

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2025-025**

March 6, 2025

The Supreme Court Clerk's Office has recommended amendments Rule 12-319 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 <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> 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 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

12-319. Oral argument.

A. **Oral argument.** The appellate court may order oral argument at its discretion. No oral argument shall be heard on cases assigned to the summary calendar.

B. **Request for oral argument.** Any party may request oral argument by including on the cover page or first page of the opening brief a statement that oral argument is requested. The requesting party may separately set out a concise statement of the reasons why oral argument would be helpful to a resolution of the issues.

C. **Settings.**

(1) **Notice of setting.** Settings for oral argument will be fixed by the appellate court and notice thereof given by the appellate court clerk.

(2) **Motion to reset oral argument.** Except for good cause shown, a motion to reset oral argument shall be made within ten (10) days after service of notice of setting.

D. **Order and content of argument.** Unless otherwise ordered, the petitioner, movant, or party first filing a notice of appeal shall open and close the argument. If notices are filed on the same day, the plaintiff in the proceeding below shall open and close the argument. Unless the appellate court directs otherwise, a cross-appeal or separate, related appeal shall be argued when the initial appeal is argued. Counsel for the same side should avoid duplicative argument. Counsel must not read at length from briefs, records, or authorities. Counsel should assume that the justices or judges have read the briefs before oral argument.

E. **Time for argument.** The time for oral argument shall not exceed twenty (20) minutes on each side for motions, petitions, or applications and thirty (30) minutes on each side as to all other matters unless the time is extended or restricted by the appellate court.

F. **Use of physical exhibits; removal.** A party may use physical exhibits at argument only on prior motion and leave of the appellate court. The motion shall concisely state why the use of the exhibits may significantly aid in the appellate court's decisional process, shall indicate whether opposing counsel has any objection to the use of the exhibits, and shall be filed at least ten (10) days before the scheduled argument date. A party whose motion to use physical exhibits has been granted must make arrangements with the appellate court clerk to have the exhibits placed in the courtroom before court convenes on the date of argument. After argument, counsel shall remove the exhibits from the courtroom unless the appellate court otherwise directs. If counsel seeks to distribute documents or other material to the justices or judges during oral argument, counsel shall provide the necessary copies directly to the appellate court clerk during the argument at the appropriate time, with a copy to opposing counsel, and the appellate court clerk will then distribute the material to each justice or judge.

G. **Nonappearance of parties.** If a party fails to appear to present argument, the appellate court may, in its discretion, hear argument on behalf of the opposing party.

H. **Joint argument.** Two or more cases involving the same or related questions may be heard together on request of a party or by order of the appellate court.

I. **Participating justices or judges.** A justice or judge who did not hear the original argument may participate in the decision of any cause by reviewing a recording or transcript of the original oral argument.

[As amended, effective December 1, 1993; May 1, 2003; as amended by Supreme Court Order No. 10-8300-001, effective April 12, 2010; 12-214 recompiled and amended as 12-319 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. S-1-RCR-2024-00114, effective for all cases filed on or after November 1, 2024.]

Committee commentary. — In 2016, the committee renumbered Rule 12-214 NMRA and placed it in the general provisions article as Rule 12-319 NMRA.

Paragraph B was revised in 2010, and again in 2016, to adopt a new method of requesting oral argument for all types of appellate proceedings, except appeals assigned to the summary calendar. Oral argument may be requested by a statement on the first page or cover of any brief, petition, motion, or application filed by the party. The request may be supported by a statement of reasons appearing in the brief, petition, motion, or application. This method is similar to that adopted by other courts and eliminates the need for a separately filed request for oral argument.

When considering whether to request oral argument, a party should consider whether the dispositive issue or issues have been authoritatively decided, whether the facts and legal arguments are adequately presented in the briefs and record, and whether the appellate court's decisional process will be significantly aided by oral argument.

As a courtesy to the appellate court, counsel should file a notice of non-availability setting forth any dates that counsel is unavailable to attend oral argument. A notice of non-availability should be filed at the earliest practicable time.

A party is not required to use all the allotted time for oral argument. Before argument starts, the party that opens oral argument may reserve time for rebuttal. If the party that opens oral argument

does not use all of the time allotted for the opening argument, the party may seek leave of court to reserve the unused time for rebuttal. Points of substance may not be reserved for rebuttal.

The 2024 amendment permits requests for oral argument to be made on the cover or first page of a party's "opening brief," which refers to the initial brief filed by the respective parties, typically the brief in chief or answer brief.

[Adopted by Supreme Court Order No. 10-8300-001, effective April 12, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]