

23-106.1 Supreme Court rule-making procedures.

A. **Requests for rule changes.** For purposes of this rule, a rule change includes amendments to, or the withdrawal of, existing rules, forms, and uniform jury instructions as well as the adoption of new rules, forms, or uniform jury instructions. All requests for rule changes shall be filed with the Supreme Court clerk and shall be immediately forwarded by the clerk to the appropriate committee appointed under Rule 23-106 NMRA for consideration without the need for prior review or approval by the Court. No docket fee shall be charged for filing a rule change request. Rule change requests shall be submitted in the form of a petition filed with the Supreme Court clerk by any member of the Court's rules committees, the bench, the bar, or the public. A petition requesting a rule change shall include the following:

- (1) a statement of the reasons why the rule change request is needed;
- (2) citations to any constitutional provisions, statutes, case law, rules, or regulations supporting the rule change request, as well as any known contrary authority;
- (3) a draft of the proposed new or amended rule, form, or uniform jury instruction; and
- (4) any supporting documentation.

B. **Rule-making schedule.** Rule-making shall proceed under the following annual cycle unless the Court declares emergency circumstances to exist under Paragraph C of this rule:

(1) ***Recommendation to publish for comment; deadline.*** Any proposed rule change that a committee recommends publishing for comment that is submitted to the Court after January 1 shall not be considered by the Court for publication for comment until January 1 of the next year unless the Court declares emergency circumstances to exist under Paragraph C of this rule;

(2) ***Publication for comment; timing and duration.*** All proposed rule changes that are published for comment shall be published in the month of March with a thirty (30)-day comment period unless otherwise ordered by the Court;

(3) ***Committee recommendation; deadline.*** Any proposed rule change that a committee recommends adopting that is submitted to the Court after July 1 shall not be considered for approval by the Court until July 1 of the next year unless the Court declares emergency circumstances to exist under Paragraph C of this rule;

(4) ***Court action.*** Any committee recommendation submitted to the Court on or before July 1 shall be acted on by the Court by November 1 of the same year unless otherwise ordered by the Court; and

(5) ***Effective date.*** All approved rule changes shall be approved as of November 1 with an effective date of December 31 for cases pending or filed on or after that date unless otherwise ordered by the Court.

C. **Out-of-cycle rule-making; emergency circumstances defined.** Emergency circumstances for varying from the time deadlines set forth in Paragraph B of this rule may include, with prior approval of the Court, the following:

- (1) rule changes needed because of new case law;
- (2) rules changes needed because of statutory changes;
- (3) rule changes needed because of changes to ABA model rules or other model rules upon which a New Mexico rule is based;
- (4) rule changes needed to address imminent threats to the efficient administration of justice; or

(5) other emergency circumstances as determined by the Court.

D. Requirements for rules committee recommendations. Committees shall make rule change recommendations to the Court in accordance with the following procedure:

(1) When a majority of the voting quorum votes to reject a request for a rule change submitted by anyone other than a committee member, the chair shall prepare a committee report for submission to the Court explaining the reasons why the committee recommends against the requested rule change. The Court may accept the committee's recommendation to take no action on the requested rule change or direct the committee to draft a proposed rule change for the Court's consideration.

(2) When a majority of the voting quorum votes to recommend a proposed rule change, the proposed rule change recommendation shall be submitted to the Court in proper format under Subparagraph (D)(3) of this rule with the committee report required under Subparagraph (D)(4) of this rule.

(3) The committee shall format all proposed rule changes to conform to the Supreme Court Rules Drafting Manual, and gender-neutral language shall be used unless the use of gender-neutral language would alter the meaning of the rule change or compromise its clarity. For purposes of this subparagraph, "gender-neutral language" means language that does not explicitly or implicitly refer to one gender to the real or apparent exclusion of any other gender.

(4) The committee chair shall prepare a committee report that submits the proposed rule change to the Court for consideration. The committee report shall be filed with the the Supreme Court clerk, who shall submit it to the Court for consideration in accordance with the applicable deadlines in Subparagraphs (B)(1) or (B)(3) of this rule or immediately upon filing if submitted as an out-of-cycle rule change request under Paragraph C of this rule. The committee report shall address the following matters:

- (a) who initiated the request for the rule change;
- (b) the purpose of the proposed rule change;
- (c) whether the committee unanimously recommends the proposed rule change and, if not, sets forth the minority view;
- (d) whether the committee recommends publishing the proposed rule change for comment before adoption; and
- (e) whether the committee recommends that the proposed rule change apply to future cases only or to pending cases as well.

(5) Upon submission of the committee report and proposed rule change to the Court, it may take the following actions:

- (a) publish for comment the proposed rule change;
- (b) adopt the proposed rule change without publication for comment;
- (c) reject the committee's proposed rule change; or
- (d) return the proposed rule change to the committee for further review.

(6) If the Court decides to publish for comment the proposed rule change, committee staff shall post the proposed rule change on the Court's web site and send notice of the publication for comment by email to all judges and to all members of the bar who have provided an email address for the Court's Roll of Attorneys and may also publish the proposed rule change in the Bar Bulletin. The comment period shall be thirty (30) days, unless otherwise ordered by the Court, and may be extended at the discretion of the Court. All comments received

may be posted on the Court's web site for public viewing.

(7) If a proposed rule change is published for comment, after the comment deadline, the Court may direct the committee to review any comments received by the Court and provide a follow-up recommendation in light of the comments received. The chair shall submit a committee report to the Court setting forth the committee's recommendation. The committee report shall,

(a) specifically address each comment that was received and explain why the committee did or did not revise the proposed rule change in light of the comment;

(b) state whether the committee unanimously recommends adopting the proposed rule change and, if not, sets forth the minority position;

(c) state whether the committee recommends republication of any revisions to the proposed rule change that the committee recommends, and

(d) state the basis for the committee recommending whether the proposed rule change should apply to future cases only or to pending cases as well.

(8) Upon receipt of the committee report after the publication for comment period, the Court shall do one of the following:

(a) adopt the committee's recommendation on the proposed rule change;

(b) reject the committee's recommendation on the proposed rule change;

(c) meet with committee representatives to discuss the recommendations;

(d) modify the committee's recommendation on the proposed rule change; or

(e) send back the committee's recommendation on the proposed rule change for further drafting or revising.

(9) Upon final approval by the Court of a proposed rule change, the Supreme Court clerk shall issue an order adopting the proposed rule change. The order shall include the effective date for the rule change. At least forty-five (45) days prior to the effective date, the approved rule change and Court order shall be posted on the New Mexico Compilation Commission's web site, and notice of the approved rule change shall be sent by email to all judges and to all members of the bar who have provided an email address for the Court's Roll of Attorneys, unless the Supreme Court determines that it is necessary for the rule change to become effective immediately upon adoption.

(10) After any rule change has been approved by the Court, arrangements shall be made for publication by the Compilation Commission in the New Mexico Rules Annotated. An approved rule change also may be published in the Bar Bulletin at the Court's discretion.

E. **Failure to comply.** Failure to comply with any or all of the provisions of this rule by the Supreme Court shall not affect the validity of any rules adopted by the Supreme Court. [Approved by Supreme Court Order No. 15-8300-016, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-026, effective December 31, 2017.]