5-802. Habeas corpus.

A. **Scope of rule.** This rule governs the procedure for filing a writ of habeas corpus by persons in custody or under restraint for a determination that such custody or restraint is, or will be, in violation of the constitution or laws of the State of New Mexico or of the United States; that the district court was without jurisdiction to impose such sentence; or that the sentence was illegal or in excess of the maximum authorized by law or is otherwise subject to collateral attack.

B. **Petition.** The petition may be submitted using Form 9-701 NMRA and shall contain the following required information:

(1) the petition shall clearly state whether either

(a) the petition seeks to vacate, set aside, or correct the sentence or order of confinement, correct the Department of Corrections' interpretation or application of the sentence or order of confinement, or challenge the conviction; or

(b) the petition challenges conditions of confinement or matters other than those set forth in Subparagraph (B)(1)(a) of this rule;

(2) the respondent's name and title. The respondent shall be the petitioner's immediate custodian, who shall have the power to produce the body of the petitioner before the court and shall have the power to discharge the petitioner from custody if the petition is granted;

(3) a brief statement naming the place where the [~~person~~]petitioner is confined or restrained;

(4) a brief statement of the steps taken to exhaust all other available remedies, including a statement of the name of the case, the docket number of the case, the court, administrative agency, or institutional grievance committee from which relief was sought, and the result of each judicial or administrative proceeding;

(5) a brief statement of whether an appeal or prior petitions for habeas corpus or other relief have been filed, including a statement of the case name, the docket number of the case, the grounds upon which relief was sought, the court from which relief was sought, the result of each proceeding and, if appropriate, a statement of why the claim now being raised was not raised in such prior proceedings or how the claim now being raised differs from a claim raised in those proceedings;

(6) if the petitioner has previously filed a petition seeking relief under this rule, a brief statement explaining why the petition should not be dismissed under Paragraph [~~H~~] I of this rule;

(7) a concise statement of the facts and law [~~upon~~]on which the application is based; and

(8) a concise statement of the relief sought.

C. **Time and other [~~limitations~~]limits pertaining to petitions challenging the conditions of confinement within the New Mexico Corrections Department.**

(1) A New Mexico Corrections Department (NMCD) inmate may file a petition challenging any misconduct or disciplinary report or decision received while incarcerated in [~~a~~]an NMCD correctional facility, provided that

(a) no court of this state shall acquire subject-matter jurisdiction over any complaint, petition, grievance, or civil action filed by any inmate of the NMCD with regard to any cause of action under state law that is substantially related to the inmate's incarceration by the NMCD until the inmate exhausts the NMCD's internal grievance procedure;

(b) the inmate files the petition challenging the disciplinary decision within one (1) year of the inmate's receipt of the NMCD's final disciplinary decision; and

(c) the NMCD shall inform the inmate of the provisions of Paragraph C of this rule in writing at the time of its decision. Should the NMCD fail to inform the inmate of the provision of Paragraph C of this rule in writing at the time of its decision, the time [~~limitations~~]limits of Subparagraph (C)(1)(b) of this rule shall be waived.

(2) [~~A~~]An NMCD inmate may file a petition challenging any other condition of the inmate's confinement while incarcerated in [~~a~~]an NMCD correctional facility, provided that no court of this state shall acquire subject-matter jurisdiction over any complaint, petition, grievance, or civil action filed by any inmate of the NMCD with regard to any cause of action under state law that is substantially related to the inmate's incarceration by the NMCD until the inmate exhausts the NMCD's internal grievance procedure.

D. **Papers attached to petition.** The following shall be attached to the petition:

(1) any opinion, order, transcript, or other written material indicating any court's, agency's, or institutional grievance committee's position or ruling on the petitioner's custody or restraint; and

(2) if the petitioner is indigent, an affidavit attesting to the petitioner's indigency and containing a statement of the petitioner's available assets and a motion for permission to proceed in forma pauperis, provided that a petitioner who is incarcerated at the time of filing the petition may file the petition without payment of the applicable filing fee or a motion for permission to proceed in forma pauperis.

E. **Venue.** If the petition

(1) seeks to vacate, set aside, or correct the sentence or order of confinement, correct the NMCD's interpretation or application of the sentence or order of confinement, or challenge the conviction, it shall be filed in the county of the court in which the matter was

adjudicated, or, if the matter has not been adjudicated, in the county of the court that ordered the contested confinement; or

(2) challenges conditions of confinement or matters other than those set forth in Subparagraph (E)(1) of this rule, it shall be filed in the county where the petitioner is confined or restrained.

F. **Filing of the petition.** A writ of habeas corpus will be issued only upon filing with the clerk of the court a petition on behalf of the party seeking the writ. Upon the filing of the petition, the clerk of the district court shall file-stamp the petition with the date of receipt [~~("file-stamp" date)~~](file-stamp date). If the petition is filed by a petitioner who is not represented by an attorney and who is confined to an institution, the petition is deemed to be filed with the clerk of the court on the day the petition is deposited in the institution's internal mail system for forwarding to the court provided that the petitioner states within the petition, under penalty of perjury, the date on which the petition was deposited in the institution's internal mail system. A notation with a [~~"deemed filed"~~] deemed-filed date shall also be made on the petition and in the court's database.

G. **Court's classification and case assignment.**

(1) If the petitioner indicates that the petition challenges matters contained in Subparagraph (E)(1) of this rule, the clerk shall file the petition in the original criminal case, thereby reopening the original criminal case, and shall assign the petition to the judge that originally heard the criminal case, or if that judge is no longer serving on the bench, to a judge presiding in the criminal division. Upon receipt of the petition or revised petition, the clerk of the court shall immediately forward a file-stamped copy of the petition and any attachments to the district attorney and to the [~~public defender department post-conviction unit~~]New Mexico Law Offices of the Public Defender (LOPD) or, if the petition is filed on behalf of the petitioner by

private legal counsel, to that legal counsel. Mailing copies of the petition in accordance with this subparagraph and with a completed certificate of mailing shall constitute service on the respondent by the clerk of the court in accordance with Rule 5-103 NMRA, Rule 5-103.1 NMRA, or Rule 5-103.2 NMRA.

(2) If the petitioner indicates that the petition challenges matters contained in Subparagraph (E)(2) of this rule, a new habeas corpus case shall be opened and the matter shall be assigned to a judge who addresses criminal matters in accordance with the court's assignment practices. Upon receipt of the petition or revised petition, the clerk of the court shall immediately forward a file-stamped and dated copy of the petition and any attachments to the attorney general and to the [~~public defender department post-conviction unit~~]LOPD or, if the petition is filed on behalf of the petitioner by private legal counsel, to that legal counsel. Mailing copies of the petition in accordance with this subparagraph and with a completed certificate of mailing shall constitute service on the respondent by the clerk of the court in accordance with Rule 5-103, Rule 5-103.1, or Rule 5-103.2[~~ NMRA~~].

H. **Procedure in non-death penalty cases.** If a sentence of death has not been imposed, upon presentation of the petition the court shall proceed in the following manner:

(1) **Pre-appointment review.** For petitions not filed by an attorney, within forty-five (45) days of the file-stamp date on the petition, the [~~public defender department~~]LOPD may file a statement recommending that the court order a revised petition under Subparagraph [~~(I)(2)(a)~~] (H)(2)(a) of this rule or indicating whether the petition is a proceeding that a reasonable person of adequate means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment. The court ordinarily should not appoint the public defender during the pre-appointment review period.

(2) **Initial court review.** Within [~~one hundred~~]one hundred twenty (120) days of the file-stamp date on the petition, the court shall examine the petition together with all attachments and statement of the [~~public defender department, if any~~]LOPD, if any. Within this initial [~~one hundred~~]one hundred twenty (120) day court review:

(a) **Petitioner's opportunity to revise.** If the court is unable to determine from the face of the petition whether the petition should be allowed to go forward on the merits or dismissed under this rule, the court may return a copy of the petition to the petitioner for additional factual information or a restatement of the legal claims. If the petition is returned to the petitioner, the court shall set a date certain within the [~~one hundred~~]one hundred twenty (120)-day initial review period, but no less than forty-five (45) days from the date of returning the copy to the petitioner, for the petitioner to resubmit a revised petition. If no revised petition is filed under this subparagraph by the date specified by the court, the judge may dismiss the petition.

(b) **Summary dismissal.** If it plainly appears from the face of the petition, any attachments, and the prior proceedings in the case that the petitioner is not entitled to relief as a matter of law, the court shall order a summary dismissal of the petition, state the reasons for the dismissal, and promptly serve a copy of the order on petitioner, district attorney if the petition challenges matters contained in Subparagraph (E)(1) of this rule, attorney general if the petition challenges matters contained in Subparagraph (E)(2) of this rule, and the [~~public defender department post-conviction unit~~]LOPD or, if the petition is filed on behalf of the petitioner by private legal counsel, to that legal counsel.

(c) **Appointment of counsel.** If, after reviewing the petition, any statement filed by the [~~public defender department~~]LOPD, and revised petition, [if any, the court does not order a summary dismissal, the court shall appoint counsel to represent the petitioner,

subject to the standards of the Indigent Defense Act, [~~Section 31-16-3 NMSA 1978~~]NMSA 1978, § 31-16-3, unless the petitioner has filed a waiver of counsel or has retained counsel. A copy of the order of appointment shall be provided to the petitioner, respondent, and the [~~public defender department post-conviction unit~~]LOPD;

(3) **Procedure; time limits.** Within ninety (90) days after the date of appointment, counsel for the petitioner shall file either an amended petition or a notice that counsel does not intend to amend the petition and provide a copy of the amended petition or notice directly to the assigned judge. Within thirty (30) days after the filing of an amended petition or a notice of non-intent to amend the petition, the court may dismiss some or all of the claims in the petition under Subparagraph (H)(2) of this rule. Within [~~one-hundred~~]one hundred twenty (120) days after filing of the amended petition or notice not to amend, the respondent shall file a response to any claims not dismissed and provide a copy of the response directly to the assigned judge, without further order of the court;

(4) **Preliminary disposition hearing.** After the response is filed, at the request of a party or upon its own motion, the court may conduct a preliminary disposition hearing for the purpose of clarifying the issues and petitioner's evidence in support of the claims in the petition. At the preliminary disposition hearing, the court will attempt to resolve any of the issues presented by the petition based on the filings by counsel for the parties. The court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall dispose of the petition without an evidentiary hearing, but may ask for briefs and oral arguments on legal issues;

(5) **Evidentiary hearing.** If an evidentiary hearing is required, the court shall conduct a hearing as promptly as practicable.

I. **Second and successive petitions.** If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to

(1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and

(2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

J. **Discovery procedures.**

(1) **Discovery procedures for parties represented by counsel.** At any time, counsel for a party may make a formal written request to opposing counsel for production of documents and other discovery materials that are available under [~~Rules 5-501 and 5-502 NMRA~~]Rule 5-501 NMRA and Rule 5-502 NMRA. The written request shall describe the good faith efforts by counsel to obtain the discovery materials from previous counsel or any other sources and shall show that these efforts were unsuccessful. Counsel for the opposing party shall comply with the request within thirty (30) days after service or notify the court in writing of any objection to the request. Any objection based on privilege should clearly identify the material withheld and the basis of the privilege claim. The court shall then hold a hearing to rule on any objection to the discovery request. The court shall grant a challenged request for discovery when the requesting party demonstrates that the materials are relevant either to advance the claims that are alleged in the petition or to defend against the claims that are alleged in the petition.

(2) For purposes of this rule, "discovery materials" are

(a) materials in the possession of a party;

(b) materials in the possession of law enforcement authorities to which the petitioner would have been entitled to at the time of trial; or

(c) materials in the possession of the NMCD.

(3) Counsel for a party may make use of any other discovery procedure under the Rules of Criminal Procedure for the District Courts only after notice to opposing counsel and prior written authorization from the court. In determining whether to authorize such proceedings, the court may consider any of the factors contained in Rule 5-507(A) NMRA.

(4) **Discovery procedures for pro-se petitioners.** Petitioners not represented by counsel shall petition the court before requesting discovery under this rule and the Rules of Criminal Procedure for the District Courts. In determining whether to authorize a discovery request, the court may consider any of the factors contained in Rule 5-507(A)[~~ NMRA~~].

(5) **Motions to compel.** If the state or the petitioner fails to comply with any of the provisions of this rule, the court may enter an order under Rule 5-505 NMRA or Rule 5-112 NMRA.

K. **Transportation of incarcerated petitioners.** If the presence of the petitioner is required at a hearing it shall be the responsibility of counsel for the petitioner to submit a transportation order for petitioners who are incarcerated. It shall be the responsibility of the respondent to facilitate the transportation of the petitioner if needed.

L. **Death penalty cases.** If a sentence of death has been imposed

(1) upon issuance of the mandate of the Supreme Court affirming the sentence of death, the district court shall promptly appoint counsel to represent the defendant;

(2) following the issuance of the mandate the execution shall be stayed pending further proceedings under this paragraph;

(3) unless an extension of time is granted for good cause shown, within [~~one hundred~~]one hundred eighty (180) days after appointment, the defendant shall file a petition for writ of habeas corpus;

(4) unless an extension of time is granted for good cause shown, within [~~one hundred~~]one hundred eighty (180) days after service of a petition for writ of habeas corpus, the respondent shall file a response to the petition;

(5) within thirty (30) days after service of the response, the court shall schedule a hearing on the petition. In considering the petition, the court may hear evidence, require briefs, or schedule arguments;

(6) within thirty (30) days after the filing of the district court's order on the petition

(a) if the writ is granted, the state may appeal; or

(b) if the writ is denied, the petitioner may appeal;

(7) the Rules of Appellate Procedure shall govern the appeal to the Supreme Court.

M. **Procedure on petition remanded by the Supreme Court.** A petition originally filed in the Supreme Court may be remanded by the Supreme Court to the district court. If the petition is remanded by the Supreme Court, the district court shall proceed as if the petition had been filed in the district court in the first instance.

N. **Appeal; non-death penalty proceedings.** Within thirty (30) days after the district court’s decision

(1) if the writ is granted, the state may appeal as of right under the Rules of Appellate Procedure;

(2) if the writ is denied, a petition for certiorari may be filed with the Supreme Court.

[As amended, effective March 1, 1986; March 16, 1998; June 1, 2002; as amended by Supreme Court Order No. 09-8300-006, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. S-1-RCR-2025-00134, effective for all cases pending or filed on or after December 31, 2026.]

Committee commentary for 2017 amendments. — Rule 5-802 NMRA was amended in 2017 to streamline the administrative processing of petitions for a writ of habeas corpus in the district courts.

The amendments eliminate the thirty (30)-day review and acceptance period under Paragraph F and instead require that all petitions for a writ of habeas corpus be filed immediately upon receipt by the district court. Paragraph F establishes two important dates, the "file-stamp" date and the "deemed filed" date. The "deemed filed" date incorporates the prison mailbox rule allowing a petition for a writ of habeas corpus to be deemed filed the date it is deposited in the institution's internal mail system. *See* Rule 5-103(I) NMRA (Filing and service by an inmate). The deemed filed date will mainly affect the one (1)-year time [~~limitation~~]limit to file a petition for a writ of habeas corpus in federal court following a state court conviction. *See* Committee commentary for 2009 amendments. However, the deemed filed date may also affect the one (1)-year time [~~limitation~~]limit for filing a petition challenging a disciplinary decision of the New Mexico Corrections Department under Paragraph C. The "file-stamp" date is the date the district court actually receives the petition. All the deadlines in Rule 5-802 run from the "file-stamp" date.

Paragraph G provides guidance to the district court as to how to classify and assign petitions challenging the underlying conviction versus petitions challenging the conditions of confinement. Petitioners who wish to raise both types of claims must file two separate petitions and submit each petition in the venue required by Paragraph E. *See* Form 9-701 NMRA.

While the district court may deny a petition for a writ of habeas corpus on appropriate grounds during the pre-appointment review period under Subparagraph (H)(1), the committee recommends that district courts consider the information provided in the pre-appointment review before denying a petition for a writ of habeas corpus.

Under Subparagraph (H)(2), within [~~one hundred~~]one hundred twenty (120) days of the "file stamp date," the district court must either return the petition to petitioner for further information, summarily dismiss the petition, or appoint counsel. If the district court fails to take one of the foregoing actions within that designated time period, the petitioner may request a hearing.

Committee commentary for 2014 amendments. — Rule 5-802 NMRA was amended in 2014 following an extensive review by the Court and its Ad-hoc Habeas Corpus Review Committee. Rule 5-802 is designed to address petitions filed after the entry of a final judgment and all direct appeals, however styled, in a criminal case. For example, motions to vacate a sentence and motions to withdraw a plea after the entry of a final judgment and all direct appeals should be treated as habeas petitions to be adjudicated under Rule 5-802, as opposed to motions to modify or reduce a sentence filed under Rule 5-801 NMRA.

Paragraph B(5) is amended to clarify that it applies to successive petitions for habeas relief. District courts should ordinarily dismiss petitions that do not comply with the provisions of Paragraph B(5).

Former Paragraph E(1) (now Paragraph G(1)) is amended to ensure that a habeas petition is assigned to the judge that originally heard the matter. This is the current practice in most district courts and reflects a policy that the judge that originally heard the matter is in a better position to rule on a petition for habeas corpus because that judge is familiar with the petitioner's case. Therefore, even if the judge that originally heard the case has transferred to a different division within the same court, the case should still be assigned to that judge. Should that judge no longer be serving on the bench, the criminal, as opposed to the civil division of the court, should handle the matter. The criminal division is more familiar with the types of claims likely to be raised in a petition for a writ of habeas corpus.

The Committee added a new Paragraph F and substantially amended former Paragraph E (now Paragraph G). Paragraphs F and G are designed to help the district court screen out frivolous petitions while making sure meritorious petitions are properly addressed. First, Paragraph F gives the district courts more flexibility in processing petitions for habeas corpus. Oftentimes, habeas petitions are difficult to recognize when received by the district court. Paragraph F gives the district court time to determine what the petition is, whether it should be accepted as a habeas petition, and how it should be filed without prejudicing the rights of the petitioner. Paragraph F also ensures that the proper parties, i.e. the district attorney, attorney general, and the public defender, are given notice of a filing of a petition for a writ of habeas corpus. By receiving notice, these parties will be able to keep track of the petitions and will be ready to respond if called upon by the district court.

Second, Paragraph G(1) gives the Public Defender Department the opportunity to file a statement regarding the filed petition for habeas corpus before counsel is appointed and/or a final order is rendered by the district court. Under the Indigent Defense Act, a person has the limited

right to appointed counsel representation in post-conviction matters "unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense." NMSA 1978, § 31-16-3(B)(3) (1968). Therefore, the [~~Public Defender~~]public defender may not be able to represent a petitioner in all cases. In addition, allowing the [~~Public Defender~~]public defender an opportunity to file a statement regarding the petition may also help the district court screen out potentially frivolous claims.

Third, Paragraph G(1) imposes a deadline on the district court to either summarily dismiss the petition, return the petition to petitioner for further information, or appoint counsel. By allowing the court to return a petition to petitioner for further development, the court may be able to clarify issues that are vague or ambiguous. Once the district court returns a petition to a petitioner for further development, the burden is on petitioner to file a revised petition. When a petitioner fails to file an amended petition when directed by the court under Paragraph G(1), the judge shall ordinarily dismiss the petition except in rare cases.

Paragraph G(2) makes clear that a district court may dismiss some of all of the claims in a petition much like a court in a civil matter could enter summary judgment on some claims while allowing other claims to proceed to trial. Under Paragraph F(2), a response must be filed by the state to any claims that are not dismissed.

Paragraph G(3) adds in one final opportunity for the district court to clarify issues. The court may hold a "preliminary disposition hearing" or status conference at which it will clarify the issues and attempt to resolve the issues based upon the written filings of the parties. If the court is unable to resolve the issues based upon the written filings, an evidentiary hearing under Paragraph G(4) may be necessary.

Paragraph H gives the district court guidance as to the handling of successive petitions for habeas relief. The standard is higher for a petitioner raising a claim rejected in a previous habeas petition than a claim rejected on direct appeal. Standard notions of claim and issue preclusion generally do not apply in habeas cases. *Campos v. Bravo*, 2007-NMSC-021, ¶ 5, 141 N.M. 801, 161 P.3d 846. Courts have some discretionary capacity to dismiss habeas claims when a prior petition has been filed. According to *Duncan v. Kerby*, 1993-NMSC-011, ¶ 5, 115 N.M. 344, 851 P.2d 466:

"The successive-writ petitioner has already enjoyed the opportunity to fully explore his constitutional claims in the postconviction setting, whereas the petitioner who makes his initial claim on direct appeal has not, and consequently, the successive writ petitioner is in a weaker position to argue that equity confers yet another postconviction opportunity to make his claim." [~~*Id.* ¶ 5.~~] In exercising its discretion, the court should consider whether the prior petition was pro se or the petitioner was represented by counsel. Petitioners proceeding pro se will often not have developed their claims as fully as petitioners represented by counsel.

In *Allen v. LeMaster*, 2012-NMSC-001, 267 P.3d 806, the New Mexico Supreme Court ruled that the state could not depose a habeas petitioner [~~due to~~] because Rule 5-503[~~'s prohibition on the~~] NMRA prohibits compelled statements of defendants. Although the opinion did not address the totality of discovery in the habeas context, it marked the starting point for the Committee's addition of Paragraph I on discovery. As habeas cases become more complex it is important to have rules in place for when discovery is needed or requested.

Paragraph I operates from the perspective that discovery in the habeas context should only occur when necessary and with supervisory control from the district court. Consistent with *Allen*, petitioners represented by counsel and the state may request discovery [~~pursuant to~~]under [~~Rules 5-~~

~~501 and 5-502 NMRA]~~Rule 5-501 NMRA and Rule 5-502 NMRA. *See* [~~*id.*~~]*Allen*, 2012-NMSC-001, ¶ 15 ("The placement of habeas corpus regulation within our Rules of Criminal Procedure demonstrated this Court's recognition that postconviction motions challenging a conviction or sentence in a criminal case are in reality part of a criminal proceeding."). However, other discovery devices under the Rules of Criminal Procedure for the District Courts must be approved by the court. Discovery is limited to the items listed in Paragraph I(2). Among the reasons for requiring pro-se petitioners to get court approval before requesting discovery are to discourage abuse and protect victims of crime. Therefore, the court should proceed cautiously on any discovery request of a victim.

Committee commentary for 2009 amendments. — The 2009 amendments to this rule make five changes to the procedures governing petitions for writs of habeas corpus. First, Paragraph B is amended to provide that a petition filed by an unrepresented inmate is deemed to be filed on the date that the petition is deposited in the institution's internal mail system. The amendment further provides that the inmate must state in the petition, under penalty of perjury, the date on which the petition was deposited for mailing. A corresponding amendment to Form 9-701 NMRA includes this statement.

The purpose of the amendment to Paragraph B is to eliminate uncertainty regarding the date when the petition is filed in the district court. Although there is no time limit for filing a state petition for a writ of habeas corpus, the date of filing can have an impact on the deadline for filing a petition for a writ of habeas corpus in federal court. Currently, defendants convicted in state court have one (1) year to file a petition for a writ of habeas corpus in federal court, and the one (1) year period begins to run from the date of the final judgment on a guilty plea, or one (1) year from a final decision of the highest state court ruling on a direct appeal after trial. However, under federal

law, the filing of a state habeas petition tolls the one (1) year [~~limitations period~~]limit for filing a habeas petition in federal court.

While a state petition can toll the federal [~~limitations period~~]time limit, disputes often arise concerning when the state petition was actually filed in state court. In some instances, unforeseen mailing delays beyond the control of the inmate prevent the receipt of a state habeas petition to toll the one (1) year federal [~~limitations period~~]time limit before it expires. Moreover, the practices among the various state judicial districts for processing state habeas petitions can vary greatly and, as a result, impact the application of the federal tolling provision. For example, some districts apparently refer habeas petitions to a district court judge for fairly swift review before actually filing, with filing by the clerk soon thereafter. In other districts, however, clerks sometimes hold petitions for sixty (60) days or more before they are reviewed by a judge and officially filed with the court. But in virtually none of these districts are the petitions actually file-stamped on the date of receipt by the clerk.

The uncertainties inherent in mailing documents from prison, and the existing inconsistent filing procedures in the district courts, have the potential to drastically affect an inmate's right to toll the federal [~~limitations period~~]time limits while state post-conviction remedies are exhausted. *See Adams v. LeMaster*, 223 F.3d 1177 (10th Cir. 2000) (holding that New Mexico inmate's federal habeas petition was not timely filed because the one (1) year [~~limitation period~~]~~time limit~~ expired before the state petition was file-stamped by the state district court clerk). The amendments to Paragraph B are intended to eliminate confusion and avoid the unfair application of federal tolling provisions that may result from inconsistent filing practices in state district courts or unforeseen mailing delays beyond the control of an incarcerated petitioner.

Because there are no filing deadlines for filing state habeas petitions by unrepresented inmates in New Mexico, the changes to Paragraph B will not affect the substantive or procedural rights of the parties to a state post-conviction proceeding. State district courts, however, may want to revise their procedures so that the date file-stamped on a petition filed under this rule reflects the date of mailing set forth in the petition. If the [~~State~~]state has reason to believe that the mailing date set forth in the petition is not accurate, the [~~State~~]state may file a motion with the district court asking for a correction to the filing date.

The amendments to Paragraph C are intended to eliminate the inordinate amount of paperwork necessary to prepare and process requests for free process in post-conviction proceedings, which seems particularly unnecessary given the undeniable right of access to the courts by persons, indigent or not, who seek to correct an unlawful confinement. Moreover, the processing of this paperwork appears to lead to many of the delays in the actual filing of habeas petitions discussed above. The amendment to Paragraph C therefore seeks to eliminate these problems by allowing an incarcerated petitioner to file a petition without payment of a filing fee.

The amendments to Paragraph D are intended to clarify the place of filing for habeas petitions. The first change to Subparagraph (1) of Paragraph D provides that petitions challenging the Department of Correction’s interpretation of a sentence should be filed with the court that imposed the sentence. As Rule 5-802.D(1) NMRA is currently written, the Department's interpretation and application of a sentence fall within "matters other than [those set forth in] Subparagraph (1)," thereby requiring the petition to be filed in the judicial district where the petitioner is confined or restrained. The rationale for the proposed amendment is that, much like petitions that seek to correct a sentence, the court that sentenced the inmate is better qualified to interpret its own sentence than a court of the judicial district in which the institution is located.

The second change to Subparagraph (1) of Paragraph D also clarifies that the petition should be filed with the court that adjudicated the petitioner's confinement rather than focusing on the county where the offense was committed.

The amendments to Subparagraph (2) of Paragraph E [~~expands~~]~~expand~~ the filing deadlines for amended petitions and responses ordered by the district court. Currently, if counsel is appointed to represent a petitioner, the attorney has thirty (30) days to file an amended petition. In situations where counsel is appointed, the issues involved and the need for further investigation by counsel often make the [~~30-day~~]thirty (30)-day filing deadline for an amended petition unrealistic. As a result, motions to extend the filing deadline are routinely made and granted. The amendment to the filing deadline seeks to recognize this reality and eliminate unnecessary motion practice by expanding the filing deadline to ninety (90) days. As a matter of fairness and consistency, the amendments also increase the filing deadline to ninety (90) days in those instances when the State is ordered to file a response to the amended petition.

Finally, the amendment to Paragraph H eliminates the deemed denied provision that previously governed the Supreme Court's review of the denial of habeas corpus petitions under Rule 12-501 NMRA. With this amendment, an express order by the Supreme Court is required to deny a petition for review filed under Rule 12-501 regardless of the length of time the petition for review is pending in the Supreme Court. The amendment is intended to conform to similar amendments to [~~Rules 5-614, 5-801, and 5-121 NMRA~~]Rule 5-614 NMRA, Rule 5-801 NMRA, and Rule 5-121 NMRA, eliminating the application of other deemed denied provisions during other stages of a criminal proceeding.

[Adopted, [~~effective~~] December 1, 1998; as amended by Supreme Court Order No. 09-8300-006[~~, effective May 6, 2009~~]; as amended by Supreme Court Order No. 14-8300-014[~~, effective for all~~

~~cases filed on or after December 31, 2014~~]; as amended by Supreme Court Order No. 17-8300-025[~~, effective for all cases pending or filed on or after December 31, 2017~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00134.]