



NM R DISC Rule 17-304

Page 1

NMRA, Rule 17-304

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West's New Mexico Rules Annotated Currentness

State Court Rules

▣ Rules Governing Discipline

▣ Article 3. Rules of Procedure

→RULE 17-304. CONFIDENTIALITY OF INVESTIGATIONS; EXCEPTIONS; HEARINGS

A. Confidentiality. Except as otherwise provided by this rule, any investigation and any investigatory hearing conducted by or under the direction of disciplinary counsel, or disciplinary counsel's authorized agents, shall be entirely confidential unless and until they:

(1) become matters of public record by:

- (a) the filing of a formal specification of charges with the Disciplinary Board pursuant to Rule 17309 NMRA;
- (b) the filing of a summary suspension proceeding pursuant to Rule 17207 NMRA;
- (c) the filing of an incompetency or incapacity proceeding pursuant to Rule 17208 NMRA;
- (d) the filing of a reinstatement proceeding pursuant to Rule 17-214 NMRA; or
- (e) the filing of a motion for order to show cause why a respondent should not be held in contempt pursuant to Paragraph G of Rule 17-206 NMRA; or

(2) are otherwise released according to these rules.

B. Exceptions. Information relating to disciplinary proceedings may be released by disciplinary counsel prior to filing formal charges as follows:

- (1) where investigation reasonably causes disciplinary counsel to believe in good faith that a crime may have been committed by an attorney, the name of the subject, general nature of the possible crime, relevant facts and documents and names of known witnesses to relevant facts shall be made available to an appropriate prosecuting authority;
- (2) if the respondent-attorney has filed with the office of disciplinary counsel a written waiver of confidentiality; or
- (3) upon written request from the Client Protection Fund Commission, such information as may assist the commission in determining the validity or worthiness of a specific claim filed with that commission may be submitted to that commission with the understanding and condition that commission members receiving and reviewing such information are subject to the provisions of Subparagraph (5) of Paragraph C of Rule 17405 NMRA as well as the rules of confidentiality governing the Client Protection Fund Commission.

C. Exceptions to public record. The Disciplinary Board or a hearing committee may, in the exercise of discretion, place the following matters under seal, upon request of disciplinary counsel, the respondent or *sua*

NM R DISC Rule 17-304

Page 2

NMRA, Rule 17-304

sponte:

- (1) documents, pleadings and testimony relating to the physical or mental condition or treatment of the respondent;
- (2) matters regarding allegations of substance abuse by the respondent; or
- (3) matters resulting in private discipline or dismissal pursuant to a consent to discipline agreement, the recommendation of a hearing committee, the decision of the Disciplinary Board. Upon the filing of proceedings in the Supreme Court, the proceedings shall no longer be confidential or sealed unless ordered by the Supreme Court on its own motion or the motion of a party. A party may request the proceedings be sealed by the Supreme Court by filing a motion to seal the proceedings with the pleadings and transcript.

D. Hearings. Formal proceedings conducted before a hearing committee or the Disciplinary Board shall be open to the public. Any person may publicly comment thereon. Attorneys remain subject to the restrictions of Rule 16-306 NMRA.

E. Disposition. Complainants shall be advised every six (6) months as to the status of the investigation and shall be immediately advised of the final disposition of their complaints.

[Amended effective February 14, 1995; August 31, 2004; December 13, 2005.]

LIBRARY REFERENCES

Attorney and Client ↪48.
 Westlaw Key Number Search: 45k48.
 C.J.S. Attorney and Client §§ 91 to 94.

NOTES OF DECISIONS

In general 1
Construction with federal law 2

Failure to state claim 3
Validity 1/2

1/2. Validity

Confidentiality provisions of New Mexico Supreme Court's rules governing attorney disciplinary proceedings did not require complainant to keep his own complaints about his former attorney confidential, notwithstanding absence of specific exclusion for complainants, and thus were not unconstitutionally vague or overbroad in violation of complainant's free speech rights. *Guttman v. Widman*, 2006, 188 Fed.Appx. 691, 2006 WL 1755951, Unreported. Constitutional Law ↪ 90.1(1.5)

1. In general

Complaining attorney who sent letter to Secretary of State regarding informal admonition of Public Utilities Commission (PUC) staff attorney in attorney disciplinary proceeding did not have relationship of trust and confidence with former PUC attorney, as required for tort of breach of confidence, regardless of what duty the attorney disciplinary rules imposed on complaining attorneys regarding the confidentiality of an informal admonition. NMRA, Rule 17- 304. *Fernandez-Wells v. Beauvais*, 1999, 127 N.M. 487, 983 P.2d 1006. Torts ↪ 424