

1 **8-304. 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 8-208 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 the  
11 opposing party shall accompany the motion. The motion is not granted until the order is  
12 approved by the court.

13 D. **Opposed motions.** The motion shall recite that concurrence of the opposing  
14 party was requested or shall specify why no such request was made. The moving party shall  
15 request concurrence from the opposing party 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 8-801 NMRA.

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

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

19               (3)    Unless otherwise ordered by the court, the prosecution shall file a  
20 written response to a motion to suppress within fifteen (15) days after service of the motion.

1 If the prosecution fails to file a response within the prescribed time period, the court may  
2 rule on the motion with or without a suppression hearing.

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

9 [As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court  
10 Order No. 06-8300-037, effective March 1, 2007; as amended by Supreme Court Order No.  
11 13-8300-044, effective for all cases filed or pending on or after December 31, 2013; as  
12 amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed  
13 on or after December 31, 2017; as amended by Supreme Court Order No. 19-8300-018,  
14 effective for all cases pending or filed on or after December 31, 2019.]

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

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

5           In 2017, the committee moved the suppression provisions from Paragraph B to  
6           Paragraph F of this rule and added new time deadlines for motions to suppress and for  
7           responses. If a party cannot meet the time deadline for filing either a motion to suppress or  
8           a response, the party may ask the court, in its discretion, to grant a time extension under Rule  
9           8-104(B) NMRA, a continuance under Rule 8-601(A) NMRA, or an extension of the time  
10          for commencement of trial under Rule 8-506(C) NMRA.

11          The paragraph addressing suppression motions previously was amended in 2013 in  
12          response to *City of Santa Fe v. Marquez*, 2012-NMSC-031, 285 P.3d 637. *Marquez* held  
13          that, absent good cause shown, motions to suppress must be filed prior to trial and  
14          suppression issues must be adjudicated prior to trial in order to preserve the state's right to  
15          appeal any order suppressing evidence. *Id.* ¶ 28; *see* Rule 5-212(C) NMRA and committee  
16          commentary. Prior to the entry of a final judgment in municipal court, the prosecution may  
17          obtain judicial review of an order suppressing evidence by dismissing the charges and  
18          reinstating the charges in district court. *See State v. Heinsen*, 2005-NMSC-035, ¶¶ 1, 23, 25,  
19          28, 138 N.M. 441, 121 P.3d 1040; *see also* Rule 8-506.1 NMRA. But if the municipal court  
20          enters an order at trial suppressing evidence and concludes that any remaining evidence is

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

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

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

**MUNICIPAL COURTS  
RULE 8-304**

**Supreme Court Approved  
November 1, 2019**

1 permissible time period for initiating an appeal will toll the time to file an appeal until the  
2 motion has been expressly disposed of or withdrawn.

3 [Adopted by Supreme Court Order No. 13-8300-044, effective for all cases filed or pending  
4 on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016,  
5 effective for all cases pending or filed on or after December 31, 2017; as amended by  
6 Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after  
7 December 31, 2019.]