

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL  
PROCEDURE FOR THE MAGISTRATE COURTS AND RULES  
OF PROCEDURE FOR THE MUNICIPAL COURTS**

The Courts of Limited Jurisdiction Rules Committee have recommended amendments to Rules 6-304 and 8-304 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://nmsupremecourt.nmcourts.gov/> 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 6, 2016, 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.

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**6-304. Motions.**

A. **Defenses and objections [which] that may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion.

B. **Suppression of evidence.**

(1) In cases within the trial court's jurisdiction  
(a) a person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence; and  
(b) a person aggrieved by a confession, admission, or other evidence may move to suppress such evidence.

(2) Except for good cause shown, motions to suppress must be filed and determined prior to trial.

C. **Motions[~~and other papers~~].** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. A written motion shall be filed and served within ninety (90) days after arraignment or the filing of a waiver of arraignment, unless a different time period is fixed by these rules or by order of the court. Motions shall be served on each party as provided by Rule 6-209 NMRA.

D. **Unopposed motions.** The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order initialed by opposing counsel shall accompany the motion. The motion is not granted until the order is approved by the court.

E. **Opposed motions.** The motion shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The moving party shall request concurrence from opposing counsel unless the motion is a

- (1) motion to dismiss;
- (2) motion regarding bonds and conditions of release;
- (3) motion for new trial;
- (4) motion to suppress evidence; or
- (5) motion to modify a sentence pursuant to Rule 6-801 NMRA.

Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions, or other documentary evidence in support of the motion may be filed with the motion.

F. **Response.** Unless otherwise specifically provided in these rules or by order of the court, any written response shall be filed and served within [~~fifteen (15)~~] eleven (11) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Paragraph B was amended in 2013 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held that, absent good cause shown, motions to suppress must be filed prior to trial and suppression issues must be adjudicated prior to trial to preserve the state’s right to appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA & committee commentary. Prior to the entry of a final judgment in magistrate court, the state may obtain judicial review of an order suppressing evidence by filing a nolle prosequi and reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *see also* Rule 6-506A NMRA. But if the trial court enters an order at trial suppressing evidence and concludes that any remaining evidence is insufficient to proceed against the defendant, the defendant is acquitted, and the defendant’s double jeopardy rights preclude the state from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior to trial ensures that the state’s right to appeal any order suppressing evidence will be preserved.

If a suppression issue is untimely raised, the trial judge may order a continuance in order to ascertain whether there is good cause for the late filing. Examples of good cause may include, but are not limited to, failure of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to trial, failure of either party to provide discovery, or the discovery of allegedly suppressable evidence during the course of the trial. If good cause is shown, the judge may excuse the late filing and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

[Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013.]

### 8-304. Motions.

A. **Defenses and objections [which] that may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion.

**B. Suppression of evidence.**

(1) In cases within the trial court's jurisdiction:

(a) a person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence; and

(b) a person aggrieved by a confession, admission, or other evidence may move to suppress such evidence.

(2) Except for good cause shown, motions to suppress must be filed and determined prior to trial.

**C. Motions[~~and other papers~~].** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. A written motion shall be filed and served at least twenty (20) days before trial or the time specified for a motion hearing, unless a different time period is fixed by these rules or by order of the court. Motions shall be served on each party as provided by Rule 8-208 NMRA.

**D. Unopposed motions.** The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order initialed by opposing counsel shall accompany the motion. The motion is not granted until the order is approved by the court.

**E. Opposed motions.** The motion shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The moving party shall request concurrence from opposing counsel unless the motion is a

- (1) motion to dismiss;
- (2) motion regarding bonds and conditions of release;
- (3) motion for new trial;
- (4) motion to suppress evidence; or
- (5) motion to modify a sentence pursuant to Rule 8-801 NMRA.

Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions, or other documentary evidence in support of the motion may be filed with the motion.

**F. Response.** Unless otherwise specifically provided in these rules or by order of the court, any written response shall be filed and served within [~~fifteen (15)~~] eleven (11) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Paragraph B was amended in 2013 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. Marquez held that, absent good cause shown, motions to suppress must be filed prior to trial and suppression issues must be adjudicated prior to trial in order to preserve the state's right to appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA & committee commentary. Prior to the entry of a final judgment in municipal court, the prosecution may obtain judicial review of an order suppressing evidence by dismissing the charges and reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *see also* Rule 8-506A NMRA. But if the municipal court enters an order at trial suppressing evidence and concludes that any remaining evidence is insufficient to proceed against the defendant, the defendant is acquitted, and the defendant's double

jeopardy rights preclude the municipality from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior to trial ensures that the municipality will be able to exercise its right to appeal any order suppressing evidence.

If a suppression issue is untimely raised, the trial judge may order a continuance in order to ascertain whether there is good cause for the late filing. *See Marquez*, 2012-NMSC-031, ¶ 16. Examples of good cause may include, but are not limited to, failure of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to trial, failure of either party to provide discovery, or the discovery of allegedly suppressable evidence during the course of the trial. If good cause is shown, the judge may excuse the late filing and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

[Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013.]

**Proposal 2016-40**

A requirement that motions be filed 20 days prior to the hearing and responses 11 days prior may have the effect of lengthening the time before which a party may be heard, Many courts operate on a compressed docket and move cases along much quicker than this timeline contemplates.

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**Comments on proposed changes to Rule 6-304**

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**From :** Kevin Nault <KNault@da.state.nm.us>

Wed, Apr 06, 2016 02:22 PM

**Subject :** Comments on proposed changes to Rule 6-304**To :** 'nmsupremecourtclerk@nmcourts.gov' <nmsupremecourtclerk@nmcourts.gov>

The proposed changes to paragraph C should include an explicit statement that motions can be made after a subsequent disclosure or triggering event. Even when everyone is acting in good faith, some evidence is disclosed upon receipt but not necessarily within the discovery deadline (e.g., laboratory analysis reports), or may not be developed until witness interviews are complete. In my experience, disclosure deadlines are also largely toothless as applied to defense counsel. Judges are loathe to prejudice defendants due to errors of counsel, which fact some attorneys take advantage of by not seriously investigating their cases in a prompt manner.

When information is not discovered, or not disclosed to a party, until late in a case that information may still be subject to a motion, and the Rule should reflect that.

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