

1 **6-401. Pretrial release.**

2 A. **Hearing.**

3 (1) **Time.** The court shall conduct a hearing under this rule and issue an order
4 setting conditions of release as soon as practicable, but in no event later than

5 (a) if the defendant remains in custody, three (3) days after the date of
6 arrest if the defendant is being held in the local detention center, or five (5) days after the date of
7 arrest if the defendant is not being held in the local detention center;

8 (b) first appearance or arraignment, if the defendant is not in custody;
9 or

10 (c) if the defendant remains in custody pending a hearing under Rule 6-
11 403(D) NMRA, then within three (3) days after a temporary detention order is placed or the date
12 of the [~~initial~~] hearing conducted under Rule 6-403 NMRA if the defendant is being held in the
13 local detention center, or five (5) days after the date of the [~~initial~~] hearing conducted under Rule 6-
14 403 NMRA if the defendant is not being held in the local detention center.

15 (2) **Right to counsel.** If the defendant does not have counsel at the initial release
16 conditions hearing and is not ordered released at the hearing, the matter shall be continued for no
17 longer than three (3) additional days for a further hearing to review conditions of release, at which
18 the defendant shall have the right to assistance of retained or appointed counsel.

19 (3) **Local detention center; defined.** A “local detention center” is one that is
20 commonly used by the magistrate court in the normal course of business and not necessarily within
21 the territorial jurisdiction of the court.

22 B. **Right to pretrial release; recognizance or unsecured appearance bond.** Any
23 defendant eligible for pretrial release under Article II, Section 13 of the New Mexico

1 Constitution shall be ordered released pending trial on the defendant's personal recognizance or
2 on the execution of an unsecured appearance bond in an amount set by the court. The court may
3 impose non-monetary conditions of release under Paragraph D of this rule, but the court shall
4 impose the least restrictive condition or combination of conditions that will reasonably ensure the
5 appearance of the defendant as required and the safety of any other person or the community. The
6 court may order execution of a secured appearance bond only if the court makes written findings
7 of particularized reasons why the release will not reasonably ensure the appearance of the
8 defendant as required under Paragraphs E and F of this rule.

9 **C. Factors to be considered in determining conditions of release.** In determining
10 the least restrictive conditions of release that will reasonably ensure the appearance of the
11 defendant as required and the safety of any other person and the community, the court shall
12 consider any available results of a pretrial risk assessment instrument approved by the Supreme
13 Court for use in the jurisdiction and the financial resources of the defendant. In addition, the court
14 may take into account the available information about

15 (1) the nature and circumstances of the offense charged, including whether the
16 offense is a crime of violence or involves alcohol or drugs;

17 (2) the weight of the evidence against the defendant;

18 (3) the history and characteristics of the defendant, including

19 (a) the defendant's character, physical and mental condition, family
20 ties, employment, past and present residences, length of residence in the community, community
21 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record about
22 appearance at court proceedings; and

1 (b) whether, at the time of the current offense or arrest, the defendant
2 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense
3 under federal, state, or local law;

4 (4) the nature and seriousness of the danger to any person or the community
5 that would be posed by the defendant's release;

6 (5) any other facts tending to indicate the defendant may or may not be likely
7 to appear as required; and

8 (6) any other facts tending to indicate the defendant may or may not commit
9 new crimes if released.

10 **D. Non-monetary conditions of release.** In its order setting conditions of release, the
11 court shall impose a standard condition that the defendant not commit a federal, state, or local
12 crime during the period of release. The court may also impose the least restrictive particularized
13 condition, or combination of particularized conditions, that the court finds will reasonably ensure
14 the appearance of the defendant as required, the safety of any other person and the community,
15 and the orderly administration of justice, which may include the condition that the defendant

16 (1) remain in the custody of a designated person who agrees to assume
17 supervision and to report any violation of a release condition to the court, if the designated person
18 is able reasonably to assure the court that the defendant will appear as required and will not pose
19 a danger to the safety of any other person or the community;

20 (2) maintain employment, or, if unemployed, actively seek employment;

21 (3) maintain or commence an educational program;

22 (4) abide by specified restrictions on personal associations, place of abode, or
23 travel;

1 (5) avoid all contact with an alleged victim of the crime or with a potential
2 witness who may testify about the offense;

3 (6) report on a regular basis to a designated pretrial services agency or other
4 agency agreeing to supervise the defendant;

5 (7) comply with a specified curfew;

6 (8) refrain from possessing a firearm, destructive device, or other dangerous
7 weapon;

8 (9) refrain from any use of alcohol or any use of an illegal drug or other
9 controlled substance without a prescription by a licensed medical practitioner;

10 (10) refrain from any use of cannabis, cannabis products, or synthetic
11 cannabinoids without a certification from a licensed medical practitioner;

12 (11) submit to a drug test or an alcohol test on request of a person designated by
13 the court;

14 (12) return to custody for specified hours after release for employment,
15 schooling, or other limited purposes; and

16 (13) satisfy any other condition that is reasonably necessary to ensure the
17 appearance of the defendant as required and the safety of any other person and the community.

18 E. **Secured bond.** If the court makes written findings of the particularized reasons
19 why release on personal recognizance or unsecured appearance bond, in addition to any non-
20 monetary conditions of release, will not reasonably ensure the appearance of the defendant as
21 required, the court may require a secured bond for the defendant's release.

22 (1) *Factors to be considered in setting secured bond.*

1 (a) In determining whether any secured bond is necessary, the court
2 may consider any facts tending to indicate that the particular defendant may or may not be likely
3 to appear as required.

4 (b) The court shall set secured bond at the lowest amount necessary to
5 reasonably ensure the defendant's appearance and with regard to the defendant's financial ability
6 to secure a bond.

7 (c) The court shall not set a secured bond that a defendant cannot afford
8 for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

9 (d) Secured bond shall not be set by reference to a predetermined
10 schedule of monetary amounts fixed according to the nature of the charge.

11 (2) ***Types of secured bond.*** If a secured bond is determined necessary in a
12 particular case, the court shall impose the first of the following types of secured bond that will
13 reasonably ensure the appearance of the defendant.

14 (a) ***Percentage bond.*** The court may require a secured appearance bond
15 executed by the defendant in the full amount specified in the order setting conditions of release,
16 secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be
17 returned as provided in Paragraph L of this rule.

18 (b) ***Property bond.*** The court may require the execution of a property
19 bond by the defendant or by unpaid sureties in the full amount specified in the order setting
20 conditions of release, secured by the pledging of real property in accordance with Rule 6-
21 401.1 NMRA.

22 (c) ***Cash or surety bond.*** The court may give the defendant the option
23 of either

1 (i) a secured appearance bond executed by the defendant in the
2 full amount specified in the order setting conditions of release, secured by a deposit in cash of one
3 hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph
4 L of this rule, or

5 (ii) a surety bond executed by licensed sureties in accordance
6 with Rule 6-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order
7 setting conditions of release.

8 **F. Order setting conditions of release; findings about secured bond.**

9 (1) *Contents of order setting conditions of release.* The written order setting
10 conditions of release shall be provided to the defendant before release if the defendant is in custody
11 or within three (3) days of the conditions of release hearing if the defendant is not in custody, and

12 (a) include a written statement that sets forth all the conditions to which
13 the release is subject, in a manner sufficiently clear and specific to serve as a guide for the
14 defendant's conduct; and

15 (b) advise the defendant of

16 (i) the penalties for violating a condition of release, including
17 the penalties for committing an offense while on pretrial release;

18 (ii) the consequences for violating a condition of release,
19 including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial
20 release, and forfeiture of bond; and

21 (iii) the consequences of intimidating a witness, victim, or
22 informant, or otherwise obstructing justice.

1 (2) ***Written findings about secured bond.*** The court shall file written findings
2 of the individualized facts justifying a secured bond as soon as possible, but no later than two (2)
3 days after the conclusion of the hearing.

4 G. **Pretrial detention.** If the prosecutor files a motion for pretrial detention, the court
5 shall follow the procedures set forth in Rule 6-409 NMRA.

6 H. **Review of conditions of release by the magistrate court.**

7 (1) ***Review.*** If the magistrate court requires a secured bond for the defendant's
8 release under Paragraph E of this rule or imposes non-monetary conditions of release under
9 Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after the
10 issuance of the order setting conditions of release as a result of the defendant's inability to post the
11 secured bond or meet the conditions of release in the present case, the defendant shall be entitled
12 to a hearing to review the conditions of release.

13 (2) ***Review hearing.*** The magistrate court shall hold a hearing in an expedited
14 manner, but in no event later than five (5) days after the initial conditions of release hearing. The
15 defendant shall have the right to assistance of retained or appointed counsel at the hearing. Unless
16 the order setting conditions of release is amended and the defendant is then released, the court shall
17 file a written order setting forth the reasons for declining to amend the order setting conditions of
18 release. The court shall consider the defendant's financial ability to secure a bond. No defendant
19 eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution shall be
20 detained solely because of financial inability to post a secured bond unless the court determines
21 by clear and convincing evidence and makes findings of the reasons why the amount of secured
22 bond required by the court is reasonably necessary to ensure the appearance of the particular
23 defendant as required. The court shall file written findings of the individualized facts justifying

1 the secured bond as soon as possible, but no later than two (2) days after the conclusion of the
2 hearing.

3 (3) ***Work or school release.*** A defendant who is ordered released on a condition
4 that requires that the defendant return to custody after specified hours shall, on motion of the
5 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.
6 Unless the requirement is removed and the defendant is released on another condition, the court
7 shall file a written order setting forth the reason for the continuation of the requirement. A hearing
8 to review conditions of release under this subparagraph shall be held by the magistrate court within
9 five (5) days of the filing of the motion. The defendant shall have the right to assistance of retained
10 or appointed counsel at the hearing.

11 (4) ***Subsequent motion for review.*** The defendant may file subsequent motions
12 for review of the order setting conditions of release, but the court may rule on subsequent motions
13 with or without a hearing.

14 I. **Amendment of conditions.** The court may amend its order setting conditions of
15 release at any time. If the amendment of the order may result in the detention of the defendant or
16 in more restrictive conditions of release, the court shall not amend the order without a hearing. If
17 the court is considering revocation of the defendant's pretrial release or modification of the
18 defendant's conditions of release for violating a condition of release, the court shall follow the
19 procedures set forth in Rule 6-403 NMRA.

20 J. **Petition to district court.**

21 (1) ***Case within magistrate court trial jurisdiction.*** A defendant charged with
22 an offense that is within magistrate court trial jurisdiction may file a petition in the district court
23 for review of the magistrate court's order setting conditions of release under this paragraph only

1 after the magistrate court has reviewed the conditions of release and made a requisite ruling under
2 Paragraph H of this rule. The defendant shall attach to the district court petition a copy of the
3 magistrate court order after the review of the conditions of release.

4 (2) ***Felony case.*** A defendant charged with a felony offense who has not been
5 bound over to the district court may file a petition in the district court for release under Rule 5-
6 401(K) NMRA and this paragraph at any time after the defendant's arrest.

7 (3) ***Petition; requirements.*** A petition to the district court under this paragraph
8 shall include the specific facts that warrant review by the district court and may include a request
9 for a hearing. The petitioner shall promptly

10 (a) file a copy of the district court petition in the magistrate court;

11 (b) serve a copy on the district attorney; and

12 (c) provide a copy to the assigned district court judge.

13 (4) ***Magistrate court's jurisdiction pending determination of the petition.*** On
14 the filing of a petition under this paragraph, the magistrate court's jurisdiction to set or amend the
15 conditions of release shall be suspended pending determination of the petition by the district court.
16 The magistrate court shall retain jurisdiction over all other aspects of the case, and the case shall
17 proceed in the magistrate court while the district court petition is pending. The magistrate court's
18 order setting conditions of release shall remain in effect unless and until the district court issues
19 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 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 court.*** The district court
6 shall promptly send to the magistrate court a copy of the district court order disposing of the
7 petition, and jurisdiction over the conditions of release shall revert to the magistrate court.

8 K. **Expedited trial scheduling for defendant in custody.** The magistrate court shall
9 provide expedited priority scheduling in a case in which the defendant is detained as a result of
10 inability to post a secured bond or meet the conditions of release. The court shall hold a status
11 review hearing in any case in which the defendant has been held for more than sixty (60) days.
12 The purpose of the status review hearing is to conduct a meaningful review of the progress of the
13 case. If the court determines that insufficient progress has been made, then the court shall issue an
14 appropriate scheduling order.

15 L. **Return of cash deposit.** If a defendant has been released by executing a secured
16 appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions
17 of the appearance bond have been performed and the defendant's case has been adjudicated by the
18 court, the clerk shall return the sum that has been deposited to the person who deposited the sum,
19 or that person's personal representatives or assigns.

20 M. **Release from custody by designee.** The presiding judge of the magistrate court
21 may designate by written court order responsible persons to implement the pretrial release
22 procedures set forth in Rule 6-408 NMRA. A designee shall release a defendant from custody
23 before the defendant's first appearance before a judge if the defendant is eligible for pretrial release

1 under Rule 6-408 NMRA, but may contact a judge for special consideration based on exceptional
2 circumstances. No person shall be qualified to serve as a designee if the person or the person's
3 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to
4 sell property or corporate bonds within this state.

5 N. **Bind over to district court.** For any case that is not within magistrate court trial
6 jurisdiction, on notice to the magistrate court, any bond shall be transferred to the district court on
7 the filing of an information or indictment in the district court.

8 O. **Evidence.** Information offered in connection with or stated in any proceeding held
9 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

10 P. **Forms.** Instruments required by this rule, including any order setting conditions of
11 release, appearance bond, property bond, or surety bond, shall be substantially in the form
12 approved by the Supreme Court.

13 Q. **Judicial discretion; disqualification and excusal.** Action by any court on any
14 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a
15 judge. A judge may not be excused from setting initial conditions of release unless the judge is
16 required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial
17 Conduct.

18 [As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;
19 as amended by Supreme Court Order No. 07-8300, effective January 22, 2008; by Supreme Court
20 Order No. 08-8300-044, effective December 31, 2008; as amended by Supreme Court Order No.
21 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by
22 Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after
23 December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective

1 for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order
2 No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as
3 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases
4 pending or filed on or after July 29, 2025; provisional amendments approved by Supreme Court
5 Order No. S-1-RCR-2025-00150, effective for all cases pending or filed on or after December 31,
6 2025.]

7 **Committee commentary.** — This rule provides “the mechanism through which a person
8 may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico
9 Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section
10 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending
11 trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger
12 to the safety of any other person or the community and that no release condition or combination
13 of conditions will reasonably ensure the safety of any other person or the community, and (2) to
14 require the pretrial release of a defendant who is in custody solely because of financial inability to
15 post a secured bond. This rule was derived from the federal statute governing the release or
16 detention of a defendant pending trial. *See* 18 U.S.C. § 3142. This rule was amended in 2017 to
17 implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding
18 in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure
19 for the District Courts, *see* Rule 5-401 NMRA, the Rules of Criminal Procedure for the
20 Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of Procedure for the Municipal
21 Courts, *see* Rule 8-401 NMRA.

22 Time periods specified in this rule are computed in accordance with Rule 6-104 NMRA.

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

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

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

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

21 Paragraph D also permits the court to impose non-monetary conditions of release to ensure
22 the orderly administration of justice. This provision was derived from the American Bar
23 Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.2 (3d ed. 2007).

1 Some conditions of release may have a cost associated with the condition. The court should make
2 a determination about whether the defendant can afford to pay all or a part of the cost, or whether
3 the court has the authority to waive the cost, because detaining a defendant because of inability to
4 pay the cost associated with a condition of release is comparable to detaining a defendant because
5 of financial inability to post a secured bond.

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

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

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

1 monetary conditions of release under Paragraph D of this rule should be detained under Article II,
2 Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

3 The court should consider the authorized types of secured bonds in the order of priority set
4 forth in Paragraph E. The court must first consider requiring an appearance bond secured by a cash
5 deposit of ten percent (10%). No other percentage is permitted under the rule. If a cash deposit of
6 ten percent (10%) is inadequate, the court then must consider a property bond involving property
7 that belongs to the defendant or other unpaid surety. If neither of these options is sufficient to
8 reasonably ensure the defendant's appearance, the court may require a cash or surety bond for the
9 defendant's release. If the court requires a cash or surety bond, the defendant has the option either
10 to execute an appearance bond and deposit one hundred percent (100%) of the amount of the bond
11 with the court or to purchase a bond from a paid surety. Under Subparagraph (E)(2)(c), the
12 defendant alone has the choice to post the bond by a one hundred percent (100%) cash deposit or
13 a surety. The court does not have the option to set a cash-only bond or a surety-only bond; it must
14 give the defendant the choice of either. A paid surety may execute a surety bond or a real or
15 personal property bond only if the conditions of Rule 6-401.2 NMRA are met.

16 Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-
17 303 NMRA (order setting conditions of release). Although pretrial release hearings are not
18 required to be a matter of record in the magistrate court, Paragraph F requires the court to make
19 written findings justifying the imposition of a secured bond. Judges are encouraged to enter their
20 written findings on the order setting conditions of release at the conclusion of the hearing. If more
21 detailed findings are necessary, the judge should make the supplemental findings in a separate
22 document within two (2) days of the conclusion of the hearing.

1 Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section
2 13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other
3 person or the community that cannot be addressed through the imposition of non-monetary
4 conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files
5 a motion for pretrial detention, the magistrate court must follow the procedures set forth in Rule 6-
6 409 NMRA.

7 Paragraph H sets forth the procedure for review of the defendant’s conditions of release in
8 the magistrate court. Paragraph J sets forth the procedure for the defendant to petition the district
9 court for release or for review of the conditions of release set by the magistrate court. Article II,
10 Section 13 of the New Mexico Constitution requires the court to rule on a motion or petition for
11 pretrial release “in an expedited manner” and to release a defendant who is being held solely
12 because of financial inability to post a secured bond. A defendant who wishes to present financial
13 information to a court to support a motion or a petition for pretrial release may present Form 9-
14 301A NMRA (pretrial release financial affidavit) to the court. The defendant shall be entitled to
15 appear and participate personally with counsel before the judge conducting any hearing to review
16 the conditions of release, rather than by any means of remote electronic conferencing.

17 Paragraph K requires the magistrate court to prioritize the scheduling of trial and other
18 proceedings for cases in which the defendant is held in custody because of inability to post bond
19 or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987)
20 (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate
21 due process, in part because of “the stringent time limitations of the Speedy Trial Act,” 18 U.S.C.
22 § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11
23 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limits

1 within which detained defendants should be tried consistent with the sound administration of
2 justice.”). This rule does not preclude earlier or more regular status review hearings. The purpose
3 of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the
4 progress of the case includes assessment of the parties’ compliance with applicable deadlines,
5 satisfaction of discovery obligations, and witness availability, among other matters. If the court
6 determines that the parties have made insufficient progress on these measures, then it shall issue
7 an appropriate scheduling order.

8 Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out
9 the provisions of this rule. As set forth in Paragraph M, a designee must be designated by the
10 presiding magistrate court judge in a written court order. A person may not be appointed as a
11 designee if that person is related within the second degree of blood or marriage to a paid surety
12 licensed in this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph M
13 and Rule 6-408 NMRA govern the limited circumstances under which a designee shall release an
14 arrested defendant from custody before that defendant’s first appearance before a judge.

15 Paragraph N requires the magistrate court to transfer any bond to the district court on notice
16 from the district attorney that an information or indictment has been filed. *See* Rule 6-202(E)-(F)
17 NMRA (requiring the district attorney to notify the magistrate court of the filing of an information
18 or indictment in the district court).

19 Paragraph O of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that
20 the Rules of Evidence do not apply to proceedings in the magistrate court with respect to matters
21 of pretrial release. As with courts in other types of proceedings in which the Rules of Evidence do
22 not apply, a court presiding over a pretrial release hearing is responsible “for assessing the
23 reliability and accuracy” of the information presented. *See United States v. Martir*, 782 F.2d 1141,

1 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the
2 responsibility for assessing the reliability and accuracy of the government’s information, whether
3 presented by proffer or by direct proof”); *see also United States v. Marshall*, 519 F. Supp. 751,
4 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has
5 sufficient indicia of reliability to support its probable accuracy, the information may properly be
6 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*
7 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a
8 probation revocation hearing, the court should focus on the reliability of the evidence).

9 Consistent with Rule 6-106 NMRA, a party cannot exercise the statutory right to excuse a
10 judge who is setting initial conditions of release. *See* NMSA 1978, § 35-3-7 (1983). Paragraph Q
11 of this rule does not prevent a judge from filing a recusal either on the court’s own motion or
12 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

13 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or
14 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases
15 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-
16 RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]