

**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, THE RULES OF PROCEDURE FOR THE MUNICIPAL  
COURTS, AND THE CRIMINAL FORMS  
PROPOSAL 2026-038**

**March 6, 2026**

On September 30, 2025, the Supreme Court provisionally approved amendments to Rules 5-602.1, 5-602.2, 5-602.3, 6-507.1, 7-506, and 8-507.1 NMRA and Form 9-514 NMRA, and suspended Rule 7-507.1 NMRA. The provisional amendments and suspended rule took effect immediately. On October 6, 2025, effective immediately, the Supreme Court provisionally approved amendments to Form 9-514, and reinstated and provisionally approved amendments to Rule 7-507.1. The Supreme Court Clerk's Office has recommended formal approval of the provisional amendments for the Supreme Court's consideration.

If you would like to comment on the provisional 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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**5-602.1. Competency.**

A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant's mental health that may be relevant in a criminal proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of commission of an offense and incapacity to form specific intent.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) **Competency.** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant's own defense and to comprehend the reasons for punishment.

(2) **Competency evaluation.** A competency evaluation is an examination of the defendant by a psychologist or psychiatrist or other qualified ~~[mental health]~~ professional recognized by the court as an expert, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. A competency evaluation ~~[shall be limited to a determination of the defendant's competency and]~~ shall not state opinions about other matters at issue in the criminal case, including the defendant's sanity at the time of the offense or ability to form a specific intent.

C. **Raising a question of competency; who may raise.** A question of the defendant's competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The question shall be raised by a motion for a competency evaluation and may be raised by a party or upon the court's own motion at any stage of the proceedings.

D. **Motion for competency evaluation; contents.**

(1) **By motion of a party.** When a question of competence is raised by a party, a motion for a competency evaluation shall be in writing and shall contain the following:

(a) a statement that the motion is based on a good faith belief that the defendant may not be competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion. If filed by defense counsel, the motion shall contain such information without violating the attorney-client privilege;

(c) a statement that the motion is not filed for purposes of delay;

(d) a statement of whether the motion is opposed as provided in Rule 5-120 NMRA;

(e) a completed defendant information sheet, substantially in the form approved by the Supreme Court; and

(f) a request for a competency evaluation.

(2) **Upon the court's own motion.** When raised by the court, the court shall make a record of the specific facts or observations about the defendant that form the basis for the motion.

E. **Suspension of proceedings.** Upon the filing of a motion for a competency evaluation, further proceedings in the case shall be suspended until the motion is denied or, if the motion is granted, until the issue of the defendant's competency is determined. Suspension of proceedings under this paragraph shall not affect a court's authority to set or review conditions of release under Rule 5-401 NMRA or to rule on a motion for pretrial detention under Rule 5-409 NMRA and shall not preclude further judicial action, defense motions, or discovery proceedings which may fairly be conducted without the personal participation of the defendant.

F. **Resolution of motion; reasonable belief.** In considering a motion for a competency evaluation, the court shall comply with the following procedures.

(1) **Unopposed.** Within two (2) days of the filing of a motion that is unopposed under Subparagraph (D)(1)(d) of this rule, the court shall file an order substantially in the form approved by the Supreme Court finding whether the motion is supported by a reasonable belief

that the defendant may not be competent to stand trial. The determination shall be based upon the allegations in the motion or upon the court's own observations of the defendant.

(2) **Opposed.** A response in opposition to a motion for a competency evaluation shall be in writing, shall cite specific facts in opposition to the motion, and shall be filed within five (5) days of the filing of the motion or be deemed waived. Upon the filing of a response in opposition, the court shall do one of the following:

(a) file an order substantially in the form approved by the Supreme Court within two (2) days finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial; or

(b) hold a hearing on the motion and file an order substantially in the form approved by the Supreme Court within five (5) days of the filing of a response under this Subparagraph finding whether there is a reasonable belief that the defendant may not be competent to stand trial.

G. **Evaluation order.** An order finding a reasonable belief under Paragraph F of this rule shall order the defendant to undergo a competency evaluation. Within two (2) days of filing the order, the court shall deliver a copy of the evaluation order, motion for a competency evaluation, ~~and~~ response, if any, and a copy of the charging document to the evaluator designated to perform the evaluation. At any time, including in the order for competency evaluation, the court may order records that are reasonably necessary to the determination of the defendant's competency. The records shall be provided to the forensic evaluator assigned to evaluating the defendant for competency. The order shall be in a form substantially approved by the Supreme Court and shall include the following:

(1) the name of the evaluator;

(2) a provision requiring the evaluator to file a written report with the court in accordance with Paragraph H of this rule within thirty (30) days of the entry of the order, unless the court orders the report to be filed at another time~~;~~and].

(a) If the defendant fails to appear for a competency evaluation, or the court and/or defense counsel is unable to locate the defendant or an address for the defendant, the evaluator or entity scheduling the evaluations shall notify the court, and the court shall make a record of the reason, if known, for the failure to appear; and

(b) The court may issue a new or amended order for competency evaluation restarting the thirty (30)-day time period upon notification by the evaluator of the failure to appear for the competency evaluation or cancellation of a bench warrant for the defendant's arrest.

~~[(3) if the motion for a competency evaluation was filed before the start of a trial by jury, a provision requiring the parties to return to court for a hearing on the question of the defendant's competency within forty-five (45) days of the entry of the order.]~~

H. **Report; contents; disclosure.** The report ordered under Subparagraph (G)(2) of this rule shall be filed with the court.

(1) **Contents of report.** The report shall include the following:

(a) a description of the procedures, tests, and methods used by the evaluator;

(b) a clear statement of the evaluator's clinical findings and opinions about the defendant's competency; and if the expert's opinion is that the defendant is not competent, then the expert shall further provide an opinion as to whether the defendant satisfies

the criteria for involuntary, inpatient civil commitment in accordance with the Mental Health and Developmental Disabilities Code or involuntary treatment in an Assisted Outpatient Treatment program;

(c) a description of the sources of information and the factual basis for the evaluator's clinical findings and opinions, provided that the report shall not include information or opinions concerning the defendant's mental condition at the time of the alleged crime or any statements made by the defendant regarding the alleged crime or any other crime; and

(d) the reasoning by which the evaluator used the information to reach the clinical findings and opinions.

(2) **Disclosure.** Within two (2) days of the filing of the report, the court shall provide a copy to the defendant and to the state. Prior to disclosure, the court shall excise any statements made by the defendant regarding the alleged crime or any other crime. The court shall notify the parties when information has been withheld under this subparagraph and that any excised information shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

I. **Effect of report; final resolution of competency.**

(1) **Motion filed before the start of a trial by jury.** If the motion for a competency evaluation was filed before the start of a trial by jury, the court and the parties shall proceed as follows after receiving the report filed under Paragraph H of this rule.

(a) **Stipulations; objections.** Within seven (7) days of the filing of the report, the parties shall confer and file with the court one of the following:

(i) a joint motion to adopt the conclusion set forth in the report;

or

(ii) the specific, written objections of either party.

(b) **Hearing.** The court shall hold a hearing on the question of the defendant's competency [~~as ordered under Subparagraph (G)(3) of this rule,~~] subject to the following procedures. If the parties agree with and the court concurs in the conclusion set forth in the report, the court may vacate the hearing and proceed under Subparagraph (1)(d) of this paragraph. If a hearing is necessary, the purpose of the hearing shall be to determine based upon a preponderance of the evidence whether the defendant is not competent to stand trial, and shall be held:

~~[(i) If the parties agree with and the court concurs in the conclusion set forth in the report, the court may vacate the hearing and proceed under Subparagraph (1)(c) of this paragraph.]~~

~~[(ii) If a hearing is necessary, the purpose of the hearing shall be to determine based upon a preponderance of the evidence whether the defendant is not competent to stand trial]~~

(i) within thirty (30) days of the date an evaluation report is submitted to the court for an incarcerated defendant charged with a felony;

(ii) within ten (10) days of the date an evaluation report is submitted to the court for an incarcerated defendant charged with misdemeanor charges; or

(iii) within ninety (90) days of the date an evaluation report is submitted to the court for a defendant who is not incarcerated.

(c)[~~—(iii)~~] *Effect of report.* The conclusion set forth in the report shall be prima facie evidence about the defendant's competency, subject to rebuttal by the party challenging the report.

[~~(e)~~] (d) *Final order on competency.* Within three (3) days of the conclusion of the hearing held under Subparagraph (1)(b) of this paragraph, the court shall file an order resolving the question of the defendant's competency. Upon request of the parties, the order shall include findings of fact and conclusions of law and may incorporate by reference the report filed under Paragraph H of this rule. If the court concludes that the defendant is not competent, the court shall proceed under Paragraph J of this rule.

(2) *Motion filed after the start of a trial by jury.* If the motion for a competency evaluation was filed after the start of a trial by jury, the court shall submit the question to the jury at the close of evidence. The jury shall decide by a preponderance of the evidence if the defendant is not competent to stand trial before considering the defendant's guilt or innocence beyond a reasonable doubt.

**J. Defendant found not competent to stand trial.**

(1) If the defendant's competency is raised before the start of a trial by jury and the court finds that the defendant is not competent to stand trial, the court shall proceed under Rule 5-602.2 NMRA.

(2) If the defendant's competency is raised after the start of a trial by jury and the jury finds that the defendant is not competent to stand trial, the court shall declare a mistrial and proceed under Rule 5-602.2 NMRA.

**K. Extensions of time.** The time limits provided in this rule may be extended by the court for good cause shown, provided that the aggregate of all extensions granted by the court shall not exceed ninety (90) days from the day that the motion for a competency evaluation is filed, except upon a showing of exceptional circumstances. An order extending time shall be in writing and shall state the reasons supporting the extension. An order extending time beyond the ninety (90)-day limit set forth in this paragraph shall not rely on circumstances that were used to support a previous extension.

**L. Effect of noncompliance with time limits.**

(1) The court may deny an untimely motion for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the question of the defendant's competence is not resolved within the time limits provided in this rule, including any court-ordered extensions, the case shall be subject to review and dismissal without prejudice at the discretion of the court.

**M. Cases transferred to the district court; remand.** In a case transferred to the district court under Rules 6-507.1 or 8-507.1 NMRA, the court shall do the following:

(1) open a case and order a competency evaluation under Paragraph G of this rule within (5) days of receiving the order transferring the case;

(2) proceed under this rule to determine whether the defendant is competent to stand trial, and

(a) if the defendant is found competent, remand the case within two (2) days to the originating court [~~in which the case is pending~~]; or

(b) if the defendant is found not competent, [~~remand the case to the court in which the case is pending within two (2) days after a determination that further proceedings~~] proceed under Rule 5-602.2 NMRA [~~are inapplicable~~].

N. **Statements and other information inadmissible.** Any statements or other information elicited from a defendant or any other person for the purpose of determining the defendant's competency shall not be admissible or used against the defendant in any criminal proceeding on any issue other than the defendant's competency to stand trial.

O. **Automatic sealing of court records.** Any motion, response, report, or other paper filed under this rule shall be automatically sealed without motion or order of the court as provided in Rule 5-123(C)(2) NMRA. An order for a competency evaluation under Paragraph G of this rule and a final order on competency under Paragraph I of this rule shall not be sealed except upon motion and order under Rule 5-123 NMRA.

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary.** — “It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975); *see also State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246, 923 P.2d 1131. (“The law has long recognized that it is a violation of due process to prosecute a defendant who is incompetent to stand trial.”). Unlike affirmative defenses that implicate questions of culpability, deterrence, and punishment for an individual defendant, *see e.g.*, Rule 5-602(A) NMRA (setting forth procedures for raising the defense of not guilty by reason of insanity at the time of the commission of the offense), the prohibition against trying an incompetent defendant is integral to the legitimacy of the criminal justice system itself. *See Drope*, 420 U.S. at 172 (“[T]he prohibition is fundamental to an adversary system of justice.”); *see also Rotherham*, 1996-NMSC-048, ¶ 13 (“Suspension of the criminal process where the defendant is incompetent is fundamental to assuring the fairness, accuracy, and dignity of the trial.”). As such, all participants in a criminal proceeding—including the court acting *sua sponte*—have a shared duty to inquire into the defendant's competency whenever circumstances suggest that the defendant, “though physically present in the courtroom, is in reality afforded no opportunity to defend himself.” *Drope*, 420 U.S. at 171 (internal quotation marks and citation omitted). This rule should be interpreted to effectuate that common purpose.

The procedures set forth in this rule for determining whether a defendant is incompetent to stand trial were substantially amended and recompiled from Rule 5-602 NMRA. The amended rule is intended to address concerns about the delays and costs associated with raising a question of the defendant's competency in a criminal proceeding. The rule addresses these concerns in several ways. First, the rule limits the scope of the evaluation that may be ordered when competency is raised to a determination of whether the defendant is competent to stand trial; other questions about the defendant's mental health that may be relevant to the defense should be raised and evaluated separately. *See, e.g.*, Rule 5-502(D) NMRA (setting forth *ex parte* procedures for a motion to transport the defendant for evaluation, testing, or interviewing when “reasonably necessary for the preparation of the defense”). Second, the rule formalizes and streamlines the process for raising a question about the defendant's competency and determining whether an evaluation is necessary. Third, the rule requires the appointment of a neutral evaluator and

establishes a rebuttable presumption in favor of the evaluator’s conclusion about the defendant’s competency. And fourth, the rule imposes aggressive time limits on the court, the parties, and the evaluator to ensure that the question of the defendant’s competency is resolved as efficiently as possible.

**Paragraph A**

The procedures set forth in this rule are intended to be used only to determine whether the defendant is competent to stand trial. This rule therefore may not be used to obtain an evaluation of other aspects of the defendant’s mental health, such as the availability of defenses under Rule 5-602 NMRA (setting forth procedures for raising the defenses of not guilty by reason of insanity at the time of the commission of the offense and incapacity to form specific intent). Similarly, the procedures set forth in this rule may not be used for purposes unrelated to assessing the defendant’s competency, including the following:

Neither party should move for an evaluation of competence in the absence of a good faith doubt that the defendant is competent to proceed. Nor should either party use the incompetence process for purposes unrelated to assessing and adjudicating the defendant’s competence to proceed, such as to obtain information for mitigation of sentence, obtain a favorable plea negotiation, or delay the proceedings against the defendant. Nor should the process be used to obtain treatment unrelated to the defendant’s competence to proceed . . . .

*Criminal Justice Standards on Mental Health*, § 7-4.3(e) (Am. Bar Ass’n 2016).

**Paragraph B**

**Definition of competency.**

The definition of competency set forth in Subparagraph (B)(1) is taken from *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691 (quoting *Rotherham*, 1996-NMSC-048, ¶ 13). As the Supreme Court has noted, UJI 14-5104 NMRA sets forth a “different formulation of the conditions necessary to be deemed competent.” *Linares*, 2017-NMSC-014, ¶ 34 n.8. *Compare id.* ¶ 34 (“A person is competent to stand trial when he or she has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, a rational as well as factual understanding of the proceedings against him, and the capacity to assist in his own defense and to comprehend the reasons for punishment.” (internal quotation marks and alterations omitted)), *with* UJI 14-5104 NMRA (setting forth the elements of competency as (1) understanding the nature and significance of the criminal proceedings, (2) having a factual understanding of the criminal charges, and (3) being able to assist the attorney with the defense). The committee considers the standard set forth in *Linares* to be controlling.

**Definition of competency evaluation.**

The evaluation that may be ordered under this rule is limited to a determination of the defendant’s competency. Such an evaluation shall be performed by a neutral, court-appointed evaluator, selected from a list of evaluators provided by the Administrative Office of the Courts under NMSA 1978, Section 31-9-2, or by the Human Services Department on behalf of the Department of Health under NMSA 1978, Section 43-1-1. As a court-appointed expert, the evaluator acts on behalf of the court and not on behalf of any party. *Cf. State v. Garcia*, 2000-NMCA-014, ¶ 32, 128 N.M. 721, 998 P.2d 186 (“[T]hat the State would not have chosen [the court-appointed evaluator] to perform the evaluation is of no moment to this Court. . . . The record indicates that [the court-appointed evaluator] was selected by the New Mexico Department of Health, *not* Defendant, and that she was further selected as the court’s expert, *not* Defendant’s.”).

A competency evaluation should not address whether a defendant is “dangerous” and therefore may be subject to commitment to attain treatment to competency. *Cf. State v. Gallegos*, 1990-NMCA-104, ¶ 24, 111 N.M. 110, 802 P.2d 15 (explaining that the competency evaluations “made prior to a Section 31-9-1.5 hearing” are not “for the purpose of assessing [the] defendant’s dangerousness”). The term “dangerous” is defined by statute and is not a clinical diagnosis. *See* NMSA 1978, § 31-9-1.2 (D) (“[D]angerous’ means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 [criminal sexual penetration] or 30-9-13 [criminal sexual contact of a minor] NMSA 1978.”). Further, the need to consider a defendant’s dangerousness arises only after a court has held that a defendant is not competent to stand trial and only if the defendant is charged with a felony. *See* § 31-9-1.2(B); *see also Garcia*, 2000-NMCA-014, ¶ 31 (“‘Dangerousness’ is a consideration secondary to the initial determination of competency.” (citing Rule 5-602(B)(3)(b) NMRA (1991))).

### **Paragraph C**

“The law has long recognized that it is a violation of due process to prosecute a defendant who is incompetent to stand trial.” *Rotherham*, 1996-NMSC-048, ¶ 13. The rule therefore permits the issue of the defendant’s competency to be raised by a motion for a competency evaluation at any point in the proceedings by the parties or the court. *Cf. Pate v. Robinson*, 383 U.S. 375, 385 (1966) (holding that the court’s failure to hold a hearing sua sponte on the question of the defendant’s competence violated his constitutional right to a fair trial). Once a question of the defendant’s competency is raised, the court “does not possess the discretion to ignore the issue” and must make “a determination on the record” about whether the defendant is competent to stand trial. *See State v. Montoya*, 2010-NMCA-067, ¶¶ 14, 18, 148 N.M. 495, 238 P.3d 369 (decided under Rule 5-602 NMRA (1991)). Similarly, the question, once raised, cannot be waived by the defendant. *See Pate*, 383 U.S. at 384 (“[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.”).

### **Paragraph D**

This paragraph sets forth specific requirements for requesting a competency evaluation. A motion under this paragraph must be in writing and must include certain information and statements to satisfy the court that the motion is well-taken and should be granted. *Cf., e.g., State v. Flores*, 2005-NMCA-135, ¶ 29, 138 N.M. 636, 124 P.3d 1175 (“[A] court may consider defense counsel’s observations and opinions, but . . . those observations and opinions alone cannot trigger reasonable doubt about the defendant’s competency.”); *State v. Hovey*, 1969-NMCA-049, ¶¶ 21-22, 80 N.M. 373, 456 P.2d 206 (holding that the district court did not abuse its discretion in denying a motion for a mental examination when defense counsel only “wondered about” the defendant’s competency and never asserted that the defendant was incompetent). Together with the reasonable belief standard set forth under Paragraph F for ordering a competency evaluation, these provisions are intended to speed the court’s determination of whether an evaluation should be ordered. In most cases, the court should have sufficient information from the motion and any response in opposition to rule on the motion without an evidentiary hearing.

A motion for a competency evaluation must include “a description of the facts and observations about the defendant that have formed the basis for the motion.” This requirement may be satisfied by the first-hand knowledge of the movant or, for example, by attaching “an affidavit from someone who has observed the defendant and formulated an opinion about his or her

competency, such as a corrections officer or defense counsel’s paralegal.” *Flores*, 2005-NMCA-135, ¶ 31. When a motion is filed by defense counsel, this requirement must be met without disclosing the substance of confidential communications with the defendant or violating the attorney–client privilege. *Accord Criminal Justice Standards on Mental Health*, § 7-4.3(f).

#### **Paragraph E**

The automatic suspension of proceedings under Paragraph E is consistent with NMSA 1978, Section 31-9-1, and applies to any proceeding for which the defendant’s personal participation is fairly required. As such, the suspension required by the rule does not stay all proceedings, and matters that do not require the defendant’s personal participation may proceed, including setting or reviewing conditions of release and considering motions that raise purely legal issues. Nothing in this rule is intended to limit a court’s inherent authority to stay proceedings upon motion. *See, e.g., Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623, 114 P.3d 303 (“The authority to stay proceedings is incidental to the court’s inherent management authority.”).

Granting a motion for a competency evaluation necessarily delays the proceedings against the defendant. *See, e.g., State v. Serros*, 2016-NMSC-008, ¶ 62, 366 P.3d 1121 (finding support for the district court’s finding that defense counsel delayed the defendant’s case “by raising the question of . . . competency and then failing to pursue an evaluation once the case had been stayed”). In extreme cases, the delay following an order for a competency evaluation can be substantial. *See, e.g., State v. Stock*, 2006-NMCA-140, ¶ 20, 140 N.M. 676, 147 P.3d 885 (noting that the defendant’s case was delayed “for nearly two and one-half years” following an order for a competency evaluation). When ordering a competency evaluation, the court should be mindful of the defendant’s conditions of release, including whether the defendant is in custody, and schedule a hearing to set or review conditions of release if appropriate.

#### **Paragraph F**

This paragraph sets forth procedures and time limits for ruling on a motion for a competency evaluation. When a motion is unopposed, the court shall review the motion and any supporting documentation within two days of its filing to determine if the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

When a motion for a competency evaluation is opposed, the rule sets forth an expedited process for considering the motion. The court must allow five days for a response in opposition. If a timely response is not submitted, the court shall review the motion to determine whether it is supported by a reasonable belief that the defendant may not be competent and shall rule on the motion within two days. If a response is submitted, the court may rule on the pleadings or may hold an expedited hearing to determine whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

The reasonable belief standard is not the standard previously set forth in Rule 5-602 NMRA for ordering a competency evaluation. *See* Rule 5-602(B)(2)(a) NMRA (1991) (requiring an evaluation when the court finds a “reasonable doubt as to the defendant’s competency”); Rule 5-602(C) NMRA (1991) (requiring an evaluation “upon motion and good cause shown”). The former “reasonable doubt” and “good cause” standards invited decades of litigation about the quantum of evidence necessary to support an order for an evaluation. *See, e.g., Flores*, 2005-NMCA-135, ¶¶ 26-29 (reviewing cases considering whether enough evidence had been offered “to pass the reasonable doubt and good cause tests”). This litigation is often misplaced and delays the ultimate determination of the substantive issue at hand: whether the defendant is

not competent to stand trial. Whether to order an evaluation is a threshold issue and therefore should not require proof that the defendant is actually incompetent. *See Mitchell v. United States*, 316 F.2d 354, 360 (D.C. Cir. 1963) (“It cannot reasonably be supposed that Congress intended to require the accused to produce, in order to get a mental examination, enough evidence to prove that he is incompetent or irresponsible. That is what the examination itself may, or may not, produce. If the accused already had such evidence, there would be little need for the examination.”); *see also Flores*, 2005-NMCA-135, ¶ 31 (“We do not read the case law as requiring expert testimony in order to obtain an evaluation of his or her competency . . .”).

The reasonable belief standard therefore requires the court to consider only whether the movant’s subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a “subjective good faith belief as opposed to an objective standard of reasonable belief”). In making this determination, the court should evaluate whether the motion demonstrates that the movant’s good faith belief is supported by specific, articulable facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 (“An officer obtains reasonable suspicion when the officer becomes aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” (internal citation and quotation marks omitted)). This is not a heavy burden, and in most circumstances a motion that meets the requirements of Paragraph D of this rule will satisfy the reasonable belief standard without the need for an evidentiary hearing. Without such a showing, however, a motion for a competency evaluation—whether opposed or unopposed—should be denied. *Cf. Hovey*, 1969-NMCA-049, ¶ 18 (“[T]here must be a showing of reasonable cause for the belief that an accused is not competent to stand trial.”).

#### **Paragraph G**

An evaluation ordered under Paragraph G of this rule shall be provided at no cost to an indigent defendant as provided by Sections 31-9-2 and 43-1-1.

#### **Paragraph H**

##### **Contents of report.**

Subparagraph (H)(1) identifies the information that must be included in the report filed with the court after the defendant’s competency evaluation. *Accord Criminal Justice Standards on Mental Health*, § 7-3.6(b). Paragraph (H)(1)(b), in particular, requires the report to include “a clear statement of the evaluator’s clinical findings and opinions about the defendant’s competency.” This requirement is intended to discourage the use of qualifiers such as “marginally” or “minimally” competent, which are not helpful and invite further litigation and delay. If the expert is not confident about the conclusion, the expert should perform further testing until a clear conclusion can be reached.

##### **Disclosure after review.**

Within two days of the filing of the report, the court shall review the report and provide a copy to the defendant and the state. Prior to disclosure, the court must review the report and excise any information or opinions unrelated to the defendant’s present competency before delivering copies of the report to the parties. *Criminal Justice Standards on Mental Health*, § 7-3.7(a) (“The report should not contain information or opinions concerning either the defendant’s mental condition at the time of the alleged offense or any statements made by the defendant regarding the alleged offense or any other offense.”). If information is excised, the court must notify the parties

and ensure that the information is sealed in the record and preserved for appellate review. *Accord Standards for Criminal Justice: Discovery and Trial by Jury*, § 11-6.6 (Am. Bar Ass'n 3d ed. 1996) (setting forth procedures for withholding information that is not discoverable and preserving the record for appellate review).

### **Paragraph I**

Paragraph I sets forth the procedures for resolving the question of the defendant's competency after the report is filed by the evaluator and distributed to the parties. Within seven days of the filing of the report, the parties are required to confer and file either a stipulated motion to adopt the conclusion set forth in the report or the specific objections of either party.

The final question of the defendant's competency should be decided at the hearing [~~ordered under Subparagraph (G)(3)~~], unless the parties stipulate to, and the court agrees with, the conclusion set forth in the report. If a hearing is necessary, the court shall determine by a preponderance of the evidence whether the defendant is not competent to stand trial. Subparagraph [~~(D)(1)(b)(iii)~~] (D)(1)(c) provides that the conclusion set forth in the report shall be prima facie evidence about the defendant's competency, subject to rebuttal by the party challenging the report. Favoring the conclusion set forth in the report reflects the evaluator's role as the court's neutral expert.

The presumption in favor of the report does not change the burden of persuasion, which is on the party asserting that the defendant is not competent. *See, e.g., State v. Chavez*, 2008-NMSC-001, ¶ 11, 143 N.M. 205, 174 P.3d 988 (“With respect to the initial determination of competency, it is well established that the defendant in a criminal case bears the initial burden of proving his or her incompetence by a preponderance of the evidence standard.”). Rather, the presumption imposes a burden of production on the party challenging the conclusion set forth in the report. *See Mortg. Inv. Co. v. Griego*, 1989-NMSC-014, ¶ 13, 108 N.M. 240, 771 P.2d 173 (“[Rule 11-301 NMRA] imposes only a burden of production on the party against whom the presumption is directed.”); Rule 11-301 NMRA (“In a civil case, unless a state statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.”); *see also* UJI 14-5104 NMRA committee commentary (“[P]roceedings to ascertain the competency to stand trial are civil proceedings.”). Either party may challenge the report by producing evidence, for example, that the evaluation was flawed or incomplete. Without evidence tending to undermine the reliability of the report, however, the evaluator's conclusion about the defendant's competency ordinarily should be dispositive. *Cf. Bell v. Skillicorn*, 1892-NMSC-007, ¶ 4, 6 N.M. 399, 28 P. 768 (“Where the party having the burden of proof establishes a prima facie case, and no proof to the contrary is offered, he would prevail.”).

When a motion for a competency evaluation is filed after the start of a trial by jury, the court shall submit the issue to the jury, unless the court finds that “there is no reasonable doubt as to the defendant's competency to stand trial, in which case there is no question for a jury to decide.” *See State v. Noble*, 1977-NMSC-031, ¶ 7, 90 N.M. 360, 563 P.2d 1153; *see also* UJI 14-5104 NMRA. This requirement is rooted in the constitutional right to a trial by jury. *See* N.M. Const. art. II, § 12 (“The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate.”); *see also generally State v. Chavez*, 1975-NMCA-119, 88 N.M. 451, 541 P.2d 631 (tracing the development of the constitutional right to a trial by jury on the question of a defendant's competency). When decided by a jury, a verdict on the issue of the defendant's competency need not be unanimous. *See* UJI 14-5104 NMRA.

### **Paragraph J**

Rule 5-602.2 NMRA sets forth procedures that must be followed after a finding of incompetency.

### **Paragraph K**

The court may extend any of the time limits in this rule for good cause shown, provided that the ultimate issue of the defendant's competency shall be resolved within ninety days of the filing of the motion for a competency evaluation. The court shall not grant an extension that exceeds the ninety-day limit except upon a showing of exceptional circumstances. In addition to granting an extension of time, the court should consider whether the use of the court's coercive powers may be appropriate.

### **Paragraph L**

A dismissal for failure to comply with the time limits set forth in this rule is distinct from a dismissal for violation of the defendant's right to a speedy trial under the Sixth Amendment to the United States Constitution. Like the speedy trial analysis, however, the reasons for the delay may be relevant when deciding whether to dismiss a case under Subparagraph (L)(2) of this rule. *See, e.g., State v. Ochoa*, 2017-NMSC-031, ¶ 18, 406 P.3d 505 (discussing four types of delay and how they weigh against the defendant and the state). The court also may consider whether the use of the court's coercive powers, rather than dismissal, would be appropriate.

An order of dismissal under this rule is a final, appealable order. *See, e.g., State v. Lucero*, 2017-NMCA-079, ¶ 11, 406 P.3d 530 (holding that the state has the right to appeal a district court order dismissing a criminal complaint, indictment, or information "even if the dismissal is without prejudice").

### **Paragraph N**

This paragraph is derived from Standard 7-4.7(a) of the ABA Mental Health Standards. *See also* Rule 11-504 NMRA (providing that communications between a patient and the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist for the purpose of diagnosis or treatment are privileged). Information elicited from the defendant or any other person for the purpose of determining the defendant's competency is immaterial to the defendant's guilt or innocence and therefore is inadmissible against the defendant in a criminal proceeding unless the defendant waives the privilege. *See Criminal Justice Standards on Mental Health*, § 7-4.7(b) ("The defendant waives the privilege . . . by using or indicating an intent to use the report or parts thereof for any other purpose."). The privilege may not be used to shield evidence that would be otherwise admissible in a criminal proceeding.

### **Courtroom closure**

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 5-124(A) NMRA ("All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule."); *see also* Rule 5-124 committee commentary ("[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.").

[Approved by Supreme Court Order No. 18-8300-023~~[-effective for all cases filed on or after February 1, 2019]~~; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143.]

## **5-602.2. Proceedings after a finding of incompetency.**

A. **Scope.** This rule governs proceedings after a defendant has been found incompetent to stand trial under Rule 5-602.1 NMRA. This rule does not apply to a defendant charged with a felony whose incompetency is believed to be primarily due to developmental or intellectual disability. Those proceedings are governed by Rule 5-602.3 NMRA.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) **Community-based competency restoration.** A court-approved program that is designed to restore a defendant to competency provided in an outpatient setting in the community where the defendant resides.

~~[(4)]~~ (2) **Competency.** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant's own defense and to comprehend the reasons for punishment.

~~[(2)]~~ (3) **Dangerous.** ~~[The terms dangerous or dangerousness mean that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or Section 30-9-13 NMSA 1978. Dangerousness is not a clinical diagnosis; therefore, a finding of dangerousness need not be based on a psychological evaluation or on expert testimony.]~~ A defendant who is not competent is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of:

(a) committing murder in the first or second degree, as provided in NMSA 1978, Section 30-2-1;

(b) inflicting great bodily harm, as defined in NMSA 1978, Section 30-1-12, on another person;

(c) committing criminal sexual penetration, as provided in NMSA 1978, Section 30-9-11;

(d) committing criminal sexual contact of a minor, as provided in NMSA 1978, Section 30-9-13;

(e) committing abuse of a child, as provided in NMSA 1978, Section 30-6-1(D);

(f) violating a provision of the Sexual Exploitation of Children Act;

(g) committing human trafficking, as provided in NMSA 1978, Section 30-52-1;

(h) committing aggravated arson, as provided in NMSA 1978, Section 30-17-6; or

(i) committing any "serious violent offense" enumerated in NMSA 1978, Section 33-2-34(L)(4)(a)-(n) with the use of a firearm.

~~[(3)]~~ (4) **Department.** The term Department means the New Mexico Department of Health.

~~[C. —~~ **Defendant not charged with a felony.** If the incompetent defendant has not been charged with a felony, the following provisions shall apply.

(1) ~~—~~ **Case transferred to district court.** If the case was transferred to the district court under Rule 6-507.1 NMRA or Rule 8-507.1 NMRA, the court shall remand the case within

two (2) days to the court in which the case is pending as provided in Rule 5-602.1(M)(2)(b) NMRA.

(2) — ***Case originally filed in district court.*** If the case was originally filed in the district court, the court may dismiss the case without prejudice in the interests of justice. On dismissal, the court may advise the district attorney to consider initiation of proceedings under Section 43-1-10 or 43-1-11 NMSA 1978 of the Mental Health and Developmental Disabilities Code. In the alternative, the court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment.]

**C. Cases transferred to the district court and restoration to competency.** If a defendant is restored to competency in a case that was transferred to the district court under Rules 6-507.1 or 8-507.1 NMRA, the district court shall remand the case to the originating court within two (2) days of the finding of competency.

**D. [Defendant charged with a felony; dangerousness] Dangerousness determination.** [If the incompetent defendant is charged with a felony,] In every case where a defendant is found not competent, the court shall consider whether there is clear and convincing evidence that the defendant is dangerous [as that term is defined by Section 31-9-1.2(D) NMSA 1978 and this rule] under NMSA 1978, Section 31-9-1.2(A). Unless the court approves a stipulation by the parties, the court shall hold a hearing to determine dangerousness. A determination of the defendant's dangerousness shall take into account only evidence relevant to whether the defendant presents a serious threat of [inflicting great bodily harm on another or of violating Section 30-9-11 or Section 30-9-13 NMSA 1978] committing one of the enumerated crimes listed in Section 31-9-1.2(A).

**E. No finding of dangerousness.** If the court does not find that the incompetent defendant is dangerous under Paragraph D of this rule, the court may order the defendant to participate in a community-based competency restoration program or dismiss the case without prejudice in the interests of justice. On dismissal, the court may advise the district attorney to consider initiation of proceedings under NMSA 1978, Section 43-1-10 or 43-1-11 [NMSA 1978] of the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven (7) days to facilitate preparation and initiation of a petition under that code. In the alternative, the court may advise the [attorneys] district attorney [in the matter] to consider [referral to an appropriate person authorized] initiation of proceedings under NMSA 1978, Section 43-1B-4 [NMSA 1978] to file a petition for assisted outpatient treatment.

(1) **Community-based competency restoration program.** The court can order a defendant to participate in a community-based competency restoration program for no more than ninety (90) days as required under Section 31-9-1.2(C).

**F. Finding of dangerousness.**

(1) **Commitment for [treatment to attain] competency restoration.** If the court finds that an incompetent defendant [charged with a felony] is dangerous, the court [shall] may commit the defendant for [treatment to attain competency to stand trial] inpatient competency restoration in [- The order of commitment shall order the defendant transported to] a [secure,] secured, locked facility, where the defendant shall remain under the supervision of the Department. The order also shall provide for return of the defendant to the local facilities within seventy-two (72) hours of the [court on completion of the treatment] defendant's restoration to competency, completion of the competency restoration program, or as otherwise required by the court.

(2) ***Inability to treat defendant.*** If ~~[after an investigation]~~ the Department determines that it does not have the ability to meet the ~~[medical]~~ needs of the defendant, the ~~[Department]~~ Department's Secretary or Secretary's Designee may refuse admission ~~[and certify]~~ by providing written certification to the committing court and parties of the Department's inability to meet the ~~[medical]~~ needs of the defendant. The certification shall be made within ~~[fourteen (14)]~~ seven (7) days of receipt of the court's order of commitment and receipt of necessary and available documents reasonably required for admission. Within ten (10) days of receipt of the certification, the court shall set a hearing to determine disposition of the criminal case.

(3) ***Initial assessment and report.*** Unless the Department certifies that it is unable to meet the ~~[medical]~~ needs of the defendant, within thirty (30) days of the defendant's admission ~~[to undergo treatment to attain]~~ for competency restoration, the person supervising the defendant's ~~[treatment]~~ competency restoration shall file with the court and serve on the state and the defendant the following:

- (a) an initial assessment and treatment plan;
- (b) a report on the defendant's amenability to ~~[treatment to]~~ competency restoration;
- (c) an assessment of the ~~[facility's]~~ Department's capacity to provide treatment for the defendant; and
- (d) an opinion about the probability of the ~~[defendant's attaining]~~ defendant being restored to competency within nine (9) months from the date ~~[of the finding of incompetency]~~ the court determined the defendant is not competent to stand trial.

(4) ***Status-review hearing.*** Within ninety (90) days of the ~~[finding of incompetency]~~ court's determination the defendant is not competent, the court shall hold a hearing, unless waived by the defense, to review whether the defendant has ~~[attained competency]~~ been restored to competency, and if not, whether the defendant is making progress ~~[under treatment]~~ towards [attaining] competency restoration within nine (9) months of the finding of incompetency and whether the defendant remains dangerous.

(a) If the court finds the defendant ~~[competent]~~ is restored to competency, the court shall set the matter for trial or, in a case transferred to the district court under Rules 6-507.1 or 8-507.1, remand the case within two (2) days to the originating court. The court may order continued care or treatment until the conclusion of the criminal proceedings if the defendant is in need of continued care or treatment and the Department agrees to continue to provide it.

(b) If the court finds the defendant is not competent but is making progress toward ~~[attaining]~~ being restored to competency within nine (9) months from the date the court determined the defendant is not competent, the court may continue or modify its original order entered under Subparagraph (F)(1) of this rule, but the court shall review the defendant's competency again no later than nine (9) months after the original finding of incompetency and the treatment supervisor shall submit a written progress report at least seven (7) days prior to the hearing.

(c) If the court finds that the defendant remains ~~[incompetent]~~ not competent and is not making progress towards ~~[attaining]~~ being restored to competency, and that there is not a substantial probability that the defendant will ~~[attain]~~ be restored to competency within nine (9) months of the original finding of incompetency, the court shall proceed under Paragraph G of this rule. Additionally, the court may order continued care or treatment until the

conclusion of the criminal proceedings if the defendant is in need of continued care or treatment and the Department agrees to continue to provide it.

G. **[Treatment] Competency restoration ineffective for defendant.** If at any time the court determines there is not a substantial probability that a defendant [~~ordered to undergo treatment to attain competency~~] is [~~not~~] likely to [~~attain~~] be restored to competency within nine (9) months from the original finding of incompetency, the district court shall do either of the following:

(1) [~~proceed under Paragraph H of this rule if the defendant is charged with any of the following;~~] hold a criminal commitment hearing in accordance with NMSA 1978, Section 31-9-1.5 within three (3) months if the defendant is charged with one of the offenses set forth in Section 31-9-1.5(A); or

~~[(a) — a felony that involves the infliction of great bodily harm on another person;~~

~~(b) — a felony that involves the use of a firearm;~~

~~(c) — aggravated arson as provided in Section 30-17-6 NMSA 1978;~~

~~(d) — criminal sexual penetration as provided in Section 30-9-11 NMSA 1978; or~~

~~(e) — criminal sexual contact of a minor as provided in Section 30-9-13 NMSA 1978; or]~~

(2) if the defendant is not charged with an offense set forth in [~~Subparagraph (1) of this paragraph;~~] Section 31-9-1.5(A), the district court may

~~(a) dismiss the criminal case with prejudice; or~~

~~(b) dismiss the criminal case without prejudice in the interest of justice.~~

On dismissal, if the treatment supervisor [~~has issued a report finding~~] reports to the court that the defendant satisfies the criteria for involuntary commitment under the Mental Health and Developmental Disabilities Code, the Department shall [commence] initiate proceedings under Section 43-1-10 or 43-1-11 [NMSA 1978], and the court may order the defendant confined for a maximum of seven (7) days to facilitate [preparation and] the initiation of a petition under that code. [The court may advise the district attorney to consider initiation of proceedings under Section 43-1-10 or 43-1-11 NMSA 1978.] In the alternative, the [court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment] district attorney may initiate involuntary commitment proceedings in the Department's stead.

H. **Criminal commitment; hearing.** If the court determines that there is not a substantial probability that a defendant charged with an offense set forth in [Subparagraph (G)(1) of this rule is not likely to attain] NMSA 1978, Sections 32A-9-1.4(A) or 32A-9-1.5(A) will be restored to competency within nine (9) months of the original finding of incompetency, the court shall hold a commitment hearing to determine whether there is clear and convincing evidence [that] of the [defendant] defendant's guilt if the defendant is charged with one of the enumerated charges outlined in Section 31-9-1.5(A) [committed the criminal act charged]. The court shall decide the issue without a jury, and may admit hearsay or affidavit evidence on secondary matters as permitted by law.

(1) If the court does not find clear and convincing evidence that the defendant committed the [~~criminal act~~] crime charged, the court shall dismiss the case with prejudice. [~~On dismissal, the court may advise the district attorney to consider initiation of proceedings under~~

~~Section 43-1-10 or 43-1-11 NMSA 1978 of the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven (7) days to facilitate preparation and initiation of a petition under that code. In the alternative, the court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment.]~~

(2) If the court finds clear and convincing evidence that the defendant committed the ~~[criminal act]~~ crime charged but does not find that the defendant is dangerous, the court shall dismiss the case without prejudice. ~~[On dismissal, the court may advise the district attorney to consider initiation of proceedings under Section 43-1-10 or 43-1-11 NMSA 1978 of the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven (7) days to facilitate preparation and initiation of a petition under that code. In the alternative, the court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment.]~~

(3) If the court finds clear and convincing evidence that the defendant committed the ~~[criminal act]~~ crime charged and enters a finding that the defendant remains ~~[incompetent]~~ not competent and dangerous, the court shall,

(a) order that the defendant shall be detained by the Department in a secure, locked facility until further order of the court or until the expiration of the period of time equal to the maximum sentence to which the defendant would have been subjected had the defendant been convicted in a criminal proceeding;

(b) order the Department to report to the district court and the parties any significant changes in the defendant's condition, including but not limited to competency and dangerousness; and

(c) on notice to the parties and to the Department, conduct a hearing at least every two (2) years to review whether the defendant remains incompetent and dangerous.

(i) If the court finds that the defendant is competent, the court shall continue with the criminal proceeding.

(ii) If the court finds that the defendant continues to ~~[be incompetent]~~ remain not competent and dangerous, the court shall review the defendant's competency every two (2) years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding.

(iii) If the defendant is not committed under this rule or if the court finds on its two (2)-year review that the defendant is no longer dangerous, the defendant shall be released.

(4) At any time, the Department or the district attorney may initiate civil involuntary commitment proceedings under NMSA 1978, Section 43-1-10 or 43-1-11 of the Mental Health and Developmental Disabilities Code, and the court may order the defendant confined for a maximum of seven (7) days to facilitate the initiation of those proceedings. In the alternative, the Department or district attorney may initiate proceedings under Section 43-1B-4 to file a petition for assisted outpatient treatment.

I. **Automatic sealing of court records.** Any motion, response, assessment, treatment plan, report, or other paper filed under this rule shall be automatically sealed without motion or

order of the court as provided in Rule 5-123(C)(2) NMRA. An order issued under this rule shall not be sealed except on motion and order under Rule 5-123 [NMRA].

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as amended by Supreme Court Order No. S-1-RCR-2023-00053, effective for all cases pending or filed on or after February 23, 2024; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary. —**

### **Dangerous(ness)**

Dangerousness is not a clinical diagnosis or condition. The definition of “dangerous” is taken from NMSA 1978, Section 39-1-1.2(D) and applies to a person who, if released, presents a serious threat of inflicting great bodily harm on another or of violating NMSA 1978, Section 30-9-11 or 30-9-13. A determination of dangerousness is analogous to the inquiry to determine which conditions of release will “reasonably ensure . . . the safety of any other person or the community.” Rule 5-401(C) NMRA; *see State v. Rotherham*, 1996-NMSC-048, ¶ 53, 122 N.M. 246, 923 P.2d 1131 (*citing United States v. Salerno*, 481 U.S. 739, 747 (1987)) (“[B]ecause the state seeks to treat an incompetent [defendant] and to protect the community from danger, detention serves a regulatory rather than a punitive function.”). As such, a finding of dangerousness need not be supported by a psychological evaluation or expert testimony. *Cf. State v. Gallegos*, 1990-NMCA-104, ¶ 24, 111 N.M. 110, 802 P.2d 15 (explaining that the competency evaluations “made prior to a Section 31-9-1.5 hearing” are not “for the purpose of assessing [the] defendant’s dangerousness”); *cf. also State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶¶ 97-103, 410 P.3d 201 (providing guidance about “evaluating evidentiary presentations” in pretrial detention proceedings, including evidence of “one’s character traits based on patterns of past conduct”).

Dangerousness is a term of art defined under NMSA 1978, Chapter 31, Article 9 and is not equivalent to “likelihood of harm to self or others” as used in the Mental Health and Developmental Disabilities Code. *Compare* NMSA 1978, § 31-9-1.2(D) (“As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, ‘dangerous’ means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.”) *with* NMSA 1978, § 43-1-3(M) (“‘likelihood of serious harm to oneself’ means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person’s self by violent or other self-destructive means, including grave passive neglect”), *and* NMSA 1978, § 43-1-3(N) (“‘likelihood of serious harm to others’ means that it is more likely than not that in the near future a person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person”). *See also, e.g.*, NMSA 1978, § 43-1-11(E)(1) (providing that an adult may be involuntarily committed for evaluation and treatment not to exceed thirty days based upon a finding, *inter alia*, that “as a result of a mental disorder, the [adult] presents a likelihood of serious harm to the [adult’s] self or others”).

The question of whether a defendant is “dangerous” arises only after a court has held that a defendant is not competent to stand trial and only if the defendant is charged with a felony. *See* NMSA 1978, § 31-9-1.2(B); *see also State v. Garcia*, 2000-NMCA-014, ¶ 31, 128 N.M. 721, 998 P.2d 186 (“‘Dangerousness’ is a consideration secondary to the initial determination of competency.” (citing Rule 5-602(B)(3)(b) NMRA (1991))).

### **Clear and convincing evidence of dangerousness**

Paragraph D of this rule requires clear and convincing evidence of a defendant's dangerousness to support a commitment for treatment to attain competency. Application of the clear and convincing standard is consistent with other proceedings, including mental health proceedings, that may result in a deprivation of a person's liberty. *See, e.g.*, § 43-1-11(E) (requiring clear and convincing evidence to support the involuntary commitment of an adult for evaluation and treatment); NMSA 1978, § 43-1-12(E) (requiring clear and convincing evidence to support an extended commitment of an adult for treatment); NMSA 1978, § 43-1-15(E) (requiring clear and convincing evidence to support the appointment of a treatment guardian for an adult); NMSA 1978, § 31-9-1.5(D) (requiring clear and convincing evidence to support detaining an incompetent defendant who is not likely to attain competency); Rule 5-409(G) NMRA (requiring clear and convincing evidence to support pretrial detention of a criminal defendant).

### **Commitment hearing**

The purpose of a hearing under Paragraph H of this rule is to determine whether an incompetent defendant committed the criminal act charged. *See Rotherham*, 1996-NMSC-048, ¶ 58 (“[T]he hearing [under Section 31-9-1.5(A)] is not a trial to establish criminal culpability, for which evidence relating to both *actus reus* and *mens rea* clearly would be relevant. Rather, to justify further commitment for treatment, the hearing is to determine whether the defendant committed the criminal *act*. Hence, any evidence relating to the defendant's state of mind at the time the criminal act was committed is irrelevant.”); *but see State v. Taylor*, 2000-NMCA-072, ¶ 15, 129 N.M. 376, 8 P.3d 863 (“[T]aken in context, when the Supreme Court characterized ‘state of mind’ as irrelevant, it was using the term as it pertained to the issue before it: the irrelevancy of the defendant's ability to form a specific intent.” (citing *Rotherham*, 1996-NMSC-048, ¶ 58)). The defendant therefore may not assert the defenses of insanity or inability to form specific intent. *See Rotherham*, 1996-NMSC-048, ¶ 58.

In addition, Paragraph H provides that the court may admit hearsay or affidavit evidence at the commitment hearing on secondary matters as permitted by law. *Accord* § 31-9-1.5(A) (“The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.”). In determining whether to admit such evidence, the court should be mindful that a person who is the subject of a commitment proceeding ordinarily is entitled to certain minimum procedural safeguards as a matter of due process. *See Vitek v. Jones*, 445 U.S. 480, 494-95 (1980). Among those safeguards is the right to confront and cross-examine government witnesses except upon a showing of good cause. *See id.* (holding that an inmate had the right, *inter alia*, to confront the state's witnesses against him in a proceeding to transfer him to a mental hospital, “except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination”). To that end, the New Mexico Supreme Court has identified “certain principles” that are useful in determining “what it means to establish good cause for not allowing confrontation” in the related context of a probation revocation proceeding. *See State v. Guthrie*, 2011-NMSC-014, ¶ 33, 150 N.M. 84, 257 P.3d 904 (internal quotation marks and citation omitted); *see also Vitek*, 445 U.S. at 495-96 (holding that a prisoner “facing involuntary transfer to a mental hospital” is entitled to due process protections similar to those required in a probation revocation proceeding). Those principles include (1) whether the evidence is offered to prove an assertion that is “central” or “collateral” to the proceeding; (2) whether the assertion is contested,

or whether the state “is being asked to produce a witness to establish something that is essentially uncontroverted”; (3) whether the evidence is inherently reliable due to its source and the circumstances surrounding its introduction; and (4) whether live testimony and confrontation would be useful to test the truthfulness and credibility of the evidence. *Guthrie*, 2011-NMSC-014, ¶¶ 33-39.

### **Treatment**

Treatment ordered under this rule must include competency restoration treatment and may include general healthcare and mental healthcare treatment. *See Rotherham*, 1996-NMSC-048, ¶ 79 (Minzner, J., specially concurring) (“During such a commitment, as a matter of substantive due process, those involuntarily committed under Section 31-9-1.5 have a right to be treated not only for competency, but to alleviate their dangerousness and accompanying mental illness or disability.”).

### **Courtroom closure**

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 5-124(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 5-124 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

### **5-602.3. Incompetency due to developmental or intellectual disability.**

A. **Definitions.** The following definitions shall apply for purposes of this rule.

(1) **Department.** “Department” means the New Mexico Department of Health.

(2) **Developmental or intellectual disability.** Developmental or intellectual disability means significant subaverage intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy (70) or below on a reliably administered intelligence quotient test shall be presumptive evidence of developmental or intellectual disability.

B. **Hearing to determine developmental or intellectual disability.** If a defendant is charged with a felony and found incompetent to stand trial, on motion of ~~[the defense]~~ a party or the court, the court shall hold a hearing to determine if the ~~[defendant’s incompetency is]~~ defendant is not competent due to developmental or intellectual disability. The purpose of the hearing shall be to determine whether there is a preponderance of the evidence of the following:

(1) the defendant ~~[has]~~ is not competent to stand trial due to a developmental or intellectual disability; and

(2) there is not a substantial probability that the defendant will ~~[become competent to proceed in a criminal case]~~ be restored to competency within [a reasonable time, not to exceed] nine (9) months from the [original finding of incompetency] date the court determined the defendant is not competent to stand trial.

C. **Department evaluation; notice of Department’s findings.** If the court makes the findings set forth in Paragraph B of this rule, the court shall order the Department to perform an evaluation within sixty (60) days of service of the order to determine whether the defendant presents a likelihood of serious harm to the defendant’s self or others. At the completion of the evaluation, the Department shall promptly notify the court and the parties of its findings.

D. **Proceedings under NMSA 1978, Chapter 43, Article 1** [~~NMSA 1978~~]. If the [evaluation ordered under Paragraph C of this rule results in a finding by] the Department determines that the defendant presents a likelihood of serious harm to self or others,

(1) the Department shall [~~commence proceedings under Chapter 43, Article 1 NMSA 1978 within sixty (60) days of the evaluation~~] initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code if the defendant [~~has been~~] is charged [~~in the initial proceedings~~] with one or more of the following offenses:

(a) murder in the first or second degree, as provided in NMSA 1978, Section 30-2-1;

(b) [~~first degree criminal sexual penetration~~] a felony involving infliction of great bodily harm, as defined in NMSA 1978, Section 30-1-12, on another person;

(c) criminal sexual [~~contact of a minor~~] penetration, as provided in NMSA 1978, Section 30-9-11; [or]

(d) [~~arson~~] criminal sexual contact of a minor, as provided in NMSA 1978, Section 30-9-13; [or]

(e) abuse of a child, as provided in NMSA 1978, Section 30-6-1(D);

(f) a crime provided for in the Sexual Exploitation of Children Act;

(g) human trafficking, as provided in NMSA 1978, Section 30-52-1;

(h) aggravated arson, as provided in NMSA 1978, Section 30-17-6; or

(i) any “serious violent offense” enumerated in NMSA 1978, Section 33-2-34(L)(4)(a)-(n) with the use of a firearm; or

(2) the Department may [~~commence proceedings under Chapter 43, Article 1 NMSA 1978 within sixty (60) days of the evaluation~~] initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code if the defendant has not been charged with an offense enumerated in Subparagraph (1) of this paragraph.

E. **Notice.**

(1) The Department shall notify the court if it [~~commences proceedings under Chapter 43, Article 1 NMSA 1978~~] initiates involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code and Paragraph D of this rule.

(2) The Department shall notify the court as soon as practicable if the Department does not intend to [~~commence~~] initiate proceedings under Paragraph (D)(2) of this rule.

F. **Disposition of criminal charges.** Unless the court dismisses the charges at an earlier time, the criminal charges against the defendant shall be dismissed without prejudice on the first of the following to occur:

(1) [~~the hearing under Chapter 43, Article 1 NMSA 1978~~] the involuntary commitment hearing; or

(2) the expiration of fourteen (14) months from the court’s initial determination that the defendant is [~~incompetent to proceed in a criminal case~~] not competent to stand trial.

G. **Automatic sealing of court records.** Any motion, response, assessment, treatment plan, report, or other paper filed under this rule shall be automatically sealed without motion or order of the court as provided in Rule 5-123(C)(2) NMRA. An order issued under this rule shall not be sealed except on motion and order under Rule 5-123 [~~NMRA~~].

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as amended by Supreme Court Order No. S-1-RCR-2023-00053, effective for all cases pending or filed on or after February 23, 2024; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary.** — Until June 16, 2023, NMSA 1978, Section 31-9-1.6 (1999, amended 2023) used a disfavored term. Old cases used that term in deference to the statute, despite the term not being otherwise acceptable. With the amendment of the statute, this rule has been updated to use the appropriate term of developmental or intellectual disability.

The legal definition of developmental or intellectual disability under this rule and Section 31-9-1.6(E) is not equivalent to a clinical finding of developmental or intellectual disability. *See State v. Trujillo*, 2009-NMSC-012, ¶ 13, 146 N.M. 14, 206 P.3d 125. A clinical determination of intellectual or developmental disability requires a finding that the issue arose before a person’s eighteenth birthday. *See id.* ¶ 10 (citing Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders-IV-TR* 41 (2000)). Age of onset, however, is not a factor in a legal determination of developmental or intellectual disability for purposes of incompetency. *See Trujillo*, 2009-NMSC-012, ¶ 12 (“[T]he Legislature’s decision to exclude the age of onset factor is logical given that what is legally relevant are the symptoms probative of culpability at the time of the alleged crime and coherence at the time of trial, not the age at which those symptoms started to affect the individual.”).

The discretion given to the Department under Subparagraph (D)(2) of this rule is consistent with Section 31-9-1.6(C) as it was originally enacted. Before it was amended in 1999, Subsection 31-9-1.6(C) provided as follows:

C. If the department evaluation results in a finding that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department:

(1) shall commence proceedings under Chapter 43, Article 1 NMSA 1978 if the defendant was charged with first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others; or

(2) may commence proceedings under Chapter 43, Article 1 NMSA 1978 if the defendant was charged with any crime other than first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings from which he was referred under this section to the department.

1997 N.M. Laws, ch. 153. Although the 1999 amendments to Section 31-9-1.6 deleted Subsection (C)(2), *see* 1999 N.M. Laws, ch. 149, the Supreme Court has observed that the deletion “is not dispositive of legislative intent and may only represent a housekeeping deletion of a provision the Legislature deemed superfluous.” *Trujillo*, 2009-NMSC-012, ¶ 27.

Subparagraph (D)(2) of the rule therefore clarifies that the Department has discretion to initiate proceedings under NMSA 1978, Chapter 43, Article 1 for a defendant who has not been charged with an enumerated offense when the Department’s evaluation results in a finding that the defendant presents a likelihood of serious harm to self or others. *See Trujillo*, 2009-NMSC-012, ¶ 28 (holding the 1999 amendments to Section 31-9-1.6 were not “intended to restrict the State from civilly committing defendants . . . accused of a crime other than the four enumerated in Section 31-9-1.6(C)”).

## **Courtroom closure**

Hearings under this rule may be closed only on motion and order of the court. *See* Rule 5-124(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 5-124 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as amended by Supreme Court Order No. S-1-RCR-2023-00053, effective for all cases pending or filed on or after February 23, 2024.]

### **6-507.1. Competency; transfer to district court.**

A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant’s mental health that may be relevant in a criminal proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of commission of an offense and incapacity to form specific intent.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) **Competency.** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant’s lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant’s own defense and to comprehend the reasons for punishment.

(2) **Competency evaluation.** A competency evaluation is an examination of the defendant by a qualified mental health professional, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. Unless otherwise ordered by the court, a competency evaluation shall be limited to a determination of the defendant’s competency and shall not state opinions about other matters including the defendant’s sanity at the time of the offense or ability to form a specific intent.

C. **Raising a question of competency; who may raise.** A question of the defendant’s competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The issue shall be raised by a motion for a competency evaluation and may be raised by a party or upon the court’s own motion at any stage of the proceedings.

D. **Motion for competency evaluation.**

(1) **By motion of a party represented by counsel.** When a question of competence is raised by a party who is represented by counsel, a motion for a competency evaluation shall be in writing and shall contain the following:

(a) a statement that the motion is based on a good faith belief that the defendant may not be competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion. If filed by defense counsel, the motion shall contain such information without invading the attorney–client privilege;

- (c) a statement that the motion is not filed for purposes of delay;
- (d) a statement of whether the motion is opposed as provided in Rule 6-304 NMRA;
- (e) a completed defendant information sheet, substantially in the form approved by the Supreme Court; and
- (f) a request for a competency evaluation.

(2) ***By motion of a self-represented defendant or upon the court's own motion.*** When a question of competence is raised by a party who is self-represented or upon the magistrate court's own motion, the magistrate court shall dispose of the motion by filing an order substantially in the form approved by the Supreme Court that addresses the following:

- (a) whether the motion is based on a good faith belief that the defendant is not competent to stand trial;
- (b) a description of the facts and observations about the defendant that have formed the basis for the motion;
- (c) whether the motion is advanced for purposes of delay;
- (d) whether the motion is opposed; and
- (e) whether a competency evaluation is requested.

E. **Suspension of proceedings.** Upon the filing of a motion for a competency evaluation, further proceedings in the case shall be suspended until the motion is denied or, if the motion is granted, until the case is remanded from the district court. The filing of a motion for a competency evaluation shall not affect a court's authority to set or review conditions of release under Rule 6-401 NMRA.

F. **Resolution of motion; reasonable belief.** In considering a motion for a competency evaluation, the court shall comply with the following procedures.

(1) ***Unopposed.*** Within two (2) days of the filing of a motion that is unopposed under Subparagraph (D)(1)(d) of this rule, the court shall file an order substantially in the form approved by the Supreme Court finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. The determination shall be based solely upon the allegations in the motion and upon the court's own observations of the defendant.

(2) ***Opposed.*** A response in opposition to a motion for a competency evaluation shall be in writing, shall cite specific facts in opposition to the motion, and shall be filed within five (5) days of the filing of the motion or be deemed waived. Upon the filing of a response in opposition, the court shall do one of the following:

- (a) unless the court determines that a hearing on the motion is necessary, file an order substantially in the form approved by the Supreme Court within two (2) days finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial; or
- (b) hold a hearing on the motion and file an order substantially in the form approved by the Supreme Court within fifteen (15) days of the filing of the response finding whether there is a reasonable belief that the defendant may not be competent to stand trial.

G. **Transfer to district court; effect on magistrate court proceedings.** An order finding a reasonable belief that the defendant may not be competent to stand trial under Paragraph E of this rule also shall transfer the case to the district court for further proceedings under Rule 5-602.1 NMRA. The order shall be delivered to the district court within two (2) days of the finding of a reasonable belief. When such an order is filed, jurisdiction over the defendant and any

conditions of release shall be transferred to the district court. Any conditions of release and any bond set by the magistrate court shall continue in effect unless amended by the district court. The magistrate court shall suspend its case pending remand from the district court.

H. **Remand from district court.** Upon remand from the district court after proceedings to determine the defendant’s competency, the magistrate court shall proceed as follows.

(1) **Defendant found competent.** If the defendant has been found competent to stand trial, the magistrate court shall resume the proceedings against the defendant as otherwise provided under these rules.

~~[(2) — **Defendant found not competent.** If the defendant has been found not competent to stand trial, the magistrate court may dismiss the case without prejudice in the interests of justice. Upon dismissal, the magistrate court may advise a person authorized under Section 43-1-10 or 43-1-11 NMSA 1978 to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code. In the alternative, the magistrate court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment.]~~

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary.** — The magistrate court shall transfer a case to the district court for a competency determination when the court finds that the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. A reasonable belief may arise from the court’s own observations or from the factual allegations in a party’s motion. If the magistrate court finds a reasonable belief that the defendant may not be competent, the magistrate court shall suspend the proceedings and transfer the case to district court for a determination of competency.

The reasonable belief standard requires the court to consider only whether the movant’s subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a “subjective good faith belief as opposed to an objective standard of reasonable belief”). In making this determination, the court should evaluate whether the motion demonstrates that the movant’s good faith belief is supported by specific, articulable facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 (“An officer obtains reasonable suspicion when the officer becomes aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” (internal citation and quotation marks omitted)). This is not a heavy burden, and in most circumstances a motion that meets the requirements of Paragraph D of this rule will satisfy the reasonable belief standard without the need for an evidentiary hearing. Without such a showing, however, a motion for a competency evaluation—whether opposed or unopposed—should be denied. *Cf. State v. Hovey*, 1969-NMCA-049, ¶ 18, 80 N.M. 373, 456 P.2d 206 (“[T]here must be a showing of reasonable cause for the belief that an accused is not competent to stand trial.”).

For further discussion of the procedures set forth in this rule, *see* the committee commentary to Rule 5-602.1 NMRA.

### **Courtroom closure**

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 6-116(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 6-116 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

#### **7-506. Time of commencement of trial.**

##### **A. Time limits for arraignment.**

(1) ***Defendant not in custody.*** A defendant who is not in custody shall be arraigned on the complaint or citation within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later.

(2) ***Defendant in custody.*** A defendant who is in custody within this state shall be arraigned on the complaint or citation as soon as practicable, but in any event no later than three (3) days after the date of arrest if the defendant is being held in the local detention center, or no later than five (5) days after the date of arrest if the defendant is not being held in the local detention center.

(3) ***After dismissal or discharge of felony charges.*** If all felony charges against the defendant have been dismissed or discharged, and the only remaining charges are within metropolitan court trial jurisdiction, the defendant shall be arraigned within thirty (30) days after the date of dismissal or discharge if the defendant is not in custody or two (2) days after the date of dismissal or discharge if the defendant is in custody.

**B. Time limits for commencement of trial.** The trial of a criminal citation or complaint shall be commenced within one hundred eighty-two (182) days after whichever of the following events occurs latest:

(1) the date of arraignment or the filing of a waiver of arraignment of the defendant;

(2) if an evaluation of competency has been ordered, the date an order or remand is filed in the metropolitan court finding the defendant competent to stand trial;

(3) if a mistrial is declared by the trial court, the date that order is filed in the metropolitan court;

(4) in the event of a remand from an appeal, the date the mandate or order is filed in the metropolitan court disposing of the appeal;

(5) if the defendant is arrested for failure to appear or surrenders in this state for failure to appear, the date of arrest or surrender of the defendant;

(6) if the defendant is arrested for failure to appear or surrenders in another state or country for failure to appear, the date the defendant is returned to this state; or

(7) if the defendant has been referred to a preprosecution or court diversion program, the date a notice is filed in the metropolitan court that the defendant has been deemed not eligible for, is terminated from, or is otherwise removed from the preprosecution or court diversion program.

**C. Extension of time.** The time for commencement of trial may be extended by the court:

(1) on the filing of a written waiver of the provisions of this rule by the defendant and approval of the court;

(2) on motion of the defendant, for good cause shown, and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;

(3) on stipulation of the parties and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;

(4) on withdrawal of a plea by a defendant for a period of up to sixty (60) days;

(5) on rejection of a plea by the court for a period of up to sixty (60) days; or

(6) on a determination by the court that exceptional circumstances exist that were beyond the control of the state or the court that prevented the case from being heard within the time period and a finding, either on the record or in writing, that the defendant would not be unfairly prejudiced, the court may grant further extensions that are necessary in the interests of justice.

**D. Time for filing motion.** A motion to extend the time period for commencement of trial granted under Subparagraph (C)(6) of this rule may be filed at any time within the applicable time limits or on exceptional circumstances shown within ten (10) days after the expiration of the time period. At the request of either party, the court shall hold a hearing before the commencement of trial to determine whether an extension may be appropriately granted.

**E. Effect of noncompliance with time limits.**

(1) The court may deny an untimely petition for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[As amended, effective August 1, 1999; August 1, 2004; as amended by Supreme Court Orders No. 08-8300-051 and No. 08-8300-053, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. S-1-RCR-2023-00021; as amended by Supreme Court Order No. S-1-RCR-2023-00037, effective for all cases filed on or after December 31, 2024; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary.** —

**Exceptional circumstances.** — “Exceptional circumstances,” as used in this rule, would include conditions that are unusual or extraordinary, such as death or illness of the judge, prosecutor, or defense attorney immediately preceding the commencement of the trial; or other circumstances that ordinary experience or prudence would not foresee, anticipate, or provide for. The court may grant an extension for exceptional circumstances only if the court finds that the extension will not unfairly prejudice the defendant. The defendant may move the court to dismiss the case based on a particularized showing that the extension or impending extension would subject the defendant to

oppressive pretrial incarceration, anxiety and concern, or the possibility that the defense will be impaired.

**Speedy trial.** — This rule is distinct from any speedy trial rights a defendant may have under the constitutions and laws of the United States and the State of New Mexico.

**Duty of prosecutor.** — It is the continuing duty of the prosecutor to seek the commencement of trial within the time specified in this rule.

**Local detention center.** — “Local detention center” is defined as “one that is commonly used by the metropolitan court in the normal course of business and not necessarily within the territorial jurisdiction of the court.” Rule 7-401(A)(3) NMRA.

[As amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023.]

## **[REINSTATED AND AMENDED]**

### **7-507.1. Competency.**

A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant’s mental health that may be relevant in a criminal proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of commission of an offense and incapacity to form specific intent.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) **Competency.** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant’s lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant’s own defense and to comprehend the reasons for punishment.

(2) **Competency evaluation.** A competency evaluation is an examination of the defendant by a psychologist or psychiatrist or other qualified professional recognized by the court as an expert, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. Unless otherwise ordered by the court, a competency evaluation shall not state opinions about other matters at issue in the criminal case, including the defendant’s sanity at the time of the offense or ability to form a specific intent.

C. **Competency to stand trial.**

(1) The issue of the defendant’s competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The issue may be raised by motion, or upon the court’s own motion, at any stage of the proceedings.

(2) The issue of the defendant’s competency to stand trial shall be determined by the judge, unless the judge finds there is evidence which raises a reasonable belief that the defendant may not be competent to stand trial.

(3) If a reasonable belief that the defendant may not be competent to stand trial is raised prior to trial, the court shall order the defendant to undergo a competency evaluation. The qualified professional who evaluates the defendant’s competency shall prepare an evaluation

report and submit the report as ordered by the court. The evaluation report shall conform to the requirements stated in NMSA 1978, Section 31-9-1.1. If, in the opinion of the qualified professional, a defendant is not competent to stand trial, an evaluation report shall include the additional findings required in Section 31-9-1.1(C)(1)-(2).

(a) At any time, including in the order for competency evaluation, the court may order records that are reasonably necessary to the determination of the defendant's competency. The records shall be provided to the forensic evaluator assigned to evaluating the defendant for competency.

(b) If the defendant fails to appear for a competency evaluation, or the court and/or defense counsel is unable to locate the defendant or an address for the defendant, the evaluator or entity scheduling the evaluations shall notify the court, and the court shall make a record of the reason, if known, for the failure to appear; and

(c) The court may issue a new or amended order for competency evaluation restarting the thirty (30)-day time period upon notification by the evaluator of the failure to appear for the competency evaluation or cancellation of a bench warrant for the defendant's arrest.

(4) The court shall hold a hearing to determine the issue of the defendant's competency to stand trial:

(a) within ten (10) days of the date an evaluation report is submitted to the court for an incarcerated defendant charged with misdemeanor charges; or

(b) within ninety (90) days of the date an evaluation report is submitted to the court for a defendant who is not incarcerated.

(5) If a defendant is found incompetent to stand trial the court shall transfer the proceedings to the district court for proceedings under Rule 5-602.2 NMRA.

(6) If the finding of incompetency is made during the trial, the court shall declare a mistrial.

**D. Statement made during competency evaluation.** A statement made by a person during a competency evaluation or treatment subsequent to the commission of the alleged crime shall not be admissible in evidence against such person in any criminal proceeding on any issue other than that of the person's competency to stand trial.

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; suspended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025; as reinstated and provisionally amended by Supreme Court Order No. S-1-RCR-2025-00163, effective for all cases pending or filed on or after October 6, 2025.]

**Committee commentary.** — The Metropolitan Court shall order a competency evaluation when the court finds evidence which raises a reasonable belief that the defendant may not be competent to stand trial. A reasonable belief may arise from the court's own observations or from the factual allegations in a party's motion.

The reasonable belief standard for ordering a competency evaluation requires the court to consider only whether the movant's subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a "subjective good faith belief as opposed to an objective standard of reasonable belief"). In making this determination, the court should evaluate whether the movant's good faith belief is supported by specific, articulable

facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 (“An officer obtains reasonable suspicion when the officer becomes aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” (internal citation and quotation marks omitted)). This is not a heavy burden, and in most circumstances should be capable of resolution without an evidentiary hearing.

For a discussion of procedures related to this rule, *see* the committee commentary to Rule 5-602.1 NMRA.

### **Courtroom closure**

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 7-115(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 7-115 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; suspended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025; as reinstated by Supreme Court Order No. S-1-RCR-2025-00163.]

### **8-507.1. Competency; transfer to district court.**

A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant’s mental health that may be relevant in a criminal proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of commission of an offense and incapacity to form specific intent.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) **Competency.** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant’s lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant’s own defense and to comprehend the reasons for punishment.

(2) **Competency evaluation.** A competency evaluation is an examination of the defendant by a qualified mental health professional, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. Unless otherwise ordered by the court, a competency evaluation shall be limited to a determination of the defendant’s competency and shall not state opinions about other matters including the defendant’s sanity at the time of the offense or ability to form a specific intent.

C. **Raising a question of competency; who may raise.** A question of the defendant’s competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The issue shall be raised by a motion for a competency evaluation and may be raised by a party or upon the court’s own motion at any stage of the proceedings.

**D. Motion for competency evaluation.**

(1) ***By motion of a party represented by counsel.*** When a question of competence is raised by a party who is represented by counsel, a motion for a competency evaluation shall be in writing and shall contain the following:

(a) a statement that the motion is based on a good faith belief that the defendant may not be competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion. If filed by defense counsel, the motion shall contain such information without violating the attorney–client privilege;

(c) a statement that the motion is not filed for purposes of delay;

(d) a statement of whether the motion is opposed as provided in Rule 8-304 NMRA;

(e) a completed defendant information sheet, substantially in the form approved by the Supreme Court; and

(f) a request for a competency evaluation.

(2) ***By motion of a self-represented defendant or upon the court’s own motion.*** When a question of competence is raised by a party who is self-represented or upon the municipal court’s own motion, the municipal court shall dispose of the motion by filing an order substantially in the form approved by the Supreme Court that addresses the following:

(a) whether the motion is based on a good faith belief that the defendant is not competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion;

(c) whether the motion is advanced for purposes of delay;

(d) whether the motion is opposed; and

(e) whether a competency evaluation is requested.

**E. Suspension of proceedings.** Upon the filing of a motion for a competency evaluation, further proceedings in the case shall be suspended until the motion is denied or, if the motion is granted, until the case is remanded from the district court. The filing of a motion for a competency evaluation shall not affect a court’s authority to set or review conditions of release under Rule 8-401 NMRA.

**F. Resolution of motion; reasonable belief.** In considering a motion for a competency evaluation, the court shall comply with the following procedures.

(1) ***Unopposed.*** Within two (2) days of the filing of a motion that is unopposed under Subparagraph (D)(1)(d) of this rule, the court shall file an order substantially in the form approved by the Supreme Court finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. The determination shall be based solely upon the allegations in the motion and upon the court’s own observations of the defendant.

(2) ***Opposed.*** A response in opposition to a motion for a competency evaluation shall be in writing, shall cite specific facts in opposition to the motion, and shall be filed within five (5) days of the filing of the motion or be deemed waived. Upon the filing of a response in opposition, the court shall do one of the following:

(a) unless the court determines that a hearing on the motion is necessary, file an order substantially in the form approved by the Supreme Court within two (2)

days finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial; or

(b) hold a hearing on the motion and file an order substantially in the form approved by the Supreme Court within fifteen (15) days of the filing of the response finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

**G. Transfer to district court; effect on municipal court proceedings.** An order finding a reasonable belief that the defendant may not be competent to stand trial under Paragraph E of this rule also shall transfer the case to the district court for further proceedings under Rule 5-602.1 NMRA. The order shall be delivered to the district court within two (2) days of the finding of a reasonable belief. When such an order is filed, jurisdiction over the defendant and any conditions of release shall be transferred to the district court. Any conditions of release and any bond set by the municipal court shall continue in effect unless amended by the district court. The municipal court shall suspend its case pending remand from the district court.

**H. Remand from district court.** Upon remand from the district court after proceedings to determine the defendant's competency, the municipal court shall proceed as follows.

(1) ***Defendant found competent.*** If the defendant has been found competent to stand trial, the municipal court shall resume the proceedings against the defendant as otherwise provided under these rules.

~~[(2) — ***Defendant found not competent.*** If the defendant has been found not competent to stand trial, the municipal court may dismiss the case without prejudice in the interests of justice. Upon dismissal, the municipal court may advise a person authorized under Section 43-1-10 or 43-1-11 NMSA 1978 to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code. In the alternative, the municipal court may advise the attorneys in the matter to consider referral to an appropriate person authorized under Section 43-1B-4 NMSA 1978 to file a petition for assisted outpatient treatment.]~~

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025.]

**Committee commentary.** — The municipal court shall transfer a case to the district court for a competency determination when the court finds that the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. A reasonable belief may arise from the court's own observations or from the factual allegations in a party's motion. If the municipal court finds a reasonable belief that the defendant may not be competent, the municipal court shall suspend the proceedings and transfer the case to district court for a determination of competency.

The reasonable belief standard requires the court to consider only whether the movant's subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a "subjective good faith belief as opposed to an objective standard of reasonable belief"). In making this determination, the court should evaluate whether the motion demonstrates that the movant's good faith belief is supported by specific, articulable facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 ("An officer obtains reasonable suspicion when the officer becomes aware of specific articulable facts that, judged

objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” (internal citation and quotation marks omitted)). This is not a heavy burden, and in most circumstances a motion that meets the requirements of Paragraph D of this rule will satisfy the reasonable belief standard without the need for an evidentiary hearing. Without such a showing, however, a motion for a competency evaluation—whether opposed or unopposed—should be denied. *Cf. State v. Hovey*, 1969-NMCA-049, ¶ 18, 80 N.M. 373, 456 P.2d 206 (“[T]here must be a showing of reasonable cause for the belief that an accused is not competent to stand trial.”).

For further discussion of the procedures set forth in this rule, *see* the committee commentary to Rule 5-602.1 NMRA.

### **Courtroom closure**

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 8-114(A) NMRA (“All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule.”); *see also* Rule 8-114 committee commentary (“[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.”).

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

### **9-514. Order on motion for a competency evaluation.**

[For use with Rule 5-602.1 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DISTRICT COURT

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

v.

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

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

### **ORDER ON [TRANSFER] [MOTION] FOR COMPETENCY EVALUATION**

[ ] This matter comes before the Court upon transfer from the [magistrate] [~~metropolitan~~] [municipal] court after a finding of a reasonable belief that the defendant may not be competent to stand trial. The defendant [ ] is [ ] is not in custody.

OR

[ ] The Court, having considered the motion for competency evaluation [and the response in opposition] [and after a hearing] and being otherwise fully advised in the premises, FINDS and CONCLUDES:

[ ] The motion is well-taken and is GRANTED because there is a reasonable belief that the defendant may not be not competent to stand trial based upon the following:

[ ] The facts alleged in the motion for a competency evaluation;

[ ] The court's observations of the defendant, described as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

[ ] Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

[ ] The motion is not well-taken and is DENIED.

*(Complete the following only if the case has been transferred or the motion is GRANTED)*

The Court therefore ORDERS the following:

1. A competency evaluation shall be performed by \_\_\_\_\_.
2. The evaluation shall be completed and a written report shall be filed with the court within thirty (30) days of the filing of this order.
3. The report filed under Paragraph 2 of this order shall include the following:
  - (a) a description of the procedures, tests, and techniques used by the evaluator;
  - (b) a clear statement of the evaluator's clinical findings and opinions about the defendant's competency; and if the expert's opinion is that the defendant is not competent, then the expert shall further provide an opinion as to whether the defendant satisfies the criteria for involuntary, inpatient civil commitment in accordance with the Mental Health and Developmental Disabilities Code or involuntary treatment in an Assisted Outpatient Treatment program;
  - (c) a description of the sources of information and the factual basis for the evaluator's clinical findings and opinions, provided that the report shall not include information or opinions concerning the defendant's mental condition at the time of the alleged crime or any statements made by the defendant regarding the alleged crime or any other crime; and

(d) the reasoning by which the evaluator utilized the information to reach the clinical findings and opinions.

4. Any party who objects to the conclusion set forth in the report filed under Paragraph 2 of this order shall file that party's objections in writing within seven (7) days of the filing of the report.

5. The parties shall return to court for a hearing on the question of the defendant's competency on \_\_\_\_\_ (*date not to exceed the timelines set forth in Rule 5-602.1(I)(1)(b) NMRA*) at \_\_\_\_\_ (*time*), unless the court, upon its own motion or upon the motion of the parties, rules at an earlier time on the defendant's competency without a hearing.

*(Optional)*

6. The court has considered the defendant's conditions of release and orders the following:

The defendant's conditions of release shall continue until further order of the court;  
or

A hearing to set or review the defendant's conditions of release shall be held on \_\_\_\_\_ (*date*).

7. Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

IT IS SO ORDERED

\_\_\_\_\_  
District Court

\_\_\_\_\_  
Attorney for the State

\_\_\_\_\_  
Attorney for the defendant

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00143, effective for all cases pending or filed on or after September 30, 2025; as provisionally amended by Supreme Court Order No. S-1-RCR-2025-00163, effective for all cases pending or filed on or after October 6, 2025.]