

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; provisional amendments approved by Supreme Court Order No. S-
9 1-RCR-2025-00150, effective for all cases pending or filed on or after December 31, 2025.]

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

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

1 Criminal Procedure for the Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of
2 Procedure for the Municipal Courts, *see* Rule 8-401 NMRA.

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

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

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

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

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

1 of release to ensure the orderly administration of justice. This provision was derived from the
2 American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-
3 5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The
4 court should make a determination on whether the defendant can afford to pay all or a part of the
5 cost, or whether the court has the authority to waive the cost, because detaining a defendant
6 because of inability to pay the cost associated with a condition of release is comparable to detaining
7 a defendant because of financial inability to post a secured bond.

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

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

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

1 to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A
2 felony defendant who poses a danger that cannot be mitigated through the imposition of non-
3 monetary conditions of release under Paragraph D of this rule should be detained under Article II,
4 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

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

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

19 Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-
20 303 NMRA (order setting conditions of release). Paragraph F also requires the court to make
21 written findings justifying the imposition of a secured bond. Judges are encouraged to enter their
22 written findings on the order setting conditions of release at the conclusion of the hearing. If more

1 detailed findings are necessary, the judge should make any supplemental findings in a separate
2 document within two (2) days of the conclusion of the hearing.

3 Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section
4 13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other
5 person or the community that cannot be addressed through the imposition of non-monetary
6 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files
7 a motion for pretrial detention, the district court must follow the procedures set forth in Rule 5-
8 409 NMRA. Paragraph G was amended in 2020 to permit the court to automatically schedule a
9 pretrial detention hearing in certain categories of cases. However, before the hearing, the
10 prosecutor retains the burden of filing an expedited motion for pretrial detention under Rule 5-
11 409 NMRA. If the prosecutor does not file that motion before the hearing, then the court is to set
12 conditions of release rather than consider detention.

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

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

15 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out
16 the provisions of this rule. As set forth in Paragraph N, a designee must be designated by the chief
17 district court judge in a written court order. A person may not be appointed as a designee if the
18 person is related within the second degree of blood or marriage to a paid surety licensed in this
19 state to execute bail bonds. A jailer may be appointed as a designee. Paragraph N and Rule 5-
20 408 NMRA govern the limited circumstances under which a designee shall release an arrested
21 defendant from custody before that defendant’s first appearance before a judge.

22 Paragraph O requires the magistrate or metropolitan court to transfer any bond to the
23 district court on notice from the district attorney that an information or indictment has been

1 filed. *See* Rules 6-202(E)-(F), 7-202(E)-(F) NMRA (requiring the district attorney to notify the
2 magistrate or metropolitan court of the filing of an information or indictment in the district court).

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

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

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

**DISTRICT COURT CRIMINAL
RULE 5-401**

**Supreme Court Approved
October 31, 2025**

- 1 8300-015, effective for all cases pending or filed on or after December 31, 2022; as amended by
- 2 Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after
- 3 May 8, 2024.]