

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2026-001**

March 6, 2026

The Appellate Rules Committee has recommended adoption of new Rules 12-208.1 and 12-211.1 NMRA, and amendments to Rules 12-202, 12-208, 12-209, 12-211, 12-503, 12-505, 12-601, 12-602, and 12-603 NMRA for the Supreme Court’s consideration.

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

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

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

12-202. Appeal as of right; how taken.

A. **Filing the notice of appeal.** An appeal permitted by law as of right from the district court shall be taken by filing a notice of appeal with the district court clerk within the time allowed by Rule 12-201 NMRA.

B. **Content of the notice of appeal.** The notice of appeal shall specify

- (1) each party taking the appeal and each party against whom the appeal is taken, except that in appeals concerning children involved in litigation under the provisions of the Children’s Code, the provisions of Rule 12-305(H) NMRA, shall be followed;
- (2) the name and address of appellate counsel if different from the person filing the notice of appeal; and
- (3) the name of the court to which the appeal is taken.

C. **Attachment to notice of appeal.** A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. **Additional requirements for appeals in criminal cases.** In addition to the requirements set forth in Paragraphs B and C of this rule, the following are required, when applicable, with a notice of appeal in criminal cases:

- (1) a notice of appeal by the state under Section 39-3-3(B)(2) NMSA 1978 shall also include the certificate of the district attorney required by the statute;

(2) if the notice of appeal names the appellate division of the public defender as appellate counsel, a copy of the order appointing the appellate division of the public defender shall be attached to the notice of appeal; and

(3) if the appeal is an appeal taken from the district court in which a sentence of death or life imprisonment has been imposed, and the proceedings are not audio recorded, a designation of proceedings shall be filed at the same time as the notice of appeal in accordance with Rule 12-211(C)(5) NMRA.

E. **Service of the notice of appeal.** The appellant shall give notice of the filing of a notice of appeal

(1) in criminal cases, including those involving criminal contempt, and in delinquency cases, including those involving serious youthful offenders and youthful offenders, by serving a copy on the ~~[appellate court,]~~ appellate division of the attorney general, appellate division of the public defender when the public defender is appointed on appeal, trial judge, trial counsel of record for each party other than the appellant, and court monitor or court reporter who took the record;

(2) in the following cases, by serving a copy on the trial judge, trial counsel of record for each party other than the appellant, children's court attorney for the Children, Youth and Families Department, and court monitor or court reporter who took the record:

(a) child abuse and neglect proceedings;

(b) proceedings involving the termination of parental rights; and

(c) cases arising under the Children's Code and governed by the Children's Court Rules other than delinquency cases~~[-by serving a copy on the appellate court, trial judge, trial counsel of record for each party other than the appellant, children's court attorney for the Children, Youth and Families Department, and court monitor or court reporter who took the record];~~ and

(3) in all other cases, by serving a copy on the ~~appellate court,~~ trial judge, court monitor or court reporter who took the record, and trial counsel of record for each party other than the appellant.

F. **Service on party.** If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

G. **Related appeals.** A party shall disclose any related or prior appeals of which the party is aware in any docketing statement or statement of the issues filed under ~~[Rule]~~ Rules 12-208 or 12-208.1 NMRA. A party has a continuing obligation to alert the appellate court to any related appeals that come to the party's attention.

[As amended, effective September 1, 1993; September 15, 2000; as amended by Supreme Court Order No. 05-8300-003, effective March 15, 2005; by Supreme Court Order No. 06-8300-011, effective May 15, 2006; by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — In 2016, the paragraph regarding joint and consolidated appeals was withdrawn from this rule, and a new Rule 12-317 NMRA was adopted to address joint and consolidated appeals. In _____, Paragraph E's requirement that the notice of appeal be served on the appellate court was removed. This requirement was removed because the appellate courts

did not find service useful with notices of appeal being easily accessed electronically. Some of the language in Subparagraph (E)(2) was also reordered for clarity.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

12-208. Docketing the appeal.

A. **Attorney responsible.** Unless otherwise ordered by the Court, trial counsel shall be responsible for preparing and filing a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court.

B. **When filed.** Within thirty (30) days after filing the notice of appeal in all appeals except those under Rules 12-102(A), 12-203, 12-203.1, 12-204, 12-603, and 12-604 NMRA, the appellant shall file a docketing statement, if the appeal has been docketed in the Court of Appeals, or file a statement of the issues, if the appeal has been docketed in the Supreme Court. But if the notice of appeal was filed before the express disposition by order or the automatic denial or the withdrawal of any timely filed post-trial or post-judgment motion that extends the time to appeal pursuant to [listed in Subparagraphs (1) or (2) of]Rule 12-201(D)(1) NMRA, then the docketing statement or statement of the issues shall be filed within thirty (30) days after the notice of appeal becomes effective under Rule 12-201(D)(4) NMRA.

C. **Service.** The appellant shall serve a copy of the docketing statement or statement of the issues on the district court clerk and on those persons who are required to be served with a notice of appeal under Rule 12-202 NMRA.

D. **Docketing statement in the Court of Appeals; contents.** A docketing statement shall ~~contain~~ include

- (1) a statement of the nature of the proceeding;
- (2) the date of the judgment or order sought to be reviewed, and a statement showing that the appeal was timely filed;
- (3) a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented;
- (4) a statement of the issues presented by the appeal, including a statement of how they arose and how they were preserved in the trial court, but without unnecessary detail. The statement of the issues should be short and concise and should not be repetitious. General conclusory statements such as “the judgment of the trial court is not supported by the law or the facts” will not be accepted;
- (5) for each issue, a list of authorities believed to support the contentions of the appellant and any contrary authorities known by appellant and, where known, the applicable standard of review. Argument on the law shall not be included, but a short, simple statement of the proposition for which the case or text is cited shall accompany the citation;
- (6) a statement specifying whether the entire proceedings were audio recorded, and if not, identifying the portion of the proceedings, other than the record proper, not audio recorded;
- (7) a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any; and
- (8) where applicable, a copy of the order appointing appellate counsel.

E. **Statement of the issues in the Supreme Court; contents.** A statement of the issues shall contain each issue to be presented by the appeal, including a statement of how the issue arose, how each issue was preserved in the trial court, and a statement of the court’s jurisdiction, but without unnecessary detail. A statement of the issues shall contain a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any. The statement of the issues should be concise and accurate and should not be repetitious. General conclusory statements such as “the judgment of the trial court is not supported by the law or the facts” will not be accepted. Statements of the issues for appeals under Rule 12-102(A)(1) where a sentence of death or life imprisonment has been imposed are governed by Rule 12-208.1 NMRA.

F. **Amendment.** The Court of Appeals may, on good cause shown, allow the amendment of the docketing statement. The Supreme Court may, on good cause shown, allow the amendment of a statement of the issues.

G. **Cross-appeals.** A party who files a cross-appeal in accordance with Rule 12-201(B) NMRA shall file and serve on the parties to the appeal a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with this rule within thirty (30) days after the notice of appeal is filed by the cross-appellant and shall pay a docket fee as provided in Paragraph H of this rule.

H. **Docket fee.** Except where free process has been granted on appeal, the docket fee shall ~~[accompany]~~ be paid within five (5) days of the filing of a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court; ~~unless the party filing the docketing statement or statement of the issues has already paid a docket fee~~.

I. **Response not permitted.** No response to a docketing statement or statement of the issues is allowed.

J. **Failure to serve docketing statement or statement of the issues.** On a monthly basis, the district court clerk shall forward to the appellate court a list of all criminal cases in which a notice of appeal has been on file for at least sixty (60) days but in which the district court has not been served with a copy of a docketing statement or a statement of the issues.

[As amended, effective October 1, 1995; April 1, 1998; January 1, 2000; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary.— In addition to minor technical amendments, Rule 12-208 NMRA was amended in 2013 to accommodate the situation that can arise under the 2013 amendments to Rule 12-201(D) NMRA, under which a notice of appeal may be filed before the disposition of certain timely filed post-trial or post-judgment motions but does not become effective until the last such motion is disposed of expressly by an order of the district court, is automatically denied, or is withdrawn. *See* Rule 12-201(D)(4) NMRA. In such a situation, the docketing statement or statement of issues is not required to be filed until thirty (30) days after the notice of appeal becomes effective, so that the appellant can frame the docketing statement or statement of issues with knowledge of the disposition of the post-trial or post-judgment motions.

In _____, Rule 12-208 NMRA was amended to add a reference to new Rule 12-208.1 NMRA, which governs statements of the issues for many direct criminal appeals in the Supreme Court. The rule was also amended to clarify that the deadline for filing a docketing statement could

be extended by unlisted motions that extend the time to appeal under Rule 12-201(D)(1), since that rule's list of motions is non-exclusive. Finally, the deadline for submitting a docket fee with a docketing statement was extended to five days after the docketing statement is filed.

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

[NEW MATERIAL]

12-208.1. Statement of the issues for direct criminal appeals in the Supreme Court.

A. **Scope.** This rule applies to appeals taken to the Supreme Court from the district courts in which a sentence of death or life imprisonment has been imposed, as set forth in Rule 12-102(A)(1) NMRA.

B. **Attorney responsible.** Unless otherwise ordered by the Supreme Court, appellate counsel shall be responsible for preparing and filing a statement of the issues in the Supreme Court.

C. **When filed.** Within sixty (60) days after filing the notice of appeal in all appeals within the scope of Paragraph A, except those under Rules 12-203, 12-204, 12-603, and 12-604 NMRA, the appellant shall file a statement of the issues. But, if the notice of appeal was filed before the express disposition by order or the automatic denial or the withdrawal of any timely filed post-trial or post-judgment motion that extends the time to appeal pursuant to Rule 12-201(D)(1) NMRA, then the statement of the issues shall be filed within sixty (60) days after the notice of appeal becomes effective under Rule 12-201(D)(4) NMRA.

D. **Service.** The appellant shall serve a copy of the statement of the issues on the district court clerk and on those persons who are required to be served with a notice of appeal under Rule 12-202 NMRA.

E. **Statement of the issues; contents.** A statement of the issues shall contain the following information:

(1) a statement of the court's jurisdiction and a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any;

(2) a statement specifying whether the entire proceedings were audio recorded, and if not, identifying the portion of the proceedings, other than the record proper, not audio recorded;

(3) a statement certifying that the transcript of proceedings and all depositions and documentary exhibits are ready to be transmitted from the district court to the Supreme Court; and

(4) a copy of the order appointing appellate counsel, where applicable.

F. **Amendment.** The Supreme Court may, on good cause shown, allow the amendment of a statement of the issues.

G. **Cross-appeals.** A party who files a cross-appeal in accordance with Rule 12-201(B) NMRA shall file a statement of the issues in accordance with this rule within thirty (30) days after the notice of appeal is filed by the cross-appellant and shall pay a docket fee as provided in Paragraph H of this rule.

H. **Docket fee.** Except where free process has been granted on appeal, the docket fee shall be paid within five (5) days of the filing of a statement of the issues in the Supreme Court.

I. **Response not permitted.** No response to a statement of the issues is allowed.

J. **Failure to serve statement of the issues.** On a monthly basis, the district court

clerk shall forward to the Supreme Court a list of all criminal cases in which a notice of appeal has been on file for at least ninety (90) days but in which the district court has not been served with a copy of a statement of the issues.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — Rule 12-208.1 NMRA was adopted to address the docketing of direct appeals of criminal cases to the Supreme Court and the submission of statements of the issues in such cases. It serves as a substitute for the more general provisions in Rule 12-208 NMRA.

[Adopted by Supreme Court Order No. _____, effective _____.]

12-209. The record proper ~~[(the court file)].~~

A. Introduction. This rule governs the preparation and filing of the record proper with the appellate court. The record proper, as defined in Paragraph B of this rule, is utilized by the appellate court in determining the calendar assignment for direct appeals under Rule 12-210 NMRA. The record proper is also utilized in resolving appeals; however, the materials that the appellate court will review in resolving the case depends on the calendar assignment. Unless otherwise ordered, cases assigned to the summary calendar are generally reviewed on the record proper and either the docketing statement for appeals brought in the Court of Appeals or statement of the issues for appeals brought in the Supreme Court, in accordance with Rule 12-210(D)(1) NMRA. Cases assigned to the general calendar are reviewed utilizing the record proper in addition to the other materials as identified in Paragraph F of this rule.

~~[A.—~~ **Composition.** ~~]~~ B. The record proper. The ~~[papers and]~~ pleadings, motions, and other papers filed on the docket in the district court ~~[(the court file), or a copy thereof]~~ shall constitute the ~~[record proper.]~~ “record proper.” ~~[Depositions shall not be copied. The original, if contained in the court file, shall be filed with the appellate court and shall not be sealed except on the order of the district court or appellate court.]~~ Materials described in Rules 12-211 through 12-212 NMRA are not part of the record proper. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA ~~[of the Rules Governing the Recording of Judicial Proceedings].~~

~~[B.]~~ C. Transmission of the record proper. On receipt of a copy of the docketing statement for appeals brought in the Court of Appeals or statement of the issues for appeals brought in the Supreme Court, the district court clerk shall number consecutively the pages of the record proper and send it to the appellate court so that it will be filed in the appellate court not later than ~~[fourteen (14)]~~ five (5) days from the date the docketing statement or statement of issues is received by the district court. The first page, after the title page, of the record proper shall consist of a copy of the district court clerk’s docket sheet with references to the page number of the record proper for each entry. The district court clerk shall ~~[send a copy of this docket sheet to all counsel of record. The district court clerk shall include]~~ prepare and file in the district court the docket sheet and a statement of the costs of the record proper. The appellant shall pay ~~[for the record proper within ten (10) days of the filing of the docketing statement or statement of issues]~~ the costs to the district court clerk within five (5) days of the filing of the statement of costs.

~~[C.]~~ D. Correction or modification of the record proper. If anything material to either party is omitted from the record proper by error or accident, the parties by stipulation, or the district court or the appellate court on motion or on its own initiative, may direct that the omission be corrected~~[;]~~ and a supplemental record proper transmitted to the appellate court. The appellate court shall notify the parties when it has ordered supplemental material on its own accord.

~~[D.]~~**E. Documents filed during pendency of appeal.** Copies of all documents filed in the district court during the pendency of the appeal shall be transmitted to the appellate court for inclusion in the record proper, unless otherwise ordered by the appellate court.

~~[E. **Return of record proper.** After final determination of the appeal, if the original of the record proper has been filed under Paragraph A of this rule, the appellate court clerk shall return the record proper to the district court clerk.]~~

F. Record on appeal in general calendar cases. If a case is assigned to the general calendar, the record on appeal is expanded to include the following: the record proper, audio recordings of district court hearings and trials transmitted under Rule 12-211(B) NMRA, stenographic transcripts of district court hearings and trials designated under Rule 12-211(C) NMRA, exhibits admitted by or proffered to the district court that have been designated under Rule 12-212 NMRA, and deposition testimony admitted by or proffered to the district court that has been designated under Rule 12-212 NMRA.

[As amended, effective July 1, 1990; January 1, 2000; July 29, 2005; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — In 2025, Rule 12-209 was amended to add new Paragraphs A and F describing the scope and purpose of the record proper. The former Paragraph E requiring the return of the record proper was removed given its obsolescence with electronic files. The move to electronic files also resulted in expediting some of the procedures for transmitting the record proper in Paragraph C.

[Adopted by Supreme Court Order No. _____, effective _____.]

12-211. Transcript of proceedings.

A. Transcript of proceedings. As used in these rules:

(1) "transcript of proceedings" includes audio recordings of the proceedings and stenographic transcripts of the proceedings; and

(2) "audio recording" includes any tape, digital or other electronic recording of the proceedings. Audio recordings must comply with standards established by the Supreme Court.

B. Audio recorded proceedings.

(1) Where the transcript of proceedings is an audio recording, within fifteen (15) days after the receipt of the general calendar assignment, the district court clerk shall prepare and send the original and two (2) duplicates of the recording and index log to the appellate court and shall prepare and retain one (1) duplicate. Unless otherwise ordered by the appellate court, upon motion by the appellant, the transcript shall include the entire proceedings, including pretrial, trial and post-trial proceedings. The district court clerk shall include a statement of the cost of the audio recordings. After final determination of the appeal, the appellate court shall preserve the original audio recording for storage in accordance with approved retention schedules as maintained by the office of the appellate court clerk.

(2) The appellant shall make satisfactory arrangements with the district court clerk for the cost of the duplicate copies of the audio recording. Proof that satisfactory arrangements have been made shall be filed in the district court within five (5) days of service of the general calendar assignment. Such proof of satisfactory arrangements shall be by certificate of the district court clerk.

C. Proceedings not audio recorded.

(1) Where the proceedings are not audio recorded, and except for those cases described in subparagraph (5) of this paragraph, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the district court and serve on the appellate court and the other parties to the appeal a description of the parts of the proceedings which the appellant intends to include in the transcript. If the appellant does not intend to designate any part of the proceedings for inclusion in the transcript, either because the appellant does not deem any part of the proceedings necessary for the appeal or because no proceedings were held in the district court, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the appellate court and serve on the other parties to the appeal a notice that a transcript will not be designated. The appellant shall designate all portions of the proceedings material to the consideration of the issues presented in the docketing statement or statement of the issues, but shall designate only those portions of the proceedings that have some relationship to the issues on appeal. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation or the notice of nondesignation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.

(2) Each party designating a portion of the stenographic transcript of proceedings shall make satisfactory arrangements with the court reporter for payment of the cost of that portion of the transcript. Proof that satisfactory arrangements have been made shall be filed with the district court clerk within fifteen (15) days of the designation. Such proof of satisfactory arrangements shall be by certificate of the reporter.

(3) Except for computer-aided transcripts, within sixty (60) days after the filing of the last certificate of satisfactory arrangements, the court reporter shall file with the district court three (3) copies of the designated transcript of proceedings with a certificate of the court reporter that such copies are true and correct copies of the transcript of proceedings. If the transcript is a computer-aided transcript, the transcript shall be filed within thirty (30) days after the filing of the last certificate of satisfactory arrangements. The transcript shall be in the form required by Rule 12-305 NMRA of these rules and Rule 22-302 of the Rules Governing the Recording of Judicial Proceedings. The transcript of proceedings shall include a statement of the cost of the transcript. The district court clerk shall serve notice on all parties of the filing of the transcript.

(4) Within fifteen (15) days after service of the notice of filing of the transcript of proceedings, any party may file with the district court clerk, and serve on the opposing party, objections to the stenographic transcript. A hearing on the objections shall be held by the district court within fifteen (15) days after the filing of the objections. At the hearing the district court shall resolve the objections and, if necessary, order appropriate corrections to be made. If no objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court when the time for filing objections has expired. If objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court within ten (10) days after the hearing on the objections.

~~[(5) If an appeal is taken from the district court in which a sentence of death or life imprisonment has been imposed and the proceedings are not audio recorded, the parties shall proceed in accordance with this rule, except that the designation of proceedings shall be filed at the same time as the notice of appeal. The proceedings beginning with the opening statement and~~

~~ending with the return of the verdict on the guilt phase shall be deemed to be designated in every case. The appellant shall designate any other portions of the proceedings material to the consideration of the issues to be raised on appeal, but shall designate only those portions of the proceedings that have some relationship to those issues. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.]~~

D. **Disagreements over cost.** In case of disagreement over the cost of a stenographic transcript or duplicates of an audio recording, a party may file with the district court a motion for determination by the district court of the amount of compensation to be paid. The district court may order the payment or collateral to be deposited in the registry of the district court to secure payment of the cost.

E. **Extensions of time.** Each appellant shall be responsible for the timely preparation and filing of the transcript of proceedings. Any extension of time for filing a transcript of proceedings may be granted only by the appellate court. Any motion for extension of time must be supported by an affidavit from the responsible court reporter, court monitor, district court clerk or other party whose duty it is to prepare the transcript of proceedings or to duplicate the master audio recording unless this affidavit is waived by the appellate court for good cause shown. The affidavit shall set forth the pending cases in which the reporter or court monitor has transcripts ordered, the estimated dates on which such transcripts will be completed and the reasons an extension is necessary in this case. If the transcript is computer-aided, the motion shall also be accompanied by a written statement signed by the managing court reporter stating the reasons why the managing court reporter supports or opposes the requested extension.

F. **Failure to file transcript of proceeding.** If the appellant shall fail to cause the transcript of proceedings to be filed in the appellate court within the time limit prescribed by this rule, the district court or the appellate court, upon motion, shall make such orders as will prevent such default from prejudicing any other party's appeal in the same case.

G. **Filing in appellate court.** Upon receipt of the transcript of proceedings, the appellate court clerk shall serve notice of the filing on all parties and the district court clerk.

H. **Unavailability or inaudibility of transcript; statement of proceedings.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript of proceedings is unavailable or inaudible, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. If no court reporter or court monitor was present at the proceedings, the statement shall be prepared and filed in the district court within fifteen (15) days after service of the notice of a general calendar assignment. If a court monitor was present at the proceedings, but the audio recorded transcript is totally or partially unavailable or inaudible, the statement shall be filed in the district court within fifteen (15) days after the filing of an audio recorded transcript of proceedings in the appellate court or within thirty (30) days after service of the notice of a general calendar assignment, whichever is earlier. If a court reporter was present at the proceedings, but the stenographic transcript is totally or partially unavailable, the statement shall be filed in the district court within fifteen (15) days after the time the stenographic transcript of proceedings is due to be filed in the district court. The statement shall be served on the appellee, who may file objections or propose amendments thereto within fifteen (15) days after service. If there are any objections or proposed amendments thereto, the

objections or amendments shall be submitted to the district court for settlement and approval. Within fifteen (15) days after filing of the objections or amendments, the district court shall settle and approve the transcript of proceedings. Upon approval, the district court clerk shall include the transcript of proceedings in the record proper and immediately transmit it to the appellate court. The appellate court may extend the time limits set forth in this paragraph for good cause shown.

I. **Stipulated transcript of proceedings.** The parties may agree upon a statement of facts and proceedings and stipulate that they deem the statement sufficient for purposes of review, and the statement shall be filed as a transcript of proceedings within sixty (60) days of service of the general calendar assignment, unless otherwise ordered by the appellate court.

J. **Separate appeals.** When separate appeals are taken by more than one party, only one transcript of proceedings shall be required.

K. **Supplemental transcript of proceedings.** After the transcript of proceedings has been filed, the appellate court may, upon its own motion or upon motion of either party and for good cause shown, order or allow a supplemental transcript of proceedings. The appellate court shall set the time for filing the supplemental transcript of proceedings in the appellate court.

L. **Designations in cases involving appointed appellate counsel.** In cases where counsel other than trial counsel is appointed to represent a party on appeal, trial counsel shall be responsible for designating the record on appeal and for performing all other duties of counsel in this rule.

[As amended, effective July 1, 1990; December 1, 1993; January 1, 1997; April 1, 1998; September 15, 2000; March 15, 2005; as amended by Supreme Court Order No. 06-8300-014, effective July 15, 2006; by Supreme Court Order No. 12-8300-035, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — In _____, Rule 12-211 was amended to remove former Subparagraph (C)(5) regarding the designation of proceedings in cases where a sentence of death or life imprisonment has been imposed. This subparagraph was replaced by 12-211.1 NMRA which provides for the designation of materials in such cases.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

12-211.1. Transcript of proceedings, depositions, and exhibits in direct criminal appeals in the Supreme Court.

A. **Transcript of proceedings.** As used in these rules

(1) “transcript of proceedings” includes audio recordings of the proceedings and stenographic transcripts of the proceedings; and

(2) “audio recording” includes any tape, digital or other electronic recording of the proceedings. Audio recordings must comply with standards established by the Supreme Court.

B. **Preparation of audio-recording transcript.**

(1) Upon service of the notice of appeal on the district court, the entire proceedings are deemed designated, meaning that the transcript of proceedings shall include pretrial, trial, and post-trial proceedings. Where the transcript of proceedings is an audio recording, within fifteen (15) days after service of the notice of appeal, the district court clerk shall prepare an original recording, two (2) duplicates of the recording, and an index log for transmission to the Supreme Court. The district court clerk shall retain one (1) duplicate. The district court clerk shall

include a statement of the cost of the audio recordings. After final determination of the appeal, the Supreme Court shall preserve the original audio recording for storage in accordance with applicable administrative regulations of the New Mexico State Records Center and Archives.

(2) The appellant shall make satisfactory arrangements with the district court clerk for the cost of the duplicate copies of the audio recording. Proof that satisfactory arrangements have been made shall be filed in the district court within five (5) days after service of the notice of appeal. Such proof of satisfactory arrangements shall be by certificate of the district court clerk.

C. **Preparation of non-audio recording transcript.**

(1) Upon service of the notice of appeal on the district court, the entire proceedings are deemed designated, meaning that the transcript of proceedings shall include pretrial, trial, and post-trial proceedings. The court reporter shall, within thirty (30) days after service of the notice of appeal, file three (3) copies of the transcript of the proceedings in district court with a certificate of the court reporter that the copies of the proceedings are true and correct. The transcript shall be in the form required by Rules 12-305 and 22-302 NMRA. The district court clerk shall serve notice on all parties of the filing of the transcript.

(2) The appellant shall make satisfactory arrangements with the court reporter for payment of the transcript. Proof that satisfactory arrangements have been made shall be filed with the district court clerk within fifteen (15) days of the filing of the transcript. Such proof of satisfactory arrangements shall be by certificate of the reporter.

(3) Within fifteen (15) days after service of the notice of filing of the transcript of proceedings, any party may file with the district court clerk, and serve on the opposing party, objections to the stenographic transcript. A hearing on the objections shall be held by the district court within fifteen (15) days after the filing of the objections. At the hearing the district court shall resolve the objections and, if necessary, order appropriate corrections to be made.

D. **Disagreements over cost.** In case of disagreement over the cost of a stenographic transcript or duplicates of an audio recording, a party may file with the district court a motion for determination by the district court of the amount of compensation to be paid. The district court may order the payment or collateral to be deposited in the registry of the district court to secure payment of the cost.

E. **Extensions of time.** The appellant shall be responsible for the timely preparation and filing of the transcript of proceedings. Any extension of time for filing a transcript of proceedings may be granted only by the Supreme Court. Any motion for extension of time must be supported by an affidavit from the responsible court reporter, court monitor, district court clerk or other party whose duty it is to prepare the transcript of proceedings or to duplicate the master audio recording unless this affidavit is waived by the Supreme Court for good cause shown. The affidavit shall set forth the pending cases in which the reporter or court monitor has transcripts ordered, the estimated dates on which such transcripts will be completed, and the reasons an extension is necessary.

F. **Depositions and documentary exhibits.** All depositions and exhibits that are documents, maps, charts, photographs, recordings, videotapes, or the like, are deemed designated at the filing of the notice of appeal, and shall be included in the record on appeal. The district court clerk shall send to the Supreme Court all depositions and documentary exhibits with the transcript of proceedings.

G. **Non-documentary exhibits.** Any non-documentary exhibits shall be submitted to

the Supreme Court under Rule 12-212(B) NMRA within five (5) days after the filing of the statement of appeal.

H. **Certification of appeal readiness.** An appellant's statement of the issues filed under Rule 12-208.1 NMRA shall include a statement certifying that the transcript of proceedings and all depositions and documentary exhibits are ready to be transmitted from the district court to the Supreme Court. Within five (5) days after service of appellant's statement of the issues and certification on the district court, the district court clerk shall send the transcript and all depositions and documentary exhibits to the Supreme Court.

I. **Filing in Supreme Court.** Upon receipt of the transcript of proceedings, depositions, and documentary exhibits, the Supreme Court clerk shall serve notice of the filing on all parties and the district court clerk.

J. **Failure to file transcript of proceeding.** If the appellant shall fail to cause the transcript of proceedings, depositions, and documentary exhibits to be filed in the Supreme Court within the time limit prescribed by this rule, the district court or the Supreme Court, upon motion, shall make such orders as will prevent such default from prejudicing any other party's appeal in the same case.

K. **Unavailability or inaudibility of transcript; statement of proceedings.**

(1) If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript of proceedings is unavailable or inaudible, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection and file it in the district court within thirty (30) days after filing the notice of appeal.

(2) The statement shall be served on the appellee, who may file objections or propose amendments thereto within fifteen (15) days after service.

(3) If there are any objections or proposed amendments thereto, the objections or amendments shall be submitted to the district court for settlement and approval. (4) Within fifteen (15) days after filing of the objections or amendments, the district court shall settle and approve the transcript of proceedings.

(4) In lieu of the foregoing, the parties may agree upon a statement of facts and proceedings and stipulate that they deem the statement sufficient for purposes of review, and the statement shall be filed in the district court as a transcript of proceedings within thirty (30) days after the filing of the notice of appeal, unless otherwise ordered by the Supreme Court.

L. **Separate appeals.** When separate appeals are taken by more than one party, only one transcript of proceedings shall be required.

M. **Supplemental transcript of proceedings.** After the transcript of proceedings has been filed, the Supreme Court may, upon its own motion or upon motion of either party and for good cause shown, order or allow a supplemental transcript of proceedings. The Supreme Court shall set the time for filing the supplemental transcript of proceedings in the Supreme Court.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — Rule 12-211.1 NMRA was added to address the preparation of transcripts, depositions, and exhibits in direct appeals of criminal cases to the Supreme Court. It serves as a substitute for the more general provisions in Rules 12-211 and 12-212 NMRA.

[Adopted by Supreme Court Order No. _____, effective _____.]

12-503. Writs of error.

A. **Scope.** This rule governs the procedure for issuance of a writ of error by the Supreme Court or Court of Appeals to the district court.

B. **Court of Appeals; authority to issue.** Under Article VI, Section 29 of the New Mexico Constitution, the Supreme Court authorizes the Court of Appeals to issue writs of error in those cases over which it would have appellate jurisdiction from a final judgment.

C. **Time.** A petition for writ of error shall be filed within thirty (30) days after the order sought to be reviewed is filed in the district court clerk's office unless, prior to the expiration of this time limit, a motion is filed that has the potential to affect the conclusiveness of the district court's order under Subparagraph (E)(2)(a) of this rule, in which event, the full time prescribed in this rule for the filing of a petition for writ of error shall commence to run and be computed from the filing of an order expressly disposing of the last such remaining motion. The three (3)-day [mailing] period set forth in Rule 12-308(B) NMRA does not apply to this time limit.

D. **Parties.** The first party to file a petition for writ of error, and any party joining in that petition, shall be designated an "appellant." Any opposing party, regardless of whether that party has also filed a petition, shall be designated an "appellee." The district court shall not be a party to the proceeding on a writ of error.

E. **Contents.** A party seeking a writ of error shall attach to the petition a copy of the order of the district court, with the date of filing noted on its face, and shall include in the petition

- (1) a concise statement of the nature of the case, a summary of the proceedings, the disposition below, and the facts relevant to the petition;
- (2) a concise statement of how the order sought to be reviewed
 - (a) conclusively determines the disputed question;
 - (b) resolves an important issue completely separate from the merits of the action; and
 - (c) would be effectively unreviewable on appeal from a final judgment because the remedy by way of appeal would be inadequate; and
- (3) any other matters of record that will assist the appellate court in exercising its discretion.

F. **Length limitations.** Except by permission of the appellate court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) **Body of the petition defined.** The body of the petition consists of headings, footnotes, quotations, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) **Page limitation.** Unless the petition complies with Subparagraph (E)(3) of this rule, the body of the petition shall not exceed ten (10) pages.

(3) **Type-volume limitation.** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface, such as Courier.

G. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (F)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (F)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (F)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall

specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

H. **Filing.** The petition shall be filed in the court that would have appellate jurisdiction over a final judgment in the case along with the appellate docket fee or free process order.

I. **Service.** The party filing the petition shall serve a copy of it on all other parties to the proceeding and on the district court judge.

J. **Response.** Any party may file a response to a petition for writ of error within fifteen (15) days of service of the petition. The response shall comply with Paragraphs F and G of this rule and shall be served on all other parties and on the district court judge.

K. **Reply.** A reply is not permitted without leave of the appellate court, which may be granted upon a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

L. **Proceedings on issuance of writ.** The appellate court in its discretion may issue the writ. On issuance of the writ, the court shall assign the case to a calendar, and the parties shall proceed in accordance with Rule 12-210 NMRA. The district court clerk shall transmit a copy of the record proper on receipt of the notice of calendar assignment. On issuance of the writ, a copy of the writ shall be served on all persons required to be served under Rule 12-202 NMRA.

M. **Stay on issuance of the writ.** On issuance of the writ, a party seeking either a stay of the order that is the subject of the writ of error or a stay of proceedings pending appeal shall first seek ~~such an~~ that order from the district court, and any party may thereafter seek appellate review of the district court's ruling under Rule 12-205, 12-206, or 12-207 NMRA.

[As amended, effective December 1, 1993; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary.— In *Pincheira v. Allstate Ins. Co.*, 2004-NMCA-030, ¶ 7, 135 N.M. 220, 86 P.3d 645, the New Mexico Court of Appeals held that Paragraph C of Rule 12-503 “does not contain any provision extending the time to appeal based upon the filing of a post-order motion seeking further review by the trial court.” The _____ amendments to Paragraph C add language acknowledging the tolling effect of post-order motions filed in the district court that could affect the “conclusiveness” of the order under Subparagraph (E)(2)(a) of the rule. In the context of a writ of error, which by definition involves review of an interlocutory order, the requirement of “conclusiveness” under Subparagraph (E)(2)(a) serves a similar function to the requirement of finality embodied in the final judgment rule. See, e.g., *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2007-NMCA-011, ¶¶ 17, 20, 140 N.M. 920, 149 P.3d 1017 (observing that the final judgment rule serves multiple purposes, such as the prevention of piecemeal appeals and the promotion of judicial economy, and that tolling provisions in the appellate rules serve to avoid the confusion and inefficiency resulting from having multiple courts decide the same issues at the same time). The amendments are modeled on the language of Rule 12-201(D)(1) NMRA, which sets forth tolling provisions applicable to post-trial or post-judgment motions that affect the time for filing an ordinary appeal from a final judgment.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

12-505. Certiorari from the Court of Appeals regarding district court review of administrative decisions.

A. **Scope of rule.** This rule governs review by the Court of Appeals of decisions of the district court

(1) from administrative appeals under Rule 1-074 NMRA, Rule 1-077 NMRA, or Section 39-3-1.1 NMSA 1978; and

(2) from constitutional reviews of decisions and orders of administrative agencies under Rule 1-075 NMRA.

B. **Scope of review.** A party aggrieved by the final order of the district court in any case described in Paragraph A of this rule may seek review of the order by filing a petition for writ of certiorari with the Court of Appeals, which may exercise its discretion whether to grant the review.

C. **Time.** The petition for writ of certiorari shall be filed with the clerk of the Court of Appeals within thirty (30) days after entry of the final action by the district court. A copy of the petition shall be served immediately on the respondent. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the petition shall be accompanied by the docket fee. The three (3)-day period set forth in Rule 12-308(B) NMRA does not apply to the time limits set by this paragraph. Final action by the district court shall be the filing of a final order or judgment in the district court unless timely motion for rehearing is filed, in which event, [final action shall be the disposition of the last motion for rehearing that was timely filed] the full time prescribed in this rule for the filing of a petition for writ of certiorari shall commence to run and be computed from the filing of an order expressly disposing of the last remaining motion.

D. **Petition.**

(1) **Cover.** The cover of the petition shall show the names of the parties, with the plaintiff, petitioner, or party initiating the proceeding in the administrative agency listed first (e.g., State of New Mexico, Plaintiff v. John Doe), and the name, mailing address, and telephone number of counsel filing the petition, or, if a party is not represented by counsel, the name, mailing address, and telephone number of the party.

(2) **Contents.** The petition shall contain a concise statement showing

(a) the date of entry of the judgment or final order of the district court and any order entered by the court on a motion for rehearing;

(b) the questions presented for review by the Court of Appeals (the Court will consider only the questions set forth in the petition);

(c) the facts material to the questions presented;

(d) the basis for granting the writ, specifying where applicable

(i) the citation to any decision of the Supreme Court or Court of Appeals with which it is asserted the final order of the district court is in conflict, including a quotation from the part of the Court of Appeals or Supreme Court decision showing the alleged conflict with the district court decision;

(ii) the citation to any statutory provision, ordinance, or agency regulation with which it is asserted the final order of the district court is in conflict and appropriate quotations from the statutes, ordinances, or regulations showing the alleged conflict with the district court decision;

(iii) what significant question of law under the Constitution of New Mexico or the United States is involved; or

(iv) the issue of substantial public interest that should be determined by the Court of Appeals;

(e) a direct and concise argument amplifying the reasons relied ~~upon~~ on for granting the writ, including specific references to the statement of appellate or review issues filed in the district court, showing where the questions were presented to the district court; and

(f) a prayer for relief, including whether the case should be remanded to the district court for consideration of issues not raised in the petition if the relief requested is granted.

(3) **Attachments.** A copy of the final order or judgment of the district court, any district court findings or decision leading to the final order or judgment, a copy of the administrative decision under review by the district court, and a copy of the appellant's and appellee's statements of appellate or review issues filed in the district court shall be attached to the petition. Any other documentary matters of record that will assist the Court in exercising its discretion may also be attached.

E. **Length limitations.** Except by permission of the Court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) **Body of the petition defined.** The body of the petition consists of headings, footnotes, quotations, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) **Page limitation.** Unless the petition complies with Subparagraph (E)(3) of this rule, the body of the petition shall not exceed ten (10) pages; or

(3) **Type-volume limitation.** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface, such as Courier.

F. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (E)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (E)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (E)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

G. **Conditional cross-petition.** Any party may, within fifteen (15) days of service of a petition for writ of certiorari, file a conditional cross-petition, to be considered only if the Court grants the petition. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the petition shall be accompanied by the docket fee. A conditional cross-petition shall be clearly identified as conditional on the cover. Material attached to the petition need not be attached again to a conditional cross-petition. A conditional cross-petition shall be governed by the other provisions of this rule, except Paragraph C.

H. **Notice to district court.** The petitioner shall file with the clerk of the district court a copy of the petition for a writ of certiorari.

I. **Response.** A respondent may file a response to the petition within fifteen (15) days of service of the petition. The response shall comply with Paragraphs E and F of this rule.

J. **Reply.** A reply is not permitted without leave of the Court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of a response and must include the proposed reply.

K. **Grant of petition; assignment.** If the petition for writ of certiorari is granted by the Court, the case may be assigned to a calendar and the appellate court clerk shall give notice of the assignment in accordance with Rule 12-210 NMRA. On receipt of the calendar assignment, the district court clerk shall transmit a copy of the record on appeal, which shall include the record on review filed in the district court by the administrative agency, as well as any other papers and pleadings filed in the district court.

L. **Oral argument.** Oral argument shall not be allowed unless directed by the Court of Appeals.

M. **Review by Supreme Court.** Within thirty (30) days after the disposition of a petition for writ of certiorari by the Court of Appeals, a party may seek further review from a decision of the Court of Appeals or a denial of certiorari by the Court of Appeals by filing a petition for writ of certiorari with the Supreme Court under Rule 12-502 NMRA.

[Approved, effective September 1, 1998; as amended effective September 1, 2002; November 1, 2003; as amended by Supreme Court Order No. 06-8300-011, effective May 15, 2006; by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary.— The _____ amendments to Rule 12-505(C) NMRA are modeled on the language of Rule 12-201(D)(1) NMRA, which sets forth tolling provisions applicable to post-trial or post-judgment motions that affect the time for filing an ordinary appeal from a district court’s final judgment.

[Adopted by Supreme Court Order No. _____, effective _____.]

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

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

B. Initiating the appeal.

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

action is authorized under applicable law and is timely filed. In the event such a motion is timely filed, the full time prescribed in this rule for the filing of a notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last remaining motion.

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

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

C. Intervention as a party-appellee in rulemaking proceedings.

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

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

(b) the participant initiated the rulemaking proceeding; or

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

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

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

D. Intervention as a party-appellee in adjudicatory proceedings.

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

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

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

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

F. Grace period when notice is sent by mail or commercial courier. A notice of appeal that is sent by mail or commercial courier service to the court in which it is to be filed shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate

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

[As amended, effective July 1, 1990; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 07-8300-019, effective August 13, 2007; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

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

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

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

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

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

12-602. Appeals from a judgment of criminal contempt of the Court of Appeals.

A. **How taken.** A notice of appeal from an appealable judgment of criminal contempt of the Court of Appeals shall be filed with the Court of Appeals clerk within thirty (30) days after filing of the judgment appealed from unless a timely motion for rehearing is filed, in which event, final action shall be the disposition of the last motion for rehearing that was timely filed. The three (3)-day ~~mailing~~ period set forth in Rule 12-308(B) NMRA does not apply to the time limits set by this paragraph.

B. **Statement of the issues; further procedure.** Within thirty (30) days of the filing of the notice of appeal, the appellant shall file a statement of the issues in the Supreme Court in accordance with Rule 12-208 NMRA. Thereafter, the appeal shall proceed in accordance with these rules.

C. **Duties of clerk.** The duties required by these rules to be performed by the district court and the clerk thereof shall be performed by the Court of Appeals clerk.

[As amended, effective April 1, 1998; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. – The _____ amendments to Rule 12-602(A) NMRA add language acknowledging the tolling effect of a motion for rehearing filed in the Court of Appeals. The amendments are modeled on the language of Rule 12-502(B) NMRA, which sets forth tolling provisions applicable to petitions for writ of certiorari from the Supreme Court to the Court of Appeals.

[Adopted by Supreme Court Order No. _____, effective _____.]

12-603. Appeals to the Supreme Court in actions challenging candidacies or nominating petitions; primary or general elections; school board recalls and recalls of elected county officials.

A. **Scope.** This rule governs the following:

(1) appeals taken under Section 1-8-18 NMSA 1978, Section 1-8-35 NMSA 1978, Section 1-14-5 NMSA 1978, Section 22-7-9.1 NMSA 1978, and Section 22-7-12 NMSA 1978; and

(2) appeals from final orders of the district court in election recall proceedings involving elected county officials initiated under Article X, Section 9 of the New Mexico Constitution.

B. **Notice of appeal; preparation of record.**

(1) Notice of appeal, with proof of service on the district court and all parties to the action, shall be filed in the Supreme Court with the certificate of counsel or certificate of appellant required by Paragraph D of this rule. The notice of appeal and certificate shall be filed in the Supreme Court within the time period specified by the statute ~~pursuant to~~ under which the appeal is taken or within thirty (30) days of the date the district court's final decision under Article X, Section 9 of the New Mexico Constitution is filed in the district court clerk's office unless a timely motion that has the potential to affect the finality of the district court's order or judgment

is filed, in which event, the full time prescribed in this rule for the filing of a notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last remaining motion. The three (3)-day [mailing] period set forth in Rule 12-308(B) NMRA does not apply to the time limits set by this paragraph.

(2) The appellant shall make all arrangements necessary to ensure that the district court clerk prepares the record for transmission to the Supreme Court clerk. The record shall include a complete copy of all documents filed in the district court and any available audio recording or stenographic transcript of any hearings held in the district court. The district court clerk shall file the record required under this subparagraph with the Supreme Court no later than two (2) days after the notice of appeal and certificate are filed with the Supreme Court. If necessary, the transcript of any hearings in the district court may be supplemented in accordance with the provisions in Subparagraphs (I)(1) and (I)(2) of this rule.

C. **Content of notice of appeal.** The notice of appeal shall state that the appeal is taken to the Supreme Court and shall specify that the appeal is one of the following:

- (1) a candidacy appeal under Section 1-8-18 NMSA 1978;
- (2) a nominating petition appeal under Section 1-8-35 NMSA 1978;
- (3) an election contest appeal under Section 1-14-5 NMSA 1978;
- (4) an appeal from a district court decision in an election recall proceeding under Article X, Section 9 of the New Mexico Constitution;
- (5) a school board member recall appeal under Section 22-7-9.1 NMSA 1978;

or

- (6) an appeal challenging a school board member recall petition under Section 22-7-12 NMSA 1978.

D. **Certificate of counsel or appellant.** At the same time that the notice of appeal is filed in the Supreme Court, the appellant shall pay the appropriate docket fee, subject to the provisions of [Rule] Rules 12-304 NMRA and 23-114 NMRA, and shall file a certificate of counsel, or if the appellant is not represented by counsel, a certificate of the appellant, with proof of service on all parties and the district court. Either certificate shall include the following:

(1) the name or names of the real parties in interest, if any, when the respondent is a justice, judge, or other public officer or employee, court, board, or tribunal, purporting to act in the discharge of official duties;

(2) the names, business addresses, and telephone numbers of all counsel appearing in the district court and of those parties not represented by counsel;

(3) a statement of the nature of the proceeding;

(4) the date of entry of the decision appealed from and an acknowledgment that the notice of appeal was timely filed with the Supreme Court at the same time as the certificate;

(5) a concise statement of the facts material to consideration of the questions presented; and

(6) a concise statement of the points relied ~~upon~~ on for reversal, including a concise, accurate statement of the case summarizing all facts material to a consideration of the points presented, but without unnecessary detail. General conclusory statements such as “the judgment of the trial court is not supported by the law or facts” will not be accepted.

E. **Involuntary dismissal.** If the appellant fails to file a timely notice of appeal or certificate in accordance with the requirements of this rule, the appeal shall be dismissed forthwith by the Supreme Court.

F. **Notice of proceedings.**

(1) Immediately ~~upon~~ on the filing of the notice of appeal and certificate, the Supreme Court clerk shall notify the Court of the docketing of the appeal.

(2) If it appears to a majority of the Court that the appeal is without merit, the decision of the district court may be summarily affirmed in accordance with Paragraph J of this rule.

(3) If the appeal is not summarily affirmed, the Court may order one or more of the following:

- (a) direct the other parties to the appeal to file a response;
- (b) request briefs under Paragraph H of this rule; or
- (c) set a hearing.

(4) If the Court decides to set a hearing, notwithstanding the provisions of Rule 23-102(D) NMRA, the Supreme Court clerk shall give notice of the setting in the most expeditious manner practicable and the hearing shall proceed in accordance with Paragraph I of this rule.

G. **Stay.** The appellant may seek a stay pending appeal in accordance with the provisions of Rule 12-207 NMRA.

H. **Briefs.** Briefs may be filed only ~~upon~~ on, and in accordance with, the directions of the Supreme Court.

I. **Hearing.** At the hearing appellant shall be limited to arguing the points specified in the certificate filed under Paragraph D. Appellee may present any grounds for affirmance of the trial court's decision. For the purpose of making available ~~such~~ any portions of the district court proceedings as may not appear in the record filed with the Supreme Court under Subparagraph (B)(2) of this rule, the appellant shall, unless a complete transcript of proceedings is available, have present at the hearing the following:

(1) the court reporter who reported the district court proceedings, with the reporter's notes; and

(2) any audio recording of the district court proceedings or any part thereof made by the court monitor or other court-designated official, together with equipment and personnel necessary to play back ~~such~~ any portions as may be required.

J. **Disposition.** Disposition of the appeal shall be by order of the Supreme Court, which may, but need not be, accompanied by a written opinion. The order of the Supreme Court shall be effective ~~upon~~ on filing the ~~same~~ order with the Supreme Court clerk, and there shall be no rehearing. Upon filing the order, the Supreme Court clerk shall forthwith furnish to each party to the appeal and the district court a certified copy of the order. The order shall constitute the mandate of the Supreme Court.

[As amended effective October 11, 2005; as amended by Supreme Court Order No. 09-8300-020, effective September 4, 2009; by Supreme Court Order No. 12-8300-010, effective March 5, 2012; as amended by Supreme Court Order No. 15-8300-021, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — The 2009 amendments to this rule are intended to bring within the scope of Rule 12-603 NMRA the appeal of election recall proceedings involving elected county officials under Article X, Section 9 of the New Mexico Constitution. The Court of Appeals in *Sparks v. Graves*, 2006-NMCA-030, 139 N.M. 143, 130 P.3d 204, accepted jurisdiction to consider an appeal from an election recall proceeding involving an elected county official under

Article X, Section 9 of the New Mexico Constitution because no constitutional provision, statute, or court rule specifically vested appellate jurisdiction in the Supreme Court. *See* Rule 12-102(B) NMRA (providing that the Court of Appeals shall have appellate jurisdiction over all appeals except those enumerated in ~~[Paragraph A of Rule 12-102]~~ Rule 12-102(A) NMRA).

By the 2009 amendments to this rule, appellate jurisdiction over election recall proceedings under Article X, Section 9 of the New Mexico Constitution is now specifically vested in the Supreme Court. *See Graves*, 2006-NMCA-030, ¶ 11 (“Consistent with Section 34-5-8(A) [NMSA 1978], Rule 12-102(A)(4) NMRA requires appeals to be taken to the Supreme Court when jurisdiction has been specifically reserved to the Supreme Court by the New Mexico Constitution or by Supreme Court order or rule.”)~~[-(emphasis added)]~~. *See also State v. Arnold*, 1947-NMSC-043, ¶ 11, 51 N.M. 311, ~~[314,]~~ 183 P.2d 845~~[, 846 (1947)]~~ (“The creating of a right of appeal is a matter of substantive law and outside the province of the court’s rule making power. Nevertheless, once the legislature has authorized the appeal, reasonable regulations affecting the time and manner of taking and perfecting the same are procedural and within this court’s rule making power.”); Seth D. Montgomery & Andrew S. Montgomery, *Jurisdiction as May Be Provided by Law: Some Issues of Appellate Jurisdiction in New Mexico*, 36 N.M. L. Rev. 215, 219, 237-241 (2006) (noting the Supreme Court’s statutory authority under NMSA 1978, Section 34-5-8(B) [NMSA] to transfer cases wholesale from the Court of Appeals to the Supreme Court as a means of case management).

Consistent with the Court’s rule-making authority, and to provide continuity with the time requirements for other election recall appeals governed by this rule, these amendments provide that Article X, Section 9 appeals are commenced by filing a notice of appeal with the district court within five (5) days of the district court’s final decision. *See Maples v. State*, 1990-NMSC-042, ¶ 10, 110 N.M. 34, ~~[36,]~~ 791 P.2d 788~~[, 790 (1990)]~~ (recognizing that the Supreme Court has “the power to set the time for all appeals from final orders”).

Although the Legislature has authorized municipalities to adopt election recall procedures for municipal officials, there are no express statutory provisions authorizing judicial review of municipal election recalls proceedings. *See, e.g.,* ~~[Section 3-14-16 NMSA 1978 and Section 3-15-7 NMSA 1978]~~ NMSA 1978, §§ 3-14-16 and 3-15-7. Accordingly, these amendments do not purport to encompass municipal election recall proceedings that may be authorized by local ordinance.

The _____ amendments to Rule 12-603(B)(1) NMRA are modeled on the language of Rule 12-201(D)(1) NMRA, which sets forth tolling provisions applicable to post-trial or post-judgment motions that affect the time for filing an ordinary appeal from a district court’s final judgment.
[Adopted by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. _____, effective _____.]

**No Comments
Received**