

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE DISTRICT COURTS
PROPOSAL 2021-007**

March 17, 2021

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rule 1-034 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.

1-034. Production of documents and things and entry ~~upon~~ on land for inspection and other purposes.

A. **Scope.** Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated ~~[documents,]~~ documents, electronically stored information, or any tangible things, which constitute or contain matters within the scope of Rule 1-026 NMRA, and which are in the possession, custody, or control of the party ~~upon~~ on whom the request is served; or

(2) to permit entry ~~upon~~ on designated land or other property in the possession or control of the party ~~upon~~ on whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation ~~thereon~~ on the property, within the scope of Rule 1-026 NMRA.

B. **Procedure.** The request may, without leave of court, be served ~~upon~~ on the plaintiff after commencement of the action and ~~upon~~ on any other party with or after service of the summons and complaint ~~upon~~ on that party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which

electronically stored information is to be produced.

The party [~~upon~~] on whom the request is served shall serve a written response within thirty (30) days after [~~the~~] service of the request, [~~except that~~] but a defendant may serve a response within forty-five (45) days after service of the summons and complaint [~~upon~~] on that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted in its entirety as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the specific reasons for objection. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party must state the form or forms it intends to use. The responding party shall state whether the response includes all responsive materials. If the responding party withholds any responsive materials based on an objection, the objection shall clearly describe with reasonable particularity what materials are being withheld for each objection. The party submitting the request may move for an order under Rule 1-037 NMRA with respect to any objection to, or other failure to respond to [~~the request~~] all or any part [~~thereof~~] of the request, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders,

(1) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(3) a party need not produce the same electronically stored information in more than one form.

C. **Persons not parties.** A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 1-045 NMRA.

[As amended, effective January 1, 1998; as amended by Supreme Court Order No. 09-8300-007, effective May 15, 2009; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary for 2009 amendments. — *See* the 2009 committee commentary to Rule 1-026 NMRA for additional information.

Committee commentary for 2021 amendments. — The 2021 amendments to this rule are similar to the 2015 amendments to Federal Rule of Civil Procedure 34 (Federal Rule 34). First, the amendments to Rule 1-034 NMRA require a responding party to state with specificity the reasons for an objection to a request for production. Second, the amendments to Rule 1-034 NMRA require a responding party to state whether the party withheld any materials based on an objection to a request for production. Like the 2015 amendments to Federal Rule 34, the goal of the amendments to Rule 1-034 NMRA is to curtail the confusion that frequently arises when a responding party makes several objections, but still produces information, leaving the requesting party uncertain whether the responding party withheld any relevant and responsive information based on an objection.

[As amended by Supreme Court Order No. 09-8300-007, effective May 15, 2009; as amended by Supreme Court Order No. _____, effective _____.]



Rule Proposal Comment Form, 03/17/2021, 11:38 am

1 message

Supreme Court <mailservices@sk.s.com>

Wed, Mar 17, 2021 at 11:38 AM

Reply-To: "sam@atkinswalker.com" <sam@atkinswalker.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your
Name: Samuel Walker

Phone
Number: 505-508-4640

Email: sam@atkinswalker.com

Proposal
Number: 2021-007

Comment: I agree whole-heartedly with the proposed change to Rule 1-034 NMRA. I believe it will help streamline the discovery process and relieve some of the unnecessary motions having to be filed with the courts just to obtain clarity.



Comment on proposed Rule 1-034 change

1 message

Josh Harris <jharris@ylawfirm.com>

Fri, Apr 16, 2021 at 9:50 AM

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>, "mailservices@sks.com" <mailservices@sks.com>, "supjdm@nmcourts.gov" <supjdm@nmcourts.gov>, "suptls@nmcourts.gov" <suptls@nmcourts.gov>, "supjls@nmcourts.gov" <supjls@nmcourts.gov>
Cc: Josh Harris <jharris@ylawfirm.com>

Name: Josh A. Harris

Phone: 505379-2226

Email: jharris@ylawfirm.com

Proposal No. 2021-007

Comment: I completely disagree with the added provision that requires a party who withholds any responsive materials, based on an objection, to describe with reasonable particularity what materials are being withheld for each objection.

This addition was not well thought out. As an example.

REQUEST NO. 1: Provide every document your company has ever generated over the last 5 years.

At least one objection would be based on the proposition that, as New Mexico case law has emphasized, fishing expeditions are not allowed under New Mexico law.

But yet, according to the proposed addition to Rule 1-034, all materials being withheld on such an objection must be described with reasonable particularity.

This defeats the whole purpose of the prohibition against fishing expeditions.

It further requires a massive amount of work on behalf of the responding party just to be able to comply with the proposed revision to the rule.

This may be an extreme example, but if a party wanted to make such a request, just to put the opposing party to the burden of responding, they could readily and legally do as a form of harassment.

It would also lead to an enormous increase in the amount of motions for protective orders being filed, in lieu of a response to the requests for production.

This would simply delay the requesting party from receiving any materials, possibly for several months, depending on how busy the trial court's calendar is, and how long it takes to get a hearing set.

You can also see how a request that is not as broad as the example provided, can still result in significant burden on the responding party, or result in significant motion practice.

Respectfully yours,

Josh A. Harris

YLAW, P.C.

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[nmsupremecourtclerk-grp] Proposal 2021-007 – Production of documents and things

1 message

Sharon T. Shaheen <sshahen@montand.com>

Fri, Apr 16, 2021 at 12:16 PM

Reply-To: sshahen@montand.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Cc: "Suzanne C. Odom" <sco@montand.com>

We write to comment on the proposed changes to Rule 1-034. Thank you for the opportunity to do so. The notice circulated on March 17, 2021, summarized the changes as follows:

“The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-034 NMRA to: (1) clarify that in answering a request for production, the responding party shall permit inspection in its entirety unless the responding party files a proper objection; (2) require the responding party to state the specific reasons for an objection to a request for production; (3) require the responding party to state whether the response includes all responsive materials; and (4) if the responding party withholds any responsive materials based on an objection, the objection must clearly describe with reasonable particularity the materials withheld for each objection. The Committee also added committee commentary to further explain the amendments.”

In particular, we are commenting on the proposed changes (3) and (4). In short, we are concerned about being required to “state whether the response includes all responsive materials” and, if not, the extent to which a responding party must “clearly describe with reasonable particularity what materials are being withheld for each objection.” With respect to change (3), the specific proposed text reads as follows: “The responding party shall state whether the response includes all responsive materials.” As an attorney signing the responses to request for production, we cannot state unequivocally that “the response includes all responsive materials.” First, it is impossible to know whether the client has reviewed all files that may contain responsive documents. Second, Rule 1-026(E) contemplates that a supplemental response may be necessary and forthcoming. To require a statement that the response includes all responsive materials is inconsistent with Rule 1-026(E)’s reasonable acknowledgment that additional responsive materials may be found by a responding party subsequent to the first response. This requirement may invite unnecessary disputes relating to what documents are responsive to a particular discovery request.

With respect to change (4), the specific proposed text reads as follows: “If the responding party withholds any responsive materials based on an objection, the objection shall clearly describe with reasonable particularity what materials are being withheld for each objection.” Again, multiple concerns arise. For example, “clearly describing with reasonable particularity” is subjective and thus invites unnecessary discovery disputes. We can anticipate that requesting parties will insist on a description that is similar to that required for a privilege log. Drafting a proper privilege log can require many hours of review and drafting. This should not be required when a responding party raises a valid objection. Moreover, with this requirement, a responding party would be required to review all files that may contain documents responsive to a request that is objectionable. This would defeat the purpose of stating the objection. This requirement would be especially onerous for defendants who are individuals or small companies that do not have the resources to pay for the costs of detailing each document that has been withheld on the basis of an objection. While the Committee may envision a more reasonable description that is clear and particular, our experience leads us to be concerned about the particularity that may be demanded by lawyers of the requesting party and the inevitable motions to compel seeking sanctions that can be anticipated. This would result in a waste of judicial resources and in excessive costs to parties that are not justified.

We note that the committee commentary indicates the proposed changes are similar to the 2015 federal rule amendments. However, the federal rule amendments are significantly different from the committee's proposed changes. The pertinent provisions of Fed. R. Civ. Proc. 34 currently read as follows:

“For each item or category, the response must either state that inspection . . . will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. . . . An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.”

In our view, the federal rule does not impose the two requirements discussed above, which are of concern. For example, it does not require a description of documents that are withheld. It simply requires a statement that responsive materials are being withheld on the basis of a particular objection. We wholly support consistency between the state and federal rules. However, in this instance, it appears that the state rule would impose much greater requirements on the responding party, which are not justified.

Again, thank you for the opportunity to comment on the proposed revisions to Rule 1-034. Please let us know if we can be of further assistance in this matter.

Best regards,

Sharon T. Shaheen

Suzanne C. Odom

Montgomery & Andrews, P.A.

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[nmsupremecourtclerk-grp] Comments to 2021 Proposed Rule Amendments

1 message

Chief Judge Jennifer DeLaney <demdjed@nmcourts.gov>

Fri, Apr 16, 2021 at 10:04 AM

Reply-To: demdjed@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Cc: "Hofacket, Jarod" <demdjkh@nmcourts.gov>, Tom Stewart <sildtfs@nmcourts.gov>, Jim Foy <sildjbf@nmcourts.gov>

Mr. Moya,

Attached are the comments from the District Judges of the Sixth Judicial District concerning the 2021 proposed rule amendments. Please let me know if I need to submit each one separately or if the attached document is sufficient to distribute to each of the rule committees. Thank you,

Chief Judge DeLaney

--

Jennifer E. DeLaney

Chief Judge, Division II

Sixth Judicial District Court

[855 S. Platinum Avenue](#)

[Deming, New Mexico 88030](#)

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2021 Proposed Rule Amendment Comments.docx

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Code of Professional Conduct Committee

Proposal 2021-006 – Lawyer communications and solicitation of clients

[Rules 16-701, 16-702, and 16-703 NMRA; and Withdrawn Rules 16-704 and 16-705 NMRA]

The Code of Professional Conduct Committee proposes to amend Rules 16-701, 16-702, and 16-703 NMRA to incorporate certain of the 2018 amendments to the ABA Model Rules of Professional Conduct. Because the proposed amendments to Rules 16-701, 16-702, and 16-703 also incorporate some provisions and commentary from Rules 16-704 and 16-705 NMRA, the Committee proposes to withdraw Rules 16-704 and 16-705.

No issues regarding this proposed change.

Rules of Civil Procedure for State Courts Committee

Proposal 2021-007 – Production of documents and things

[Rule 1-034 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-034 NMRA to: (1) clarify that in answering a request for production, the responding party shall permit inspection in its entirety unless the responding party files a proper objection; (2) require the responding party to state the specific reasons for an objection to a request for production; (3) require the responding party to state whether the response includes all responsive materials; and (4) if the responding party withholds any responsive materials based on an objection, the objection must clearly describe with reasonable particularity the materials withheld for each objection. The Committee also added committee commentary to further explain the amendments.

No issues regarding this proposed change.

Proposal 2021-008 – Electronic filing and service fees as recoverable costs

[Rules 1-054, 2-701, and 3-701 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 1-054, 2-701, and 3-701 NMRA to clarify that electronic filing and service fees are recoverable costs.

This rule change helps to clarify what is included in fees and that is helpful to the Court.

Proposal 2021-009 – Court trust account requirements

[Rule 1-102 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-102 NMRA to clarify that district courts must deposit litigant funds within two (2) business days of receipt in a bank that is a member of the Federal Deposit Insurance Corporation and in an account that is distinct from the court's accounts for general funds. The Committee additionally proposes to amend Rule 1-102 NMRA to specify that funds deposited in a court trust fund checking account

must be invested and maintained in a financial institution located within the court's judicial district and in accordance with governing statutes and any regulation prescribed by the Director of the Administrative Office of the Courts. The Committee also replaced the references to "social security number" and "employer identification number" with the more-inclusive term "taxpayer identification number," and also cited Form W-9 (Request for Taxpayer Identification Number and Certification) by name.

No comment.

Proposal 2021-010 – Tribal court personal representative
[Rule 1B-102 NMRA; and Forms 4B-801 and 4B-802 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1B-102 NMRA, and Forms 4B-801 and 4B-802 NMRA, to clarify that a domiciliary foreign personal representative includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs. The Committee further proposes to amend Forms 4B-801 and 4B-802 NMRA to recognize tribal court appointments. Finally, the Committee proposes to amend Form 4B-801 NMRA to allow "equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs" to serve as a substitute for Letters of Administration or Letters Testamentary, recognizing that tribal courts may title documents differently than probate courts.

No comment.

Proposal 2021-011 – Summons and order for free process
[Rules 2-202 and 3-202 NMRA; and Forms 4-204 and 4-223 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 2-202 and 3-202 NMRA by replacing "incapacitated" with "incompetent" for consistency with Rules 1-004(I) and 1-017(D) NMRA applicable to the district courts.

The Committee also proposes to amend Rules 2-202 and 3-202 NMRA, as well as Form 4-204 NMRA, to permit *pro se* parties to serve a summons by mail.

Finally, the Committee proposes to amend Form 4-223 NMRA to specify the methods of service a person seeking free service of process must first attempt in the district, magistrate, and metropolitan courts.

The revisions are helpful in making the rule more clear.

Proposal 2021-012 – Title page of transcript of civil proceedings
[Form 4-708 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Form 4-708 NMRA for consistency with the comparable criminal form, Form 9-608 NMRA, to reflect that the court clerk, rather than the judge, issues the title page of a transcript of civil proceedings.

No objections to the new forms as proposed.

Rules of Criminal Procedure for State Courts Committee

Proposal 2021-013 – Order of trial

[Rule 5-607 NMRA; and New Rules 6-603.1 and 7-603.1 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 5-607 NMRA to clarify and make housekeeping changes to its text and committee commentary, and to adopt new Rules 6-603.1 and 7-603.1 NMRA that import Rule 5-607's sequence of trial events into jury trial practice in the magistrate and metropolitan courts.

No objections to the new rules as proposed.

Proposal 2021-014 – Time limits for filing citations

[Rules 6-201, 7-201, and 8-201 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-201, 7-201, and 8-201 NMRA to incorporate an express time limitation for the filing of a citation and an explicit remedy—the potential dismissal of the citation with prejudice—for a late-filed citation.

This is a necessary amendment to each of the above listed rules.

Proposal 2021-015 – Interview subpoenas

[Rule 6-606 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 6-606 NMRA to provide that a judge-issued subpoena in magistrate court will lie “only after good faith efforts to secure an interview . . . have been unsuccessful[,]” the same criterion that governs the issuance of interview subpoenas in metropolitan court under Rule 7-606 NMRA

The changes help to clarify and will reduce the procedure where litigants come straight to the court to obtain an interview subpoena.

Proposal 2021-016 – Time limits for probation violation hearings

[Rules 6-802, 7-802, and 8-802 NMRA]

6-802 (C)(2), 7-802 (C)(2), and 8-802(C)(2) With our current use of technology, there is no reason that a hearing should take two days longer to set if the person is in custody in an out of district detention center. It should be 3 days regardless if the defendant is in detention.

8-802 (D). Municipal ordinances are generally very low-level offenses and allowing someone to remain in custody for 18 days (3 before initial hearing and 15 from that date) seems extremely severe. There should be limited reasons why this kind of case could not be adjudicated with seven days from the initial appearance. The time should be reduced.

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-802, 7-802, and 8-802 NMRA to provide explicit time limits for the holding of a probation violation hearing in the limited jurisdiction criminal courts.

[Proposal 2021-017](#) – *Waiver of counsel and other public defender forms*
[Forms 9-401, 9-403, 9-403A, and 9-403B NMRA; and Withdrawn Form 9-401A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Forms 9-401, 9-403, 9-403A, and 9-403B NMRA, and to withdraw Form 9-401A NMRA, to adopt a single, detailed “Waiver of Counsel Advisement” for use in all courts of criminal jurisdiction, align the form provisions governing the appointment of defense counsel with the current policies of the Law Offices of the Public Defender, and clarify the form provisions governing appeals of indigency determinations.

In the Waiver of Counsel form, the language is definitely much clearer than the previous form; however, there is still a lot of legalese especially in paragraphs six and seven. Additionally, there should be added language that the prosecutor has not duty to assist a self-represented criminal defendant and has no duty of loyalty to him/her.

[Proposal 2021-018](#) – *Dismissal of criminal charges on completion of deferred sentence*
[Form 9-603A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Form 9-603A NMRA to make clear the mandatory nature of the dismissal remedy available to a defendant upon the defendant’s completion of the terms of a deferred sentence without revocation.

No comment.

UJI-Civil Committee

[Proposal 2021-019](#) – *Insurance has no bearing*
[UJI 13-208 NMRA]

The UJI-Civil Committee proposes to amend UJI 13-208 NMRA to align the instruction with jurors’ current understanding of the role played by insurance and to provide for possible use of the instruction prior to the commencement of a trial.

The amendments appear to clarify the UJI, which is helpful.

[Proposal 2021-020](#) – *Request for admission*
[New UJI 13-215 NMRA]

The UJI-Civil Committee proposes to adopt new UJI 13-215 NMRA to address the introduction of admitted facts at trial. The proposed instruction provides jurors with the definition of a request for admission and informs them of the effect of an admitted fact at trial.

These amendments help to streamline the UJI and increase clarity.

Proposal 2021-021 – Unfair Practices Act claims

[New UJI 13-25 Introduction NMRA; New UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and New UJI 13-25 Appendix NMRA]

The UJI-Civil Committee proposes to adopt a new Chapter 25 to the Civil Uniform Jury Instructions to use with Unfair Practices Act (UPA) claims. Proposed Chapter 25 includes new UJI 13-25 Introduction NMRA; new UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and new UJI 13-25 Appendix NMRA. The proposed Introduction orients practitioners and judges to Chapter 25 and explains how the instructions in the chapter may be used with other UJI chapters. Proposed UJI 13-2501 sets out the elements that a plaintiff alleging a UPA violation must prove and is intended for use in all cases alleging a UPA violation. Proposed UJI 13-2502 instructs the jury on the proof required to establish that a defendant engaged in an unconscionable trade practice under the UPA. Proposed UJI 13-2503, -2504, and -2505 are definitional instructions to be used as appropriate in a given case. Proposed UJI 13-2506 provides a damages framework for UPA claims. The proposed Appendix provides a sample set of jury instructions for a hypothetical case containing UPA violations.

The new UJI will help to give the parties a better framework for proceeding in these cases and assisting jurors in their role as fact finders.

UJI-Criminal Committee

Proposal 2021-022 – Explanation of trial procedure

[UJI 14-101 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-101 NMRA to simplify instructions on outside communications and internet use and to clarify that jurors ordinarily will not receive transcripts of witness testimony.

This seems like an excellent rule change. This has always been a challenging part of the jury script.

Proposal 2021-023 – Procedure for instructing on uncharged offenses

[UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA]

The UJI-Criminal Committee proposes to amend the Use Notes to UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378,

14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA to reference the procedure for instruction on uncharged offenses outlined in UJI 14-140 NMRA.

This seems like a helpful correction to make the use of 14-140 mandatory instead of referencing it. I think the old rule was adequate. This is more clear.

Proposal 2021-024 – Stalking and aggravated stalking
[UJI 14-331 and 14-333 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-331 and 14-333 NMRA to conform more closely to the language of NMSA 1978, Section 30-3A-3 (2009), defining the crime of stalking, and NMSA 1978, Section 30-3A-3.1 (1997), defining the crime of aggravated stalking.

I think this change is a reach. The statute changed in 2009. No case has interpreted the statute the way the committee is attempting to, namely that proving that the Defendant was acting without lawful authority is an element for the State to prove. I do not believe the rules committee should be making this fundamental change to the law so long after the statute they are referencing changed.

Proposal 2021-025 - Reliance in fraud
[UJI 14-1640 NMRA]

The UJI-Criminal Committee proposes to amend the committee commentary to UJI 14-1640 NMRA to reference the definition of reliance provided in *State v. Garcia*, 2016-NMSC-034, 384 P.3d 1076, and to remove outdated citations.

No problem with this change. Nice update.

Proposal 2021-026 – Securities offenses
[UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA to update statutory references and style conventions.

No problem with this change. Nice update.

Proposal 2021-027 – Life without possibility of release or parole
[UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029, 14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA]

Good clarity to provide the Court and practitioners guidance on these cases. No issues.

The UJI-Criminal Committee proposes to amend UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029,

14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA to provide instructions for sentencing proceedings for life imprisonment without possibility of release or parole in response to the repeal of the death penalty and in conformity with *State v. Chadwick-McNally*, 2018-NMSC-018, 414 P.3d 326, Rule 5-705 NMRA, and proposed changes to Rule 14-101 NMRA.



Rule Proposal Comment Form, 04/16/2021, 1:12 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 1:13 PM

Reply-To: "caela@harveyfirm.com" <caela@harveyfirm.com>

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Your
Name: Caela Baker
Phone
Number: 505-254-0000
Email: caela@harveyfirm.com
Proposal
Number: 2021-007

Comment: I agree with the proposed changes to Rule 1-034 NMRA. I believe these changes will make the discovery process more transparent and efficient, both for the litigants and the courts. Discovery responses that are made "subject to and without waiving" various objections, or that fail to specify whether documents have been withheld, often result in lengthy delays and time-consuming motion practice. Such changes also reinforce the requirement that counsel must have a good-faith basis for any objections, and that such analysis must occur on a document-specific basis. The proposed changes should have a positive impact on discovery practice and reduce the courts' need to intervene in discovery disputes. These changes are also consistent with the goal that discovery should be open and transparent.



Rule Proposal Comment Form, 04/16/2021, 1:14 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 1:14 PM

Reply-To: "ssanchez@peiferlaw.com" <ssanchez@peiferlaw.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your
Name: Sara Sanchez

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Number: 505-247-4800

Email: ssanchez@peiferlaw.com

Proposal
Number: 2021-007

Comment: I am very concerned about unintended consequences of this proposed change. It may encourage overly broad and improper discovery requests that would almost certainly be drastically cut back by the court, but the responding party still has to incur all the expense, burden and intrusiveness of searching for and identifying all potentially responsive documents (such as "produce every document in your possession at any time about subject x" where the responding party may have to search millions of documents). Or it could encourage improper requests such as "produce counsel's entire litigation file, all memoranda, and all correspondence with the client". Or it could encourage improper, intrusive and burdensome requests to a plaintiff such as "produce every text message you have exchanged with your wife" - the material may clearly be protected and the request may be overbroad but if the objecting party has to identify every responsive document, they will still suffer harm just by objecting to an improper request.



Rule Proposal Comment Form, 04/16/2021, 2:34 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 2:34 PM

Reply-To: "elizabeth.perkins@lewisbrisbois.com" <elizabeth.perkins@lewisbrisbois.com>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your
Name: Elizabeth Perkins
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Proposal
Number: 2021-007

Comment: I believe the proposed changes to Rule 1-034 will create an environment that fosters discovery disputes as opposed to encouraging resolution of such disputes without seeking court involvement. In my experience, most judges emphasize their desire to have disputes resolved without court involvement, or at least without motion practice. I also think the proposed changes requiring the responding party to "state whether the response includes all responsive materials" is particularly problematic. It fails to account for the continually evolving nature of discovery and could have a chilling effect on supplementation for fear that the other side will accuse the responding party of making a misrepresentation when it stated the first response "includes all responsive materials." It is not uncommon for a client to find some responsive document in a drawer or filed away somewhere, etc. and the party or the attorney should not have to have anxiety about whether producing the document is going to invite accusations from the other side. I also believe the proposed changes fail to account for discovery requests that are vague, ambiguous, and unclear as to what may or may not be responsive. Requiring the responding attorney to list every document not produced on the subjective basis of whether an ambiguous request could encompass that document is in and of itself unduly burdensome and will undoubtedly lead to discovery disputes. I also believe the changes will embolden litigants to use discovery as a sword instead of a fact finding tool by creating discovery disputes that would not otherwise exist in an attempt to gain a procedural advantage and eventually request default under United Nuclear.



Rule Proposal Comment Form, 04/16/2021, 3:03 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 3:03 PM

Reply-To: "cpeifer@peiferlaw.com" <cpeifer@peiferlaw.com>

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Your
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Proposal
Number: 2021-007

Comment: The requirement in the proposed revision of Rule 1-034 that an objecting party "describe with reasonable particularity what materials are being withheld for each objection." This is completely unrealistic and not a requirement of the corresponding federal rule. In the case of objections based on relevance, overbreadth and burden, for example, an objecting party would potentially be required have to undertake enormous and expensive effort to search for and locate and describe materials that the party has legitimate objections to searching for, locating, and describing.

Perhaps the Committee would consider eliminating the requirement to identify and describe in particularity the responsive documents and in its place insert a requirement that the objecting party state simply whether or not documents are being withheld. Other details can be elicited during the meet and confer process, and if necessary, further details can be ordered by the judge on the motion to compel.



Rule Proposal Comment Form, 04/16/2021, 3:52 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 3:52 PM

Reply-To: "matthew.barceleau@lewisbrisbois.com" <matthew.barceleau@lewisbrisbois.com>

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Your
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Proposal
Number: Proposal 2021-007

Comment: I disagree with the proposed changes as written. The current language attempts to make something that could be resolved via good faith conferrals, an additional obligation on the parties. This is likely to lead to additional Motions to Compel over the level of specificity provided in identifying what, if any, records were withheld. This is especially problematic when responding to vague and broad requests typically propounded at the onset of the suit, that may encompass items like attorney client communications or attorney work-product, when it is unclear whether the information which is privileged or immune from discovery is even being requested. Such a requirement would make the exercise of listing everything not produced in response to an overly broad, unduly burdensome request, in and of itself over broad and unduly burdensome. Additionally, the requirement to state all responsive materials have been produced, could later result in discovery disputes and motions practice should a party supplement. The proposed change, as written, does not take into consideration the evolving nature of discovery, the ongoing requirement to supplement, and the reality but rather responsive material is located/received that was not previously available.

This proposed change will serve to embolden litigants who use discovery disingenuously to contrive issues of dispute over obscure documents so as to justify unsubstantiated claims of misconduct. Litigants will be subject to a heavy burden on either plaintiff or defense side and counsel will be incentivized to make unreasonable requests. The proposed change would increase discovery disputes and serve to drown the courts rather than keep simple and resolvable disputes from unnecessary judicial intervention.



Rule Proposal Comment Form, 04/16/2021, 4:01 pm

1 message

Supreme Court <mailservices@sks.com>

Fri, Apr 16, 2021 at 4:01 PM

Reply-To: "jessica.marshall@lewisbrisbois.com" <jessica.marshall@lewisbrisbois.com>

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Proposal
Number: 2021-007

Comment: I disagree with the proposed changes as written. The current language attempts to make something that could be resolved via good faith conferrals, an additional obligation on the parties. This is likely to lead to additional Motions to Compel over the level of specificity provided in identifying what, if any, records were withheld. This is especially problematic when responding to vague and broad requests typically propounded at the onset of the suit, that may encompass items like attorney client communications or attorney work-product, when it is unclear whether the information which is privileged or immune from discovery is even being requested. Such a requirement would make the exercise of listing everything not produced in response to an overly broad, unduly burdensome request, in and of itself over broad and unduly burdensome. Additionally, the requirement to state all responsive materials have been produced, could later result in discovery disputes and motions practice should a party supplement. The proposed change, as written, does not take into consideration the evolving nature of discovery, the ongoing requirement to supplement, and that responsive material may be located/received that was not previously available.

This proposed change will serve to embolden litigants who use discovery disingenuously to contrive issues of dispute over obscure documents so as to justify unsubstantiated claims of misconduct. Litigants will be subject to a heavy burden on either plaintiff or defense side and counsel will be incentivized to make unreasonable requests. The proposed change would increase discovery disputes and serve to drown the courts rather than keep simple and resolvable disputes from unnecessary judicial intervention.