

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE  
DISTRICT COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE  
MAGISTRATE COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE  
METROPOLITAN COURTS, AND THE CRIMINAL FORMS  
PROPOSAL 2026-017**

**March 6, 2026**

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rules 5-211, 6-208, and 7-208 NMRA and Form 9-213 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.

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**5-211. Search warrants.**

A. **Issuance.** A warrant may be issued by the court to search for and seize any

- (1) property which has been obtained or is possessed in a manner which constitutes a criminal offense;
- (2) property designed or intended for use or which is or has been used as the means of committing a criminal offense;
- (3) property which would be material evidence in a criminal prosecution; or
- (4) person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B. **Contents.** A search warrant shall be executed by a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, an Indian tribal or pueblo law enforcement officer, or a civil officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall state the date and time it was issued by the judge and shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken

in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C. **Execution.** A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the affidavit for search warrant, a copy of the search warrant, and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant, and inventory at the place from which the property was taken.

D. **Return.** The return of the warrant, or any duplicate original, shall be made promptly after execution of the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer and the person in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

E. **Probable cause.** As used in this rule, "probable cause" shall be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

F. **Methods for requesting warrant.** A request for a search warrant may be made using any of the following methods, provided that the request should be made in writing whenever possible:

(1) by hand-delivery of an affidavit substantially in the form approved by the Supreme Court with a proposed search warrant attached;

(2) by oral testimony in the presence of the judge provided that the testimony is reduced to writing, supported by oath or affirmation, and served with the warrant; or

(3) by transmission of the affidavit and proposed search warrant required under Subparagraph (1) of this paragraph to the judge by telephone, facsimile, electronic mail, or other reliable electronic means.

**G. Testimony, oaths, remote transmissions, and signatures.**

(1) Before ruling on a request for a warrant the judge may require the affiant to appear personally, telephonically, or by audio-video transmission and may examine under oath the affiant and any witnesses the affiant may produce, provided that any additional evidence shall be reduced to writing, supported by oath or affirmation, and served with the warrant.

(2) If the judge administers an oath or affirmation remotely to the affiant or any witnesses the affiant may produce, the means used must be designed to ensure that the judge confirms the identity of the affiant and any witnesses the affiant may produce.

(3) If the judge issues the warrant remotely, it shall be transmitted by reliable electronic means to the affiant and the judge shall file a duplicate original with the court. Upon the affiant's acknowledgment of receipt by electronic transmission, the electronically transmitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write

the words “duplicate original” on the transmitted copy. The affiant may request that the duplicate original warrant filed by the judge be sealed or lodged in accordance with Rule 5-123 NMRA.

(4) Any signatures required under this rule by the judge or affiant may be by original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

**H. Post-indictment disclosures; notice in pending district court case.**

**(1) Affidavit disclosure.** When an affiant seeks a search warrant from any court for evidence related to a criminal prosecution that has commenced in the district court, the affidavit must disclose:

(a) the existence of the pending district court case, including the case number, assigned judge, and whether a scheduling order has issued;

(b) whether any prior warrant application sought the same evidence from the person named or the property described in this affidavit; for each such application, state the court, date and disposition (issued/executed, lapsed, denied, quashed);

(c) whether any motion in the district court seeks or has sought the same evidence, and the status of such motion.

**(2) Notice filing in district court.** Within three business days after issuance of such warrant and in any event no later than the warrant return, the state must file in the district court case a notice identifying the issuing court and judge, the date and time of issuance, and the items or bodily evidence authorized. The notice must attach the warrant and supporting affidavit; upon motion or sua sponte, the district court may seal these materials under Rule 5-123 NMRA.

**(3) Inherent authority.** Nothing in this rule limits the district court’s inherent authority to supervise the proceedings and to quash a warrant issued by another court when necessary to ensure the orderly and efficient administration of justice.

[As amended, effective October 1, 1974 and July 1, 1980; as amended by Supreme Court Order No. 12-8300-016, effective for all cases pending or filed on or after June 29, 2012; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — This rule is patterned after Rule 41 of the Federal Rules of Criminal Procedure.

For other court rules governing issuance, etc., of search warrants by the magistrate, metropolitan, or municipal court, *see* Rules 6-208, 7-208, and 8-207 NMRA. These rules are substantially identical and are based on the New Mexico constitutional requirements. *See* N.M. Const., Art. 2, § 10. The court rules replaced the former search warrant statute, repealed in 1972. *See* N.M. Laws 1967, ch. 245, §§ 1 and 2, formerly compiled as 41-18-1 and 41-18-2, 1953 Comp.

“Property” in Paragraph A of this rule is defined in Rule 41(h) of the Federal Rules of Criminal Procedure “to include documents, books, papers and any other tangible objects.” The committee is of the opinion that this would include such things as blood, fingerprints, and handwriting samples. *See Sanchez v. Attorney General*, 1979-NMCA-081, 93 N.M. 210, 598 P.2d 1170.

As amended in 1979, this rule provides a procedure for the obtaining of a search warrant to conduct a search of premises for a person even when a warrant is not required. As stated in the advisory committee note to Rule 41 of the Federal Rules of Criminal Procedure:

That part of the amendment which authorizes issuance of a search warrant to search for a person unlawfully restrained is consistent with ALI Model Code of Pre-Arrest Procedure § SS 210.3(1)(d) (Proposed Official Draft, 1975), which specifies that a search warrant may issue to search for ‘an individual \* \* \* who is unlawfully held in confinement or other restraint.’ As noted in the Commentary thereto, *id.* at p. 507: “Ordinarily such persons will be held against their will and in that case the persons are, of course, not subject to ‘seizure.’ But they are, in a sense, ‘evidence’ of crime, and the use of search warrants for these purposes presents no conceptual difficulties.”

In *United States v. Watson*, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976), the Court alluded to “the still unsettled question” of whether, absent exigent circumstances, officers acting without a warrant may enter private premises to make an arrest. Some courts have indicated that probable cause alone ordinarily is sufficient to support an arrest entry, *United States v. Fernandez*, 480 F.2d 726 (2d Cir. 1973); *United States ex rel. Wright v. Woods*, 432 F.2d 1143 (7th Cir. 1970). There exists some authority, however, that except under exigent circumstances a warrant is required to enter the defendant's own premises, *United States v. Calhoun*, 542 F.2d 1094 (9th Cir. 1976); *United States v. Lindsay*, 506 F.2d 166 (D.C. Cir. 1974); *Dorman v. United States*, 435 F.2d 385 (D.C. Cir. 1970), or, at least to enter the premises of a third party, *Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974); *Fisher v. Volz*, 486 F.2d 333 (3d Cir. 1974); *Huotari v. Vanderport*, 380 F. Supp. 645 (D. Minn. 1974).

A warrant must be served between the hours of 6:00 a.m. and 10:00 p.m. unless for reasonable cause shown the issuing judge authorizes the execution at any time. The time periods designated were taken from the definition of “day time” in Rule 41(h) of the Federal Rules of Criminal Procedure.

Paragraph C requires the officer seizing property under the warrant to leave a copy of the affidavit for search warrant, the search warrant, and the inventory at the place from which the property was taken. In *State v. Malloy*, 2001-NMCA-067, 131 N.M. 222, 34 P.3d 611, the State moved to seal affidavits for search warrants in a sexual exploitation of children investigation. The district court ordered the narrative portions of the affidavits be partially and temporarily sealed in order to protect the ongoing investigation and the identity of the alleged victims. *Id.* ¶ 2. Upon execution, law enforcement delivered copies of the search warrants with the sealed portions redacted to the defendant. *Id.* ¶¶ 3-4. The Court of Appeals held that “the requirement of delivery of the affidavit for search warrant is ministerial and, without a showing of prejudice to the defendant, suppression is not warranted.” *Id.* ¶ 1.

Paragraph E of this rule was derived in part from Rule 41(c) of the Federal Rules of Procedure. On the use of hearsay evidence to establish probable cause, *see State v. Perea*, 1973-NMCA-123, 85 N.M. 505, 513 P.2d 1287. *See also*, 48 F.R.D. 553, 630 (1970).

Uncorroborated information given by an unknown informant to support an affidavit for probable cause may be found to be reliable if the information is personal to the informant and other information given by the informant has been corroborated by information supplied by a reliable confidential informant. *State v. Turkal*, 1979-NMSC-071, 93 N.M. 248, 599 P.2d 1045.

The tests for evaluating the supporting affidavit for probable cause were set forth in *Perea*, 1973-NMCA-123, ¶¶ 5-8: (1) technical requirements of elaborate specificity are not

required; (2) any inferences to be drawn from statements of the affiant must be drawn by the judge and not the police officer; (3) affidavits are tested by less rigorous standards than those governing the admissibility of evidence at trial; and (4) where affiant is relying on an informant, the affidavit must set forth some of the underlying circumstances supporting the affiant's conclusion that the information is credible or reliable. Only a probability of criminal conduct need be established and common sense should control the magistrate's determination of probable cause, which should be shown great deference by the reviewing court. *State v. Bowers*, 1974-NMCA-135, 87 N.M. 74, 529 P.2d 300. *See also State v. Alderete*, 1975-NMCA-058, 88 N.M. 14, 536 P.2d 278.

As in the federal rule, any additional evidence received by the court when the affiant appears personally must be made a part of the facts showing probable cause. In addition, under this rule, the additional evidence must be reduced to writing and sworn to in order to comply with the constitutional requirement of a "written showing of probable cause."

For cases showing examples of the sufficiency of descriptions in warrants, *see State v. Ferrari*, 1969-NMSC-146, 80 N.M. 714, 460 P.2d 244 (instrumentalities of the crime in a murder case); *State v. Sero*, 1970-NMCA-102, 82 N.M. 17, 474 P.2d 503 (sufficiency of the description of the place to be searched); *State v. Quintana*, 1975-NMCA-034, 87 N.M. 414, 534 P.2d 1126, cert. denied, 88 N.M. 29, 536 P.2d 1084, cert. denied, 423 U.S. 832, 96 S. Ct. 54, 46 L. Ed. 2d 50 (1975) (sufficiency of description of controlled substances).

Absent a showing of prejudice, defects in the return of service will not invalidate the warrant. *See State v. Wise*, 1977-NMCA-074, 90 N.M. 659, 567 P.2d 970, cert. denied, 91 N.M. 4, 569 P.2d 414 (1977); *State v. Baca*, 1974-NMCA-098, 87 N.M. 12, 528 P.2d 656, cert. denied, 87 N.M. 5, 528 P.2d 649 (1974).

In 2012, Paragraphs F and G were added to permit multiple methods for requesting and issuing warrants. Beyond the traditional in-person submission of a written affidavit and proposed warrant, Paragraph F permits requesting a search warrant through oral testimony in the presence of the judge or by submission of the affidavit and proposed search warrant in person, over the telephone, by fax, by email, or by other electronic means. A judge is not required to accept requests for warrants by alternative methods, but, if the judge decides to do so, the judge must ensure that any oath or affirmation administered by remote means is done in a way that allows the judge to confirm the identity of the affiant. For example, the oath or affirmation may be accomplished by audio-visual means that allows the judge to see the person to whom the oath or affirmation is administered. Or the oath or affirmation may be accomplished by telephone or other audio method if done in a way that allows the judge to confirm identity, such as by having the call made through a known law enforcement telephone number with a verifiable badge number given by the officer requesting the warrant. *See, e.g.*, Rule 11-901(A) NMRA. If the judge accepts a request for warrant by remote means, the judge must ensure that the sworn statement of facts offered in support of the warrant is reduced to writing to be served along with the warrant. And if the judge issues the warrant by remote means, the judge must file a duplicate original warrant with the court and the affiant may request that the warrant and affidavit be sealed upon an adequate showing under Rule 5-123 NMRA. Paragraph B was amended to require that the warrant include the date and time of its issuance. All duplicate originals shall reflect the date and time as indicated by the judge. Any signatures required under this rule by the judge or affiant may be by original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law. *See, e.g.*, NMSA 1978, Sections 14-15-1 to -6 (Electronic Authentication of

Documents Act); Rule 5-103.2(D) NMRA (recognizing possibility for future electronic filing of documents in criminal cases).

[As amended by Supreme Court Order No. 12-8300-016, effective for all cases pending or filed on or after June 29, 2012; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017.]

#### **6-208. Search warrants.**

A. **Issuance.** A warrant may be issued by the court to search for and seize any of the following:

(1) property that has been obtained or is possessed in a manner which constitutes criminal offense;

(2) property designed or intended for use or that is or has been used as the means of committing a criminal offense;

(3) property that would be material evidence in a prosecution for a criminal offense; or

(4) a person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B. **Contents.** A search warrant shall be executed by a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, an Indian tribal or pueblo law enforcement officer, or a civil officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall state the date and time it was issued by the judge and shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

~~[C. **Form.** A search warrant shall be substantially in the form approved by the Supreme Court.]~~

~~[D]~~C. **Execution.** A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the affidavit for search warrant, a copy of the search warrant, and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant, and inventory at the place from which the property was taken.

~~[E]~~D. **Return.** The return of the warrant, or any duplicate original, shall be made promptly after execution of the warrant to the magistrate court issuing the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken and shall be signed by the officer and the person or persons in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or whose premises the property was taken and to the applicant for the warrant.

[F]E. **Probable cause.** As used in this rule, “probable cause” shall be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

[G]F. **Methods for requesting warrant.** A request for a search warrant may be made using any of the following methods, provided that the request should be made in writing whenever possible:

- (1) by hand-delivery of an affidavit substantially in the form approved by the Supreme Court with a proposed search warrant attached;
- (2) by oral testimony in the presence of the judge provided that the testimony is reduced to writing, supported by oath or affirmation, and served with the warrant; or
- (3) by transmission of the affidavit and proposed search warrant required under Subparagraph (1) of this paragraph to the judge by telephone, facsimile, electronic mail, or other reliable electronic means.

[H]G. **Testimony, oaths, remote transmissions, and signatures.**

(1) Before ruling on a request for a warrant the judge may require the affiant to appear personally, telephonically, or by audio-video transmission and may examine under oath the affiant and any witnesses the affiant may produce, provided that any additional evidence shall be reduced to writing, supported by oath or affirmation, and served with the warrant.

(2) If the judge administers an oath or affirmation remotely to the affiant or any witnesses the affiant may produce, the means used must be designed to ensure that the judge confirms the identity of the affiant and any witnesses the affiant may produce.

(3) If the judge issues the warrant remotely, it shall be transmitted by reliable electronic means to the affiant and the judge shall file a duplicate original with the court. Upon the affiant’s acknowledgment of receipt by electronic transmission, the electronically transmitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write the words “duplicate original” on the transmitted copy. The affiant may request that the duplicate original warrant filed by the judge be sealed or lodged in accordance with Rule 6-114 NMRA.

(4) Any signatures required under this rule by the judge or affiant may be by original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

[F]H. **Post-indictment disclosures; notice in pending district court case.**

(1) Affidavit disclosure. When an affiant seeks a search warrant from any court for evidence related to a criminal prosecution that has commenced in the district court, the affidavit must disclose:

(a) the existence of the pending district court case, including the case number, assigned judge, and whether a scheduling order has issued;

(b) whether any prior warrant application sought the same evidence from the person named or the property described in this affidavit; for each such application, state the court, date and disposition (issued/executed, lapsed, denied, quashed);

(c) whether any motion in the district court seeks or has sought the same evidence, and the status of such motion.

(2) Notice filing in district court. Within three business days after issuance of such warrant and in any event no later than the warrant return, the state must file in the district court case a notice identifying the issuing court and judge, the date and time of issuance, and the

items of bodily evidence authorized. The notice must attach the warrant and supporting affidavit; upon motion or sua sponte, the district court may seal these materials under Rule 5-123 NMRA.

(3) **Inherent authority.** Nothing in this rule limits the district court's inherent authority to supervise the proceedings and to quash a warrant issued by another court when necessary to ensure the orderly and efficient administration of justice.

[As amended by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — In 2013, Paragraphs G and H were added to permit multiple methods for requesting and issuing warrants. See Rule 5-211(F) NMRA and the related committee commentary for more information.

It is the obligation of each court to track the warrants it has issued and the warrants returned to it. The requirement in Paragraph H(3) of this rule that the judge file a duplicate original of a warrant issued remotely reaffirms this existing duty. Warrants issued via traditional means should already be tracked. Warrants issued remotely are no different. If a judge is concerned that filing a warrant prematurely may create a public and law enforcement safety issue, the warrant may be filed under seal, provided an appropriate order is entered in accordance with Paragraph F of Rule 6-114 NMRA.

[Adopted by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

## **7-208. Search warrants.**

A. **Issuance.** A warrant may be issued by the court to search for and seize any

- (1) property which has been obtained or is possessed in a manner which constitutes a criminal offense;
- (2) property designed or intended for use or which is or has been used as the means of committing a criminal offense;
- (3) property which would be material evidence in a criminal prosecution; or
- (4) person for whose arrest there is probable cause, or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B. **Contents.** A search warrant shall be executed by a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, an Indian tribal or pueblo law enforcement officer, or a civil officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall state the date and time it was issued by the judge and shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C. **Execution.** A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the affidavit for search warrant, a copy of

the search warrant, and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant, and inventory at the place from which the property was taken.

D. **Return.** The return of the warrant, or any duplicate original, shall be made promptly after execution of the warrant to the clerk of the court which issued the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer and the person in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

E. **Probable cause.** As used in this rule, "probable cause" shall be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

F. **Methods for requesting warrant.** A request for a search warrant may be made using any of the following methods, provided that the request should be made in writing whenever possible:

(1) by hand-delivery of an affidavit substantially in the form approved by the Supreme Court with a proposed search warrant attached;

(2) by oral testimony in the presence of the judge provided that the testimony is reduced to writing, supported by oath or affirmation, and served with the warrant; or

(3) by transmission of the affidavit and proposed search warrant required under Subparagraph (1) of this paragraph to the judge by telephone, facsimile, electronic mail, or other reliable electronic means.

G. **Testimony, oaths, remote transmissions, and signatures.**

(1) Before ruling on a request for a warrant the judge may require the affiant to appear personally, telephonically, or by audio-video transmission and may examine under oath the affiant and any witnesses the affiant may produce, provided that any additional evidence shall be reduced to writing, supported by oath or affirmation, and served with the warrant.

(2) If the judge administers an oath or affirmation remotely to the affiant or any witnesses the affiant may produce, the means used must be designed to ensure that the judge confirms the identity of the affiant and any witnesses the affiant may produce.

(3) If the judge issues the warrant remotely, it shall be transmitted by reliable electronic means to the affiant and the judge shall file a duplicate original with the court. Upon the affiant's acknowledgment of receipt by electronic transmission, the electronically transmitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write the words "duplicate original" on the transmitted copy. The affiant may request that the duplicate original warrant filed by the judge be sealed or lodged in accordance with Rule 7-113 NMRA.

(4) Any signatures required under this rule by the judge or affiant may be by original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

**H. Post-indictment disclosures; notice in pending district court case.**

(1) **Affidavit disclosure.** When an affiant seeks a search warrant from any court for evidence related to a criminal prosecution that has commenced in the district court, the affidavit must disclose:

(a) the existence of the pending district court case, including the case number, assigned judge, and whether a scheduling order has issued;

(b) whether any prior warrant application sought the same evidence from the person named or the property described in this affidavit; for each such application, state the court, date and disposition (issued/executed, lapsed, denied, quashed);

(c) whether any motion in the district court seeks or has sought the same evidence, and the status of such motion.

(2) **Notice filing in district court.** Within three business days after issuance of such warrant and in any event no later than the warrant return, the state must file in the district court case a notice identifying the issuing court and judge, the date and time of issuance, and the items or bodily evidence authorized. The notice must attach the warrant and supporting affidavit; upon motion or sua sponte, the district court may seal these materials under Rule 5-123 NMRA.

(3) **Inherent authority.** Nothing in this rule limits the district court's inherent authority to supervise the proceedings and to quash a warrant issued by another court when necessary to ensure the orderly and efficient administration of justice.

[As amended by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — In 2013, Paragraphs F and G were added to permit multiple methods for requesting and issuing warrants. *See* Rule 5-211(F) NMRA and the related committee commentary for more information.

It is the obligation of each court to track the warrants it has issued and the warrants returned to it. The requirement in Paragraph G(3) of this rule that the judge file a duplicate original of a warrant issued remotely reaffirms this existing duty. Warrants issued via traditional means should already be tracked. Warrants issued remotely are no different. If a judge is concerned that filing a warrant prematurely may create a public and law enforcement safety issue, the warrant may be filed under seal, provided an appropriate order is entered in accordance with Paragraph F of Rule 7-113 NMRA.

[Adopted by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**9-213. Affidavit for search warrant.**

[For use with District Court Rule 5-211 NMRA,  
Magistrate Court Rule 6-208 NMRA,  
Metropolitan Court Rule 7-208 NMRA and  
Municipal Court Rule 8-207 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No. \_\_\_\_\_

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

\_\_\_\_\_, Defendant

**AFFIDAVIT FOR SEARCH WARRANT**

Affiant, being duly sworn, upon his oath, states that I have reason to believe that on the following described premises or person of \_\_\_\_\_

\_\_\_\_\_ (here name person and/or describe premises)  
in the city or county designated above there is now being concealed

\_\_\_\_\_ and that the facts  
tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

\_\_\_\_\_ (include facts in support of the credibility of any hearsay relied upon; if necessary, continue on reverse side of this form or on a separate page or pages)

**Post-Indictment/Related Case Disclosures (complete if any district court prosecution has commenced)**

**District court case pending.** Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_  
Scheduling order issued?  Yes (date: \_\_\_\_\_)  No

**Prior warrant applications seeking the same evidence from this person or this property (as identified above).**

Court(s)/date(s)/disposition(s):

\_\_\_\_\_

**Related district court motion(s) seeking the same evidence.**  Pending  Resolved –  
status/details: \_\_\_\_\_

**Status of the target:**  Defendant in the case above  Not charged  Other: \_\_\_\_\_

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Official Title (if any)

Subscribed and sworn to or declared and affirmed to before me in the above-named county of the  
State of New Mexico this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, Notary or Other Officer  
Authorized to Administer Oaths

\_\_\_\_\_  
Official Title

*NOTE: This affidavit shall be filed in the same file as the search warrant. If no criminal  
proceedings are filed, the affidavit and warrant shall be filed in a miscellaneous file.*

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on  
or after \_\_\_\_\_.]



**New Mexico  
Courts**

**Kateri Eisenberg <supkhe@nmcourts.gov>**

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**[rules.supremecourt-grp] 2026-017**

1 message

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**Catherine Taylor** <lalmcet@nmcourts.gov>

Wed, Mar 11, 2026 at 4:45 PM

Reply-To: lalmcet@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

re: Proposed revision to Magistrate Court rule 6-208

At proposed paragraph (H)(2): at the end of the first sentence, it reads "the items of bodily evidence authorized." Is this a typo? The other courts' proposed changes read: "the items OR bodily evidence authorized" which make more sense in the context.

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Catherine E. Taylor, J.D.  
Los Alamos Magistrate Judge