

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

**PROPOSAL 2024-012**

**March 13, 2024**

The Rules of Criminal Procedure for State Courts Committee has recommended new Rules 5-305, 6-307, 7-307, and 8-307 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 website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[rules.supremecourt@nmcourts.gov](mailto:rules.supremecourt@nmcourts.gov)  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 12, 2024**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

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**[NEW MATERIAL]**

**5-305. Consolidating cases.**

A. **Consolidation motions; judge assignment.** Motions to consolidate shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged or recused. If consolidation is ordered, the judge assigned to the lowest-numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties and the court.

B. **Filings; copies.** The motion to consolidate and the court's order to consolidate shall be filed in the oldest case (the case bearing the lowest case number). Copies of the motion and order shall be filed in all the consolidated cases. Following consolidation, all pleadings, motions, and other papers shall be filed in the oldest case. Copies shall be filed in all the remaining cases.

C. **Captions; titles.** The case number of each case consolidated shall appear in the caption of all pleadings, motions, and other papers filed after consolidation. In addition, if the pleading, motion, or other paper does not apply to all consolidated cases, the title shall include the

case number(s) to which it pertains, e.g., “Motion to Suppress on Count II of D-101-CR-2021-00000.”

D. **Effect of consolidation.** If separate charging documents are properly consolidated, they are thereafter considered as one charging document containing separate counts. The order of consolidation results in a single judgment and sentence.

E. **Pretrial detention cases.** This rule shall not apply to pretrial detention cases consolidated into the corresponding criminal cause number.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — Consolidation of criminal cases is a procedural mechanism which avoids repetitious litigation and facilitates speedy administration of justice. Consolidating separate charging documents yields a single charging document containing separate counts. *See State v. Compton*, 1953-NMSC-036, ¶¶ 41-42, 57 N.M. 227; *See also State v. Paschall*, 1965-NMSC-008, ¶ 3, 74 N.M. 750. Thus, when cases are consolidated in criminal matters, the parties and court must be held to the sentencing limitations applicable to a trial based on one charging document. *See Torres v. Santistevan*, No. S-1-SC-38147, ¶ 17 (N.M. July 24, 2023). Subject to opposition by either party, the court has discretion to consolidate cases when an issue bears on all pending cases, for example, in addressing questions of competency or determining conditions of release. Upon resolution of the issue, the cases are considered unconsolidated and return to the court originally assigned.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

## **[NEW MATERIAL]**

### **6-307. Consolidating cases.**

A. **Consolidation motions; judge assignment.** Motions to consolidate shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged or recused. If consolidation is ordered, the judge assigned to the lowest-numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties and the court.

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D. **Effect of consolidation.** If separate charging documents are properly consolidated, they are thereafter considered as one charging document containing separate counts. The order of consolidation results in a single judgment and sentence.

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**Committee commentary.** — Consolidation of criminal cases is a procedural mechanism which avoids repetitious litigation and facilitates speedy administration of justice. Consolidating separate charging documents yields a single charging document containing separate counts. *See State v. Compton*, 1953-NMSC-036, ¶¶ 41-42, 57 N.M. 227; *See also State v. Paschall*, 1965-NMSC-008, ¶ 3, 74 N.M. 750. Thus, when cases are consolidated in criminal matters, the parties and court must be held to the sentencing limitations applicable to a trial based on one charging document. *See Torres v. Santistevan*, No. S-1-SC-38147, ¶ 17 (N.M. July 24, 2023). Subject to opposition by either party, the court has discretion to consolidate cases when an issue bears on all pending cases, for example, in addressing questions of competency or determining conditions of release. Upon resolution of the issue, the cases are considered unconsolidated and return to the court originally assigned.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **[NEW MATERIAL]**

#### **7-307. Consolidating cases.**

A. **Consolidation motions; judge assignment.** Motions to consolidate shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged or recused. If consolidation is ordered, the judge assigned to the lowest-numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties and the court.

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[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**[NEW MATERIAL]**

**8-307. Consolidating cases.**

A. **Consolidation motions; judge assignment.** Motions to consolidate shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged or recused. If consolidation is ordered, the judge assigned to the lowest-numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties and the court.

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[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

New Mexico  
Courts

Alyssa Segura &lt;supams@nmcourts.gov&gt;

**[rules.supremecourt-grp] Comment on Supreme Court Out-of-Cycle Rule Proposal**

Kimberly Weston &lt;KWeston@da.state.nm.us&gt;

Reply-To: kweston@da.state.nm.us

To: "rules.supremecourt@nmcourts.gov" &lt;rules.supremecourt@nmcourts.gov&gt;

Fri, Mar 22, 2024 at 4:58 PM

Dear Rule-Making Committee:

My name is Kimberly J. Weston and I am an ADA for the First Judicial District Attorney's Office. Please see my comments (below and attached) regarding the 2024 out of cycle rule proposals:

1. Proposal 2024-012 – Consolidated Cases [New Rules 5-305, 6-307, 7-307, and 8-307 NMRA]

In *Torres v. Santistevan*, 2023-NMSC-021, ¶ 17, 536 P.3d 465, the Court requested that the Committee define the effect of consolidation within the rules of criminal procedure. As a result, the Committee recommends the adoption of new rules that govern the consolidation of criminal cases, including the effect of consolidation.

In *Torres*, the Court highlighted official “consolidation” seems more like joinder, where a case and the sentencing structure becomes a single case. To make more than a purely administrative construct, the rules committee should designate who is responsible for proposing the Motion to Consolidate. For example, must pleas in district court contain a consolidation clause? If so, that seems to lie with district attorneys. If the presumption is that cases should not be consolidated upon plea, then the *Torres* request loses some of its heft. The motion protects Defendants rights, but the DA is responsible for memorializing the agreement between the parties. The question these amendments don't seem to answer is: who is responsible for the Motion to Consolidate?

2. First Judicial District Court -- Proposal 2024-019 - Case Management Program in the First Judicial District Court

[New LR1-307 NMRA]

The First Judicial District Court proposes the adoption of a new local rule that sets forth a case management pilot program for criminal cases originating in the District. The proposed case management pilot program is intended to establish clear and uniform time limits for the disposition of criminal cases within the District.

C (5) Evidence deemed in the possession of the state. Evidence is deemed to be in possession of the state for purposes of this rule and Rule 5-501(A) NMRA if this evidence is in the possession or control of any person or entity who has participated in the investigation or evaluation of the case.

Vaguely, the caselaw behind the theory that the State is an amalgamation of state entities is not to require the prosecution to have immediate access to all department files; rather, it is to ensure the ongoing cooperation of prosecutors in their duty to continually disclose newly provided evidence. *See prosecutor's Code of Professional Responsibility*. The proposed concrete phrasing will only increase the “dismissal-refile” pipeline, where charges against a defendant linger in the land without prejudice.

For now, the State can pursue plea negotiations with the discovery it has been provided by each state agency. This begins the process of case evaluation. In Santa Fe, attorneys are already bound by Supreme Court Order No. 22-8500-017, which imposes a firm deadline of five days pre-status conference for filing an amended certificate of disclosure, which affirms that the attorney has provided to defense all discovery, documents, and witness information in its possession. That duty continues throughout the case. At what point can an attorney know they have all the information in the “State's” – as a global organization – possession? Is there not always an argument that something more should exist or be able to be found? After all, it is hard to prove a negative.

The law tells the State to provide the discovery it knows, or reasonably should know, is available. This means that diligently requesting discovery, (if it assumably exists), is enough for the State to proceed with evaluating and working on the case under Magistrate Court deadlines. If a prosecutor *must* turn over all of the documents in their “possession,” and possession is considered to be anyone who has “participated in the investigation or evaluation of the case,” then the mere existence of irrelevant material could arguably put attorneys in violation of LR1-307 NMRA C(5).

Sincerely,

Kimberly J .Weston

[kweston@da.state.nm.us](mailto:kweston@da.state.nm.us)

Sincerely,

4/8/24, 10:30 AM

New Mexico State Judiciary Mail - [rules.supremecourt-grp] Comment on Supreme Court Out-of-Cycle Rule Proposal

Kimberly J. Weston

Assistant District Attorney

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**Proposed Rule Changes.docx**

18K

Dear Rule-Making Committee:

My name is Kimberly J. Weston and I am an ADA for the First Judicial District Attorney's Office. Please see my comments below regarding the 2024 out of cycle rule proposal:

1. Proposal 2024-012 – Consolidated Cases [New Rules 5-305, 6-307, 7-307, and 8-307 NMRA]

In *Torres v. Santistevan*, 2023-NMSC-021, ¶ 17, 536 P.3d 465, the Court requested that the Committee define the effect of consolidation within the rules of criminal procedure. As a result, the Committee recommends the adoption of new rules that govern the consolidation of criminal cases, including the effect of consolidation.

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Sincerely,

Kimberly J .Weston

[kweston@da.state.nm.us](mailto:kweston@da.state.nm.us)





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## [rules.supremecourt-grp] Comments by NMJC Legislation and Rules Subcommittee

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**Judge Emilio Chavez** <taodejc@nmcourts.gov>

Thu, Apr 11, 2024 at 9:49 AM

Reply-To: taodejc@nmcourts.gov

To: rules.supremecourt@nmcourts.gov, Angie Schneider <aladaks@nmcourts.gov>, Thomas Pestak <tpestak@sierraco.org>, Jennifer Attrep <coajla@nmcourts.gov>

Attached is NMJC L&R Subcommittee's comments regarding the current proposed rule changes.  
Please kindly confirm receipt.

Thank you,

Emilio J. Chavez

Chief Judge

Eighth Judicial District

[105 Albright Street, Suite N](#)

[Taos, NM 87571](#)



**NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS (1).docx**

21K

## NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS

1. Proposal 2024-002 – Permanency Review Hearings [comments begin on p. 4]
  - The proposed changes to Rules 10-345 NMRA and 10-346 are mostly stylistic and appropriate.
2. Proposal 2024-003 – Child’s First Appearance on a Delinquency Petition
  - The proposed changes to Form 10-711 NMRA: The form is for use with Rule 10-224 NMRA and should indicate at the top of the form similar to other delinquency forms. It makes sense to change arraignment to first appearance.
  - However, in the comparable criminal forms the language indicates “I understand that I am charged with the following criminal offense or offenses.” *See e.g.* 9-405 NMRA. Although the suggested change “I understand the allegations in the petition” is correct, it insert “allegations” rather than “offense,” which is the language indicated in Rule 10-224(A) NMRA. A suggestion might be to amend the language to “I understand that I am charged with the following ~~criminal~~ offense or offenses” to track the language of the rule and to be consistent with the criminal form.
  - Rule 10-224(G) NMRA reads, “the right to remain silent, and that any statement made by the respondent child may be used against the respondent child.” The proposed change to Form 10-711 regarding right to remain silent is appropriate but the change should omit “in court”. The proposed changed language might be modified as follows “the RIGHT to remain silent with the understanding that any statement I make may be used against me ~~in court~~, except any “**confidential**” statements I make to my attorney.”  
*See e.g.* Rules 11-503 NMRA; 6-501 NMRA.
3. Proposal 2024-004 – Water Settlement Agreements
  -
4. Proposal 2024-005 – Garnishment [comments begin on p. 50]
  - Rule 1-065.1(E): The word “filed” is missing in the following sentence: “Notwithstanding the foregoing, for cases **filed** on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account.”
  - Rule 2-802(B): The phrase “certificate of service shall be filed by the judgment creditor indicating” is missing in the following sentence: “A separate **certificate of**

service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.”

5. Proposal 2024-006 – Political Activity and Elections

- The proposed changes are stylistic and appropriate. The inclusion in 21-401(C)(7) of the language “express and implied” is superfluous.

6. Proposal 2024-007 – Lawyer Succession Rule [comments begin on p. 4]

- The proposed changes are necessary and appropriate.

7. Proposal 2024-008 – Surreptitious Recordings of Clients, Third Parties

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8. Proposal 2024-009 – Providing Financial Assistance to Clients

- The proposed change to Rule 16-108 NMRA is a much needed exception, but perhaps modest gift should be defined.

9. Proposal 2024-010 – Incorporation of Plea Deadlines [comments begin on p. 6]

- The proposed change to Rule 5-304(E) NMRA is important to define a set timeframe for plea deadlines. Instead of creating (F), the new proposed (E) might read no plea agreement shall be entered into later than five (5) days before the scheduled date for jury selection or commencement of a bench trial **unless a written finding of good cause is made by the judge that excuses the untimely submission of the agreement.**
- (F) might also include language “In addition, to finding good cause excusing the untimely plea agreement, the court may consider sanctions against the state and defense counsel.”
- In (F), the phrase “the scheduled date for jury selection or commencement of a bench” might be added in the following sentence for consistency: “A request for the court to approve an untimely plea agreement less than five (5) days before **the scheduled date for jury selection or commencement of a bench** trial shall not be granted except on a written finding by the judge of good cause that excuses the untimely submission of the agreement.”
- In the “Notwithstanding” sentence the committee may want to consider including “a defendant may plead guilty to all **legally permissible** charges . . .” There are often times where a criminal information implicates double jeopardy or there is not a factual basis supporting the allegation.

10. Proposal 2024-011 – Filing of Criminal Complaint Upon Arrest

- The proposed change to Rule 5-210 NMRA providing a definitive timeframe is a much needed change.

#### 11. Proposal 2024-012 – Consolidated Cases [comments begin on p. 5]

- The proposal seeks to create Rule 5-305 NMRA. The proposed new rule is generally accomplished under Rule 5-203(A) or filing a superseding indictment. Rather than creating a new rule, the same purpose might be done by amending in 5-203(A) NMRA to include similar language to 5-203(B) NMRA.
- For example after separate count “**or a separate complaint, indictment or information may be consolidated on motion of a party.**” The language “whether felonies or misdemeanors or both:” is likely unnecessary and could be removed.

#### 12. Proposal 2024-013 – Plea Deadlines, Suppression Hearings, and Extensions for Trial [comments begin on p. 14]

- The proposed change to the committee commentary to Rule 5-212 NMRA should be included in the substantive part of the rule under (D) rather than commentary. The committee may want to consider 7-10 day requirement to allow the court time to rule and the parties to timely enter a plea after the ruling under the new proposed deadline for Rule 5-304 NMRA.

#### 13. Proposal 2024-014 – Kinship Guardianship Forms

- The proposed changes to the forms appear to be appropriate and add consistency.

#### 14. Proposal 2024-015 – Parentage Forms

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#### 15. Proposal 2024-016 – Human Rights Act Intentional Discrimination

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#### 16. Proposal 2024-017 – Firearm Enhancement

- The proposed change to UJI Special Verdict Form 14-6013 NMRA is needed to track the language of NMSA 1978 §31-18-16. The definitions are likewise clear and important for the determination. Likewise, the use note is necessary to provide clarification regarding the changes to the statute. The committee may want to consider an additional sentence to the firearm instruction that the defendant can use a gun without brandishing it

- On the sample verdict form, the committee may want to consider that there may be cases where the jury needs to determine if the firearm was either used, brandished, or discharged.
- Depending on the facts of the case the form might have Used \_\_\_\_\_ (Yes or No; Brandished \_\_\_\_\_ (Yes or No); or Discharged \_\_\_\_\_ (Yes or No)

The sentencing judge would use the highest of the three alternatives to sentence.

#### 17. Proposal 2024-018 – Multiple Defendants

- Prior to changing UJI 14-6003 NMRA the committee should consider if the instruction is necessary? UJI 14-6005 NMRA is short and simple and illustrates the point that the counts should be considered separately as to each defendant. Also, the committee may want to look at UJI's 14-6010 and 14-6012 that include some of the proposed language.
- If a change is necessary, the proposed change to UJI 14-6003 NMRA might be clearer if the instruction read, "In this case, involving multiple defendants, you must consider separately whether each defendant is guilty or not guilty. The state must prove to your satisfaction beyond a reasonable doubt each of the elements of a crime against a defendant to render a verdict of guilty. You should analyze what the evidence in the case shows with respect to each individual defendant. [[Both] [All] defendants are charged with the same crimes.] [The defendants are charged with different offenses. Please review the verdict forms to clarify the offense(s) that [is][are] applicable to each defendant.
- The last two proposed sentences for 14-6003 are redundant as to instructions UJI 14-6010 "If you have agreed upon one verdict [as to a particular charge] [as to a defendant], that form of verdict is the only form to be signed [as to that charge] [as to that defendant] and UJI 14-6012.

Respectfully submitted,

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New Mexico Judicial Council Legislation and  
Rules Subcommittee

Hon. Jennifer Attrep  
Hon. Emilio Chavez  
Hon. Thomas Pestak  
Hon. Angie Schneider



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## [rules.supremecourt-grp] Comments on Proposed Rule Change to Rule 5-305, NMRA (Proposal 2024-012)

1 message

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**Brett Loveless** <albdbrl@nmcourts.gov>  
Reply-To: albdbrl@nmcourts.gov  
To: rules.supremecourt@nmcourts.gov

Thu, Apr 11, 2024 at 5:03 PM

Dear Ms. Garcia:

The Second Judicial District Court Criminal Division would like to offer the following comments on proposal 2024-012, new Rule 5-305.

First, with regard to sections (A) and (B), the Court suggests that this should contain language that allows cases to be consolidated into a case number other than the lowest numbered case where agreed to by the Court and/or parties and the consolidation motion be heard by any judge assigned to any of the cases. While cases are generally consolidated into the lowest case number, it is also true that in some instances there are agreements and reasons to consolidate into one of the higher numbered cases. More importantly, in jurisdictions that use judicial rotations and deal with high volumes of cases, the consolidation motion may be heard by any judge assigned to any of the cases (vs. the judge assigned to the lowest numbered case).

Second, with regard to (D), the Court has a couple of concerns about the practical application of this provision. This section would appear to require the clerk's office to renumber counts/charges which they are not permitted to do. Clerks report each charge by count; multiple charges cannot be labeled as count 1. Therefore, if the cases/charges are thereafter considered to be one charging document, in order to avoid having multiple count 1s (not permitted in Odyssey), the clerk would have to renumber certain charges/counts. Currently, clerks enter the counts as they are enumerated by the DA's office. They do not renumber counts or charges. Further, there is concern about configuring the status of the consolidated cases and whether the intent is to close the consolidated cases (except the case that they are consolidated into) or leave it open. If the intent is to close the case, disposing of the charges will be problematic since the clerks will not have dispositions for the charges which are required in closing a CR case. Finally, there is a concern that the completion of the J&S, and associated problems with numbering of charges, is already complicated--this would increase the confusion that often already exists and require additional corrections and resubmissions of J&S's. Currently, one J&S is drafted if a plea agreement results in resolution of multiple cases, and each count is delineated in the single J&S by count number and case number, which seems to work.

Thank you for your consideration.

Brett R. Loveless  
District Court Judge, Div. III