

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE  
FOR THE MAGISTRATE, METROPOLITAN, AND MUNICIPAL COURTS  
PROPOSAL 2021-014**

**March 17, 2021**

The Rules of Criminal Procedure Committee has recommended amendments to Rules 6-201, 7-201, and 8-201 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](mailto: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.

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**6-201. Commencement of action.**

A. **How commenced.** A criminal action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of the New Mexico Statutes Annotated, 1978 Compilation, that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed ~~[as soon as practicable]~~ with the magistrate court within five days of the issuance of the citation or, in any event, no later than one day prior to the date cited for the defendant to appear. If the citation is not timely filed, the magistrate court may dismiss the citation with prejudice. All

complaints and citations shall be signed, as defined in Rule 6-210(J) NMRA, and the magistrate court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Magistrate judges have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** Unless otherwise provided by law, the action must be commenced in the magistrate district where the crime is alleged to have been committed.

D. **Arrest without a warrant; criminal complaint.** In all criminal cases, including cases that are not within magistrate court trial jurisdiction, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the magistrate court. If the court is not open and the defendant remains in custody, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court as soon as practicable.

E. **Name of defendant.** In every complaint or citation the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty.  
[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 08-8300-044, effective December 31, 2008; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

## 7-201. Commencement of action

A. **How commenced.** A criminal action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of either the New Mexico Statutes Annotated, 1978 Compilation, or the county or municipal ordinance that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed [~~as soon as practicable~~] with the metropolitan court within five days of the issuance of the citation or, in any event, no later than one day prior to the date cited for the defendant to appear.

If the citation is not timely filed, the metropolitan court may dismiss the citation with prejudice. All complaints and citations shall be signed, as defined in Rule 7-210(J) NMRA, and the metropolitan court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Metropolitan judges have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** Unless otherwise provided by law, the action must be commenced in the metropolitan district where the crime is alleged to have been committed.

D. **Arrest without a warrant; criminal complaint.** In all criminal cases, including cases that are not within metropolitan court trial jurisdiction, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the metropolitan court. If the court is not open and the defendant remains in custody, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court as soon as practicable.

E. **Name of defendant.** In every complaint or citation the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty.

[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 10-8300-012, effective May 10, 2010; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

### **8-201. Commencement of action**

A. **How commenced.** An action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of either the municipal ordinance or the New Mexico Statutes Annotated, 1978 Compilation, that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed [~~as soon as practicable~~] with the municipal court within five days of the issuance of the citation or, in any event, no later than one day prior to the date cited for the defendant to appear. If the citation is not timely filed, the municipal court may dismiss the citation with prejudice. All complaints and citations shall be signed, as defined in Rule 8-209(J) NMRA, and the municipal court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Municipal courts have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** The action shall be commenced in the municipality where the offense is alleged to have been committed.

D. **When commenced.** All prosecutions for the commission of any offense made punishable by ordinance shall be commenced within the time provided by law.

E. **Arrest without a warrant; criminal complaint.** In all municipal court cases, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the municipal court. If the court is not open and the defendant remains in custody, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court as soon as practicable.

F. **Name of defendant.** In every complaint or citation, the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty. [As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 08-8300-047, effective December 31, 2008; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]



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## Rule Proposal Comment Form, 04/16/2021, 8:53 am

1 message

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**Supreme Court** <mailservices@sks.com>

Fri, Apr 16, 2021 at 8:53 AM

Reply-To: "belmjrc@nmcourts.gov" <belmjrc@nmcourts.gov>

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

Your  
Name: John Chavez

Phone  
Number: 5054537125

Email: [belmjrc@nmcourts.gov](mailto:belmjrc@nmcourts.gov)

Proposal  
Number: 2021-014

Comment: I think a time limit is appropriate but I think 5 days is too short for rural courts in large counties like mine, Valencia. Not a problem for NMSP, our Sheriff, or local municipalities but our Isleta Reservation mails citations; I would assume other tribes may do the same. For this reason, I think 7 or 10 days is more appropriate.



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## [nmsupremecourtclerk-grp] Comments to 2021 Proposed Rule Amendments

1 message

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**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

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Jennifer E. DeLaney

Chief Judge, Division II

Sixth Judicial District Court

[855 S. Platinum Avenue](#)

[Deming, New Mexico 88030](#)

(575) 543-1546

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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.



Chambers of  
Judge Maria I. Dominguez  
Chief Judge  
Metropolitan Court  
Division VI

State of New Mexico  
Bernalillo County  
Metropolitan Court

401 Lomas Blvd NW  
Albuquerque, New Mexico 87102  
Telephone (505) 841-8289  
Fax (505) 222-4806

April 16, 2021

SUPREME COURT OF NEW MEXICO  
FILED

APR 16 2021

VIA EMAIL  
Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, NM 87504-0848

Re: Proposal 2021-011: Proposed revisions to Rule 3-202 NMRA; Proposal 2021-014: Proposed revisions to Rule 7-201 NMRA; Proposal 2021-018: Proposed Revisions to Form 9-603A NMRA

Dear Mr. Moya:

On behalf of the Metropolitan Court, we appreciate the opportunity to comment on the proposed changes to the Metropolitan Court's Rules and forms used in the Court. We anticipate that certain concerns may arise if the proposed amendments to Rules 3-202 NMRA; Rule 7-201 NMRA; and Form 9-603 NMRA are adopted:

1. Proposal 2021-011: Proposed revisions to Rule 3-202 NMRA

The Court has concerns about the proposed changes to Rule 3-202(D) NMRA. Bernalillo County Metropolitan Court has many self-represented litigants, and there is a high likelihood that self-represented litigants will not be able to follow precisely the rule of procedure for service of process by mail if parties are allowed to complete their own substitute service of process, which could result in cases being unnecessarily delayed and/or ultimately dismissed for lack of prosecution. The Court recommends that none of the proposed changes be made to Rule 3-202 (D) NMRA.

2. Proposal 2021-014: Proposed revisions to Rules 7-201

The Court has concerns about the sanction for the proposed deadline to file a citation as impeding on the statute of limitations prescribed by the Legislature in Section 30-1-8(D), NMSA 1978. The purpose behind the criminal statute of limitations is "to ensure the timely *initiation of a prosecution.*" *State v. Collier*, 2013-NMSC-015, ¶ 33. A petty misdemeanor offense currently has a one year statute of limitations from the time the crime was committed. See §30-1-8(D),

Joey D. Moya, Chief Clerk  
New Mexico Supreme Court  
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NMSA 1978 (2009). A misdemeanor offense currently has a two year statute of limitations from the time the crime was committed. *See* §30-1-8(C), NMSA 1978 (2009).

The practice in Bernalillo County with regards to traffic stops where the traffic citation is contested, the law enforcement officer is able to issue a motorist a citation with a date to appear to answer for the charges. A deadline to file a traffic citation “prior to the date cited for the defendant to appear” makes sense in traffic cases as the motorist has been given a date to appear in court, however unless the citation is actually filed, there is no case/charge to dismiss. With regard to non-traffic citations that are issued by law enforcement, unlike the traffic citation, these individuals are summonsed into court to answer for the charges.

While the Metropolitan Court understands requesting law enforcement in a rule to file citations promptly with the Court, the Court does not recommend adopting the language, “If the citation is not timely filed, the metropolitan court may dismiss the citation with prejudice.” The State has prosecutorial discretion on whether or not to charge a person with a crime, which charges to bring, and when the charge(s) will be brought so long as it is within the applicable statute of limitations. One of the biggest advantages of allowing prosecutorial discretion is that it promotes judicial economy. Requiring any citation be filed “within five days of the issuance of the citation or, in any event, no later than one day prior to the date cited for the defendant to appear,” removes the discretion from the State whether or not to charge a person with a crime and when the charges will be brought. Everyone, including the defendant, benefits when the State exercises due diligence and ensures a thorough investigation of the charges before they are brought. Of further concern is the risk of an inevitable increase of motions to dismiss being filed as well as an increase of motion hearings which will require additional court time. The proposed amendment provides the Court the remedy of an extreme sanction of dismissal with prejudice for violation of initiating a case by filing a citation after the deadline proposed by this rule amendment. The Court currently has discretion to impose sanctions for the violation of a discovery order that results in prejudice to the opposing party. However, “[e]xtreme sanctions are ‘to be only used in exceptional cases.’” *State v. Harper*, 2011-NMSC-044, ¶ 16, *citing State v. Bartlett*, 109 N.M. at 680, 789 P.2d at 628. Even so, “[T]he mere showing of violation of a discovery order, without a showing of prejudice, is not grounds for sanctioning a party.” *Id.*

3. Proposal 2021-018: Proposed Revisions Criminal Form 9-603A NMRA


With one exception, the Court concurs with the proposed changes to Form 9-603A NMRA, the Order of Dismissal of Criminal Charges Upon Completion of Deferred Sentence. Section 31-20-9, 1978 NMSA provides, “Whenever the *period of deferment* expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges” (emphasis added). The proposed amendment to Form 9-603A NMRA proposes, “it [~~now appearing to the court~~] being shown that [~~the defendant~~] Defendant has [~~fulfilled all of the terms and conditions of the deferred sentence~~] completed the terms of the deferred sentence without revocation so as to satisfy all criminal liability for the crime[s], dismissal of the charges is required under Section 31-20-9 NMSA 1978” (emphasis added). By using “terms” rather than “term” in the proposed

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amendment, implies a completion of the terms and conditions ordered as part of the deferment rather than the completion of the period of time or term of the deferment. Consistent with the language in Section 31-20-9, the language in the order should instead read, "It [~~now appearing to the court~~] being shown that [~~the defendant~~] Defendant has [~~fulfilled all of the terms and conditions of the deferred sentence~~] completed the term[s] of the deferred sentence without revocation so as to satisfy all criminal liability for the crime[s], dismissal of the charges is required under Section 31-20-9 NMSA 1978."

We appreciate the opportunity to share these concerns and our suggestions for changes. As always, please feel free to contact us if you wish to discuss these matters further or if we can provide any additional information.

Very truly yours,

  
Judge Maria I. Dominguez  
Chief Judge

cc: Judges of the Metropolitan Court  
Robert Padilla, Court Executive Officer  
Arthur W. Pepin, Director, Administrative Office of the Court