

1 **7-304. Motions.**

2           A.     **Defenses and objections that may be raised.** Any matter that is capable of  
3 determination without trial of the general issue, including defenses and objections, may be raised  
4 before trial by motion.

5           B.     **Motion requirements.** An application to the court for an order shall be by motion  
6 which, unless made during a hearing or trial, shall be made in writing, shall state with particularity  
7 the grounds therefor, and shall set forth the relief or order sought. Motions shall be served on each  
8 party as provided by Rule 7-209 NMRA.

9           C.     **Unopposed motions.** The moving party shall determine whether or not a motion  
10 will be opposed. If the motion will not be opposed, an order initialed by opposing counsel shall  
11 accompany the motion. The motion is not granted until the order is approved by the court.

12           D.     **Opposed motions.** The motion shall recite that concurrence of opposing counsel  
13 was requested or shall specify why no such request was made. The moving party shall request  
14 concurrence from opposing counsel unless the motion is a

- 15                   (1)     motion to dismiss;
- 16                   (2)     motion regarding bonds and conditions of release;
- 17                   (3)     motion for new trial;
- 18                   (4)     motion to suppress evidence; or
- 19                   (5)     motion to modify a sentence under Rule 7-801 NMRA.

20           Notwithstanding the provisions of any other rule, counsel may file with any opposed  
21 motion a brief or supporting points with citations or authorities. Affidavits, statements,  
22 depositions, or other documentary evidence in support of the motion may be filed with the motion.

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

5           F.       **Suppression of evidence.**

6               (1)     In cases within the trial court’s jurisdiction

7                   (a)     a person aggrieved by a search and seizure may move for the return  
8 of the property and to suppress its use as evidence; and

9                   (b)     a person aggrieved by a confession, admission, or other evidence  
10 obtained through allegedly unconstitutional means may move to suppress such evidence.

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

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

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

1 [As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order  
2 No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 16-8300-  
3 029, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme  
4 Court Order No. 19-8300-018, effective for all cases pending or filed on or after December 31,  
5 2019.]

6  
7 **Committee commentary.** — A motion to suppress evidence under Paragraph F of this  
8 rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure  
9 or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-  
10 025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification). In 2016, the committee  
11 moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new  
12 time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline  
13 for filing either a motion to suppress or a response, the party may ask the court, in its discretion,  
14 to grant a time extension under Rule 7-104(B) NMRA, a continuance under Rule 7-601(A)  
15 NMRA, or an extension of the time for commencement of trial under Rule 7-506 (C) NMRA.

16 The paragraph addressing suppression motions previously was amended in 2013 in  
17 response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held that,  
18 absent good cause shown, motions to suppress must be filed prior to trial and suppression issues  
19 must be adjudicated prior to trial in order to preserve the state’s right to appeal any order  
20 suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA & committee commentary. Prior to the  
21 entry of a final judgment in metropolitan court, the state may obtain judicial review of an order  
22 suppressing evidence by filing a nolle prosequi and reinstating the charges in district court. *See*  
23 *State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *State v.*

1 *Gardea*, 1999-NMCA-116, ¶ 5, 128 N.M. 64, 989 P.2d 439; *see also* Rule 7-506.1 NMRA. But if  
2 the trial court enters an order at trial suppressing evidence and concludes that any remaining  
3 evidence is insufficient to proceed against the defendant, the defendant is acquitted, and the  
4 defendant’s double jeopardy rights preclude the state from appealing. *See Marquez*, 2012-NMSC-  
5 031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating  
6 suppression issues prior to trial ensures that the state will be able to exercise its right to appeal any  
7 order suppressing evidence.

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

11 If a defendant raises a suppression issue at trial, the trial judge may order a continuance  
12 under Rule 7-601(A) in order to ascertain whether there is good cause for the defendant’s failure  
13 to raise the issue prior to trial. Examples of good cause may include, but are not limited to, failure  
14 of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to  
15 trial, failure of either party to provide discovery, or the discovery of allegedly [~~suppressable~~]  
16 suppressible evidence during the course of the trial. If good cause is shown, the judge may excuse  
17 the late motion and hold a suppression hearing. Absent good cause shown, the judge may deny the  
18 motion for failure to comply with the rule.

19 Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which  
20 have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-  
21 NMSC-040, ¶ 12, 339 P.3d 614 (“Although our procedural rules do not grant the State an express  
22 right to file a motion to reconsider a suppression order, the common law has long recognized the  
23 validity and utility of motions to reconsider in criminal cases.”). Consistent with Rule 12-

1 201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal  
2 will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn.  
3 [Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or  
4 after December 31, 2013; as amended by Supreme Court Order No. 16-8300-029, effective for all  
5 cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No.  
6 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended  
7 by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after  
8 December 31, 2019; as amended by Supreme Court Order No. S-1-RCR-2023-00037, effective  
9 for all cases filed on or after December 31, 2024.]