

1 **12-609. On-record appeals from metropolitan court.**

2 A. **Scope.** This rule governs the procedure for filing and perfecting direct appeals to
3 an appellate court from the final judgments and orders of the metropolitan court in matters that
4 proceed as on-record appeals. The Rules of Appellate Procedure shall apply to the filing and
5 perfecting of on-record appeals with the modifications identified below and in Rules 7-702 and 7-
6 703.1 NMRA. This rule does not create a right of appeal.

7 B. **Substitution of metropolitan court.** When these Rules of Appellate Procedure
8 state that a duty is to be performed by, service is to be made on, or reference is made to the district
9 court or a judge or clerk of the district court, the metropolitan court or a judge or clerk of the
10 metropolitan court whose action is appealed from shall be substituted for the district court or a
11 judge or clerk of the district court.

12 C. **Initiating the appeal.** The notice of appeal shall be filed as provided for in Rules
13 7-702, 7-703.1, 12-201, and 12-202 NMRA. The notice of appeal shall be filed in the metropolitan
14 court within thirty (30) days of the filing of the metropolitan court judgment or final order with
15 the metropolitan court clerk's office. The docketing statement, the requirements for which are
16 provided in Rule 12-208 NMRA of these rules and modified by Rule 7-703.1, shall be filed with
17 the clerk of the Court of Appeals, along with the docketing fee, within thirty (30) days of the filing
18 of the notice of appeal.

19 D. **Sanctions.** Failure to comply with the Rules of Appellate Procedure or the
20 requirements provided in Rule 7-703.1 may result in sanctions up to and including dismissal in
21 accordance with Rule 12-312 NMRA.

22 E. **Transfer.** When a party appeals a metropolitan court decision in a criminal case
23 and documents initiating or docketing the appeal are filed in the wrong court, the district court in

1 accordance with Rule 5-827(J) NMRA or the Court Appeals under this rule shall enter an order of
 2 transfer to the appropriate court. When the district court has entered an order of transfer under Rule
 3 5-827(J), the Court of Appeals shall review the order. If the Court of Appeals determines that
 4 jurisdiction over the appeal lies with the district court, the Court of Appeals shall enter an order
 5 rejecting the transfer. If the Court of Appeals determines that it has jurisdiction over the appeal
 6 and transfer was proper, the Court of Appeals shall issue an order accepting transfer. The appellant
 7 shall have thirty (30) days from the date the order accepting transfer is entered to file a docketing
 8 statement with the Court of Appeals. When the Court of Appeals has entered an order of transfer
 9 to the district court, the transfer is complete on filing, and the appellant shall proceed in the district
 10 court in accordance with Rule 5-827.

11 [Adopted by Supreme Court Order No. S-1-RCR-2025-00175, effective for all cases filed on or
 12 after December 31, 2025.]

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14 **Committee commentary.** — This rule provides the procedure for direct appeals from
 15 metropolitan court to the Court of Appeals in light of the 2019 amendment to NMSA 1978, Section
 16 34-8A-6 (2019).

17 Paragraph E of this rule, permitting the transfer of an appeal between the district court and
 18 Court of Appeals when documents have been filed in the wrong court, does not eliminate an
 19 appellant’s responsibility to comply with the time and place of filing requirements. These
 20 requirements are characterized as mandatory preconditions to the exercise of an appellate court’s
 21 jurisdiction. *See Trujillo v. Serrano*, 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871 P.2d 369 (noting
 22 that the filing of a timely notice of appeal is better described as a mandatory precondition to the
 23 exercise of jurisdiction rather than an absolute jurisdictional requirement). The inclusion of a

1 transfer provision for criminal appeals reflects case law allowing for exceptions to mandatory
 2 preconditions in some criminal cases. *See State v. Duran*, 1986-NMCA-125, ¶¶ 4-6, 105 N.M.
 3 231, 731 P.2d 374 (creating a conclusive presumption of ineffective assistance of counsel when
 4 counsel filed an untimely notice of appeal following a defendant’s conviction in district court);
 5 *State v. Upchurch*, 2006-NMCA-076, ¶ 4, 139 N.M. 739, 137 P.3d 679 (noting that the appellate
 6 courts “routinely excuse untimely appeals of *represented* criminal defendants” (emphasis added)).
 7 However, when these requirements are not excused by case law, *see, e.g., State v. Peppers*, 1990-
 8 NMCA-057, ¶ 21, 110 N.M. 393, 796 P.2d 614 (noting that the conclusive presumption adopted
 9 in *Duran* is not extended to appeals from guilty or no contest pleas); *Upchurch*, 2006-NMCA-076,
 10 ¶ 4 (“We do not extend the presumption [of ineffective assistance of counsel] to the State . . .
 11 because it does not possess the constitutional right of an accused to the effective assistance of
 12 counsel.”), the existence of a transfer provision for criminal appeals does not eliminate an
 13 appellant’s responsibility for ensuring the appeal is timely filed in the correct tribunal or
 14 demonstrating that unusual circumstances caused the procedural defect. *See Trujillo*, 1994-NMSC-
 15 024, ¶ 19 (“Only the most unusual circumstances beyond the control of the parties—such as error
 16 on the part of the court—will warrant overlooking procedural defects.”); *Chavez v. U-Haul Co. of*
 17 *N.M., Inc.*, 1997-NMSC-051, ¶¶ 19-22, 124 N.M. 165, 947 P.2d 122 (hearing an appeal when the
 18 notice of appeal was filed fifty-eight minutes late, but the “case [wa]s marginal and involve[d]
 19 unusual circumstances arguably beyond [the appellant’s] control”).
 20 [Adopted by Supreme Court Order No. S-1-RCR-2025-00175.]