PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2026-002

March 6, 2026

The Appellate Rules Committee has recommended amendments to Rule 12-601 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/ or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2026 to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

12-601. Direct appeals from administrative decisions where the right to appeal is provided by statute.

A. Scope of rule. This rule governs the procedure for filing and perfecting direct appeals to an appellate court from orders, decisions, or actions of boards, commissions, administrative agencies, or officials when the right to a direct appeal is provided by statute. This rule applies to both rulemaking and adjudicatory proceedings by the administrative entity. To the extent of any conflict, this rule supersedes any statute providing for the time or other procedure for filing or perfecting an appeal with an appellate court. This rule does not create a right of appeal and does not govern petitions for writs filed in the Supreme Court or appeals to the district court.

B. Initiating the appeal.

(1) In accordance with Rule 12-307 NMRA, [~~D~~]direct appeals from final orders, decisions, or actions of boards, commissions, administrative agencies, or officials shall be taken by filing a notice of appeal with the appellate court clerk, together with the docket fee and proof of service on the agency involved and all parties and participants entitled to notice under Paragraphs C and D of this rule. [~~in accordance with Rule 12-307 NMRA,~~] The notice of appeal shall be filed within thirty (30) days of the date of the order, decision, or action being appealed from. The time within which a notice of appeal must be filed may be tolled when a motion that has the potential to affect the finality of the underlying order, decision, or action is authorized under applicable law and is timely filed. In the event such a motion is timely filed, the full time prescribed

in this rule for the filing of a notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last remaining motion.

(2) The additional three (3)-day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time limits for filing a notice of appeal under this paragraph.

(3) Within thirty (30) days of the filing of the notice of appeal, the appellant shall file a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with Rule 12-208 NMRA[~~, and~~]. The appeal shall proceed in accordance with [~~these rules~~] the Rules of Appellate Procedure, notwithstanding any provision of law to the contrary.

C. Intervention [~~as a party-appellee~~] in rulemaking proceedings.

(1) In any appeal challenging the adoption of a rule by an administrative entity, a participant in the rulemaking proceeding is entitled to notice of the appeal under Paragraph B of this rule and may intervene in the appeal [~~as a party-appellee as of right~~] by filing a notice of intervention as of right if:

(a) the participant was a party to the rulemaking proceeding under the applicable rules or procedures of the administrative entity;

(b) the participant initiated the rulemaking proceeding; or

(c) the participant participated actively in the rulemaking proceeding, during which it presented evidence relating to matters that the administrative entity was required to consider in deciding whether to adopt the rule at issue.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the rulemaking proceeding may move to intervene in the appeal [~~as a party-appellee~~] only at the discretion of the appellate court.

~~[(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.]~~

(3) A participant in the rulemaking proceeding who seeks to intervene under Subparagraphs (1) or (2) of this paragraph shall identify in the notice of intervention or motion to intervene whether it seeks to intervene as an intervenor-appellant or intervenor-appellee.

D. Intervention [~~as a party-appellee~~] in adjudicatory proceedings.

(1) In any appeal challenging an adjudicatory action by an administrative entity, a participant in the adjudicatory proceeding is entitled to notice of the appeal under Paragraph B of this rule and may move to intervene in the appeal [~~as a party-appellee as of right~~] by filing a notice of intervention as of right if the participant was a party to the adjudicatory proceeding under the applicable rules or procedures of the administrative entity.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the adjudicatory proceeding may intervene in the appeal only at the discretion of the appellate court.

~~[(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.]~~

(3) A participant in the adjudicatory proceeding who intervenes as of right shall identify in its notice of intervention whether it seeks to intervene as an intervenor-appellant or intervenor-appellee.

E. Substitution of administrative entity. Whenever in these rules a duty is to be performed by, service is to be made on, or reference is made to the district court or a judge or clerk of the district court, the board, commission, administrative agency, or official whose action is appealed from shall be substituted for the district court or a judge or clerk of the district court, except that any request for extension of time must be made to the appellate court.

F. Filing and briefing schedules.

(1) Absent a showing of exceptional circumstances, notices of intervention or motions to intervene shall be filed within forty-five (45) days of the filing of the docketing statement or statement of the issues.

(2) If appellant, appellee, or an intervenor is a governmental entity or official, that entity is not required to file joint briefing with other parties but is otherwise subject to the briefing schedule set forth in Subparagraphs (3) through (6) of this paragraph.

(3) Within forty-five (45) days of the expiration of the time for filing a notice of intervention or motion to intervene, appellant and any intervenors-appellant shall file a joint brief in chief, which shall comply with the requirements for a brief in chief under Rule 12-318 NMRA. If a motion to intervene has been filed, the brief in chief shall instead be filed within forty-five (45) days of any order granting or denying the motion.

(4) Within forty-five (45) days of the last filing of any brief in chief, appellee shall file an answer brief, and any intervenors-appellee shall file a joint answer brief. Such briefs shall comply with the requirements for an answer brief under Rule 12-318 NMRA.

(5) Within twenty (20) days of the last filing of any answer brief, appellant and intervenors-appellants may file a joint reply brief, which shall comply with the requirements for a reply brief under Rule 12-318 NMRA.

(6) Any other brief, including any briefs filed by non-governmental entities or officials not filed jointly with other parties pursuant to Subparagraphs (3), (4), or (5) of this subsection, may be filed only on motion and order of the appellate court. A motion for leave to file such a brief shall state good cause why leave to file should be granted. A proposed brief shall be conditionally filed with a motion for leave and shall comply with the requirements for a reply brief under Rule 12-318 NMRA unless otherwise ordered by the Court. A proposed brief shall avoid repetition of facts or legal arguments made in a brief filed under Subparagraphs (1) through (5) of this paragraph.

[~~F.~~]G. Grace period when notice is sent by mail or commercial courier. A notice of appeal that is sent by mail or commercial courier service to the court in which it is to be filed shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA, explicitly states that the notice of appeal was sent to the appellate court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

[As amended, effective July 1, 1990; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 07-8300-019, effective August 13, 2007; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after

December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — New Paragraphs C and D were added in 2013 in response to the New Mexico Supreme Court's opinion in *New Energy Economy, Inc. v. Vanzi*, 2012-NMSC-005, 274 P.3d 53, which addresses what level of participation in an administrative proceeding is required before a participant may be considered a "party" that is entitled to notice of an appeal challenging the administrative action and is permitted, but not required, to intervene as an appellee for the purpose of defending the action. The Court held that those who participated in a "legally significant manner" in a rulemaking proceeding before the administrative tribunal have the right to participate as parties to an appeal. *Id.* ¶ 47. Providing technical testimony or the kind of evidence that directly informs the inquiries of the rulemaking tribunal in reaching its decision are listed as non-exclusive examples of the types of evidence that support finding a "legally significant" contribution to a rulemaking proceeding. *Id.* ¶¶ 37-39. In an adjudicatory proceeding, the general rule is that only parties to the administrative proceeding are entitled to notice or have a right to participate in an ensuing appeal. *Id.* ¶ 56.

The new paragraphs are largely based [~~upon~~] on the particular factual and procedural setting of *New Energy Economy* and, in other cases, should be applied with consideration of the factors that the Supreme Court considered important to determining whether participation in a rulemaking process was "legally significant."

The appellate court hearing the appeal may take reasonable steps to encourage efficiency and avoid unnecessary duplication in the event of a considerable number of intervening parties, *e.g.*, by ordering consolidated briefing from similarly situated parties. *Id.* ¶¶ 48-50.

The 2025 amendments to Rule 12-601(B) NMRA divide the paragraph into three subparagraphs for clarity. New language is added to subparagraph (B)(1) recognizing the tolling effect of motions filed in the administrative agency, such as motions to reconsider or motions for rehearing, which have the potential to affect the finality of the underlying order, decision, or action, but only when the motions are already authorized under applicable law. Subparagraph (B)(1) does not create new procedural rights, but instead recognizes the tolling effect of certain existing procedures. The amendments to subparagraph (B)(1) are modeled on the language of Rule 12-201(D)(1) NMRA, which sets forth tolling provisions applicable to post-trial or post-judgment motions that affect the time for filing an ordinary appeal from a district court's final judgment.

The 2025 amendments also revise the procedures for briefing by intervenors in rulemaking and adjudicatory proceedings under this Rule. Those revisions require intervenors to identify whether they are intervening as an intervenor-appellant or intervenor-appellee. Intervenors must then engage in coordinated briefing with the other parties unless excused by the Rule or the Court. The purpose of the revision to intervention procedures is to permit parties to intervene as either appellants or appellees and then streamline briefing by requiring joint briefing by parties asserting related arguments.

[Adopted by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Public Comment on Proposal 2026-002 — PRC Appeals, Intervention in PRC Cases

1 message

Scott Rapalee <qsgadgets@gmail.com> Tue, Mar 10, 2026 at 11:49 AM
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To: rules.supremecourt@nmcourts.gov

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RE: Public Comment on Proposal 2026-002 — PRC Appeals, Intervention in PRC Cases (Rule 12-601 NMRA)

Dear Chief Clerk Garcia,

I write regarding Proposal 2026-002 and respectfully submit this comment for the Court's consideration before the April 5, 2026 deadline.

I am a pro se complainant in PRC Docket 26-00004-UT, in which IFP status was granted. My family has been without electrical power since December 1, 2025. PNM disconnected service to a household with a brain tumor patient who cannot regulate body temperature and a legally blind child receiving SSI — during the winter disconnection moratorium established by NMAC 17.5.410.

MY EXPERIENCE WITH THE PRC PROCESS THAT THESE AMENDMENTS SHOULD ADDRESS

1. Denial of Emergency Relief on a Technicality

After a 46-day delay, the PRC denied emergency relief on February 20, 2026, claiming I was not a "customer" because the utility account was in my landlord's name — despite LIHEAP payments made directly in my name to PNM for the same account. The PRC treated a billing technicality as dispositive while a disabled family went without heat during winter.

2. Ex Parte Communications

I filed a Notice of Ex Parte Communication (docketed February 16, 2026) documenting improper communications in Docket 26-00004-UT. The proposed amendments to Rule 12-601 address intervention procedures but do not address the fundamental problem of administrative agencies acting on ex parte information.

3. Intervention Barriers for Affected Parties

The proposed amendments refine intervention procedures for rulemaking and adjudicatory proceedings. I respectfully submit that the amendments should also address the rights of individual complainants — particularly pro se parties and persons with disabilities — to meaningful participation in PRC proceedings that directly affect their lives and safety.

In my case, PNM filed objections and responses to my interrogatories on February 2, 2026. The hearing examiner was never assigned despite my emergency motion to compel filed February 16, 2026. The procedural framework being amended in Proposal 2026-002 governs the appeal pathway I will use if the PRC continues to deny relief.

4. Connection to the DFA/PRC Pipeline

The current DFA Secretary, Wayne Propst, previously served as PRC Chief of Staff. He now controls the state budget that funds the PRC. A former PRC CFO, Jim Williamson, filed a whistleblower lawsuit against Propst for retaliation after reporting fraud. The former DFA Secretary, Deborah Romero, is now CEO of First National Bank in Alamogordo. These relationships raise serious questions about whether the PRC can function as an independent regulatory body when budget authority rests with officials who have documented conflicts of interest.

RECOMMENDATIONS

(a) The amendments should include provisions ensuring that pro se complainants with pending emergency matters before the PRC have access to expedited appellate review when the PRC fails to act within a reasonable timeframe.

(b) The tolling provision in proposed Subparagraph (B)(1) should explicitly address situations where the PRC fails to rule on a pending motion, as indefinite administrative delay effectively denies the right of appeal.

(c) The intervention provisions should require the PRC to notify affected parties — including utility customers whose service has been disconnected — when matters affecting their rights are before the Commission, regardless of whether they were formal parties to the original proceeding.

My family cannot wait for the PRC to process appeals through standard timelines. As summer temperatures in southern New Mexico approach dangerous levels, the lack of electrical power and climate control is becoming a medical emergency for a person with thermoregulation impairment.

This comment is submitted for the public record.

Respectfully,

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Referenced: PRC Docket 26-00004-UT; NMAC 17.5.410; D-101-CV-2025-02811

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