PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS
PROPOSAL 2020-015

March 3, 2020

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rule 5-210 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 2, 2020, 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.

5-210. Arrests without a warrant; arrest warrants.

A. **To whom directed.** Whenever a warrant is issued in a criminal action, including by any method authorized by Paragraph F of Rule 5-211 NMRA, it shall be directed to a full-time salaried state or county law enforcement officer, a municipal police officer, a campus ~~[security]~~ police officer or an Indian tribal or pueblo law enforcement officer. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the case file. The person obtaining the warrant shall cause it to be entered into a law enforcement information system. Upon arrest the defendant shall be brought before the court without unnecessary delay.

B. **Arrest.** The warrant shall be executed by the arrest of the defendant. If the arresting officer has the warrant in his possession at the time of the arrest, a copy shall be served on the defendant upon arrest. If the officer does not have the warrant in his possession at the time of the arrest, the officer shall then inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable.

C. **Return.** The arresting officer shall make a return of the warrant, or any duplicate original, to the court which issued the warrant and notify immediately all law enforcement agencies, previously advised of the issuance of the warrant for arrest, that the defendant has been arrested. The return shall be docketed in the case file.

D. **Arrests without a warrant.** If the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, and upon a showing of prejudice, the complaint may be dismissed without prejudice or defendant may be released from custody. If the defendant is in custody and the court is open, the criminal complaint shall be filed immediately with the court. If the court is not open and the defendant remains in custody, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court as soon as practicable.

E. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon the arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective September 1, 1990; November 1, 1991; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — For the [~~rule~~] rules governing execution and return of arrest warrants issued by the magistrate, metropolitan and municipal courts, see Rules 6-206, 7-206 and 8-206 NMRA, which are substantially identical to this rule. *See also*[~~, Commentary to~~] Rule 5-301 NMRA comm. cmt.

Although not explicit in this rule, pursuant to NMSA 1978, Section 33-3-28, detention officers have the same authority as peace officers "with respect to arrests and enforcement of laws when on the premises of a local jail[.]"

[~~Paragraph B of this rule was derived from Rule 4(d)(3) of the Federal Rules of Criminal Procedure. *See* 62 F.R.D. 271-72 (1974). In a case decided without reference to Paragraph B of this rule, the court of appeals has upheld that physical possession of the warrant by the officer at the time of the arrest is not essential to the validity of the arrest, assuming that the warrant is otherwise valid.~~] The Court of Appeals has held that "physical possession of the warrant is not essential to a lawful arrest when the validity of the arrest warrant is not involved." *See State v. Grijalva*, 1973-NMCA-061, 85 N.M. 127, 509 P.2d 894 [~~(Ct. App. 1974)~~].

Paragraph D was added in 1990 to require in warrantless arrest cases that the defendant be given a copy of the criminal complaint prior to being transferred to the custody of a detention facility. Similar language was added to Rules 6-201, 7-201 and 8-201 NMRA. The right to a copy of the criminal charges is no greater than the right of a person accused of a motor vehicle violation to a copy of the citation. *See* NMSA 1978, § [~~Section~~] 66-8-123 [~~NMSA 1978~~] (2013), which provides that a copy of a traffic citation be given to the defendant. A traffic citation is a criminal complaint even though it is not verified. [~~(See Sections 29-5-1.1 and 66-8-131 NMSA 1978)~~] *See* NMSA 1978, § 66-8-131 (1990); *see also* NMSA 1978, § 29-5-1.1 (1989). If the defendant remains in custody, the complaint must be filed with the court at the time it is given to the defendant or if the court is closed, the next business day.

The right to a copy of the criminal complaint was added to this rule so that the defendant has notice of the criminal charges.

In 1991, the Supreme Court amended the criminal complaint form to delete the requirement that the complaint be sworn to before a notary or judicial officer before it is filed with the court.

Law enforcement officers are required to swear or affirm under penalty of perjury that the facts set in the complaint are true to the best of their information and belief. There is no absolute requirement that a copy of a criminal complaint be given to a defendant who, because of drugs, alcohol or rage is unable to read and understand the charges. Rather, it would be a better practice to place the complaint with other belongings of the defendant until such time as the defendant can understand the nature of the charges. [~~It is noted that under Section 43-2-22 NMSA 1978 of the Detoxification Act, an intoxicated person may be detained in jail in protective custody for a 12 hour period without criminal charges. This time may be extended by a medical professional. Section 43-2-22 NMSA 1978. In this situation no criminal complaint need be served on the defendant who is being held for protective custody.~~]

[~~Rule 5-210 NMRA~~] This rule does not provide a precise definition as to the point in time at which a defendant is deemed to have been transferred to the custody of a detention facility. Nothing in these rules prevents the police from briefly detaining a defendant in a detention facility pending completion of preliminary police investigatory procedures so long as the police have not transferred jurisdiction to release the defendant to the detention facility. The police, however, must be free to release the defendant if, after such preliminary investigation and screening, charges are not filed.

The defendant has a number of rights prior to arraignment or first appearance. These preliminary rights include:

(a) The statutory right to 3 telephone calls within 20 minutes after detention; [~~[Section 31-1-5 NMSA 1978]~~] NMSA 1978, § 31-1-5 (1973)

(b) In warrantless arrest and detention cases, the right to be given a copy of the criminal complaint prior to transfer to custody of a detention facility; and

(c) In warrantless arrest and detention cases, the constitutional right to a prompt probable cause determination. *See* [~~Commentary,~~] Rule 5-301 [~~NMRA~~] & comm. cmt.

[~~Unlike the 6-month trial rules, this rule does not contain a provision requiring dismissal of the complaint for failure to provide the defendant in a warrantless arrest case with a copy of the complaint prior to transfer to a detention facility.~~] The court may dismiss criminal charges for denying an accused the right to 3 telephone calls, the right to a copy of the criminal complaint, or the right to a prompt probable cause determination if the court finds that the denial of one of these rights resulted in prejudice to the defendant or if the court finds that the law enforcement officers acted in bad faith. *See State v. Bearly*, 1991-NMCA-022, 112 N.M. 50, 811 P.2d 83 [~~(Ct. App. 1991). *See*~~]; *see also State v. Gibby*, 1967-NMSC-219, 78 N.M. 414, [~~418,~~] 432 P.2d 258 ~~[(1967)~~]. [As revised, effective November 1, 1991; as amended by Supreme Court Order No. _____, effective _____.]

March 23, 2020

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RE: Proposal 2020-015; Rule 5-210 NMRA

Please accept for consideration the following comments which are strictly my own and do not represent any views of the district court for which I work.

Rule 5-210 (A) & (C)

The district court does not have a "case file" in which to docket an arrest warrant affidavit, the warrant, the return on the warrant nor the associated criminal complaint. Only the district attorney may open a criminal case in the district court by filing the usual *Criminal Information* or, more rarely, a *Criminal Complaint*. Law enforcement officers are not allowed to practice law in the district court and cannot commence a prosecution. Thus they cannot file a criminal complaint in the district court or otherwise open case or a "case file."

Of course district court judges sign arrest warrants all the time. However, the warrants have a magistrate court caption. The law enforcement officer files the paperwork in the magistrate court and although the actual warrant is signed by a district court judge, return is made to the magistrate court.

(A) I recommend changing the proposed language to: "A copy of the warrant shall be docketed in the ~~case file~~ court as captioned on the warrant."

(C) The existing language in subsection (C) that directs that the return be made "to the court which issued the warrant" is ambiguous. We have interpreted "the court which issued the warrant" to mean the court with which the warrant is captioned. In this sense, "the court" is not the particular judge (such as a district court judge) who signed the warrant, but the court in the caption (usually the magistrate court). I would like to recommend that the existing language be changed to: ". . .the court ~~which issued~~ as captioned on the warrant." Then, I suggest, the proposed final sentence that "The return shall be docketed in the case file" can be eliminated.

Rule 5-210 (D)

The proposed changes to Rule 5-201 (D) will do very little to accomplish what is apparently in view – to provide for dismissal of a criminal complaint under the

circumstances proposed. The reason is because the district attorney very, very rarely files criminal complaints in the district court. Rule 5-201 (D) is cast entirely in terms of the handling of a criminal complaint. Subsection (D) is triggered in the district court only in the rare situation where a criminal complaint is filed in the district court.

Since criminal complaints are more often filed in the magistrate, metropolitan and municipal courts, it seems to me that including the entire provision of 5-201 (D) would be more effective if it were also included in the rules of criminal procedure for the those courts.

Thank you for your consideration of these comments.

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Google Groups

comments on proposed rule changes

Charles Knoblauch <quidproquo@zianet.com> Apr 17, 2020 2:31 PM

Posted in group: **nmsupremecourtclerk**

Proposal 2020-014
This amendment appears to be a good in granting a remedy for the non-feasance of the district attorney on abiding by the rules. There have been too many instances of prosecutors acting as though they are above the rules.
Proposal 2020-015
This amendment rectifies a long standing problem wherein an accused is arrested and jailed without knowing his charges. It is a not uncommon scenario for a defendant to contact a lawyer from jail and ask for advice. Without the defendant having the charging document in hand, counsel is left with merely guessing as to what the charges might be and their severity when attempting to advise the defendant. Further, paragraph E is greatly needed to ensure the arresting officer actually removes an arrest warrant from the system—too often someone is released from custody only to find that his warrant is still active and then suffers another arrest.
Proposal 2020-019
You need to go back to the drawing board on this UJI. The addition of “intent” to the knowingly might work. Please review the statute.
Proposal 2020-021
I like this new UJI. It may put a bit of pressure on prosecuting authorities to be a bit more careful in handling evidence.

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