

1 **5-602.1. Competency.**

2 A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate
3 procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial
4 is distinct from other questions about a defendant's mental health that may be relevant in a criminal
5 proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of
6 commission of an offense and incapacity to form specific intent.

7 B. **Definitions.** For purposes of this rule, the following definitions shall apply.

8 (1) **Competency.** The terms competency, competence, and competent are used
9 interchangeably throughout this rule and refer to whether the defendant has,

10 (a) sufficient present ability to consult with the defendant's lawyer with
11 a reasonable degree of rational understanding,

12 (b) a rational as well as factual understanding of the proceedings against
13 the defendant, and

14 (c) the capacity to assist in the defendant's own defense and to
15 comprehend the reasons for punishment.

16 (2) **Competency evaluation.** A competency evaluation is an examination of the
17 defendant by a psychologist or psychiatrist or other qualified ~~[mental health]~~ professional
18 recognized by the court as an expert, appointed by and acting on behalf of the court, limited to
19 determining whether the defendant is competent to stand trial. A competency evaluation ~~[shall be~~
20 ~~limited to a determination of the defendant's competency and]~~ shall not state opinions about other
21 matters at issue in the criminal case, including the defendant's sanity at the time of the offense or
22 ability to form a specific intent.

1 C. **Raising a question of competency; who may raise.** A question of the defendant's
2 competency to stand trial shall be raised whenever it appears that the defendant may not be
3 competent to stand trial. The question shall be raised by a motion for a competency evaluation and
4 may be raised by a party or upon the court's own motion at any stage of the proceedings.

5 D. **Motion for competency evaluation; contents.**

6 (1) ***By motion of a party.*** When a question of competence is raised by a party,
7 a motion for a competency evaluation shall be in writing and shall contain the following:

8 (a) a statement that the motion is based on a good faith belief that the
9 defendant may not be competent to stand trial;

10 (b) a description of the facts and observations about the defendant that
11 have formed the basis for the motion. If filed by defense counsel, the motion shall contain such
12 information without violating the attorney–client privilege;

13 (c) a statement that the motion is not filed for purposes of delay;

14 (d) a statement of whether the motion is opposed as provided in Rule 5-
15 120 NMRA;

16 (e) a completed defendant information sheet, substantially in the form
17 approved by the Supreme Court; and

18 (f) a request for a competency evaluation.

19 (2) ***Upon the court's own motion.*** When raised by the court, the court shall
20 make a record of the specific facts or observations about the defendant that form the basis for the
21 motion.

22 E. **Suspension of proceedings.** Upon the filing of a motion for a competency
23 evaluation, further proceedings in the case shall be suspended until the motion is denied or, if the

1 motion is granted, until the issue of the defendant's competency is determined. Suspension of
2 proceedings under this paragraph shall not affect a court's authority to set or review conditions of
3 release under Rule 5-401 NMRA or to rule on a motion for pretrial detention under Rule 5-
4 409 NMRA and shall not preclude further judicial action, defense motions, or discovery
5 proceedings which may fairly be conducted without the personal participation of the defendant.

6 F. **Resolution of motion; reasonable belief.** In considering a motion for a
7 competency evaluation, the court shall comply with the following procedures.

8 (1) **Unopposed.** Within two (2) days of the filing of a motion that is unopposed
9 under Subparagraph (D)(1)(d) of this rule, the court shall file an order substantially in the form
10 approved by the Supreme Court finding whether the motion is supported by a reasonable belief
11 that the defendant may not be competent to stand trial. The determination shall be based upon the
12 allegations in the motion or upon the court's own observations of the defendant.

13 (2) **Opposed.** A response in opposition to a motion for a competency evaluation
14 shall be in writing, shall cite specific facts in opposition to the motion, and shall be filed within
15 five (5) days of the filing of the motion or be deemed waived. Upon the filing of a response in
16 opposition, the court shall do one of the following:

17 (a) file an order substantially in the form approved by the Supreme
18 Court within two (2) days finding whether the motion is supported by a reasonable belief that the
19 defendant may not be competent to stand trial; or

20 (b) hold a hearing on the motion and file an order substantially in the
21 form approved by the Supreme Court within five (5) days of the filing of a response under this
22 Subparagraph finding whether there is a reasonable belief that the defendant may not be competent
23 to stand trial.

1 G. **Evaluation order.** An order finding a reasonable belief under Paragraph F of this
2 rule shall order the defendant to undergo a competency evaluation. Within two (2) days of filing
3 the order, the court shall deliver a copy of the evaluation order, motion for a competency
4 evaluation, ~~[and]~~ response, if any, and a copy of the charging document to the evaluator designated
5 to perform the evaluation. At any time, including in the order for competency evaluation, the court
6 may order records that are reasonably necessary to the determination of the defendant's
7 competency. The records shall be provided to the forensic evaluator assigned to evaluating the
8 defendant for competency. The order shall be in a form substantially approved by the Supreme
9 Court and shall include the following:

10 (1) the name of the evaluator;

11 (2) a provision requiring the evaluator to file a written report with the court in
12 accordance with Paragraph H of this rule within thirty (30) days of the entry of the order, unless
13 the court orders the report to be filed at another time~~[-and]~~.

14 (a) If the defendant fails to appear for a competency evaluation, or the
15 court and/or defense counsel is unable to locate the defendant or an address for the defendant, the
16 evaluator or entity scheduling the evaluations shall notify the court, and the court shall make a
17 record of the reason, if known, for the failure to appear; and

18 (b) The court may issue a new or amended order for competency
19 evaluation restarting the thirty (30)-day time period upon notification by the evaluator of the failure
20 to appear for the competency evaluation or cancellation of a bench warrant for the defendant's
21 arrest.

1 ~~[(3) — if the motion for a competency evaluation was filed before the start of a~~
2 ~~trial by jury, a provision requiring the parties to return to court for a hearing on the question of the~~
3 ~~defendant's competency within forty-five (45) days of the entry of the order.]~~

4 H. **Report; contents; disclosure.** The report ordered under Subparagraph (G)(2) of
5 this rule shall be filed with the court.

6 (1) ***Contents of report.*** The report shall include the following:

7 (a) a description of the procedures, tests, and methods used by the
8 evaluator;

9 (b) a clear statement of the evaluator's clinical findings and opinions
10 about the defendant's competency; and if the expert's opinion is that the defendant is not
11 competent, then the expert shall further provide an opinion as to whether the defendant satisfies
12 the criteria for involuntary, inpatient civil commitment in accordance with the Mental Health and
13 Developmental Disabilities Code or involuntary treatment in an Assisted Outpatient Treatment
14 program;

15 (c) a description of the sources of information and the factual basis for
16 the evaluator's clinical findings and opinions, provided that the report shall not include information
17 or opinions concerning the defendant's mental condition at the time of the alleged crime or any
18 statements made by the defendant regarding the alleged crime or any other crime; and

19 (d) the reasoning by which the evaluator used the information to reach
20 the clinical findings and opinions.

21 (2) ***Disclosure.*** Within two (2) days of the filing of the report, the court shall
22 provide a copy to the defendant and to the state. Prior to disclosure, the court shall excise any
23 statements made by the defendant regarding the alleged crime or any other crime. The court shall

1 notify the parties when information has been withheld under this subparagraph and that any
2 excised information shall be sealed, preserved in the records of the court, and made available to
3 the appellate court in the event of an appeal.

4 I. **Effect of report; final resolution of competency.**

5 (1) ***Motion filed before the start of a trial by jury.*** If the motion for a
6 competency evaluation was filed before the start of a trial by jury, the court and the parties shall
7 proceed as follows after receiving the report filed under Paragraph H of this rule.

8 (a) ***Stipulations; objections.*** Within seven (7) days of the filing of the
9 report, the parties shall confer and file with the court one of the following:

10 (i) a joint motion to adopt the conclusion set forth in the report;
11 or

12 (ii) the specific, written objections of either party.

13 (b) ***Hearing.*** The court shall hold a hearing on the question of the
14 defendant's competency [~~as ordered under Subparagraph (G)(3) of this rule,~~] subject to the
15 following procedures. If the parties agree with and the court concurs in the conclusion set forth in
16 the report, the court may vacate the hearing and proceed under Subparagraph (1)(d) of this
17 paragraph. If a hearing is necessary, the purpose of the hearing shall be to determine based upon a
18 preponderance of the evidence whether the defendant is not competent to stand trial, and shall be
19 held:

20 [~~(i) — If the parties agree with and the court concurs in the~~
21 ~~conclusion set forth in the report, the court may vacate the hearing and proceed under~~
22 ~~Subparagraph (1)(e) of this paragraph.]~~

~~[(ii) — If a hearing is necessary, the purpose of the hearing shall be to determine based upon a preponderance of the evidence whether the defendant is not competent to stand trial]~~

(i) within thirty (30) days of the date an evaluation report is submitted to the court for an incarcerated defendant charged with a felony;

(ii) within ten (10) days of the date an evaluation report is submitted to the court for an incarcerated defendant charged with misdemeanor charges; or

(iii) within ninety (90) days of the date an evaluation report is submitted to the court for a defendant who is not incarcerated.

~~(c)[—(iii)]~~ Effect of report. The conclusion set forth in the report shall be prima facie evidence about the defendant's competency, subject to rebuttal by the party challenging the report.

~~(c)~~ (d) *Final order on competency.* Within three (3) days of the conclusion of the hearing held under Subparagraph (1)(b) of this paragraph, the court shall file an order resolving the question of the defendant's competency. Upon request of the parties, the order shall include findings of fact and conclusions of law and may incorporate by reference the report filed under Paragraph H of this rule. If the court concludes that the defendant is not competent, the court shall proceed under Paragraph J of this rule.

(2) ***Motion filed after the start of a trial by jury.*** If the motion for a competency evaluation was filed after the start of a trial by jury, the court shall submit the question to the jury at the close of evidence. The jury shall decide by a preponderance of the evidence if the defendant is not competent to stand trial before considering the defendant's guilt or innocence beyond a reasonable doubt.

1 **J. Defendant found not competent to stand trial.**

2 (1) If the defendant's competency is raised before the start of a trial by jury and
3 the court finds that the defendant is not competent to stand trial, the court shall proceed under
4 Rule 5-602.2 NMRA.

5 (2) If the defendant's competency is raised after the start of a trial by jury and
6 the jury finds that the defendant is not competent to stand trial, the court shall declare a mistrial
7 and proceed under Rule 5-602.2 NMRA.

8 **K. Extensions of time.** The time limits provided in this rule may be extended by the
9 court for good cause shown, provided that the aggregate of all extensions granted by the court shall
10 not exceed ninety (90) days from the day that the motion for a competency evaluation is filed,
11 except upon a showing of exceptional circumstances. An order extending time shall be in writing
12 and shall state the reasons supporting the extension. An order extending time beyond the ninety
13 (90)-day limit set forth in this paragraph shall not rely on circumstances that were used to support
14 a previous extension.

15 **L. Effect of noncompliance with time limits.**

16 (1) The court may deny an untimely motion for extension of time or may grant
17 it and impose other sanctions or remedial measures, as the court may deem appropriate in the
18 circumstances.

19 (2) In the event the question of the defendant's competence is not resolved
20 within the time limits provided in this rule, including any court-ordered extensions, the case shall
21 be subject to review and dismissal without prejudice at the discretion of the court.

22 **M. Cases transferred to the district court; remand.** In a case transferred to the
23 district court under Rules 6-507.1 or 8-507.1 NMRA, the court shall do the following:

(1) open a case and order a competency evaluation under Paragraph G of this rule within (5) days of receiving the order transferring the case;

(2) proceed under this rule to determine whether the defendant is competent to stand trial, and

(a) if the defendant is found competent, remand the case within two (2) days to the originating court ~~[in which the case is pending]~~; or

(b) if the defendant is found not competent, ~~[remand the case to the court in which the case is pending within two (2) days after a determination that further proceedings]~~ proceed under Rule 5-602.2 NMRA ~~[are inapplicable]~~.

N. **Statements and other information inadmissible.** Any statements or other information elicited from a defendant or any other person for the purpose of determining the defendant's competency shall not be admissible or used against the defendant in any criminal proceeding on any issue other than the defendant's competency to stand trial.

O. **Automatic sealing of court records.** Any motion, response, report, or other paper filed under this rule shall be automatically sealed without motion or order of the court as provided in Rule 5-123(C)(2) NMRA. An order for a competency evaluation under Paragraph G of this rule and a final order on competency under Paragraph I of this rule shall not be sealed except upon motion and order under Rule 5-123 NMRA.

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

Committee commentary. — “It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings

1 against him, to consult with counsel, and to assist in preparing his defense may not be subjected to
2 a trial.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975); *see also State v. Rotherham*, 1996-NMSC-
3 048, ¶ 13, 122 N.M. 246, 923 P.2d 1131. (“The law has long recognized that it is a violation of
4 due process to prosecute a defendant who is incompetent to stand trial.”). Unlike affirmative
5 defenses that implicate questions of culpability, deterrence, and punishment for an individual
6 defendant, *see e.g.*, Rule 5-602(A) NMRA (setting forth procedures for raising the defense of not
7 guilty by reason of insanity at the time of the commission of the offense), the prohibition against
8 trying an incompetent defendant is integral to the legitimacy of the criminal justice system
9 itself. *See Drope*, 420 U.S. at 172 (“[T]he prohibition is fundamental to an adversary system of
10 justice.”); *see also Rotherham*, 1996-NMSC-048, ¶ 13 (“Suspension of the criminal process where
11 the defendant is incompetent is fundamental to assuring the fairness, accuracy, and dignity of the
12 trial.”). As such, all participants in a criminal proceeding—including the court acting sua sponte—
13 have a shared duty to inquire into the defendant’s competency whenever circumstances suggest
14 that the defendant, “though physically present in the courtroom, is in reality afforded no
15 opportunity to defend himself.” *Drope*, 420 U.S. at 171 (internal quotation marks and citation
16 omitted). This rule should be interpreted to effectuate that common purpose.

17 The procedures set forth in this rule for determining whether a defendant is incompetent to
18 stand trial were substantially amended and recompiled from Rule 5-602 NMRA. The amended
19 rule is intended to address concerns about the delays and costs associated with raising a question
20 of the defendant’s competency in a criminal proceeding. The rule addresses these concerns in
21 several ways. First, the rule limits the scope of the evaluation that may be ordered when
22 competency is raised to a determination of whether the defendant is competent to stand trial; other
23 questions about the defendant’s mental health that may be relevant to the defense should be raised

and evaluated separately. *See, e.g.*, Rule 5-502(D) NMRA (setting forth ex parte procedures for a motion to transport the defendant for evaluation, testing, or interviewing when “reasonably necessary for the preparation of the defense”). Second, the rule formalizes and streamlines the process for raising a question about the defendant’s competency and determining whether an evaluation is necessary. Third, the rule requires the appointment of a neutral evaluator and establishes a rebuttable presumption in favor of the evaluator’s conclusion about the defendant’s competency. And fourth, the rule imposes aggressive time limits on the court, the parties, and the evaluator to ensure that the question of the defendant’s competency is resolved as efficiently as possible.

Paragraph A

The procedures set forth in this rule are intended to be used only to determine whether the defendant is competent to stand trial. This rule therefore may not be used to obtain an evaluation of other aspects of the defendant’s mental health, such as the availability of defenses under Rule 5-602 NMRA (setting forth procedures for raising the defenses of not guilty by reason of insanity at the time of the commission of the offense and incapacity to form specific intent). Similarly, the procedures set forth in this rule may not be used for purposes unrelated to assessing the defendant’s competency, including the following:

Neither party should move for an evaluation of competence in the absence of a good faith doubt that the defendant is competent to proceed. Nor should either party use the incompetence process for purposes unrelated to assessing and adjudicating the defendant’s competence to proceed, such as to obtain information for mitigation of sentence, obtain a favorable plea negotiation, or delay the proceedings against the defendant. Nor should the process be used to obtain treatment unrelated to the defendant’s competence to proceed

Criminal Justice Standards on Mental Health, § 7-4.3(e) (Am. Bar Ass’n 2016).

Paragraph B

Definition of competency.

The definition of competency set forth in Subparagraph (B)(1) is taken from *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691 (quoting *Rotherham*, 1996-NMSC-048, ¶ 13). As the Supreme Court has noted, UJI 14-5104 NMRA sets forth a “different formulation of the conditions necessary to be deemed competent.” *Linares*, 2017-NMSC-014, ¶ 34 n.8. *Compare id.* ¶ 34 (“A person is competent to stand trial when he or she has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, a rational as well as factual understanding of the proceedings against him, and the capacity to assist in his own defense and to comprehend the reasons for punishment.” (internal quotation marks and alterations omitted)), *with* UJI 14-5104 NMRA (setting forth the elements of competency as (1) understanding the nature and significance of the criminal proceedings, (2) having a factual understanding of the criminal charges, and (3) being able to assist the attorney with the defense). The committee considers the standard set forth in *Linares* to be controlling.

Definition of competency evaluation.

The evaluation that may be ordered under this rule is limited to a determination of the defendant’s competency. Such an evaluation shall be performed by a neutral, court-appointed evaluator, selected from a list of evaluators provided by the Administrative Office of the Courts under NMSA 1978, Section 31-9-2, or by the Human Services Department on behalf of the Department of Health under NMSA 1978, Section 43-1-1. As a court-appointed expert, the evaluator acts on behalf of the court and not on behalf of any party. *Cf. State v. Garcia*, 2000-NMCA-014, ¶ 32, 128 N.M. 721, 998 P.2d 186 (“[T]hat the State would not have chosen [the

1 court-appointed evaluator] to perform the evaluation is of no moment to this Court. . . . The record
2 indicates that [the court-appointed evaluator] was selected by the New Mexico Department of
3 Health, *not* Defendant, and that she was further selected as the court’s expert, *not* Defendant’s.”).

4 A competency evaluation should not address whether a defendant is “dangerous” and
5 therefore may be subject to commitment to attain treatment to competency. *Cf. State v.*
6 *Gallegos*, 1990-NMCA-104, ¶ 24, 111 N.M. 110, 802 P.2d 15 (explaining that the competency
7 evaluations “made prior to a Section 31-9-1.5 hearing” are not “for the purpose of assessing [the]
8 defendant’s dangerousness”). The term “dangerous” is defined by statute and is not a clinical
9 diagnosis. *See* NMSA 1978, § 31-9-1.2 (D) (“[D]angerous’ means that, if released, the defendant
10 presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11
11 [criminal sexual penetration] or 30-9-13 [criminal sexual contact of a minor] NMSA 1978.”).
12 Further, the need to consider a defendant’s dangerousness arises only after a court has held that a
13 defendant is not competent to stand trial and only if the defendant is charged with a felony. *See* §
14 31-9-1.2(B); *see also Garcia*, 2000-NMCA-014, ¶ 31 (“‘Dangerousness’ is a consideration
15 secondary to the initial determination of competency.” (citing Rule 5-602(B)(3)(b) NMRA
16 (1991))).

17 **Paragraph C**

18 “The law has long recognized that it is a violation of due process to prosecute a defendant
19 who is incompetent to stand trial.” *Rotherham*, 1996-NMSC-048, ¶ 13. The rule therefore permits
20 the issue of the defendant’s competency to be raised by a motion for a competency evaluation at
21 any point in the proceedings by the parties or the court. *Cf. Pate v. Robinson*, 383 U.S. 375, 385
22 (1966) (holding that the court’s failure to hold a hearing sua sponte on the question of the
23 defendant’s competence violated his constitutional right to a fair trial). Once a question of the

defendant’s competency is raised, the court “does not possess the discretion to ignore the issue” and must make “a determination on the record” about whether the defendant is competent to stand trial. *See State v. Montoya*, 2010-NMCA-067, ¶¶ 14, 18, 148 N.M. 495, 238 P.3d 369 (decided under Rule 5-602 NMRA (1991)). Similarly, the question, once raised, cannot be waived by the defendant. *See Pate*, 383 U.S. at 384 (“[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.”).

Paragraph D

This paragraph sets forth specific requirements for requesting a competency evaluation. A motion under this paragraph must be in writing and must include certain information and statements to satisfy the court that the motion is well-taken and should be granted. *Cf., e.g., State v. Flores*, 2005-NMCA-135, ¶ 29, 138 N.M. 636, 124 P.3d 1175 (“[A] court may consider defense counsel’s observations and opinions, but . . . those observations and opinions alone cannot trigger reasonable doubt about the defendant’s competency.”); *State v. Hovey*, 1969-NMCA-049, ¶¶ 21-22, 80 N.M. 373, 456 P.2d 206 (holding that the district court did not abuse its discretion in denying a motion for a mental examination when defense counsel only “wondered about” the defendant’s competency and never asserted that the defendant was incompetent). Together with the reasonable belief standard set forth under Paragraph F for ordering a competency evaluation, these provisions are intended to speed the court’s determination of whether an evaluation should be ordered. In most cases, the court should have sufficient information from the motion and any response in opposition to rule on the motion without an evidentiary hearing.

A motion for a competency evaluation must include “a description of the facts and observations about the defendant that have formed the basis for the motion.” This requirement may

be satisfied by the first-hand knowledge of the movant or, for example, by attaching “an affidavit from someone who has observed the defendant and formulated an opinion about his or her competency, such as a corrections officer or defense counsel’s paralegal.” *Flores*, 2005-NMCA-135, ¶ 31. When a motion is filed by defense counsel, this requirement must be met without disclosing the substance of confidential communications with the defendant or violating the attorney–client privilege. *Accord Criminal Justice Standards on Mental Health*, § 7-4.3(f).

Paragraph E

The automatic suspension of proceedings under Paragraph E is consistent with NMSA 1978, Section 31-9-1, and applies to any proceeding for which the defendant’s personal participation is fairly required. As such, the suspension required by the rule does not stay all proceedings, and matters that do not require the defendant’s personal participation may proceed, including setting or reviewing conditions of release and considering motions that raise purely legal issues. Nothing in this rule is intended to limit a court’s inherent authority to stay proceedings upon motion. *See, e.g., Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623, 114 P.3d 303 (“The authority to stay proceedings is incidental to the court’s inherent management authority.”).

Granting a motion for a competency evaluation necessarily delays the proceedings against the defendant. *See, e.g., State v. Serros*, 2016-NMSC-008, ¶ 62, 366 P.3d 1121 (finding support for the district court’s finding that defense counsel delayed the defendant’s case “by raising the question of . . . competency and then failing to pursue an evaluation once the case had been stayed”). In extreme cases, the delay following an order for a competency evaluation can be substantial. *See, e.g., State v. Stock*, 2006-NMCA-140, ¶ 20, 140 N.M. 676, 147 P.3d 885 (noting that the defendant’s case was delayed “for nearly two and one-half years” following an order for

a competency evaluation). When ordering a competency evaluation, the court should be mindful of the defendant's conditions of release, including whether the defendant is in custody, and schedule a hearing to set or review conditions of release if appropriate.

Paragraph F

This paragraph sets forth procedures and time limits for ruling on a motion for a competency evaluation. When a motion is unopposed, the court shall review the motion and any supporting documentation within two days of its filing to determine if the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

When a motion for a competency evaluation is opposed, the rule sets forth an expedited process for considering the motion. The court must allow five days for a response in opposition. If a timely response is not submitted, the court shall review the motion to determine whether it is supported by a reasonable belief that the defendant may not be competent and shall rule on the motion within two days. If a response is submitted, the court may rule on the pleadings or may hold an expedited hearing to determine whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

The reasonable belief standard is not the standard previously set forth in Rule 5-602 NMRA for ordering a competency evaluation. *See* Rule 5-602(B)(2)(a) NMRA (1991) (requiring an evaluation when the court finds a “reasonable doubt as to the defendant’s competency”); Rule 5-602(C) NMRA (1991) (requiring an evaluation “upon motion and good cause shown”). The former “reasonable doubt” and “good cause” standards invited decades of litigation about the quantum of evidence necessary to support an order for an evaluation. *See, e.g., Flores*, 2005-NMCA-135, ¶¶ 26-29 (reviewing cases considering whether enough evidence had been offered “to pass the reasonable doubt and good cause tests”). This litigation is often misplaced

1 and delays the ultimate determination of the substantive issue at hand: whether the defendant is
2 not competent to stand trial. Whether to order an evaluation is a threshold issue and therefore
3 should not require proof that the defendant is actually incompetent. *See Mitchell v. United States*,
4 316 F.2d 354, 360 (D.C. Cir. 1963) (“It cannot reasonably be supposed that Congress intended to
5 require the accused to produce, in order to get a mental examination, enough evidence to prove
6 that he is incompetent or irresponsible. That is what the examination itself may, or may not,
7 produce. If the accused already had such evidence, there would be little need for the
8 examination.”); *see also Flores*, 2005-NMCA-135, ¶ 31 (“We do not read the case law as requiring
9 expert testimony in order to obtain an evaluation of his or her competency . . .”).

10 The reasonable belief standard therefore requires the court to consider only whether the
11 movant’s subjective, good faith belief that the defendant may not be competent to stand trial is
12 objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766
13 P.2d 280 (discussing the difference between a “subjective good faith belief as opposed to an
14 objective standard of reasonable belief”). In making this determination, the court should evaluate
15 whether the motion demonstrates that the movant’s good faith belief is supported by specific,
16 articulable facts that would lead a reasonable person to believe that the defendant may not be
17 competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 (“An officer
18 obtains reasonable suspicion when the officer becomes aware of specific articulable facts that,
19 judged objectively, would lead a reasonable person to believe criminal activity occurred or was
20 occurring.” (internal citation and quotation marks omitted)). This is not a heavy burden, and in
21 most circumstances a motion that meets the requirements of Paragraph D of this rule will satisfy
22 the reasonable belief standard without the need for an evidentiary hearing. Without such a
23 showing, however, a motion for a competency evaluation—whether opposed or unopposed—

should be denied. *Cf. Hovey*, 1969-NMCA-049, ¶ 18 (“[T]here must be a showing of reasonable cause for the belief that an accused is not competent to stand trial.”).

Paragraph G

An evaluation ordered under Paragraph G of this rule shall be provided at no cost to an indigent defendant as provided by Sections 31-9-2 and 43-1-1.

Paragraph H

Contents of report.

Subparagraph (H)(1) identifies the information that must be included in the report filed with the court after the defendant’s competency evaluation. *Accord Criminal Justice Standards on Mental Health*, § 7-3.6(b). Paragraph (H)(1)(b), in particular, requires the report to include “a clear statement of the evaluator’s clinical findings and opinions about the defendant’s competency.” This requirement is intended to discourage the use of qualifiers such as “marginally” or “minimally” competent, which are not helpful and invite further litigation and delay. If the expert is not confident about the conclusion, the expert should perform further testing until a clear conclusion can be reached.

Disclosure after review.

Within two days of the filing of the report, the court shall review the report and provide a copy to the defendant and the state. Prior to disclosure, the court must review the report and excise any information or opinions unrelated to the defendant’s present competency before delivering copies of the report to the parties. *Criminal Justice Standards on Mental Health*, § 7-3.7(a) (“The report should not contain information or opinions concerning either the defendant’s mental condition at the time of the alleged offense or any statements made by the defendant regarding the alleged offense or any other offense.”). If information is excised, the court must notify the parties

and ensure that the information is sealed in the record and preserved for appellate review. *Accord Standards for Criminal Justice: Discovery and Trial by Jury*, § 11-6.6 (Am. Bar Ass’n 3d ed. 1996) (setting forth procedures for withholding information that is not discoverable and preserving the record for appellate review).

Paragraph I

Paragraph I sets forth the procedures for resolving the question of the defendant’s competency after the report is filed by the evaluator and distributed to the parties. Within seven days of the filing of the report, the parties are required to confer and file either a stipulated motion to adopt the conclusion set forth in the report or the specific objections of either party.

The final question of the defendant’s competency should be decided at the hearing [~~ordered under Subparagraph (G)(3)~~], unless the parties stipulate to, and the court agrees with, the conclusion set forth in the report. If a hearing is necessary, the court shall determine by a preponderance of the evidence whether the defendant is not competent to stand trial. Subparagraph ~~[(4)(1)(b)(iii)]~~ (I)(1)(c) provides that the conclusion set forth in the report shall be prima facie evidence about the defendant’s competency, subject to rebuttal by the party challenging the report. Favoring the conclusion set forth in the report reflects the evaluator’s role as the court’s neutral expert.

The presumption in favor of the report does not change the burden of persuasion, which is on the party asserting that the defendant is not competent. *See, e.g., State v. Chavez*, 2008-NMSC-001, ¶ 11, 143 N.M. 205, 174 P.3d 988 (“With respect to the initial determination of competency, it is well established that the defendant in a criminal case bears the initial burden of proving his or her incompetence by a preponderance of the evidence standard.”). Rather, the presumption imposes a burden of production on the party challenging the conclusion set forth in the report. *See*

1 *Mortg. Inv. Co. v. Griego*, 1989-NMSC-014, ¶ 13, 108 N.M. 240, 771 P.2d 173 (“[Rule 11-
2 301 NMRA] imposes only a burden of production on the party against whom the presumption is
3 directed.”); Rule 11-301 NMRA (“In a civil case, unless a state statute or these rules provide
4 otherwise, the party against whom a presumption is directed has the burden of producing evidence
5 to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on
6 the party who had it originally.”); *see also* UJI 14-5104 NMRA committee commentary
7 (“[P]roceedings to ascertain the competency to stand trial are civil proceedings.”). Either party
8 may challenge the report by producing evidence, for example, that the evaluation was flawed or
9 incomplete. Without evidence tending to undermine the reliability of the report, however, the
10 evaluator’s conclusion about the defendant’s competency ordinarily should be dispositive. *Cf. Bell*
11 *v. Skillicorn*, 1892-NMSC-007, ¶ 4, 6 N.M. 399, 28 P. 768 (“Where the party having the burden
12 of proof establishes a prima facie case, and no proof to the contrary is offered, he would prevail.”).

13 When a motion for a competency evaluation is filed after the start of a trial by jury, the
14 court shall submit the issue to the jury, unless the court finds that “there is no reasonable doubt as
15 to the defendant’s competency to stand trial, in which case there is no question for a jury to
16 decide.” *See State v. Noble*, 1977-NMSC-031, ¶ 7, 90 N.M. 360, 563 P.2d 1153; *see also* UJI 14-
17 5104 NMRA. This requirement is rooted in the constitutional right to a trial by jury. *See* N.M.
18 Const. art. II, § 12 (“The right of trial by jury as it has heretofore existed shall be secured to all
19 and remain inviolate.”); *see also generally State v. Chavez*, 1975-NMCA-119, 88 N.M. 451, 541
20 P.2d 631 (tracing the development of the constitutional right to a trial by jury on the question of a
21 defendant’s competency). When decided by a jury, a verdict on the issue of the defendant’s
22 competency need not be unanimous. *See* UJI 14-5104 NMRA.

23 **Paragraph J**

Rule 5-602.2 NMRA sets forth procedures that must be followed after a finding of incompetency.

Paragraph K

The court may extend any of the time limits in this rule for good cause shown, provided that the ultimate issue of the defendant's competency shall be resolved within ninety days of the filing of the motion for a competency evaluation. The court shall not grant an extension that exceeds the ninety-day limit except upon a showing of exceptional circumstances. In addition to granting an extension of time, the court should consider whether the use of the court's coercive powers may be appropriate.

Paragraph L

A dismissal for failure to comply with the time limits set forth in this rule is distinct from a dismissal for violation of the defendant's right to a speedy trial under the Sixth Amendment to the United States Constitution. Like the speedy trial analysis, however, the reasons for the delay may be relevant when deciding whether to dismiss a case under Subparagraph (L)(2) of this rule. *See, e.g., State v. Ochoa*, 2017-NMSC-031, ¶ 18, 406 P.3d 505 (discussing four types of delay and how they weigh against the defendant and the state). The court also may consider whether the use of the court's coercive powers, rather than dismissal, would be appropriate.

An order of dismissal under this rule is a final, appealable order. *See, e.g., State v. Lucero*, 2017-NMCA-079, ¶ 11, 406 P.3d 530 (holding that the state has the right to appeal a district court order dismissing a criminal complaint, indictment, or information "even if the dismissal is without prejudice").

Paragraph N

This paragraph is derived from Standard 7-4.7(a) of the ABA Mental Health Standards. *See also* Rule 11-504 NMRA (providing that communications between a patient and the patient’s physician, psychotherapist, or state or nationally licensed mental-health therapist for the purpose of diagnosis or treatment are privileged). Information elicited from the defendant or any other person for the purpose of determining the defendant’s competency is immaterial to the defendant’s guilt or innocence and therefore is inadmissible against the defendant in a criminal proceeding unless the defendant waives the privilege. *See Criminal Justice Standards on Mental Health*, § 7-4.7(b) (“The defendant waives the privilege . . . by using or indicating an intent to use the report or parts thereof for any other purpose.”). The privilege may not be used to shield evidence that would be otherwise admissible in a criminal proceeding.

Courtroom closure

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 5-124(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 5-124 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023~~], effective for all cases filed on or after February 1, 2019~~; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143.]