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IT IS SO ORDERED.



WITNESS, the Honorable David K. Thomson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 1st day of August, 2025.

A handwritten signature in cursive script that reads "Elizabeth A. Garcia".

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Elizabeth A. Garcia, Chief Clerk of the Supreme Court  
of the State of New Mexico

I CERTIFY AND ATTEST:  
A true copy was served on all parties  
or their counsel of record on date filed.  
Elizabeth A. Garcia  
Chief Clerk of the Supreme Court  
of the State of New Mexico

1 **5-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** If a case is initiated in the district court, and the conditions of release  
4 have not been set by the magistrate or metropolitan court, the district court shall conduct a hearing  
5 under this rule and issue an order setting the conditions of release as soon as practicable, but in no  
6 event later than

7 (a) if the defendant remains in custody, three (3) days after the date of  
8 arrest if the defendant is being held in the local detention center, or five (5) days after the date of  
9 arrest if the defendant is not being held in the local detention center;

10 (b) arraignment, if the defendant is not in custody; or

11 (c) if the defendant remains in custody pending a hearing under Rule 5-  
12 403(D) NMRA, then within three (3) days after a temporary detention order is placed or the date  
13 of the [~~initial~~] hearing conducted under Rule 5-403 NMRA if the defendant is being held in the  
14 local detention center, or five (5) days after the date of the [~~initial~~] hearing conducted under Rule 5-  
15 403 NMRA if the defendant is not being held in the local detention center.

16 (2) **Right to counsel.** If the defendant does not have counsel at the initial release  
17 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no  
18 longer than three (3) additional days for a further hearing to review conditions of release, at which  
19 the defendant shall have the right to assistance of retained or appointed counsel.

20 (3) **Local detention center; defined.** A “local detention center” is one that is  
21 commonly used by the district court in the normal course of business and not necessarily within  
22 the territorial jurisdiction of the court.

1           **B. Right to pretrial release; recognizance or unsecured appearance bond.** Any  
2 defendant eligible for pretrial release under Article II, Section 13 of the New Mexico  
3 Constitution shall be ordered released pending trial on the defendant’s personal recognizance or  
4 on the execution of an unsecured appearance bond in an amount set by the court. The court may  
5 impose non-monetary conditions of release under Paragraph D of this rule, but the court shall  
6 impose the least restrictive condition or combination of conditions that will reasonably ensure the  
7 appearance of the defendant as required and the safety of any other person or the community. The  
8 court may order execution of a secured appearance bond only if the court makes written findings  
9 of particularized reasons why the release will not reasonably ensure the appearance of the  
10 defendant as required under Paragraphs E and F of this rule.

11           **C. Factors to be considered in determining conditions of release.** In determining  
12 the least restrictive conditions of release that will reasonably ensure the appearance of the  
13 defendant as required and the safety of any other person and the community, the court shall  
14 consider any available results of a pretrial risk assessment instrument approved by the Supreme  
15 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court  
16 may take into account the available information about

17                   (1) the nature and circumstances of the offense charged, including whether the  
18 offense is a crime of violence or involves alcohol or drugs;

19                   (2) the weight of the evidence against the defendant;

20                   (3) the history and characteristics of the defendant, including

21                           (a) the defendant’s character, physical and mental condition, family  
22 ties, employment, past and present residences, length of residence in the community, community

1 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about  
2 appearance at court proceedings; and

3 (b) whether, at the time of the current offense or arrest, the defendant  
4 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense  
5 under federal, state, or local law;

6 (4) the nature and seriousness of the danger to any person or the community  
7 that would be posed by the defendant's release;

8 (5) any other facts tending to indicate the defendant may or may not be likely  
9 to appear as required; and

10 (6) any other facts tending to indicate the defendant may or may not commit  
11 new crimes if released.

12 D. **Non-monetary conditions of release.** In its order setting conditions of release, the  
13 court shall impose a standard condition that the defendant not commit a federal, state, or local  
14 crime during the period of release. The court may also impose the least restrictive particularized  
15 condition, or combination of particularized conditions, that the court finds will reasonably ensure  
16 the appearance of the defendant as required, the safety of any other person and the community,  
17 and the orderly administration of justice, which may include the condition that the defendant

18 (1) remain in the custody of a designated person who agrees to assume  
19 supervision and to report any violation of a release condition to the court, if the designated person  
20 is able reasonably to assure the court that the defendant will appear as required and will not pose  
21 a danger to the safety of any other person or the community;

22 (2) maintain employment, or, if unemployed, actively seek employment;

23 (3) maintain or commence an educational program;

1                   (4)     abide by specified restrictions on personal associations, place of abode, or  
2 travel;

3                   (5)     avoid all contact with an alleged victim of the crime or with a potential  
4 witness who may testify about the offense;

5                   (6)     report on a regular basis to a designated pretrial services agency or other  
6 agency agreeing to supervise the defendant;

7                   (7)     comply with a specified curfew;

8                   (8)     refrain from possessing a firearm, destructive device, or other dangerous  
9 weapon;

10                  (9)     refrain from any use of alcohol or any use of an illegal drug or other  
11 controlled substance without a prescription by a licensed medical practitioner;

12                  (10)    refrain from any use of cannabis, cannabis products, or synthetic  
13 cannabinoids without a certification from a licensed medical practitioner;

14                  (11)    submit to a drug test or an alcohol test on request of a person designated by  
15 the court;

16                  (12)    return to custody for specified hours after release for employment,  
17 schooling, or other limited purposes; and

18                  (13)    satisfy any other condition that is reasonably necessary to ensure the  
19 appearance of the defendant as required and the safety of any other person and the community.

20           E.     **Secured bond.** If the court makes written findings of the particularized reasons  
21 why release on personal recognizance or unsecured appearance bond, in addition to any non-  
22 monetary conditions of release, will not reasonably ensure the appearance of the defendant as  
23 required, the court may require a secured bond for the defendant's release.

1                   (1)    ***Factors to be considered in setting secured bond.***

2                   (a)    In determining whether any secured bond is necessary, the court  
3 may consider any facts tending to indicate that the particular defendant may or may not be likely  
4 to appear as required.

5                   (b)    The court shall set secured bond at the lowest amount necessary to  
6 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability  
7 to secure a bond.

8                   (c)    The court shall not set a secured bond that a defendant cannot afford  
9 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

10                  (d)    Secured bond shall not be set by reference to a predetermined  
11 schedule of monetary amounts fixed according to the nature of the charge.

12                  (2)    ***Types of secured bond.*** If a secured bond is determined necessary in a  
13 particular case, the court shall impose the first of the following types of secured bond that will  
14 reasonably ensure the appearance of the defendant.

15                  (a)    ***Percentage bond.*** The court may require a secured appearance bond  
16 executed by the defendant in the full amount specified in the order setting conditions of release,  
17 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be  
18 returned as provided in Paragraph M of this rule.

19                  (b)    ***Property bond.*** The court may require the execution of a property  
20 bond by the defendant or by unpaid sureties in the full amount specified in the order setting  
21 conditions of release, secured by the pledging of real property in accordance with Rule 5-  
22 401.1 NMRA.

1 (c) *Cash or surety bond.* The court may give the defendant the option  
2 of either

3 (i) a secured appearance bond executed by the defendant in the  
4 full amount specified in the order setting conditions of release, secured by a deposit in cash of one  
5 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph  
6 M of this rule, or

7 (ii) a surety bond executed by licensed sureties in accordance  
8 with Rule 5-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order  
9 setting conditions of release.

10 F. **Order setting conditions of release; findings about secured bond.**

11 (1) *Contents of order setting conditions of release.* The written order setting  
12 conditions of release shall be provided to the defendant before release if the defendant is in custody  
13 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

14 (a) include a written statement that sets forth all the conditions to which  
15 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the  
16 defendant's conduct; and

17 (b) advise the defendant of

18 (i) the penalties for violating a condition of release, including  
19 the penalties for committing an offense while on pretrial release;

20 (ii) the consequences for violating a condition of release,  
21 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial  
22 release, and forfeiture of bond; and

1 (iii) the consequences of intimidating a witness, victim, or  
2 informant, or otherwise obstructing justice.

3 (2) **Written findings about secured bond.** The court shall file written findings  
4 of the individualized facts justifying a secured bond as soon as possible, but no later than two (2)  
5 days after the conclusion of the hearing.

6 G. **Pretrial detention.**

7 (1) If the prosecutor files a motion for pretrial detention, the court shall follow  
8 the procedures set forth in Rule 5-409 NMRA.

9 (2) The court may schedule a detention hearing within the time limits set forth  
10 in Rule 5-409(F)(1) NMRA and give notice to the prosecutor and the defendant when the  
11 defendant is charged with a felony offense:

12 (a) involving the use of a firearm;

13 (b) involving the use of a deadly weapon resulting in great bodily harm  
14 or death; or

15 (c) which authorizes a sentence of life in prison without the possibility  
16 of parole.

17 (3) If the prosecutor does not file a motion for pretrial detention by the date  
18 scheduled for the detention hearing, the court shall treat the hearing as a pretrial release hearing  
19 under this rule and issue an order setting conditions of release.

20 H. **Case pending in district court; review of conditions of release.**

21 (1) **Review.** If the district court requires a secured bond for the defendant's  
22 release under Paragraph E of this rule or imposes non-monetary conditions of release under  
23 Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after the

1 issuance of the order setting conditions of release as a result of the defendant's inability to post the  
2 secured bond or meet the conditions of release in the present case, the defendant shall be entitled  
3 to a hearing to review the conditions of release.

4           (2)     **Review hearing.** The district court shall hold a hearing in an expedited  
5 manner, but in no event later than five (5) days after the initial conditions of release hearing. The  
6 defendant shall have the right to assistance of retained or appointed counsel at the hearing. Unless  
7 the order setting conditions of release is amended and the defendant is then released, the court shall  
8 state in the record the reasons for declining to amend the order setting conditions of release. The  
9 court shall consider the defendant's financial ability to secure a bond. No defendant eligible for  
10 pretrial release under Article II, Section 13 of the New Mexico Constitution shall be detained  
11 solely because of financial inability to post a secured bond unless the court determines by clear  
12 and convincing evidence and makes findings of the reasons why the amount of secured bond  
13 required by the court is reasonably necessary to ensure the appearance of the particular defendant  
14 as required. The court shall file written findings of the individualized facts justifying the secured  
15 bond as soon as possible, but no later than two (2) days after the conclusion of the hearing.

16           (3)     **Work or school release.** A defendant who is ordered released on a condition  
17 that requires that the defendant return to custody after specified hours shall, on motion of the  
18 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.  
19 Unless the requirement is removed and the defendant is released on another condition, the court  
20 shall state in the record the reason for the continuation of the requirement. A hearing to review  
21 conditions of release under this subparagraph shall be held by the district court within five (5) days  
22 of the filing of the motion. The defendant shall have the right to assistance of retained or appointed  
23 counsel at the hearing.

1                   (4)     ***Subsequent motion for review.*** The defendant may file subsequent motions  
2 for review of the order setting conditions of release, but the court may rule on subsequent motions  
3 with or without a hearing.

4           I.       **Amendment of conditions.** The court may amend its order setting conditions of  
5 release at any time. If the amendment of the order may result in the detention of the defendant or  
6 in more restrictive conditions of release, the court shall not amend the order without a hearing. If  
7 the court is considering revocation of the defendant’s pretrial release or modification of the  
8 defendant’s conditions of release for violating a condition of release, the court shall follow the  
9 procedures set forth in Rule 5-403 NMRA.

10          J.       **Record of hearing.** A record shall be made of any hearing held by the district court  
11 under this rule.

12          K.       **Cases pending in magistrate, metropolitan, or municipal court; petition for**  
13 **release or review by district court.**

14                   (1)     ***Case within magistrate, metropolitan, or municipal court trial***  
15 ***jurisdiction.*** A defendant charged with an offense that is within magistrate, metropolitan, or  
16 municipal court trial jurisdiction may file a petition in the district court for review of the magistrate,  
17 metropolitan, or municipal court’s order setting conditions of release only after the magistrate,  
18 metropolitan, or municipal court has reviewed the conditions of release and made a requisite ruling  
19 under Rule 6-401(H) NMRA, Rule 7-401(H) NMRA, or Rule 8-401(G) NMRA. The defendant  
20 shall attach to the district court petition a copy of the magistrate, metropolitan, or municipal court  
21 order after the review of the conditions of release.

1                   (2)     ***Felony case.*** A defendant charged with a felony offense who has not been  
2 bound over to the district court may file a petition in the district court for release under this rule at  
3 any time after the defendant’s arrest.

4                   (3)     ***Petition; requirements.*** A petition under this paragraph shall include the  
5 specific facts that warrant review by the district court and may include a request for a hearing. The  
6 petitioner shall promptly

7                             (a)     file a copy of the district court petition in the magistrate,  
8 metropolitan, or municipal court;

9                             (b)     serve a copy on the district attorney; and

10                            (c)     provide a copy to the assigned district court judge.

11                   (4)     ***Magistrate, metropolitan, or municipal court’s jurisdiction pending***  
12 ***determination of the petition.*** On the filing of a petition under this paragraph, the magistrate,  
13 metropolitan, or municipal court’s jurisdiction to set or amend the conditions of release shall be  
14 suspended pending determination of the petition by the district court, unless the case is dismissed  
15 or a finding of no probable cause is made. The magistrate, metropolitan, or municipal court shall  
16 retain jurisdiction over all other aspects of the case, and the case shall proceed in the magistrate,  
17 metropolitan, or municipal court while the district court petition is pending. The magistrate,  
18 metropolitan, or municipal court’s order setting conditions of release shall remain in effect unless  
19 and until the district court issues an order amending the conditions of release.

20                   (5)     ***District court review.*** The district court shall rule on the petition in an  
21 expedited manner. Within three (3) days after the petition is filed, the district court shall take one  
22 of the following actions:

1 (a) set a hearing no later than ten (10) days after the filing of the petition  
2 and promptly send a copy of the notice to the magistrate, metropolitan, or municipal court;

3 (b) deny the petition summarily; or

4 (c) amend the order setting conditions of release without a hearing.

5 (6) ***District court order; transmission to magistrate, metropolitan, or***  
6 ***municipal court.*** The district court shall promptly send to the magistrate, metropolitan, or  
7 municipal court a copy of the district court order disposing of the petition, and jurisdiction over  
8 the conditions of release shall revert to the magistrate, metropolitan, or municipal court.

9 L. **Expedited trial scheduling for defendant in custody.** The district court shall  
10 provide expedited priority scheduling in a case in which the defendant is detained as a result of  
11 inability to post a secured bond or meet the conditions of release. The court shall hold a status  
12 review hearing in any case in which the defendant has been held for more than six (6) months and  
13 every six (6) months thereafter. The purpose of the status review hearing is to conduct a meaningful  
14 review of the progress of the case. If the court determines that insufficient progress has been made,  
15 then the court shall issue an appropriate scheduling order.

16 M. **Return of cash deposit.** If a defendant has been released by executing a secured  
17 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions  
18 of the appearance bond have been performed and the defendant's case has been adjudicated by the  
19 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,  
20 or that person's personal representatives or assigns.

21 N. **Release from custody by designee.** The chief judge of the district court may  
22 designate by written court order responsible persons to implement the pretrial release procedures  
23 set forth in Rule 5-408 NMRA. A designee shall release a defendant from custody before the

1 defendant's first appearance before a judge if the defendant is eligible for pretrial release under  
2 Rule 5-408 NMRA, but may contact a judge for special consideration based on exceptional  
3 circumstances. No person shall be qualified to serve as a designee if the person or the person's  
4 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to  
5 sell property or corporate bonds within this state.

6       **O. Bind over to district court.** For any case that is not within magistrate or  
7 metropolitan court trial jurisdiction, on notice to that court, any bond shall be transferred to the  
8 district court on the filing of an information or indictment in the district court.

9       **P. Evidence.** Information offered in connection with or stated in any proceeding held  
10 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

11       **Q. Forms.** Instruments required by this rule, including any order setting conditions of  
12 release, appearance bond, property bond, or surety bond, shall be substantially in the form  
13 approved by the Supreme Court.

14       **R. Judicial discretion; disqualification and excusal.** Action by any court on any  
15 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a  
16 judge. A judge may not be excused from setting initial conditions of release or reviewing a lower  
17 court's order setting or revoking conditions of release unless the judge is required to recuse under  
18 the provisions of the New Mexico Constitution or the Code of Judicial Conduct.

19 [As amended, effective January 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;  
20 September 1, 2005; as amended by Supreme Court Order No. 07-8300-029, effective December  
21 10, 2007; by Supreme Court Order No. 10-8300-033, effective December 10, 2010; as amended  
22 by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after  
23 December 31, 2014; as amended by Supreme Court Order No. 17-8300-005, effective for all cases

1 pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 20-8300-013,  
2 effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme  
3 Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31,  
4 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective for all cases  
5 pending or filed on or after December 31, 2023; as amended by Supreme Court Order No. S-1-  
6 RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as provisionally  
7 amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases pending or  
8 filed on or after July 29, 2025.]

9 **Committee commentary.** — This rule provides “the mechanism through which a person  
10 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico  
11 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section  
12 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending  
13 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger  
14 to the safety of any other person or the community and that no release condition or combination  
15 of conditions will reasonably ensure the safety of any other person or the community, and (2) to  
16 require the pretrial release of a defendant who is in custody solely because of financial inability to  
17 post a secured bond. This rule was derived from the federal statute governing the release or  
18 detention of a defendant pending trial. *See* 18 U.S.C. § 3142.

19 This rule was amended in 2017 to implement the 2016 amendment to Article II, Section 13  
20 and the Supreme Court’s holding in *Brown*, 2014-NMSC-038. Corresponding rules are located in  
21 the Rules of Criminal Procedure for the Magistrate Courts, *see* Rule 6-401 NMRA, the Rules of  
22 Criminal Procedure for the Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of  
23 Procedure for the Municipal Courts, *see* Rule 8-401 NMRA.

1 Time periods specified in this rule are computed in accordance with Rule 5-104 NMRA.

2 Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA  
3 that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2),  
4 (H)(2), and (H)(3) of this rule provide that assistance of counsel is required in a proceeding that  
5 may result in denial of pretrial release based on reasons that do not involve dangerousness, such  
6 as a simple inability to meet a financial condition.

7 As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or  
8 unsecured bond unless the court determines that any release, in addition to any non-monetary  
9 conditions of release under Paragraph D, will not reasonably ensure the appearance of the  
10 defendant and the safety of any other person or the community.

11 Paragraph C lists the factors the court should consider when determining conditions of  
12 release. In all cases, the court is required to consider any available results of a pretrial risk  
13 assessment instrument approved by the Supreme Court for use in the jurisdiction and the financial  
14 resources of the defendant.

15 Paragraph D lists various non-monetary conditions of release. The court must impose the  
16 least restrictive condition, or combination of conditions, that will reasonably ensure the appearance  
17 of the defendant as required and the safety of any other person and the community. *See*  
18 *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard  
19 conditions before a court appearance, the judge should review the conditions at the defendant's  
20 first appearance to determine whether any particularized conditions should be imposed under the  
21 circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions  
22 of release to ensure the orderly administration of justice. This provision was derived from the  
23 American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-

1 5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The  
2 court should make a determination on whether the defendant can afford to pay all or a part of the  
3 cost, or whether the court has the authority to waive the cost, because detaining a defendant  
4 because of inability to pay the cost associated with a condition of release is comparable to detaining  
5 a defendant because of financial inability to post a secured bond.

6 As set forth in Paragraph E, the only purpose for which the court may impose a secured  
7 bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which  
8 the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746  
9 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the  
10 punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993)  
11 (authorizing the forfeiture of bond on the defendant’s failure to appear).

12 The 2017 amendments to this rule clarify that the amount of secured bond must not be  
13 based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to  
14 the nature of the charge. Instead, the court must consider the individual defendant’s financial  
15 resources and must set secured bond at the lowest amount that will reasonably ensure the  
16 defendant’s appearance in court after the defendant is released.

17 Secured bond cannot be used for the purpose of detaining a defendant who may pose a  
18 danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53  
19 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set  
20 high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*,  
21 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated  
22 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A  
23 felony defendant who poses a danger that cannot be mitigated through the imposition of non-

1 monetary conditions of release under Paragraph D of this rule should be detained under Article II,  
2 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

3 The court should consider the authorized types of secured bonds in the order of priority set  
4 forth in Paragraph E.

5 The court must first consider requiring an appearance bond secured by a cash deposit of  
6 ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of ten percent  
7 (10%) is inadequate, the court then must consider a property bond involving property that belongs  
8 to the defendant or other unpaid surety. If neither of these options is sufficient to reasonably ensure  
9 the defendant's appearance, the court may require a cash or surety bond for the defendant's release.  
10 If the court requires a cash or surety bond, the defendant has the option either to execute an  
11 appearance bond and deposit one hundred percent (100%) of the amount of the bond with the court  
12 or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the defendant alone has  
13 the choice to post the bond by a one hundred percent (100%) cash deposit or a surety. The court  
14 does not have the option to set a cash-only bond or a surety-only bond; it must give the defendant  
15 the choice of either. A paid surety may execute a surety bond or a real or personal property bond  
16 only if the conditions of Rule 5-401.2 NMRA are met.

17 Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-  
18 303 NMRA (order setting conditions of release). Paragraph F also requires the court to make  
19 written findings justifying the imposition of a secured bond. Judges are encouraged to enter their  
20 written findings on the order setting conditions of release at the conclusion of the hearing. If more  
21 detailed findings are necessary, the judge should make any supplemental findings in a separate  
22 document within two (2) days of the conclusion of the hearing.

1 Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section  
2 13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other  
3 person or the community that cannot be addressed through the imposition of non-monetary  
4 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files  
5 a motion for pretrial detention, the district court must follow the procedures set forth in Rule 5-  
6 409 NMRA. Paragraph G was amended in 2020 to permit the court to automatically schedule a  
7 pretrial detention hearing in certain categories of cases. However, before the hearing, the  
8 prosecutor retains the burden of filing an expedited motion for pretrial detention under Rule 5-  
9 409 NMRA. If the prosecutor does not file that motion before the hearing, then the court is to set  
10 conditions of release rather than consider detention.

11 Paragraphs H and K provide avenues for a defendant to seek district court review of the  
12 conditions of release. Paragraph H applies to a defendant whose case is pending before the district  
13 court. Paragraph K sets forth the procedure for a defendant whose case is pending in the magistrate,  
14 metropolitan, or municipal court. Article II, Section 13 of the New Mexico Constitution requires  
15 the court to rule on a motion or a petition for pretrial release “in an expedited manner” and to  
16 release a defendant who is being held solely because of financial inability to post a secured bond.  
17 A defendant who wishes to present financial information to a court to support a motion or petition  
18 for pretrial release may present Form 9-301A NMRA (pretrial release financial affidavit) to the  
19 court. The defendant shall be entitled to appear and participate personally with counsel before the  
20 judge conducting any hearing to review the conditions of release, rather than by any means of  
21 remote electronic conferencing.

22 Paragraph L requires the district court to prioritize the scheduling of trial and other  
23 proceedings for cases in which the defendant is held in custody because of inability to post bond

1 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)  
2 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate  
3 due process, in part because of “the stringent time limitations of the Speedy Trial Act, 18 U.S.C.  
4 § 3161”); Am. Bar Ass’n, ABA Standards for Criminal Justice: Pretrial Release, Standard 10-5.11  
5 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time  
6 limitations within which detained defendants should be tried consistent with the sound  
7 administration of justice.”). This rule does not preclude earlier or more regular status review  
8 hearings. The purpose of the hearing is to determine how best to expedite a trial in the case. A  
9 meaningful review of the progress of the case includes assessment of the parties’ compliance with  
10 applicable deadlines, satisfaction of discovery obligations, and witness availability, among other  
11 matters. If the court determines that the parties have made insufficient progress on these measures,  
12 then it shall issue an appropriate scheduling order.

13 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out  
14 the provisions of this rule. As set forth in Paragraph N, a designee must be designated by the chief  
15 district court judge in a written court order. A person may not be appointed as a designee if the  
16 person is related within the second degree of blood or marriage to a paid surety licensed in this  
17 state to execute bail bonds. A jailer may be appointed as a designee. Paragraph N and Rule 5-  
18 408 NMRA govern the limited circumstances under which a designee shall release an arrested  
19 defendant from custody before that defendant’s first appearance before a judge.

20 Paragraph O requires the magistrate or metropolitan court to transfer any bond to the  
21 district court on notice from the district attorney that an information or indictment has been  
22 filed. *See* Rules 6-202(E)-(F), 7-202(E)-(F) NMRA (requiring the district attorney to notify the  
23 magistrate or metropolitan court of the filing of an information or indictment in the district court).

1 Paragraph P of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that  
2 the Rules of Evidence do not apply to proceedings in district court with respect to matters of  
3 pretrial release. As with courts in other types of proceedings in which the Rules of Evidence do  
4 not apply, a court presiding over a pretrial release hearing is responsible “for assessing the  
5 reliability and accuracy” of the information presented. *See United States v. Martir*, 782 F.2d 1141,  
6 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the  
7 responsibility for assessing the reliability and accuracy of the government’s information, whether  
8 presented by proffer or by direct proof”); *see also United States v. Marshall*, 519 F. Supp. 751,  
9 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
10 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
11 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir.1983); *State v.*  
12 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
13 probation revocation hearing, the court should focus on the reliability of the evidence).

14 Consistent with Rule 5-106 NMRA, a party cannot exercise the statutory right to excuse a  
15 judge who is setting initial conditions of release. *See* NMSA 1978, § 38-3-9 (1985). Paragraph R  
16 of this rule does not prevent a judge from filing a recusal either on the court’s own motion or  
17 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

18 [As amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; as  
19 amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
20 after July 1, 2017; as amended by Supreme Court Order No. 20-8300-021, effective for all cases  
21 pending or filed on or after November 23, 2020; as amended by Supreme Court Order No. 22-  
22 8300-015, effective for all cases pending or filed on or after December 31, 2022; as amended by

- 1 Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after
- 2 May 8, 2024.]

1 **5-403. Revocation or modification of release orders.**

2 A. **Scope.** In accordance with this rule, the court may consider revocation of the  
3 defendant's pretrial release or modification of the defendant's conditions of release

4 (1) if the defendant is alleged to have violated a condition of release; or

5 (2) to prevent interference with witnesses or the proper administration of  
6 justice.

7 B. **Revocation or modification of conditions of release.**

8 (1) The court shall consider revocation of the defendant's pretrial release or  
9 modification of the defendant's conditions of release on motion of the prosecutor, on notice of a  
10 non-technical violation of a condition of release by a court pretrial services agency, or on the  
11 court's own motion.

12 (2) The defendant may file a response to the motion, but the filing of a response  
13 shall not delay any hearing under Paragraph D [~~or E~~] of this rule.

14 C. **Issuance of summons or bench warrant; temporary detention of certain**  
15 **defendants.**

16 (1) On motion or notice of a non-technical violation of a condition of release by  
17 a court pretrial services agency, the court shall enter an order with specific findings about why  
18 amended or revoked conditions of release are unnecessary, or the court shall issue a summons and  
19 notice of hearing, unless the court finds that the interests of justice may be better served by the  
20 issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons  
21 for the review of the pretrial release decision.

22 (2) A defendant previously released by any court in this state pending any  
23 felony charge or pending a charge for an enumerated misdemeanor, who is arrested and charged

1 with a new felony or new enumerated misdemeanor defined in Rule 5-403.1 NMRA alleged to  
2 have occurred during the period of initial release, shall be held without conditions of release  
3 pending ~~[an initial]~~ a hearing under Paragraph D of this rule. The ~~[initial]~~ hearing required by  
4 Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial  
5 conditions of release.

6 (3) A defendant previously released by any court in this state pending any  
7 felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-  
8 403.1 NMRA, who is charged but not arrested for a new felony or new enumerated misdemeanor  
9 alleged to have occurred during the period of initial release, shall be summonsed by the court with  
10 current jurisdiction over the defendant's initial conditions of release to ~~[an initial]~~ a hearing  
11 required by Paragraph D of this rule, unless the court finds that the interests of justice may be  
12 better served by the issuance of a bench warrant. The ~~[initial]~~ hearing required by Paragraph D  
13 shall be conducted by the court with current jurisdiction over the defendant's initial conditions of  
14 release.

15 ~~[D. Initial hearing.~~

16 (1) ~~The court shall hold an initial hearing as soon as practicable. If the defendant~~  
17 ~~is in custody, the hearing shall be held no later than three (3) days after the defendant is detained~~  
18 ~~if the defendant is being held in the local detention center, or no later than five (5) days after the~~  
19 ~~defendant is detained if the defendant is not being held in the local detention center. If the~~  
20 ~~defendant is not in custody, the hearing shall be held no later than ten (10) days after the motion~~  
21 ~~or notice of alleged violation is filed.~~

22 (2) ~~At the initial hearing, the court may continue the existing conditions of~~  
23 ~~release, set different conditions of release, or if the court is considering revocation of release, the~~

1 ~~court shall schedule an evidentiary hearing under Paragraph E of this rule, unless waived by the~~  
2 ~~defendant.~~

3 ~~(3) — If at the conclusion of the initial hearing, the court continues or amends the~~  
4 ~~defendant’s conditions of release, then a written order continuing or amending the defendant’s~~  
5 ~~conditions of release shall be provided to the defendant at the time of release from custody if the~~  
6 ~~defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.~~  
7 ~~If the defendant waives the evidentiary hearing under Paragraph E and the court finds that the~~  
8 ~~conditions of release should be revoked, an order revoking conditions of release, including written~~  
9 ~~findings of the individualized facts justifying revocation, shall be filed within three (3) days of the~~  
10 ~~initial hearing.]~~

11 ~~[E.]~~ D. [Evidentiary hearing] **Hearing on alleged violation.**

12 (1) *Time.* ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If  
13 the defendant is in custody, the [evidentiary] hearing shall be held no later than [seven (7)] five (5)  
14 days after the [initial hearing] defendant is detained. If the defendant is not in custody, the  
15 [evidentiary] hearing shall be held no later than ten (10) days after the [initial hearing] motion or  
16 notice of alleged violation is filed.

17 (2) At the hearing, the court may continue the existing conditions of release, set  
18 different conditions of release, or if the court is considering revocation of release, the court shall  
19 conduct an evidentiary hearing, unless waived by the defendant.

20 ~~[(2)]~~ (3) *Defendant’s rights.* The defendant has the right to be present and to be  
21 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.  
22 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the  
23 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance

1 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by  
2 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not  
3 be used against the defendant at trial except for impeachment purposes or in a subsequent  
4 prosecution for perjury.

5 ~~[F.]~~ E. **Order at completion of ~~[evidentiary]~~ hearing.**

6 (1) If at the conclusion of the hearing, the court continues or amends the  
7 defendant's conditions of release, then a written order continuing or amending the defendant's  
8 conditions of release shall be provided to the defendant at the time of the release from custody if  
9 the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

10 (2) If the defendant waives an evidentiary hearing and the court finds that the  
11 conditions of release should be revoked, an order revoking conditions of release, including written  
12 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the  
13 hearing.

14 (3) If an evidentiary hearing is conducted, at ~~[A]~~ the completion of ~~[an]~~ the  
15 evidentiary hearing, the court shall determine whether the defendant has violated a condition of  
16 release or whether revocation of the defendant's release is necessary to prevent interference with  
17 witnesses or the proper administration of justice, and may:

18 ~~[(1)]~~ (a) continue the existing conditions of release;

19 ~~[(2)]~~ (b) set new or additional conditions of release in accordance with  
20 Rule 5-401 NMRA; or

21 ~~[(3)]~~ (c) revoke the defendant's release, if the court

1                    ~~[(a)]~~ (i) finds either probable cause to believe that the defendant  
2 committed a federal, state, or local crime while on release, or clear and convincing evidence that  
3 the defendant has willfully violated any other condition of release; and

4                    ~~[(i)]~~ ~~probable cause to believe that the defendant committed a~~  
5 ~~federal, state, or local crime while on release; or~~

6                    ~~(ii)~~ ~~clear and convincing evidence that the defendant has~~  
7 ~~willfully violated any other condition of release; and]~~

8                    ~~[(b)]~~ (ii) finds clear and convincing evidence that either no condition  
9 or combination of conditions will reasonably ensure the defendant's compliance with the release  
10 conditions ordered by the court, or revocation of the defendant's release is necessary to prevent  
11 interference with witnesses or the proper administration of justice.

12                    ~~[(i)]~~ ~~no condition or combination of conditions will reasonably~~  
13 ~~ensure the defendant's compliance with the release conditions ordered by the court; or~~

14                    ~~(ii)~~ ~~revocation of the defendant's release is necessary to prevent~~  
15 ~~interference with witnesses or the proper administration of justice.]~~

16 \_\_\_\_\_ (4)    ~~[An]~~ If the court revokes conditions of release after an evidentiary hearing,  
17 an order revoking release shall include written findings of the individualized facts justifying  
18 revocation and shall be filed within three (3) days of the evidentiary hearing.

19 \_\_\_\_\_ (5)    If the court continues or amends the defendant's conditions of release after  
20 an evidentiary hearing, then a written order continuing or amending the defendant's conditions of  
21 release shall be provided to the defendant at the time of release from custody if the defendant is in  
22 custody, or within three (3) days of the hearing if the defendant is not in custody.

1           ~~[G.]~~ F. Evidence. The New Mexico Rules of Evidence shall not apply to the presentation  
2 and consideration of information at ~~[any]~~ a hearing under this rule.

3           ~~[H.]~~ G. Review of conditions. If the court enters an order setting new or additional  
4 conditions of release, the defendant may file a motion to review the conditions under Rule 5-  
5 401(H) NMRA. If, on disposition of the motion, the defendant is detained or continues to be  
6 detained because of a failure to meet a condition imposed, or is subject to a requirement to return  
7 to custody after specified hours, the defendant may appeal in accordance with Rule 5-405 NMRA  
8 and Rule 12-204 NMRA.

9           ~~[I.]~~ H. Expedited trial scheduling for defendant in custody. The district court shall  
10 provide expedited priority scheduling in a case in which the defendant is detained pending trial.  
11 The court shall hold a status review hearing in any case in which the defendant has been held for  
12 more than six (6) months and every six (6) months thereafter. The purpose of the status review  
13 hearing is to conduct a meaningful review of the progress of the case. If the court determines that  
14 insufficient progress has been made, then the court shall issue an appropriate scheduling order.

15           ~~[J.]~~ I. Appeal. If the court revokes the defendant's release, the defendant may appeal in  
16 accordance with Rule 5-405 NMRA and Rule 12-204 NMRA. The appeal shall be heard in an  
17 expedited manner. The defendant shall be detained pending the disposition of the appeal.

18           ~~[K.]~~ J. Petition for review of revocation order issued by magistrate, metropolitan, or  
19 **municipal court.** If the magistrate, metropolitan, or municipal court issues an order revoking the  
20 defendant's release, the defendant may petition the district court for review under this paragraph.

21           (1)    *Petition; requirements.* The petition shall include the specific facts that  
22 warrant review by the district court and may include a request for a hearing. The petitioner shall  
23 promptly

1 (a) file a copy of the district court petition in the magistrate,  
2 metropolitan, or municipal court;

3 (b) serve a copy on the district attorney; and

4 (c) provide a copy to the assigned district court judge.

5 (2) ***Magistrate, metropolitan, or municipal court's jurisdiction pending***  
6 ***determination of the petition.*** On the filing of the petition, the magistrate, metropolitan, or  
7 municipal court's jurisdiction to set or amend conditions of release shall be suspended pending  
8 determination of the petition by the district court. The case shall proceed in the magistrate,  
9 metropolitan, or municipal court while the petition is pending.

10 (3) ***District court review.*** The district court shall rule on the petition in an  
11 expedited manner.

12 (a) Within three (3) days after the petition is filed, the district court shall  
13 take one of the following actions:

14 (i) issue an order affirming the revocation order; or

15 (ii) set a hearing to be held within ten (10) days after the filing  
16 of the petition and promptly send a copy of the notice to the magistrate, metropolitan, or municipal  
17 court.

18 (b) If the district court holds a hearing on the petition, at the conclusion  
19 of the hearing the court shall issue either an order affirming the revocation order or an order setting  
20 conditions of release in accordance with Rule 5-401 NMRA.

21 (4) ***Transmission of district court order to magistrate, metropolitan, or***  
22 ***municipal court.*** The district court shall promptly send the order to the magistrate, metropolitan,

1 or municipal court, and jurisdiction over the conditions of release shall revert to the magistrate,  
2 metropolitan, or municipal court.

3 (5) *Appeal.* If the district court affirms the revocation order, the defendant may  
4 appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

5 [~~L~~] K. **Judicial discretion; disqualification and excusal.** Action by any court on any  
6 matter relating to pretrial release or detention shall not preclude the subsequent statutory  
7 disqualification of a judge. A judge may not be excused from reviewing a lower court's order  
8 revoking conditions of release unless the judge is required to recuse under the provisions of the  
9 New Mexico Constitution or the Code of Judicial Conduct.

10 [As amended, effective September 1, 1990; as amended by Supreme Court Order No. 13-8300-  
11 046, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme  
12 Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as  
13 amended by Supreme Court Order No. 18-8300-024, effective for all cases pending or filed on or  
14 after February 1, 2019; as amended by Supreme Court Order Nos. 20-8300-013 and 20-8300-019,  
15 effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme  
16 Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31,  
17 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases  
18 pending or filed on or after May 8, 2024; as provisionally amended by Supreme Court Order No.  
19 S-1-AO-2025-00013, effective for all cases pending or filed on or after July 29, 2025.]

20 **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for  
21 the court to follow when considering revocation of the defendant's pretrial release or modification  
22 of the defendant's conditions of release for violating the conditions of release. In *State v.*  
23 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*

1 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires  
2 courts to afford the defendant notice and an opportunity to be heard before the court may revoke  
3 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-  
4 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*  
5 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final  
6 disposition of the criminal case in order to prevent interference with witnesses or the proper  
7 administration of justice, the right to do so before trial seems to be equally apparent under a proper  
8 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions  
9 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable  
10 by immediate arrest, revocation, or modification if violated. Such conditions of release are  
11 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-  
12 NMSC-001, 134 N.M. 768, 82 P.3d 939.

13 ~~[As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~  
14 ~~district court in the normal course of business and not necessarily within the territorial jurisdiction~~  
15 ~~of the court.” Rule 5-401(A)(3) NMRA.]~~

16 Paragraph ~~[G]~~ F provides that the New Mexico Rules of Evidence do not apply at a  
17 revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types  
18 of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial  
19 detention hearing is responsible “for assessing the reliability and accuracy” of the information  
20 presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a  
21 pretrial detention hearing the judge “retains the responsibility for assessing the reliability and  
22 accuracy of the government’s information, whether presented by proffer or by direct proof”); *State*  
23 *v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion

1 of the detention hearing court to determine whether a pretrial detention order may be supported in  
2 an individual case by documentary evidence, proffer, one or more live witnesses, or other forms  
3 of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751,  
4 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
5 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
6 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
7 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
8 probation revocation hearing, the court should focus on the reliability of the evidence); *State v.*  
9 *Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation  
10 hearing that hearsay untested for accuracy or reliability lacked probative value).

11 Paragraph [F] H requires the district court to prioritize the scheduling of trial and other  
12 proceedings for cases in which the defendant is held in custody. *See generally United States v.*  
13 *Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform  
14 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations  
15 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*  
16 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute  
17 or court rule, accelerated time limitations within which detained defendants should be tried  
18 consistent with the sound administration of justice.”). This rule does not preclude earlier or more  
19 regular status review hearings. The purpose of the hearing is to determine how best to expedite a  
20 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’  
21 compliance with applicable deadlines, satisfaction of discovery obligations, and witness  
22 availability, among other matters. If the court determines that the parties have made insufficient  
23 progress on these measures, then it shall issue an appropriate scheduling order.

1           Consistent with Rule 5-106 NMRA, a party cannot exercise the statutory right to excuse a  
2 judge who is reviewing a lower court’s order setting or revoking conditions of release. *See* NMSA  
3 1978, § 38-3-9 (1985). Paragraph [~~L~~] K of this rule does not prevent a judge from filing a recusal  
4 either on the court’s own motion or motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-  
5 211 NMRA.

6           The 1975 amendment to Rule 5-402 NMRA makes it clear that this rule may be invoked  
7 while the defendant is appealing a conviction. *See* Rule 5-402 and commentary.

8 [As amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed  
9 on or after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all  
10 cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No.  
11 S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as  
12 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
13 pending or filed on or after July 29, 2025.]

1 **6-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** The court shall conduct a hearing under this rule and issue an order  
4 setting conditions of release as soon as practicable, but in no event later than

5 (a) if the defendant remains in custody, three (3) days after the date of  
6 arrest if the defendant is being held in the local detention center, or five (5) days after the date of  
7 arrest if the defendant is not being held in the local detention center;

8 (b) first appearance or arraignment, if the defendant is not in custody;  
9 or

10 (c) if the defendant remains in custody pending a hearing under Rule 6-  
11 403(D) NMRA, then within three (3) days after a temporary detention order is placed or the date  
12 of the [~~initial~~] hearing conducted under Rule 6-403 NMRA if the defendant is being held in the  
13 local detention center, or five (5) days after the date of the [~~initial~~] hearing conducted under Rule 6-  
14 403 NMRA if the defendant is not being held in the local detention center.

15 (2) **Right to counsel.** If the defendant does not have counsel at the initial release  
16 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no  
17 longer than three (3) additional days for a further hearing to review conditions of release, at which  
18 the defendant shall have the right to assistance of retained or appointed counsel.

19 (3) **Local detention center; defined.** A “local detention center” is one that is  
20 commonly used by the magistrate court in the normal course of business and not necessarily within  
21 the territorial jurisdiction of the court.

22 B. **Right to pretrial release; recognizance or unsecured appearance bond.** Any  
23 defendant eligible for pretrial release under Article II, Section 13 of the New Mexico

1 Constitution shall be ordered released pending trial on the defendant's personal recognizance or  
2 on the execution of an unsecured appearance bond in an amount set by the court. The court may  
3 impose non-monetary conditions of release under Paragraph D of this rule, but the court shall  
4 impose the least restrictive condition or combination of conditions that will reasonably ensure the  
5 appearance of the defendant as required and the safety of any other person or the community. The  
6 court may order execution of a secured appearance bond only if the court makes written findings  
7 of particularized reasons why the release will not reasonably ensure the appearance of the  
8 defendant as required under Paragraphs E and F of this rule.

9           **C. Factors to be considered in determining conditions of release.** In determining  
10 the least restrictive conditions of release that will reasonably ensure the appearance of the  
11 defendant as required and the safety of any other person and the community, the court shall  
12 consider any available results of a pretrial risk assessment instrument approved by the Supreme  
13 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court  
14 may take into account the available information about

15           (1) the nature and circumstances of the offense charged, including whether the  
16 offense is a crime of violence or involves alcohol or drugs;

17           (2) the weight of the evidence against the defendant;

18           (3) the history and characteristics of the defendant, including

19           (a) the defendant's character, physical and mental condition, family  
20 ties, employment, past and present residences, length of residence in the community, community  
21 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about  
22 appearance at court proceedings; and

1                   (b)     whether, at the time of the current offense or arrest, the defendant  
2 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense  
3 under federal, state, or local law;

4                   (4)     the nature and seriousness of the danger to any person or the community  
5 that would be posed by the defendant's release;

6                   (5)     any other facts tending to indicate the defendant may or may not be likely  
7 to appear as required; and

8                   (6)     any other facts tending to indicate the defendant may or may not commit  
9 new crimes if released.

10           D.     **Non-monetary conditions of release.** In its order setting conditions of release, the  
11 court shall impose a standard condition that the defendant not commit a federal, state, or local  
12 crime during the period of release. The court may also impose the least restrictive particularized  
13 condition, or combination of particularized conditions, that the court finds will reasonably ensure  
14 the appearance of the defendant as required, the safety of any other person and the community,  
15 and the orderly administration of justice, which may include the condition that the defendant

16                   (1)     remain in the custody of a designated person who agrees to assume  
17 supervision and to report any violation of a release condition to the court, if the designated person  
18 is able reasonably to assure the court that the defendant will appear as required and will not pose  
19 a danger to the safety of any other person or the community;

20                   (2)     maintain employment, or, if unemployed, actively seek employment;

21                   (3)     maintain or commence an educational program;

22                   (4)     abide by specified restrictions on personal associations, place of abode, or  
23 travel;

1                   (5)     avoid all contact with an alleged victim of the crime or with a potential  
2 witness who may testify about the offense;

3                   (6)     report on a regular basis to a designated pretrial services agency or other  
4 agency agreeing to supervise the defendant;

5                   (7)     comply with a specified curfew;

6                   (8)     refrain from possessing a firearm, destructive device, or other dangerous  
7 weapon;

8                   (9)     refrain from any use of alcohol or any use of an illegal drug or other  
9 controlled substance without a prescription by a licensed medical practitioner;

10                  (10)    refrain from any use of cannabis, cannabis products, or synthetic  
11 cannabinoids without a certification from a licensed medical practitioner;

12                  (11)    submit to a drug test or an alcohol test on request of a person designated by  
13 the court;

14                  (12)    return to custody for specified hours after release for employment,  
15 schooling, or other limited purposes; and

16                  (13)    satisfy any other condition that is reasonably necessary to ensure the  
17 appearance of the defendant as required and the safety of any other person and the community.

18           E.     **Secured bond.** If the court makes written findings of the particularized reasons  
19 why release on personal recognizance or unsecured appearance bond, in addition to any non-  
20 monetary conditions of release, will not reasonably ensure the appearance of the defendant as  
21 required, the court may require a secured bond for the defendant's release.

22                  (1)     *Factors to be considered in setting secured bond.*

1                   (a)     In determining whether any secured bond is necessary, the court  
2 may consider any facts tending to indicate that the particular defendant may or may not be likely  
3 to appear as required.

4                   (b)     The court shall set secured bond at the lowest amount necessary to  
5 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability  
6 to secure a bond.

7                   (c)     The court shall not set a secured bond that a defendant cannot afford  
8 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

9                   (d)     Secured bond shall not be set by reference to a predetermined  
10 schedule of monetary amounts fixed according to the nature of the charge.

11                 (2)     ***Types of secured bond.*** If a secured bond is determined necessary in a  
12 particular case, the court shall impose the first of the following types of secured bond that will  
13 reasonably ensure the appearance of the defendant.

14                   (a)     ***Percentage bond.*** The court may require a secured appearance bond  
15 executed by the defendant in the full amount specified in the order setting conditions of release,  
16 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be  
17 returned as provided in Paragraph L of this rule.

18                   (b)     ***Property bond.*** The court may require the execution of a property  
19 bond by the defendant or by unpaid sureties in the full amount specified in the order setting  
20 conditions of release, secured by the pledging of real property in accordance with Rule 6-  
21 401.1 NMRA.

22                   (c)     ***Cash or surety bond.*** The court may give the defendant the option  
23 of either

1 (i) a secured appearance bond executed by the defendant in the  
2 full amount specified in the order setting conditions of release, secured by a deposit in cash of one  
3 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph  
4 L of this rule, or

5 (ii) a surety bond executed by licensed sureties in accordance  
6 with Rule 6-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order  
7 setting conditions of release.

8 **F. Order setting conditions of release; findings about secured bond.**

9 (1) *Contents of order setting conditions of release.* The written order setting  
10 conditions of release shall be provided to the defendant before release if the defendant is in custody  
11 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

12 (a) include a written statement that sets forth all the conditions to which  
13 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the  
14 defendant's conduct; and

15 (b) advise the defendant of

16 (i) the penalties for violating a condition of release, including  
17 the penalties for committing an offense while on pretrial release;

18 (ii) the consequences for violating a condition of release,  
19 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial  
20 release, and forfeiture of bond; and

21 (iii) the consequences of intimidating a witness, victim, or  
22 informant, or otherwise obstructing justice.

1                   (2)     ***Written findings about secured bond.*** The court shall file written findings  
2 of the individualized facts justifying a secured bond as soon as possible, but no later than two (2)  
3 days after the conclusion of the hearing.

4           G.     **Pretrial detention.** If the prosecutor files a motion for pretrial detention, the court  
5 shall follow the procedures set forth in Rule 6-409 NMRA.

6           H.     **Review of conditions of release by the magistrate court.**

7                   (1)     ***Review.*** If the magistrate court requires a secured bond for the defendant's  
8 release under Paragraph E of this rule or imposes non-monetary conditions of release under  
9 Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after the  
10 issuance of the order setting conditions of release as a result of the defendant's inability to post the  
11 secured bond or meet the conditions of release in the present case, the defendant shall be entitled  
12 to a hearing to review the conditions of release.

13                   (2)     ***Review hearing.*** The magistrate court shall hold a hearing in an expedited  
14 manner, but in no event later than five (5) days after the initial conditions of release hearing. The  
15 defendant shall have the right to assistance of retained or appointed counsel at the hearing. Unless  
16 the order setting conditions of release is amended and the defendant is then released, the court shall  
17 file a written order setting forth the reasons for declining to amend the order setting conditions of  
18 release. The court shall consider the defendant's financial ability to secure a bond. No defendant  
19 eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution shall be  
20 detained solely because of financial inability to post a secured bond unless the court determines  
21 by clear and convincing evidence and makes findings of the reasons why the amount of secured  
22 bond required by the court is reasonably necessary to ensure the appearance of the particular  
23 defendant as required. The court shall file written findings of the individualized facts justifying

1 the secured bond as soon as possible, but no later than two (2) days after the conclusion of the  
2 hearing.

3 (3) **Work or school release.** A defendant who is ordered released on a condition  
4 that requires that the defendant return to custody after specified hours shall, on motion of the  
5 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.  
6 Unless the requirement is removed and the defendant is released on another condition, the court  
7 shall file a written order setting forth the reason for the continuation of the requirement. A hearing  
8 to review conditions of release under this subparagraph shall be held by the magistrate court within  
9 five (5) days of the filing of the motion. The defendant shall have the right to assistance of retained  
10 or appointed counsel at the hearing.

11 (4) **Subsequent motion for review.** The defendant may file subsequent motions  
12 for review of the order setting conditions of release, but the court may rule on subsequent motions  
13 with or without a hearing.

14 I. **Amendment of conditions.** The court may amend its order setting conditions of  
15 release at any time. If the amendment of the order may result in the detention of the defendant or  
16 in more restrictive conditions of release, the court shall not amend the order without a hearing. If  
17 the court is considering revocation of the defendant's pretrial release or modification of the  
18 defendant's conditions of release for violating a condition of release, the court shall follow the  
19 procedures set forth in Rule 6-403 NMRA.

20 J. **Petition to district court.**

21 (1) **Case within magistrate court trial jurisdiction.** A defendant charged with  
22 an offense that is within magistrate court trial jurisdiction may file a petition in the district court  
23 for review of the magistrate court's order setting conditions of release under this paragraph only

1 after the magistrate court has reviewed the conditions of release and made a requisite ruling under  
2 Paragraph H of this rule. The defendant shall attach to the district court petition a copy of the  
3 magistrate court order after the review of the conditions of release.

4 (2) ***Felony case.*** A defendant charged with a felony offense who has not been  
5 bound over to the district court may file a petition in the district court for release under Rule 5-  
6 401(K) NMRA and this paragraph at any time after the defendant's arrest.

7 (3) ***Petition; requirements.*** A petition to the district court under this paragraph  
8 shall include the specific facts that warrant review by the district court and may include a request  
9 for a hearing. The petitioner shall promptly

10 (a) file a copy of the district court petition in the magistrate court;

11 (b) serve a copy on the district attorney; and

12 (c) provide a copy to the assigned district court judge.

13 (4) ***Magistrate court's jurisdiction pending determination of the petition.*** On  
14 the filing of a petition under this paragraph, the magistrate court's jurisdiction to set or amend the  
15 conditions of release shall be suspended pending determination of the petition by the district court.  
16 The magistrate court shall retain jurisdiction over all other aspects of the case, and the case shall  
17 proceed in the magistrate court while the district court petition is pending. The magistrate court's  
18 order setting conditions of release shall remain in effect unless and until the district court issues  
19 an order amending the conditions of release.

20 (5) ***District court review.*** The district court shall rule on the petition in an  
21 expedited manner. Within three (3) days after the petition is filed, the district court shall take one  
22 of the following actions:

1 (a) set a hearing no later than ten (10) days after the filing of the petition  
2 and promptly send a copy of the notice to the magistrate court;

3 (b) deny the petition summarily; or

4 (c) amend the order setting conditions of release without a hearing.

5 (6) ***District court order; transmission to magistrate court.*** The district court  
6 shall promptly send to the magistrate court a copy of the district court order disposing of the  
7 petition, and jurisdiction over the conditions of release shall revert to the magistrate court.

8 K. **Expedited trial scheduling for defendant in custody.** The magistrate court shall  
9 provide expedited priority scheduling in a case in which the defendant is detained as a result of  
10 inability to post a secured bond or meet the conditions of release. The court shall hold a status  
11 review hearing in any case in which the defendant has been held for more than sixty (60) days.  
12 The purpose of the status review hearing is to conduct a meaningful review of the progress of the  
13 case. If the court determines that insufficient progress has been made, then the court shall issue an  
14 appropriate scheduling order.

15 L. **Return of cash deposit.** If a defendant has been released by executing a secured  
16 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions  
17 of the appearance bond have been performed and the defendant's case has been adjudicated by the  
18 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,  
19 or that person's personal representatives or assigns.

20 M. **Release from custody by designee.** The presiding judge of the magistrate court  
21 may designate by written court order responsible persons to implement the pretrial release  
22 procedures set forth in Rule 6-408 NMRA. A designee shall release a defendant from custody  
23 before the defendant's first appearance before a judge if the defendant is eligible for pretrial release

1 under Rule 6-408 NMRA, but may contact a judge for special consideration based on exceptional  
2 circumstances. No person shall be qualified to serve as a designee if the person or the person's  
3 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to  
4 sell property or corporate bonds within this state.

5 N. **Bind over to district court.** For any case that is not within magistrate court trial  
6 jurisdiction, on notice to the magistrate court, any bond shall be transferred to the district court on  
7 the filing of an information or indictment in the district court.

8 O. **Evidence.** Information offered in connection with or stated in any proceeding held  
9 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

10 P. **Forms.** Instruments required by this rule, including any order setting conditions of  
11 release, appearance bond, property bond, or surety bond, shall be substantially in the form  
12 approved by the Supreme Court.

13 Q. **Judicial discretion; disqualification and excusal.** Action by any court on any  
14 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a  
15 judge. A judge may not be excused from setting initial conditions of release unless the judge is  
16 required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial  
17 Conduct.

18 [As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;  
19 as amended by Supreme Court Order No. 07-8300, effective January 22, 2008; by Supreme Court  
20 Order No. 08-8300-044, effective December 31, 2008; as amended by Supreme Court Order No.  
21 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by  
22 Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after  
23 December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective

1 for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order  
2 No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as  
3 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
4 pending or filed on or after July 29, 2025.]

5 **Committee commentary.** — This rule provides “the mechanism through which a person  
6 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico  
7 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section  
8 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending  
9 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger  
10 to the safety of any other person or the community and that no release condition or combination  
11 of conditions will reasonably ensure the safety of any other person or the community, and (2) to  
12 require the pretrial release of a defendant who is in custody solely because of financial inability to  
13 post a secured bond. This rule was derived from the federal statute governing the release or  
14 detention of a defendant pending trial. *See* 18 U.S.C. § 3142. This rule was amended in 2017 to  
15 implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding  
16 in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure  
17 for the District Courts, *see* Rule 5-401 NMRA, the Rules of Criminal Procedure for the  
18 Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of Procedure for the Municipal  
19 Courts, *see* Rule 8-401 NMRA.

20 Time periods specified in this rule are computed in accordance with Rule 6-104 NMRA.

21 Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA  
22 that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2),  
23 (H)(2), and (H)(3) of this rule provide that assistance of counsel is required in a proceeding that

1 may result in denial of pretrial release based on reasons that do not involve dangerousness, such  
2 as a simple inability to meet a financial condition.

3 As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or  
4 unsecured bond unless the court determines that a release, in addition to any non-monetary  
5 conditions of release under Paragraph D, will not reasonably ensure the appearance of the  
6 defendant and the safety of any other person or the community.

7 Paragraph C lists the factors the court should consider when determining conditions of  
8 release. In all cases, the court is required to consider any available results of a pretrial risk  
9 assessment instrument approved by the Supreme Court for use in the jurisdiction and the financial  
10 resources of the defendant.

11 Paragraph D lists various non-monetary conditions of release. The court must impose the  
12 least restrictive condition, or combination of conditions, that will reasonably ensure the appearance  
13 of the defendant as required and the safety of any other person and the community. *See*  
14 *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard  
15 conditions before a court appearance, the judge should review the conditions at the defendant's  
16 first appearance to determine whether any particularized conditions should be imposed under the  
17 circumstances of the case.

18 Paragraph D also permits the court to impose non-monetary conditions of release to ensure  
19 the orderly administration of justice. This provision was derived from the American Bar  
20 Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.2 (3d ed. 2007).  
21 Some conditions of release may have a cost associated with the condition. The court should make  
22 a determination about whether the defendant can afford to pay all or a part of the cost, or whether  
23 the court has the authority to waive the cost, because detaining a defendant because of inability to

1 pay the cost associated with a condition of release is comparable to detaining a defendant because  
2 of financial inability to post a secured bond.

3 As set forth in Paragraph E, the only purpose for which the court may impose a secured  
4 bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which  
5 the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746  
6 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the  
7 punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993)  
8 (authorizing the forfeiture of bond on the defendant’s failure to appear).

9 The 2017 amendments to this rule clarify that the amount of secured bond must not be  
10 based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to  
11 the nature of the charge. Instead, the court must consider the individual defendant’s financial  
12 resources and must set secured bond at the lowest amount that will reasonably ensure the  
13 defendant’s appearance in court after the defendant is released.

14 Secured bond cannot be used for the purpose of detaining a defendant who may pose a  
15 danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53  
16 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set  
17 high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*,  
18 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated  
19 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A  
20 felony defendant who poses a danger that cannot be mitigated through the imposition of non-  
21 monetary conditions of release under Paragraph D of this rule should be detained under Article II,  
22 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

1           The court should consider the authorized types of secured bonds in the order of priority set  
2           forth in Paragraph E. The court must first consider requiring an appearance bond secured by a cash  
3           deposit of ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of  
4           ten percent (10%) is inadequate, the court then must consider a property bond involving property  
5           that belongs to the defendant or other unpaid surety. If neither of these options is sufficient to  
6           reasonably ensure the defendant's appearance, the court may require a cash or surety bond for the  
7           defendant's release. If the court requires a cash or surety bond, the defendant has the option either  
8           to execute an appearance bond and deposit one hundred percent (100%) of the amount of the bond  
9           with the court or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the  
10          defendant alone has the choice to post the bond by a one hundred percent (100%) cash deposit or  
11          a surety. The court does not have the option to set a cash-only bond or a surety-only bond; it must  
12          give the defendant the choice of either. A paid surety may execute a surety bond or a real or  
13          personal property bond only if the conditions of Rule 6-401.2 NMRA are met.

14          Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-  
15          303 NMRA (order setting conditions of release). Although pretrial release hearings are not  
16          required to be a matter of record in the magistrate court, Paragraph F requires the court to make  
17          written findings justifying the imposition of a secured bond. Judges are encouraged to enter their  
18          written findings on the order setting conditions of release at the conclusion of the hearing. If more  
19          detailed findings are necessary, the judge should make the supplemental findings in a separate  
20          document within two (2) days of the conclusion of the hearing.

21          Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section  
22          13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other  
23          person or the community that cannot be addressed through the imposition of non-monetary

1 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files  
2 a motion for pretrial detention, the magistrate court must follow the procedures set forth in Rule 6-  
3 409 NMRA.

4 Paragraph H sets forth the procedure for review of the defendant’s conditions of release in  
5 the magistrate court. Paragraph J sets forth the procedure for the defendant to petition the district  
6 court for release or for review of the conditions of release set by the magistrate court. Article II,  
7 Section 13 of the New Mexico Constitution requires the court to rule on a motion or petition for  
8 pretrial release “in an expedited manner” and to release a defendant who is being held solely  
9 because of financial inability to post a secured bond. A defendant who wishes to present financial  
10 information to a court to support a motion or a petition for pretrial release may present Form 9-  
11 301A NMRA (pretrial release financial affidavit) to the court. The defendant shall be entitled to  
12 appear and participate personally with counsel before the judge conducting any hearing to review  
13 the conditions of release, rather than by any means of remote electronic conferencing.

14 Paragraph K requires the magistrate court to prioritize the scheduling of trial and other  
15 proceedings for cases in which the defendant is held in custody because of inability to post bond  
16 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)  
17 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate  
18 due process, in part because of “the stringent time limitations of the Speedy Trial Act,” 18 U.S.C.  
19 § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11  
20 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limits  
21 within which detained defendants should be tried consistent with the sound administration of  
22 justice.”). This rule does not preclude earlier or more regular status review hearings. The purpose  
23 of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the

1 progress of the case includes assessment of the parties’ compliance with applicable deadlines,  
2 satisfaction of discovery obligations, and witness availability, among other matters. If the court  
3 determines that the parties have made insufficient progress on these measures, then it shall issue  
4 an appropriate scheduling order.

5 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out  
6 the provisions of this rule. As set forth in Paragraph M, a designee must be designated by the  
7 presiding magistrate court judge in a written court order. A person may not be appointed as a  
8 designee if that person is related within the second degree of blood or marriage to a paid surety  
9 licensed in this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph M  
10 and Rule 6-408 NMRA govern the limited circumstances under which a designee shall release an  
11 arrested defendant from custody before that defendant’s first appearance before a judge.

12 Paragraph N requires the magistrate court to transfer any bond to the district court on notice  
13 from the district attorney that an information or indictment has been filed. *See* Rule 6-202(E)-(F)  
14 NMRA (requiring the district attorney to notify the magistrate court of the filing of an information  
15 or indictment in the district court).

16 Paragraph O of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that  
17 the Rules of Evidence do not apply to proceedings in the magistrate court with respect to matters  
18 of pretrial release. As with courts in other types of proceedings in which the Rules of Evidence do  
19 not apply, a court presiding over a pretrial release hearing is responsible “for assessing the  
20 reliability and accuracy” of the information presented. *See United States v. Martir*, 782 F.2d 1141,  
21 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the  
22 responsibility for assessing the reliability and accuracy of the government’s information, whether  
23 presented by proffer or by direct proof”); *see also United States v. Marshall*, 519 F. Supp. 751,

1 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
2 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
3 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
4 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
5 probation revocation hearing, the court should focus on the reliability of the evidence).

6 Consistent with Rule 6-106 NMRA, a party cannot exercise the statutory right to excuse a  
7 judge who is setting initial conditions of release. *See* NMSA 1978, § 35-3-7 (1983). Paragraph Q  
8 of this rule does not prevent a judge from filing a recusal either on the court’s own motion or  
9 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

10 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
11 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases  
12 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-  
13 RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]

1 **6-403. Revocation or modification of release orders.**

2 A. **Scope.** In accordance with this rule, the court may consider revocation of the  
3 defendant's pretrial release or modification of the defendant's conditions of release

4 (1) if the defendant is alleged to have violated a condition of release; or

5 (2) to prevent interference with witnesses or the proper administration of  
6 justice.

7 B. **Revocation or modification of conditions of release.**

8 (1) The court shall consider revocation of the defendant's pretrial release or  
9 modification of the defendant's conditions of release on motion of the prosecutor, on notice of a  
10 non-technical violation of a condition of release by a court pretrial services agency, or on the  
11 court's own motion.

12 (2) The defendant may file a response to the motion, but the filing of a response  
13 shall not delay any hearing under Paragraph D [~~or E~~] of this rule.

14 C. **Issuance of summons or bench warrant; temporary detention of certain**  
15 **defendants.**

16 (1) On motion or notice of a non-technical violation of a condition of release by  
17 a court pretrial services agency, the court shall enter an order with specific findings about why  
18 amended or revoked conditions of release are unnecessary, or the court shall issue a summons and  
19 notice of hearing, unless the court finds that the interests of justice may be better served by the  
20 issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons  
21 for the review of the pretrial release decision.

22 (2) A defendant previously released by any court in this state pending any  
23 felony charge or pending a charge for an enumerated misdemeanor, who is arrested and charged

1 with a new felony or new enumerated misdemeanor defined in Rule 5-403.1 NMRA alleged to  
2 have occurred during the period of initial release, shall be held without conditions of release  
3 pending ~~[an initial]~~ a hearing pursuant to Paragraph D of this rule. The ~~[initial]~~ hearing required  
4 by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's  
5 initial conditions of release.

6 (3) A defendant previously released by any court in this state pending any  
7 felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-  
8 403.1 NMRA, who is charged but not arrested for a new felony or new enumerated misdemeanor  
9 alleged to have occurred during the period of initial release, shall be summonsed by the court with  
10 current jurisdiction over the defendant's initial conditions of release to ~~[an initial]~~ a hearing  
11 required by Paragraph D of this rule, unless the court finds that the interests of justice may be  
12 better served by the issuance of a bench warrant. The ~~[initial]~~ hearing required by Paragraph D  
13 shall be conducted by the court with current jurisdiction over the defendant's initial conditions of  
14 release.

15 ~~[D. Initial hearing.~~

16 (1) ~~The court shall hold an initial hearing as soon as practicable. If the defendant~~  
17 ~~is in custody, the hearing shall be held no later than three (3) days after the defendant is detained~~  
18 ~~if the defendant is being held in the local detention center, or no later than five (5) days after the~~  
19 ~~defendant is detained if the defendant is not being held in the local detention center. If the~~  
20 ~~defendant is not in custody, the hearing shall be held no later than ten (10) days after the motion~~  
21 ~~or notice of alleged violation is filed.~~

22 (2) ~~At the initial hearing, the court may continue the existing conditions of~~  
23 ~~release, set different conditions of release, or if the court is considering revocation of release, the~~

1 ~~court shall schedule an evidentiary hearing under Paragraph E of this rule, unless waived by the~~  
2 ~~defendant.~~

3 ~~(3) — If at the conclusion of the initial hearing, the court continues or amends the~~  
4 ~~defendant’s conditions of release, then a written order continuing or amending the defendant’s~~  
5 ~~conditions of release shall be provided to the defendant at the time of release from custody if the~~  
6 ~~defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.~~  
7 ~~If the defendant waives the evidentiary hearing under Paragraph E and the court finds that the~~  
8 ~~conditions of release should be revoked, an order revoking conditions of release, including written~~  
9 ~~findings of the individualized facts justifying revocation, shall be filed within three (3) days of the~~  
10 ~~initial hearing.]~~

11 ~~[E.]~~ D. [Evidentiary hearing.] **Hearing on alleged violation.**

12 (1) *Time.* ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If  
13 the defendant is in custody, the [evidentiary] hearing shall be held no later than [seven (7)] five (5)  
14 days after the [initial hearing] defendant is detained. If the defendant is not in custody, the  
15 [evidentiary] hearing shall be held no later than ten (10) days after the [initial hearing] motion or  
16 notice of alleged violation is filed.

17 (2) At the hearing, the court may continue the existing conditions of release, set  
18 different conditions of release, or if the court is considering revocation of release, the court shall  
19 conduct an evidentiary hearing, unless waived by the defendant.

20 ~~[(2)]~~ (3) *Defendant’s rights.* The defendant has the right to be present and to be  
21 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.  
22 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the  
23 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance

1 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by  
2 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not  
3 be used against the defendant at trial except for impeachment purposes or in a subsequent  
4 prosecution for perjury.

5 ~~[F.]~~ E. **Order at completion of ~~[evidentiary]~~ hearing.**

6 (1) If at the conclusion of the hearing, the court continues or amends the  
7 defendant's conditions of release, then a written order continuing or amending the defendant's  
8 conditions of release shall be provided to the defendant at the time of the release from custody if  
9 the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

10 (2) If the defendant waives an evidentiary hearing and the court finds that the  
11 conditions of release should be revoked, an order revoking conditions of release, including written  
12 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the  
13 hearing.

14 (3) If an evidentiary hearing is conducted, at ~~[A]~~ the completion of ~~[an]~~ the  
15 evidentiary hearing, the court shall determine whether the defendant has violated a condition of  
16 release or whether revocation of the defendant's release is necessary to prevent interference with  
17 witnesses or the proper administration of justice, and may:

18 ~~[(1)]~~ (a) continue the existing conditions of release;

19 ~~[(2)]~~ (b) set new or additional conditions of release in accordance with  
20 Rule 6-401 NMRA; or

21 ~~[(3)]~~ (c) revoke the defendant's release, if the court

1                    ~~[(a)]~~ (i) finds either probable cause to believe that the defendant  
2 committed a federal, state, or local crime while on release, or clear and convincing evidence that  
3 the defendant has willfully violated any other condition of release; and

4                    ~~[(i)]~~ ~~probable cause to believe that the defendant committed a~~  
5 ~~federal, state, or local crime while on release; or~~

6                    ~~(ii)~~ ~~clear and convincing evidence that the defendant has~~  
7 ~~willfully violated any other condition of release; and]~~

8                    ~~[(b)]~~ (ii) finds clear and convincing evidence that either no condition  
9 or combination of conditions will reasonably ensure the defendant's compliance with the release  
10 conditions ordered by the court, or revocation of the defendant's release is necessary to prevent  
11 interference with witnesses or the proper administration of justice.

12                    ~~[(i)]~~ ~~no condition or combination of conditions will reasonably~~  
13 ~~ensure the defendant's compliance with the release conditions ordered by the court; or~~

14                    ~~(ii)~~ ~~revocation of the defendant's release is necessary to prevent~~  
15 ~~interference with witnesses or the proper administration of justice.]~~

16 \_\_\_\_\_ (4)    ~~[An]~~ If the court revokes conditions of release after an evidentiary hearing,  
17 an order revoking release shall include written findings of the individualized facts justifying  
18 revocation and shall be filed within three (3) days of the evidentiary hearing.

19 \_\_\_\_\_ (5)    If the court continues or amends the defendant's conditions of release after  
20 an evidentiary hearing, then a written order continuing or amending the defendant's conditions of  
21 release shall be provided to the defendant at the time of release from custody if the defendant is in  
22 custody, or within three (3) days of the hearing if the defendant is not in custody.

1           ~~[G.]~~ **F. Evidence.** The New Mexico Rules of Evidence shall not apply to the presentation  
2 and consideration of information at ~~[any]~~ a hearing under this rule.

3           ~~[H.]~~ **G. Review of conditions.** If the magistrate court enters an order setting new or  
4 additional conditions of release and the defendant is detained or continues to be detained because  
5 of a failure to meet a condition imposed, or is subject to a requirement to return to custody after  
6 specified hours, the defendant may petition the district court for review in accordance with Rule 6-  
7 401(J) NMRA. The defendant may petition the district court immediately on the issuance of the  
8 magistrate court order and shall not be required to first seek review or reconsideration by the  
9 magistrate court. If, on disposition of the petition by the district court, the defendant is detained or  
10 continues to be detained because of a failure to meet a condition imposed, or is subject to a  
11 requirement to return to custody after specified hours, the defendant may appeal in accordance  
12 with Rule 5-405 NMRA and Rule 12-204 NMRA.

13           ~~[I.]~~ **H. Expedited trial scheduling for defendant in custody.** The magistrate court shall  
14 provide expedited priority scheduling in a case in which the defendant is detained pending trial.  
15 The court shall hold a status review hearing in any case in which the defendant has been held for  
16 more than sixty (60) days. The purpose of the status review hearing is to conduct a meaningful  
17 review of the progress of the case. If the court determines that insufficient progress has been made,  
18 then the court shall issue an appropriate scheduling order.

19           ~~[J.]~~ **I. Petition to district court for review of revocation order.** If the magistrate court  
20 issues an order revoking the defendant's release, the defendant may petition the district court for  
21 review under this paragraph and Rule 5-403(K) NMRA.

1                   (1)     ***Petition; requirements.*** The petition shall include the specific facts that  
2 warrant review by the district court and may include a request for a hearing. The petitioner shall  
3 promptly

4                             (a)     file a copy of the district court petition in the magistrate court;

5                             (b)     serve a copy on the district attorney; and

6                             (c)     provide a copy to the assigned district court judge.

7                   (2)     ***Magistrate court's jurisdiction pending determination of the petition.*** On  
8 the filing of the petition, the magistrate court's jurisdiction to set or amend conditions of release  
9 shall be suspended pending determination of the petition by the district court. The magistrate court  
10 shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the  
11 magistrate court while the petition is pending.

12                   (3)     ***District court review.*** The district court shall rule on the petition in an  
13 expedited manner.

14                             (a)     Within three (3) days after the petition is filed, the district court shall  
15 take one of the following actions:

16                                     (i)     issue an order affirming the revocation order; or

17                                     (ii)    set a hearing to be held within ten (10) days after the filing  
18 of the petition and promptly send a copy of the notice to the magistrate court.

19                             (b)     If the district court holds a hearing on the petition, at the conclusion  
20 of the hearing the court shall issue either an order affirming the revocation order or an order setting  
21 conditions of release under Rule 5-401 NMRA.

1           (4)     ***District court order; transmission to magistrate court.*** The district court  
2 shall promptly send the order to the magistrate court, and jurisdiction over the conditions of release  
3 shall revert to the magistrate court.

4           (5)     ***Appeal.*** If the district court affirms the revocation order, the defendant may  
5 appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

6 [As amended, effective September 1, 1990; as amended by Supreme Court Order No. 08-8300-  
7 044, effective December 31, 2008; as amended by Supreme Court Order No. 17-8300-005,  
8 effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court  
9 Order No. 18-8300-024, effective for all cases pending or filed on or after February 1, 2019; as  
10 amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or  
11 after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068,  
12 effective for all cases pending or filed on or after May 8, 2024; as provisionally amended by  
13 Supreme Court Order No. S-1-AO-2025-00013, effective for all cases pending or filed on or after  
14 July 29, 2025.]

15           **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for  
16 the court to follow when considering revocation of the defendant’s pretrial release or modification  
17 of the defendant’s conditions of release for violating the conditions of release. In *State v.*  
18 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*  
19 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires  
20 courts to afford the defendant notice and an opportunity to be heard before the court may revoke  
21 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-  
22 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*  
23 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final

1 disposition of the criminal case in order to prevent interference with witnesses or the proper  
2 administration of justice, the right to do so before trial seems to be equally apparent under a proper  
3 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions  
4 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable  
5 by immediate arrest, revocation, or modification if violated. Such conditions of release are  
6 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-  
7 NMSC-001, 134 N.M. 768, 82 P.3d 939.

8 ~~[As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~  
9 ~~magistrate court in the normal course of business and not necessarily within the territorial~~  
10 ~~jurisdiction of the court.” Rule 6-401(A)(3) NMRA.]~~

11 Paragraph [G] F provides that the New Mexico Rules of Evidence do not apply at a  
12 revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types  
13 of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial  
14 detention hearing is responsible “for assessing the reliability and accuracy” of the information  
15 presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a  
16 pretrial detention hearing the judge “retains the responsibility for assessing the reliability and  
17 accuracy of the government’s information, whether presented by proffer or by direct proof”); *State*  
18 *v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion  
19 of the detention hearing court to determine whether a pretrial detention order may be supported in  
20 an individual case by documentary evidence, proffer, one or more live witnesses, or other forms  
21 of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751,  
22 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
23 sufficient indicia of reliability to support its probable accuracy, the information may properly be

1 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
2 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
3 probation revocation hearing, the court should focus on the reliability of the evidence); *State v.*  
4 *Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation  
5 hearing that hearsay untested for accuracy or reliability lacked probative value).

6 Paragraph [F] H requires the magistrate court to prioritize the scheduling of trial and other  
7 proceedings for cases in which the defendant is held in custody. *See generally United States v.*  
8 *Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform  
9 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations  
10 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*  
11 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute  
12 or court rule, accelerated time limitations within which detained defendants should be tried  
13 consistent with the sound administration of justice.”). This rule does not preclude earlier or more  
14 regular status review hearings. The purpose of the hearing is to determine how best to expedite a  
15 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’  
16 compliance with applicable deadlines, satisfaction of discovery obligations, and witness  
17 availability, among other matters. If the court determines that the parties have made insufficient  
18 progress on these measures, then it shall issue an appropriate scheduling order.

19 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
20 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases  
21 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-  
22 RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as

- 1 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases
- 2 pending or filed on or after July 29, 2025.]

1 **7-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** The court shall conduct a hearing under this rule and issue an order  
4 setting conditions of release as soon as practicable, but in no event later than

5 (a) if the defendant remains in custody, three (3) days after the date of  
6 arrest if the defendant is being held in the local detention center, or five (5) days after the date of  
7 arrest if the defendant is not being held in the local detention center;

8 (b) first appearance or arraignment, if the defendant is not in custody;  
9 or

10 (c) if the defendant remains in custody pending a hearing under Rule 7-  
11 403(D) NMRA, then within three (3) days after a temporary detention order is placed or the date  
12 of the [~~initial~~] hearing conducted under Rule 7-403 NMRA if the defendant is being held in the  
13 local detention center, or five (5) days after the date of the [~~initial~~] hearing conducted under Rule 7-  
14 403 NMRA if the defendant is not being held in the local detention center.

15 (2) **Right to counsel.** If the defendant does not have counsel at the initial release  
16 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no  
17 longer than three (3) additional days for a further hearing to review conditions of release, at which  
18 the defendant shall have the right to assistance of retained or appointed counsel.

19 (3) **Local detention center; defined.** A “local detention center” is one that is  
20 commonly used by the metropolitan court in the normal course of business and not necessarily  
21 within the territorial jurisdiction of the court.

22 B. **Right to pretrial release; recognizance or unsecured appearance bond.** Any  
23 defendant eligible for pretrial release under Article II, Section 13 of the New Mexico

1 Constitution shall be ordered released pending trial on the defendant's personal recognizance or  
2 on the execution of an unsecured appearance bond in an amount set by the court. The court may  
3 impose non-monetary conditions of release under Paragraph D of this rule, but the court shall  
4 impose the least restrictive condition or combination of conditions that will reasonably ensure the  
5 appearance of the defendant as required and the safety of any other person or the community. The  
6 court may order execution of a secured appearance bond only if the court makes written findings  
7 of particularized reasons why the release will not reasonably ensure the appearance of the  
8 defendant as required under Paragraphs E and F of this rule.

9           **C. Factors to be considered in determining conditions of release.** In determining  
10 the least restrictive conditions of release that will reasonably ensure the appearance of the  
11 defendant as required and the safety of any other person and the community, the court shall  
12 consider any available results of a pretrial risk assessment instrument approved by the Supreme  
13 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court  
14 may take into account the available information about

15           (1) the nature and circumstances of the offense charged, including whether the  
16 offense is a crime of violence or involves alcohol or drugs;

17           (2) the weight of the evidence against the defendant;

18           (3) the history and characteristics of the defendant, including

19                   (a) the defendant's character, physical and mental condition, family  
20 ties, employment, past and present residences, length of residence in the community, community  
21 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about  
22 appearance at court proceedings; and

1 (b) whether, at the time of the current offense or arrest, the defendant  
2 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense  
3 under federal, state, or local law;

4 (4) the nature and seriousness of the danger to any person or the community  
5 that would be posed by the defendant's release;

6 (5) any other facts tending to indicate the defendant may or may not be likely  
7 to appear as required; and

8 (6) any other facts tending to indicate the defendant may or may not commit  
9 new crimes if released.

10 **D. Non-monetary conditions of release.** In its order setting conditions of release, the  
11 court shall impose a standard condition that the defendant not commit a federal, state, or local  
12 crime during the period of release. The court may also impose the least restrictive particularized  
13 condition, or combination of particularized conditions, that the court finds will reasonably ensure  
14 the appearance of the defendant as required, the safety of any other person and the community,  
15 and the orderly administration of justice, which may include the condition that the defendant

16 (1) remain in the custody of a designated person who agrees to assume  
17 supervision and to report any violation of a release condition to the court, if the designated person  
18 is able reasonably to assure the court that the defendant will appear as required and will not pose  
19 a danger to the safety of any other person or the community;

20 (2) maintain employment, or, if unemployed, actively seek employment;

21 (3) maintain or commence an educational program;

22 (4) abide by specified restrictions on personal associations, place of abode, or  
23 travel;

1           (5)     avoid all contact with an alleged victim of the crime or with a potential  
2 witness who may testify about the offense;

3           (6)     report on a regular basis to a designated pretrial services agency or other  
4 agency agreeing to supervise the defendant;

5           (7)     comply with a specified curfew;

6           (8)     refrain from possessing a firearm, destructive device, or other dangerous  
7 weapon;

8           (9)     from any use of alcohol or any use of an illegal drug or other controlled  
9 substance without a prescription by a licensed medical practitioner;

10          (10)    refrain from any use of cannabis, cannabis products, or synthetic  
11 cannabinoids without a certification from a licensed medical practitioner;

12          (11)    submit to a drug test or an alcohol test on request of a person designated by  
13 the court;

14          (12)    return to custody for specified hours after release for employment,  
15 schooling, or other limited purposes; and

16          (13)    satisfy any other condition that is reasonably necessary to ensure the  
17 appearance of the defendant as required and the safety of any other person and the community.

18         E.     **Secured bond.** If the court makes written findings of the particularized reasons  
19 why release on personal recognizance or unsecured appearance bond, in addition to any non-  
20 monetary conditions of release, will not reasonably ensure the appearance of the defendant as  
21 required, the court may require a secured bond for the defendant's release.

22           (1)     *Factors to be considered in setting secured bond.*

1 (a) In determining whether any secured bond is necessary, the court  
2 may consider any facts tending to indicate that the particular defendant may or may not be likely  
3 to appear as required.

4 (b) The court shall set secured bond at the lowest amount necessary to  
5 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability  
6 to secure a bond.

7 (c) The court shall not set a secured bond that a defendant cannot afford  
8 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

9 (d) Secured bond shall not be set by reference to a predetermined  
10 schedule of monetary amounts fixed according to the nature of the charge.

11 (2) ***Types of secured bond.*** If a secured bond is determined necessary in a  
12 particular case, the court shall impose the first of the following types of secured bond that will  
13 reasonably ensure the appearance of the defendant.

14 (a) ***Percentage bond.*** The court may require a secured appearance bond  
15 executed by the defendant in the full amount specified in the order setting conditions of release,  
16 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be  
17 returned as provided in Paragraph L of this rule.

18 (b) ***Property bond.*** The court may require the execution of a property  
19 bond by the defendant or by unpaid sureties in the full amount specified in the order setting  
20 conditions of release, secured by the pledging of real property in accordance with Rule 7-  
21 401.1 NMRA.

22 (c) ***Cash or surety bond.*** The court may give the defendant the option  
23 of either

1 (i) a secured appearance bond executed by the defendant in the  
2 full amount specified in the order setting conditions of release, secured by a deposit in cash of one  
3 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph  
4 L of this rule, or

5 (ii) a surety bond executed by licensed sureties in accordance  
6 with Rule 7-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order  
7 setting conditions of release.

8 **F. Order setting conditions of release; findings about secured bond.**

9 (1) *Contents of order setting conditions of release.* The written order setting  
10 conditions of release shall be provided to the defendant before release if the defendant is in custody  
11 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

12 (a) include a written statement that sets forth all the conditions to which  
13 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the  
14 defendant's conduct; and

15 (b) advise the defendant of

16 (i) the penalties for violating a condition of release, including  
17 the penalties for committing an offense while on pretrial release;

18 (ii) the consequences for violating a condition of release,  
19 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial  
20 release, and forfeiture of bond; and

21 (iii) the consequences of intimidating a witness, victim, or  
22 informant, or otherwise obstructing justice.

1                   (2)     ***Written findings about secured bond.*** The court shall file written findings  
2 of the individualized facts justifying a secured bond as soon as possible, but no later than two (2)  
3 days after the conclusion of the hearing.

4           G.     **Pretrial detention.** If the prosecutor files a motion for pretrial detention, the court  
5 shall follow the procedures set forth in Rule 7-409 NMRA.

6           H.     **Review of conditions of release by the metropolitan court.**

7                   (1)     ***Review.*** If the metropolitan court requires a secured bond for the  
8 defendant’s release under Paragraph E of this rule or imposes non-monetary conditions of release  
9 under Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after  
10 the issuance of the order setting conditions of release as a result of the defendant’s inability to post  
11 the secured bond or meet the conditions of release in the present case, the defendant shall be  
12 entitled to a hearing to review the conditions of release.

13                   (2)     ***Review hearing.*** The metropolitan court shall hold a hearing in an expedited  
14 manner, but in no event later than five (5) days after the initial conditions of release hearing. The  
15 defendant shall have the right to assistance of retained or appointed counsel at the hearing. Unless  
16 the order setting conditions of release is amended and the defendant is then released, the court shall  
17 file a written order setting forth the reasons for declining to amend the order setting conditions of  
18 release. The court shall consider the defendant’s financial ability to secure a bond. No defendant  
19 eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution shall be  
20 detained solely because of financial inability to post a secured bond unless the court determines  
21 by clear and convincing evidence and makes findings of the reasons why the amount of secured  
22 bond required by the court is reasonably necessary to ensure the appearance of the particular  
23 defendant as required. The court shall file written findings of the individualized facts justifying

1 the secured bond as soon as possible, but no later than two (2) days after the conclusion of the  
2 hearing.

3 (3) ***Work or school release.*** A defendant who is ordered released on a condition  
4 that requires that the defendant return to custody after specified hours shall, on motion of the  
5 defendant or the court’s own motion, be entitled to a hearing to review the conditions imposed.  
6 Unless the requirement is removed and the defendant is released on another condition, the court  
7 shall file a written order setting forth the reason for the continuation of the requirement. A hearing  
8 to review conditions of release under this subparagraph shall be held by the metropolitan court  
9 within five (5) days of the filing of the motion. The defendant shall have the right to assistance of  
10 retained or appointed counsel at the hearing.

11 (4) ***Subsequent motion for review.*** The defendant may file subsequent motions  
12 for review of the order setting conditions of release, but the court may rule on subsequent motions  
13 with or without a hearing.

14 I. **Amendment of conditions.** The court may amend its order setting conditions of  
15 release at any time. If the amendment of the order may result in the detention of the defendant or  
16 in more restrictive conditions of release, the court shall not amend the order without a hearing. If  
17 the court is considering revocation of the defendant’s pretrial release or modification of the  
18 defendant’s conditions of release for violating a condition of release, the court shall follow the  
19 procedures set forth in Rule 7-403 NMRA.

20 J. **Petition to district court.**

21 (1) ***Case within metropolitan court trial jurisdiction.*** A defendant charged  
22 with an offense that is within metropolitan court trial jurisdiction may file a petition in the district  
23 court for review of the metropolitan court’s order setting conditions of release under this paragraph

1 only after the metropolitan court has reviewed the conditions of release and made a requisite ruling  
2 under Paragraph H of this rule. The defendant shall attach to the district court petition a copy of  
3 the metropolitan court order after the review of the conditions of release.

4 (2) ***Felony case.*** A defendant charged with a felony offense who has not been  
5 bound over to the district court may file a petition in the district court for release under Rule 5-  
6 401(K) NMRA and this paragraph at any time after the defendant's arrest.

7 (3) ***Petition; requirements.*** A petition to the district court under this paragraph  
8 shall include the specific facts that warrant review by the district court and may include a request  
9 for a hearing. The petitioner shall promptly

10 (a) file a copy of the district court petition in the metropolitan court,

11 (b) serve a copy on the district attorney, and

12 (c) provide a copy to the assigned district court judge.

13 (4) ***Metropolitan court's jurisdiction pending determination of the***  
14 ***petition.*** On the filing of a petition under this paragraph, the metropolitan court's jurisdiction to  
15 set or amend the conditions of release shall be suspended pending determination of the petition by  
16 the district court. The metropolitan court shall retain jurisdiction over all other aspects of the case,  
17 and the case shall proceed in the metropolitan court while the district court petition is pending. The  
18 metropolitan court's order setting conditions of release shall remain in effect unless and until the  
19 district court issues an order amending the conditions of release.

20 (5) ***District court review.*** The district court shall rule on the petition in an  
21 expedited manner. Within three (3) days after the petition is filed, the district court shall take one  
22 of the following actions:

1                   (a)     set a hearing no later than ten (10) days after the filing of the petition  
2 and promptly send a copy of the notice to the metropolitan court;

3                   (b)     deny the petition summarily; or

4                   (c)     amend the order setting conditions of release without a hearing.

5                   (6)     ***District court order; transmission to metropolitan court.*** The district court  
6 shall promptly send to the metropolitan court a copy of the district court order disposing of the  
7 petition, and jurisdiction over the conditions of release shall revert to the metropolitan court.

8           K.     **Expedited trial scheduling for defendant in custody.** The metropolitan court  
9 shall provide expedited priority scheduling in a case in which the defendant is detained as a result  
10 of inability to post a secured bond or meet the conditions of release. The court shall hold a status  
11 review hearing in any case in which the defendant has been held for more than sixty (60) days.  
12 The purpose of the status review hearing is to conduct a meaningful review of the progress of the  
13 case. If the court determines that insufficient progress has been made, then the court shall issue an  
14 appropriate scheduling order.

15           L.     **Return of cash deposit.** If a defendant has been released by executing a secured  
16 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions  
17 of the appearance bond have been performed and the defendant's case has been adjudicated by the  
18 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,  
19 or that person's personal representatives or assigns.

20           M.     **Release from custody by designee.** The chief judge of the metropolitan court may  
21 designate by written court order responsible persons to implement the pretrial release procedures  
22 set forth in Rule 7-408 NMRA. A designee shall release a defendant from custody before the  
23 defendant's first appearance before a judge if the defendant is eligible for pretrial release under

1 Rule 7-408 NMRA, but may contact a judge for special consideration based on exceptional  
2 circumstances. No person shall be qualified to serve as a designee if the person or the person's  
3 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to  
4 sell property or corporate bonds within this state.

5 N. **Bind over to district court.** For any case that is not within metropolitan court trial  
6 jurisdiction, on notice to the metropolitan court, any bond shall be transferred to the district court  
7 on the filing of an information or indictment in the district court.

8 O. **Evidence.** Information offered in connection with or stated in any proceeding held  
9 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

10 P. **Forms.** Instruments required by this rule, including any order setting conditions of  
11 release, appearance bond, property bond, or surety bond, shall be substantially in the form  
12 approved by the Supreme Court.

13 Q. **Judicial discretion; disqualification and excusal.** Action by any court on any  
14 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a  
15 judge. A judge may not be excused from setting initial conditions of release unless the judge is  
16 required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial  
17 Conduct.

18 [As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;  
19 as amended by Supreme Court Order No. 08-8300-059, effective February 2, 2009; as amended  
20 by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July  
21 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or  
22 filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-  
23 00021, effective for all cases pending or filed on or after December 31, 2023; as amended by

1 Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after  
2 May 8, 2024; as provisionally amended by Supreme Court Order No. S-1-AO-2025-00013,  
3 effective for all cases pending or filed on or after July 29, 2025.]

4 **Committee commentary.** — This rule provides “the mechanism through which a person  
5 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico  
6 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section  
7 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending  
8 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger  
9 to the safety of any other person or the community and that no release condition or combination  
10 of conditions will reasonably ensure the safety of any other person or the community, and (2) to  
11 require the pretrial release of a defendant who is in custody solely because of financial inability to  
12 post a secured bond. This rule was derived from the federal statute governing the release or  
13 detention of a defendant pending trial. *See* 18 U.S.C. § 3142. This rule was amended in 2017 to  
14 implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding  
15 in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure  
16 for the District Courts, *see* Rule 5-401 NMRA, the Rules of Criminal Procedure for the Magistrate  
17 Courts, *see* Rule 6-401 NMRA, and the Rules of Procedure for the Municipal Courts, *see* Rule 8-  
18 401 NMRA.

19 Time periods specified in this rule are computed in accordance with Rule 7-104 NMRA.

20 Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA  
21 that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2),  
22 (H)(2), and (H)(3) of this rule provide that assistance of counsel is required in a proceeding that

1 may result in denial of pretrial release based on reasons that do not involve dangerousness, such  
2 as a simple inability to meet a financial condition.

3 As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or  
4 unsecured bond unless the court determines that the release, in addition to any non-monetary  
5 conditions of release under Paragraph D, will not reasonably ensure the appearance of the  
6 defendant and the safety of any other person or the community.

7 Paragraph C lists the factors the court should consider when determining conditions of  
8 release. In all cases, the court is required to consider any available results of a pretrial risk  
9 assessment instrument approved by the Supreme Court for use in the jurisdiction and the financial  
10 resources of the defendant.

11 Paragraph D lists various non-monetary conditions of release. The court must impose the  
12 least restrictive condition, or combination of conditions, that will reasonably ensure the appearance  
13 of the defendant as required and the safety of any other person and the community. *See*  
14 *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard  
15 conditions before a court appearance, the judge should review the conditions at the defendant's  
16 first appearance to determine whether any particularized conditions should be imposed under the  
17 circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions  
18 of release to ensure the orderly administration of justice. This provision was derived from the  
19 American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-  
20 5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The  
21 court should make a determination about whether the defendant can afford to pay all or a part of  
22 the cost, or whether the court has the authority to waive the cost, because detaining a defendant

1 because of inability to pay the cost associated with a condition of release is comparable to detaining  
2 a defendant because of financial inability to post a secured bond.

3 As set forth in Paragraph E, the only purpose for which the court may impose a secured  
4 bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which  
5 the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746  
6 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the  
7 punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993)  
8 (authorizing the forfeiture of bond on the defendant’s failure to appear).

9 The 2017 amendments to this rule clarify that the amount of secured bond must not be  
10 based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to  
11 the nature of the charge. Instead, the court must consider the individual defendant’s financial  
12 resources and must set secured bond at the lowest amount that will reasonably ensure the  
13 defendant’s appearance in court after the defendant is released.

14 Secured bond cannot be used for the purpose of detaining a defendant who may pose a  
15 danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53  
16 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set  
17 high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*,  
18 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated  
19 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A  
20 felony defendant who poses a danger that cannot be mitigated through the imposition of non-  
21 monetary conditions of release under Paragraph D of this rule should be detained under Article II,  
22 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

1           The court should consider the authorized types of secured bonds in the order of priority set  
2           forth in Paragraph E. The court must first consider requiring an appearance bond secured by a cash  
3           deposit of ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of  
4           ten percent (10%) is inadequate, the court then must consider a property bond involving property  
5           that belongs to the defendant or other unpaid surety. If neither of these options is sufficient to  
6           reasonably ensure the defendant's appearance, the court may require a cash or surety bond for the  
7           defendant's release. If the court requires a cash or surety bond, the defendant has the option either  
8           to execute an appearance bond and deposit one hundred percent (100%) of the amount of the bond  
9           with the court or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the  
10          defendant alone has the choice to post the bond by a one hundred percent (100%) cash deposit or  
11          a surety. The court does not have the option to set a cash-only bond or a surety-only bond; it must  
12          give the defendant the choice of either. A paid surety may execute a surety bond or a real or  
13          personal property bond only if the conditions of Rule 7-401.2 NMRA are met.

14          Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-  
15          303 NMRA (order setting conditions of release). Although pretrial release hearings are not  
16          required to be a matter of record in the metropolitan court, Paragraph F requires the court to make  
17          written findings justifying the imposition of a secured bond. Judges are encouraged to enter their  
18          written findings on the order setting conditions of release at the conclusion of the hearing. If more  
19          detailed findings are necessary, the judge should make any supplemental findings in a separate  
20          document within two (2) days of the conclusion of the hearing.

21          Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section  
22          13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other  
23          person or the community that cannot be addressed through the imposition of non-monetary

1 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files  
2 a motion for pretrial detention, the metropolitan court must follow the procedures set forth in  
3 Rule 7-409 NMRA.

4 Paragraph H sets forth the procedure for review of the defendant’s conditions of release in  
5 the metropolitan court. Paragraph J sets forth the procedure for the defendant to petition the district  
6 court for release or for review of the conditions of release set by the metropolitan court. Article II,  
7 Section 13 of the New Mexico Constitution requires the court to rule on a motion or petition for  
8 pretrial release “in an expedited manner” and to release a defendant who is being held solely  
9 because of financial inability to post a secured bond. A defendant who wishes to present financial  
10 information to a court to support a motion or a petition for pretrial release may present Form 9-  
11 301A NMRA (pretrial release financial affidavit) to the court. The defendant shall be entitled to  
12 appear and participate personally with counsel before the judge conducting any hearing to review  
13 the conditions of release, rather than by any means of remote electronic conferencing.

14 Paragraph K requires the metropolitan court to prioritize the scheduling of trial and other  
15 proceedings for cases in which the defendant is held in custody because of inability to post bond  
16 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)  
17 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate  
18 due process, in part because of “the stringent time limitations of the Speedy Trial Act,” 18 U.S.C.  
19 § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11  
20 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limits  
21 within which detained defendants should be tried consistent with the sound administration of  
22 justice.”). This rule does not preclude earlier or more regular status review hearings. The purpose  
23 of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the

1 progress of the case includes assessment of the parties’ compliance with applicable deadlines,  
2 satisfaction of discovery obligations, and witness availability, among other matters. If the court  
3 determines that the parties have made insufficient progress on these measures, then it shall issue  
4 an appropriate scheduling order.

5 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out  
6 the provisions of this rule. As set forth in Paragraph M, a designee must be designated by the chief  
7 metropolitan court judge in a written court order. A person may not be appointed as a designee if  
8 that person is related within the second degree of blood or marriage to a paid surety licensed in  
9 this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph M and Rule 7-  
10 408 NMRA govern the limited circumstances under which a designee shall release an arrested  
11 defendant from custody before that defendant’s first appearance before a judge.

12 Paragraph N requires the metropolitan court to transfer any bond to the district court on  
13 notice from the district attorney that an information or indictment has been filed. *See* Rule 7-  
14 202(E)-(F) NMRA (requiring the district attorney to notify the metropolitan court of the filing of  
15 an information or indictment in the district court).

16 Paragraph O of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that  
17 the Rules of Evidence do not apply to proceedings in the metropolitan court with respect to matters  
18 of pretrial release. As with courts in other types of proceedings in which the Rules of Evidence do  
19 not apply, a court presiding over a pretrial release hearing is responsible “for assessing the  
20 reliability and accuracy” of the information presented. *See United States v. Martir*, 782 F.2d 1141,  
21 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the  
22 responsibility for assessing the reliability and accuracy of the government’s information, whether  
23 presented by proffer or by direct proof”); *see also United States v. Marshall*, 519 F. Supp. 751,

1 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
2 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
3 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
4 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
5 probation revocation hearing, the court should focus on the reliability of the evidence).

6 Consistent with Rule 7-106 NMRA, a party cannot exercise the statutory right to excuse a  
7 judge who is setting initial conditions of release. *See* NMSA 1978, § 35-3-7 (1983). Paragraph Q  
8 of this rule does not prevent a judge from filing a recusal either on the court’s own motion or  
9 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

10 [Adopted by Supreme Court Order No. 08-8300-059, effective February 2, 2009; as amended by  
11 Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1,  
12 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or  
13 filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-  
14 00068, effective for all cases pending or filed on or after May 8, 2024.]

1 **7-403. Revocation or modification of release orders.**

2 A. **Scope.** In accordance with this rule, the court may consider revocation of the  
3 defendant's pretrial release or modification of the defendant's conditions of release

4 (1) if the defendant is alleged to have violated a condition of release; or

5 (2) to prevent interference with witnesses or the proper administration of  
6 justice.

7 B. **Revocation or modification of conditions of release.**

8 (1) The court shall consider revocation of the defendant's pretrial release or  
9 modification of the defendant's conditions of release on motion of the prosecutor, on notice of a  
10 non-technical violation of a condition of release by a court pretrial services agency, or on the  
11 court's own motion.

12 (2) The defendant may file a response to the motion, but the filing of a response  
13 shall not delay any hearing under Paragraph D [~~or E~~] of this rule.

14 C. **Issuance of summons or bench warrant; temporary detention of certain**  
15 **defendants.**

16 (1) On motion or notice of a non-technical violation of a condition of release by  
17 a court pretrial services agency, the court shall enter an order with specific findings about why  
18 amended or revoked conditions of release are unnecessary, or the court shall issue a summons and  
19 notice of hearing, unless the court finds that the interests of justice may be better served by the  
20 issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons  
21 for the review of the pretrial release decision.

22 (2) A defendant previously released by any court in this state pending any  
23 felony charge or pending a charge for an enumerated misdemeanor, who is arrested and charged

1 with a new felony or new enumerated misdemeanor defined in Rule 5-403.1 NMRA alleged to  
2 have occurred during the period of initial release, shall be held without conditions of release  
3 pending ~~[an initial]~~ a hearing pursuant to Paragraph D of this rule. The ~~[initial]~~ hearing required  
4 by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's  
5 initial conditions of release.

6 (3) A defendant previously released by any court in this state pending any  
7 felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-  
8 403.1 NMRA, who is charged but not arrested for a new felony or new enumerated misdemeanor  
9 alleged to have occurred during the period of initial release, shall be summonsed by the court with  
10 current jurisdiction over the defendant's initial conditions of release to ~~[an initial]~~ a hearing  
11 required by Paragraph D of this rule, unless the court finds that the interests of justice may be  
12 better served by the issuance of a bench warrant. The ~~[initial]~~ hearing required by Paragraph D  
13 shall be conducted by the court with current jurisdiction over the defendant's initial conditions of  
14 release.

15 ~~[D. Initial hearing.~~

16 (1) ~~The court shall hold an initial hearing as soon as practicable. If the defendant~~  
17 ~~is in custody, the hearing shall be held no later than three (3) days after the defendant is detained~~  
18 ~~if the defendant is being held in the local detention center, or no later than five (5) days after the~~  
19 ~~defendant is detained if the defendant is not being held in the local detention center. If the~~  
20 ~~defendant is not in custody, the hearing shall be held no later than ten (10) days after the motion~~  
21 ~~or notice of alleged violation is filed.~~

22 (2) ~~At the initial hearing, the court may continue the existing conditions of~~  
23 ~~release, set different conditions of release, or if the court is considering revocation of release, the~~

1 ~~court shall schedule an evidentiary hearing under Paragraph E of this rule, unless waived by the~~  
2 ~~defendant.~~

3 ~~(3) — If at the conclusion of the initial hearing, the court continues or amends the~~  
4 ~~defendant’s conditions of release, then a written order continuing or amending the defendant’s~~  
5 ~~conditions of release shall be provided to the defendant at the time of release from custody if the~~  
6 ~~defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.~~  
7 ~~If the defendant waives the evidentiary hearing under Paragraph E and the court finds that the~~  
8 ~~conditions of release should be revoked, an order revoking conditions of release, including written~~  
9 ~~findings of the individualized facts justifying revocation, shall be filed within three (3) days of the~~  
10 ~~initial hearing.]~~

11 ~~[E.]~~ D. [Evidentiary hearing] **Hearing on alleged violation.**

12 (1) *Time.* ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If  
13 the defendant is in custody, the [evidentiary] hearing shall be held no later than [seven (7)] five (5)  
14 days after the [initial hearing] defendant is detained. If the defendant is not in custody, the  
15 [evidentiary] hearing shall be held no later than ten (10) days after the [initial hearing] motion or  
16 notice of alleged violation is filed.

17 (2) At the hearing, the court may continue the existing conditions of release, set  
18 different conditions of release, or if the court is considering revocation of release, the court shall  
19 conduct an evidentiary hearing, unless waived by the defendant.

20 ~~[(2)]~~ (3) *Defendant’s rights.* The defendant has the right to be present and to be  
21 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.  
22 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the  
23 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance

1 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by  
2 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not  
3 be used against the defendant at trial except for impeachment purposes or in a subsequent  
4 prosecution for perjury.

5 **[F.] E. Order at completion of ~~evidentiary~~ hearing.**

6 (1) If at the conclusion of the hearing, the court continues or amends the  
7 defendant's conditions of release, then a written order continuing or amending the defendant's  
8 conditions of release shall be provided to the defendant at the time of the release from custody if  
9 the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

10 (2) If the defendant waives an evidentiary hearing and the court finds that the  
11 conditions of release should be revoked, an order revoking conditions of release, including written  
12 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the  
13 hearing.

14 (3) If an evidentiary hearing is conducted, at [A~~t~~] the completion of [~~an~~] the  
15 evidentiary hearing, the court shall determine whether the defendant has violated a condition of  
16 release or whether revocation of the defendant's release is necessary to prevent interference with  
17 witnesses or the proper administration of justice, and may:

18 [~~1~~](a) continue the existing conditions of release;

19 [~~2~~](b) set new or additional conditions of release in accordance with  
20 Rule 7-401 NMRA; or

21 [~~3~~](c) revoke the defendant's release, if the court

1                    ~~[(a)]~~ (i) finds either probable cause to believe that the defendant  
2 committed a federal, state, or local crime while on release, or clear and convincing evidence that  
3 the defendant has willfully violated any other condition of release; and

4                    ~~[(i)]~~ ~~probable cause to believe that the defendant committed a~~  
5 ~~federal, state, or local crime while on release; or~~

6                    ~~(ii) clear and convincing evidence that the defendant has~~  
7 ~~willfully violated any other condition of release; and]~~

8                    ~~[(b)]~~ (ii) finds clear and convincing evidence that either no condition  
9 or combination of conditions will reasonably ensure the defendant's compliance with the release  
10 conditions ordered by the court, or revocation of the defendant's release is necessary to prevent  
11 interference with witnesses or the proper administration of justice.

12                    ~~[(i)]~~ ~~no condition or combination of conditions will reasonably~~  
13 ~~ensure the defendant's compliance with the release conditions ordered by the court; or~~

14                    ~~(ii) revocation of the defendant's release is necessary to prevent~~  
15 ~~interference with witnesses or the proper administration of justice.]~~

16 \_\_\_\_\_ (4) ~~[An]~~ If the court revokes conditions of release after an evidentiary hearing,  
17 an order revoking release shall include written findings of the individualized facts justifying  
18 revocation and shall be filed within three (3) days of the evidentiary hearing.

19 \_\_\_\_\_ (5) If the court continues or amends the defendant's conditions of release after  
20 an evidentiary hearing, then a written order continuing or amending the defendant's conditions of  
21 release shall be provided to the defendant at the time of release from custody if the defendant is in  
22 custody, or within three (3) days of the hearing if the defendant is not in custody.

1           ~~[G.]~~ **F. Evidence.** The New Mexico Rules of Evidence shall not apply to the presentation  
2 and consideration of information at ~~[any]~~ a hearing under this rule.

3           ~~[H.]~~ **G. Review of conditions.** If the metropolitan court enters an order setting new or  
4 additional conditions of release and the defendant is detained or continues to be detained because  
5 of a failure to meet a condition imposed, or is subject to a requirement to return to custody after  
6 specified hours, the defendant may petition the district court for review in accordance with Rule 7-  
7 401(J) NMRA. The defendant may petition the district court immediately on the issuance of the  
8 metropolitan court order and shall not be required to first seek review or reconsideration by the  
9 metropolitan court. If, on disposition of the petition by the district court, the defendant is detained  
10 or continues to be detained because of a failure to meet a condition imposed, or is subject to a  
11 requirement to return to custody after specified hours, the defendant may appeal in accordance  
12 with Rule 5-405 NMRA and Rule 12-204 NMRA.

13           ~~[I.]~~ **H. Expedited trial scheduling for defendant in custody.** The metropolitan court  
14 shall provide expedited priority scheduling in a case in which the defendant is detained pending  
15 trial. The court shall hold a status review hearing in any case in which the defendant has been held  
16 for more than sixty (60) days. The purpose of the status review hearing is to conduct a meaningful  
17 review of the progress of the case. If the court determines that insufficient progress has been made,  
18 then the court shall issue an appropriate scheduling order.

19           ~~[J.]~~ **I. Petition to district court for review of revocation order.** If the metropolitan court  
20 issues an order revoking the defendant's release, the defendant may petition the district court for  
21 review under this paragraph and Rule 5-403(K) NMRA.

1                   (1)    ***Petition; requirements.*** The petition shall include the specific facts that  
2 warrant review by the district court and may include a request for a hearing. The petitioner shall  
3 promptly

- 4                           (a)    file a copy of the district court petition in the metropolitan court;
- 5                           (b)    serve a copy on the district attorney; and
- 6                           (c)    provide a copy to the assigned district court judge.

7                   (2)    ***Metropolitan court’s jurisdiction pending determination of the***  
8 ***petition.*** On the filing of the petition, the metropolitan court’s jurisdiction to set or amend  
9 conditions of release shall be suspended pending determination of the petition by the district court.  
10 The metropolitan court shall retain jurisdiction over all other aspects of the case, and the case shall  
11 proceed in the metropolitan court while the petition is pending.

12                   (3)    ***District court review.*** The district court shall rule on the petition in an  
13 expedited manner.

14                           (a)    Within three (3) days after the petition is filed, the district court shall  
15 take one of the following actions:

- 16                                   (i)    issue an order affirming the revocation order; or
- 17                                   (ii)   set a hearing to be held within ten (10) days after the filing  
18 of the petition and promptly send a copy of the notice to the metropolitan court.

19                           (b)    If the district court holds a hearing on the petition, at the conclusion  
20 of the hearing the court shall issue either an order affirming the revocation order or an order setting  
21 conditions of release under Rule 5-401 NMRA.

1           (4)     ***District court order; transmission to metropolitan court.*** The district court  
2 shall promptly send the order to the metropolitan court, and jurisdiction over the conditions of  
3 release shall revert to the metropolitan court.

4           (5)     ***Appeal.*** If the district court affirms the revocation order, the defendant may  
5 appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

6 [As amended, effective September 1, 1990; as amended by Supreme Court Order No. 17-8300-  
7 005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court  
8 Order No. 18-8300-024, effective for all cases pending or filed on or after February 1, 2019; as  
9 amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or  
10 after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068,  
11 effective for all cases pending or filed on or after May 8, 2024; as provisionally amended by  
12 Supreme Court Order No. S-1-AO-2025-00013, effective for all cases pending or filed on or after  
13 July 29, 2025.]

14           **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for  
15 the court to follow when considering revocation of the defendant’s pretrial release or modification  
16 of the defendant’s conditions of release for violating the conditions of release. In *State v.*  
17 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*  
18 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires  
19 courts to afford the defendant notice and an opportunity to be heard before the court may revoke  
20 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-  
21 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*  
22 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final  
23 disposition of the criminal case in order to prevent interference with witnesses or the proper

1 administration of justice, the right to do so before trial seems to be equally apparent under a proper  
2 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions  
3 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable  
4 by immediate arrest, revocation, or modification if violated. Such conditions of release are  
5 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-  
6 NMSC-001, 134 N.M. 768, 82 P.3d 939.

7 ~~[As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~  
8 ~~metropolitan court in the normal course of business and not necessarily within the territorial~~  
9 ~~jurisdiction of the court.” Rule 7-401(A)(3) NMRA.]~~

10 Paragraph [G] F provides that the New Mexico Rules of Evidence do not apply at a  
11 revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types  
12 of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial  
13 detention hearing is responsible “for assessing the reliability and accuracy” of the information  
14 presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a  
15 pretrial detention hearing the judge “retains the responsibility for assessing the reliability and  
16 accuracy of the government’s information, whether presented by proffer or by direct proof”); *State*  
17 *v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion  
18 of the detention hearing court to determine whether a pretrial detention order may be supported in  
19 an individual case by documentary evidence, proffer, one or more live witnesses, or other forms  
20 of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751,  
21 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
22 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
23 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*

1 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
2 probation revocation hearing, the court should focus on the reliability of the evidence); *State v.*  
3 *Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation  
4 hearing that hearsay untested for accuracy or reliability lacked probative value).

5 Paragraph [F] H requires the metropolitan court to prioritize the scheduling of trial and  
6 other proceedings for cases in which the defendant is held in custody. *See generally United States*  
7 *v. Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform  
8 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations  
9 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*  
10 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute  
11 or court rule, accelerated time limitations within which detained defendants should be tried  
12 consistent with the sound administration of justice.”). This rule does not preclude earlier or more  
13 regular status review hearings. The purpose of the hearing is to determine how best to expedite a  
14 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’  
15 compliance with applicable deadlines, satisfaction of discovery obligations, and witness  
16 availability, among other matters. If the court determines that the parties have made insufficient  
17 progress on these measures, then it shall issue an appropriate scheduling order.

18 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
19 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases  
20 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-  
21 RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as  
22 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
23 pending or filed on or after July 29, 2025.]

1 **8-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** The court shall conduct a hearing under this rule and issue an order  
4 setting conditions of release as soon as practicable, but in no event later than

5 (a) if the defendant remains in custody, three (3) days after the date of  
6 arrest if the defendant is being held in the local detention center, or five (5) days after the date of  
7 arrest if the defendant is not being held in the local detention center;

8 (b) arraignment, if the defendant is not in custody; or

9 (c) if the defendant remains in custody pending a hearing under Rule 8-  
10 403(D) NMRA, then within three (3) days after a temporary detention order is placed or the date  
11 of the [~~initial~~] hearing conducted under Rule 8-403 NMRA if the defendant is being held in the  
12 local detention center, or five (5) days after the date of the [~~initial~~] hearing conducted under Rule 8-  
13 403 NMRA if the defendant is not being held in the local detention center.

14 (2) **Right to counsel.** If the defendant does not have counsel at the initial release  
15 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no  
16 longer than three (3) additional days for a further hearing to review conditions of release, at which  
17 the defendant shall have the right to assistance of retained or appointed counsel.

18 (3) **Local detention center; defined.** A “local detention center” is one that is  
19 commonly used by the municipal court in the normal course of business and not necessarily within  
20 the territorial jurisdiction of the court.

21 B. **Right to pretrial release; recognizance or unsecured appearance bond.** Any  
22 defendant shall be ordered released pending trial on the defendant’s personal recognizance or on  
23 the execution of an unsecured appearance bond in an amount set by the court. The court may

1 impose non-monetary conditions of release under Paragraph D of this rule, but the court shall  
2 impose the least restrictive condition or combination of conditions that will reasonably ensure the  
3 appearance of the defendant as required and the safety of any other person or the community. The  
4 court may order execution of a secured appearance bond only if the court makes written findings  
5 of particularized reasons why the release will not reasonably ensure the appearance of the  
6 defendant as required under Paragraphs E and F of this rule.

7       **C. Factors to be considered in determining conditions of release.** In determining  
8 the least restrictive conditions of release that will reasonably ensure the appearance of the  
9 defendant as required and the safety of any other person and the community, the court shall  
10 consider any available results of a pretrial risk assessment instrument approved by the Supreme  
11 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court  
12 may take into account the available information about

13           (1) the nature and circumstances of the offense charged, including whether the  
14 offense is a crime of violence or involves alcohol or drugs;

15           (2) the weight of the evidence against the defendant;

16           (3) the history and characteristics of the defendant, including

17               (a) the defendant's character, physical and mental condition, family  
18 ties, employment, past and present residences, length of residence in the community, community  
19 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about  
20 appearance at court proceedings; and

21               (b) whether, at the time of the current offense or arrest, the defendant  
22 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense  
23 under federal, state, or local law;

1                   (4)     the nature and seriousness of the danger to any person or the community  
2 that would be posed by the defendant's release;

3                   (5)     any other facts tending to indicate the defendant may or may not be likely  
4 to appear as required; and

5                   (6)     any other facts tending to indicate the defendant may or may not commit  
6 new crimes if released.

7           D.     **Non-monetary conditions of release.** In its order setting conditions of release, the  
8 court shall impose a standard condition that the defendant not commit a federal, state, or local  
9 crime during the period of release. The court may also impose the least restrictive particularized  
10 condition, or combination of particularized conditions, that the court finds will reasonably ensure  
11 the appearance of the defendant as required, the safety of any other person and the community,  
12 and the orderly administration of justice, which may include the condition that the defendant

13                   (1)     remain in the custody of a designated person who agrees to assume  
14 supervision and to report any violation of a release condition to the court, if the designated person  
15 is able reasonably to assure the court that the defendant will appear as required and will not pose  
16 a danger to the safety of any other person or the community;

17                   (2)     maintain employment, or, if unemployed, actively seek employment;

18                   (3)     maintain or commence an educational program;

19                   (4)     abide by specified restrictions on personal associations, place of abode, or  
20 travel;

21                   (5)     avoid all contact with an alleged victim of the crime or with a potential  
22 witness who may testify about the offense;

1           (6)    report on a regular basis to a designated pretrial services agency or other  
2 agency agreeing to supervise the defendant;

3           (7)    comply with a specified curfew;

4           (8)    refrain from possessing a firearm, destructive device, or other dangerous  
5 weapon;

6           (9)    refrain from any use of alcohol or any use of an illegal drug or other  
7 controlled substance without a prescription by a licensed medical practitioner;

8           (10)   refrain from any use of cannabis, cannabis products, or synthetic  
9 cannabinoids without a certification from a licensed medical practitioner;

10          (11)   submit to a drug test or an alcohol test on request of a person designated by  
11 the court;

12          (12)   return to custody for specified hours after release for employment,  
13 schooling, or other limited purposes; and

14          (13)   satisfy any other condition that is reasonably necessary to ensure the  
15 appearance of the defendant as required and the safety of any other person and the community.

16          E.    **Secured bond.** If the court makes written findings of the particularized reasons  
17 why release on personal recognizance or unsecured appearance bond, in addition to any non-  
18 monetary conditions of release, will not reasonably ensure the appearance of the defendant as  
19 required, the court may require a secured bond for the defendant's release.

20               (1)    ***Factors to be considered in setting secured bond.***

21                   (a)    In determining whether any secured bond is necessary, the court  
22 may consider any facts tending to indicate that the particular defendant may or may not be likely  
23 to appear as required.

1 (b) The court shall set secured bond at the lowest amount necessary to  
2 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability  
3 to secure a bond.

4 (c) The court shall not set a secured bond that a defendant cannot afford  
5 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

6 (d) Secured bond shall not be set by reference to a predetermined schedule of monetary  
7 amounts fixed according to the nature of the charge.

8 (2) ***Types of secured bond.*** If a secured bond is determined necessary in a  
9 particular case, the court shall impose the first of the following types of secured bond that will  
10 reasonably ensure the appearance of the defendant.

11 (a) ***Percentage bond.*** The court may require a secured appearance bond  
12 executed by the defendant in the full amount specified in the order setting conditions of release,  
13 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be  
14 returned as provided in Paragraph K of this rule.

15 (b) ***Property bond.*** The court may require the execution of a property  
16 bond by the defendant or by unpaid sureties in the full amount specified in the order setting  
17 conditions of release, secured by the pledging of real property in accordance with Rule 8-  
18 401.1 NMRA.

19 (c) ***Cash or surety bond.*** The court may give the defendant the option  
20 of either

21 (i) a secured appearance bond executed by the defendant in the  
22 full amount specified in the order setting conditions of release, secured by a deposit in cash of one

1 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph  
2 K of this rule, or  
3 (ii) a surety bond executed by licensed sureties in accordance  
4 with Rule 8-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order  
5 setting conditions of release.

6 **F. Order setting conditions of release; contents.**

7 (1) *Contents of order setting conditions of release.* The written order setting  
8 conditions of release shall be provided to the defendant before release if the defendant is in custody  
9 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

10 (a) include a written statement that sets forth all the conditions to which  
11 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the  
12 defendant's conduct;

13 (b) advise the defendant of  
14 (i) the penalties for violating a condition of release, including  
15 the penalties for committing an offense while on pretrial release;

16 (ii) the consequences for violating a condition of release,  
17 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial  
18 release, and forfeiture of bond; and

19 (iii) the consequences of intimidating a witness, victim, or  
20 informant, or otherwise obstructing justice.

21 (2) *Written findings about secured bond.* The court shall file written findings  
22 of the individualized facts justifying a secured bond as soon as possible, but no later than two (2)  
23 days after the conclusion of the hearing.

1           G.       **Review of conditions of release by the municipal court.**

2                   (1)       *Review.* If the municipal court requires a secured bond for the defendant's  
3 release under Paragraph E of this rule or imposes non-monetary conditions of release under  
4 Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after the  
5 issuance of the order setting conditions of release as a result of the defendant's inability to post the  
6 secured bond or meet the conditions of release in the present case, the defendant shall be entitled  
7 to a hearing to review the conditions of release.

8                   (2)       *Review hearing.* The municipal court shall hold a hearing in an expedited  
9 manner, but in no event later than five (5) days after the conditions of release hearing. The  
10 defendant shall have the right to assistance of retained or appointed counsel at the hearing. Unless  
11 the order setting conditions of release is amended and the defendant is then released, the court shall  
12 file a written order setting forth the reasons for declining to amend the order setting conditions of  
13 release. The court shall consider the defendant's financial ability to secure a bond. No defendant  
14 eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution shall be  
15 detained solely because of financial inability to post a secured bond unless the court determines  
16 by clear and convincing evidence and makes findings of the reasons why the amount of secured  
17 bond required by the court is reasonably necessary to ensure the appearance of the particular  
18 defendant as required. The court shall file written findings of the individualized facts justifying  
19 the secured bond as soon as possible, but no later than two (2) days after the conclusion of the  
20 hearing.

21                   (3)       *Work or school release.* A defendant who is ordered released on a condition  
22 that requires that the defendant return to custody after specified hours, shall, on motion of the  
23 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.

1 Unless the requirement is removed and the defendant is released on another condition, the court  
2 shall file a written order setting forth the reason for the continuation of the requirement. A hearing  
3 to review conditions of release under this subparagraph shall be held by the municipal court within  
4 five (5) days of the filing of the motion. The defendant shall have the right to assistance of retained  
5 or appointed counsel at the hearing.

6 (4) ***Subsequent motion for review.*** The defendant may file subsequent motions  
7 for review of the order setting conditions of release, but the court may rule on subsequent motions  
8 with or without a hearing.

9 H. **Amendment of conditions.** The court may amend its order setting conditions of  
10 release at any time. If the amendment of the order may result in the detention of the defendant or  
11 in more restrictive conditions of release, the court shall not amend the order without a hearing. If  
12 the court is considering revocation of the defendant's pretrial release or modification of the  
13 defendant's conditions of release for violating a condition of release, the court shall follow the  
14 procedures set forth in Rule 8-403 NMRA.

15 I. **Petition to district court.**

16 (1) ***Defendant must seek review by municipal court before filing petition in***  
17 ***district court.*** The defendant may file a petition in the district court for review of the municipal  
18 court's order setting conditions of release only after the municipal court has reviewed the  
19 conditions of release and made a requisite ruling under Paragraph G of this rule. The defendant  
20 shall attach to the district court petition a copy of the municipal court order after the review of the  
21 conditions of release.

1                   (2)     ***Petition; requirements.*** A petition to the district court under this paragraph  
2 shall include the specific facts that warrant review by the district court and may include a request  
3 for a hearing. The petitioner shall promptly

4                             (a)     file a copy of the district court petition in the municipal court;

5                             (b)     serve a copy on the prosecutor; and

6                             (c)     provide a copy to the assigned district court judge.

7                   (3)     ***Municipal court’s jurisdiction pending determination of the petition.*** On  
8 the filing of a petition under this paragraph, the municipal court’s jurisdiction to amend the  
9 conditions of release shall be suspended pending determination of the petition by the district court.  
10 The municipal court shall retain jurisdiction over all other aspects of the case, and the case shall  
11 proceed in the municipal court while the district court petition is pending. The municipal court’s  
12 order setting conditions of release shall remain in effect unless and until the district court issues  
13 an order amending the conditions of release.

14                   (4)     ***District court review.*** The district court shall rule on the petition in an  
15 expedited manner. Within three (3) days after the petition is filed, the district court shall take one  
16 of the following actions:

17                             (a)     set a hearing no later than ten (10) days after the filing of the petition  
18 and promptly send a copy of the notice to the municipal court;

19                             (b)     deny the petition summarily; or

20                             (c)     amend the order setting conditions of release without a hearing.

21                   (5)     ***District court order; transmission to municipal court.*** The district court  
22 shall promptly send to the municipal court a copy of the district court order disposing of the  
23 petition, and jurisdiction over the conditions of release shall revert to the municipal court.

1           J.       **Expedited trial scheduling for defendant in custody.** The municipal court shall  
2 provide expedited priority scheduling in a case in which the defendant is detained as a result of  
3 inability to post a secured bond or meet the conditions of release. The court shall hold a status  
4 review hearing in any case in which the defendant has been held for more than forty-five (45) days.  
5 The purpose of the status review hearing is to conduct a meaningful review of the progress of the  
6 case. If the court determines that insufficient progress has been made, then the court shall issue an  
7 appropriate scheduling order.

8           K.       **Return of cash deposit.** If a defendant has been released by executing a secured  
9 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions  
10 of the appearance bond have been performed and the defendant’s case has been adjudicated by the  
11 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,  
12 or that person’s personal representatives or assigns.

13           L.       **Release from custody by designee.** The presiding judge of the municipal court  
14 may designate by written court order responsible persons to implement the pretrial release  
15 procedures set forth in Rule 8-408 NMRA. A designee shall release a defendant from custody  
16 before the defendant’s first appearance before a judge if the defendant is eligible for pretrial release  
17 under Rule 8-408 NMRA, but may contact a judge for special consideration based on exceptional  
18 circumstances. No person shall be qualified to serve as a designee if the person or the person’s  
19 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to  
20 sell property or corporate bonds within this state.

21           M.       **Evidence.** Information offered in connection with or stated in any proceeding held  
22 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

1 N. **Forms.** Instruments required by this rule, including any order setting conditions of  
2 release, appearance bond, property bond, or surety bond, shall be substantially in the form  
3 approved by the Supreme Court.

4 O. **Judicial discretion; disqualification.** Action by any court on any matter relating  
5 to pretrial release shall not preclude the subsequent disqualification of a judge under the provisions  
6 of the New Mexico Constitution or the Code of Judicial Conduct.

7 [As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;  
8 as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008; by Supreme  
9 Court Order No. 08-8300-047, effective December 31, 2008; as amended by Supreme Court Order  
10 No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by  
11 Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after  
12 December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective  
13 for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order  
14 No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as  
15 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
16 pending or filed on or after July 29, 2025.]

17 **Committee commentary.** — This rule provides “the mechanism through which a person  
18 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico  
19 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section  
20 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending  
21 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger  
22 to the safety of any other person or the community and that no release condition or combination  
23 of conditions will reasonably ensure the safety of any other person or the community, and (2) to

1 require the pretrial release of a defendant who is in custody solely because of financial inability to  
2 post a secured bond. This rule was derived from the federal statute governing the release or  
3 detention of a defendant pending trial. *See* 18 U.S.C. § 3142. This rule was amended in 2017 to  
4 implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding  
5 in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure  
6 for the District Courts, *see* Rule 5-401 NMRA, the Rules of Criminal Procedure for the Magistrate  
7 Courts, *see* Rule 6-401 NMRA, and the Rules of Criminal Procedure for the Metropolitan  
8 Courts, *see* Rule 7-401 NMRA.

9 Time periods specified in this rule are computed in accordance with Rule 8-104 NMRA.

10 Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA  
11 that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2),  
12 (G)(2), and (G)(3) of this rule provide that assistance of counsel is required in a proceeding that  
13 may result in denial of pretrial release based on reasons that do not involve dangerousness, such  
14 as a simple inability to meet a financial condition.

15 As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or  
16 unsecured bond unless the court determines that any release, in addition to any non-monetary  
17 conditions of release under Paragraph D, will not reasonably ensure the appearance of the  
18 defendant and the safety of any other person or the community.

19 Paragraph C lists the factors the court should consider when determining conditions of  
20 release. In all cases, the court is required to consider any available results of a pretrial risk  
21 assessment instrument approved by the Supreme Court for use in the jurisdiction and the financial  
22 resources of the defendant.

1 Paragraph D lists various non-monetary conditions of release. The court must impose the  
2 least restrictive condition, or combination of conditions, that will reasonably ensure the appearance  
3 of the defendant as required and the safety of any other person and the community. *See*  
4 *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard  
5 conditions before a court appearance, the judge should review the conditions at the defendant’s  
6 first appearance to determine whether any particularized conditions should be imposed under the  
7 circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions  
8 of release to ensure the orderly administration of justice. This provision was derived from the  
9 American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-  
10 5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The  
11 court should make a determination about whether the defendant can afford to pay all or a part of  
12 the cost, or whether the court has the authority to waive the cost, because detaining a defendant  
13 because of inability to pay the cost associated with a condition of release is comparable to detaining  
14 a defendant because of financial inability to post a secured bond.

15 As set forth in Paragraph E, the only purpose for which the court may impose a secured  
16 bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which  
17 the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746  
18 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the  
19 punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993)  
20 (authorizing the forfeiture of bond on the defendant’s failure to appear).

21 The 2017 amendments to this rule clarify that the amount of secured bond must not be  
22 based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to  
23 the nature of the charge. Instead, the court must consider the individual defendant’s financial

1 resources and must set secured bond at the lowest amount that will reasonably ensure the  
2 defendant’s appearance in court after the defendant is released.

3 Secured bond cannot be used for the purpose of detaining a defendant who may pose a  
4 danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53  
5 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set  
6 high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*,  
7 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated  
8 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”).

9 The court should consider the authorized types of secured bonds in the order of priority set  
10 forth in Paragraph E. The court must first consider requiring an appearance bond secured by a cash  
11 deposit of ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of  
12 ten percent (10%) is inadequate, the court then must consider a property bond involving property  
13 that belongs to the defendant or other unpaid surety. If neither of these options is sufficient to  
14 reasonably ensure the defendant’s appearance, the court may require a cash or surety bond for the  
15 defendant’s release. If the court requires a cash or surety bond, the defendant has the option either  
16 to execute an appearance bond and deposit one hundred percent (100%) of the amount of the bond  
17 with the court or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the  
18 defendant alone has the choice to post the bond by a one hundred percent (100%) cash deposit or  
19 a surety. The court does not have the option to set a cash-only bond or a surety-only bond; it must  
20 give the defendant the choice of either. A paid surety may execute a surety bond or a real or  
21 personal property bond only if the conditions of Rule 8-401.2 NMRA are met.

22 Paragraph F governs the contents of an order setting conditions of release. *See Form 9-*  
23 *303 NMRA* (order setting conditions of release). Although pretrial release hearings are not

1 required to be a matter of record in the municipal court, Paragraph F requires the court to make  
2 written findings justifying the imposition of a secured bond. Judges are encouraged to enter their  
3 written findings on the order setting conditions of release at the conclusion of the hearing. If more  
4 detailed findings are necessary, the judge should make any supplemental findings in a separate  
5 document within two (2) days of the conclusion of the hearing.

6 Paragraph G sets forth the procedure for review of the defendant’s conditions of release in  
7 the municipal court. Paragraph I sets forth the procedure for the defendant to petition the district  
8 court for review of the conditions of release set by the municipal court. Article II, Section 13 of  
9 the New Mexico Constitution requires the court to rule on a motion or petition for pretrial release  
10 “in an expedited manner” and to release a defendant who is being held solely because of financial  
11 inability to post a secured bond. A defendant who wishes to present financial information to a court  
12 to support a motion or a petition for pretrial release may present Form 9-301A NMRA (pretrial  
13 release financial affidavit) to the court. The defendant shall be entitled to appear and participate  
14 personally with counsel before the judge conducting any hearing to review the conditions of  
15 release, rather than by any means of remote electronic conferencing.

16 Paragraph J requires the municipal court to prioritize the scheduling of trial and other  
17 proceedings for cases in which the defendant is held in custody because of inability to post bond  
18 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)  
19 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate  
20 due process, in part because of “the stringent time limitations of the Speedy Trial Act,” 18 U.S.C.  
21 § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11  
22 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time  
23 limitations within which detained defendants should be tried consistent with the sound

1 administration of justice.”). This rule does not preclude earlier or more regular status review  
2 hearings. The purpose of the hearing is to determine how best to expedite a trial in the case. A  
3 meaningful review of the progress of the case includes assessment of the parties’ compliance with  
4 applicable deadlines, satisfaction of discovery obligations, and witness availability, among other  
5 matters. If the court determines that the parties have made insufficient progress on these measures,  
6 then it shall issue an appropriate scheduling order.

7 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out  
8 the provisions of this rule. As set forth in Paragraph L, a designee must be designated by the  
9 presiding municipal court judge in a written court order. A person may not be appointed as a  
10 designee if that person is related within the second degree of blood or marriage to a paid surety  
11 licensed in this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph L  
12 and Rule 8-408 NMRA govern the limited circumstances under which a designee shall release an  
13 arrested defendant from custody before that defendant’s first appearance before a judge.

14 Paragraph M of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that  
15 the Rules of Evidence do not apply to proceedings in the municipal court with respect to matters  
16 of pretrial release. As with courts in other types of proceedings in which the Rules of Evidence do  
17 not apply, a court presiding over a pretrial release hearing is responsible “for assessing the  
18 reliability and accuracy” of the information presented. *See United States v. Martir*, 782 F.2d 1141,  
19 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the  
20 responsibility for assessing the reliability and accuracy of the government’s information, whether  
21 presented by proffer or by direct proof”); *see also United States v. Marshall*, 519 F. Supp. 751,  
22 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
23 sufficient indicia of reliability to support its probable accuracy, the information may properly be

1 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
2 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
3 probation revocation hearing, the court should focus on the reliability of the evidence).

4 As set forth in Rule 8-106 NMRA, no right to peremptory disqualification exists in the  
5 municipal court, but a judge may file a recusal either on the court’s own motion or motion of a  
6 party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

7 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
8 after July 1, 2017; as amended by Supreme Court No. 22-8300-015, effective for all cases pending  
9 or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-  
10 00068 effective for all cases pending or filed on or after May 8, 2024.]

1 **8-403. Revocation or modification of release orders.**

2 A. **Scope.** In accordance with this rule, the court may consider revocation of the  
3 defendant's pretrial release or modification of the defendant's conditions of release

4 (1) if the defendant is alleged to have violated a condition of release; or

5 (2) to prevent interference with witnesses or the proper administration of  
6 justice.

7 B. **Motion for revocation or modification of conditions of release.**

8 (1) The court may consider revocation of the defendant's pretrial release or  
9 modification of the defendant's conditions of release on motion of the prosecutor or on the court's  
10 own motion.

11 (2) The defendant may file a response to the motion, but the filing of a response  
12 shall not delay any hearing under Paragraph D [~~or E~~] of this rule.

13 C. **Issuance of summons or bench warrant.** If the court does not deny the motion on  
14 the pleadings, the court shall issue a summons and notice of hearing, unless the court finds that the  
15 interests of justice may be better served by the issuance of a bench warrant. The summons or bench  
16 warrant shall include notice of the reasons for the review of the pretrial release decision.

17 [~~D.~~] **Initial hearing.**

18 (1) ~~The court shall hold an initial hearing as soon as practicable, but if the~~  
19 ~~defendant is in custody, the hearing shall be held no later than three (3) days after the defendant is~~  
20 ~~detained if the defendant is being held in the local detention center, or no later than five (5) days~~  
21 ~~after the defendant is detained if the defendant is not being held in the local detention center.~~

22 (2) ~~At the initial hearing, the court may continue the existing conditions of~~  
23 ~~release, set different conditions of release, or propose revocation of release.~~

1           (3) ~~— If the court proposes revocation of release, the court shall schedule an~~  
2 ~~evidentiary hearing under Paragraph E of this rule, unless waived by the defendant.]~~

3           ~~[E.]~~ **D. ~~[Evidentiary hearing]~~ Hearing on alleged violation.**

4           (1)     **Time.** ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If  
5 the defendant is in custody, the ~~[evidentiary]~~ hearing shall be held no later than ~~[seven (7)]~~ five (5)  
6 days after the ~~[initial hearing]~~ defendant is detained.

7           (2)     At the hearing, the court may continue the existing conditions of release, set  
8 different conditions of release, or if the court is considering revocation of release, the court shall  
9 conduct an evidentiary hearing, unless waived by the defendant.

10          ~~[(2-)]~~ (3)     **Defendant's rights.** The defendant has the right to be present and to be  
11 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.  
12 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the  
13 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance  
14 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by  
15 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not  
16 be used against the defendant at trial except for impeachment purposes or in a subsequent  
17 prosecution for perjury.

18          ~~[F.]~~ **E. Order at completion of ~~[evidentiary]~~ hearing.**

19          (1) If at the conclusion of the hearing, the court continues or amends the  
20 defendant's conditions of release, then a written order continuing or amending the defendant's  
21 conditions of release shall be provided to the defendant at the time of the release from custody if  
22 the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

1           (2) If the defendant waives an evidentiary hearing and the court finds that the  
2 conditions of release should be revoked, an order revoking conditions of release, including written  
3 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the  
4 hearing.

5           (3) If an evidentiary hearing is conducted, at [A#] the completion of [an] the  
6 evidentiary hearing, the court shall determine whether the defendant has violated a condition of  
7 release or whether revocation of the defendant’s release is necessary to prevent interference with  
8 witnesses or the proper administration of justice, and may:

9           ~~[(1)]~~ (a) continue the existing conditions of release;

10           ~~[(2)]~~ (b) set new or additional conditions of release in accordance with  
11 Rule 8-401 NMRA; or

12           ~~[(3)]~~ (c) revoke the defendant’s release, if the court

13           ~~[(a)]~~ (i) finds either probable cause to believe that the defendant  
14 committed a federal, state, or local crime while on release, or clear and convincing evidence that  
15 the defendant has willfully violated any other condition of release; and

16                           ~~[(i)]~~ probable cause to believe that the defendant committed a  
17 federal, state, or local crime while on release; or

18                           ~~[(ii)]~~ clear and convincing evidence that the defendant has  
19 willfully violated any other condition of release; and]

20           ~~[(b)]~~ (ii) finds clear and convincing evidence that either no condition  
21 or combination of conditions will reasonably ensure the defendant’s compliance with the release  
22 conditions ordered by the court, or revocation of the defendant’s release is necessary to prevent  
23 interference with witnesses or the proper administration of justice.



1           ~~[F.]~~ H. **Expedited trial scheduling for defendant in custody.** The municipal court shall  
2 provide expedited priority scheduling in a case in which the defendant is detained pending trial.  
3 The court shall hold a status review hearing in any case in which the defendant has been held for  
4 more than forty-five (45) days. The purpose of the status review hearing is to conduct a meaningful  
5 review of the progress of the case. If the court determines that insufficient progress has been made,  
6 then the court shall issue an appropriate scheduling order.

7           ~~[J.]~~ I. **Petition to district court for review of revocation order.** If the municipal court  
8 issues an order revoking the defendant’s release, the defendant may petition the district court for  
9 review under this paragraph and Rule 5-403(K) NMRA.

10                   (1)     ***Petition; requirements.*** The petition shall include the specific facts that  
11 warrant review by the district court and may include a request for a hearing. The petitioner shall  
12 promptly

- 13                               (a)     file a copy of the district court petition in the municipal court;  
14                               (b)     serve a copy on the prosecutor; and  
15                               (c)     provide a copy to the assigned district court judge.

16                   (2)     ***Municipal court’s jurisdiction pending determination of the petition.*** On  
17 the filing of the petition, the municipal court’s jurisdiction to set or amend conditions of release  
18 shall be suspended pending determination of the petition by the district court. The municipal court  
19 shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the  
20 municipal court while the petition is pending.

21                   (3)     ***District court review.*** The district court shall rule on the petition in an  
22 expedited manner.

1                   (a)     Within three (3) days after the petition is filed, the district court shall  
2 take one of the following actions:

3                   (i)     issue an order affirming the revocation order; or

4                   (ii)    set a hearing to be held within ten (10) days after the filing  
5 of the petition and promptly send a copy of the notice to the municipal court.

6                   (b)     If the district court holds a hearing on the petition, at the conclusion  
7 of the hearing the court shall issue either an order affirming the revocation order or an order setting  
8 conditions of release under Rule 5-401 NMRA.

9                   (4)     ***District court order; transmission to municipal court.*** The district court  
10 shall promptly send the order to the municipal court, and jurisdiction over the conditions of release  
11 shall revert to the municipal court.

12                  (5)     ***Appeal.*** If the district court affirms the revocation order, the defendant may  
13 appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

14 [Approved, effective July 1, 1988; as amended, effective September 1, 1990; as amended by  
15 Supreme Court Order No. 08-8300-047, effective December 31, 2008; as amended by Supreme  
16 Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as  
17 amended by Supreme Court Order No. 18-8300-024, effective for all cases pending or filed on or  
18 after February 1, 2019; as amended by Supreme Court Order No. 22-8300-015, effective for all  
19 cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No.  
20 S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as  
21 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
22 pending or filed on or after July 29, 2025.]

1           **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for  
2 the court to follow when considering revocation of the defendant’s pretrial release or modification  
3 of the defendant’s conditions of release for violating the conditions of release. In *State v.*  
4 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*  
5 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires  
6 courts to afford the defendant notice and an opportunity to be heard before the court may revoke  
7 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-  
8 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*  
9 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final  
10 disposition of the criminal case in order to prevent interference with witnesses or the proper  
11 administration of justice, the right to do so before trial seems to be equally apparent under a proper  
12 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions  
13 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable  
14 by immediate arrest, revocation, or modification if violated. These conditions of release are  
15 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-  
16 NMSC-001, 134 N.M. 768, 82 P.3d 939.

17           ~~[As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~  
18 ~~municipal court in the normal course of business and not necessarily within the territorial~~  
19 ~~jurisdiction of the court.” Rule 8-401(A)(3) NMRA.]~~

20           Paragraph [G] E provides that the New Mexico Rules of Evidence do not apply at a  
21 revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types  
22 of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial  
23 detention hearing is responsible “for assessing the reliability and accuracy” of the information

1 presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a  
2 pretrial detention hearing the judge “retains the responsibility for assessing the reliability and  
3 accuracy of the government’s information, whether presented by proffer or by direct proof”); *State*  
4 *v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion  
5 of the detention hearing court to determine whether a pretrial detention order may be supported in  
6 an individual case by documentary evidence, proffer, one or more live witnesses, or other forms  
7 of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751,  
8 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has  
9 sufficient indicia of reliability to support its probable accuracy, the information may properly be  
10 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*  
11 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a  
12 probation revocation hearing, the court should focus on the reliability of the evidence); *State v.*  
13 *Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation  
14 hearing that hearsay untested for accuracy or reliability lacked probative value).

15 Paragraph [F] H requires the municipal court to prioritize the scheduling of trial and other  
16 proceedings for cases in which the defendant is held in custody. *See generally United States v.*  
17 *Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform  
18 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations  
19 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*  
20 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute  
21 or court rule, accelerated time limitations within which detained defendants should be tried  
22 consistent with the sound administration of justice.”). This rule does not preclude earlier or more  
23 regular status review hearings. The purpose of the hearing is to determine how best to expedite a

1 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’  
2 compliance with applicable deadlines, satisfaction of discovery obligations, and witness  
3 availability, among other matters. If the court determines that the parties have made insufficient  
4 progress on these measures, then it shall issue an appropriate scheduling order.

5 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
6 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases  
7 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-  
8 RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as  
9 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases  
10 pending or filed on or after July 29, 2025.]