

1           **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2                                   **October 15, 2019**

3   **NO. 19-8300-012**

4   **IN THE MATTER OF THE AMENDMENT**  
5   **OF RULE 16-804 NMRA AND THE**  
6   **WITHDRAWAL OF RULE 16-300 NMRA**  
7   **OF THE RULES OF PROFESSIONAL**  
8   **CONDUCT**

9                                   **ORDER**

10           WHEREAS, this matter came on for consideration upon recommendation of  
11 the Code of Professional Conduct Committee to amend Rule 16-804 NMRA and to  
12 withdraw Rule 16-300 NMRA of the Rules of Professional Conduct, and the Court  
13 having considered the recommendation and being sufficiently advised, Chief Justice  
14 Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C.  
15 Shannon Bacon, and Justice David K. Thomson concurring;

16           NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 16-804  
17 NMRA is APPROVED;

18           IT IS FURTHER ORDERED that Rule 16-300 NMRA is WITHDRAWN;

19           IT IS FURTHER ORDERED that the amendment of Rule 16-804 NMRA and  
20 the withdrawal of Rule 16-300 NMRA shall be **effective December 1, 2019**; and

1       IT IS FURTHER ORDERED that the Clerk of the Court is authorized and  
2 directed to give notice of the above-referenced amendments by publishing them in  
3 the *Bar Bulletin* and *New Mexico Rules Annotated*.

4       IT IS SO ORDERED.

5                       WITNESS, Honorable Judith K. Nakamura, Chief Justice  
6 of the Supreme Court of the State of New Mexico, and the  
7 seal of said Court this 15th day of October, 2019.

8 ( S E A L )  
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Joey D. Moya, Chief Clerk of the Supreme Court  
of the State of New Mexico

[WITHDRAWN]

~~16-300. Prohibition against invidious discrimination.~~

~~—— In the course of any judicial or quasi-judicial proceeding before a tribunal, a lawyer shall refrain from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others. This rule does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age or sexual orientation is material to the issues in the proceeding.~~

~~[Adopted, effective January 1, 1994; withdrawn by Supreme Court Order No. 19-8300-012, effective December 1, 2019.]~~

~~Committee commentary.——~~

~~[1]—— For purposes of this rule, the term "judicial or quasi-judicial proceeding" shall refer to any and all courts, regardless of their jurisdiction or location, as well as any governmental agency, board, commission, or department before whom the lawyer is engaged in the practice of law. The rule also encompasses arbitration or mediation proceedings, whether or not court ordered.~~

~~[2]—— For purposes of this rule, the term "proceeding" shall mean any judicial or administrative process relating to the adjudication or resolution of legal disputes (including, but not limited to, discovery procedures, arbitration and mediation), rule making, licensing, lobbying, the imposition or withholding of sanctions or the granting or withholding of relief. For purposes of this rule, the term "sexual orientation" shall mean heterosexuality, bisexuality or homosexuality.~~

~~[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; withdrawn by Supreme Court Order No. 19-8300-012, effective December 1, 2019.]~~

**RULES OF PROFESSIONAL CONDUCT**  
**Rule 16-804**

**Supreme Court Approved**  
**October 15, 2019**

1 **16-804. Misconduct.**

2 It is professional misconduct for a lawyer to:

3 A. violate or attempt to violate the Rules of Professional Conduct,  
4 knowingly assist or induce another to do so or do so through the acts of another;

5 B. commit a criminal act that reflects adversely on the lawyer's  
6 honesty, trustworthiness or fitness as a lawyer in other respects;

7 C. engage in conduct involving dishonesty, fraud, deceit or  
8 misrepresentation;

9 D. engage in conduct that is prejudicial to the administration of justice;

10 E. state or imply an ability to influence improperly a government  
11 agency or official or to achieve results by means that violate the Rules of Professional  
12 Conduct or other law; or

13 F. knowingly assist a judge or judicial officer in conduct that is a  
14 violation of applicable rules of judicial conduct or other law.

15 G. engage in conduct that the lawyer knows or reasonably should know  
16 is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity,  
17 disability, age, sexual orientation, gender identity, or marital status in conduct related to  
18 the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline,  
19 or withdraw from a representation in accordance with Rule 16-116 NMRA. This paragraph  
20 does not preclude legitimate advice or advocacy consistent with these rules.

21 [As amended by Supreme Court Order No. 08-8300-29, effective November 3, 2008; as

**RULES OF PROFESSIONAL CONDUCT**  
**Rule 16-804**

**Supreme Court Approved**  
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1 amended by Supreme Court Order No. 19-8300-012, effective December 1, 2019.]

2 **Committee Commentary.**

3 [1] Lawyers are subject to discipline when they violate or attempt to violate the  
4 Rules of Professional Conduct, knowingly assist or induce another to do so or do so through  
5 the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf.  
6 Paragraph A, however, does not prohibit a lawyer from advising a client concerning action  
7 the client is legally entitled to take.

8 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law,  
9 such as offenses involving fraud and the offense of willful failure to file an income tax  
10 return. However, some kinds of offenses carry no such implication. Traditionally, the  
11 distinction was drawn in terms of offenses involving "moral turpitude."[-] That concept can  
12 be construed to include offenses concerning some matters of personal morality, such as  
13 adultery and comparable offenses, which have no specific connection to fitness for the  
14 practice of law. Although a lawyer is personally answerable to the entire criminal law, a  
15 lawyer should be professionally answerable only for offenses that indicate lack of those  
16 characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of  
17 trust, or serious interference with the administration of justice are in that category. A  
18 pattern of repeated offenses, even ones of minor significance when considered separately,  
19 can indicate indifference to legal obligation.

20 [3] ~~[A lawyer who, in the course of representing a client, knowingly manifests~~  
21 ~~by words or conduct, bias or prejudice based upon race, sex, religion, national origin,~~

**RULES OF PROFESSIONAL CONDUCT**  
**Rule 16-804**

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1 ~~disability, age, sexual orientation or socioeconomic status, violates Paragraph D when such~~  
2 ~~actions are prejudicial to the administration of justice. Legitimate advocacy respecting the~~  
3 ~~foregoing factors does not violate Paragraph D. A trial judge's finding that peremptory~~  
4 ~~challenges were exercised on a discriminatory basis does not alone establish a violation of~~  
5 ~~this rule.]~~ Discrimination and harassment by lawyers in violation of Paragraph G  
6 undermine confidence in the legal profession and the legal system. Such discrimination  
7 includes harmful verbal or physical conduct that manifests bias or prejudice towards others.  
8 Harassment includes sexual harassment and derogatory or demeaning verbal or physical  
9 conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual  
10 favours, and other unwelcome verbal or physical conduct of a sexual nature. The substantive  
11 law of antidiscrimination and anti-harassment statutes and case law may guide application  
12 of Paragraph G.

13 [4] Conduct related to the practice of law includes representing clients;  
14 interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged  
15 in the practice of law; operating or managing a law firm or law practice; and participating  
16 in bar association, business, or social activities in connection with the practice of law.  
17 Lawyers may engage in conduct undertaken to promote diversity and inclusion without  
18 violating this rule by, for example, implementing initiatives aimed at recruiting, hiring,  
19 retaining, and advancing diverse employees or sponsoring diverse law student  
20 organizations.

21 [5] A lawyer does not violate Paragraph G by limiting the scope or subject

1 matter of the lawyer's practice or by limiting the lawyer's practice to members of  
2 underserved populations in accordance with these rules and other law. A lawyer's  
3 representation of a client does not constitute an endorsement by the lawyer of the client's  
4 views or activities. See Rule 16-102(B) NMRA.

5       [[4]] [6] A lawyer may refuse to comply with an obligation imposed by law upon a  
6 good faith belief that no valid obligation exists. The provisions of Rule 16-102(D) NMRA  
7 ~~[Paragraph D of Rule 16-102 NMRA of the Rules of Professional Conduct]~~ concerning a  
8 good faith challenge to the validity, scope, meaning, or application of the law apply to  
9 challenges of legal regulation of the practice of law.

10       [[5]] [7] Lawyers holding public office assume legal responsibilities going beyond  
11 those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill  
12 the professional role of lawyers. The same is true of abuse of positions of private trust such  
13 as trustee, executor, administrator, guardian, agent and officer, director or manager of a  
14 corporation or other organization.

15 [Adopted by Supreme Court Order No. 08-8300-29, effective November 3, 2008; as  
16 amended by Supreme Court Order No. 19-8300-012, effective December 1, 2019.]