**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. S-1-RCR-2023-00005, effective for all cases filed on or after December 31, 2026.]

**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 2016, 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. S-1-RCR-2023-00005.]