PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS, MAGISTRATE COURTS, AND METROPOLITAN COURTS, AND THE RULES OF PROCEDURE FOR THE MUNICIPAL COURTS
PROPOSAL 2019-010

March 4, 2019

The Rules of Criminal Procedure Committee has recommended amendments to Rules 5-601, 6-304, 7-304, and 8-304 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at http://supremecourt.nmcourts.gov/open-for-comment.aspx or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 3, 2019, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

5-601. Motions.

A. **Change of venue.** Change of venue shall be accomplished according to law.

B. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the district court. The district court may rule on a motion to reconsider with or without a hearing.

[~~B.~~] C. **Defenses and objections which may be raised.** Any defense, objection or request which is capable of determination without a trial on the merits may be raised before trial by motion.

[~~C.~~] D. **Defenses and objections which must be raised.** The following defenses or objections must be raised prior to trial:

(1) defenses and objections based on defects in the initiation of the prosecution; or

(2) defenses and objections based on defects in the complaint, indictment or information other than a failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding. Failure to present any such defense or objection, other than the failure to show jurisdiction or charge an offense, constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

If any such objection or defense is sustained and is not otherwise remediable, the court shall order the complaint, indictment or information dismissed.

[~~D.~~] E. **Time for making motions.**

(1) [~~All motions, unless~~] Unless otherwise provided by these rules or [~~unless otherwise~~] ordered by the court, a pretrial motion shall be made at the arraignment or within ninety (90) days thereafter, unless upon good cause shown the court waives the time requirement.

(2) A motion to reconsider may be filed at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal.

[~~E.~~] F. **Evidentiary hearing.** If an evidentiary hearing is required, the motion shall be accompanied by a separate written request for an evidentiary hearing, including a statement of the ultimate facts intended to be proven at such an evidentiary hearing. Unless a shorter period of time is ordered by the court, at least five (5) days before the hearing on the motion, each party shall submit to the other party's attorney the names and addresses of the witnesses the party intends to call at the evidentiary hearing, together with any statement subject to discovery made by the witness which has not been previously disclosed pursuant to Rule 5-501 or 5-502.

[~~F.~~] G. **Ruling of court.** All motions shall be disposed of within a reasonable time after filing.

[~~G.~~] H. **Defenses and objections not waived.** No defense or objection shall be waived by not being raised or made at arraignment.

[~~H.~~] I. **Notice of withdrawal of motion.** If a motion is scheduled for hearing, a party shall give at least five (5) days notice of withdrawal of the motion.

[As amended, effective May 1, 1999; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — *See* NMSA 1978, [~~Sections~~] §§ 38-3-3 to [~~38-3-8 NMSA 1978~~] 33-3-7 (1880, as amended through 2003), for the statutes pertaining to change of venue. The original venue for a criminal case is the county in which the crime was committed. NMSA 1978, [~~Section~~] § 30-1-14 [~~NMSA 1978~~] (1963).

Paragraphs [~~B~~] C and [~~C~~] D of this rule were derived from Rules 12(b)(1) and (2) and 12(f) of the Federal Rules of Criminal Procedure. *See generally*[~~,~~] 48 F.R.D. 553, 579 (1970) [~~and~~] ; 62 F.R.D. 571, 287-92 (1974). Unlike the federal rule, Paragraph [~~C~~] D of this rule does not include motions to suppress evidence as a matter which must be raised prior to trial. If a motion to suppress is made prior to trial, it is governed by Rule 5-212. Subparagraph (2) of Paragraph [~~C~~] D, and Paragraph [~~G~~] H of this rule superseded decisions holding that motions to quash an indictment must be raised prior to the arraignment and plea. *See* NMSA 1978, [~~Section~~] § 31-6-3 [~~NMSA 1978~~]; *State v. Elam*, 1974-NMCA-075, 86 N.M. 595, 526 P.2d 189 [~~(Ct. App.), cert. denied, 86 N.M. 593, 526 P.2d 187 (1974)~~].

Paragraph [~~H~~] I was added in 1999 to provide an affirmative duty of an attorney to give five days notice of withdrawal of a motion. Failure to provide adequate notice can result in unnecessary costs. *See State v. Rivera*, 1998-NMSC-024, 125 N.M. 532, 964 P.2d 93. A willful violation of this paragraph can result in contempt of court and the imposition of disciplinary action. *See* Rule 5-112 NMRA. Paragraph [~~H~~] I is intended to preclude local rules which may result in imposition of costs

incurred by the court because of an alleged negligent failure of the attorney to provide adequate notice of the withdrawal of a motion. The committee is of the opinion that such a rule would have a chilling effect upon the zealous representation of a defendant in a criminal case.

This rule was amended in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our Rules of Criminal Procedure. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 ("Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases."). Consistent with Rule 12-201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn.

[As amended by Supreme Court Order No. , effective .]

6-304. Motions.

A. Defenses and objections that may be raised. Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion.

B. Motion requirements. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions shall be served on each party as provided by Rule 6-209 NMRA.

C. Unopposed motions. The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order initialed by the opposing party shall accompany the motion. The motion is not granted until the order is approved by the court.

D. Opposed motions. The motion shall recite that concurrence of the opposing party was requested or shall specify why no such request was made. The moving party shall request concurrence from the opposing party unless the motion is a

(1) motion to dismiss;
(2) motion regarding bonds and conditions of release;
(3) motion for new trial;
(4) motion to suppress evidence; or
(5) motion to modify a sentence under Rule 6-801 NMRA.

Notwithstanding the provisions of any other rule, a party may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions, or other documentary evidence in support of the motion may be filed with the motion.

E. Response. Unless otherwise specifically provided in these rules or by order of the court, if a party wants to file a written response to a motion, the written response shall be filed and served within fifteen (15) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

F. Suppression of evidence.

(1) In cases within the trial court's jurisdiction

(a) a person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence; and

(b) a person aggrieved by a confession, admission, or other evidence obtained through allegedly unconstitutional means may move to suppress such evidence.

(2) Unless otherwise ordered by the court, a motion to suppress shall be filed at least twenty (20) days before trial or the time specified for a motion hearing, whichever is earlier. Except for good cause shown, a motion to suppress shall be filed and decided prior to trial.

(3) Unless otherwise ordered by the court, the prosecution shall file a written response to a motion to suppress within fifteen (15) days after service of the motion. If the prosecution fails to file a response within the prescribed time period, the court may rule on the motion with or without a suppression hearing.

G. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the court at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal. The court may rule on a motion to reconsider with or without a hearing.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. , effective .]

Committee commentary. — Although Paragraph E does not require a written response to every motion, a court may order a party to file a written response to a motion. Alternatively, to facilitate docket and case management, courts are encouraged to issue scheduling orders with specific deadlines for written motions and responses. To the extent ~~of~~ any conflict exists, the deadlines in a court order supersede the deadlines in this rule.

A motion to suppress evidence under Paragraph F of this rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification).

In 2017, the committee moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline for filing either a motion to suppress or a response, the party may ask the court, in its discretion, to grant a time extension under Rule 6-104(B) NMRA, a continuance under Rule 6-601(A) NMRA, or an extension of the time for commencement of trial under Rule 6-506(C) NMRA.

The paragraph addressing suppression motions previously was amended in 2013 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held that, absent good cause shown, motions to suppress must be filed prior to trial and suppression issues must be adjudicated prior to trial to preserve the state's right to appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA and committee commentary. Prior to the entry of a final judgment in magistrate court, the state may obtain judicial review of an order suppressing evidence by filing a nolle prosequi and reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *see also* Rule 6-506.1 NMRA. But if the trial court enters an order at trial suppressing evidence and concludes that any remaining evidence is

insufficient to proceed against the defendant, the defendant is acquitted, and the defendant's double jeopardy rights preclude the state from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior to trial ensures that the state's right to appeal any order suppressing evidence will be preserved.

If a defendant raises a suppression issue at trial, the trial judge may order a continuance under Rule 6-601(A) in order to ascertain whether there is good cause for the defendant's failure to raise the issue prior to trial. Examples of good cause may include, but are not limited to, failure of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to trial, failure of either party to provide discovery, or the discovery of allegedly suppressable evidence during the course of the trial. If good cause is shown, the judge may excuse the late motion and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 ("Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases."). A motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn. A jury verdict is not a ruling of the court and therefore may not be reconsidered pursuant to this rule. *See Jaramillo v. O'Toole*, 1982-NMSC-011, 97 N.M. 345, 639 P.2d 1199 (holding that a magistrate court does not have jurisdiction to set aside a jury verdict).

[Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. _____, effective _____.]

7-304. Motions.

A. **Defenses and objections that may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion.

B. **Motion requirements.** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions shall be served on each party as provided by Rule 7-209 NMRA.

C. **Unopposed motions.** The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order initialed by opposing counsel shall accompany the motion. The motion is not granted until the order is approved by the court.

D. **Opposed motions.** The motion shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The moving party shall request concurrence from opposing counsel unless the motion is a

(1) motion to dismiss;

(2) motion regarding bonds and conditions of release;

(3) motion for new trial;

(4) motion to suppress evidence; or

(5) motion to modify a sentence under Rule 7-801 NMRA.

Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions, or other documentary evidence in support of the motion may be filed with the motion.

E. **Response.** Unless otherwise specifically provided in these rules or by order of the court, if a party wants to file a written response to a motion, the written response shall be filed and served within fifteen (15) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

F. **Suppression of evidence.**

(1) In cases within the trial court's jurisdiction

(a) a person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence; and

(b) a person aggrieved by a confession, admission, or other evidence obtained through allegedly unconstitutional means may move to suppress such evidence.

(2) Unless otherwise ordered by the court, a motion to suppress shall be filed at least twenty (20) days before trial or the time specified for a motion hearing, whichever is earlier. Except for good cause shown, a motion to suppress shall be filed and decided prior to trial.

(3) Unless otherwise ordered by the court, the prosecution shall file a written response to a motion to suppress within fifteen (15) days after service of the motion. If the prosecution fails to file a response within the prescribed time period, the court may rule on the motion with or without a suppression hearing.

G. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the court at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal. The court may rule on a motion to reconsider with or without a hearing.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 16-8300-029, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — A motion to suppress evidence under Paragraph F of this rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification). In 2016, the committee moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline for filing either a motion to suppress or a response, the party may ask the court, in its discretion, to grant a time extension under Rule 7-104(B) NMRA, a continuance under Rule 7-601(A) NMRA, or an extension of the time for commencement of trial under Rule 7-506 (C) NMRA.

The paragraph addressing suppression motions previously was amended in 2013 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held that, absent good

cause shown, motions to suppress must be filed prior to trial and suppression issues must be adjudicated prior to trial in order to preserve the state's right to appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA & committee commentary. Prior to the entry of a final judgment in metropolitan court, the state may obtain judicial review of an order suppressing evidence by filing a nolle prosequi and reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *State v. Gardea*, 1999-NMCA-116, ¶ 5, 128 N.M. 64, 989 P.2d 439; *see also* Rule 7-506.1 NMRA. But if the trial court enters an order at trial suppressing evidence and concludes that any remaining evidence is insufficient to proceed against the defendant, the defendant is acquitted, and the defendant's double jeopardy rights preclude the state from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior to trial ensures that the state will be able to exercise its right to appeal any order suppressing evidence.

If a defendant raises a suppression issue at trial, the trial judge may order a continuance under Rule 7-601(A) in order to ascertain whether there is good cause for the defendant's failure to raise the issue prior to trial. Examples of good cause may include, but are not limited to, failure of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to trial, failure of either party to provide discovery, or the discovery of allegedly suppressable evidence during the course of the trial. If good cause is shown, the judge may excuse the late motion and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 ("Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases."). Consistent with Rule 12-201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn.

[Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-029, effective for all cases pending or filed on or after December 31, 2016; 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. _____, effective _____.]

8-304. Motions.

A. **Defenses and objections that may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion.

B. **Motion requirements.** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions shall be served on each party as provided by Rule 8-208 NMRA.

C. **Unopposed motions.** The moving party shall determine whether or not a motion will

be opposed. If the motion will not be opposed, an order initialed by the opposing party shall accompany the motion. The motion is not granted until the order is approved by the court.

D. **Opposed motions.** The motion shall recite that concurrence of the opposing party was requested or shall specify why no such request was made. The moving party shall request concurrence from the opposing party unless the motion is a

(1) motion to dismiss;
(2) motion regarding bonds and conditions of release;
(3) motion for new trial;
(4) motion to suppress evidence; or
(5) motion to modify a sentence under Rule 8-801 NMRA.

Notwithstanding the provisions of any other rule, a party may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions, or other documentary evidence in support of the motion may be filed with the motion.

E. **Response.** Unless otherwise specifically provided in these rules or by order of the court, if a party wants to file a written response to a motion, the written response shall be filed and served within fifteen (15) days after service of the motion. Affidavits, statements, depositions, or other documentary evidence in support of the response may be filed with the response.

F. **Suppression of evidence.**

(1) A person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence; and a person aggrieved by a confession, admission, or other evidence obtained through allegedly unconstitutional means may move to suppress such evidence.

(2) Unless otherwise ordered by the court, a motion to suppress shall be filed at least twenty (20) days before trial or the time specified for a motion hearing, whichever is earlier. Except for good cause shown, a motion to suppress shall be filed and decided prior to trial.

(3) Unless otherwise ordered by the court, the prosecution shall file a written response to a motion to suppress within fifteen (15) days after service of the motion. If the prosecution fails to file a response within the prescribed time period, the court may rule on the motion with or without a suppression hearing.

G. **Motions to reconsider.** A party may file a motion to reconsider any ruling made by the court at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered before or after the judgment and sentence will toll the time to appeal only if the motion is filed within the permissible time for initiating the appeal. The court may rule on a motion to reconsider with or without a hearing.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — Although Paragraph E does not require a written response to every motion, a court may order a party to file a written response to a motion. Alternatively, to facilitate docket and case management, courts are encouraged to issue scheduling orders with specific deadlines for written motions and responses. To the extent of any conflict, the deadlines in

a court order supersede the deadlines in this rule.

A motion to suppress evidence under Paragraph F of this rule may be used to suppress or exclude evidence obtained through an unlawful search and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification).

In 2017, the committee moved the suppression provisions from Paragraph B to Paragraph F of this rule and added new time deadlines for motions to suppress and for responses. If a party cannot meet the time deadline for filing either a motion to suppress or a response, the party may ask the court, in its discretion, to grant a time extension under Rule 8-104(B) NMRA, a continuance under Rule 8-601(A) NMRA, or an extension of the time for commencement of trial under Rule 8-506(C) NMRA.

The paragraph addressing suppression motions previously was amended in 2013 in response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held that, absent good cause shown, motions to suppress must be filed prior to trial and suppression issues must be adjudicated prior to trial in order to preserve the state's right to appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA and committee commentary. Prior to the entry of a final judgment in municipal court, the prosecution may obtain judicial review of an order suppressing evidence by dismissing the charges and reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25, 28, 138 N.M. 441, 121 P.3d 1040; *see also* Rule 8-506.1 NMRA. But if the municipal court enters an order at trial suppressing evidence and concludes that any remaining evidence is insufficient to proceed against the defendant, the defendant is acquitted, and the defendant's double jeopardy rights preclude the municipality from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*, 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior to trial ensures that the municipality will be able to exercise its right to appeal any order suppressing evidence.

If a defendant raises a suppression issue at trial, the trial judge may order a continuance under Rule 8-601(A) in order to ascertain whether there is good cause for the defendant's failure to raise the issue prior to trial. *See Marquez*, 2012-NMSC-031, ¶ 16. Examples of good cause may include, but are not limited to, failure of the prosecution to disclose evidence relevant to the motion to suppress to the defense prior to trial, failure of either party to provide discovery, or the discovery of allegedly suppressable evidence during the course of the trial. If good cause is shown, the judge may excuse the late motion and hold a suppression hearing. Absent good cause shown, the judge may deny the motion for failure to comply with the rule.

Paragraph G was added in 2019 to affirmatively provide for motions to reconsider, which have long been recognized in common law though not in our rules. *See State v. Suskiewich*, 2014-NMSC-040, ¶ 12, 339 P.3d 614 ("Although our procedural rules do not grant the State an express right to file a motion to reconsider a suppression order, the common law has long recognized the validity and utility of motions to reconsider in criminal cases."). Consistent with Rule 12-201 NMRA, a motion to reconsider filed within the permissible time period for initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed of or withdrawn.

[Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No.

_____, effective _____.]

Chambers of
Judge Sandra Engel
Chief Judge
Metropolitan Court
Division XI

State of New Mexico
Bernalillo County
Metropolitan Court

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April 3, 2019

Via email

Joey D. Moya
Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

Re: Proposal 2019-008 [Rule 1-073 (Appeal from metropolitan court on the record)]; and Proposal 2019-010 [Rule 7-304 (Motions)].

Dear Mr. Moya:

On behalf of the Bernalillo County Metropolitan Court ("Metro Court"), I am submitting the Court's response to Proposals 2019-008 and 2019-010 to amend the rules of civil procedure for District Courts and rules of criminal procedure for Metro Court.

Proposal 2019-008 - Rule 1-073 (Appeal from metropolitan court on the record)

If HB 279 is signed into law,[1] (making Metro Court a court of *non-record* for cases related to the Uniform Owner-Resident Relations Act ["UORRA"], NMSA 1978, §§ 47-8-1 to -52), the proposed amendment to Rule 1-073 would be rendered unnecessary. This is because HB 279 would make cases under UORRA, subject to an appeal *de novo* in District Court. If there is a trial *de novo* in the District Court, the need for a mandate or any other type of remand to Metro Court would be duplicative and a waste of judicial resources. After a trial *de novo*, the District Court would be in the best position to carry out its own Judgment without the need for any Metro Court involvement. *Compare* Rule 2-705 (de novo appeal of non-record civil cases from magistrate courts); and *State v. Trujillo*, 1999-NMCA-003 (restating that non-record criminal cases appealed from Metro Court to the District Court are reviewed as appeals *de novo*, requiring a new trial).

Since under HB 279 the District Court would have complete jurisdiction over *de novo* appeals under UORRA, there would be no need to issue mandates to Metro Court for enforcement of restitution and the proposed extra fifteen (15) days would be unnecessary. If amendments related to additional time are granted, it should be noted that when evictions are warranted, the

[1] If the Governor does not sign or veto HB 279 into law then it will be "pocket vetoed" on April 5, 2019, since the bill does not have an emergency clause.

additional time becomes problematic due to statutory language in UORRA requiring writs to be issued within three to seven days from the date of the judgment.

In addition, the enactment of HB 279 will presumably create an increased workload for the District Court. It is very likely that plaintiffs who operate large residential complexes will elect to file at Metro Court at all, since District Court would have complete jurisdiction to issue writs, etc. This is currently the common practice of landlords in other magistrate jurisdictions.

Proposal 2019-010 - Rule 7-304 (Motions)

While Metro Court understands that this proposed Rule change is a largely a codification of a common practice in misdemeanor criminal cases, the language of the proposed change should be amended to more clearly state the intention of the proposal. Specifically, the proposed language does not explicitly state that it is the *Metro Court* Judge who will be entering the order on any motion to reconsider under proposed Rule 1-073. Since the language is not explicit in this regard, there is a concern that parties may file "Rule 1-073(G)" motions with the District Court, which would create confusion and raise unnecessary and time-consuming questions about jurisdiction, and waste judicial resources with needless hearings and other proceedings. To address these concerns, Metro Court respectfully proposes the following amendments to Proposal 2019-010:

A party may file at the Metropolitan court a motion to reconsider any ruling made by ~~the~~ a Metropolitan court judge at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered by a Metropolitan court judge before or after the judgment and sentence will toll the time to appeal only if the motion is filed at the Metropolitan court within the permissible time for initiating the appeal. The Metropolitan court judge may rule on a motion to reconsider with or without a hearing.

It is the view of Metro Court that the above amendments would clarify the ambiguities in the current Proposal 2019-010, and stem and confusion or abuse such ambiguities may produce.

We appreciate the opportunity to share our input and concerns regarding these proposed changes. As always, please feel free to contact us if you wish to discuss these matters further.

Very truly yours,

Chief Judge Sandra Engel

cc: Judges of the Metropolitan Court
Robert Padilla, Court Executive Officer
Arthur W. Pepin, Director, Administrative Office of the Court