1 [14-7029. Death penalty sentencing proceeding; mitigating circumstances.¹ If you unanimously find an aggravating circumstance, each of you must consider all 2 mitigating circumstances. ² [You have found an aggravating circumstance. You must now consider 3 4 any and all mitigating circumstances. ³ A mitigating circumstance is any conduct, circumstance or 5 thing which would lead you individually or as a jury to decide not to impose the death penalty. 6 You are not required to reach unanimous agreement on the existence of any of the mitigating 7 circumstances. Instead, if any one of you, individually, believes that a mitigating circumstance 8 exists, you may consider it in the weighing process. [Each of you must consider any and all of the following mitigating circumstances]4:5 9 [the defendant did not have any significant history of prior criminal activity;] 10 11 [the defendant acted under duress or under the domination of another person;] 12 [the defendant's capacity to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of the law was impaired; 13 [the defendant was under the influence of mental or emotional disturbance;] 14 [the victim was a willing participant in the defendant's conduct;] 15 [the defendant acted under circumstances which tended to justify, excuse or reduce 16 17 the crime; [the defendant is likely to be rehabilitated:] 18 19 [cooperation by the defendant with authorities;] 20 [the defendant's age;] 21 the circumstances of the offense which are mitigating; and anything else which may 22 lead you to believe that the death penalty should not be imposed.

1	[You must also consider the (character), (emotional history) (and) (family history)
2	of the defendant which are mitigating.] ⁶
3	<u>[You must also consider</u>] ⁷
4	You need not unanimously agree on the existence of a mitigating circumstance.
5	
6	USE NOTES
7	1. This instruction must be given in every death penalty sentencing proceeding.
8	2. Use this bracketed sentence unless the court has bifurcated the sentencing
9	proceeding.
10	3. Use the bracketed sentence only if the court has bifurcated the sentencing
11	proceeding.
12	4. Use this phrase only if there is one or more statutory mitigating circumstance.
13	5. Use the following bracketed mitigating circumstances for which there is evidence,
14	but do not add other specific circumstances. See Section 31-20A-6 NMSA 1978 for statutory
15	mitigating circumstances.
16	6. Use bracketed phrase and applicable words or phrases set forth in parentheses if
17	requested by defendant.
18	7. Include any non-statutory mitigating circumstances about which evidence has been
19	presented.
20	[As amended, effective August 1, 2001; withdrawn by Supreme Court Order No. 21-8300-008.]
21	Committee commentary. Section 31-20A-2 NMSA 1978 requires the trier of fact to determine
22	if mitigating circumstances exist and to weigh them against the aggravating circumstances. The
23	weight to be given to the mitigating and aggravating circumstances and the burden of proof for

- 1 each are not provided in the statute. Aggravating circumstances must be proven beyond a
- 2 reasonable doubt.
- 3 It is not necessary for the jury to unanimously agree on any mitigating circumstance. See
- 4 Clark v. Tansy, 118 N.M. 486, 494, 882 P.2d 527, 535. See also State v. Henderson, 109 N.M.
- 5 655, 664, 789 P.2d 603, 612 (1990); State v. Clark, 1999-NMSC-035, P66, 128 N.M. 119, 990
- 6 P.2d 793.
- 7 Section 31-20A-2 NMSA 1978 requires the trier of fact to consider the defendant and the
- 8 crime. The mitigating circumstances includes, but is not limited to the specific mitigating
- 9 circumstances identified in 31-20A-6 NMSA 1978.]
- 10 [Withdrawn by Supreme Court Order No. 21-8300-008.]