

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2021-003**

March 17, 2021

The Appellate Rules Committee has recommended amendments to Rule 12-209 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.

12-209. The record proper[~~-(the court file)~~].

A. **Introduction.** This rule governs the preparation and filing of the record proper with the appellate court. The record proper, as defined in Paragraph B of this rule, is utilized by the appellate court in determining the calendar assignment for direct appeals under Rule 12-210 NMRA. The record proper is also utilized in resolving appeals; however, the materials that the appellate court will review in resolving the case depends on the calendar assignment. Cases assigned to the summary calendar are generally reviewed on the record proper and either the docketing statement or statement of issues, in accordance with Rule 12-210(D)(1) NMRA, unless otherwise ordered. Cases assigned to the general calendar are reviewed utilizing the record proper in addition to the other materials as identified in Paragraph F of this rule.

~~[A. — **Composition.**]~~ B. **The record proper.** The [papers and] pleadings, motions, and other papers filed on the docket in the district court [(the court file), or a copy thereof] shall constitute the [record proper.] "record proper." ~~[Depositions shall not be copied. The original, if contained in the court file, shall be filed with the appellate court and shall not be sealed except on the order of the district court or appellate court.]~~ Materials described in Rules 12-211 through 12-212 NMRA are not part of the record proper. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA[of the Rules Governing the Recording of Judicial Proceedings].

~~[B.]~~ C. **Transmission of the record proper.** On receipt of a copy of the docketing statement or statement of issues, the district court clerk shall number consecutively the pages of the record proper and send it to the appellate court so that it will be filed in the appellate court not

later than fourteen (14) days from the date the docketing statement or statement of issues is received by the district court. The first page, after the title page, of the record proper shall consist of a copy of the district court clerk's docket sheet with references to the page number of the record proper for each entry. The district court clerk shall ~~[send a copy of this docket sheet to all counsel of record. The district court clerk shall include]~~ prepare and file in the district court a statement of the costs of the record proper. The appellant shall pay ~~[for the record proper within ten (10) days of the filing of the docketing statement or statement of issues]~~ the costs to the district court clerk within five (5) days of the filing of the statement of costs.

~~[C.]~~D. Correction or modification of the record proper. If anything material to either party is omitted from the record proper by error or accident, the parties by stipulation, or the district court or the appellate court on motion or on its own initiative, may direct that the omission be corrected, and a supplemental record proper transmitted to the appellate court. The appellate court shall notify the parties when it has ordered supplemental material on its own accord.

~~[D.]~~E. Documents filed during pendency of appeal. Copies of all documents filed in the district court during the pendency of the appeal shall be transmitted to the appellate court for inclusion in the record proper, unless otherwise ordered by the appellate court.

~~[E.]~~ ~~Return of record proper.~~ After final determination of the appeal, if the original of the record proper has been filed under Paragraph A of this rule, the appellate court clerk shall return the record proper to the district court clerk.]

F. Record on appeal in general calendar cases. If a case is assigned to the general calendar, the record on appeal is expanded to include the following: the record proper, audio recordings of district court hearings and trials transmitted under Rule 12-211(B) NMRA, stenographic transcripts of district court hearings and trials designated under Rule 12-211(C) NMRA, exhibits admitted by or proffered to the district court that have been designated under Rule 12-212 NMRA, and deposition testimony admitted by or proffered to the district court that has been designated under Rule 12-212(A) NMRA.

[As amended, effective July 1, 1990; January 1, 2000; July 29, 2005; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; 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 _____.]