

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

April 24, 2017

NO. 17-8300-004

IN THE MATTER OF THE AMENDMENT OF
RULE 12-307.2 NMRA OF THE RULES OF APPELLATE
PROCEDURE, RULES 17-202 AND -301 NMRA OF THE
RULES GOVERNING DISCIPLINE, AND RULE 27-104
NMRA OF THE RULES GOVERNING REVIEW OF
JUDICIAL STANDARDS COMMISSION PROCEEDINGS

ORDER

WHEREAS, this matter came on for consideration by the Court upon its own motion to implement electronic filing and service in certain proceedings in the Supreme Court through amendments to Rule 12-307.2 NMRA of the Rules of Appellate Procedure, Rules 17-202 and 17-301 NMRA of the Rules Governing Discipline, and Rule 27-104 NMRA of the Rules Governing Review of Judicial Standards Commission Proceedings, and the Court being sufficiently advised, Chief Justice Charles W. Daniels, Justice Petra Jimenez Maes, Justice Edward L. Chávez, Justice Barbara J. Vigil, and Justice Judith K. Nakamura concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 12-307.2, 17-202, 17-301, and 27-104 NMRA is APPROVED;

IT IS FURTHER ORDERED that voluntary electronic filing and service in any new or pending case in the Supreme Court may commence on May 1, 2017, under the above-reference amendments;

IT IS FURTHER ORDERED that the above-referenced amendments shall be **effective for all cases pending or filed on or after July 1, 2017**; and

IT IS FURTHER ORDERED that the Clerk of the Court is authorized and directed to give notice of the above-referenced amendments by posting them on the New Mexico Compilation Commission web site and publishing them in the *Bar Bulletin* and *New Mexico Rules Annotated*.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 24th day of April, 2017.

(S E A L)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

12-307.2. Electronic service and filing of papers.

A. Definitions. As used in these rules

- (1) “electronic transmission” means email or other transfer of data from computer to computer other than by facsimile transmission;
- (2) “document” includes the electronic representation of pleadings and other papers but does not include a record proper filed under Rule 12-209 NMRA, a transcript filed under Rule 12-211 NMRA, or an exhibit filed under Rule 12-212 NMRA; and
- (3) “EFS” means the electronic filing system approved by the Supreme Court for use by attorneys to file and serve documents by electronic transmission in Supreme Court or Court of Appeals proceedings.

B. Filing by electronic transmission authorized in the Supreme Court only; mandatory registration for attorneys.

- (1) In any proceeding in the Supreme Court, the filing of documents by electronic transmission through the EFS is mandatory for any party represented by an attorney, which includes attorneys who represent themselves. The filing of documents by electronic transmission in the Court of Appeals is not currently authorized.
- (2) Self-represented parties are prohibited from filing documents by electronic transmission and shall continue to file documents through the other methods authorized by the Rules of Appellate Procedure.
- (3) Parties represented by attorneys shall file documents by electronic transmission even if another party to the action is self-represented or is exempt from electronic filing under Paragraph M of this rule.
- (4) Unless exempted under Paragraph M of this rule, for any case pending or filed in the Supreme Court on or after the effective date of this rule, the following attorneys shall register with the EFS:
 - (a) any attorney required to file documents by electronic transmission under this rule; and
 - (b) any attorney who is deemed to have entered an appearance under Rule 12-302(B) NMRA and who has not withdrawn in accordance with Rule 12-302(C) NMRA.
- (5) Every registered attorney shall provide a valid, working, and regularly checked email address for the EFS. The Court shall not be responsible for inoperable email addresses or unread email sent from the EFS.

C. Filing fees; no fees charged for use of the EFS; non-electronic payment of docket fees required; dismissal for untimely payment of docket fee.

- (1) Except for the payment of any docket fee required under the Rules of Appellate Procedure, no other fees shall be charged for the filing or service of documents by electronic transmission through the EFS.
- (2) Payments currently cannot be accepted by the Supreme Court through the EFS or by other electronic payment methods.
- (3) Notwithstanding any other provision in these rules requiring the payment of a docket fee at the time a document is filed, any docket fee required under the Rules of Appellate Procedure for initiating a case in the Supreme Court through the EFS shall be paid by check no later than five (5) days after the attorney is notified through the EFS that the case has been accepted for filing.
- (4) A check for payment of a docket fee under this paragraph shall include a

notation providing the docket number of the case to which the payment applies.

(5) Failure to timely pay the docket fee as required under Subparagraph (3) of this paragraph may, on the Court's own motion, result in the dismissal of the case without prejudice to a timely motion for reinstatement filed under Subparagraph (6) of this paragraph.

(6) A motion for reinstatement of any case dismissed without prejudice under Subparagraph (5) of this paragraph may be filed within fifteen (15) days after the date of the dismissal order provided that payment of the docket fee is delivered to the Court clerk on or before the date that the motion for reinstatement is submitted for filing through the EFS.

(7) A motion for reinstatement may be granted on a showing of good cause, and any proceeding reinstated under the provisions of this subparagraph shall be deemed initiated on the date that the proceeding was originally filed.

D. Service by electronic transmission.

(1) Any document required to be served by Rule 12-307(B) NMRA may be served on a party or attorney by electronic transmission of the document if

(a) the attorney for the party to be served has registered with the EFS under this rule or Rule 1-005.2 NMRA;

(b) the party or attorney has agreed to be served with documents by email; or

(c) the party or attorney has listed an email address on a paper filed with the Court.

(2) Documents filed by electronic transmission through the EFS may be served by an attorney through the EFS or may be served through other methods authorized by this rule, Rule 12-307 NMRA, or Rule 12-307.1 NMRA.

(3) Electronic service is accomplished when the transmission of the document is completed. If within two (2) days after service by electronic transmission, a party served by electronic transmission notifies the sender of the electronic transmission that the document cannot be read, the document shall be served by any other method authorized by Rule 12-307 NMRA as designated by the party to be served.

(4) Proof of service by a party or attorney shall be in the form of written acknowledgment of service by the person served, certificate of the attorney making service, or affidavit of any other person and shall state the following:

(a) the name of the person who sent the document;

(b) the date of service and email address of the sender and recipients;

and

(c) a statement that the document was served by electronic transmission and that the transmission was successful.

(5) The Court shall serve all written court orders and notices on the parties unless otherwise ordered by the Court. The Court may file documents before serving them on the parties. The Court may serve any document by electronic transmission to an attorney who has registered with the EFS under this rule or Rule 1-005.2 NMRA and to any other party or attorney who has agreed to receive documents by electronic transmission or who has listed an email address on a document filed with the Court. For documents served by the Court, proof of service shall be in the form of a certificate of the Court clerk, which shall state the date of service and identify the parties served but need not indicate the method of service. For purposes of Rule 12-308(B) NMRA, documents served by the Court shall be deemed served by mail, regardless of

the actual manner of service, unless the Court clerk's certificate of service unambiguously states otherwise.

E. **Single transmission.** Whenever a rule requires multiple copies of a document to be filed only a single transmission is necessary.

F. **Time of filing.** For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight on the day preceding the next business day of the Court it will be considered filed on the immediately preceding business day of the Court. For any questions of timeliness, the time and date registered by the Court's computer will be determinative. For purposes of filing by electronic transmission only, notwithstanding rejection of an attempted filing through the EFS or its placement into an error queue for additional processing, the date and time that the filer submits the electronic filing envelope will serve as the filing date and time for purposes of meeting any filing deadline.

G. **Signatures.**

(1) All electronically filed documents shall be deemed to contain the filing attorney's signature pursuant to Rule 12-302 NMRA. Attorneys filing by electronic transmission thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document.

(2) If a document filed by electronic transmission contains a signature block from an original paper document containing a signature, the signature in the electronic document may represent the original signature in the following ways:

- (a) by scanning or other electronic reproduction of the signature; or
- (b) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

(3) All documents filed by electronic transmission that are signed by the Court shall be scanned or otherwise electronically produced so that the original signature is shown.

H. **Format of documents; protected personal identifier information; EFS user guide.** All documents filed by electronic transmission shall be formatted in accordance with the Rules of Appellate Procedure and shall comply with all procedures for protected personal identifier information under Rule 12-314 NMRA. The Court may make available a user guide on its website to provide guidance with the technical operation of the EFS. In the event of any conflicts between these rules and the user guide, the rules shall control.

I. **Demand for original; electronic conversion of paper documents.**

(1) Original paper documents filed or served electronically, including original signatures, shall be maintained by the attorney filing the document and shall be made available, upon reasonable notice, for inspection by other parties or the Court. If an original paper document is filed by electronic transmission, the electronic version of the document shall conform to the original paper document. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

(2) For cases in which electronic filing is mandatory, if an attorney who is exempt under Paragraph M of this rule or a self-represented party files a paper document with the Court, the Court clerk shall convert such document into electronic format for filing. The filing date shall be the date on which the paper document was filed even if the document is electronically converted and filed at a later date. The Court clerk shall retain such paper

documents as long as required by applicable statutes and Court rules.

J. **Electronic file stamp and confirmation receipt; effect.** The Court clerk's endorsement of an electronically filed document shall have the same force and effect as a manually affixed file stamp. When a document is filed through the EFS, it shall have the same force and effect as a paper document and a confirmation receipt shall be issued by the system that includes the following information:

- (1) the case name and docket number;
- (2) the date and time of filing as defined under Paragraph F of this rule;
- (3) the document title;
- (4) the name of the EFS service provider;
- (5) the email address of the person or entity filing the document; and
- (6) the page count of the filed document.

K. **Conformed copies.** Upon request of a party, the Court clerk shall stamp additional copies provided by the party of any paper filed by electronic transmission. A file-stamped copy of a document filed by electronic transmission can be obtained through the EFS. Certified copies of a document may be obtained from the Court clerk.

L. **Technical difficulties.** Substantive rights of the parties shall not be affected when the EFS is not operating through no fault of the filing attorney.

M. **Requests for exemptions from electronic filing requirement.**

(1) An attorney may file a petition with the Supreme Court requesting an exemption, for good cause shown, from the mandatory electronic filing requirements under this rule. The petition shall set forth the specific facts offered to establish good cause for an exemption. No docket fee shall be charged for filing a petition with the Supreme Court under this subparagraph.

(2) Upon a showing of good cause, the Supreme Court may issue an order granting an exemption from the mandatory electronic filing requirements of this rule. An exemption granted under this subparagraph remains in effect for one (1) year from the date of the order and may be renewed by filing another petition in accordance with Subparagraph (1) of this paragraph.

(3) An attorney granted an exemption under this paragraph may file documents in paper format with the Court. When filing paper documents under an exemption granted under this paragraph, the attorney shall attach to the document a copy of the Supreme Court exemption order. The Court clerk shall scan the attorney's paper document into the electronic filing system including the attached Supreme Court exemption order. No fee shall be charged for scanning the document. The attorney remains responsible for serving the document in accordance with these rules and shall include a copy of the Supreme Court exemption order with the document that is served.

(4) An attorney who receives an exemption under this paragraph may nevertheless file documents by electronic transmission without seeking leave of the Supreme Court provided that the attorney complies with all requirements under this rule. By doing so, the attorney does not waive the right to exercise any exemption granted under this paragraph for future filings.

[Approved, effective July 1, 1997; as amended by Supreme Court Order No. 06-8300-031, effective January 15, 2007; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017.]

17-202. Registration of attorneys.

A. Registration statement.

(1) Within three (3) months of admission to practice in this state, and, thereafter, on or before January 1 of every year, every attorney admitted to practice in this state shall submit to the state bar and to the clerk of the Supreme Court, on forms provided by the state bar and approved by the Supreme Court, a registration statement setting forth the following:

- (a) the attorney's address of record;
- (b) the street address where client files or other materials related to the attorney's practice are located;
- (c) the attorney's telephone number of record;
- (d) the attorney's email address of record; and
- (e) such other information as the Supreme Court may from time to time direct.

(2) The attorney's "address of record" is the attorney's official address for service of notices, pleadings, papers and information. The "address of record" is a public record and upon request will be provided to any member of the public. The attorney may also maintain a separate address with the state bar for purposes of publications of the state bar and solicitations.

(3) In addition to the annual registration statement, every attorney shall file a supplemental statement with the state bar and with the clerk of the Supreme Court showing any change in the information previously submitted within thirty (30) days of such change. Upon the request of any attorney providing a street address under the provisions of this rule that is not the "address of record," the street address shall not be disclosed to any member of the public.

(4) The attorney's email address of record may be used in the Supreme Court's electronic filing system in accordance with Rule 12-307.2 NMRA for the electronic service of any documents filed in the Supreme Court under the Rules Governing Discipline.

B. Certificate of compliance. In order to enable an attorney to demonstrate compliance with the requirements of Paragraph A of this rule, upon request of an attorney, the clerk of the Supreme Court shall issue a certificate of compliance to an attorney who has complied with the annual registration requirements of these rules.

C. Failure to file. Any attorney who fails to file the registration statement, or supplement thereto, in accordance with the requirements of Paragraph A of this rule, may be summarily suspended and barred from practicing law in this state until the attorney has complied therewith.

D. Inactive attorneys. An attorney who has retired, or is not engaged in practice as provided in Paragraph A of this rule, may petition the Board of Bar Commissioners on forms provided by the state bar that the attorney desires to assume inactive status and to discontinue the practice of law. Upon the receipt of such petition by the Board of Bar Commissioners, the attorney shall no longer be eligible to practice law in any jurisdiction pursuant to the attorney's New Mexico license, except as provided by the Legal Service Provider Limited Law License under Rule 15-301.2 NMRA and as an emeritus attorney as authorized under Rule 24-111 and shall continue to file an annual inactive status registration statement with the state bar. The attorney will be relieved from the payment of the fee imposed by Rule 17-203 NMRA, and Rule 17A-003 NMRA, but is required to pay the inactive status fee set by the Board of Bar Commissioners, provided, however, that an emeritus attorney as authorized under Rule 24-111 shall not be required to pay the inactive status fee. Upon the filing of a petition to assume

inactive status, the state bar shall notify the Supreme Court of the filing of the petition. Upon receipt of the notice, the Supreme Court shall change the membership status of the attorney on the official roll of attorneys effective as of the date on the petition submitted to the Board of Bar Examiners.

E. **Reinstatement of inactive attorneys.** The inactive attorney may petition for reinstatement on a form prescribed by the Board of Bar Examiners and may be granted reinstatement by the Supreme Court upon recommendation of the Board of Bar Examiners as provided in Rule 15-302(B) and (C) NMRA. A petition for reinstatement shall be granted as a matter of course, unless the Board of Bar Examiners shall determine for good cause that the petition should be denied, in which event the applicant shall have the right to a hearing as provided in Rule 15-301 NMRA of the Rules Governing Admission to the Bar. Prior to reinstatement, the Board of Bar Examiners shall inquire of the Disciplinary Board if it knows of any reason why the attorney should not be reinstated.

F. **Service.** The Supreme Court or Disciplinary Board may serve any order, pleading, or other matter on an attorney by mailing or emailing a copy of such order, pleading, or other matter to the attorney at the address of record or email address of record shown on the latest registration statement on file with the Supreme Court and this shall constitute notice as required by these rules.

G. **Applicability of rule.** The provisions of this rule shall not apply to justices of the Supreme Court, judges of the Court of Appeals, district judges, magistrate judges, metropolitan judges, or municipal judges who are prohibited by statute or ordinance from practicing law. [As amended, effective January 1, 1987; January 1, 1997; November 30, 2004; as amended by Supreme Court Order No. 06-8300-32, effective January 15, 2007; as amended by Supreme Court Order No. 16-8300-035, effective for status changes on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017.]

17-301. Applicability of rules; application of Rules of Civil Procedure and Rules of Appellate Procedure; service.

A. **Application of rules.** This article governs the procedure in disciplinary proceedings before the New Mexico Supreme Court, the Disciplinary Board and its hearing committees and reviewing officers.

B. **Application of Rules of Civil Procedure and Rules of Appellate Procedure.** Except where clearly inapplicable to disciplinary proceedings or inconsistent with or otherwise provided for by these rules, the Rules of Civil Procedure for the District Courts of New Mexico shall be used in formal disciplinary proceedings. Except where clearly inapplicable to disciplinary proceedings or inconsistent with or otherwise provided for by these rules or by Court order, the Rules of Appellate Procedure shall apply to documents filed in the Supreme Court.

C. **Service.** Except as otherwise provided in these rules, the specification of charges, all pleadings, notices, motions, orders, or other papers required to be served may be served on a party unless the party is represented by an attorney in which case service may be upon the attorney. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party, by mailing it to the attorney or party at the address listed on the most recent registration statement filed under Rule 17-202 NMRA or by electronic transmission in accordance with Rule 12-307.2 NMRA to the email address of record listed on the most recent registration statement filed under Rule 17-202 NMRA. "Delivering a copy" as used in this rule means handing it to the attorney or to the party; leaving it at the attorney's or party's office with the attorney's or party's clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion therein. Service by mail is complete upon mailing and shall constitute notice as required by these rules. Service by electronic transmission is complete as defined by Rule 12-307.2 NMRA.

D. **Proof of service.** Except as otherwise provided in these rules or by order of the Supreme Court or Disciplinary Board, proof of service of any pleading, motion, order, or other paper required to be served shall be made by the certificate of the attorney of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall be filed with the Disciplinary Board or with the Supreme Court, as appropriate, or endorsed on the pleading, motion, or other paper required to be served.

E. **Additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

[As amended by Supreme Court order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017.]

27-104. Filing and service.

A. **Filing.** Papers required or permitted to be filed in the Supreme Court shall be filed with the clerk. Filing by mail is not complete until actual receipt. Filing by electronic transmission in accordance with Rule 12-307.2 NMRA is mandatory for all attorneys filing papers under these rules except for judges representing themselves in a proceeding under these rules.

B. **Filing under seal before the conclusion of formal proceedings.** To protect the privileged and confidential nature of proceedings that are pending before the Commission as required by Article VI, Section 32 of the New Mexico Constitution, any papers filed in the Supreme Court before the conclusion of formal proceedings in the Commission shall be automatically sealed from public access and shall not be disclosed to anyone other than Court personnel, the parties to the proceeding, and their counsel, without further order of the Court. For purposes of this paragraph, the conclusion of formal proceedings occurs when the Commission holds an evidentiary hearing and issues findings, conclusions, and a recommendation for removal, retirement, or discipline based on that evidence. Accordingly, petitions for temporary suspension and responses filed pursuant to Rule 27-201 NMRA, stipulated petitions for discipline, and any request for interim relief under Paragraph E of Rule 32 of the Judicial Standards Commission Rules filed before conclusion of formal proceedings and submission to the Court of the Commission record pursuant to Article VI, Section 32, are subject to the automatic sealing provisions of this paragraph. The contents, the fact of filing, and any other information about any request for temporary suspension, stipulated discipline, or interim relief shall remain confidential until the Court determines that confidentiality is no longer required and enters an unsealing order on its own initiative or grants a motion to unseal pursuant to Paragraph I of Rule 12-314 NMRA. The Clerk of the Court shall open the case with the Commission's assigned inquiry number as the style of the case and docket pleadings only as sealed pleadings. Any papers filed under the provisions of this paragraph shall be clearly labeled "Filed Under Seal". In the event the Court rejects the stipulated discipline or denies the request for interim relief, the documents under seal shall be returned to the Commission and shall not become public record. Any other requests to seal papers filed with the Court shall be governed by the provisions of Rule 12-314 NMRA of the Rules of Appellate Procedure. Any person or entity who knowingly discloses any material obtained from a court record sealed pursuant to this rule may be held in contempt or subject to other sanctions as the Court deems appropriate.

C. **Service of all papers required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall be served by the party on all other parties to the proceeding. Service shall be upon the attorney of record of the party to be served or upon the party if the party has no attorney. Service may be made by either personal service or by mail. Except for service upon a judge who is self-represented, service by electronic transmission is also permitted in accordance with the requirements of Rule 12-307.2 NMRA. Service shall be made at or before the time of filing the paper in the Supreme Court.

D. **Service on incompetent persons.** If there is an issue of the mental competency of a judge who is not represented by counsel, service shall be made upon a guardian ad litem appointed to represent the judge in the proceedings.

E. **Proof of service.** Proof of service, in the form of written acknowledgment of the party to be served or certificate of the clerk of the court or of the attorney making service, or affidavit of any other person, shall state the name and address of counsel on whom service has

been made, or the name and address of the party if the party has no attorney. Such proof of service shall be filed with the papers filed or immediately after service is effected.

[Approved, effective April 17, 1996; as amended by Supreme Court Order No. 09-8300-022, effective September 4, 2009; as amended by Supreme Court Order No. 11-8300-026, effective May 4, 2011; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017.]