

1 **1-077.1. Expungement.**

2 A. **Scope of Rule.** This rule governs proceedings for expungement of arrest and public  
3 records under the Criminal Record Expungement Act, NMSA 1978, Sections 29-3A-1 to -9  
4 ~~[NMSA 1978]~~, except expungement of cannabis arrest and public records, which are automatic  
5 under NMSA 1978, Section 29-3A-8.

6 B. **Commencement of Action.** An expungement proceeding is commenced by filing  
7 a civil petition in the appropriate district court as follows:

8 (1) A petition seeking expungement of arrest records or public records  
9 wrongfully identifying a person therein as a result of identity theft under NMSA 1978, Section 29-  
10 3A-3 ~~[NMSA 1978]~~ shall be filed in the district court of the county where the charges originated,  
11 or the arrest occurred, or where a conviction was entered.

12 (2) A petition seeking expungement of arrest records and public records where  
13 there is no conviction under NMSA 1978, Section 29-3A-4 ~~[NMSA 1978]~~ shall be filed in the  
14 district court for the county where the charges originated or the arrest occurred.

15 (3) An action seeking expungement of records upon conviction under NMSA  
16 1978, Section 29-3A-5 ~~[NMSA 1978]~~ shall be filed in the district court in the county in which  
17 petitioner's conviction was entered.

18 ~~[(4) An action seeking expungement of an arrest, release without conviction, or~~  
19 ~~conviction of a charge that the petitioner believes is legally invalid due to the passage of the~~  
20 ~~Cannabis Regulation Act and is eligible for automatic expungement under Section 29-3A-~~  
21 ~~8 NMSA 1978, which automatic expungement has not occurred, shall be filed in the district court~~  
22 ~~in which the arrest occurred, the charges were originally filed, or the conviction was entered. There~~

1 ~~shall be no filing fee for an action commenced under the automatic expungement provisions of~~  
2 ~~Section 29-3A-8.]~~

3           ~~(5)~~ (4) A petition to expunge may contain a request to expunge arrest records  
4 and public records pertaining to any number of arrests, criminal charges filed without arrest, and/or  
5 convictions in a single judicial district.

6           C.     **Sealing of Petition.** A petition for expungement of records upon release without  
7 conviction shall be filed under seal and subject to the requirements of Rule 1-079 NMRA and the  
8 provisions of this rule. If the petition seeks both expungement of records upon conviction and  
9 expungement of records upon release without conviction, the district court shall treat the petition  
10 as one filed for expungement of records upon conviction and the petition shall not be subject to  
11 Rule 1-079 NMRA.

12           D.     **Contents of Petition.** A petition for expungement shall conform with the  
13 requirements of Form 4-951 NMRA (expungement of arrest records and public records upon  
14 identity theft), Form 4-452 NMRA (expungement of arrest records and public records upon release  
15 without conviction), or Form 4-953 NMRA (expungement of arrest records and public records  
16 upon conviction), [~~or Form 4-954 NMRA (automatic expungement of arrest records and public~~  
17 ~~records),]~~ the use of which are mandatory in expungement proceedings.

18           E.     **Service.** Service of the petition and attachments thereto is only required in cases  
19 seeking expungement of records upon release without conviction and upon conviction.

20           (1)     A petition for expungement of records upon release without conviction and  
21 all attachments thereto shall be served upon:

22                   (a)     the district attorney for the county in which the arrest was made or  
23 the criminal charge or proceeding filed; and

1 (b) the New Mexico Department of Public Safety.

2 (2) A petition for expungement of records upon conviction and all attachments  
3 thereto shall be served upon:

4 (a) the district attorney for the county in which the conviction was  
5 entered;

6 (b) the New Mexico Department of Public Safety; and

7 (c) the law enforcement agency that arrested the petitioner.

8 (3) Service under this section is made by first-class United States mail.  
9 Petitioner shall file a certificate of service with the district court.

10 (4) Subsequent pleadings shall be served in accordance with Rules 1-005, 1-  
11 005.1, or 1-005.2 NMRA.

12 F. **Court action upon insufficient petition.** If the court concludes that the initial  
13 petition does not comply with the provisions of this rule and the applicable form, the court may  
14 enter an order granting the petitioner leave to file a proper amended petition within sixty (60) days  
15 from entry of the order. If the petition fails to comply with the order or this rule, the court may  
16 dismiss the petition without prejudice.

17 G. **Response.**

18 (1) Within sixty (60) days from service of the petition, the parties entitled to  
19 notice of the proceeding by way of service of the petition, as identified in Paragraph E of this rule,  
20 shall file and serve specific objections (Form 4-957 NMRA) or shall file a Notice of Non-  
21 Objection (Form 4-958 NMRA). A responding party filing and serving a Notice of Non-Objection  
22 shall be excused from further participation in the proceeding.

1           (2) If a party objects to a petition for expungement of arrest records or public  
2 records without conviction on the basis of the contents of petitioner’s Federal Bureau of  
3 Investigation’s record of arrests and prosecutions, the objecting party shall provide petitioner with  
4 a copy of the FBI Rap sheet, at no charge, at the time of filing the objection.

5           H.     **Notice of Completion of Briefing.** For petitions seeking expungement of records  
6 upon release without conviction and upon conviction, petitioner must file a notice of completion  
7 of briefing (Form 4-959 NMRA (upon release without conviction) or Form 4-960 NMRA (upon  
8 conviction)) after expiration of the objection period set forth in Paragraph G of this rule. Petitioner  
9 shall serve the notice of completion of briefing on all parties that have filed an objection.

10           Petitioner shall attach completed Form 4-960.2 NMRA (affirmation in support of  
11 expungement of records, upon release without conviction) or Form 4-960.3 NMRA (affirmation  
12 in support of expungement of records, upon conviction) to the notice of completion of briefing. If  
13 Form 4-960.2 or Form 4-960.3 contains information regarding arrests, charges without arrest,  
14 and/or convictions that occurred subsequent to the filing of the petition, the parties shall have  
15 twenty (20) days after service of the notice of completion of briefing and attachments thereto to  
16 file additional objections to the petition for expungement.

17           I.     **Burden of Proof.** Petitioner bears the burden of proving the requirements for  
18 statutory expungement.

19           J.     **Hearings.** No hearing on the merits will be set in an expungement action prior to  
20 the filing and service of the notice of completion of briefing as set forth in Paragraph H of this  
21 rule.

22           If the petition is filed under NMSA 1978, Section 29-3A-3 [~~NMSA 1978~~] (expungement  
23 of records upon identity theft) or NMSA 1978, Section 29-3A-4 [~~NMSA 1978~~] (expungement of

1 records upon release without conviction) and no objections to the petition are filed, the court may  
2 decide the petition on the pleadings and affirmation (if applicable) without a hearing.

3 ~~[If the petition is filed under Section 29-3A-8 NMSA 1978, the court may decide the~~  
4 ~~petition on the pleadings without a hearing.]~~

5 If the petition is filed under NMSA 1978, Section 29-3A-5 [~~NMSA 1978~~] (expungement  
6 of records upon conviction), the court shall hold a hearing to determine whether petitioner has  
7 established that the requirements of NMSA 1978, Section 29-3A-5(C) [~~NMSA 1978~~] have been  
8 met.

9 Any party wishing to participate in any hearing by telephonic or other electronic means,  
10 may do so by giving notice to the court and the other parties as provided for in the petition and  
11 objection forms. A motion and order for telephonic or electronic appearance shall not be required.  
12 The court may order any party to attend a hearing in-person.

13 K. **Orders.** When there is a hearing on a petition for expungement, the court shall issue  
14 an order within sixty (60) days of the hearing. Any order requiring the expungement of arrest and  
15 public records shall allow a minimum of sixty (60) days to complete the expungement. Any order  
16 granting a petition shall require that the civil expungement proceeding be expunged. The court  
17 shall not expunge court records earlier than 30-days from entry of its order of expungement.

18 L. **Service of Orders on the Merits.** On granting a petition for expungement, the  
19 court shall cause a copy of an order on a petition for expungement to be delivered to all relevant  
20 law enforcement agencies and courts. The order shall prohibit all relevant law enforcement  
21 agencies and lower courts from releasing copies of the records to any persons, except as authorized  
22 by the Criminal Records Expungement Act, or on order of the court. If there are related records  
23 maintained at an appellate court, the order shall be served on the appellate court and should identify

1 the related appellate court case. On receipt of the order, the appellate court shall review the order  
2 and expunge the requested records, if appropriate.

3 M. **Mandatory Forms.** The use of Forms 4-951 to -960.3 NMRA, as appropriate, is  
4 mandatory in expungement proceedings.

5 [Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or  
6 pending on or after January 28, 2022; provisionally adopted rule approved as amended by Supreme  
7 Court Order No. S-1-RCR-2024-00099, effective for all cases pending or filed on or after  
8 December 31, 2025.]

9 **Committee commentary.** —

10 **2021 Amendment to Rule 1-004 NMRA**

11 The Supreme Court has concluded that in the context of proceedings under the Criminal Record  
12 Expungement Act, NMSA 1978, Sections 29-3A-1 to -9 (2019, as amended [~~2021~~] through 2023),  
13 if the petitioner serves notice of the petition as required by Paragraph F of Rule 1-077.1 NMRA  
14 and subsequently affirms that service was made in accordance with this rule, *see* Form 4-  
15 955 NMRA (certificate of service, expungement of records upon release without conviction) or  
16 Form 4-956 NMRA (certificate of service, expungement of records upon conviction), such service  
17 satisfies the requirements of due process because the recipients of the notice must either file  
18 objections or file a “Notice of Non-Objection” before the district court holds a hearing pursuant to  
19 Section 29-3A-4(E) or Section 29-3A-5(C).

20 **Section 29-3A-3(D) (expungement of records upon identity theft); due process issue**

21 Section 29-3A-3(D) provides that “After notice to and a hearing for all interested parties and in  
22 compliance with all applicable law, the court shall insert in the records the correct name and other  
23 identifying information of the offender, if known or ascertainable, in lieu of the name of the person

1 wrongly identified.” Identity theft is a crime. *See, e.g.*, NMSA 1978, § 30-16-24.1 (2009) (theft of  
2 identity; obtaining identity by electronic fraud). It would be a violation of due process for the court  
3 in a civil proceeding to publicly declare that it found a person guilty of the crime of identity theft  
4 and to identify in public records the name and identifying information of the offender, particularly  
5 when the statute does not require notice of the proceeding be given to the alleged wrongdoer. For  
6 this reason, Rule 1-077.1 omits requirements related to the statutory provision quoted above.

7 **Rule 1-077.1(G)**

8 Rule 1-077.1(G) provides that parties entitled to notice of these proceedings must file and serve  
9 specific objections or a Notice of Non-Objection within sixty days of service of the petition. This  
10 time limit is contrary to Section 29-3A-4(B), which provides for a thirty-day response time for  
11 filing objections to a petition seeking expungement of records upon release without conviction.  
12 Rule 1-077.1(G) controls because the Supreme Court can modify a procedural provision in a  
13 statute by adopting a contrary rule. *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 15, 111  
14 N.M. 336, 805 P.2d 603 (“[L]egislative rules relating to pleading, practice and procedure in the  
15 courts, particularly where those rules relate to court management or housekeeping functions, may  
16 be modified by a subsequent rule promulgated by the Supreme Court.”); *see also id.* ¶ 10 (“[T]here  
17 are good reasons for construing [statutory time limits] simply as the legislative adoption of a  
18 housekeeping rule to assist the courts with the management of their cases, [which] have effect  
19 unless and until waived by a court in a particular case or modified by a rule of this Court on the  
20 same subject.”).

21 **Rule 1-077.1(J)**

22 Rule 1-077.1(J) provides that if no objections are filed, the district court may decide a petition for  
23 expungement of records upon identity theft, § 29-3A-3, or for expungement of records upon

1 release without conviction, § 29-3A-4, without a hearing. This conflicts with Section 29-3A-3(B),  
2 which provides that the district court shall issue an order “after a hearing” on a petition for  
3 expungement of records upon identity theft and with Section 29-3A-4(E), which provides likewise  
4 in the context of a petition for expungement of records upon release without conviction. Rule 1-  
5 077.1(J) controls because the Supreme Court can modify a procedural provision in a statute by  
6 adopting a contrary rule. *Lovelace Med. Ctr.*, 1991-NMSC-002, ¶ 15 (“[L]egislative rules relating  
7 to pleading, practice and procedure in the courts, particularly where those rules relate to court  
8 management or housekeeping functions, may be modified by a subsequent rule promulgated by  
9 the Supreme Court.”).

10 **Rule 1-077.1(K)**

11 Rule 1-077.1(K) provides that the district court shall issue an order within sixty (60) days of an  
12 expungement hearing. This time limit is contrary to Section 29-3A-4(E) and Section 29-3A-5(C),  
13 which require the district court to issue an order within thirty (30) days of certain expungement  
14 hearings. For the reasons stated above in the committee commentary to Rule 1-077.1(G), the time  
15 limits in Rule 1-077.1(K) control.

16 **2025 Amendment**

17 Rule 1-077.1(B) was amended to remove former Subparagraph (B)(4), which provided for an  
18 action to be filed in district court for automatic expungement of cannabis arrest and public records  
19 under Section 29-3A-8. Rule 1-077.1(D) was amended to remove reference to former Form 4-954  
20 NMRA (automatic expungement of arrest records and public records). Rule 1-077.1(J) was  
21 amended to remove reference to a petition filed under Section 29-3A-8. These amendments reflect  
22 the changes enacted by H.B. 314, 56th Leg., 1st Sess. (N.M. 2023), which amended Section 29-  
23 3A-8 of the Criminal Record Expungement Act to provide for a procedure implemented by the

1 Administrative Office of the Courts to verify whether automatic expungement has occurred and  
2 request expedited automatic expungement if eligible charges, convictions, or any public records  
3 held by a court or agency of the state or a local jurisdiction that relate to the person's arrest or  
4 conviction have not yet been expunged.

5 [~~Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or~~  
6 ~~pending on or after January 28, 2022~~]; provisionally adopted committee commentary approved as  
7 amended by Supreme Court Order No. S-1-RCR-2024-00099.]