5-403. Revocation or modification of release orders.

A. **Scope.** In accordance with this rule, the court may consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release

(1) if the defendant is alleged to have violated a condition of release; or

(2) to prevent interference with witnesses or the proper administration of justice.

B. **Revocation or modification of conditions of release.**

(1) The court shall consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release on motion of the prosecutor, on notice of a non-technical violation of a condition of release by a court pretrial services agency, or on the court's own motion.

(2) The defendant may file a response to the motion, but the filing of a response shall not delay any hearing under Paragraph D of this rule.

C. **Issuance of summons or bench warrant; temporary detention of certain defendants.**

(1) On motion, or notice of a non-technical violation of a condition of release by a court pretrial services agency, the court shall enter an order with specific findings about why amended or revoked conditions of release are unnecessary, or the court shall issue a summons and notice of hearing, unless the court finds that the interests of justice may be better served by the issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons for the review of the pretrial release decision.

(2) A defendant previously released by any court in this state pending any felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-403.1

NMRA, who is arrested and charged with a new felony or new enumerated misdemeanor defined in Rule 5-403.1 NMRA alleged to have occurred during the period of initial release, shall be held without conditions of release pending a hearing under Paragraph D of this rule. The hearing required by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial conditions of release.

(3) A defendant previously released by any court in this state pending any felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-403.1 [~~NMRA~~], who is charged but not arrested for a new felony or new enumerated misdemeanor alleged to have occurred during the period of initial release, shall be summonsed by the court with current jurisdiction over the defendant's initial conditions of release to a hearing required by Paragraph D of this rule, unless the court finds that the interests of justice may be better served by the issuance of a bench warrant. The hearing required by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial conditions of release.

(4) A defendant previously released by any court in this state, who is arrested and charged with a new criminal offense that is not a felony or enumerated misdemeanor defined in Rule 5-403.1 alleged to have occurred during the period of initial release, may be held without conditions of release pending a hearing under Paragraph D of this rule or summonsed by the court with current jurisdiction over the defendant's initial conditions of release to a hearing required by Paragraph D of this rule. The hearing required by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial conditions of release.

(5) A defendant previously released by any court in this state, who is charged with but not arrested for a new criminal offense that is not a felony or enumerated misdemeanor defined in Rule 5-403.1 alleged to have occurred during the period of initial release, may be

summonsed by the court with current jurisdiction over the defendant's initial conditions of release to a hearing required by Paragraph D of this rule, unless the court finds that the interests of justice may be better served by the issuance of a bench warrant. The hearing required by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial conditions of release.

D. **Hearing on alleged violation.**

(1) ***Time.*** A hearing shall be held as soon as practicable. If the defendant is in custody, the hearing shall be held no later than five (5) days after the defendant is detained. If the defendant is not in custody, the hearing shall be held no later than ten (10) days after the motion or notice of alleged violation is filed.

(2) At the hearing, the court may continue the existing conditions of release, set different conditions of release, or if the court is considering revocation of release, the court shall conduct an evidentiary hearing, unless waived by the defendant.

(3) ***Defendant's rights.*** The defendant has the right to be present and to be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed. If the court is considering revocation of release and an evidentiary hearing is conducted, the defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not be used against the defendant at trial except for impeachment purposes or in a subsequent prosecution for perjury.

E. **Order at completion of hearing.**

(1) If at the conclusion of the hearing, the court continues or amends the defendant's conditions of release, then a written order continuing or amending the defendant's conditions of release shall be provided to the defendant at the time of the release from custody if the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

(2) If the defendant waives an evidentiary hearing and the court finds that the conditions of release should be revoked, an order revoking conditions of release, including written findings of the individualized facts justifying revocation, shall be filed within three (3) days of the hearing.

(3) If an evidentiary hearing is conducted, at the completion of the evidentiary hearing, the court shall determine whether the defendant has violated a condition of release or whether revocation of the defendant's release is necessary to prevent interference with witnesses or the proper administration of justice, and may:

(a) continue the existing conditions of release;

(b) set new or additional conditions of release in accordance with Rule 5-401 NMRA; or

(c) revoke the defendant's release, if the court

(i) finds either probable cause to believe that the defendant committed a federal, state, or local crime while on release, or clear and convincing evidence that the defendant has willfully violated any other condition of release; and

(ii) finds clear and convincing evidence that either no condition or combination of conditions will reasonably ensure the defendant's compliance with the release conditions ordered by the court, or revocation of the defendant's release is necessary to prevent interference with witnesses or the proper administration of justice.

(4) If the court revokes conditions of release after an evidentiary hearing, an order revoking release shall include written findings of the individualized facts justifying revocation and shall be filed within three (3) days of the evidentiary hearing.

(5) If the court continues or amends the defendant's conditions of release after an evidentiary hearing, then a written order continuing or amending the defendant's conditions of release shall be provided to the defendant at the time of release from custody if the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

F. **Evidence.** The New Mexico Rules of Evidence shall not apply to the presentation and consideration of information at a hearing under this rule.

G. **Review of conditions.** If the court enters an order setting new or additional conditions of release, the defendant may file a motion to review the conditions under Rule 5-401(H) NMRA. If, on disposition of the motion, the defendant is detained or continues to be detained because of a failure to meet a condition imposed, or is subject to a requirement to return to custody after specified hours, the defendant may appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

H. **Expedited trial scheduling for defendant in custody.** The district court shall provide expedited priority scheduling in a case in which the defendant is detained pending trial. The court shall hold a status review hearing in any case in which the defendant has been held for more than six (6) months and every six (6) months thereafter. The purpose of the status review hearing is to conduct a meaningful review of the progress of the case. If the court determines that insufficient progress has been made, then the court shall issue an appropriate scheduling order.

I. **Appeal.** If the court revokes the defendant's release, the defendant may appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA. The appeal shall be heard in an expedited manner. The defendant shall be detained pending the disposition of the appeal.

J. **Petition for review of revocation order issued by magistrate, metropolitan, or municipal court.** If the magistrate, metropolitan, or municipal court issues an order revoking the defendant's release, the defendant may petition the district court for review under this paragraph.

(1) ***Petition; requirements.*** The petition shall include the specific facts that warrant review by the district court and may include a request for a hearing. The petitioner shall promptly

(a) file a copy of the district court petition in the magistrate, metropolitan, or municipal court;

(b) serve a copy on the district attorney; and

(c) provide a copy to the assigned district court judge.

(2) ***Magistrate, metropolitan, or municipal court's jurisdiction pending determination of the petition.*** On the filing of the petition, the magistrate, metropolitan, or municipal court's jurisdiction to set or amend conditions of release shall be suspended pending determination of the petition by the district court. The case shall proceed in the magistrate, metropolitan, or municipal court while the petition is pending.

(3) ***District court review.*** The district court shall rule on the petition in an expedited manner.

(a) Within three (3) days after the petition is filed, the district court shall take one of the following actions:

(i) issue an order affirming the revocation order; or

(ii) set a hearing to be held within ten (10) days after the filing of the petition and promptly send a copy of the notice to the magistrate, metropolitan, or municipal court.

(b) If the district court holds a hearing on the petition, at the conclusion of the hearing the court shall issue either an order affirming the revocation order or an order setting conditions of release in accordance with Rule 5-401 NMRA.

(4) ***Transmission of district court order to magistrate, metropolitan, or municipal court.*** The district court shall promptly send the order to the magistrate, metropolitan, or municipal court, and jurisdiction over the conditions of release shall revert to the magistrate, metropolitan, or municipal court.

(5) ***Appeal.*** If the district court affirms the revocation order, the defendant may appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

K. **Judicial discretion; disqualification and excusal.** Action by any court on any matter relating to pretrial release or detention shall not preclude the subsequent statutory disqualification of a judge. A judge may not be excused from reviewing a lower court's order revoking conditions of release unless the judge is required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial Conduct.

[As amended, effective September 1, 1990; as amended by Supreme Court Order No. 13-8300-046, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 18-8300-024, effective for all cases pending or filed on or after February 1, 2019; as amended by Supreme Court Order Nos. 20-8300-013 and 20-8300-019, effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme

Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases pending or filed on or after July 29, 2025; provisional amendments approved by Supreme Court Order No. S-1-RCR-2025-00150, effective for all cases pending or filed on or after December 31, 2025; as amended by Supreme Court Order No. S-1-RCR-2026-00220, effective for all cases pending or filed on or after December 31, 2026.]

Committee commentary. — The 2017 amendments to this rule clarify the procedure for the court to follow when considering revocation of the defendant's pretrial release or modification of the defendant's conditions of release for violating the conditions of release. In *State v. Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v. Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires courts to afford the defendant notice and an opportunity to be heard before the court may revoke the defendant's bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.* ¶ 10 ("If the court has inherent power to revoke bail of a defendant during trial and pending final disposition of the criminal case in order to prevent interference with witnesses or the proper administration of justice, the right to do so before trial seems to be equally apparent under a proper set of facts."); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 ("Conditions of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable by immediate arrest, revocation, or modification if violated. Such conditions of release are

intended to protect the public and keep the defendant in line."), *rev'd on other grounds*, 2004-NMSC-001, 134 N.M. 768, 82 P.3d 939.

Paragraph F provides that the New Mexico Rules of Evidence do not apply at a revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial detention hearing is responsible "for assessing the reliability and accuracy" of the information presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge "retains the responsibility for assessing the reliability and accuracy of the government's information, whether presented by proffer or by direct proof"); *State v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion of the detention hearing court to determine whether a pretrial detention order may be supported in an individual case by documentary evidence, proffer, one or more live witnesses, or other forms of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751, 754 (E.D. Wis. 1981) ("So long as the information which the sentencing judge considers has sufficient indicia of reliability to support its probable accuracy, the information may properly be taken into account in passing sentence."), *aff'd*, 719 F.2d 887 (7th Cir. 1983); *State v. Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation revocation hearing, the court should focus on the reliability of the evidence); *State v. Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation hearing that hearsay untested for accuracy or reliability lacked probative value).

Paragraph H requires the district court to prioritize the scheduling of trial and other proceedings for cases in which the defendant is held in custody. *See generally United States v. Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform

Act, 18 U.S.C. § 3142, did not violate due process, in part because of "the stringent time limitations of the Speedy Trial Act," 18 U.S.C. § 3161); Am. Bar Ass'n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.11 (3d ed. 2007) ("Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice."). This rule does not preclude earlier or more regular status review hearings. The purpose of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the progress of the case includes assessment of the parties' compliance with applicable deadlines, satisfaction of discovery obligations, and witness availability, among other matters. If the court determines that the parties have made insufficient progress on these measures, then it shall issue an appropriate scheduling order.

Consistent with Rule 5-106 NMRA, a party cannot exercise the statutory right to excuse a judge who is reviewing a lower court's order setting or revoking conditions of release. *See* NMSA 1978, § 38-3-9 (1985). Paragraph K of this rule does not prevent a judge from filing a recusal either on the court's own motion or motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

The 1975 amendment to Rule 5-402 NMRA makes it clear that this rule may be invoked while the defendant is appealing a conviction. *See* Rule 5-402 and commentary.

[As amended by Supreme Court Order No. 17-8300-005; as amended by Supreme Court Order No. 22-8300-015; as amended by Supreme Court Order No. S-1-RCR-2023-00021; as provisionally amended by Supreme Court Order No. S-1-AO-2025-00013; provisional amendments approved by Supreme Court Order No. S-1-RCR-2025-00150.]