

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

**PROPOSAL 2024-013**

**March 13, 2024**

The Rules of Criminal Procedure for State Courts Committee recommends amendments to Rules 5-212, 5-601, 6-304, 6-506, 7-304, and 7-506 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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**5-212. Motion to suppress.**

A. **Property.** A person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence.

B. **Suppression of other evidence.** A person aggrieved by a confession, admission or other evidence may move to suppress such evidence.

C. **Time for filing.** A motion to suppress shall be filed no less than sixty (60) days prior to trial, unless, upon good cause shown, the trial court waives the time requirement. Any motion to suppress filed prior to trial shall be decided prior to trial to preserve the state's right to appeal any order suppressing evidence.

D. **Hearing.** The court shall receive evidence on any issue of fact necessary to the decision of the motion. If a motion pursuant to Paragraph A of this rule is granted, the property shall be returned, unless otherwise subject to lawful detention.

[As amended by Supreme Court Order No. 13-8300-016, effective for all cases pending or filed on or after December 31, 2013.]

**Committee commentary.** — For the general rule governing motions, *see* Rule 5-601 NMRA.

The aggrieved person under Paragraphs A and B of this rule is the person who has standing to raise the issue. *See State v. Nemrod*, 85 N.M. 118, 509 P.2d 885 (Ct. App. 1973), and *State v. Torres*, 81 N.M. 521, 469 P.2d 166 (Ct. App. 1970).

The motion under Paragraph B of this rule is used to suppress or exclude evidence obtained in violation of any constitutional rights, not only that obtained by an unlawful search and seizure. *See e.g., State v. Harrison*, 81 N.M. 324, 466 P.2d 890 (Ct. App. 1970) (motion to exclude lineup identification).

Paragraph B was amended in 2012 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. Marquez held prospectively “that Rule 5-212(C) requires that motions to suppress be filed before trial and that the district court must adjudicate suppression issues before trial, absent good cause.” *Id.* ¶ 28. 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 hearing pursuant to Paragraph D. Absent good cause shown, the judge may deny the motion for failure to comply with the rule. If the motion to suppress is granted, the court may declare a mistrial.

If a defendant raises a motion before trial, the court should endeavor to resolve such motion at least five (5) days prior to trial in order to permit the parties to negotiate resolution via plea consistent with Rule 5-304 NMRA.

At a hearing on a motion to suppress, the Rules of Evidence, except for the rules on privileges, do not apply. *See* Paragraph A of Rule 11-104 NMRA and Subparagraph (1) of Paragraph D of Rule 11-1101 NMRA. For example, hearsay evidence is admissible. *United States v. Matlock*, 415 U.S. 164, 94 Sup. Ct. 988, 39 L. Ed. 2d 242 (1974).

[As amended by Supreme Court Order No. 13-8300-016, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

## **5-601. Motions.**

- A. **Change of venue.** Change of venue shall be accomplished according to law.
- B. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the district court. The district court may rule on a motion to reconsider with or without a hearing.
- C. **Defenses and objections which may be raised.** Any defense, objection or request which is capable of determination without a trial on the merits may be raised before trial by motion.
- D. **Defenses and objections which must be raised.** The following defenses or objections must be raised prior to trial:
  - (1) defenses and objections based on defects in the initiation of the prosecution;or
  - (2) defenses and objections based on defects in the complaint, indictment or information other than a failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding. Failure to present any such defense or objection, other than the failure to show jurisdiction or charge an offense, constitutes a waiver thereof, but the court for cause shown may grant relief from the

waiver. If any such objection or defense is sustained and is not otherwise remediable, the court shall order the complaint, indictment or information dismissed.

**E. Time for making motions.**

(1) Unless otherwise provided by these rules or ordered by the court, a pretrial motion shall be made at the arraignment or within ninety (90) days thereafter, unless upon good cause shown the court waives the time requirement.

(2) A motion to reconsider may be filed at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal.

**F. Evidentiary hearing.** If an evidentiary hearing is required, the motion shall be accompanied by a separate written request for an evidentiary hearing, including a statement of the ultimate facts intended to be proven at such an evidentiary hearing. Unless a shorter period of time is ordered by the court, at least five (5) days before the hearing on the motion, each party shall submit to the other party's attorney the names and addresses of the witnesses the party intends to call at the evidentiary hearing, together with any statement subject to discovery made by the witness which has not been previously disclosed pursuant to Rule 5-501 or 5-502.

**G. Ruling of court.** All motions shall be disposed of within a reasonable time after filing.

**H. Defenses and objections not waived.** No defense or objection shall be waived by not being raised or made at arraignment.

**I. Notice of withdrawal of motion.** If a motion is scheduled for hearing, a party shall give at least five (5) days notice of withdrawal of the motion.

[As amended, effective May 1, 1999; as amended by Supreme Court Order No. 19-8300-018, effective for all cases filed or pending on or after December 31, 2019.]

**Committee commentary.** — See NMSA 1978, §§ 38-3-3 to 38-3-7 (1880, as amended through 2003), for the statutes pertaining to change of venue. The original venue for a criminal case is the county in which the crime was committed. NMSA 1978, § 30-1-14 (1963).

Paragraphs C and D of this rule were derived from Rules 12(b)(1) and (2) and 12(f) of the Federal Rules of Criminal Procedure. See generally 48 F.R.D. 553, 579 (1970); 62 F.R.D. 571, 287-92 (1974). Unlike the federal rule, Paragraph D of this rule does not include motions to suppress evidence as a matter which must be raised prior to trial. If a motion to suppress is made prior to trial, it is governed by Rule 5-212. Subparagraph (2) of Paragraph D, and Paragraph H of this rule superseded decisions holding that motions to quash an indictment must be raised prior to the arraignment and plea. See NMSA 1978, § 31-6-3; *State v. Elam*, 1974-NMCA-075, 86 N.M. 595, 526 P.2d 189.

If a defendant raises a motion before trial, the court should endeavor to resolve such motion at least five (5) days prior to trial in order to permit the parties to negotiate resolution via plea consistent with Rule 5-304 NMRA.

Paragraph I was added in 1999 to provide an affirmative duty of an attorney to give five days notice of withdrawal of a motion. Failure to provide adequate notice can result in unnecessary costs. See *State v. Rivera*, 1998-NMSC-024, 125 N.M. 532, 964 P.2d 93. A willful violation of this paragraph can result in contempt of court and the imposition of disciplinary action. See Rule 5-112 NMRA. Paragraph I is intended to preclude local rules which may result in imposition of costs incurred by the court because of an alleged negligent failure of the attorney to provide adequate

notice of the withdrawal of a motion. The committee is of the opinion that such a rule would have a chilling effect upon the zealous representation of a defendant in a criminal case.

This rule was amended in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our Rules of Criminal Procedure. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 (“Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases.”). Consistent with Rule 12-201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn.

[As amended by Supreme Court Order No. 19-8300-018, effective for all cases filed or pending on or after December 31, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

#### **6-304. Motions.**

A. **Defenses and objections 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. **Motion requirements.** 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. Motions shall be served on each party as provided by Rule 6 209 NMRA.

C. **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 the opposing party shall accompany the motion. The motion is not granted until the order is approved by the court.

D. **Opposed motions.** The motion shall recite that concurrence of the opposing party was requested or shall specify why no such request was made. The moving party shall request concurrence from the opposing party 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 under Rule 6 801 NMRA.

Notwithstanding the provisions of any other rule, a party 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.

E. **Response.** Unless otherwise specifically provided in these rules or by order of the court, if a party wants to file a written response to a motion, the written response shall be filed and served within fifteen (15) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

F. **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 obtained through allegedly unconstitutional means may move to suppress such evidence.

(2) Unless otherwise ordered by the court, a motion to suppress shall be filed at least twenty (20) days before trial or the time specified for a motion hearing, whichever is earlier. Except for good cause shown, a motion to suppress shall be filed and decided prior to trial.

(3) Unless otherwise ordered by the court, the prosecution shall file a written response to a motion to suppress within fifteen (15) days after service of the motion. If the prosecution fails to file a response within the prescribed time period, the court may rule on the motion with or without a suppression hearing.

G. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the court at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal. The court may rule on a motion to reconsider with or without a hearing.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 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 No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. 19-8300-018, effective for all cases filed or pending on or after December 31, 2019.]

**Committee commentary.** — Although Paragraph E does not require a written response to every motion, a court may order a party to file a written response to a motion. Alternatively, to facilitate docket and case management, courts are encouraged to issue scheduling orders with specific deadlines for written motions and responses. To the extent any conflict exists, the deadlines in a court order supersede the deadlines in this rule. A motion to suppress evidence under Paragraph F of this rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification).

In 2017, the committee moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline for filing either a motion to suppress or a response, the party may ask the court, in its discretion, to grant a time extension under Rule 6-104(B) NMRA, a continuance under Rule 6-601(A) NMRA, or an extension of the time for commencement of trial under Rule 6-506(C) NMRA.

The paragraph addressing suppression motions previously 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 and 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 6-506.1 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.

In an attorney-prosecuted case, if a defendant raises a motion before trial, the court should endeavor to resolve such motion at least five (5) days prior to trial in order to permit the parties to negotiate resolution via plea consistent with Rule 6-302 NMRA.

If a defendant raises a suppression issue at trial, the trial judge may order a continuance under Rule 6-601(A) in order to ascertain whether there is good cause for the defendant's failure to raise the issue prior to trial. 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 motion and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 ("Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases."). A motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn. A jury verdict is not a ruling of the court and therefore may not be reconsidered pursuant to this rule. *See Jaramillo v. O'Toole*, 1982-NMSC-011, 97 N.M. 345, 639 P.2d 1199 (holding that a magistrate court does not have jurisdiction to set aside a jury verdict).

[Adopted 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 No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. 19-8300-018, effective for all cases filed or pending on or after December 31, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

## **6-506. Time of commencement of trial.**

### **A. Time limits for arraignment.**

(1) ***Defendant not in custody.*** A defendant who is not in custody shall be arraigned on the complaint or citation within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later. If the defendant fails to appear by the appearance date on a citation, the court shall issue a summons commanding the defendant to appear for arraignment within thirty (30) days of the initial appearance date on the citation.

(2) ***Defendant in custody.*** A defendant who is in custody within this state shall be arraigned on the complaint or citation as soon as practicable, but in any event no later than three (3) days after the date of arrest if the defendant is being held in the local detention center, or no later than five (5) days after the date of arrest if the defendant is not being held in the local detention center.

(3) ***After dismissal or discharge of felony charges.*** If all felony charges against the defendant have been dismissed or discharged, and the only remaining charges are within magistrate court trial jurisdiction, the defendant shall be arraigned within thirty (30) days after the

date of dismissal or discharge if the defendant is not in custody, or two (2) days after the date of dismissal or discharge if the defendant is in custody.

**B. Time limits for commencement of trial.** The trial of a criminal citation or complaint shall be commenced within one hundred eighty-two (182) days after whichever of the following events occurs latest:

(1) the date of arraignment or the filing of a waiver of arraignment of the defendant;

(2) if an evaluation of competency has been ordered, the date an order or remand is filed in the magistrate court finding the defendant competent to stand trial;

(3) if a mistrial is declared by the trial court, the date ~~[such]~~ that order is filed in the magistrate court;

(4) in the event of a remand from an appeal or request for extraordinary relief, the date the mandate or order is filed in the magistrate court disposing of the appeal or request for extraordinary relief;

(5) if the defendant is arrested for failure to appear or surrenders in this state for failure to appear, the date of arrest or surrender of the defendant;

(6) if the defendant is arrested for failure to appear or surrenders in another state or country for failure to appear, the date the defendant is returned to this state; or

(7) if the defendant has been placed in a preprosecution diversion program, the date a notice is filed in the magistrate court that the preprosecution diversion program has been terminated for failure to comply with the terms, conditions, or requirements of the program.

**C. Extension of time.** The time for commencement of trial may be extended by the court:

(1) on the filing of a written waiver of the provisions of this rule by the defendant and approval of the court;

(2) on motion of the defendant, for good cause shown, and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;

(3) on stipulation of the parties and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;

(4) on withdrawal of a plea ~~[or rejection of a plea]~~ by a defendant for a period of up to ~~[ninety (90)]~~ sixty (60) days;

~~(5)~~ upon rejection of a plea by the court for a period of up to sixty (60) days;

~~[(5)]~~ (6) on a determination by the court that exceptional circumstances exist that were beyond the control of the state or the court that prevented the case from being heard within the time period and a written finding that the defendant would not be unfairly prejudiced, the court may grant further extensions that are necessary in the interests of justice; or

~~[(6)]~~ (7) if defense counsel fails to appear for trial within a reasonable time, for a period not to exceed one hundred eighty-two (182) days, but the aggregate of all extensions granted under this subparagraph may not exceed one hundred eighty-two (182) days.

**D. Time for filing motion.** A motion to extend the time period for commencement of trial under Paragraph C of this rule may be filed at any time within the applicable time limits or on exceptional circumstances shown within ten (10) days after the expiration of the time period. At

the request of either party, the court shall hold a hearing prior to the commencement of trial to determine whether an extension may be appropriately granted.

**E. Effect of noncompliance with time limits.**

(1) The court may deny an untimely petition for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[As amended, effective August 1, 1999; effective August 1, 2004; as amended by Supreme Court Order No. 07-8300-025, effective November 1, 2007; by Supreme Court Order No. 08-8300-054, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

**Committee commentary.** —

**Exceptional circumstances.** — “Exceptional circumstances,” as used in this rule, would include conditions that are unusual or extraordinary, such as death or illness of the judge, prosecutor, or defense attorney immediately preceding the commencement of the trial; or other circumstances that ordinary experience or prudence would not foresee, anticipate, or provide for. The court may grant an extension for exceptional circumstances only if the court finds that the extension will not unfairly prejudice the defendant. The defendant may move the court to dismiss the case based on a particularized showing that the extension or impending extension would subject the defendant to oppressive pretrial incarceration, anxiety and concern, or the possibility that the defense will be impaired.

**Constitutional right to speedy trial.** — This rule is distinct from any speedy trial rights a defendant may have under the constitutions and laws of the United States and the State of New Mexico. *See State v. Urban*, 2004-NMSC-007, 135 N.M. 279, 87 P.3d 1061, for the factors to be considered.

**Duty of prosecutor.** — It is the continuing duty of the prosecutor to seek the commencement of trial within the time specified in this rule. It is the obligation of both parties to make a good faith effort to complete their separate discovery and to advise the court of non-compliance with Rule 6-504 NMRA.

**Computation of time.** — Time periods are computed under Rule 6-104 NMRA.

**Paragraph A.** — Paragraph A of this rule requires arraignment within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later. For defendants in custody, arraignment is required within three (3) days after the date of arrest if the defendant is being held in the local jail, or five (5) days after the date of arrest, if the defendant is being held in another jurisdiction. A failure to arraign the defendant within the time limitation will not result in a dismissal of the charge unless the defendant can show some prejudice because of the delay. “Local detention center” is defined as “one that is commonly used by the magistrate court in the



normal course of business and not necessarily within the territorial jurisdiction of the court.” Rule 6-401(A)(3) NMRA.

**Paragraph B.** — A violation of Paragraph B of this rule can result in a dismissal with prejudice under Paragraph E of this rule. *See also State v. Lopez*, 1976-NMSC-012, ¶ 3, 89 N.M. 82, 547 P.2d 565. However, the rules do not create a jurisdictional barrier to prosecution. The defendant must raise the issue and seek dismissal. *See State v. Vigil*, 1973-NMCA-089, ¶ 28, 85 N.M. 328, 512 P.2d 88. If the state in good faith files a nolle prosequi under Rule 6-506.1(C) and (D) NMRA and later files the same charge, the trial on the refiled charges shall be commenced within the unexpired time for trial under Rule 6-506 NMRA, unless, under Rule 6-506.1(D) NMRA, the court finds the refiled complaint should not be treated as a continuation of the same case.

[As amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023.]

#### **7-304. Motions.**

A. **Defenses and objections 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. **Motion requirements.** 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. Motions shall be served on each party as provided by Rule 7-209 NMRA.

C. **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.

D. **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 under Rule 7-801 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.

E. **Response.** Unless otherwise specifically provided in these rules or by order of the court, if a party wants to file a written response to a motion, the written response shall be filed and served within fifteen (15) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

**F. 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 obtained through allegedly unconstitutional means may move to suppress such evidence.

(2) Unless otherwise ordered by the court, a motion to suppress shall be filed at least twenty (20) days before trial or the time specified for a motion hearing, whichever is earlier. Except for good cause shown, a motion to suppress shall be filed and decided prior to trial.

(3) Unless otherwise ordered by the court, the prosecution shall file a written response to a motion to suppress within fifteen (15) days after service of the motion. If the prosecution fails to file a response within the prescribed time period, the court may rule on the motion with or without a suppression hearing.

**G. Motions to reconsider.** A party may file a motion to reconsider any ruling made by the court at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal. The court may rule on a motion to reconsider with or without a hearing.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 16-8300-029, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after December 31, 2019.]

**Committee commentary.** — A motion to suppress evidence under Paragraph F of this rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification). In 2016, the committee moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline for filing either a motion to suppress or a response, the party may ask the court, in its discretion, to grant a time extension under Rule 7-104(B) NMRA, a continuance under Rule 7-601(A) NMRA, or an extension of the time for commencement of trial under Rule 7-506 (C) NMRA.

The paragraph addressing suppression motions previously 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 metropolitan 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; *State v. Gardea*, 1999-NMCA-116, ¶ 5, 128 N.M. 64, 989 P.2d 439; *see also* Rule 7-506.1 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 will be able to exercise its right to appeal any order suppressing evidence.

In an attorney-prosecuted case, if a defendant raises a motion before trial, the court should endeavor to resolve such motion at least five (5) days prior to trial in order to permit the parties to negotiate resolution via plea consistent with Rule 7-302 NMRA.

If a defendant raises a suppression issue at trial, the trial judge may order a continuance under Rule 7-601(A) in order to ascertain whether there is good cause for the defendant's failure to raise the issue prior to trial. 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 motion and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 (“Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases.”). Consistent with Rule 12-201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn. [Adopted 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 No. 16-8300-029, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

## **7-506. Time of commencement of trial.**

### **A. Time limits for arraignment.**

(1) ***Defendant not in custody.*** A defendant who is not in custody shall be arraigned on the complaint or citation within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later.

(2) ***Defendant in custody.*** A defendant who is in custody shall be arraigned on the complaint or citation as soon as practicable, but in any event no later than three (3) days after the date of arrest if the defendant is being held in the local detention center, or no later than five (5) days after the date of arrest if the defendant is not being held in the local detention center.

(3) ***Following dismissal or discharge of felony charges.*** If all felony charges against the defendant have been dismissed or discharged, and the only remaining charges are within metropolitan court trial jurisdiction, the defendant shall be arraigned within thirty (30) days after the date of dismissal or discharge if the defendant is not in custody or two (2) days after the date of dismissal or discharge if the defendant is in custody.

**B. Time limits for commencement of trial.** The trial of a criminal citation or complaint shall be commenced within one hundred eighty-two (182) days after whichever of the following events occurs latest:

- (1) the date of arraignment or the filing of a waiver of arraignment of the defendant;
- (2) if an evaluation of competency has been ordered, the date an order is filed in the metropolitan court finding the defendant competent to stand trial;
- (3) if a mistrial is declared by the trial court, the date such order is filed in the metropolitan court;
- (4) in the event of a remand from an appeal, the date the mandate or order is filed in the metropolitan court disposing of the appeal;
- (5) if the defendant is arrested for failure to appear or surrenders in this state for failure to appear, the date of arrest or surrender of the defendant;
- (6) if the defendant is arrested for failure to appear or surrenders in another state or country for failure to appear, the date the defendant is returned to this state; or
- (7) if the defendant has been referred to a preprosecution or court diversion program, the date a notice is filed in the metropolitan court that the defendant has been deemed not eligible for, is terminated from, or is otherwise removed from the preprosecution or court diversion program.

C. **Extension of time.** The time for commencement of trial may be extended by the court:

- (1) upon the filing of a written waiver of the provisions of this rule by the defendant and approval of the court;
- (2) upon motion of the defendant, for good cause shown, and approval of the court, for a period not exceeding sixty (60) days, provided that the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;
- (3) upon stipulation of the parties and approval of the court, for a period not exceeding sixty (60) days, provided that the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;
- (4) upon withdrawal of a plea ~~[or rejection of a plea]~~ by a defendant for a period of up to sixty (60) days; [or]
- (5) upon rejection of a plea by the court for a period of up to sixty (60) days; or
- ~~[(5)]~~ (6) upon a determination by the court that exceptional circumstances exist that were beyond the control of the state or the court that prevented the case from being heard within the time period and a finding, either on the record or in writing, that the defendant would not be unfairly prejudiced, the court may grant further extensions that are necessary in the interests of justice.

D. **Time for filing motion.** A motion to extend the time period for commencement of trial granted under Subparagraph (C)~~[(5)]~~ (6) of this rule may be filed at any time within the applicable time limits or upon exceptional circumstances shown within ten (10) days after the expiration of the time period. At the request of either party, the court shall hold a hearing prior to the commencement of trial to determine whether an extension may be appropriately granted.

E. **Effect of noncompliance with time limits.**

- (1) The court may deny an untimely petition for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[As amended, effective August 1, 1999; August 1, 2004; as amended by Supreme Court Orders No. 08-8300-051 and No. 08-8300-053, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

**Committee commentary.** —

**Exceptional circumstances.** — “Exceptional circumstances,” as used in this rule, would include conditions that are unusual or extraordinary, such as death or illness of the judge, prosecutor, or defense attorney immediately preceding the commencement of the trial; or other circumstances that ordinary experience or prudence would not foresee, anticipate, or provide for. The court may grant an extension for exceptional circumstances only if the court finds that the extension will not unfairly prejudice the defendant. The defendant may move the court to dismiss the case based on a particularized showing that the extension or impending extension would subject the defendant to oppressive pretrial incarceration, anxiety and concern, or the possibility that the defense will be impaired.

**Speedy trial.** — This rule is distinct from any speedy trial rights a defendant may have under the constitutions and laws of the United States and the State of New Mexico.

**Duty of prosecutor.** — It is the continuing duty of the prosecutor to seek the commencement of trial within the time specified in this rule.

[As amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016.]

**New Mexico  
Courts**

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

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**[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court**

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**Supreme Court** <noreply@nmcourts.gov>

Fri, Mar 22, 2024 at 4:38 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

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**Proposal  
Number** 2024-013

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**Comment** I am a public defender in the Metropolitan Court. However, I only speak for myself and not for LOPD. I support changing the rules to resolve a motion at least 5 days before trial. This will effectively stop motion hearings from being held on the same day and being incorporated with a bench trial. Although judges do their best to isolate evidence from the motions hearing that is inadmissible on the merits, there is a risk that psychologically some or all are not able to do so. Therefore, it is important to have time between the motions hearing and a bench trial to avoid inadmissible evidence influencing the judge's decision at the merits phase.

I also support clarifying that 60 days can be added to the rule when the court, as opposed to the defendant, rejects a plea agreement. Judges should not be adding 60 days to the rule simply because a defendant exercises their constitutional right to trial. The current practice in many courts of adding 60 days to the rule upon a defendant rejecting a plea could incentivize the state to initially offer worse pleas.

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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](#)



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

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## 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
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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