

**PROPOSED REVISIONS TO THE SUPREME COURT GENERAL RULES
PROPOSAL 2025-027**

March 6, 2025

The Supreme Court Clerk's Office has recommended amendments to Rule 23-106 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.

23-106. Supreme Court rules committees.

A. **Authority to appoint.** The Supreme Court may appoint standing committees and ad hoc committees to assist the Court with its rulemaking function and to make recommendations to the Court for drafting and revising rules, forms, and uniform jury instructions for approval by the Court. As used in this rule and in Rule 23-106.1 NMRA, a committee includes a board or commission created by the Court for the same purposes.

B. **Composition of committees.** Most standing committees will be comprised of nine (9) members appointed by the Court to reflect geographical balance and to represent the various factions of the bar, such as prosecutors, defense attorneys, private attorneys, and government attorneys, but the Court in its discretion may appoint more or fewer than nine (9) members to any standing committee. Ad hoc committees will be comprised of as many members as the Court deems necessary with the same considerations of balance as for standing committees.

C. **Chairperson; duties; subcommittees.** The Court may appoint a chair and vice-chair for each committee.

(1) The chair shall [have the authority to call meetings of the committee on whatever basis deemed necessary to ensure that the work of the committee is accomplished, and shall call at least one (1) meeting each year to evaluate the operation of the rules for which the committee is responsible and set future meeting dates for the remainder of the year] set a standing meeting schedule for the committee at the committee's first meeting of the year to ensure that the work of the committee is accomplished.

(a) The standing meeting schedule shall ensure that no fewer than six (6) committee meetings are scheduled for the year.

(b) If the chair cancels two consecutive committee meetings for lack of business, the chair shall notify the Supreme Court Clerk's Office.

(2) The chair will preside at all meetings and is responsible for communicating with the Court on behalf of the committee.

(3) In the absence of the chair, the chair may designate another committee member or committee staff to assume the authority of the chair, provided that committee staff temporarily designated to chair the committee may not vote and shall not count for establishing a quorum.

(4) The chair may appoint one or more subcommittees, as deemed necessary, to develop recommendations for consideration by the standing committee. The members of a subcommittee may include members from the standing committee and other individuals with experience and expertise the chair determines would be helpful to the work of the subcommittee.

D. Terms of appointment. Standing committee members shall be appointed for a term of three (3) years. The Court may appoint a standing committee member to fill a partial term created by the departure of another member. When a new standing committee is created, the Supreme Court clerk is authorized to randomly assign one (1), two (2), and three (3)-year terms for new members to achieve a staggering of terms. Standing committee members who are initially assigned a one (1) or two (2)-year term, or who are appointed to complete the remainder of an unexpired term of a prior member, may be reappointed to two (2) full three (3)-year terms thereafter. No standing committee member shall serve for more than two (2) full three (3)-year terms unless ordered by the Court. Members of ad hoc committees may be appointed by the Court with or without membership terms. Any standing or ad hoc committee member may resign at any time during the member's term by informing the Court in writing.

E. Committee participation required. All committee members are expected to actively participate in committee business and regularly attend committee meetings. If any committee member, including the chair, is absent from three (3) consecutive committee meetings, that person is deemed to have resigned from the committee. The committee chair or committee staff may excuse an absence at their discretion, if the absent committee member provides a written request for the excusal. Any resignation shall be reported to the Court, in writing, by the chair or committee staff, and the chair or committee staff may recommend to the Court that a committee member not be required to resign under the provisions of this rule due to exceptional circumstances. For purposes of this paragraph, an absence shall be defined as,

(1) failing to attend a regularly scheduled committee meeting for any reason;
or

(2) contributing to the lack of a quorum that results in the cancellation of a regularly scheduled committee meeting.

F. State bar representative. The Board of Bar Commissioners may appoint a liaison to each standing committee. Any liaison appointed to the Judicial Performance Evaluation Commission, Disciplinary Board or Board of Bar Examiners may participate in discussions pertaining to rulemaking or matters of general policy but may not participate in executive sessions and other confidential proceedings or in pending disciplinary or admission matters.

G. Supreme Court liaison. The chief justice may appoint a liaison justice to a committee.

H. **Committee staff.** The Court may appoint or contract for such staff as may be needed for each committee. If appointed, the committee staff shall be responsible for providing notice of meetings, assisting the chair with setting the agenda for meetings and other duties of the chair, drafting and revising rules, forms, and uniform jury instructions, serving as a liaison between the committee and the Court, and any other duties requested by the Court. It shall not be necessary for committee staff to keep minutes.

I. **Quorum and voting.** All appointed members, including the chair, shall have one (1) vote. Voting by proxy is not permitted. Committee staff, guests, and liaisons may participate in meetings, but may not vote. A quorum of the committee consists of a majority of its voting members, including the chair. A quorum includes any member who is present in person, by telephone, or by videoconference. A quorum shall be present and voting before any committee business may be adopted and recommended to the Court. Committees may, however, meet and discuss matters without a quorum present.

(1) The chair may, under extraordinary circumstances, request to hold a committee vote by email. Any requests to vote by email should be directed to the Clerk's Office and should explain the extraordinary circumstances and the need for the vote to occur by email rather than at a later committee meeting.

J. **Standing committees.** The following is a list of Supreme Court standing committees:

(1) Rules of Civil Procedure for State Courts Committee, which is responsible for the Rules of Civil Procedure for the District Courts, the Rules of Civil Procedure for the Magistrate Courts, the Rules of Civil Procedure for the Metropolitan Courts, the Probate Court Rules and Forms, and the civil forms for the district courts, magistrate courts, and metropolitan courts;

(2) Rules of Criminal Procedure for State Courts Committee, which is responsible for the Rules of Criminal Procedure for the District Courts, the Rules of Criminal Procedure for the Magistrate Courts, the Rules of Criminal Procedure for the Metropolitan Courts, the Rules of Procedure for the Municipal Courts, and the criminal forms for the district courts, magistrate courts, metropolitan courts, and municipal courts;

(3) Appellate Rules Committee, which is responsible for the Rules of Appellate Procedure;

(4) Rules of Evidence Committee, which is responsible for the Rules of Evidence;

(5) Uniform Jury Instructions-Civil Committee, which is responsible for the Uniform Jury Instructions-Civil;

(6) Uniform Jury Instruction-Criminal Committee, which is responsible for the Uniform Jury Instructions-Criminal;

(7) Children's Court Rules Committee, which is responsible for the Children's Court Rules and Forms;

(8) Minimum Continuing Legal Education Board, which is responsible for the Rules of Minimum Continuing Legal Education and for administering the Minimum Continuing Legal Education program under those rules;

(9) Board Governing the Recording of Judicial Proceedings, which is responsible for the Rules Governing the Recording of Judicial Proceedings and for administering the program for court reporters and court monitors under those rules;

(10) Board of Bar Examiners, which is responsible for the Rules Governing Admission to the Bar and for administering the Supreme Court program for the admission of attorneys under those rules;

(11) Disciplinary Board, which is responsible for the Rules Governing Discipline, the Rules Governing the Unauthorized Practice of Law, and for administering the Supreme Court program for disciplining attorneys under those rules;

(12) Code of Professional Conduct Committee, which is responsible for the Rules of Professional Conduct;

(13) Code of Judicial Conduct Committee, which is responsible for the Code of Judicial Conduct;

(14) Client Protection Fund Commission, which is responsible for the Rules Governing the Client Protection Fund and for administering the client protection fund program under those rules;

(15) Judicial Performance Evaluation Commission, which is responsible for the Rules Governing the Judicial Performance Evaluation Commission and for administering the program for evaluating judges under those rules; and

(16) Domestic Relations Rules Committee, which is responsible for the rules of procedure and forms specifically applicable to domestic relations and domestic violence proceedings.

K. **Failure to comply.** Failure to comply with any or all of the provisions of this rule shall not affect the validity of any rules adopted by the Supreme Court or the validity of any action taken by a committee that is approved by the Supreme Court.

[As amended, effective August 15, 1986; August 1, 1992; August 17, 1999; January 11, 2002; February 23, 2004; as amended by Supreme Court Order No. 06-8300-002, effective January 11, 2006; by Supreme Court Order No. 07-8300-003, February 12, 2007; by Supreme Court Order No. 10-8300-014, effective May 10, 2010; by Supreme Court Order No. 12-8300-036, effective July 1, 2013; as amended by Supreme Court Order No. 14-8300-018, effective December 31, 2014; as amended by Supreme Court Order No. 15-8300-016, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-026, effective December 31, 2017; as amended by Supreme Court Order No. 22-8300-038, effective for all cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00078, effective July 1, 2024; as amended by Supreme Court Order No. _____, effective _____.]



**New Mexico
Courts**

Amy Feagans <supajf@nmcourts.gov>

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

Supreme Court <noreply@nmcourts.gov>

Thu, Mar 6, 2025 at 4:55 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

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| Name | Dylan |
| | O'Reilly |
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| Proposal Number | 2025-027 |
| Comment | <p>The proposed subparagraph (1) to 23-106(I) would permit voting on committee actions by email in extraordinary circumstances. Such voting arrangements are often disfavored because they do not permit full and vigorous consideration of the issues being voted-upon. This is often recognized in corporate contexts, where corporate meetings can occur by "unanimous consent" -- but the action only carries if the vote is unanimous. Otherwise a meeting must be held on that business, and a vote held after opportunity for discussion. This recognizes that, in a corporate context, a board member can only fulfil fiduciary duties by being apprised of all facts and being able to hear dissenting voices.</p> <p>While work by our committees may not involve a fiduciary duty, the work can be incredibly impactful on litigants' legal rights. Given the ease with which committee meetings can be conducted by telephone or video, it seems that requiring committees to meet and discuss a vote on board action (at least when it is not unanimous) is but a small requirement.</p> <p>For comparison purposes, I note that the Rules Governing Admission to the Bar permits the Board of Bar Examiners--which is a standing committee of the Supreme Court--to hold votes outside of a board meeting, but the vote is only effective if the vote is unanimous. See Rule 15-604(E) NMRA.</p> <p>Thank you.</p> <p>Dylan O'Reilly</p> |

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Comment

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Thank you.
Dylan O'Reilly