

1 **5-827. ~~[Appeals]~~De novo appeals from metropolitan court to district court.**

2           A.       **Right of appeal.** A party who is aggrieved by the judgment or final order of the  
3 metropolitan court in a criminal action that does not involve driving while under the influence or  
4 domestic violence offenses may appeal, as permitted by law, to the district court of the county  
5 within which the metropolitan court is located. Appeals from the metropolitan court to the district  
6 court shall be de novo. The notice of appeal shall be filed in the district court within fifteen (15)  
7 days after the judgment or final order appealed from is filed in the metropolitan court clerk's office.  
8 The ~~[three (3)-day]~~ three (3)-day mailing period set forth in Rule 7-104 NMRA does not apply to  
9 the time limits set forth above. A notice of appeal filed after the announcement of a decision~~;~~ or  
10 return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's  
11 office, shall be treated as timely filed and shall become effective when the judgment or order  
12 appealed from is filed in the metropolitan court clerk's office. Notwithstanding any other provision  
13 of this rule, no docket fee or other cost shall be imposed against the state or its political  
14 subdivisions or against a defendant who is represented by a public defender or court appointed  
15 counsel.

16           B.       **Notice of appeal.** An appeal from the metropolitan court is taken by~~;~~

17                   (1)       filing with the clerk of the district court a notice of appeal with proof of  
18 service; and

19                   (2)       promptly filing with the metropolitan court~~;~~

20                           (a)       a copy of the notice of appeal which has been endorsed by the clerk  
21 of the district court; and

22                           (b)       ~~[-unless the appeal has been filed by the state, a political subdivision~~  
23 ~~of the state or by a defendant represented by a public defender or court appointed counsel,-]~~ a copy

1 of the receipt of payment of the docket fee[-], unless the appeal has been filed by the state, a  
2 political subdivision of the state, or by a defendant represented by a public defender or court  
3 appointed counsel.

4 C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the  
5 form approved by the Supreme Court.

6 D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district  
7 court, the appellant shall[:]

8 (1) serve each party or each party's attorney in the proceedings in the  
9 metropolitan court with a copy of the notice of appeal in accordance with Rule 5-103 NMRA[~~of~~  
10 ~~the Rules of Criminal Procedure for the District Courts~~]; and

11 (2) file proof of service with the clerk of the district court that a copy of the  
12 notice of appeal has been served in accordance with Rule 5-103 NMRA.

13 E. **Docketing the appeal.** [~~Upon~~] On the filing of the notice of appeal and proof of  
14 service and payment of the docket fee, if required, the clerk of the district court shall docket the  
15 appeal in the district court.

16 F. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the  
17 notice of appeal in the metropolitan court [~~pursuant to~~]under Paragraph B of this rule, the  
18 metropolitan court shall file with the clerk of the district court a copy of the record on appeal taken  
19 in the action in the metropolitan court.

20 \_\_\_\_\_ (1) For purposes of this rule, the record on appeal shall consist of the following:

21 [(4)] (a) a title page containing the caption of the case in the metropolitan  
22 court and the names and mailing addresses of each party or, if the party is represented by counsel,  
23 the name and address of the attorney;

1            [(2)] (b) a copy of all papers and pleadings filed in the metropolitan court;

2            [(3)] (c) a copy of the judgment or final order sought to be reviewed with  
3 date of filing;

4            [(4)] (d) any exhibits; and

5            [(5)] (e) [if the appeal is from a trial on the record, any transcript of the  
6 proceedings made by the metropolitan court. The metropolitan court clerk shall prepare and file  
7 with the district court] a duplicate of the audio record of the proceedings and that record's index  
8 log.

9            (2) The metropolitan court clerk shall give prompt notice to all parties of the  
10 filing of the record on appeal with the district court.

11            (3) Any party desiring a copy of the record on appeal shall be responsible for  
12 [paying] the cost of preparing the copy.

13            G. **Correction or modification of the record.** If anything material to either party is  
14 omitted from the record on appeal by error or accident, the parties by stipulation, or the  
15 metropolitan court or the district court, on proper suggestion or on its own initiative, may direct  
16 that the omission be corrected and a supplemental record [transmitted] sent to the district court.

17            H. **Conditions of release.** If the metropolitan court sets an appeal bond [pursuant  
18 to] under Rule 7-703 NMRA [upon] on filing of the notice of appeal, the appeal bond shall be  
19 transferred to the district court pending disposition of the appeal. The district court shall dispose  
20 of all matters relating to the appeal bond until remand to the metropolitan court.

21            I. **Review of terms of release.** If the metropolitan court has refused release pending  
22 appeal or has imposed conditions of release which the defendant cannot meet, the defendant may  
23 file a petition for release with the clerk of the district court at any time after the filing of the notice

1 of appeal. A copy of the petition for release, which has been endorsed by the clerk of the district  
2 court, shall be filed with the metropolitan court. If the district court releases the defendant on  
3 appeal, a copy of the order of release shall be filed in the metropolitan court.

4 J. ~~[Trial de novo appeals. Except as otherwise provided by law for appeals involving~~  
5 ~~driving while under the influence and domestic violence offenses, trials upon appeals from the~~  
6 ~~metropolitan court to the district court shall be de novo.] **Transfer.** When a party files an appeal  
7 with the district court that the district court determines should have been filed as an on-record  
8 appeal in the Court of Appeals, the district court shall enter an order of transfer to the Court of  
9 Appeals explaining why the district court believes transfer is appropriate, and give prompt notice  
10 to the parties. The Court of Appeals will review the district court's transfer order in accordance  
11 with Rule 12-609(E) NMRA.~~

12 ~~[K. — **Rehearing; appeals on the record.** Within ten (10) days after entry of a judgment~~  
13 ~~or order disposing of an appeal on the record, any party may file a motion for rehearing. The~~  
14 ~~motion shall set forth with particularity the points of law or fact which the movant believes the~~  
15 ~~court has overlooked or misapprehended but shall not contain argument. No response to a motion~~  
16 ~~shall be permitted unless requested by the district court. The motion for rehearing shall be disposed~~  
17 ~~of within fifteen (15) days after it is filed.]~~

18 ~~[L.]~~K. **Disposal of appeals.** The district court shall dispose of appeals by entry of a  
19 judgment and sentence or other final order. The court in its discretion may accompany the  
20 judgment or order with a formal or memorandum opinion. Opinions shall not be published and  
21 shall not be used as precedent in subsequent cases. A mandate shall be issued by the district court  
22 [upon]on expiration of whichever of the following events occurs latest:

23 (1) fifteen (15) days after entry of the order disposing of the case;

- 1                   (2)     fifteen (15) days after disposition of a motion for rehearing; or  
2                   (3)     if a notice of appeal is filed, ~~[upon]~~on final disposition of the appeal.

3 ~~[Upon remand of the case by the district court to the metropolitan court, the metropolitan court~~  
4 ~~shall enforce the mandate of the district court.]~~

5           [M.]L.           **Remand.** ~~[Upon]~~On expiration of the time for appeal from the final order  
6 or judgment of the district court, the district court shall remand the case to the metropolitan court  
7 for enforcement of the district court’s judgment, and the metropolitan court shall enforce the  
8 mandate of the district court.

9           ~~[N.]~~M. **Appeal.** An aggrieved party may appeal from a judgment of the district court to the  
10 ~~[New Mexico]~~Supreme Court or ~~[New Mexico]~~Court of Appeals, as authorized by law, in  
11 accordance with the Rules of Appellate Procedure. The conditions of release and bond approved  
12 or continued in effect by the district court during the pendency of the appeal to the district court  
13 shall continue in effect pending appeal to the Supreme Court or Court of Appeals, unless modified  
14 ~~[pursuant to]~~under Rule 12-205 NMRA~~[of the Rules of Appellate Procedure].~~

15           ~~[O.]~~N. **Transmittal of the judgment and sentence or final order.** After final  
16 determination of the appeal, the clerk of the district court shall ~~[transmit]~~send a copy of the  
17 judgment and sentence or final order to the metropolitan court clerk.

18 ~~[Adopted by Supreme Court Order No. 12-8300-018, effective for all cases pending or filed on or~~  
19 ~~after August 3, 2012; as amended by Supreme Court Order No. S-1-RCR-2025-00175, effective~~  
20 ~~for all cases filed on or after December 31, 2025.]~~

21 ~~[Committee commentary. — Section 34-8A-6C NMSA 1978 (as amended by Laws 1980,~~  
22 ~~Chapter 142, Section 4), is so broad as to be in violation of the constitutional prohibition against~~  
23 ~~double jeopardy. The rule as drafted limits appeals by the prosecution to a determination of the~~

- 1 ~~validity of the statute or ordinance under which the defendant was prosecuted, thus avoiding the~~
- 2 ~~statutory violation mentioned above.]~~
- 3 [Adopted by Supreme Court Order No. 12-8300-018~~], effective for all cases pending or filed on~~
- 4 ~~or after August 3, 2012]; withdrawn by Supreme Court Order No. S-1-RCR-2025-00175.]~~