PROPOSED REVISIONS TO THE RULES OF EVIDENCE
PROPOSAL 2026-021

March 6, 2026

The Rules of Evidence Committee has recommended the adoption of new Rule 11-515 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed new rule 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.

[NEW MATERIAL]

11-515. U Visa, T Visa, VAWA Self-Petition, and Cancellation of Removal Application Privilege.

A. **Definitions.** For purposes of this rule,

(1) an "applicant" is a person who has applied for relief under 8 U.S.C. § 1101(a)(15)(T), (15)(U), or (51) or 8 U.S.C. § 1229(b).

(2) an "application" is an application, petition, or materials submitted in support of a request for relief under 8 U.S.C. § 1101(a)(15)(T), (15)(U), or (51) or 8 U.S.C. § 1229(b).

(3) a "beneficiary" is a person who is intended to receive the benefit of an application.

B. **Scope of the privilege.** An applicant or a beneficiary of a pending or approved application has a privilege to refuse to disclose, or to prevent any other person from disclosing, the application and information which relates to the application for relief.

C. **Who may claim the privilege.** The privilege may be claimed by the applicant or a beneficiary.

D. **Waiver.** Necessary disclosure to law enforcement to complete an application is not a waiver. Disclosure to anyone of the fact of an application is not a waiver.

E. **Exceptions.** The privilege shall not apply in circumstances set forth in 8 U.S.C. § 1367(b), including if the applicant and all beneficiaries are adults and waive the privilege. The privilege no longer exists if an application is denied and all opportunities for appeal of the denial

have been exhausted. The privilege shall not prevent the prosecution from making required disclosures under *Brady v. Maryland*, 373 U.S. 83 (1963), including the fact of an application when the prosecution is aware of an application and information within the application to the extent it is material to guilt, punishment, or may be used as impeachment evidence.
[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. This rule was drafted in accordance with the holdings set forth in *Ramirez v. Marsh*, S-1-SC-39966, S-1-SC-40114.
[Adopted by Supreme Court Order No. _____.]

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Comment to Proposal 2026-021 – U/T-Visa Application Privilege

'Weiner, Travis' via Supreme Court Rules <rules.supremecourt-grp@nmcourts.gov> Fri, Mar 20, 2026 at 10:44 AM
Reply-To: travis.weiner@lopdnm.us
To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Good Morning,

My comment to this proposed rule is as follows. It relates to this specific section (below):

D. **Waiver.** Necessary disclosure to law enforcement to complete an application is not a waiver. Disclosure to anyone of the fact of an application is not a waiver.

E. **Exceptions.** The privilege shall not apply in circumstances set forth in 8 U.S.C. § 1367(b), including if the applicant and all beneficiaries are adults and waive the privilege. The privilege no longer exists if an application is denied and all opportunities for appeal of the denial

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have been exhausted. The privilege shall not prevent the prosecution from making required disclosures under *Brady v. Maryland*, 373 U.S. 83 (1963), including the fact of an application when the prosecution is aware of an application and information within the application to the extent it is material to guilt, punishment, or may be used as impeachment evidence.

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

Committee commentary. This rule was drafted in accordance with the holdings set forth in *Ramirez v. Marsh*, S-1-SC-39966, S-1-SC-40114.

[Adopted by Supreme Court Order No. _____.]

My comment:

- I believe this language should be significantly-beefed up. For example, the phrase “the privilege shall not prevent the prosecution from making required disclosures under *Brady*,” for example, should instead read something like “The Prosecution is not relieved of their duties to comply with *Brady* as it relates to material within the application itself.”

- In my opinion, this is not a semantic/meaningless change with regards to the language, given the ubiquitousness of discovery-violations across this state and District Attorney’s offices in this state routinely violating their *Brady* obligations. Language that makes explicitly-clear that there is no safe-harbor under this rule for U-visa applications is necessary, to that end. It is also more-consistent with the actual-language in *Ramirez*, for example:

> {34} Second, if the prosecution—or an arm of the prosecution—is in possession of the U/T-Visa application itself, *Brady* is implicated to the extent information within the application “is material either to guilt or to punishment.” *See Brady*, 373 U.S. at 87, 83 S.Ct. 1194; *see also Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) (“[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.”).[6] If information within the U/T-Visa ***778** application is material, then the information—not the application—should be disclosed to the defendant. *Cf. United States v. Kohring*, 637 F.3d 895, 898, 908-10 (9th Cir. 2011) (holding the prosecutor had a *Brady* obligation to share noncumulative exculpatory facts in the prosecutor's email that constituted opinion work-product but did not have an obligation to disclose the email itself). If materiality is contested, in-camera review by the trial court is appropriate to determine materiality.

See Ramirez v. Marsh, 2025-NMSC-050, ¶ 34, 580 P.3d 768, 777–78 (emphasis added).

Thus, I think the “shall not prevent” language, for these reasons, is much too passive.

Thank you,

Travis Weiner

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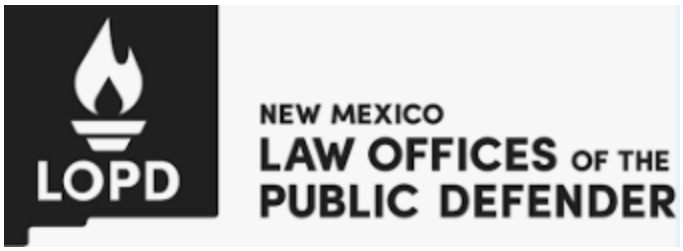

"To be an effective criminal defense counsel, an attorney must be prepared to be demanding, outrageous, irreverent, blasphemous, a rogue, a renegade, and a hated, isolated, and lonely person - few love a spokesman for the despised and the damned" - *Clarence Darrow*

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

Marie Ward
Chief Judge

400 Lomas Blvd. NW
Albuquerque, NM 87102
(505) 841-7392

April 3, 2026

Elizabeth A. Garcia, Chief Clerk of the Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe NM 87504-0848

Via email only to nmsupremecourtclerk@nmcourts.gov

Re: Proposed Amendments to the Supreme Court Rules

Dear Ms. Garcia,

We wish to submit public comment to the proposed amendments to the Supreme Court Rules as outlined more specifically below.

Rule 23-118 Juror term of service.

A juror's term of service shall not exceed three (3) months. Each judicial district may, in its discretion ~~and in consultation with the Administrative Office of the Courts~~, establish terms of jury service not to exceed three (3) months based on the number of trials held, the availability of jurors, and the administrative and financial impact for that judicial district.

Comment: It is recommended that terms of jury service should be left to the discretion of the individual courts. While the SJDC does not have an issue with the term not exceeding three (3) months, it is aware that the more rural districts may be negatively impacted. Different districts will have different needs and considerations that impact what term makes sense in their district and the districts are in the best position to weigh those considerations.

Rule 5-602.1. Competency

G. **Evaluation order.**

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

Comment: It is recommended to allow individual jurisdictions to determine a reasonable time for submission of the report after evaluation is ordered, based on the availability of resources in the jurisdiction.

(a) If ~~the defendant fails to appear for~~ a competency evaluation is cancelled, 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, giving a reason for the cancellation, if known, and the court shall make a record of the reason, ~~if known, for the failure to appear~~for the cancellation; and

Comment: It is recommended not to use the 'failure to appear' language as reasons for cancellation of an evaluation may include many different circumstances that may be beyond the control of the defendant.

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

Comment: It is recommended to remove the thirty-day language to be consistent with the time period may have been originally ordered. It is also recommended to replace 'failure to appear' language with cancellation of a scheduled evaluation to include other circumstances for a cancellation beyond failure to appear.

5.602.2. Proceedings after a finding of incompetency.

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, 7-507.1, 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.

Comment: It is recommended to include the metropolitan rule as cases are also transferred to the district court following a finding of incompetency under 7-507.1(C)(5) NMRA.

F. **Finding of dangerousness**
(4)(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, 7-507.1 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.

Comment: It is recommended to include the metropolitan rule as cases are also transferred to the district court following a finding of incompetency under 7-507.1(C)(5) NMRA.

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 [~~Subparagrah (G)(1) of this rule is not likely to attain~~] NMSA 1978, Sections ~~32A~~31-9-1.4(A) (or) ~~32A~~31-9-1.5(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.

Comment: It is recommended to correct the statute citation to conform to the competency statute.

9-210. Warrant for arrest.
9-212. Bench Warrant.

Comment: It is recommended to include extradition language in 9-210 and to retain the extradition language in 9-212, as it needs to be clear, whether extradition is sought and how the extradition is being authorized. The topic of extradition—and ensuring only defendants that the state intends to prosecute be extradited—has come up in the Second as a concern from the Bernalillo County Sherriff's Office on numerous occasions.

Extradition information:
The State will extradite the defendant:
(check and complete)
[ ] from any contiguous state
[ ] from anywhere in the continental United States

[ ] from any other State
[ ] from anywhere
Prosecuting attorney: _____
By: _____
Date: _____
Originating officer _____
Originating agency _____

Rule 11-515 U Visa, T Visa, VAWA Self-Petition, and Cancellation of Removal Application Privilege.

Comment: It is recommended to make the rule more expansive and explicit consistent with Ramirez v. Marsh, 2025-NMSC-050, to clarify and explain that the fact of an application for U/T Visa and VAWA self-petition is not privileged and to clarify the acceptable parameters for cross examination related to the information obtained regarding U/T Visa and VAWA self-petition, if any.

Rules 5-111, 5-117, 5-506, 22-201, 22-206, 22-301, 22-302 and 22-303 and withdrawal of Rule 1-092.

Comment: The Second Judicial District Court supports the recommendations/comments submitted by the Judicial Technology Council concerning proposed amendments pursuant to its letter of March 5, 2026 and recommends consistency as applied to Children and Criminal Rules of Procedure.

Rule 10-312, Filing of petition; amendment of petition; appointment of guardian ad litem or attorney.

Comment: The Second Judicial District supports the proposed changes to Rule 10-312.

The Second Judicial District Court greatly appreciates the work of the Supreme Court and the Committees in drafting the proposed rule amendments. The Second Judicial District Court is grateful for the opportunity to provide public comment. Thank you for your consideration.

Respectfully,

Marie C. Ward
Chief Judge
Second Judicial District Court