

PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL

PROPOSAL 2024-018

March 13, 2024

The Uniform Jury Instructions – Criminal Committee has recommended amendments to Uniform Jury Instruction 14-6003 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
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.

14-6003. Multiple defendants; consider each separately.¹

[In this case, involving multiple defendants charged with different offenses, the following defendants are charged with the following crimes:

Defendant _____ (first defendant’s name) is charged with _____ (list first defendant’s crimes);

Defendant _____ (second defendant’s name) is charged with _____ (list second defendant’s crimes);²

[OR]

[In this case, [both]³ [all] defendants are charged with the same crimes.]

[you] You must consider separately whether each of the [two]³ [several] defendants is guilty or not guilty. You should analyze what the evidence in the case shows with respect to each individual defendant separately. ~~[Even if you cannot agree upon a verdict as to one [or more] of the defendants [or charges], you must return the verdict upon which you agree.]~~

The state must prove each element of each count against each defendant. Your verdict as to any one defendant or count, whether it is guilty or not guilty, should not influence your verdict as to any other defendants or counts.

If you cannot reach a verdict on [both]³ [all] defendants, or on any charge against any defendant, you must return your verdict on any defendant or charge on which you unanimously agree.

USE NOTES

1. This instruction is not appropriate for a [conspiracy trial] multiple-defendant trial in which a charge of conspiracy is submitted to the jury. UJI 14-2812 NMRA should be used in such cases.

2. Use the applicable alternative. Use the first alternative if any of the charges against the defendants are different. If additional defendants are on trial, add lines for each defendant's name and applicable crime or crimes. Use the second alternative if all of the charges against all defendants are the same.

3. _____ Use the applicable alternative.
[As amended by Supreme Court Order No. _____, effective _____.]
Committee commentary. — [~~This instruction was derived from California Jury Instructions Criminal, 17.00, and Devitt & Blackmar, Federal Jury Practice and Instructions, Section 17.04.~~]
UJI 14-6003 is not appropriate for multiple-defendant trials involving conspiracy charges. The second sentence of this instruction directs the jury to “analyze ... the evidence ... with respect to each individual defendant separately,” which conflicts with the rule that the acts and declarations of a conspirator may be the acts and declarations of all of the members of the conspiracy. Accordingly, if a multiple-defendant trial involves conspiracy allegations, UJI 14-2812 NMRA should be used instead.

This instruction was derived from the Judicial Council of California Criminal Jury Instruction 203 (2023) and the Tenth Circuit Criminal Pattern Jury Instruction 1.21. See CALCRIM No. 203; Tenth Circuit Criminal Pattern Jury Instruction 1.21.

[As amended by Supreme Court Order No. _____, effective _____.]



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

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

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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,

New Mexico Judicial Council Legislation and
Rules Subcommittee

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