PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS
PROPOSAL 2025-028

March 6, 2025

The Supreme Court Clerk's Office has recommended amendments to the Uniform Jury Instructions in the 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.

13-101. Voir dire orientation statement.

Good [morning] [afternoon] [~~ladies and gentlemen~~]prospective jurors:

You have been summoned here as prospective jurors.

Jury service is an honored tradition. From its beginning, our country has relied on citizens to apply their collective wisdom, experience, and fact-finding abilities to decide disputes under the law.

[As amended, effective January 1, 1987; March 1, 2005; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — The trial judge who has the time to study the case in advance of the jury selection can undoubtedly prepare an outline of remarks which may be more cogent and applicable to the particular case. However, if the trial court has not had time to prepare for the particular jury trial, then the use of the remarks hereinabove outlined will be found helpful.

13-810. Acceptance; manner of acceptance.

_____'s notice of acceptance may be communicated in any reasonable way [unless _____'s offer required a particular manner of acceptance].

USE NOTES

This instruction should be used with UJI 13-807 NMRA when the offeree's method of communicating a purported acceptance is at issue. If the offeror claims that [~~he or she~~]they

requested a particular form of acceptance, the entire instruction should be given. If the only issue is whether the acceptance was reasonably communicated, give only the first part of the instruction. [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Unless a particular method of acceptance is required in the offer, acceptance can be made in any reasonable way. *Silva v. Noble*, 85 N.M. 677, 515 P.2d 1281 (1973); *Pickett v. Miller*, 76 N.M. 105, 412 P.2d 400 (1966); *Polhamus v. Roberts*, 50 N.M. 236, 175 P.2d 196 (1946). The reasonableness of the method of acceptance is a question of fact to be determined by the jury, depending upon what would reasonably be expected by prevailing business usages and other circumstances. *Polhamus v. Roberts*, supra; Restatement (Second) of Contracts § 65. An oral or formal acceptance is not always necessary. *Keeth Gas Co., Inc. v. Jackson Creek Cattle Co.*, 91 N.M. 87, 570 P.2d 918 (1973).

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[nmsupremecourtclerk-grp] Second Judicial District Court's Comments on 2025 Rulemaking Proposals

Alison Orona <albdayg@nmcourts.gov> Fri, Apr 4, 2025 at 3:15 PM
Reply-To: albdayg@nmcourts.gov
To: nmsupremecourtclerk@nmcourts.gov

Good afternoon Ms. Garcia,

Please see attached letter from Acting Chief Judge Levy regarding the Supreme Court's 2025 Rulemaking Proposals.

The letter comments on the following proposals:

- Proposal 2025-001 – CASA Duties
- Proposal 2025-002 – Improving Outcomes for Crossover Youth
- Proposal 2025-003 – Service by Social Media
- Proposal 2025-006 – Residential Foreclosures
- Proposal 2025-028 – Pronouns in UJIs
- Proposal 2025-030 – Orders of Expungement
- Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

Thank you for the opportunity to comment, and please let me know if you have any questions. Thank you. Respectfully,

Alison K. Orona (she/her)
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Second Judicial District Court Comments on 2025 Rulemaking.pdf
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April 4, 2025

Elizabeth A. Garcia, Chief Clerk of the Court
New Mexico Supreme Court
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Santa Fe, New Mexico 87504-0848

Via email only to nmsupremecourtclerk@nmcourts.gov

Re: Comments on New Mexico Supreme Court 2025 Rulemaking:
Proposal 2025-001 – CASA Duties
Proposal 2025-002 – Improving Outcomes for Crossover Youth
Proposal 2025-003 – Service by Social Media
Proposal 2025-006 – Residential Foreclosures
Proposal 2025-028 – Pronouns in UJIs
Proposal 2025-030 – Orders of Expungement
Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

Dear Ms. Garcia,

As Acting Chief Judge of the Second Judicial District Court (the Court), I write to submit public comment to the 2025 proposed amendments to the Supreme Court's Rules of Practice and Procedure. My comments are on behalf of the Court as a whole, although individual judges and staff may submit their own additional comments, as well. My comments are as follows:

I. Proposal 2025-001 – CASA Duties

Proposal 2025-001 seeks to clarify CASA duties, including that "[a]ny report prepared by a CASA shall be served on the parties and the court at least five (5) days prior to the hearing at which it will be considered." However, Rule 10-164.1(F) and 10-164.2(G) do not include whether the CASA report is also intended to be filed into the case.

If the intention is to have the court file the report, I recommend clarifying language for the clerks, such as (addition in yellow):

> . . . Any report prepared by the CASA shall be served on the parties and the court at least five (5) days prior to the hearing at which it will be considered. Upon receipt, the court shall file into the case. . . .

II. *Proposal 2025-002 – Improving Outcomes for Crossover Youth*

The Court appreciates the Committee's work on providing a mechanism for parties in crossover youth matters to have notice of the other case(s). The Court understands the importance of this facilitation. However, the Court has concerns about (1) the Court's responsibility to complete and send the notices, and (2) the proposed rules do not account for whether the filings would be sealed or the hearings would be sequestered.

(1) The Court's Responsibility to Create and File the Notice is Contrary to a Court Clerk's Responsibilities and Overly Burdens the Court.

Proposed Rule 10-172(A) requires the Court to complete and file a notice of crossover youth. This poses practical and logistical issues. First, the Court's Clerk's Office does not typically *create* filings. *See e.g.,* Rule 23-113(C)(3) (prohibiting court staff from "creating documents" when communicating with self-represented litigants). This proposed rule would require the Clerk's Office to do independent research, complete a document, and then file and serve the document. This is contrary to the Clerk's Office's role, which is predominantly to be the record keeper. *See* NMSA 1978, § 34-1-6 ("The clerks of the . . . inferior courts, . . . shall seasonably record the judgments, rules, orders and other proceedings of the respective courts and make a complete alphabetical index thereto, issue and attest all processes issuing from their respective offices, and affix the seal of office thereto; they shall preserve the seal and other property belonging to their respective offices."); *see e.g., Ennis v. KMART Corp*., 2001-NMCA-068, ¶ 10, 131 N.M. 32, 33 P.3d 32*,* (holding that a court clerk lacks the discretion to reject pleadings for technical violations).

Instead, the Clerk's Office accepts filings, *see* Rule 1-005 NMRA, Rule 5-103 NMRA, issues subpoenas, *see* Rule 1-045(A) NMRA, Rule 5-511(A) NMRA, issues writs, *see* Rule 1-065, and issues summons, *see* Rule 1004(A) and (B) that the *parties* or *attorneys* provide to the Clerk's Office. In these scenarios, the *parties* or *attorneys* create the document, not the court clerk. The Clerk's Office does not do independent research on a case, create a document, and then file it.

In Indian Family Protection Act (IFPA) cases, the Child, Youth, and Families Department (CFYD) notifies the Clerk's Office when a child custody proceeding involves an Indian child, and the Clerk's Office will create and file the notice. *See* NMSA 1978, § 32A-28-5 (A) ("In a child custody proceeding when the court knows or has reason to know that an Indian child is involved, the department shall notify the parent, guardian or Indian custodian and the Indian child's tribe[. . .]") (emphasis added). Similarly, in adoption cases, the party or attorney presents a completed application for a birth certificate and the clerk will certify it. *See* NMSA 1978, § 32A-5-38; Rule LR2-501 NMRA.

Additionally, the Court is concerned that the turnaround time under 10-172(B) is very quick – "within one (1) day of the filing of the petition or criminal information or indictment." Requiring this on the Court would be a huge influx of work, with timelines that may not be feasible.

Furthermore, the proposed rule does not include any district-wide jurisdiction limitations. This would further increase the Court's work load and create a new requirement for the Clerk's Office to search across jurisdictions.

Putting this requirement on the Court – which in turn, will put it on court clerks – is impractical, contrary to Section 34-1-6, and improper. The Court and court clerks can only respond with the information parties to present to them; the Court is not an independent fact gatherer. The responsibility to determine if a child is involved in both a child welfare case and a delinquency case should be to the parties in the case, not to the Court, an independent and neutral arbitrator.

The Court appreciates the work of the Committee on this important issue. The Court respectfully recommends the Committee explore collaboration with other stakeholders, including CYFD. While this Court cannot speak on behalf of the judiciary as a whole, this Court would happy to discuss facilitation of getting CYFD the relevant information, such as daily or weekly reports if needed and if legally appropriate.

(2) The Proposal Does Not Account for When Filings Would be Sealed and When Hearings Would be Sequestered.

Since delinquency proceedings are open hearings and delinquency filings are not sealed, yet child welfare proceedings are sequestered and child welfare filings are sealed, I recommend adding language clarifying when filings are sealed pursuant to NMSA 1978, § 32A-4-33 (2022) and hearings are sequestered pursuant to NMSA 1978, § 32A-4-20 (B) (2014), such as:

> **E. Notice upon filing of petition for abuse and neglect or families in need of court-ordered services cases.** If the child has a pending delinquency or criminal case, is under the supervision of juvenile probation, or is serving a commitment, and is subsequently placed in the CYFD's legal custody in an abuse and neglect case or a family in need of court-ordered services case, the court shall notify juvenile probation and all parties to both the delinquency or criminal case and the child welfare case that the child is a crossover youth within ten (10) days of the entry of the order granting legal custody of the child in CYFD. <u>The notice shall be automatically sealed.</u>
>
> **<u>F. Sequestered proceedings.</u>** <u>Proceedings that discuss the crossover youth's child welfare case shall be closed to the general public.</u>

III. Proposal 2025-003 – Service by Social Media

The Court appreciates the Committee's work on the proposed amendments to Rule 1-004 allowing service via email, social media, and text messages. The proposed rule change reflects the evolving nature of communication and the need for more effective, practical means of ensuring notice to parties. The goal of service is to ensure actual notice of a pending case. Service through alternative means, such as email, text message, and social media direct messaging is more likely to lead to actual notice than would publication of notice in a newspaper of general circulation. Many individuals use digital communication on a daily (or more frequently) basis. They are unlikely to see a legal notice in a newspaper but are likely to check their email or direct messages. By expanding acceptable service methods, the rule will be acknowledging this reality and making it more likely that people will have actual notice of cases wherein they are a named party.

The cost of publication is also prohibitive for many parties. For example, any of the cases filed in the Family Court division are grandparents or other family members seeking kinship guardianship of children. The parents are often impossible to locate and are certainly not providing child support to the parties filing for kinship guardianship. Requiring temporary guardians to pay almost $300 (the cost of a legal notice in the Albuquerque Journal) would devastate their finances. The ability to serve parents through electronic means will hugely benefit the guardians, and therefore the children, in these cases. Instead of spending rent money on publishing, they can provide actual notice through an email or the equivalent.

Further, judges will still be required to determine if service was properly effectuated and the proposed rule changes still require judges to exercise discretion in determining whether electronic service is appropriate in a given case.

This rule change would modernize the service process, improve access to justice, and uphold due process by embracing the communication tools people already use daily.

However, with this said, the Court has concerns with the implementation of the rule.

1. First, the proposal requires the movant to submit admissible evidence (affidavit or other sworn testimony) that "the defendant is the sole owner of the specific social media account, e-mail address, or telephone number proposed for service and [that] the defendant, within thirty (30) days of the motion, has sent or received transmissions from that specific social media account, e-mail address, or telephone number proposed for service." This standard seems impossible, as how will a party seeking to serve the party would have personal knowledge and/or a sufficient foundation to actually provide evidence of "sole ownership"? This standard appears to invite parties to be forced to attest to something that cannot possibly know.
2. Second, the Court recommends that the Committee change the requirement that the defendant have received the electronic service within 30 days *of the motion* to be within 30 days <u>of entry of the order allowing such service of process</u>.

3. Third, the language to be included in the email, text, social media message, etc. that "You have been sued" (etc.) is potentially harmful. It reads like a scam, and it may deter people from reading the message. This is especially true because the person making the service is not someone the recipient will likely know. Furthermore, the rule should also include a prohibition on serving the documents by hyperlink, e.g., "You have been sued. Click on this link to get your summons and complaint." The actual documents must be served, and I think the rule should prohibit service by hyperlink.
4. Finally, the proposal does not appear to account for Domestic matters or Children's Court matters for which the Rules of Civil Procedure apply. Rule 1-004 applies to all domestic matters, emancipations, adoptions, and expungements. However, the proposed language for the substance of the message to the party under new Subparagraph Rule 1-004(F)(4) assumes service only in the context of a civil lawsuit. That required language is "'Important information—You have been sued. If you do not file a response to the lawsuit, the court may decide the case without hearing from you, and you could lose the case." This language would be required for service by social media (Rule 1-004(F)(4)(c)(i)), email (Rule 1-004(F)(4)(d)(ii)-(iii)), and text message (Rule 1-004(F)(4)(e)(i)).

   I would recommend a change to that standard required language to contemplate civil cases where "being sued" is not what is commonly understood to occur in those cases. For example, while perhaps technically accurate, a parent likely would not think of "being sued" for emancipation or adoption. Instead, the required language should read something like, "'Important information—You [~~have been sued~~] are part of a court case. If you do not file a response [~~to the lawsuit~~], the court may decide the case without hearing from you, and you could lose the case.'" I would further suggest a corresponding change to the email subject line under Rule 1-004(F)(4)(d)(ii) as such: "'Important information—You are [~~being sued~~] are part of a court case.'"

   A smaller recommendation is to fix the errant "be" in Subparagraph (4)(a). "…service cannot [~~be~~] reasonably be made under Subparagraphs (F)(1), (F)(2), or (F)(3)."

IV. Proposal 2025-006 – Residential Foreclosures

The Court recommends adding the word "residential" in the last sentence within the body of Rule 1-003.3, as follows (addition in yellow):

> **1-003.3. Commencement of residential foreclosure action; certification of pre-filing notice required.**
> A certification of pre-filing notice, substantially in the form approved by the Supreme Court as Form 4-227 NMRA, shall be submitted with any complaint initiating a residential foreclosure action. Notwithstanding the provisions of Rule 1-005(F) NMRA, the clerk shall not accept for filing any residential foreclosure complaint that is not submitted with the certification form required under this rule.

V. Proposal 2025-028 – Pronouns in UJIs

The Court supports this proposal and has not further comments.

VI. Proposal 2025-030 – Orders of Expungement

This proposal includes a requirement that any appellate court with related records be served the order. The Court suggests that, in order for the Court to be able to find all related appellate case, the Committee also updates the form petition to include an additional paragraph for appellate cases. We recommend the following:

> 5. The following appellate court case(s) are related to Petitioner's Petition to Expunge:
> New Mexico Court of Appeals case number(s): _____
> New Mexico Supreme Court case number(s): _____

VII. Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

The Court supports this proposal and has not further comments.

Respectfully,

Jane C. Levy
Acting Chief Judge
Second Judicial District Court