

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2021-001**

March 17, 2021

The Appellate Rules Committee has recommended amendments to Rule 12-202 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 16, 2021, 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.

12-202. Appeal as of right; how taken.

A. **Filing the notice of appeal.** An appeal permitted by law as of right from the district court shall be taken by filing a notice of appeal with the district court clerk within the time allowed by Rule 12-201 NMRA.

B. **Content of the notice of appeal.** The notice of appeal shall specify

- (1) each party taking the appeal and each party against whom the appeal is taken, except that in appeals concerning children involved in litigation under the provisions of the Children's Code, the provisions of Rule 12-305(H) NMRA, shall be followed;

- (2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

- (3) the name of the court to which the appeal is taken.

C. **Attachment to notice of appeal.** A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. **Additional requirements for appeals in criminal cases.** In addition to the requirements set forth in Paragraphs B and C of this rule, the following are required, when applicable, with a notice of appeal in criminal cases:

- (1) a notice of appeal by the state under Section 39-3-3(B)(2) NMSA 1978 shall also include the certificate of the district attorney required by the statute;

(2) if the notice of appeal names the appellate division of the public defender as appellate counsel, a copy of the order appointing the appellate division of the public defender shall be attached to the notice of appeal; and

(3) if the appeal is an appeal taken from the district court in which a sentence of death or life imprisonment has been imposed, and the proceedings are not audio recorded, a designation of proceedings shall be filed at the same time as the notice of appeal in accordance with Rule 12-211(C)(5) NMRA.

E. **Service of the notice of appeal.** The appellant shall give notice of the filing of a notice of appeal

(1) in criminal cases, including those involving criminal contempt, and in delinquency cases, including those involving serious youthful offenders and youthful offenders, by serving [a] an electronic or paper copy on the [~~appellate court,~~] appellate division of the attorney general, appellate division of the public defender when the public defender is appointed on appeal, trial judge, trial counsel of record for each party other than the appellant, and court monitor or court reporter who took the record;

(2) in the following cases:

(a) child abuse and neglect proceedings;

(b) proceedings involving the termination of parental rights; and

(c) cases arising under the Children's Code and governed by the Children's Court Rules other than delinquency cases, by serving [a] an electronic or paper copy on the [~~appellate court,~~] trial judge, trial counsel of record for each party other than the appellant, children's court attorney for the Children, Youth and Families Department, and court monitor or court reporter who took the record; and

(3) in all other cases, by serving [a] an electronic or paper copy on the [~~appellate court,~~] trial judge, court monitor or court reporter who took the record, and trial counsel of record for each party other than the appellant.

F. **Service on party.** If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

G. **Related appeals.** A party shall disclose any related or prior appeals of which the party is aware in any docketing statement or statement of the issues filed under Rule 12-208 NMRA. A party has a continuing obligation to alert the appellate court to any related appeals that come to the party's attention.

[As amended, effective September 1, 1993; September 15, 2000; as amended by Supreme Court Order No. 05-8300-003, effective March 15, 2005; by Supreme Court Order No. 06-8300-011, effective May 15, 2006; by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 16-8300-011, 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 _____.]

Committee commentary. — In 2016, the paragraph regarding joint and consolidated appeals was withdrawn from this rule, and a new Rule 12-317 NMRA was adopted to address joint and consolidated appeals.

The 2021 amendments to Rule 12-202(E) NMRA eliminate the requirement to serve the notice of appeal on the appellate court and permit electronic service of the notice of appeal.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]