

1 **7-703. ~~Appeal~~ De novo appeal from metropolitan court to district court.**

2 A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a
3 criminal action, other than those identified in Rule 7-702 NMRA as requiring an on-record appeal,
4 may appeal, as permitted by law, to the district court of the county within which the metropolitan
5 court is located. The notice of appeal shall be filed in the district court within fifteen (15) days
6 after the judgment or final order appealed from is filed in the metropolitan court clerk's office in
7 accordance with Rule 5-827 NMRA.

8 B. **Conditions of release.** The appearance bond set to ensure the defendant's
9 appearance for trial shall be released. The metropolitan court may set an appeal bond to ensure the
10 defendant's appearance in the district court on appeal and may set any conditions of release as are
11 necessary to ensure the appearance of the defendant or the orderly administration of justice. The
12 ~~metropolitan~~ court may ~~utilize~~use the criteria listed in Rule 7-401(C) NMRA and may also
13 consider the fact of the defendant's conviction and the length of the sentence imposed. The amount
14 of the appeal bond and the conditions of release shall be included ~~on~~ in the judgment and
15 sentence. Nothing in this rule shall be construed to prevent the court from releasing a person not
16 released ~~prior to~~before or during trial. ~~Upon~~On filing of the notice of appeal, the appeal bond
17 shall be transferred to the district court pending disposition of the appeal. The district court shall
18 dispose of all matters relating to the appeal bond until remand to the metropolitan court.

19 C. **Review of terms of release.** If the metropolitan court has refused release pending
20 appeal or has imposed conditions of release that the defendant cannot meet, the defendant may file
21 a petition for release with the clerk of the district court at any time after the filing of the notice of
22 appeal. A copy of the petition for release that has been endorsed by the clerk of the district court

1 shall be filed with the metropolitan court. If the district court releases the defendant on appeal, a
2 copy of the order of release shall be filed in the metropolitan court.

3 **D. Stay of execution of sentence.** Execution of any sentence, fine, fee, or probation
4 shall be stayed pending the results of the appeal to the district court. An abstract of record of the
5 defendant's conviction shall not be prepared and sent in accordance with Section 66-8-135 NMSA
6 1978 until the later of the following dates:

7 (1) expiration of the deadline for filing a notice of appeal under this rule if the
8 defendant does not file a notice of appeal; or

9 (2) ten (10) days after remand from the district court or issuance of mandate
10 by the Court of Appeals or Supreme Court if the defendant [~~does file~~] files a notice of appeal under
11 this rule.

12 [As amended, effective July 1, 1988; September 1, 1989; September 1, 1990; January 1, 1994;
13 January 1, 1994; January 1, 1995; January 1, 1997; February 16, 2004; as amended by Supreme
14 Court Order No. 08-8300-056, effective January 15, 2009; by Supreme Court Order No. 12-8300-
15 020, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme
16 Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as
17 amended by Supreme Court Order No. S-1-RCR-2025-00175, effective for all cases filed on or
18 after December 31, 2025.]

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20 **Committee commentary.** — [~~Section 34-8A-6C NMSA 1978 (as amended by Laws 1980,~~
21 ~~Chapter 142, Section 4), is so broad as to be in violation of the constitutional prohibition against~~
22 ~~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 ~~Paragraph H was redesignated as Paragraph C and revised to clarify that bond liability terminates~~
4 ~~upon a finding of guilt pursuant to NMSA 1978, § 31-3-10 (1987). Paragraph D was added to~~
5 ~~clarify that all aspects of the sentence shall be stayed pending appeal because there were wide~~
6 ~~variances in interpretation and practice. The provision in Paragraph D regarding preparation and~~
7 ~~issuance of the abstract of record of the defendant's conviction is intended to reconcile the~~
8 ~~potentially conflicting ten (10) day deadline in NMSA 1978, Section 66-8-135 and the fifteen (15)~~
9 ~~day notice of appeal deadline in this rule and NMSA 1978, Section 34-8A-6.] Only a final~~
10 ~~judgment or final order of the metropolitan court may be appealed. There is no right to an~~
11 ~~interlocutory appeal from the metropolitan court.~~

12 [Adopted by Supreme Court Order No. 12-8300-020, effective August 3, 2012; as amended by
13 Supreme Court Order No. S-1-RCR-2025-00175.]