8-506. Time of commencement of trial.

A. **Time limits for arraignment.**

(1) ***Defendant not in custody.*** A defendant who is not in custody shall be arraigned on the complaint or citation within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later. If the defendant fails to appear by the appearance date on a citation, the court shall issue a summons commanding the defendant to appear for arraignment within thirty (30) days of the initial appearance date on the citation.

(2) ***Defendant in custody.*** A defendant who is in custody within this state shall be arraigned on the complaint or citation as soon as practicable, but in any event no later than three (3) days after the date of arrest if the defendant is being held in the local detention center, or no later than five (5) days after the date of arrest if the defendant is not being held in the local detention center.

B. **Time limits for commencement of trial.** The trial of a criminal citation or complaint shall be commenced within one hundred eighty-two (182) days after whichever of the following events occurs latest:

(1) the date of arraignment or the filing of a waiver of arraignment of the defendant;

(2) if an evaluation of competency has been ordered, the date an order [~~or~~] and remand [~~is~~] are filed in the municipal court finding the defendant competent to stand trial;

(3) if a mistrial is declared by the trial court, the date that order is filed in the municipal court;

(4) in the event of a remand from an appeal or request for extraordinary relief, the date the mandate or order is filed in the municipal court disposing of the appeal or request for extraordinary relief;

(5) if the defendant is arrested for failure to appear or surrenders in this state for failure to appear, the date of arrest or surrender of the defendant;

(6) if the defendant is arrested for failure to appear or surrenders in another state or country for failure to appear, the date the defendant is returned to this state; or

(7) if the defendant has been placed in a preprosecution diversion program, the date a notice is filed in the municipal court that the preprosecution diversion program has been terminated for failure to comply with the terms, conditions, or requirements of the program.

C. **Extension of time.** The time for commencement of trial may be extended by the court:

(1) on the filing of a written waiver of the provisions of this rule by the defendant and approval of the court;

(2) on motion of the defendant, for good cause shown, and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days; or

(3) on stipulation of the parties and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days;

(4) on withdrawal of a plea or rejection of a plea for a period up to ninety (90) days;

(5) on a determination by the court that exceptional circumstances exist that were beyond the control of the prosecution or the court that prevented the case from being heard within the time period and a written finding that the defendant would not be unfairly prejudiced, the court may grant further extensions that are necessary in the interests of justice; or

(6) if defense counsel fails to appear for trial within a reasonable time, for a period not to exceed one hundred eighty-two (182) days, but the aggregate of all extensions granted under this subparagraph may not exceed one hundred eighty-two (182) days.

D. **Time for filing motion.** A motion to extend the time period for commencement of trial under Paragraph C of this rule may be filed at any time within the applicable time limits or on exceptional circumstances shown within ten (10) days after the expiration of the time period. At the request of either party, the court shall hold a hearing before the commencement of trial to determine whether an extension may be appropriately granted.

E. **Effect of noncompliance with time limits.**

(1) The court may deny an untimely petition for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[As amended, effective August 1, 1999; August 1, 2004; as amended by Supreme Court Order No. 07-8300-026, effective November 1, 2007; by Supreme Court Order No. 08-8300-057, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-

8300-002, effective for all cases filed on or after May 24, 2016; 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. S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order No. S-1-RCR-2026-00200, effective for all cases pending or filed on or after December 31, 2026.]

Committee commentary. —

Exceptional circumstances. — "Exceptional circumstances," as used in this rule, would include conditions that are unusual or extraordinary, such as death or illness of the judge, prosecutor, or defense attorney immediately preceding the commencement of the trial; or other circumstances that ordinary experience or prudence would not foresee, anticipate, or provide for. The court may grant an extension for exceptional circumstances only if the court finds that the extension will not unfairly prejudice the defendant. The defendant may move the court to dismiss the case based on a particularized showing that the extension or impending extension would subject the defendant to oppressive pretrial incarceration, anxiety and concern, or the possibility that the defense will be impaired.

Constitutional right to speedy trial. — This rule is distinct from any speedy trial rights a defendant may have under the constitutions and laws of the United States and the State of New Mexico. *See State v. Urban*, 2004-NMSC-007, 135 N.M. 279, 87 P.3d 1061 for the factors to be considered.

Duty of prosecutor. — It is the continuing duty of the prosecutor to seek the commencement of trial within the time specified in this rule.

Computation of time. — Time periods are computed under Rule 8-104 NMRA.

Paragraph A. — Paragraph A of this rule requires arraignment within thirty (30) days after the filing of the complaint or citation or the date of arrest, whichever is later. For defendants in custody, arraignment is required within three (3) days after the date of arrest if the defendant is being held in the local jail, or five (5) days after the date of arrest, if the defendant is being held in another jurisdiction. A failure to arraign the defendant within the time limitation will not result in a dismissal of the charge unless the defendant can show some prejudice because of the delay. "Local detention center" is defined as "one that is commonly used by the municipal court in the normal course of business and not necessarily within the territorial jurisdiction of the court." Rule 8-401(A)(3) NMRA.

Paragraph B. — A violation of Paragraph B of this rule can result in a dismissal with prejudice under Paragraph E of this rule. *See also State v. Lopez*, 1976-NMSC-012, ¶ 3, 89 N.M. 82, 547 P.2d 565. However, the rules do not create a jurisdictional barrier to prosecution. The defendant must raise the issue and seek dismissal. *See State v. Vigil*, 1973-NMCA-089, ¶ 28, 85 N.M. 328, 512 P.2d 88. If the state in good faith files a nolle prosequi under Rule 8-506.1(C) and (D) NMRA and later files the same charge, the trial on the refiled charges shall be commenced within the unexpired time for trial under Rule 8-506 NMRA, unless, under Rule 8-506.1(D) NMRA, the court finds the refiled complaint should not be treated as a continuation of the same case.

[As amended by Supreme Court Order No. 08-8300-057, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-019, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-002, effective for all cases filed on or after May 24, 2016; 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.

17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. S-1-RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023.]