

**PROPOSED REVISIONS TO THE CRIMINAL FORMS
PROPOSAL 2021-018**

March 17, 2021

The Rules of Criminal Procedure Committee has recommended amendments to Form 9-603A 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.

Form 9-603A. [~~Final order~~] Order [~~on criminal complaint~~] of dismissal upon completion of deferred sentence

[For use with Magistrate Court Rule 6-701 NMRA,
Metropolitan Court Rules 7-701 NMRA and
Municipal Court Rules 8-701 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

No. _____

[STATE OF NEW MEXICO]

[COUNTY OF _____] [CITY OF _____] v.

_____, Defendant

**[~~FINAL~~] ORDER [~~ON~~] OF DISMISSAL OF CRIMINAL [~~COMPLAINT~~] CHARGES
UPON COMPLETION OF DEFERRED SENTENCE**

This court having previously found the defendant guilty and having deferred sentencing of the defendant on the following charge(s) _____

(set forth only charges for which a deferred sentence was entered)

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.

IT IS THEREFORE ORDERED that the criminal charges set forth above [~~be and the same~~] are hereby dismissed with prejudice.

Date: _____

Judge

I, _____, certify that I caused a copy of this order dismissing the criminal charges to be served on Defendant and the parties and attorney(s) of record listed below.

Person making service

Title

(1) _____
(Name of Defendant)

(Address)

(2) _____
(Attorney of record name)

(Address)

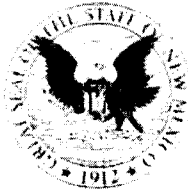
(3) _____
(Officer/Prosecutor name)

(Address)

USE NOTES

1. This form may be used to dismiss misdemeanor and petty misdemeanor charges upon a defendant's completion of the terms of a deferred sentence without revocation.

[Adopted, effective September 1, 1989; as amended by Supreme Court Order No. _____, effective _____.]



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
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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),

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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

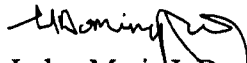
With one exception, the Court concurs with the proposed changes to Form 9-603A NMRA, the Order of Dismissal of Criminal Charges Upon Completion of Deferred Sentence. Section 31-20-9, 1978 NMSA provides, “Whenever the *period of deferment* expires, the defendant is relieved of any obligations imposed 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