

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2021-002**

March 17, 2021

The Appellate Rules Committee has recommended amendments to Rule 12-208 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.

12-208. Docketing the appeal.

A. **Attorney responsible.** Unless otherwise ordered by the Court, trial counsel shall be responsible for preparing and filing a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court.

B. ~~[When filed]~~ **Filing in the appellate court.** Within thirty (30) days after filing the notice of appeal in all appeals except those under Rules 12-203, 12-203.1, 12-204, 12-603, and 12-604 NMRA, the appellant shall file a docketing statement~~[, if the appeal has been docketed]~~ in the Court of Appeals or file a statement of the issues~~[, if the appeal has been docketed]~~ in the Supreme Court. But if the notice of appeal was filed before the express disposition by order or the automatic denial or the withdrawal of any timely filed post-trial or post-judgment motion listed in ~~[Subparagraphs (1) or (2) of Rule 12-201(D)]~~ Rule 12-201(D)(1) or (2) NMRA, then the docketing statement or statement of the issues shall be filed within thirty (30) days after the notice of appeal becomes effective under Rule 12-201(D)(4) NMRA.

C. **Filing a notice copy of the docketing statement in the district court.** After the docketing statement or statement of the issues is filed in the appellate court, the appellant shall file a notice copy of the filed docketing statement or statement of the issues with the district court clerk. The filing of a notice copy of the docketing statement in district court initiates the preparation of the record proper by the district court clerk, as set forth in Rule 12-209 NMRA.

~~{C.}D.~~ **Service.** The appellant shall serve a copy of the docketing statement or statement of the issues ~~[on the district court clerk, and on those persons who are required to be served with~~

~~a notice of appeal under Rule 12-202 NMRA]~~ by emailing a copy of the docketing statement to the proposed text inbox of the district court judge and additionally serving by electronic mail or otherwise on those persons who are required to be served with a notice of appeal under Rule 12-202 NMRA. Alternatively, the appellant may serve a copy of the docketing statement or statement of the issues by mailing a copy to the district court judge and those persons who are required to be served with a notice of appeal under Rule 12-202 NMRA.

~~[D.]~~E. **Docketing statement in the Court of Appeals; contents.** A docketing statement shall ~~contain~~ include

- (1) a statement of the nature of the proceeding;
- (2) the date of the judgment or order sought to be reviewed, and a statement showing that the appeal was timely filed;
- (3) a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented;
- (4) a statement of the issues presented by the appeal, including a statement of how they arose and how they were preserved in the trial court, but without unnecessary detail. The statement of the issues should be short and concise and should not be repetitious. General conclusory statements such as “the judgment of the trial court is not supported by the law or the facts” will not be accepted;
- (5) for each issue, a list of authorities believed to support the contentions of the appellant and any contrary authorities known by appellant and, where known, the applicable standard of review. Argument on the law shall not be included, but a short, simple statement of the proposition for which the case or text is cited shall accompany the citation;
- (6) a statement specifying whether the entire proceedings were audio recorded, and if not, identifying the portion of the proceedings, other than the record proper, not audio recorded;
- (7) a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any; and
- (8) where applicable, a copy of the order appointing appellate counsel.

~~[E.]~~F. **Statement of the issues in the Supreme Court; contents.** A statement of the issues shall contain each issue to be presented by the appeal, including a statement of how the issue arose, how each issue was preserved in the trial court, and a statement of the court’s jurisdiction, but without unnecessary detail. A statement of the issues shall contain a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any. ~~[The]~~ A statement of the issues should be concise and accurate and should not be repetitious. General conclusory statements such as “the judgment of the trial court is not supported by the law or the facts” will not be accepted.

~~[F.]~~G. **Amendment.** The Court of Appeals may, on good cause shown, allow the amendment of ~~[the]~~ a docketing statement. The Supreme Court may, on good cause shown, allow the amendment of a statement of the issues.

~~[G.]~~H. **Cross-appeals.** A party who files a cross-appeal in accordance with Rule 12-201(B) NMRA shall file and serve on the parties to the appeal a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with this rule within thirty (30) days after the notice of appeal is filed by the cross-appellant and shall pay a docket fee as provided in Paragraph ~~[H]~~ I of this rule.

~~[H.]~~I. **Docket fee.** Except where free process has been granted on appeal, the docket fee shall ~~[accompany]~~ be paid within five (5) days of the filing of a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court, unless the party filing the docketing statement or statement of the issues has already paid a docket fee.

~~[I.]~~J. **Response not permitted.** No response to a docketing statement or statement of the issues is allowed.

~~[J.]~~K. **Failure to serve docketing statement or statement of the issues.** On a monthly basis, the district court clerk shall forward to the appellate court a list of all criminal cases in which a notice of appeal has been on file for at least sixty (60) days but in which ~~[the district court has not been served with a copy of the docketing statement]~~ a notice copy of a docketing statement or a statement of the issues has not been filed with the district court.

[As amended, effective October 1, 1995; April 1, 1998; January 1, 2000; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; 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. _____, effective _____.]

Committee commentary. — In addition to minor technical amendments, Rule 12-208 NMRA was amended in 2013 to accommodate the situation that can arise under the 2013 amendments to Rule 12-201(D) NMRA, under which a notice of appeal may be filed before the disposition of certain timely filed post-trial or post-judgment motions but does not become effective until the last ~~[such]~~ post-trial or post-judgment motion is disposed of expressly by an order of the district court, is automatically denied, or is withdrawn. *See* Rule 12-201(D)(4) NMRA. In ~~[such a]~~ that situation, the docketing statement or statement of issues is not required to be filed until thirty (30) days after the notice of appeal becomes effective, so that the appellant can frame the docketing statement or statement of issues with knowledge of the disposition of the post-trial or post-judgment motions.

Rule 12-208(B) and (C) NMRA provide that a docketing statement or statement of the issues is filed in the appellate court, and a notice copy of the docketing statement or statement of the issues is filed in the district court. The amendment to Rule 12-208(C) NMRA marks a departure from historical practice. Prior to the electronic filing era, a docketing statement or statement of the issues was filed only in the appellate court and served on the district court. Historically, the service of the docketing statement or statement of the issues on the district court signaled the district court clerk to prepare and transmit the record proper to the appellate court. In the electronic filing era, that signal is given by filing a notice copy of the docketing statement or statement of the issues in the district court. Filing a notice copy of the docketing statement or statement of the issues in the district court does not eliminate the need to file the docketing statement or statement of the issues in the appellate court. The filing of the docketing statement or statement of the issues (or a motion requesting an extension of time in which to file a docketing statement or statement of the issues) in the appellate court is what docket an appeal.

[Adopted by Supreme Court Order No. 13-8300-032 , effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]