

1 **7-304. Motions.**

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

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

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

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

- 16 (1) motion to dismiss;
- 17 (2) motion regarding bonds and conditions of release;
- 18 (3) motion for new trial;
- 19 (4) motion to suppress evidence; or
- 20 (5) motion to modify a sentence under Rule 7-801 NMRA.

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

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

10 F. **Suppression of evidence.**

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

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

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

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

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

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

11 [As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court
12 Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No.
13 16-8300-029, effective for all cases pending or filed on or after December 31, 2016; as
14 amended by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed
15 on or after December 31, 2019.]

16 **Committee commentary.** — A motion to suppress evidence under Paragraph F of
17 this rule may be used to suppress or exclude evidence obtained through an unlawful search
18 and seizure or obtained in violation of any constitutional right. *See, e.g., State v. Harrison,*
19 *1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 (motion to exclude lineup identification).* In
20 2016, the committee moved the suppression provisions from Paragraph B to Paragraph F of

1 this rule and added new time deadlines for motions to suppress and for responses. If a party
2 cannot meet the time deadline for filing either a motion to suppress or a response, the party
3 may ask the court, in its discretion, to grant a time extension under Rule 7-104(B) NMRA,
4 a continuance under Rule 7-601(A) NMRA, or an extension of the time for commencement
5 of trial under Rule 7-506 (C) NMRA.

6 The paragraph addressing suppression motions previously was amended in 2013 in
7 response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held
8 that, absent good cause shown, motions to suppress must be filed prior to trial and
9 suppression issues must be adjudicated prior to trial in order to preserve the state's right to
10 appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA & committee
11 commentary. Prior to the entry of a final judgment in metropolitan court, the state may
12 obtain judicial review of an order suppressing evidence by filing a nolle prosequi and
13 reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25,
14 28, 138 N.M. 441, 121 P.3d 1040; *State v. Gardea*, 1999-NMCA-116, ¶ 5, 128 N.M. 64, 989
15 P.2d 439; *see also* Rule 7-506.1 NMRA. But if the trial court enters an order at trial
16 suppressing evidence and concludes that any remaining evidence is insufficient to proceed
17 against the defendant, the defendant is acquitted, and the defendant's double jeopardy rights
18 preclude the state from appealing. *See Marquez*, 2012-NMSC-031, ¶ 16; *State v. Lizzol*,
19 2007-NMSC-024, ¶ 15, 41 N.M. 705, 160 P.3d 886. Adjudicating suppression issues prior

1 to trial ensures that the state will be able to exercise its right to appeal any order suppressing
2 evidence.

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

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

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

**METROPOLITAN COURT CRIMINAL
RULE 7-304**

**Supreme Court Approved
November 1, 2019**

1 effective for all cases pending or filed on or after December 31, 2016; as amended by
2 Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after
3 December 31, 2017; as amended by Supreme Court Order No. 19-8300-018, effective for
4 all cases pending or filed on or after December 31, 2019.]