

**PROPOSED REVISIONS TO THE RULES GOVERNING THE NEW MEXICO BAR
PROPOSAL 2017-034**

The Commission on Professionalism has recommended amendments to Rule 24-110 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2017, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

24-110 . "Bridge the Gap: Transitioning into the Profession" program.

A. **Applicability; deadlines; continuing legal education credit.** Every new lawyer, as defined in this paragraph, admitted to practice law in New Mexico [~~on active status~~] shall timely complete the requirements of the "Bridge the Gap: Transitioning into the Profession" (Bridge the Gap) program administered by the State Bar of New Mexico unless otherwise specified in this rule. For purposes of this rule, a "new lawyer" means any person admitted to the active practice of law [in] as a member of the State Bar of New Mexico after the effective date of this rule.

(1) A new lawyer shall enroll in the Bridge the Gap program within thirty (30) days after admission to the [~~bar~~] State Bar of New Mexico. A new lawyer shall complete the Bridge the Gap program by December 31 of the first full calendar year following the date that the new lawyer is admitted to the [~~bar~~] State Bar of New Mexico, which includes but is not limited to filing with the [~~state bar~~] State Bar of New Mexico a Bridge the Gap Completion Certification executed by the assigned mentor attesting to successful completion of the Bridge the Gap program.

(2) A new lawyer who successfully completes the Bridge the Gap program shall receive credit for the first full year of minimum continuing legal education requirements. The Commission on Professionalism shall certify the new lawyer's completion of the program to the minimum continuing legal education board, and the credits shall be awarded in the compliance year when the program was completed. Any deferral or exemption granted to a new lawyer under Paragraphs D or E of this rule does not defer or exempt the new lawyer from the minimum continuing legal education requirements under Rule 18-201 NMRA.

B. **Appointment and training of qualified mentors; continuing legal education credit.**

(1) The Commission on Professionalism shall certify and recommend qualifying lawyers to serve as mentors in accordance with the minimum requirements of the Bridge the Gap program guidelines for appointment by the Supreme Court. The Commission shall also be responsible for providing training materials for new mentors in accordance with the Bridge the Gap program guidelines. The Supreme Court shall issue orders of appointment for all lawyers appointed as mentors, who are then authorized, but not required, to serve indefinitely as mentors in the Bridge the Gap program unless otherwise ordered by the Supreme Court.

(2) A lawyer who participates in the Bridge the Gap program as an appointed mentor may receive up to one (1) compliance year's worth of continuing legal education credits every other compliance year. The Supreme Court's Commission on Professionalism shall certify to the minimum continuing legal education board when a mentor has completed participation in a mentorship program with a new lawyer.

C. **Administration.** The State Bar of New Mexico shall be responsible for administering the Bridge the Gap program, which shall include the following:

- (1) establish guidelines for the program subject to approval of the Supreme Court under Paragraph H of this rule;
- (2) certify compliance and completion of the program by new lawyers;
- (3) develop and approve the program's operating procedures, budget, and staffing; and
- (4) submit an annual status report to the Supreme Court by March 1 of each year.

D. **Deferrals.**

(1) A new lawyer serving a judicial law clerkship may apply for a deferral from the State Bar of New Mexico depending on the expected termination date of the new lawyer's clerkship, which shall be granted for the duration of the new lawyer's clerkship provided that the new lawyer reports annually to the State Bar of New Mexico on the status of the clerkship and enrolls in the Bridge the Gap program within thirty (30) days of the termination of the clerkship.

(2) A new lawyer who is not engaged in the practice of law or who is unemployed may petition the State Bar of New Mexico for temporary deferral of the requirements in this rule, which may be granted ~~[upon]~~ on a showing of financial hardship or other good cause. A new lawyer who is denied a temporary deferral may petition the Commission on Professionalism for review. The Commission's decision is final.

(3) A new lawyer granted a deferral under this paragraph shall enroll in the Bridge the Gap program no later than thirty (30) days after expiration of the deferral period and shall complete the Bridge the Gap program requirements by December 31 of the first full calendar year following the expiration of the deferral period.

E. **Exemptions.** The following new lawyers are exempt from completing the Bridge the Gap program:

- (1) new lawyers on active status who ~~[-do not practice in New Mexico;]~~
 - (a) do not maintain an office or other systematic presence for the practice of law in New Mexico;
 - (b) do not represent any client who is a resident of or whose principal place of business is in New Mexico;
 - (c) do not have any legal matters that involve transactions in, real or personal property in, or legal issues specific to New Mexico or New Mexico law; and

(d) do not have any active cases in New Mexico;

(2) new lawyers who have practiced law in another state for a minimum of two (2) years in the last five (5) years prior to admission in this state; and

(3) new lawyers admitted under a limited license [pursuant to] under Rule 15-301.1 NMRA or Rule 15-301.2 NMRA and whose practice of law under these rules does not exceed one year.

Any lawyer who is exempt from completing the Bridge the Gap program shall, within one month of any change in circumstance that makes the lawyer no longer eligible for the exemption, notify the Bridge the Gap program of the change in circumstance. The lawyer may then be required to complete the requirements of the Bridge the Gap program if deemed necessary by the executive director of the State Bar of New Mexico or the executive director's designee.

F. **Cost.** Participation in the Bridge the Gap program requires payment of a three hundred dollar (\$300.00) administrative fee by the new lawyer to the State Bar of New Mexico. One half of the fee is due on or before March 1 of the year immediately after admission and the remainder of the fee is due by December 31 of that same year.

G. **Administrative suspension of license for non-compliance.** Whenever the executive director of the State Bar of New Mexico shall certify in writing to the Supreme Court that a new lawyer has failed or refused to comply with the provisions of this rule, the clerk of the Supreme Court shall issue a citation to the new lawyer requiring the new lawyer to show cause before the Court, within fifteen (15) days after service of ~~[such]~~ the citation, why the new lawyer should not be suspended from the right to practice in the courts of this state. Service of the citation may be by personal service or by first class mail postage prepaid. The new lawyer's compliance with the provisions of this rule on or before the return day of ~~[such]~~ the citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.

H. **Bridge the Gap program curriculum and other information.** The State Bar of New Mexico is responsible for developing and maintaining a program manual and other training materials, to be approved by the Supreme Court, necessary for the implementation and operation of the program.

I. **Conflicts and confidentiality in outside mentoring.**

(1) An outside mentoring relationship exists when the mentoring lawyer and new lawyer are not employed by the same law firm or agency. The mentoring lawyer is presumed not to have a lawyer-client relationship with the new lawyer's client and the new lawyer's client is not an intended beneficiary of the outside mentoring relationship between the mentoring lawyer and the new lawyer. When allowed by Rule 16-101 NMRA, the mentoring lawyer may provide or the new lawyer may seek short-term limited guidance or counsel, within an outside mentoring relationship, without expectation by either lawyer or the new lawyer's clients that a lawyer-client relationship has been formed by the mentoring lawyer with the new lawyer's clients or that representation is being provided in the matter to the new lawyer's clients by the mentoring lawyer.

(2) Where practical the new lawyer and the mentoring lawyer shall discuss new lawyer client specific issues in hypothetical terms within an outside mentoring relationship. Regardless of whether issues are discussed in hypothetical terms, the outside mentoring lawyer shall run a conflict check and shall treat all client information discussed with the new lawyer as confidential under Rules 16-106 to ~~[16]~~-112 NMRA. Although the outside mentoring lawyer is presumed not to have a lawyer-client relationship with the new lawyer's client, the outside mentoring lawyer is presumed to be a representative of the new lawyer employed to assist the

new lawyer in the rendition of professional legal services under [~~Subparagraph (3) of Paragraph A of~~] Rule 11-503 NMRA(A)(3).

(3) Subparagraphs (1) and (2) of this paragraph do not apply to lawyers who are outside mentors providing, or new lawyers seeking, counsel or guidance on an on-going or regular basis relating to the needs of or litigation regarding a specific client, whether within or without the context of the mentoring relationship. If the lawyers are engaged in on-going or regular guidance or counsel related to a specific client or clients such that a lawyer-client relationship exists between the new lawyer's client and the mentoring lawyer, then the new lawyer and the mentoring lawyer must comply with the relevant New Mexico Rules of Professional Conduct.

[Adopted by Supreme Court Order No. 11-8300-024, effective for all lawyers admitted to practice law in New Mexico after April 6, 2011; as amended by Supreme Court Order No. 14-8300-018, effective December 31, 2014; as amended by Supreme Court Order No. _____, effective _____.]

MICHAEL O. ESHLEMAN

ATTORNEY-AT-LAW—ADMITTED IN OHIO
P.O. BOX 100—KINGS MILLS, OHIO 45034

April 5th, 2017

The Honorable Joey D. Moya,
Office of the Clerk,
New Mexico Supreme Court
237 Don Gaspar Avenue, Room 104
Santa Fe, New Mexico 87501

Via fax to 505-827-4837

Re: Comment on Rules Proposal 2017-034
Bridge the Gap

Dear Mr. Clerk:

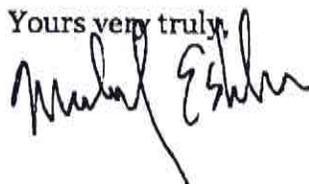
I am an attorney admitted in New Mexico, presently on inactive status. I previously was a public defender with the New Mexico Public Defender Department. Because I had been admitted to practice in Ohio before I was admitted in New Mexico, I did not participate in the Bridge the Gap program.

I am wondering why this program is necessary. By all means, the State Bar should encourage mentoring. But it should be voluntary. It is unfair to impose this additional requirement on new attorneys at substantial cost of their time and money. From my observation of participants in the Bridge the Gap program, I did not see the mentoring program as something useful. Both the new attorneys and the mentors I observed appeared to consider it useless, just another hoop to jump through.

I wonder if there has been any serious, rigorous study of how the program is working. Or is this another instance of government by anecdote? Is it even possible to determine if the Bridge the Gap program does any good? I suspect it is an idea that was rolled out and continues to grow and expand even though there are not documented positive results because once a program begins there arises a vested financial interest in keeping it going. Like attorneys' C.L.E. requirements.

The entire Bridge the Gap program should be dropped as a mandatory requirement for new attorneys and made a voluntary program of the State Bar.

With warm regards, I am,

Yours very truly,


SUPREME COURT OF NEW MEXICO
FILED

APR - 5 2017

