PROPOSED REVISIONS TO THE RULES OF THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

PROPOSAL 2024-019

March 13, 2024

The First Judicial District Court has recommended the adoption of new LR1-307 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
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.

[NEW MATERIAL]

LR1-307. Case management pilot program for criminal cases.

A. **Scope; application.** This is a special pilot rule governing time limits for criminal proceedings in the First Judicial District Court. This rule applies in all criminal proceedings in the First Judicial District Court but does not apply to probation violations, which are heard as expedited matters separately from cases awaiting a determination of guilt, nor to any other special proceedings in Article 8 of the Rules of Criminal Procedure for the District Courts. The Rules of Criminal Procedure for the District Courts and existing case law on criminal procedure continue to apply to cases filed in the First Judicial District Court, but only to the extent they do not conflict with this pilot rule. The First Judicial District Court may adopt forms to facilitate compliance with this rule, including the data tracking requirements of Paragraph K of this rule.

B. **Arraignment.**

(1) ***Deadline for arraignment.*** The defendant shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the bind-over order, indictment, or the date of the arrest, whichever is later. The state shall file and directly submit its arraignment request to the trial court administrative assistant concurrently with the filing of the bind-over order, information, indictment, or date of arrest, whichever is later.

(2) ***Certification by prosecution required; matters certified.*** At or before arraignment or waiver of arraignment, or on the filing of a bind-over order, the state shall certify that before obtaining an indictment or filing an information the case has been investigated sufficiently to be reasonably certain that:

(a) the case will reach a timely disposition by plea or trial within the case processing time limits set forth in this rule;

(b) the court will have sufficient information on which to rely in assigning a case to an appropriate track at the status hearing provided for in Paragraph F of this rule;

(c) all discovery in the possession of the state and relied on in the investigation leading to the bind-over order, indictment or information will be provided in accordance with Subparagraph (C)(2) of this rule; and

(d) the state understands that, absent extraordinary circumstances, the state's failure to comply with the case processing time lines set forth in this rule will result in sanctions as set forth in Paragraph H of this rule.

(3) ***Certification form.*** The court may adopt and require use of a form to fulfill the certification and acknowledgment required by this paragraph.

C. **Disclosure by the state; requirement to provide contact information; continuing duty; failure to comply.**

(1) ***Scope of disclosure by the state.*** The scope of the state's discovery disclosure obligation shall be governed by Rule 5-501(A)(1)-(6) NMRA. In addition to producing a "speed letter" authorizing the defendant to examine physical evidence in possession of the state, the state shall provide the defendant with physical copies of any documentary evidence and audio, video, and audio-video recordings made by law enforcement officers or otherwise in possession of the state at the time of the disclosure. As part of its production obligation under Rule 5-501(A)(5) NMRA, the state shall provide contact information for its witnesses that is current as of the date of disclosure, including, to the extent available, witness addresses, phone numbers, and email addresses.

(2) ***Deadline for disclosure by the state.*** If the case is a ten (10)-day case as described by Rule 5-302(A)(l) NMRA, the state shall make its discovery disclosures to the defendant within five (5) days after the first appearance. If the case is a sixty (60)-day case as described by Rule 5-302(A)(1) NMRA, the state shall make its initial discovery disclosures to the defendant within fifteen (15) days after the first appearance.

(3) ***Motion to withhold contact information for safety reasons.*** A party may seek relief from the court by motion, for good cause shown, to withhold specific contact information if necessary to protect a victim or a witness. If the address of a witness is not disclosed under court order, the party seeking the order shall arrange for a witness interview or accept at its business offices a subpoena for purposes of deposition under Rule 5-503 NMRA.

(4) ***Continuing duty.*** The state shall have a continuing duty to disclose additional information to the defendant, including the names and current contact information for newly discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

(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.

(6) ***Deadline for the state to submit evidence to the crime lab.*** Within fifteen (15) days of arraignment or the filing of a waiver of arraignment, the state shall file a certification that it has exercised due diligence to ensure that all evidence that may require testing has been submitted to the state crime lab.

D. **Disclosure by defendant; notice of alibi; entrapment defense; failure to comply.**

(1) ***Initial disclosures; deadline; witness contact information.*** Not less than five (5) days before the scheduled date of the status hearing described in Paragraph F of this rule, the defendant shall disclose or make available to the state all information described in Rule 5-502(A)(1)-(3) NMRA. At the same time, the defendant shall provide addresses, and also phone numbers and email addresses if available, for its witnesses that are current as of the date of disclosure.

(2) ***Deadline for notice of alibi and entrapment defense.*** Notwithstanding Rule 5-508 NMRA or any other rule, not less than ninety (90) days before the date scheduled for commencement of trial as provided in Paragraph F of this rule, the defendant shall serve on the state a notice in writing of the defendant's intention to offer evidence of an alibi or entrapment as a defense.

(3) ***Continuing duty.*** The defendant shall have a continuing duty to disclose additional information to the state, including the names and contact information for newly discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

E. **Peremptory excusal of a district judge; limits on excusals; time limits; reassignment.** A party on either side may file one (1) peremptory excusal of any judge in the First Judicial District Court, regardless of which judge is currently assigned to the case, within ten (10) days of the arraignment or the filing of a waiver of arraignment. If necessary, the case may later be reassigned by the chief judge to any judge in the First Judicial District, so long as that judge has not been previously excused on the case, under Paragraph J of this rule. The chief judge may also reassign the case to a judge pro tempore previously approved to preside over these matters by order of the Chief Justice, and the judge pro tempore shall not be subject to peremptory excusal.

F. **Status hearing; witness disclosure; case track determination; scheduling order.**

(1) ***Witness list disclosure requirements.*** Within twenty-five (25) days after arraignment or waiver of arraignment each party shall, subject to Rule 5-501(F) NMRA and Rule 5-502(C) NMRA, file a list of names and contact information for known witnesses the party intends to call at trial and that the party has verified is current as of the date of disclosure required under this subparagraph, including a brief statement of the expected testimony for each witness, to assist the court in assigning the case to a track as provided in this rule. The continuing duty to make the disclosure to the other party continues at all times before trial, requiring this disclosure within five (5) days of when a party determines or should reasonably have determined the witness will be expected to testify at trial.

(2) ***Status hearing; factors for case track assignment.*** A status hearing, at which the defendant shall be present, shall be commenced within thirty (30) days of arraignment or the filing of a waiver of arraignment.

(3) ***Case track assignment required; factors.*** At the status hearing, the court shall determine the appropriate assignment of the case to one of three tracks. Written findings are required to place a case on track 3 and any findings shall be entered by the court within five (5) days of assignment to track 3. Any track assignment under this rule only shall be made after considering the following factors:

(a) the complexity of the case, starting with the assumption that most cases will qualify for assignment to track 1; and

(b) the number of witnesses, time needed reasonably to address any evidence issues, and other factors the court finds appropriate to distinguish track 1, track 2, and track 3 cases.

(4) ***Defendants detained pending trial.*** When the defendant is detained pending trial, the case shall be given the highest priority for trial scheduling.

(5) ***Scheduling order required.*** After hearing argument and weighing the above factors, the court shall, on the conclusion of the status hearing, issue a scheduling order that assigns the case to one of three tracks and identifies the dates when events required by that track shall be scheduled, which are as follows for tracks 1, 2, and 3:

(a) *Track 1*; *deadlines for commencement of trial and other events*. For track 1 cases, the scheduling order shall have trial commence within two hundred ten (210) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph G of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 1 cases:

(i) Track 1 - deadline for plea agreement. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances. Should the prosecutor dismiss counts from the criminal information or indictment within ten (10) days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) days before trial or on the day of trial, the Court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information or indictment with prejudice if the Court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline;

(ii) Track 1 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than fourteen (14) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) Track 1 - deadline for notice of need for court interpreter. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(iv) Track 1 - deadline for pretrial motions hearing. A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(v) Track 1 - deadline for pretrial motions. Pretrial motions shall be filed not less than fifty (50) days before the trial date;

(vi) Track 1 - deadline for responses to pretrial motions. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(vii) Track 1 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than sixty (60) days before the trial date. Absent order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than fourteen (14) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the thirty (30) days after the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that thirty (30)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews;

(viii) Track 1 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred twenty (120) days before the trial date. When justified by good cause, the court may but is not required to provide for production of scientific evidence less than one hundred twenty (120) days before the trial date. In no case shall the order provide for production of scientific evidence less than ninety (90) days before the trial date; and

(ix) Track 1 – deadline for amending criminal information or indictment. The state shall file any amendment to the criminal information or indictment not less than one hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good cause shown.

(b) *Track 2; deadlines for commencement of trial and other events*. For track 2 cases, the scheduling order shall have trial commence within three hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph G of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 2 cases:

(i) Track 2 - deadline for plea agreement. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances. Should the prosecutor dismiss counts from the criminal information or indictment within ten (10) days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) days before trial or on the day

of trial, the court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information or indictment with prejudice if the court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline;

(ii) Track 2 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than fourteen (14) days before the trial date. Each party shall file their final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) Track 2 - deadline for notice of need for court interpreter. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(iv) Track 2 - deadline for pretrial motions hearing. A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(v) Track 2 - deadline for pretrial motions. Pretrial motions shall be filed not less than sixty (60) days before the trial date;

(vi) Track 2 - deadline for responses to pretrial motions. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(vii) Track 2 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than seventy-five (75) days before the trial date. Absent order of the court, the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than twenty-one (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the forty-five (45) days after the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that forty-five (45)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews;

(viii) Track 2 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred twenty (120) days before the trial date. When justified by good cause, the court may but is not required to provide for production of scientific evidence less than one hundred twenty (120) days before the trial date. In no case shall the order provide for production of scientific evidence less than ninety (90) days before the trial date; and

(ix) Track 2 – deadline for amending criminal information or indictment. The state shall file any amendment to the criminal information or indictment not less than one hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good cause shown.

(c) *Track 3; deadlines for commencement of trial and other events*. For track 3 cases, the scheduling order shall have trial commence within four hundred fifty-five (455) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph G of this rule, whichever is the latest to occur, but no case may be set past three hundred sixty-five (365) days when the defendant is detained pending trial except on consent by defense counsel or on a finding of exceptional circumstances beyond the control of the parties. The scheduling order shall also set dates for other events according to the following requirements for track 3 cases:

(i) Track 3 - deadline for plea agreement. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances. Should the prosecutor dismiss counts from the criminal information or indictment within ten (10) days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) days before trial or on the day of trial, the court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information or indictment with prejudice if the court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline;

(ii) Track 3 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than twenty (20) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) Track 3 - deadline for notice of need for court interpreter. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(iv) Track 3 - deadline for pretrial motions hearing. A hearing for resolution of pretrial motions shall be set not less than forty-five (45) days before the trial date;

(v) Track 3 - deadline for pretrial motions. Pretrial motions shall be filed not less than seventy (70) days before the trial date;

(vi) Track 3 - deadline for responses to pretrial motions. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than fifty-five (55) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(vii) Track 3 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than one hundred (100) days before the trial date. Absent order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than twenty (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the sixty (60) days after the request and the party receiving the request

shall make reasonable efforts to schedule the requested interviews during that sixty (60)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews;

(viii) Track 3 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred fifty (150) days before the trial date. When justified by good cause, the court may but is not required to provide for production of scientific evidence less than one hundred fifty (150) days before the trial date. In no case shall the order provide for production of scientific evidence less than one hundred twenty (120) days before the trial date; and

(ix) Track 3 – deadline for amending criminal information or indictment. The state shall file any amendment to the criminal information or indictment not less than one hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good cause shown.

(6) ***Form of scheduling order; additional requirements and shorter deadlines allowed.*** The court may adopt on order of the chief judge of the district court a form to be used to implement the time requirements of this rule. Additional requirements may be included in the scheduling order at the discretion of the assigned judge and the judge may alter any of the deadlines described in Subparagraph (F)(5) of this rule to allow for the case to come to trial sooner.

(7) ***Extensions of time; cumulative limit.*** In the scheduling order the court may shorten the deadlines for the parties to request pretrial interviews set forth in Subparagraphs (F)(5)(a)(vii), (F)(5)(b)(vii), and (F)(5)(c)(vii) of this rule. The court may, for good cause, grant any party an extension of the time requirements imposed by an order entered in compliance with Paragraph F of this rule. In no case shall a party be given time extensions that in total exceed thirty (30) days for track 1 cases, sixty (60) days for track 2 cases, and ninety (90) days for track 3 cases. Unless required by good cause, the extensions of time shall not result in delay of the date scheduled for commencement of trial. Substitution of counsel alone ordinarily shall not constitute good cause for an extension of time. A stipulated request for extension of time in order to consolidate and resolve multiple cases against the same defendant under one plea agreement shall ordinarily be considered good cause for an extension of time.

G. **Time limits for commencement of trial.** As deemed necessary, the court may enter an amended scheduling order to extend the time limits for commencement of trial consistent with the deadlines in Paragraph F of this rule when one of the following triggering events occurs:

(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 court finding the defendant competent to stand trial;

(3) if a mistrial is declared by the trial court, the date this order is filed in the court;

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

(5) if the defendant is arrested on any valid warrant in the case or surrenders in this state on any valid warrant in the case, the date of the arrest or surrender of the defendant, and the assigned judge determines that this circumstance reasonably requires additional time to bring the case to trial;

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

(7) if the defendant has been referred to a preprosecution or court diversion program, the date a notice is filed in the court that the defendant has been deemed not eligible for, is terminated from, or is otherwise removed from the preprosecution or court diversion program;

(8) if the defendant's case is severed from a case to which it was previously joined, the date from which the cases are severed, but the nonmoving defendant or at least one of the nonmoving defendants shall continue on the same basis as previously established under these rules for track assignment and otherwise;

(9) if a defendant's case is severed into multiple trials, the date from which the case is severed into multiple trials, but the court shall continue at least one of the previously joined defendants or counts on the original track assignment, which defendant or counts shall be determined by the court on consideration of the complexity of the now-severed cases or counts;

(10) if a judge enters a recusal and the newly assigned judge determines the change in judge assignment reasonably requires additional time to bring the case to trial, the date the recusal is entered;

(11) if the court grants a change of venue and the court determines the change in venue reasonably requires additional time to bring the case to trial, the date of the court's order; or

(12) if the court grants a motion to withdraw defendant's plea, the date of the court's order.

H. **Failure to comply**.

(1) If a party fails to comply with any provision of this rule or the time limits imposed by a scheduling order entered under this rule, the court shall, on its own motion or on motion of a party, impose sanctions as the court may deem appropriate in the circumstances and taking into consideration the reasons for the failure to comply.

(2) In considering the sanction to be applied the court shall not accept negligence or the usual press of business as sufficient excuse for failure to comply. If the case has been refiled after an earlier dismissal, dismissal with prejudice is the presumptive outcome for a repeated failure to comply with this rule, subject to the provisions in Subparagraph (H)(6) of this rule.

(3) A motion for sanctions for failure to comply with this rule or any of the Rules of Criminal Procedure must be made in writing, but an oral motion may be made during a setting scheduled for another purpose if the basis of the motion was not and reasonably could not have been known before that setting.

(4) The sanctions the court may impose under this paragraph include, but are not limited to, the following:

(a) a reprimand by the judge;

(b) prohibiting a party from calling a witness or introducing evidence;

(c) a monetary fine imposed on a party's attorney or that attorney's employing office with appropriate notice to the office and an opportunity to be heard;

(d) civil or criminal contempt; and

(e) dismissal of the case with or without prejudice, subject to the provisions in Subparagraph (H)(6) of this rule.

(5) The court shall not impose any sanction against the state for violation of this rule if an in-custody defendant was not at a court setting as a result of a failure to transport, but the court may impose a sanction if the failure to transport was attributable to the prosecutor's failure to properly prepare and serve a transportation order if so required.

(6) The sanction of dismissal, with or without prejudice, shall not be imposed under the following circumstances:

(a) the state proves by clear and convincing evidence that the defendant is a danger to the community; and

(b) the failure to comply with this rule is caused by extraordinary circumstances beyond the control of the parties.

Any court order of dismissal with or without prejudice or prohibiting a party from calling a witness or introducing evidence shall be in writing and include findings of fact about the moving party's proof of and the court's consideration of the above factors.

I. **Certification of readiness before pretrial conference or docket call.** Both the prosecutor and defense counsel shall submit a certification of readiness form three (3) days before the final pretrial conference or docket call, indicating they have been unable to reach a plea agreement, that both parties have contacted their witnesses and the witnesses are available and ready to testify at trial, and that both parties are ready to proceed to trial. This certification may be by stipulation. If either party is unable to proceed to trial, it shall submit a written request for extension of the trial date as outlined in Paragraph J of this rule. If the state is unable to certify the case is ready to proceed to trial and does not meet the requirements for an extension in Paragraph J of this rule, it shall prepare and submit notice to the court that the state is not ready for trial and the court shall dismiss the case.

J. **Extension of time for trial; reassignment; dismissal with prejudice; sanctions**.

(1) ***Extending date for trial; good cause or exceptional circumstances; reassignment to available judge for trial permitted; sanctions.*** The court may extend the trial date for a total of up to thirty (30) days for a track 1 case, forty-five (45) days for a track 2 case, and sixty (60) days for a track 3 case, on showing of good cause which is beyond the control of the parties or the court. To grant the extension, the court shall enter written findings of good cause. If on the date the case is set or reset for trial the court is unable to hear a case for any reason, including a trailing docket, the presiding judge may ask that the case be reassigned by order of the chief judge, within the chief judge's sole discretion without entertaining motion or argument by the parties, for immediate trial to any available judge or judge pro tempore, so long as that judge has not been previously excused. If the court is unable to proceed to trial and must grant an extension for reasons the court does not find meet the requirement of good cause, the court shall impose sanctions as provided in Paragraph H of this rule, which may include dismissal of the case with prejudice subject to the provisions in Subparagraph (H)(6) of this rule. Without regard to which party requests any extension of the trial date, the court shall not extend the trial date more than sixty (60) days beyond the original date scheduled for commencement of trial without a written finding of exceptional circumstances approved in writing by the chief judge or a judge, including a judge pro tempore previously approved to preside over those matters by order of the Chief Justice, that the chief judge designates.

(2) ***Requirements for extension of trial date for exceptional circumstances*; *reassignment.*** When the chief judge or the chief judge's designee accepts the finding by the trial judge of exceptional circumstances, the chief judge shall approve rescheduling of the trial to a date certain. The order granting an extension to a date certain for extraordinary circumstances may reassign the case to a different judge for trial, so long as that judge has not been previously excused on the case, or include any other relief necessary to bring the case to prompt resolution.

(3) ***Requirements for multiple requests.*** Any extension sought beyond the date certain in a previously granted extension will again require a finding by the trial judge of exceptional circumstances approved in writing by the chief judge or designee with an extension to a date certain.

(4) ***Rejecting extension request for exceptional circumstances; dismissal required.*** If the chief judge or designee rejects the trial judge's request for an extension based on exceptional circumstances, the case shall be tried within the previously ordered time limit or shall be dismissed with prejudice if it is not, subject to the provisions in Subparagraph (H)(6) of this rule.

(5) ***A new probable cause determination is not required for recently refiled charges.*** If a probable cause determination has been made by preliminary hearing or grand jury and the court dismisses the case without prejudice, the same charges may be refiled under the same case number by information within six (6) months of the dismissal without requiring a new probable cause determination.

K. **Data reporting to the Supreme Court required.** The chief judge, district attorney, and public defender shall provide statistical reports to the Supreme Court as directed.

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

New Mexico Courts

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[rules.supremecourt-grp] Rule Proposal Comment Form, 03/14/2024, 1:47 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov> Thu, Mar 14, 2024 at 1:47 PM
Reply-To: nmcourtswebforms@nmcourts.gov
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Email:	jennifer.burrill@lopdnm.us
Proposal Number:	2024-019
Comment:	While I appreciate the effort to speed up the process, the legislature has not allocated sufficient resources following the court ending the district court 6 month rule to keep up with the cases in the pipeline and the new ones coming in. Creating additional complex rules without providing the resources for the DAs and LOPD to comply with discovery and motion requirements fails to address the insufficiency of resources. It would be much simpler to reinstate the 6 month rule in district court. When the court removed the 6 month rule in the Savedra decision, it effectively tripled the number of cases pending in the court. Switching to a speedy trial analysis that couldn't even be raised until 12 months guaranteed caseloads at least doubled; doubled in the courts, doubled in the district attorneys offices, and doubled the caseloads for public defenders. As you are aware the staffing levels for these agencies did not double. With recent rulings, like Gurule, where the court found 69 months didn't violate a persons speedy trial right it is clear why the pipeline of pending cases continues to increase. This line of cases coupled with the addition of the prejudice requirement to enforce Rule 5-501, and there being no consequences for non-compliance with Rule 5-120 makes it very difficult for courts to control their dockets and move cases. In the 1st Judicial district court there aren't sufficient resources to carryout this proposed rule requiring more oversight on criminal cases. There are only two (2) criminal judges in Santa Fe and one (1) for Rio Arriba and Los Alamos. It has taken 10 months to get a J&S from the court in Santa Fe. During my last trial the judge was doing triple duty - our trial, the grand jury judge, and conducting hearings in other cases before we started in the morning, over lunch, and at the end of the day. In Rio Arriba it is taking 2 months to get a speedy trial motion set. Making the system more complex strains the available resources, it doesn't fix the problem. I am opposed to the implementation of the case management order in the First Judicial District, however, support reinstating the 6 month rule in district court and requiring strict compliance with Rule 5-501.

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

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

Kimberly Weston <KWeston@da.state.nm.us>
Reply-To: kweston@da.state.nm.us
To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

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

—

Sincerely,

Kimberly J. Weston

Assistant District Attorney

First Judicial District Attorney's Office

327 Sandoval Street

Santa Fe, NM 87501

(505) 670-8815

KWeston@da.state.nm.us

Proposed Rule Changes.docx
18K

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Sincerely,

Kimberly J .Weston

kweston@da.state.nm.us

New Mexico Courts

Amy Feagans <supajf@nmcourts.gov>

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

1 message

Supreme Court <noreply@nmcourts.gov> Fri, Apr 12, 2024 at 8:33 AM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Adan
	Mendoza
Phone Number	5059862455
Email	amemdoza@santafecountynm.gov
Proposal Number	2024-019
Comment	Letter attached
File Upload	https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/The-Santa-Fe-County-Sheriff-to-NM-Supreme-Court.pdf

Name Adan Mendoza

Phone Number 5059862455

Email amemdoza@santafecountynm.gov

Proposal Number 2024-019

Comment

Letter attached

https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/The-Santa-Fe-County-Sheriff-to-NM-Supreme-Court.pdf

The-Santa-Fe-County-Sheriff-to-NM-Supreme-Court.pdf
388K

SANTA FE COUNTY SHERIFF'S OFFICE

Sheriff Adan Mendoza

Submitted via: supremecourt.nmcourts.gov

April 12, 2024

Elizabeth A. Garcia
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

Re: Proposal: 2024-19

The Santa Fe County Sheriff's Office has serious concerns and apprehension regarding the First Judicial District Court's proposed Case Management Order ("CMO"), proposed rule LR1-307. The Santa Fe County Sheriff's Office agrees with the State, as represented by the First Judicial District Attorney's Office, that this proposed rule includes many measures which would harm the very interests it purports to serve and would negatively impact public safety throughout the district.

The Santa Fe County Sheriff's Office is not prepared for the implementation of this CMO. This proposed rule could have significant negative consequences for public safety if approved without significant time for law enforcement to prepare for its measures and additional resources The Santa Fe County Sheriff's Office agrees with the comments made by the First Judicial District Attorney and respectfully requests that the CMO not be implemented until January 1, 2026 at the earliest.

SANTA FE COUNTY SHERIFF'S OFFICE

Sheriff Adan Mendoza

The Santa Fe County Sheriff's Office and law enforcement in general is facing record number of vacancies and resource deficits. Law enforcement is struggling to maintain technology and keep up with infrastructure changes after body-worn cameras were mandated. The Santa Fe

County Sheriff's Office is concerned that the successful implementation of information sharing technology and procedures which would aid in the implementation of such a CMO cannot be completed on the timeline required by the CMO. Implementing and refining these measures will take additional time with input of all stakeholders. Additionally, the Santa Fe County Sheriff's Office requests the rule should be discussed, postponed and effected law enforcement agencies be given additional opportunity to provide input as to the timing and implementation of these measures. As part of the Criminal Justice System, the Santa Fe County Sheriff's Office looks forward to partnering and working with the 1st Judicial District Attorney and First Judicial District Court to implement the CMO and ensure that the best possible version is implemented.

Thank you

Sheriff Adan Mendoza

35 Camino Justicia Santa Fe, New Mexico 87508 (505) 986-2400 www.santafecountynm.gov/sheriff

New Mexico Courts

Amy Feagans <supajf@nmcourts.gov>

[rules.supremecourt-grp] First Judicial District Attorney's Office public comment to proposed LR1-307

1 message

Jennifer Padgett Macias <JPadgett@da.state.nm.us> Fri, Apr 12, 2024 at 3:07 PM
Reply-To: jpadgett@da.state.nm.us
To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>
Cc: Mary Carmack-Altwies <MCarmack-Altwies@da.state.nm.us>

Good afternoon,

Please find the First Judicial District Attorney's (FJDA) public comment on proposed LR1-307 attached.

Thank you for your consideration,

District Attorney Mary Carmack-Altwies and the office of the FJDA.

First Judicial District Attorney's Office Public Comment proposed LR1-307.pdf
175K

STATE OF NEW MEXICO
First Judicial District Attorney
Santa Fe, Rio Arriba & Los Alamos Counties

Mary Carmack-Altwies
District Attorney

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The First Judicial District Attorney's Office (FJDA)[1] opposes the adoption of the proposed Case Management Order (CMO), proposed rule LR1-307, and maintains its previously asserted position that the CMO is (1) unnecessary in the First judicial District; and (2) none of the agency partners implicated by the drastic procedural change are prepared with proper staffing, budget, or processes to handle the changes associated with the CMO. The public safety consequences of implementing this measure via court rule and without proper stakeholder involvement and preparation are dire.

The First Judicial District Attorney's Office (FJDA) first asserts that the proposed Case Management Order (CMO), proposed rule LR1-307, is unnecessary in the First Judicial District. The FJDA has spent the last three years investing in and updating antiquated systems in order to increase efficiency and reduce the motions and arguments over discovery disclosures that have plagued other DA offices throughout New Mexico. Our new systems and processes, while not perfect, have dramatically reduced delays in prosecution due to discovery issues, rendering much of what the CMO aims to accomplish unnecessary.

In addition to the innovations to address discovery issues, the FJDA has also shifted away from an almost exclusive grand jury system to a preliminary hearing charging process. While grand

[1] The proposed CMO refers to the prosecution as the State. For purposes of this comment, the First Judicial District Attorney's Office uses "FJDA" and "State" interchangeably.

jury is still a necessary option and will need to increase significantly if this CMO is implemented, initiating a felony case via the preliminary hearing process has helped ensure that only viable felony cases move forward in District Court. (This resulting decline of cases bound over from Magistrate Court into District Court is depicted in Attachment 1.) *See infra* Attachment 1 at 12. In short, the FJDA's heavy reliance on the preliminary hearing process had already addressed and properly managed the volume of cases the CMO purports to solve.

The FJDA further contends that the CMO includes many measures which would harm the very interests it purports to serve and would negatively impact public safety. At a minimum, the local criminal justice framework—which includes law enforcement, the FJDA, partner executive agencies, and the courts—is neither ready nor ripe for this extreme measure. Without the benefit of cross-agency preparation and buy-in, this CMO is an unfunded mandate which adversely impacts the community safety we are charged to uphold. [2]

The FJDA therefore respectfully submits this public comment for consideration.

[2] The FJDA will not speak for the Law Office of the Public Defenders, but a comprehensive evaluation and assessment of LOPD resources and staffing should be conducted as part of the rulemaking process.

INDEX

PLEA AGREEMENTS

In its request for the adoption of the case management order (CMO), the District Court ("the Court") writes that the purpose of the CMO is to "aid in the speedy, fair, and just resolution of criminal matters pending in the district," to "establish clear timeframes for the disposition of criminal cases," and to "ensure that deadlines are uniformly implemented within the district." Regarding the first goal, the proposed CMO will have a counterproductive effect. A case cannot be speedy, fair, and just under the rules proposed here. For instance, the CMO proposes a deadline for plea agreements:

> A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances.
>
> Local Proposed Rule LR1-307(F)(5)(a)(i); LR1-307(F)(5)(b)(i); LR1-307(F)(5)(c)(i).

This measure would essentially punish prosecutorial discretion and undermine this important autonomy. The fact that the Court may not accept a plea agreement beyond a certain point is violative of the very goals set forward in the submission letter. Currently, the plea deadlines set by the criminal judges are effective at ensuring the cases resolve well in advance of a trial setting. The First Judicial District also found that having *pro temp* Judges available to facilitate settlement conferences was beneficial to docket management. It is the FJDA's understanding that the settlement conferences will resume in the next fiscal year and that the first judicial district court received funding for three (3) settlement "referees." Not only is this measure not necessary or in the interests of justice or fairness, but it is also decidedly more time-consuming and resource depleting to force members of the community to sit through a trial as jurors when all

the parties involved would have been better served by the Court's acceptance of an otherwise agreed-upon plea.

CERTIFICATIONS

Similarly, the Court now proposes the use of several unnecessary and burdensome certifications and documentations from the State. Among these is a so-called "speed letter," an item which, despite the language used in the CMO, has never been utilized in the First Judicial District. Other required filings include a new "[c]ertification of readiness before pretrial conference or docket call," a "[c]ertification by prosecution [stating] that before obtaining an indictment or filing an information the case has been investigated sufficiently," and a "certification [stating that the State] has exercised due diligence to ensure that all evidence that may require testing has been submitted to the state crime lab." *Id.* at (A)(2); (I); (C)(6).

These new requirements are redundant for several reasons. First, the State is already required to exercise its due diligence under the Rules of Professional Conduct. "The prosecutor in a criminal case shall: [] refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Rule 16-308(A) NM R RPC. A prosecutor is also required to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor." *Id.* at (D).

Second, the State is already required to certify disclosure of discovery under the New Mexico Supreme Court order for preliminary hearings—thereby rendering the requirement of a certificate that "the case been investigated sufficiently" superfluous by the time it reaches District

Court. Rule 5-302 NMRA. This requirement should be subsumed by preliminary requirements at the Magistrate Court.

Finally, each of these new certificates requires certifying the existence and stewardship of discovery. Should, for some reason, the State not have already abided by the Rules of Professional Conduct, then there is already an additional baked-in motivation for the State to exercise diligence: without such stewardship and appropriate collection of evidence, the State would be risking its case at trial or beforehand. Is this aim not already better served by Supreme Court precedent that is frequently relied upon by our District Court judges? *See* State v. Le Mier, 2017-NMSC-017, 394 P.3d 959; State v. Harper, 2011-NMSC-044, 150 N.M. 745, 266 P.3d 25.

If it is true that the FJDA is already kept in line by the Rules of Professional Conduct, the Magistrate Court certification requirement, the Rules of Evidence, and Supreme Court precedent, why then would time-consuming and resource-draining technicalities such as four additional filings make a sufficient enough difference to outweigh the obvious strain they would put on the FJDA and the Court itself?

Finally, this is an unreasonable burden on an already overburdened and understaffed Court Clerk's office. Tripling the number of filings for the Court, which is already behind in processing filings, will only increase opportunities for sanctions. It appears from the CMO that the prosecution would run the risk of sanctions when a process outside of its control is not aligned with the strict timelines and mandates.

PRETRIAL INTERVIEWS

The State will be required under this CMO to file a certification of the summary or nature of a Witness's testimony:

> Within twenty-five (25) days after arraignment or waiver of arraignment each party shall…file a list of names and contact information for known witnesses the party intends to call at trial and that the party has verified is current as of the date of disclosure required under this subparagraph, ***including a brief statement of the expected testimony for each witness.***
>
> Local Proposed Rule LR1-307(F)(1) (emphasis added).

Resultingly, the FJDA contends that it should no longer be required to conduct Pretrial Interviews (PTIs). *Id.* at 307(F)(5)(a)(vii); (F)(5)(b)(vii); (F)(5)(c)(vii). In support of this contention, the FJDA points to New Mexico Supreme Court Order NO. 22-8500-016, in which the New Mexico Supreme Court issued an order creating a Pilot Project in Santa Fe County Magistrate Court as well as Bernalillo County Metropolitan Court to suspend Rules 6-504(D) and 7-504(C)(1) NMRA as they relate to law enforcement witnesses. [March 24, 2022 NMSC NO. 22-8500-016 Order.] This means that in Santa Fe County Magistrate Court in the First Judicial District and in Bernalillo County Metropolitan Court in the Second Judicial District, it is already the practice that PTIs are not conducted on law enforcement witnesses. The Pilot Project suspended the provisions under Rules 6-504(F) and 7-504(H) NMRA allowing the Court to "grant a continuance or issues sanctions" should a party fail to make a Witness available for PTI. [March 24, 2022 NMSC NO. 22-8500-016 Order 2:7-10.]

The Supreme Court's reasoning for the creation of this Pilot Project was that "the vast majority of states do not require the prosecution to make law enforcement officers available for pretrial interviews in misdemeanor cases" and that "requiring law enforcement officers to participate in pretrial interviews in every misdemeanor case…strains the resources of the Law Offices of the Public Defender [LOPD], the First and Second Judicial District Attorneys' Offices, and local law enforcement." *Id.* at 2:11-17.

The FJDA considers the Supreme Court's reasoning here to be compelling. Although it is true that the cases before District Court are not often misdemeanors, not only do many misdemeanor cases arrive in District Court on appeal, but felony DWI and felony domestic violence cases are, most often, misdemeanor charges made felonies merely through prior convictions. If the reasoning of the Supreme Court is that PTIs are not essential in misdemeanor cases, the FJDA must then wonder what the factors are which would sufficiently delineate felonies from misdemeanors in their respective necessitation of PTIs. Further, the second reason presented by the Supreme Court for doing away with PTIs in misdemeanor cases in two Districts is also directly applicable in District Court. The resources of LOPD, FJDA, and local law enforcement are no less strained at the District Court level than they are the Magistrate Court level.

Because (1) the certification will provide the nature of a Witness's testimony, and (2) the practice of conducting PTIs has already been determined by the Supreme Court to be in misdemeanor cases a "waste[of] time and resources," the FJDA therefore requests that the CMO include language which effectively ends the requirement of PTIs in District Court just as it the Supreme has done in the Santa Fe County Magistrate Court. *Id.* at 1:22-23.

DISCOVERY

Additionally, the CMO would now require the FJDA to provide physical copies of the discovery to Defense Counsel. This requirement would be out of line with the statewide practice of New Mexico district attorney's offices which utilize the Case Management System (CMS). According to the New Mexico Administrative Office of District Attorneys (AODA), CMS:

> …tracks all judicial cases to include criminal felony, criminal misdemeanor, juvenile, civil, pre-prosecution diversion clients, worthless check clients, forfeiture cases, special drug cases, and victim information. [The] system serves as the core source of data for data-informed impact prosecution strategies.

New Mexico Administrative Office of District Attorneys, 2022, https://www.nmdas.com/.

At no cost to our law enforcement partners, LOPD, and private defense bar, the FJDA secured the budget and invested in a digital discovery platform (Evidence.com is a discovery platform employed by numerous law enforcement agencies throughout the state). This platform went into effect in September 2023. Now, between CMS and Evidence.com, the vast majority of discovery is uploaded by law enforcement, shared by the FJDA, and viewed by all parties via an online format. Discovery is only provided in a physical format when the materials are sensitive and/or it is agreed upon by the parties or is otherwise subject to a protective order. Should this CMO go into effect as written, the FJDA would be required to provide hard copies of documentary, visual, and audio recording discovery to Defense Counsel in every case—a tedious and unnecessary task with negative consequences for all parties involved. Local Proposed Rule LR1-307(C)(1). This system would be antithetical to the CMO's stated goals and undo the progress of the FJDA's digital innovations. It could not possibly be in the interests of justice, fairness, or efficiency to have the FJDA provide discovery in an antiquated manner when Defense Counsel would otherwise have immediate access to discovery via CMS or Evidence.com.

CONFLICTS WITH EXISTING RULES

The submission letter further states that the CMO has been written to ensure that it would "not conflict with existing local rules of the First Judicial District Court." However, the CMO does exactly that on no fewer than two fronts.

In each case track, the CMO requires that the amending Criminal Information must be done 120 days prior to trial. Local Proposed Rule LR1-307(F)(5)(a)(ix); (F)(5)(b)(ix); (F)(5)(c)(ix).

Should the State not comply with this requirement, the CMO sets out a list of potential sanctions, up to the dismissal of a case. *Id.* at (H)(4)(a)-(e). This conflicts with the so-called "variance rule":

> A complaint, indictment, or information shall not be deemed invalid, nor shall the trial, judgment, or other proceedings thereon be stayed, arrested, ***or in any manner affected***, because of any defect, error, omission, imperfection, or repugnancy therein which does not prejudice the substantial rights of the defendant upon the merits. The court may at any time prior to a verdict cause the complaint, indictment or information to be amended in respect to any such defect, error, omission or repugnancy if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.
>
> Rule 5-204(A) NMRA (emphasis added).

The Rule continues:

> No variance between those allegations of a complaint, indictment, information, or any supplemental pleading which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be grounds for the acquittal of the defendant unless such variance prejudices substantial rights of the defendant.
>
> *Id.* at C.

Further, this new rule does not clarify whether downward variances are prohibited or whether alternate theories of charging are prohibited. These vagaries should be rectified in the finalized CMO.

Moreover, this CMO runs afoul of the already-existing Local Rule LR1-305(C), the so-called "Package Rule." The CMO addresses deadlines for pretrial motions and responses to pretrial motions in each case track, requiring that written responses to any pretrial motions be filed within ten (10) days of the filing of any pretrial motions and no fewer than fifty-five (55) days before the trial date for Track 3 and within ten (10) days of the filing of any pretrial motions and no fewer than forty (40) days before the trial date for Tracks 1 and 2. Local Proposed Rule LR1-307(F)(5)(a)(vi); (F)(5)(b)(vi); (F)(5)(c)(vi). However, the "package" procedure requires that all responsive times falls under Rule 5-120 NMRA, at the expiration of which…

> …the movant shall submit to the court a copy of the motion, any response, any reply, and a copy of a request for hearing (after filing the request with the clerk of the court) and notice of hearing form…in a package. The submission of the package alerts the court that the motion is ripe for decision.
>
> Local Rule LR1-305(C).

The above-referenced Rule 5-120 NMRA states clearly in subsection E that "unless otherwise specifically provided in these rules, a written response shall be filed within fifteen (15) days after service of the motion." Additionally, the Rule requires that "[a]ny reply brief shall be filed within fifteen (15) days after service of any written response." *Id.* at 5-120(F).

The proposed CMO would not fall under the phraseology of time limits "otherwise specifically provided in these rules"; it would, in fact, completely subsume the time limits provided for in Rule 5-120 NMRA and required by the Package Rule in LR1-305(C). The possibility of exceptions to the time limits that could be specifically carved out under Rule 5-120 NMRA is not the same as the CMO's proposed time limits, which would alter all criminal case response and reply time limits across the board. These time limits would, therefore, absolutely "conflict with existing local rules of the First Judicial District Court"—contradicting that very promise made within the CMO's submission letter.

DEADLINES FOR EVIDENCE

The CMO additionally creates a deadline for the State to submit evidence to the Department of Public Safety, Forensic Laboratory ("DPS"), putting the FJDA at risk of further sanctions should it not have ensured that "all evidence that may require testing has been submitted" within 15 days of the arraignment of the Defendant or of a waiver of arraignment. Local Proposed Rule LR1-307(C)(6). Additionally, and of more consequence, the CMO also sets strict deadlines upon DPS for the completion of testing and analysis. LR 1-307(F)(5)(a)(vii),(b)(vii),(c)(vii).

Logistically, the deadlines and priority schedule for the completion of DPS testing do not contemplate the DPS process, its internal standards and policies, its resources, its current staffing and workflow, and the sheer volume of cases handled by DPS from over three hundred (300) federal, state, local, and tribal agencies from around New Mexico. Significantly, the FJDA is concerned that DPS and other law enforcement partners that are directly impacted by the CMO were not properly engaged through this process, and requiring DPS, an executive agency, to prioritize FJDA cases over other cases in New Mexico is an unfair and disparate mandate.[3]

Agencies within the First Judicial District share the statewide Department of Public Safety, Forensic Laboratory (DPS) with nearly all other districts for DNA/Biology, Latent Print, Firearm and Toolmarks, and Controlled Substance testing and analysis. The forensic laboratory is already subject to certain priority schedules. For example, NMSA 1978 §30-9-21(D) requires that the "crime laboratory shall complete the processing of a sexual assault examination kit within one hundred eighty days of receipt of the kit." Remarkably, even this statute that was passed through legislative process with proper stakeholder buy-in, negotiation, and process is at odds and in conflict with the "tracks" in the proposed CMO. LR 1-307(F)(5)(a)(vii),(b)(vii),(c)(vii). Additionally, the forensic laboratory is bound by the priority schedules for the Case Management Orders in the Second, Third, and Eighth Judicial Districts. Competing priorities cancel each other out with implications ranging far beyond the jurisdictional limits of the First Judicial District. When everything is a priority, nothing is a priority.

Moreover, the proposed CMO is naïve to and lacks understanding of the complexities of the DPS forensic lab process. For example, law enforcement as the recognized "client" submits items to DPS for testing, and the FJDA is not involved in this process. Also, DPS policies only

[3] Importantly, the FJDA does not have a mechanism to submit evidence to the forensic laboratory and must work with and rely upon law enforcement agencies.

permit law enforcement to submit a limited number of items for DNA testing at once, allowing for further DNA testing of previously submitted items or submission of new items for testing once the initial "batch" of items has been tested by this unit. This batching process does not align with and is unworkable with the CMO: Would the FJDA be required to guess and then pick and choose which items of evidence in, for instance, a Criminal Sexual Penetration case is the most important? What about testing and analysis for items that may, unbeknownst at the time of collection, contain potentially exculpatory information? The unintentional effect of this measure would cause guesswork and conjecture in the investigatory process and creates the perverse incentive to "high-grade" which evidence to prioritize sending to the forensic lab.

The Court assured the FJDA that the review and implementation process of the CMO would engage all stakeholders. However, the FJDA has since learned that, in addition to the DPS forensic laboratory, many, if not all, of the local law enforcement agencies impacted by this proposed rule remain in the dark about this measure, its implication on their internal operations, and the rulemaking process. Importantly, on April 11, 2024, the FJDA learned that Katharina Babcock, Laboratory Director for DPS, was not contacted or conferred with about this proposed CMO despite its direct and massive impact upon the forensic lab. Director Babcock explained to the FJDA that currently, the forensic lab is operating at a 40% vacancy rate, and, although the hiring process is on-going, there are currently only four (4) analysists in the DNA unit. Further, the Court's CMO also presupposes that the analysts are always in the forensic laboratory conducting testing. However, an analyst also spends a great deal of time outside of the forensic laboratory and traveling throughout the State of New Mexico to testify at trials. In sum, the CMO's arbitrary deadlines fail to consider the volume of cases, staffing, and complexities of the forensic process. From a statewide perspective, it appears contradictory to a fair administration of justice

and process and runs afoul of DPS's statewide obligations and practices to operate as an independent and unbiased forensic laboratory free and clear from any "undue pressure and influence." DPS Quality Assurance Policy.

Further, and most concernedly, these provisions appear to encroach upon power expressly given to the New Mexico Legislature, thereby violating Article III, Section 1 of the New Mexico Constitution, which prohibits any branch of government from usurping the power of the other branches. NM Const art III § 1.

> The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others.
>
> *Id.*

The New Mexico Supreme Court has before addressed this issue when the Executive branch usurped the power of the Legislature by overhauling the public assistance system in New Mexico in State ex rel. Taylor v. Johnson:

> [The above provision of the New Mexico Constitution] articulates one of the cornerstones of democratic government: that the accumulation of too much power within one branch poses a threat to liberty. *See Gregory v. Ashcroft,* 501 U.S. 452, 458–59, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991); *The Federalist* No. 47, at 332 (James Madison) (M. Walter Dunne 1901) (discussing Montesquieu).
>
> State ex rel. Taylor v. Johnson, 1998-NMSC-015, 125 N.M. 343, 349, 961 P.2d 768, 774.

The Court goes on to write that:

> "[t]he test is whether the Governor's action disrupts the proper balance between the executive and legislative branches. If a governor's actions infringe upon the essence of legislative authority—the making of laws—then the [g]overnor has exceeded his authority. A violation occurs when the Executive, rather than the Legislature, determines ***how, when, and for what purpose the public funds shall be applied in carrying on the government.***
> …

> We have no doubt that Respondents' program implements the type of substantive policy changes reserved to the Legislature. Their changes substantially altered, modified, and extended existing law governing the structure and provision of public assistance in New Mexico. Furthermore, by refusing to permit legislative participation in fashioning public assistance policy changes, Respondents attempt to foreclose legislative action in [an] area[ ] where legislative authority is undisputed. We hold that Respondents' program constitutes executive creation of substantive law, and as such, is an unconstitutional encroachment upon the Legislature's role of declaring public policy.
>
> *Id.* at 775 (internal citations and quotes removed) (emphasis added).

As with the above case, the CMO here attempts to implement substantive policy changes which could alter, modify, and extend existing law governing the structure and use of resources of an executive agency of New Mexico. This undoubtedly "disrupts the proper balance" between the branches.

CASE TRACKS

This leads to the issue of the case tracks and related scheduling orders proposed by the CMO. The case tracks, 1 through 3, would determine how much time the State has to commence trial. For Track 1 cases, "the scheduling order shall have trial commence within two hundred ten (210) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event." Local Proposed Rule LR1-307(F)(5)(a). For Track 2 cases, that deadline would be within 300 days, and for Track 3 cases, the deadline would be within 455 days. *Id.* at (F)(5)(b), (F)(5)(c). These deadlines are untenable.

The First Judicial District, as noted above, shares a statewide lab. Because this statewide lab serves more than one district, only a limited number of items are allowed to be submitted at a time. The Eighth Judicial District, the other district upon which this new CMO based many of its measures, has fewer cases than the First.[4] In other words, the First Judicial District is being asked

[4] See Attachment 1.

to comply with an order which presumes three non-realities: *(1) that the First Judicial District has fewer cases than it does, (2) that the First Judicial District has more resources than it does,* and *3) that the First Judicial District can assume this mandate with its existing staff and existing budget*.

In reality, the First Judicial District has fewer resources and more demands on them. This is demonstrated, for instance, by a case currently ongoing in the District Court in which the FJDA has been waiting for 14+ months for DNA evidence and is still #30 on the waiting list for results; were this case to be set into Track 3 and presuming the evidence were submitted the same day as the Defendant's arraignment, the State would now be one month from the deadline to proceed to trial yet still would not have the DNA evidence it would need in order to prosecute the case. The deleterious effect this would have on public safety cannot be overstated. Were similar cases subject to the rules set forth in this CMO after its implementation, the State could run afoul of the rule on a regular basis and be at constant risk of sanctions through no fault of its own. The Court would be encouraged to punish the FJDA for matters outside the FJDA's control.

SANCTIONS

The CMO presents several possible sanctions for failures to comply with the order. Local Proposed Rule LR1-307(H)(4)(a)-(e). Additionally, subsection H(3) allow Defense Counsel to present oral motions to dismiss "if the basis of the motion was not and reasonably could not have been known before that setting"; this would give the State no opportunity review the issue presented by Defense Counsel, to meet and confer with Defense Counsel beforehand, or to prepare prior to addressing the issue. This provision encourages ambush and gamesmanship with the consequence falling on the FJDA in the form of sanctions without adequate opportunity to meet

and counter, which defies the basic notions of fairness that the CMO purports to ensure. The FJDA respectfully requests that the Court revise this subsection to require motions for dismissal *in writing,* without exception, in order to give the State an opportunity to reply in writing.

REQUESTS AND QUESTIONS

In short, the FJDA does not believe law enforcement, Defense Counsel, the Court, or other state partners are prepared for the implementation of this CMO. This unfunded mandate could have significant negative consequences for public safety if not revised, properly vetted, and properly implemented. For example, the implementation of the CMO in Bernalillo County and Doña Ana County resulted in hundreds of dismissals and a reworking of internal processes. The FJDA needs time to prepare for this burdensome and unfunded change in order to ensure cases remain viable and that we continue to uphold our responsibility to community safety. [5] Therefore, the FJDA respectfully requests revisions consistent with our comments, and that any CMO not be implemented until January 1, 2026. The First Judicial District Attorney's Office has begun implementing and obtaining infrastructure which would aid in the implementation of such a CMO, but these measures will take time to launch. FJDA will need time to approach the New Mexico Legislature for funding for additional employees to implement this rule given its many wide-ranging impacts.

Further, the FJDA will need weekly grand juries in order to comply with the case track deadlines; otherwise, after arraignment, cases will languish awaiting a probable cause determination. This is not time that, under the strict deadlines set forth in the CMO, the FJDA (or victims, the public, or the interests of justice) could afford to lose.

[5] The First Judicial District is still adjusting from the technology and infrastructure changes after body-worn cameras were mandated for law enforcement.

Additionally, the FJDA respectfully requests that the rule should toll as to time and sanctions when Defense Counsel is not entered in a case, is not responsive, or is out of office without a designated attorney to stand in for entered Defense Counsel. For example, LOPD currently has several attorneys on extended leave with no clear coverage for district attorneys to coordinate with. The FJDA is not able to disclose discovery to nonexistent counsel and cannot be held responsible for a Defendant's previous counsel having not passed on the discovery the FJDA has already disclosed. By the same token, the FJDA also requests language in the CMO as to the duty of Defense Counsel to forward discovery and file its own certificate of complete disclosure to subsequent attorneys that enter on a given case. This would remove from the FJDA the responsibility to repeatedly send (or, as the CMO proposes, physically present) the same evidence to different defense attorneys on the same case. The FJDA should not be punished for matters outside the FJDA's control. The FJDA therefore also asks that failure to obtain discovery which would be immaterial to outcome of a case shall not be a basis for sanction or dismissal.

Similarly, the FJDA requests the addition of language which would prevent Defense Counsel's failure to comply with these rules from being used as a basis for ineffective assistance of counsel claims. The FJDA also requests that administrative problems in the Court and other similar delays will not be attributable to the State (*i.e.* time for commencing new trial due to too many scheduled trials or court clerk delays in filing).

Several of the sanctions listed in the CMO (including prohibiting introduction of evidence or calling a Witness, civil or criminal contempt, and dismissal of the case with prejudice) are excessively punitive and detrimental to the interests of justice and public safety. Local Proposed Rule LR1-307(H)(4)(a)-(e). Therefore, the FJDA recommends several alternative sanctions to be employed by the Court. First, a reasonable specific sanction employed by the Court against the

FJDA for missing discovery would be that the FJDA must turn the piece of discovery at issue over within a truncated deadline of five (5) business days from the Court's finding of a violation. Second, the FJDA could be required to conduct subsequent pretrial interviews. Third, the FJDA could be required to disclose a discovery violation to the factfinder. In conjunction with the reasonable sanctions in the CMO (namely, in subsection (a) "a reprimand by the judge" and subsection (c) "a monetary fine imposed on a party's attorney or that attorney's employing office"), the FJDA believes the above alternatives would be more appropriate and less likely to injure community safety. *Id.* at (H)(4)(a), (H)(4)(c). The FJDA considers the language used in the CMO (stating that "sanctions…are not limited to" those listed in (a) through (e)) to be both too vague and too broad, leaving open the possibility of unexpected and potentially draconian sanctions on either party. *Id.* at (H)(4).

Further, the FJDA asks that language be included in the CMO stating that Defense Counsel has a duty to relay plea offers to their clients within a timely period of no more than ten (10) days and respond within twenty-one (21) days. Defense bar, including LOPD, should have to certify this with the Court. This measure would contribute to the Court's stated goals of justice, fairness, and efficiency, and it would help with the Court's stated desire to have finalized plea agreements submitted no later than ten days before trial.

Finally, as to the limited resources of the Court, the FJDA requests clarification as to where a case will be tried in jurisdictions where there is only one courtroom per courthouse (such as in Rio Arriba County) if there is more than one case ready for trial. Under the CMO, the case tracks will, at times, necessitate multiple trials taking place simultaneously in Santa Fe and Tierra Amarilla. The assignment of criminal trials to civil judges when there is overlap will result in civil delays. The increase in unnecessary jury trials will require significant overhaul of jury services

who will need to assign many more selections and condense jury questionnaire pools to manageable numbers to allow for efficient preparation. The courts will also need additional budget and funding for trials including witness and jury fees.

FINAL REMARKS

The First Judicial District Attorney's Office is of the firm belief that the Court will be unable to manage the influx of additional filings, hearings, and trials. The rule, as proposed, will place burdens on law enforcement, the FJDA, the Court, and other justice partners that are unworkable and will result in needless dismissals that negatively impact our community safety. Implementation of this rule in the near future will only serve to undermine the significant improvements in the discovery process that the FJDA has spear-headed in the last year. These measures make the administration of justice more difficult, not more streamlined. They do not improve outcomes, improve community safety, or effectively uphold the rights of victims or of the accused. This proposed CMO is merely one more rule, one more burden, one more unfunded mandate that will clog rather than clear caseloads and dockets.

The First Judicial District Attorney's Office respects the rulemaking process, however there are situations (like the codification of §30-9-21(D)) whereby the legislative process should control. This is especially true when a rule binds an executive agency, has statewide implications by setting a priority schedule of one jurisdiction over another, and adversely impacts public safety agencies. Therefore, the FJDA urges the rulemaking committee to consider the role of the Legislature as the proper body and lawmaking process that allows for statewide and community input and buy-in. The legislative process ensures transparency, is far less rushed, and guarantees the input of *all* impacted stakeholders.

ATTACHMENT 1 [6]

Year	1st JD Magistrate Court (SF + RA) FR Only	1st JD District Court (SF and RA) Felonies	8th JD Magistrate Court FR Only	8th JD District Court Felonies
2023	2207	729	335	198
2022	1911	626	358	214
2021	1807	613	304	296
2020	1637	683	267	221
2019	1818	1187	245	198
2018	1838	1189	283	272

[6] These numbers were prepared by the Law Office of the Public Defender in anticipation of a meeting on January 26, 2024 with Chief Judge Bryan Biedscheid and First Judicial District Attorney Mary Carmack-Altwies to express joint concern over the proposed CMO in the First Judicial District.

New Mexico Courts

Amy Feagans <supajf@nmcourts.gov>

[rules.supremecourt-grp] SFPD Chief Paul Joye - Rule Proposal Comment LR1-307

1 message

JOYE, PAUL M. <pmjoye@santafenm.gov> Fri, Apr 12, 2024 at 3:39 PM
Reply-To: pmjoye@santafenm.gov
To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Good afternoon,

Please see the attached letter in reference to public comment on proposed LR1-307 (Case Management Pilot Program for Criminal Cases)

Thank you,

Paul Joye

Chief of Police

Santa Fe Police Department

Phone: (505)955-5355

Email: pmjoye@santafenm.gov

Chief Joye SFPD Public Comment LR1-307.pdf
548K

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April 12, 2024

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

From: Paul Joye, Chief of Police for City of Santa Fe

Re: Proposed LR1-307 (Case Management Pilot Program for Criminal Cases)

To the New Mexico Supreme Court Justices and Rule Making Committee:

On behalf of the Santa Fe Police Department (SFPD), I provide the following comments in response to a proposed local rule for the First Judicial District titled "LR1-307. Case management pilot program for criminal cases." This letter provides SFPD's perspective and concerns with proposed Local Rule LR1-307 ("LR1-307").

As the department with the highest case volume for this jurisdiction, and thus the department most directly affected, SFPD has valuable insight relevant to the case management order that should be considered by the Court.

SFPD is concerned that LR1-307, if adopted, would impede effective protection for the citizens of the city of Santa Fe. The cases sent to the First Judicial District Court are among SFPD's most important, and the proposed rule will complicate SFPD's discovery process and result in dismissal of cases involving dangerous crimes. These outcomes would be a disservice to not only victims, survivors, and witnesses of violent crime, but to the community at large that SFPD's officers are sworn to protect.

SFPD recognizes the importance of moving criminal cases forward expeditiously and fairly. SFPD currently has three (3) dedicated units who are focused on ensuring that evidence is properly gathered, preserved, and presented to all necessary parties in a timely manner. These units include a records unit, an evidence unit, and a team of

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employees dedicated to discovery requests. These employees comprise a highly dedicated and motivated group, who are a full-time administrative element of the department that currently is understaffed.

Should the Supreme Court adopt this proposed rule, SFPD would essentially need to double the staffing of each of the units described above in order to accommodate the aggressive time constraints. SFPD does not currently have, nor will the department be able to have in the next fiscal year, the budget necessary to accommodate such a staffing demand. While the City may be able to create new positions, there is no guarantee that those positions will be staffed and trained immediately, or given our current vacancies, at all.

I. The following are police perspectives on the specific subsections of LR1-307 that need further consideration before adoption: Proposed LR1-307(C)(1) (inter alia, production of "speed letters" for examination of evidence")

The first concern with the proposed language in LR1-307(C)(1) is that it uses the term "speed letter." in the context of the requirement that the State produce a "speed letter" authorizing the defendant to examine the physical evidence in possession of the State. "Speed letter" appears to be a term of art without a definition, causing ambiguity.

SFPD has an established procedure for inspection of physical items of evidence. Without a definition of the term "speed letter," it is unclear whether SFPD's current procedures meet the proposed requirements. If the procedure modified to comply with LR1-307 is slower, or results in negative outcomes such as physical letters being lost or misfiled and delaying or preventing defense inspections of evidence, it would be difficult for SFPD to address those problems due to the procedure being externally imposed.

II. Proposed LR1-307(C)(1) (inter alia, production of police reports, documentary evidence, and audio-visual evidence in physical media)

LR1-307(C)(1) requires the State to provide the defendant with evidence in a physical format. This requirement will require SFPD to submit evidence to the District Attorney's Office in a physical format. SFPD has taken significant and costly measures over the past 6 years to update and modernize not only SFPD's evidence collection and storage

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processes and technology, but also the department's discovery processes and technology. SFPD currently transfer the majority of evidence through an online portal, Evidence.com, which can be immediately accessed by defendants and their attorneys as new information is uploaded. LR1-307 (C)(1) would reverse all of those efforts to modernize the discovery process. Implementing this proposed rule would take SFPD and law enforcement partners as a whole nearly a decade backwards in technology. The proposed rule would burden SFPD in requiring an exorbitant amount of money not only in additional staffing needs to accommodate this rule, but also the purchase of additional antiquated physical media and large volumes of paper for printing reports and documentary evidence. Thanks to our modernization efforts in recent years, that outdated practice has to this point been rendered mostly unnecessary.

The proposed requirement of paper copies and physical media also would drastically increase the likelihood of documents and evidence being lost, damaged, or misplaced. If, for instance, a defense attorney receives a physical copy of evidence and misplaces it, that attorney would be unable to review the evidence in the case until another physical copy could be made, delivered to the District Attorney's Office, and provided to the defense. Thanks to SFPD's current procedures and modern programs, this concern has been significantly diminished. In the same hypothetical, the defense attorney could simply download documentary evidence from the District Attorneys' case management system, or audiovisual evidence from the Evidence.com service that the SFPD employs.

LR1-307 also does not have an exception for the copying of evidence which would be a criminal act or otherwise contrary to law, including creating copies of child pornography. SFPD 's current procedure for handling materials such as child pornography is modeled on national practice and complies with state law. It is not to copy child pornography, with a possible exception for copies published to a jury at trial. When either the prosecution or the defense wishes to review the evidence, the SFPD investigator handling the case arranges a time to view the evidence. LR1-307, as I understand it, would require physical copies of child pornography to be distributed to the defense, contrary to State and federal law. Through Evidence.com, SFPD is able to quickly and efficiently provide evidence to the District Attorney's Office digitally. In addition to the inefficiencies with requiring physical evidence, there is also an added cost. Instead of sending a link with

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a video, SFPD would likely bear the additional cost of purchasing thumb drives or CD/DVDs, to send the evidence to the District Attorney's Office. Additionally, more staff would be needed to manually copy or print the videos and documentary evidence. Moreover, requiring physical evidence increases the likelihood that evidence could get mixed up, disorganized, or lost. With the high volume of pages and thumb drives or CD/DVDs that these cases would require, it is not hard to imagine a scenario where an item could be misplaced, either within SFPD, by the District Attorney's Office, or by defense counsel.

III. Proposed LR1-307(C)(4) (disclosure of new and updated information and witness contact information within seven (7) days of discovery)

This rule, as proposed, does not take into consideration the amount of time it may take to determine whether an individual is a witness, and if that person has information that is relevant to the case. There are circumstances in which there is not enough information to fully identify a possible witness during the initial investigation, but the SFPD receives a partial identifier or name. It is not uncommon for investigators to receive a nickname, gang name, or other pseudonym that may take further investigation and resources to accurately identify the person in question. The time it takes to complete even this initial investigation often exceeds seven (7) days.

Patrol officers and investigators are required to draft their reports before leaving the shift during which the incident occurred or during the shift the officer discovered information. In extraordinary circumstances, the officer may be approved to draft the report the following calendar day (which may require the officer working on a day off to complete). When an officer is injured and unable to draft a report, they are required to draft the report as soon as practicable. The draft reports are then sent to the records unit for review within three (3) business days for completeness, comprehensibility, and compliance with SFPD standards. If changes are required, the records review unit refers the draft back to the reporting officer to add or change the draft on the officer's next shift, which might be up to four (4) calendar days later. The officer then returns the updated draft to the records unit to review, again within three (3) business days. This process, while designed to avoid unnecessary delay, can easily take five (5) business days to produce an approved report.

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SFPD would also have to double its staffing in its records unit to make records staff available seven (7) days per week, in shifts corresponding to the officers' work schedules. These staffing increases would need to be in addition to the staffing increases required for the production of physical media for discovery, discussed above.

The proposed deadline of seven (7) days provides very little time for the actual investigation of a pseudonym or to locate a former neighbor, and for physical copies to be printed, physically delivered to the District Attorney's Office, and physically delivered to the defense. In the alternative, SFPD would have to produce unreviewed drafts which might contain errors, cause confusion, contain inappropriate personal information for members of the public, or other issues that would otherwise be addressed by the review process.

IV. Proposed LR1-307(C)(6) (deadline for submission to state crime lab)

Under current SFPD procedure, physical evidence collected during the course of an investigation is delivered to the evidence unit for inventory and storage. SFPD uses a database linked to bar codes on items of evidence and/or boxes containing multiple pieces of evidence, and stores evidence subject to biological degradation (e.g., evidence intended for DNA testing) in a laboratory-grade refrigerator.

SFPD and the City of Santa Fe do not have their own scientific laboratory for analyzing evidence. SFPD submits evidence for scientific analysis to the labs at the Scientific Laboratory Division ("SLD"). SLD is composed of multiple laboratories, such as the chemical, fingerprint, and firearm laboratories, and each lab conducts different analyses. Each laboratory has its own rules regarding whether evidence is accepted, how many pieces of evidence can be submitted by each agency at one time, and even whether the lab is currently accepting evidence due to storage constraints. Staffing shortages at the laboratories, equipment failure, and other issues can cause SLD to change admission standards while a case is pending. SFPD, therefore, has minimal control of when and even whether evidence is submitted for analysis and must work within the resource constraints of laboratories that serve the entire state. The proposed rule is unclear what party would certify the exercise of due diligence, e.g., SFPD or the District Attorney, and

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what the standard for due diligence would be, given the resource limitations discussed above.

V. Proposed LR1-307(F)(5)(a)(i), (F)(5)(b)(i), and (F)(5)(c)(i) (no pleas less than 10 days before trial)

A defendant changing his or her plea when the jury venire is assembled or during trial is never the best outcome. However, there are situations in which this may be unavoidable. For example, if a witness flees due to fear of retaliation, it is possible that such a witness might only be located and returned to testify less than ten (10) days before trial. Having a deadline of this type does not allow the trial judge to take into account the details peculiar to each case.

VI. Implementation Timeline (presumptively December 31, 2024)

Finally, should the proposed LR1-307 be approved, SFPD respectfully requests that the effective date be January 1, 2026. Based upon the above, the implementation of proposed LR1-307 would require SFPD to analyze whether it needs to request more funding for additional staff and training the staff. The City of Santa Fe's fiscal year is the same as the State's, from July-June. Much of the City's budgeting for the subsequent fiscal year takes place in March. Budgeting for the coming fiscal year, FY25, is nearly complete. If the Supreme Court were to adopt the proposed rule, going into effect December 31, 2024, SFPD would still need time to determine additional staff and material requirements, and funds might not be available in FY25. The FY26 budget, which will likely be submitted in March 2025, is a better time to request the scale of increase that would be required. If the City were able to identify a revenue source to fund the increase in a future budget request, those funds would not be available until July 1, 2025. After receiving an increased budget, then SFPD could start procuring materials and recruiting personnel to satisfy the requirements. The personnel would need to be trained in compliance with the new rule after being hired.

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Sincerely,

Paul Joye
Chief of Police
Santa Fe Police Department

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

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

Supreme Court <noreply@nmcourts.gov> Fri, Apr 12, 2024 at 3:51 PM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Jonathan
	Ibarra
Phone Number	505-369-3600
Email	joanthanl.ibarra@lopdnm.us
Proposal Number	2024-019
Comment	Please accept these comments regarding the new “CMO” for the First. Generally I think the changes, as compared to the CMO in the Second, are a good thing, but I have questions and comments. These are my own, not my office’s. (B) – Is there a reason why even in custody people need to wait 15 days for arraignment? In the Second it’s 15 unless in custody, then it’s 7. Practically, that might not be a huge difference, since 7 is business days and 15 is calendar days, but still. It shouldn’t take more than a week to get someone in custody arraigned. I would suggest changing that. (C)(2) – why is it after the “first appearance” rather than arraignment? Most cases, of course, are not having their felony first appearance in district court. Does this mean their Mag Court first appearance? If so, that’s great. If it is meant to mean arraignment, then it should say arraignment. (It’s arraignment in the Second.) (F)(5)(a)(i) (and similar paragraphs for other tracks) – in the same set of rule proposals, the Court is looking at a general plea deadline rule which only requires good cause, not extraordinary circumstances. I believe that this is the right level of need that should be required. Sometimes things change late. Obviously, courts can deny a good cause request if the parties can’t demonstrate it, but if there is good cause, by definition that should be “good” enough. The extra part of this rule requiring dismissal would seem to be a windfall for the defendant. Normally, as a public defender, I don’t know if I would object to that. But in practice, that means that it will essentially never happen, even when it should, because the State will be too afraid that the case will get dismissed with prejudice. I think the last sentence should be struck. (F)(5)(a)(viii) (and similar paragraphs for other tracks) – I understand why the Court changed this rule for the Second and why it’s in here for the First requiring quick requests for PTIs. For Track 1 cases, that’s mostly fine. For some Track 2 and many Track 3 cases, though, it doesn’t make sense. Those cases are, by definition, more complicated. For defense attorneys to have to do pretrial interviews on, say, experts listed by the State who haven’t completed their evaluations (OMI, DNA analysts,

fingerprint examiners), or, especially, alleged victims when you haven't talked to other people first, makes no sense. Parties need to have flexibility to organize how they want to do interviews.

(I) – certification of readiness – this used to be in the rule in the Second, but isn't any longer. It seems like that was not worth doing, which is why we don't have it any more. Further, there could easily be times when the defense does not feel ready for trial, and having them required to say they are is problematic. I don't believe these certifications are helpful.

Thank you!

Jonathan L Ibarra

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Phone Number 505-369-3600

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Jonathan L Ibarra

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

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Supreme Court <noreply@nmcourts.gov> Fri, Apr 12, 2024 at 9:28 PM
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Name	Julie
	Ball
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Proposal Number	Proposal 2024-019 – Case Management Program in the First Judicial District Court
Comment	As the District Defender for the Law Offices of the Public Defender (LOPD) for the 1st Judicial District, I would oppose the adoption of new LR1-307 NMRA as presented for the Supreme Court's consideration. My primary objections are summarized below. 1) The goal of LR1-307, speedy resolution of cases, is currently being addressed without arbitrary case labels, fixed deadlines or confusing dogma. Compliance with Supreme Court Order No. 22-8500-017, A Pilot Project to Institute Mandatory Status Hearings in Out-Of-Custody Cases Pending Preliminary Hearings, required our office and the Office of the First Judicial District Attorney to work together to create a system of gatekeeping for felony cases filed in Santa Fe Magistrate Court. Both offices put senior attorneys in charge of assessing strengths and weaknesses of filed cases and worked to determine a fair and just outcome with bindover to District Court used as a last resort rather than the first. A review of case filings in Santa Fe County supports the position that we have already made significant strides in the speedy resolution of felony cases. In 2023, 1,649 FR cases were filed in Santa Fe Magistrate Court, but only 490 criminal cases in District Court, which includes cases that bypassed the Magistrate Court. No other district in New Mexico comes close to the 25% bindover rate that we have achieved in Santa Fe County. 2) The Santa Fe Trial Office of LOPD lacks the necessary resources and personnel to ensure the rights of defendants under the strict deadlines and complicated procedures laid out in proposed rule LR1-307. All indigent clients in the 1st JD are represented by the attorneys working at the Santa Fe Trial office of LOPD, including those in Rio Arriba and Los Alamos counties. The Office of the District Attorney has 42% more attorneys than our office (31 to 18) and a whopping 79% more legal support staff (56 to 12). If the proposed Rule has the effect of the filing of more pretrial detention cases by the State to avoid mandatory dismissals, see Section H(6)(a), or if the Office of the District Attorney chooses to use grand juries to avoid its discovery obligations instead of preliminary hearings, our ability to provide effective assistance of counsel will be at serious risk. 3) Fixed deadlines and case labels in the interest of judicial efficiency is dehumanizing to the people for whom the criminal justice system in New Mexico is intended to serve. A person's life and liberty should not be categorized in terms of "tracks" using tenets or "factors," see F (3), put forth as authoritative without adequate grounds followed by implementation by arbitrary courts.

Respectfully,
Julie Ann Ball
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Proposal Number Proposal 2024-019 – Case Management Program in the First Judicial District Court

Comment

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