

1 **6-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** The court shall conduct a hearing under this rule and issue an order
4 setting conditions of release as soon as practicable, but in no event later than

5 (a) if the defendant remains in custody, three (3) days after the date of
6 arrest if the defendant is being held in the local detention center, or five (5) days after the date of
7 arrest if the defendant is not being held in the local detention center; ~~[or]~~

8 (b) first appearance or arraignment, if the defendant is not in custody~~[-]~~;
9 or

10 (c) if the defendant remains in custody pending a hearing under Rule 6-
11 403(D) NMRA, then within three (3) days after the date of the initial hearing conducted under
12 Rule 6-403 NMRA if the defendant is being held in the local detention center, or five (5) days after
13 the date of the initial hearing conducted under Rule 6-403 NMRA if the defendant is not being
14 held in the local detention center.

15 (2) **Right to counsel.** If the defendant does not have counsel at the initial release
16 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no
17 longer than three (3) additional days for a further hearing to review conditions of release, at which
18 the defendant shall have the right to assistance of retained or appointed counsel.

19 (3) **Local detention center; defined.** A “local detention center” is one that is
20 commonly used by the magistrate court in the normal course of business and not necessarily within
21 the territorial jurisdiction of the court.

22 B. **Right to pretrial release; recognizance or unsecured appearance**
23 **bond.** ~~[Pending trial, any]~~ Any defendant eligible for pretrial release under Article II, Section 13

1 of the New Mexico Constitution shall be ordered released pending trial on the defendant's personal
2 recognizance or on the execution of an unsecured appearance bond in an amount set by the court[;
3 ~~unless the court makes written findings of particularized reasons why the release will not~~
4 ~~reasonably ensure the appearance of the defendant as required~~]. The court may impose non-
5 monetary conditions of release under Paragraph D of this rule, but the court shall impose the least
6 restrictive condition or combination of conditions that will reasonably ensure the appearance of
7 the defendant as required and the safety of any other person or the community. The court may
8 order execution of a secured appearance bond only if the court makes written findings of
9 particularized reasons why the release will not reasonably ensure the appearance of the defendant
10 as required under Paragraphs E and F of this rule.

11 C. **Factors to be considered in determining conditions of release.** In determining
12 the least restrictive conditions of release that will reasonably ensure the appearance of the
13 defendant as required and the safety of any other person and the community, the court shall
14 consider any available results of a pretrial risk assessment instrument approved by the Supreme
15 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court
16 may take into account the available information about

17 (1) the nature and circumstances of the offense charged, including whether the
18 offense is a crime of violence or involves alcohol or drugs;

19 (2) the weight of the evidence against the defendant;

20 (3) the history and characteristics of the defendant, including

21 (a) the defendant's character, physical and mental condition, family
22 ties, employment, past and present residences, length of residence in the community, community

1 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about
2 appearance at court proceedings; and

3 (b) whether, at the time of the current offense or arrest, the defendant
4 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense
5 under federal, state, or local law;

6 (4) the nature and seriousness of the danger to any person or the community
7 that would be posed by the defendant's release;

8 (5) any other facts tending to indicate the defendant may or may not be likely
9 to appear as required; and

10 (6) any other facts tending to indicate the defendant may or may not commit
11 new crimes if released.

12 D. **Non-monetary conditions of release.** In its order setting conditions of release, the
13 court shall impose a standard condition that the defendant not commit a federal, state, or local
14 crime during the period of release. The court may also impose the least restrictive particularized
15 condition, or combination of particularized conditions, that the court finds will reasonably ensure
16 the appearance of the defendant as required, the safety of any other person and the community,
17 and the orderly administration of justice, which may include the condition that the defendant

18 (1) remain in the custody of a designated person who agrees to assume
19 supervision and to report any violation of a release condition to the court, if the designated person
20 is able reasonably to assure the court that the defendant will appear as required and will not pose
21 a danger to the safety of any other person or the community;

22 (2) maintain employment, or, if unemployed, actively seek employment;

23 (3) maintain or commence an educational program;

1 (4) abide by specified restrictions on personal associations, place of abode, or
2 travel;

3 (5) avoid all contact with an alleged victim of the crime or with a potential
4 witness who may testify about the offense;

5 (6) report on a regular basis to a designated pretrial services agency or other
6 agency agreeing to supervise the defendant;

7 (7) comply with a specified curfew;

8 (8) refrain from possessing a firearm, destructive device, or other dangerous
9 weapon;

10 (9) refrain from any use of alcohol or any use of an illegal drug or other
11 controlled substance without a prescription by a licensed medical practitioner;

12 (10) refrain from any use of cannabis, cannabis products, or synthetic
13 cannabinoids without a certification from a licensed medical practitioner;

14 ~~[(11) undergo available medical, psychological, or psychiatric treatment,~~
15 ~~including treatment for drug or alcohol dependency, and remain in a specified institution if~~
16 ~~required for that purpose;]~~

17 ~~[(12)]~~ (11) submit to a drug test or an alcohol test on request of a person
18 designated by the court;

19 ~~[(13)]~~ (12) return to custody for specified hours after release for employment,
20 schooling, or other limited purposes; and

21 ~~[(14)]~~ (13) satisfy any other condition that is reasonably necessary to ensure the
22 appearance of the defendant as required and the safety of any other person and the community.

1 E. **Secured bond.** If the court makes written findings of the particularized reasons
2 why release on personal recognizance or unsecured appearance bond, in addition to any non-
3 monetary conditions of release, will not reasonably ensure the appearance of the defendant as
4 required, the court may require a secured bond for the defendant's release.

5 (1) ***Factors to be considered in setting secured bond.***

6 (a) In determining whether any secured bond is necessary, the court
7 may consider any facts tending to indicate that the particular defendant may or may not be likely
8 to appear as required.

9 (b) The court shall set secured bond at the lowest amount necessary to
10 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability
11 to secure a bond.

12 (c) The court shall not set a secured bond that a defendant cannot afford
13 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

14 (d) Secured bond shall not be set by reference to a predetermined
15 schedule of monetary amounts fixed according to the nature of the charge.

16 (2) ***Types of secured bond.*** If a secured bond is determined necessary in a
17 particular case, the court shall impose the first of the following types of secured bond that will
18 reasonably ensure the appearance of the defendant.

19 (a) ***Percentage bond.*** The court may require a secured appearance bond
20 executed by the defendant in the full amount specified in the order setting conditions of release,
21 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be
22 returned as provided in Paragraph L of this rule.

1 (b) *Property bond.* The court may require the execution of a property
2 bond by the defendant or by unpaid sureties in the full amount specified in the order setting
3 conditions of release, secured by the pledging of real property in accordance with Rule 6-
4 401.1 NMRA.

5 (c) *Cash or surety bond.* The court may give the defendant the option
6 of either

7 (i) a secured appearance bond executed by the defendant in the
8 full amount specified in the order setting conditions of release, secured by a deposit in cash of one
9 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph
10 L of this rule, or

11 (ii) a surety bond executed by licensed sureties in accordance
12 with Rule 6-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order
13 setting conditions of release.

14 **F. Order setting conditions of release; findings about secured bond.**

15 (1) *Contents of order setting conditions of release.* The written order setting
16 conditions of release shall be provided to the defendant before release if the defendant is in custody
17 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

18 (a) include a written statement that sets forth all the conditions to which
19 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the
20 defendant's conduct; and

21 (b) advise the defendant of

22 (i) the penalties for violating a condition of release, including
23 the penalties for committing an offense while on pretrial release;

1 (ii) the consequences for violating a condition of release,
2 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial
3 release, and forfeiture of bond; and

4 (iii) the consequences of intimidating a witness, victim, or
5 informant, or otherwise obstructing justice.

6 (2) **Written findings about secured bond.** The court shall file written findings
7 of the individualized facts justifying ~~the~~ a secured bond~~[, if any,]~~ as soon as possible, but no later
8 than two (2) days after the conclusion of the hearing.

9 G. **Pretrial detention.** If the prosecutor files a motion for pretrial detention, the court
10 shall follow the procedures set forth in Rule 6-409 NMRA.

11 H. ~~[Motion for review]~~ **Review of conditions of release by the magistrate court.**

12 (1) ~~[Motion for review]~~ **Review.** If the magistrate court requires a secured bond
13 for the defendant's release under Paragraph E of this rule or imposes non-monetary conditions of
14 release under Paragraph D of this rule, and the defendant remains in custody twenty-four (24)
15 hours after the issuance of the order setting conditions of release as a result of the defendant's
16 inability to post the secured bond or meet the conditions of release in the present case, the
17 defendant shall~~[, on motion of the defendant or the court's own motion,]~~ be entitled to a hearing
18 to review the conditions of release.

19 (2) **Review hearing.** The magistrate court shall hold a hearing in an expedited
20 manner, but in no event later than five (5) days after the ~~[filing of the motion]~~ initial conditions of
21 release hearing. The defendant shall have the right to assistance of retained or appointed counsel
22 at the hearing. Unless the order setting conditions of release is amended and the defendant is then
23 released, the court shall file a written order setting forth the reasons for declining to amend the

1 order setting conditions of release. The court shall consider the defendant's financial ability to
2 secure a bond. No defendant eligible for pretrial release under Article II, Section 13 of the New
3 Mexico Constitution shall be detained solely because of financial inability to post a secured bond
4 unless the court determines by clear and convincing evidence and makes findings of the reasons
5 why the amount of secured bond required by the court is reasonably necessary to ensure the
6 appearance of the particular defendant as required. The court shall file written findings of the
7 individualized facts justifying the secured bond as soon as possible, but no later than two (2) days
8 after the conclusion of the hearing.

9 (3) ***Work or school release.*** A defendant who is ordered released on a condition
10 that requires that the defendant return to custody after specified hours shall, on motion of the
11 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.
12 Unless the requirement is removed and the defendant is released on another condition, the court
13 shall file a written order setting forth the reason for the continuation of the requirement. A hearing
14 to review conditions of release under this subparagraph shall be held by the magistrate court within
15 five (5) days of the filing of the motion. The defendant shall have the right to assistance of retained
16 or appointed counsel at the hearing.

17 (4) ***Subsequent motion for review.*** The defendant may file subsequent motions
18 for review of the order setting conditions of release, but the court may rule on subsequent motions
19 with or without a hearing.

20 I. **Amendment of conditions.** The court may amend its order setting conditions of
21 release at any time. If the amendment of the order may result in the detention of the defendant or
22 in more restrictive conditions of release, the court shall not amend the order without a hearing. If
23 the court is considering revocation of the defendant's pretrial release or modification of the

1 defendant's conditions of release for violating a condition of release, the court shall follow the
2 procedures set forth in Rule 6-403 NMRA.

3 J. **Petition to district court.**

4 (1) ***Case within magistrate court trial jurisdiction.*** A defendant charged with
5 an offense that is within magistrate court trial jurisdiction may file a petition in the district court
6 for review of the magistrate court's order setting conditions of release under this paragraph only
7 after the magistrate court has [~~ruled on a motion to review~~] reviewed the conditions of release and
8 made a requisite ruling under Paragraph H of this rule. The defendant shall attach to the district
9 court petition a copy of the magistrate court order [~~disposing of the defendant's motion for review~~]
10 after the review of the conditions of release.

11 (2) ***Felony case.*** A defendant charged with a felony offense who has not been
12 bound over to the district court may file a petition in the district court for release under Rule 5-
13 401(K) NMRA and this paragraph at any time after the defendant's arrest.

14 (3) ***Petition; requirements.*** A petition to the district court under this paragraph
15 shall include the specific facts that warrant review by the district court and may include a request
16 for a hearing. The petitioner shall promptly

17 (a) file a copy of the district court petition in the magistrate court;

18 (b) serve a copy on the district attorney; and

19 (c) provide a copy to the assigned district court judge.

20 (4) ***Magistrate court's jurisdiction pending determination of the petition.*** On
21 the filing of a petition under this paragraph, the magistrate court's jurisdiction to set or amend the
22 conditions of release shall be suspended pending determination of the petition by the district court.
23 The magistrate court shall retain jurisdiction over all other aspects of the case, and the case shall

1 proceed in the magistrate court while the district court petition is pending. The magistrate court's
2 order setting conditions of release[~~, if any,~~] shall remain in effect unless and until the district court
3 issues an order amending the conditions of release.

4 (5) ***District court review.*** The district court shall rule on the petition in an
5 expedited manner. Within three (3) days after the petition is filed, the district court shall take one
6 of the following actions:

7 (a) set a hearing no later than ten (10) days after the filing of the petition
8 and promptly send a copy of the notice to the magistrate court;

9 (b) deny the petition summarily; or

10 (c) amend the order setting conditions of release without a hearing.

11 (6) ***District court order; transmission to magistrate court.*** The district court
12 shall promptly send to the magistrate court a copy of the district court order disposing of the
13 petition, and jurisdiction over the conditions of release shall revert to the magistrate court.

14 K. **Expedited trial scheduling for defendant in custody.** The magistrate court shall
15 provide expedited priority scheduling in a case in which the defendant is detained as a result of
16 inability to post a secured bond or meet the conditions of release. The court shall hold a status
17 review hearing in any case in which the defendant has been held for more than sixty (60) days.
18 The purpose of the status review hearing is to conduct a meaningful review of the progress of the
19 case. If the court determines that insufficient progress has been made, then the court shall issue an
20 appropriate scheduling order.

21 L. **Return of cash deposit.** If a defendant has been released by executing a secured
22 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions
23 of the appearance bond have been performed and the defendant's case has been adjudicated by the

1 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,
2 or that person's personal representatives or assigns.

3 **M. Release from custody by designee.** The presiding judge of the magistrate court
4 may designate by written court order responsible persons to implement the pretrial release
5 procedures set forth in Rule 6-408 NMRA. A designee shall release a defendant from custody
6 before the defendant's first appearance before a judge if the defendant is eligible for pretrial release
7 under Rule 6-408 NMRA, but may contact a judge for special consideration based on exceptional
8 circumstances. No person shall be qualified to serve as a designee if the person or the person's
9 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to
10 sell property or corporate bonds within this state.

11 **N. Bind over to district court.** For any case that is not within magistrate court trial
12 jurisdiction, on notice to the magistrate court, any bond shall be transferred to the district court on
13 the filing of an information or indictment in the district court.

14 **O. Evidence.** Information offered in connection with or stated in any proceeding held
15 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

16 **P. Forms.** Instruments required by this rule, including any order setting conditions of
17 release, appearance bond, property bond, or surety bond, shall be substantially in the form
18 approved by the Supreme Court.

19 **Q. Judicial discretion; disqualification and excusal.** Action by any court on any
20 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a
21 judge. A judge may not be excused from setting initial conditions of release unless the judge is
22 required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial
23 Conduct.

1 [As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;
2 as amended by Supreme Court Order No. 07-8300, effective January 22, 2008; by Supreme Court
3 Order No. 08-8300-044, effective December 31, 2008; as amended by Supreme Court Order No.
4 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by
5 Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after
6 December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective
7 for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order
8 No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]

9 **Committee commentary.** — This rule provides “the mechanism through which a person
10 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico
11 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section
12 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending
13 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger
14 to the safety of any other person or the community and that no release condition or combination
15 of conditions will reasonably ensure the safety of any other person or the community, and (2) to
16 require the pretrial release of a defendant who is in custody solely because of financial inability to
17 post a secured bond. This rule was derived from the federal statute governing the release or
18 detention of a defendant pending trial. [See] See 18 U.S.C. § 3142. This rule was amended in 2017
19 to implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding
20 in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure
21 for the District Courts, *see* Rule 5-401 NMRA, the Rules of Criminal Procedure for the
22 Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of Procedure for the Municipal
23 Courts, *see* Rule 8-401 NMRA.

1 Time periods specified in this rule are computed in accordance with Rule 6-104 NMRA.

2 Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA
3 that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2),
4 (H)(2), and (H)(3) of this rule provide that assistance of counsel is required in a proceeding that
5 may result in denial of pretrial release based on reasons that do not involve dangerousness, such
6 as a simple inability to meet a financial condition.

7 As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or
8 unsecured bond unless the court determines that a release, in addition to any non-monetary
9 conditions of release under Paragraph D, will not reasonably ensure the appearance of the
10 defendant and the safety of any other person or the community.

11 Paragraph C lists the factors the court should consider when determining conditions of
12 release. In all cases, the court is required to consider any available results of a pretrial risk
13 assessment instrument approved by the Supreme Court for use in the jurisdiction~~[, if any,]~~ and the
14 financial resources of the defendant.

15 Paragraph D lists various non-monetary conditions of release. The court must impose the
16 least restrictive condition, or combination of conditions, that will reasonably ensure the appearance
17 of the defendant as required and the safety of any other person and the community. *See*
18 *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard
19 conditions before a court appearance, the judge should review the conditions at the defendant's
20 first appearance to determine whether any particularized conditions should be imposed under the
21 circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions
22 of release to ensure the orderly administration of justice. This provision was derived from the
23 American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-

1 5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The
2 court should make a determination about whether the defendant can afford to pay all or a part of
3 the cost, or whether the court has the authority to waive the cost, because detaining a defendant
4 because of inability to pay the cost associated with a condition of release is comparable to detaining
5 a defendant because of financial inability to post a secured bond.

6 As set forth in Paragraph E, the only purpose for which the court may impose a secured
7 bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which
8 the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746
9 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the
10 punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993)
11 (authorizing the forfeiture of bond on the defendant’s failure to appear).

12 The 2017 amendments to this rule clarify that the amount of secured bond must not be
13 based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to
14 the nature of the charge. Instead, the court must consider the individual defendant’s financial
15 resources and must set secured bond at the lowest amount that will reasonably ensure the
16 defendant’s appearance in court after the defendant is released.

17 Secured bond cannot be used for the purpose of detaining a defendant who may pose a
18 danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53
19 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set
20 high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*,
21 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated
22 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A
23 felony defendant who poses a danger that cannot be mitigated through the imposition of non-

1 monetary conditions of release under Paragraph D of this rule should be detained under Article II,
2 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

3 The court should consider the authorized types of secured bonds in the order of priority set
4 forth in Paragraph E. The court must first consider requiring an appearance bond secured by a cash
5 deposit of ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of
6 ten percent (10%) is inadequate, the court then must consider a property bond involving property
7 that belongs to the defendant or other unpaid surety. If neither of these options is sufficient to
8 reasonably ensure the defendant's appearance, the court may require a cash or surety bond for the
9 defendant's release. If the court requires a cash or surety bond, the defendant has the option either
10 to execute an appearance bond and deposit one hundred percent (100%) of the amount of the bond
11 with the court or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the
12 defendant alone has the choice to post the bond by a one hundred percent (100%) cash deposit or
13 a surety. The court does not have the option to set a cash-only bond or a surety-only bond; it must
14 give the defendant the choice of either. A paid surety may execute a surety bond or a real or
15 personal property bond only if the conditions of Rule 6-401.2 NMRA are met.

16 Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-
17 303 NMRA (order setting conditions of release). Although pretrial release hearings are not
18 required to be a matter of record in the magistrate court, Paragraph F requires the court to make
19 written findings justifying the imposition of a secured bond~~[, if any]~~. Judges are encouraged to
20 enter their written findings on the order setting conditions of release at the conclusion of the
21 hearing. If more detailed findings are necessary, the judge should make the supplemental findings
22 in a separate document within two (2) days of the conclusion of the hearing.

1 Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section
2 13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other
3 person or the community that cannot be addressed through the imposition of non-monetary
4 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files
5 a motion for pretrial detention, the magistrate court must follow the procedures set forth in Rule 6-
6 409 NMRA.

7 Paragraph H sets forth the procedure [~~for the defendant to file a motion in the magistrate~~
8 ~~court]~~ for review of the defendant's conditions of release in the magistrate court. Paragraph J sets
9 forth the procedure for the defendant to petition the district court for release or for review of the
10 conditions of release set by the magistrate court. Article II, Section 13 of the New Mexico
11 Constitution requires the court to rule on a motion or petition for pretrial release “in an expedited
12 manner” and to release a defendant who is being held solely because of financial inability to post
13 a secured bond. A defendant who wishes to present financial information to a court to support a
14 motion or a petition for pretrial release may present Form 9-301A NMRA (pretrial release financial
15 affidavit) to the court. The defendant shall be entitled to appear and participate personally with
16 counsel before the judge conducting any hearing to review the conditions of release, rather than
17 by any means of remote electronic conferencing.

18 Paragraph K requires the magistrate court to prioritize the scheduling of trial and other
19 proceedings for cases in which the defendant is held in custody because of inability to post bond
20 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)
21 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate
22 due process, in part because of “the stringent time limitations of the Speedy Trial Act,” 18 U.S.C.
23 § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11

1 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limits
2 within which detained defendants should be tried consistent with the sound administration of
3 justice.”). This rule does not preclude earlier or more regular status review hearings. The purpose
4 of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the
5 progress of the case includes assessment of the parties’ compliance with applicable deadlines,
6 satisfaction of discovery obligations, and witness availability, among other matters. If the court
7 determines that the parties have made insufficient progress on these measures, then it shall issue
8 an appropriate scheduling order.

9 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out
10 the provisions of this rule. As set forth in Paragraph M, a designee must be designated by the
11 presiding magistrate court judge in a written court order. A person may not be appointed as a
12 designee if that person is related within the second degree of blood or marriage to a paid surety
13 licensed in this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph M
14 and Rule 6-408 NMRA govern the limited circumstances under which a designee shall release an
15 arrested defendant from custody before that defendant’s first appearance before a judge.

16 Paragraph N requires the magistrate court to transfer any bond to the district court on notice
17 from the district attorney that an information or indictment has been filed. *See* Rule 6-202(E)-(F)
18 NMRA (requiring the district attorney to notify the magistrate court of the filing of an information
19 or indictment in the district court).

20 Paragraph O of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that
21 the Rules of Evidence [~~are not applicable~~] do not apply to proceedings in the magistrate court with
22 respect to matters of pretrial release. As with courts in other types of proceedings in which the
23 Rules of Evidence do not apply, a court presiding over a pretrial release hearing is responsible “for

1 assessing the reliability and accuracy” of the information presented. *See United States v. Martir*,
2 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge
3 “retains the responsibility for assessing the reliability and accuracy of the government’s
4 information, whether presented by proffer or by direct proof”); *see also United States v. Marshall*,
5 519 F. Supp. 751, 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge
6 considers has sufficient indicia of reliability to support its probable accuracy, the information may
7 properly be taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*
8 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a
9 probation revocation hearing, the court should focus on the reliability of the evidence).

10 Consistent with Rule 6-106 NMRA, a party cannot exercise the statutory right to excuse a
11 judge who is setting initial conditions of release. *See* NMSA 1978, § 35-3-7 (1983). Paragraph Q
12 of this rule does not prevent a judge from filing a recusal either on the court’s own motion or
13 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

14 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or
15 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases
16 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-
17 RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]