

1 **5-601. [~~Pretrial motions, defenses and objections~~] Motions.**

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

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

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

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

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

11 (2) defenses and objections based on defects in the complaint, indictment or
12 information other than a failure to show jurisdiction in the court or to charge an offense, which
13 objections shall be noticed by the court at any time during the pendency of the proceeding. Failure
14 to present any such defense or objection, other than the failure to show jurisdiction or charge an
15 offense, constitutes a waiver thereof, but the court for cause shown may grant relief from the
16 waiver. If any such objection or defense is sustained and is not otherwise remediable, the court
17 shall order the complaint, indictment or information dismissed.

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

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

22 (2) A motion to reconsider may be filed at any time before entry of the
23 judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order

1 entered before or after the judgment and sentence will toll the time to appeal only if the motion is
2 filed within the permissible time for initiating the appeal.

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

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

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

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

16 [As amended, effective May 1, 1999; as amended by Supreme Court Order No. 19-8300-018,
17 effective for all cases filed or pending on or after December 31, 2019.]

18 **Committee commentary.** — See NMSA 1978, [Sections] §§ 38-3-3 to [38-3-8 NMSA
19 1978] 38-3-7 (1880, as amended through 2003), for the statutes pertaining to change of venue. The
20 original venue for a criminal case is the county in which the crime was committed. NMSA 1978,
21 [Section] § 30-1-14 [NMSA-1978] (1963).

22 Paragraphs ~~[B]~~ **C** and ~~[C]~~ **D** of this rule were derived from Rules 12(b)(1) and (2) and 12(f)
23 of the Federal Rules of Criminal Procedure. See generally~~[,]~~ 48 F.R.D. 553, 579 (1970) ~~[and]~~; 62

1 F.R.D. 571, 287-92 (1974). Unlike the federal rule, Paragraph [E] D of this rule does not include
2 motions to suppress evidence as a matter which must be raised prior to trial. If a motion to suppress
3 is made prior to trial, it is governed by Rule 5-212. Subparagraph (2) of Paragraph [E] D, and
4 Paragraph [G] H of this rule superseded decisions holding that motions to quash an indictment
5 must be raised prior to the arraignment and plea. *See NMSA 1978, [Section] § 31-6-3 [NMSA*
6 *1978]; State v. Elam, 1974-NMCA-075, 86 N.M. 595, 526 P.2d 189 [(Ct. App.), cert. denied, 86*
7 *N.M. 593, 526 P.2d 187 (1974)].*

8 Paragraph [H] I was added in 1999 to provide an affirmative duty of an attorney to give
9 five days notice of withdrawal of a motion. Failure to provide adequate notice can result in
10 unnecessary costs. *See State v. Rivera, 1998-NMSC-024, 125 N.M. 532, 964 P.2d 93.* A willful
11 violation of this paragraph can result in contempt of court and the imposition of disciplinary action.
12 *See Rule 5-112 NMRA.* Paragraph [H] I is intended to preclude local rules which may result in
13 imposition of costs incurred by the court because of an alleged negligent failure of the attorney to
14 provide adequate notice of the withdrawal of a motion. The committee is of the opinion that such
15 a rule would have a chilling effect upon the zealous representation of a defendant in a criminal
16 case.

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

- 1 initiating an appeal will toll the time to file an appeal until the motion has been expressly disposed
- 2 of or withdrawn.
- 3 [As amended by Supreme Court Order No. 19-8300-018, effective for all cases filed or pending
- 4 on or after December 31, 2019.]