

1 **5-104. Time.**

2 A. **Computing time.** This rule applies in computing any time period specified in these
3 rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of
4 procedure contains time computation provisions that expressly supersede this rule.

5 (1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the
6 period is stated as eleven (11) days or a longer unit of time

7 (a) exclude the day of the event that triggers the period;

8 (b) count every day, including intermediate Saturdays, Sundays, and
9 legal holidays; and

10 (c) include the last day of the period, but if the last day is a Saturday,
11 Sunday, or legal holiday, the period continues to run until the end of the next day that is not a
12 Saturday, Sunday, or legal holiday.

13 (2) ***Period stated in days or a longer unit; ten (10) days or less.*** When the
14 period is stated in days but the number of days is ten (10) days or less

15 (a) exclude the day of the event that triggers the period;

16 (b) exclude intermediate Saturdays, Sundays, and legal holidays; and

17 (c) include the last day of the period, but if the last day is a Saturday,
18 Sunday, or legal holiday, the period continues to run until the end of the next day that is not a
19 Saturday, Sunday, or legal holiday.

20 (3) ***Period stated in hours.*** When the period is stated in hours

21 (a) begin counting immediately on the occurrence of the event that
22 triggers the period;

1 (b) count every hour, including hours during intermediate Saturdays,
2 Sundays, and legal holidays; and

3 (c) if the period would end on a Saturday, Sunday, or legal holiday, the
4 period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal
5 holiday.

6 (4) ***Unavailability of the court for filing.*** If the court is closed or is unavailable
7 for filing at any time that the court is regularly open

8 (a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of
9 this rule, then the time for filing is extended to the first day that the court is open and available for
10 filing that is not a Saturday, Sunday, or legal holiday; or

11 (b) during the last hour for filing under Subparagraph (A)(3) of this rule,
12 then the time for filing is extended to the same time on the first day that the court is open and
13 available for filing that is not a Saturday, Sunday, or legal holiday.

14 (5) ***“Last day” defined.*** Unless a different time is set by a court order, the last
15 day ends

16 (a) for electronic filing, at midnight; and

17 (b) for filing by other means, when the court is scheduled to close.

18 (6) ***“Next day” defined.*** The “next day” is determined by continuing to count
19 forward when the period is measured after an event and backward when measured before an event.

20 (7) ***“Legal holiday” defined.*** “Legal holiday” means the day that the following
21 are observed by the judiciary:

22 (a) New Year’s Day, Martin Luther King Jr.’s Birthday, Presidents’
23 Day (traditionally observed on the day after Thanksgiving), Memorial Day, Juneteenth,

1 Independence Day, Labor Day, [~~Columbus Day~~]Indigenous Peoples Day, Veterans' Day,
2 Thanksgiving Day, or Christmas Day; and

3 (b) any other day observed as a holiday by the judiciary.

4 B. **Extending time.**

5 (1) ***In General.*** When an act may or must be done within a specified time, the
6 court may, for cause shown, extend the time

7 (a) with or without motion or notice if the court acts, or if a request is
8 made, before the original time or its extension expires; or

9 (b) on motion made after the time has expired if the party failed to act
10 because of excusable neglect.

11 (2) ***Exceptions.*** The court shall not extend the time for a determination of
12 probable cause, for filing a motion for new trial, for filing a notice of appeal, for filing a motion
13 for acquittal, for filing a notice of intent to seek the death penalty, for filing petitions for writs of
14 certiorari seeking review of denials of habeas corpus petitions by the district court, or for filing a
15 motion for an extension of time for commencement of trial, except as otherwise provided in these
16 rules.

17 C. **Additional time after certain kinds of service.** When a party may or must act
18 within a specified time after service and service is made by mail, facsimile, [~~electronic~~
19 ~~transmission,~~] or by deposit at a location designated for an attorney at a court facility under Rule
20 5-103(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under
21 Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these
22 added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is
23 the next day that is not a Saturday, Sunday, or legal holiday.

1 D. **Public posting of regular court hours.** The court shall publicly post the hours that
2 it is regularly open.

3 [As amended, effective October 1, 1995; as amended by Supreme Court Order No. 06-
4 8300-023, effective December 18, 2006; by Supreme Court Order No. 09-8300-009, effective May
5 6, 2009; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or
6 filed on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-030,
7 effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme
8 Court Order No. S-1-RCR-2023-00046, effective for all cases pending or filed on or after
9 December 31, 2024.]

10 **Committee commentary.** — This rule is derived from civil procedure Rule 1-006 NMRA.

11 In 2014, the Joint Committee on Rules of Procedure amended the time computation rules,
12 including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and
13 restyled the rules to more closely resemble the federal rules of procedure. *See* Fed. R. Civ. Pro. 6;
14 Fed. R. Crim. Pro. 45. The method of computing time set forth in this rule may be expressly
15 superseded by other rules. *See, e.g.,* Rule 5-301 NMRA (requiring the court to make a probable
16 cause determination within forty-eight (48) hours of a warrantless arrest, notwithstanding the time
17 computation provisions in this rule).

18 Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable
19 for filing due to weather, technological problems, or other circumstances. A person relying on
20 Subparagraph (A)(4) to extend the time for filing a paper should be prepared to demonstrate or
21 affirm that the court was closed or unavailable for filing at the time that the paper was due to be
22 filed under Subparagraph (A)(1), (A)(2), or (A)(3).

**DISTRICT COURT CRIMINAL
RULE 5-104**

**Supreme Court Approved
November 1, 2024**

- 1 [As amended by Supreme Court Order No. 09-8300-009, effective May 6, 2009; as amended by
- 2 Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after
- 3 December 31, 2014.]