

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2022-001**

January 3, 2022

The Rules of Criminal Procedure for New Mexico State Courts Committee has recommended new Rules 3-706.1, 3-706.2, 7-703.1, and 12-609 NMRA, and amendments to Rules 1-073, 2-705, 3-701, 3-704, 3-706, 3-708, 5-827, 7-611, 7-702, and 7-703 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:

Jennifer L. Scott, 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 February 3, 2022, 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.

1-073. ~~[Appeal]~~De novo appeals from metropolitan court ~~[on the record]~~.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order of the metropolitan court in a civil action ~~[in the metropolitan court]~~ arising under the Uniform Owner-Resident Relations Act, Sections 47-8-1 to -51 NMSA 1978, may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The ~~[three (3)-day]~~ three (3)-day mailing period set forth in Rule 1-006 does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision^[5] or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state, its political subdivisions, or the nonprofit corporations authorized to be formed under the Educational Assistance Act, Sections 21-21A-1 to -25 NMSA 1978, [[21-21A-1 NMSA 1978]] in ~~[any such]~~ the appeal.

B. **Notice of appeal.** An appeal from the metropolitan court is taken by:

- (1) filing with the clerk of the district court a notice of appeal with proof of service; and
- (2) promptly filing with the metropolitan court:
 - (a) a copy of the notice of appeal that has been endorsed by the clerk of the district court; and
 - (b) a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the metropolitan court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

- (1) serve each party or ~~[such]~~the party's attorney in the metropolitan court proceedings with a copy of the notice of appeal in accordance with Rule 1-005; and

- (2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA~~[-and]~~.

~~[(3) if evidentiary or factual matters are involved in the appeal, file with the clerk of the district court a certificate of the clerk of the metropolitan court that satisfactory arrangements have been made with the metropolitan court for preparation and payment for the transcript of the proceedings.]~~

E. **Request for hearing.** An original request for hearing shall be filed at the time a notice of appeal is filed. The request for hearing shall be in the form set forth in LR2-Form 703 NMRA or substantially equivalent form approved by the Supreme Court. The following shall be delivered to the assigned judge:

- (1) a copy of the request for hearing;
- (2) an original notice of hearing in the form set forth in LR2-Form 704 NMRA or substantially equivalent form approved by the Supreme Court with sufficient copies for all parties entitled to notice; and
- (3) stamped, addressed, plain (without return address) envelopes for all parties entitled to notice.

~~[E.]~~F. **Docketing the appeal.** ~~[Upon]~~On the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

~~[F.]~~G. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court ~~[pursuant to]~~under Paragraph B of this rule, the metropolitan court shall file with the clerk of the district court the record on appeal taken in the action in the metropolitan court.

- (1) For purposes of this rule, the record on appeal shall consist of:
 - ~~[(1)]~~ (a) a title page containing the caption of the case in the metropolitan court and names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
 - ~~[(2)]~~ (b) a copy of all papers and pleadings filed in the metropolitan court;
 - ~~[(3)]~~ (c) a copy of the judgment or order sought to be reviewed with date of filing noted thereon;
 - ~~[(4)]~~ (d) any exhibits; and

~~[(5)]~~ (e) any ~~[transcript]~~audio recording of the proceedings ~~[made by]~~prepared at the ~~[metropolitan court, either stenographically recorded or tape recorded]~~request of a party. If ~~[the transcript]~~an audio recording of the proceedings ~~[is]~~was requested by a ~~[tape recording]~~party, the metropolitan court clerk shall prepare and file with the district court a duplicate of the ~~[tape]~~audio recording and the index log.

_____ (2) Any party desiring a copy of the transcript of the proceedings shall be responsible for ~~[paying]~~ the cost~~[-if any,-]~~ of preparing ~~[such]~~the copy.

_____ (3) The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

~~[G.]~~**H. Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court ~~[on motion,-]~~ or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record ~~[transmitted]~~sent to the district court.

~~[H.]~~**I. Stay of proceedings to enforce a judgment.**~~[Statement of appellate issues. A statement of appellate issues shall be filed with the district court as follows:]~~

_____ (1) ~~When an appeal is taken from a final decision or order of the metropolitan court under the Uniform Owner-Resident Relations Act, the appellant may obtain a stay in accordance with Section 47-8-47 NMSA 1978. [the appellant's statement shall be filed and served within thirty (30) days from the date of service of the notice of filing of the record on appeal in the district court; and]~~

_____ (2) ~~When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of that appeal shall operate as a stay. [the appellee's response shall be filed and served within thirty (30) days after service of the appellant's statement of issues;-]~~

I. Appellant's statement of appellate issues. The appellant's statement of appellate issues, under appropriate headings and in the order here indicated, shall contain:

_____ (1) a statement of the issues;
_____ (2) a summary of the proceedings which shall indicate briefly the nature of the case, the course of proceedings, and the disposition of the metropolitan court. The summary shall include a short recitation of all facts relevant to the issues presented for review, with appropriate references to the record on appeal showing how the issues were preserved in the proceedings before the metropolitan court;

_____ (3) an argument which shall contain the contentions of the appellant with respect to each issue presented in the statement of issues, with citations to the authorities, statutes and parts of the record on appeal relied upon. New Mexico decisions, if any, shall be cited; and

_____ (4) a statement of the precise relief sought.

J. Appellee's statement of appellate issues; response. The appellee's response shall conform to the requirements of Subparagraphs (1) to (4) of Paragraph I of this rule, except that a statement of the issues or a summary of the proceedings shall not be made unless the appellant's statement of issues or summary of the proceedings is disputed or is incomplete.

K. References in statement of appellate issues. References in the statement of appellate issues shall be to the pages of the record on appeal or, if the reference is to a tape recording, the approximate counter numbers of the tape as shown on the index log shall be used.

If reference is made to evidence the admissibility of which is in controversy, reference shall be to the place in the record on appeal at which the evidence was identified, offered, and received or rejected.

~~_____ L. **Length of statements of appellate issues.** Except by permission of the court, the argument portion of the appellant's statement of appellate issues shall not exceed eight (8) pages. Except by permission of the court, the argument portion of appellee's response shall not exceed eight (8) pages.~~

~~_____ M. **Briefs.** Briefs may be filed only by leave of the district court and upon such conditions as the court may direct.~~

~~_____ N. **Oral argument.** Upon motion of a party or on the court's own motion, the court may allow oral argument.~~

~~_____ O. **Scope of review.** To preserve a question for review it must appear that a ruling or decision by the metropolitan court was fairly invoked, but formal exceptions are not required, nor is it necessary to file a motion for a new trial to preserve questions for review. Further, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party. This paragraph shall not preclude the district court from considering jurisdictional questions or, in its discretion, questions involving:~~

- ~~_____ (1) general public interest; or~~
- ~~_____ (2) fundamental error or fundamental rights of a party.~~

~~_____ P. **Stay of proceedings to enforce a judgment.**~~

~~_____ (1) When an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court as provided in the Rules of Civil Procedure for the Metropolitan Courts.~~

~~_____ (2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.]~~

~~[Q.] **Review of supersedeas.** At any time after an appeal is filed [pursuant to] under Paragraph B of this rule, the district court may, [upon] on motion and notice, review any action of[,] or any failure or refusal to act by the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time [within which] to file in the district court a supersedeas bond complying with the requirements for a supersedeas bond set forth in the Rules of Civil Procedure for the Metropolitan Courts. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.~~

~~[R. **Rehearing.** A motion for reconsideration may be filed within ten (10) days after filing of the district court's final order. The three (3) day mailing period set forth in Rule 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and with particularity, but without argument, the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended. No response to a motion for rehearing shall be filed unless requested by the court.~~

~~_____ S. **Disposal of appeals.** The district court shall dispose of appeals by entry of an appropriate order disposing of the appeal. The court in its discretion may accompany the order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as~~

~~precedent in subsequent cases. A mandate shall be issued by the court upon expiration of whichever of the following events occurs latest:~~

- ~~_____ (1) fifteen (15) days after entry of the order disposing of the case;~~
- ~~_____ (2) fifteen (15) days after disposition of a motion for rehearing; or~~
- ~~_____ (3) if a notice of appeal is filed, upon final disposition of the appeal.~~

~~T. **Remand.** Upon expiration of the time for appeal from the final order or judgment of the district court, the district court shall remand the case to the metropolitan court for enforcement of the district court's judgment.]~~

[U.]**K. Appeal.** Any aggrieved person may appeal from a judgment of the district court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in accordance with the Rules of Appellate Procedure. Any supersedeas bond approved by the metropolitan court, or modified by the district court, shall continue in effect pending appeal to the Supreme Court or Court of Appeals, unless modified [pursuant to]under Rule 12-207 NMRA. [of the Rules of Appellate Procedure.]

[Adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective for appeals filed on or after _____.]

2-705. Appeal.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil action may appeal, as permitted by law, to the district court of the county within which the magistrate court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the magistrate court. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The [~~three (3)-day~~] three (3)-day mailing period set forth in Rule 2-104 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the magistrate court, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions in any [such] appeal.

B. **Notice of appeal.** An appeal from the magistrate court is taken by

- (1) filing with the clerk of the district court a notice of appeal with proof of service; and
- (2) promptly filing the following with the magistrate court:
 - (a) a copy of the notice of appeal which has been endorsed by the clerk of the district court; and
 - (b) a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the magistrate court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall

(1) serve each party or ~~[such]~~the party's attorney in the proceedings in the magistrate court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA ~~[of the Rules of Civil Procedure for the District Courts]~~; and

(2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA.

E. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the magistrate court under Paragraph B of this rule, the magistrate court shall file with the clerk of the district court the record on appeal taken in the action in the magistrate court. For purposes of this rule, the record on appeal shall consist of

(1) a title page containing the caption of the case in the magistrate court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

(2) a copy of all papers and pleadings filed in the magistrate court;

(3) a copy of the judgment or order sought to be reviewed with date of filing;
and

(4) any exhibits.

The magistrate court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

F. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the magistrate court or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record ~~[transmitted]~~sent to the district court.

G. **Stay of proceedings to enforce a judgment.**

(1) Except as provided in Subparagraph (2) of this paragraph, when an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the magistrate court. The bond may be posted at any time after docketing the appeal. The stay is effective when the supersedeas bond is approved by the magistrate court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified by an appellate court, together with costs, attorneys' fees, and interest, if any. The bond shall be enforceable on dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties, or collateral securing ~~[such]~~the bond, and the terms ~~[thereof]~~of those, must be approved by and the amount fixed by the magistrate court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees, and interest, if any. In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral that is in, or may be placed in, the custody or control of the court and that has the effect of securing payment of and compliance with the judgment.

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of an appeal shall operate as a stay.

H. **District court review of supersedeas.** At any time after an appeal is filed under Paragraph B of this rule, the district court may, on motion and notice, review any action of, or any failure or refusal to act by, the magistrate court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond, or if it determines that the magistrate court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time [~~within which~~] to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the magistrate court by the party seeking the review.

I. **Procedure on appeal.** The Rules of Civil Procedure for the District Courts shall govern the procedure on appeal from the magistrate court.

~~[J. — **Remand.** On remand of the case by the district court to the magistrate court, the magistrate court shall enforce the mandate of the district court.]~~

~~[K.]~~ J. **Return of record and copy of judgment.** After final determination of the appeal, the clerk of the district court shall return the record on appeal to the magistrate court clerk and send a copy of the of the district court judgment to the magistrate court clerk.

[As amended, effective November 1, 1988; January 1, 1994; July 1, 1996; as amended by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

3-701. Judgments; costs.

A. **Definition; form.** "Judgment," as used in these rules, includes a decree and any order from which an appeal lies. A judgment should not contain a recital of pleadings or the record of prior proceedings.

B. **Judgment on multiple claims or involving multiple parties.** If an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved in an action, the court may enter a final judgment on one or more, but fewer than all, claims or parties only if the court expressly finds that there is no just reason for delay. If the court does not make a finding of no just reason for delay, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims.

~~[(1) — Except as provided in Subparagraph (B)(2), if more than one claim for relief is presented in an action, whether as a claim or counterclaim, the court may enter a final judgment about one or more, but fewer than all of the claims, only after expressly finding no just reason for delay. If the court fails to make a determination of no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all of the claims, shall not terminate the action for any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.~~

~~_____ (2) — If multiple parties are involved, judgment may be entered adjudicating all issues about one or more, but fewer than all parties. The judgment shall be a final judgment unless the court, in its discretion, expressly provides otherwise in the judgment. If the judgment states that it is not a final judgment, the judgement shall not terminate the action about a party or parties and shall be subject to revision at any time before the entry of judgment adjudicating all claims and the rights and liabilities of all the parties.]~~

C. **Entry of judgment.** After the trial, the court shall enter a written judgment in accordance with the jury's verdict or, if the trial was without a jury, in accordance with the court's decision. The court may direct counsel for any party to prepare the judgment. If a setoff or a counterclaim is established by the defendant, the amount of the setoff or counterclaim shall be offset against any sum owed the plaintiff and judgment shall be entered accordingly.

D. **Demand for judgment.** A judgment by default shall not be different in kind from, or exceed in amount, that claimed in the complaint. Except for a default judgment, each final judgment shall grant the relief sought by the party in whose favor judgment is rendered, even if the party has not demanded the relief in the party's pleadings.

E. **Costs.** Any docket fee, filing fee (including electronic filing and service fee), jury fee, or copying fee paid by the prevailing party to the court shall be a recoverable cost and shall be awarded to the prevailing party against the losing party. The court may award any fees actually paid by the prevailing party for service of the complaint, summons and subpoenas, and for attendance of witnesses, including expert witnesses. No costs or fees shall be taxed against the state, its officers, and its agencies. Expert witness fees for any case shall not exceed five hundred dollars (\$500), plus the fee for per diem expenses provided by Section 10-8-4(A) NMSA 1978 for nonsalaried public officers attending a board or committee meeting and the mileage provided by Section 10-8-4(D) NMSA 1978. The fee for per diem expenses shall not be prorated.

[As amended, effective January 1, 1995; as amended by Supreme Court Order No. _____; effective for all cases filed or pending on or after _____.]

Committee commentary. — Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Adopted by Supreme Court Order No. _____; effective _____.]

3-704. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or parts of the record and errors ~~[therein arising]~~ that arise from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party. ~~[and after such notice, if any, as the court orders.]~~ During the pendency of an appeal, ~~[such]~~ clerical mistakes may be so corrected before the appeal is docketed in the district court or appellate court. ~~[, and thereafter while]~~ While the appeal is pending, clerical mistakes may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** On motion and ~~[upon such]~~ on those terms as are just, the court may relieve a party or ~~[his]~~ the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (3) the judgment is void; ~~[or]~~
- (4) the judgment has been satisfied, released or discharged, or a prior judgment ~~[upon]~~ on which it is based has been reversed or otherwise vacated ~~[, -]~~; or
- (5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 3-201(E) NMRA to comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with Form 4-226 NMRA.

A motion filed ~~[pursuant to]~~under Subparagraph (1) or (2) of this paragraph shall be filed not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation.

An order granting or denying relief from a final judgment under this rule may be appealed to the district court or appellate court in the same manner as other appeals from final judgments of the metropolitan court are taken.

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released, or discharged. The application shall be served ~~[upon]~~on the judgment creditor in the manner prescribed by Rule 3-202 NMRA for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at ~~[such]~~the hearing, a default satisfaction of judgment may be entered ~~[upon]~~on completion of the following:

(1) the filing of the return of service or an affidavit that after “diligent search” the judgment creditor could not be located. For purposes of this subparagraph, “diligent search” includes, but shall not be limited to, an affidavit that[=]

(a) the judgment creditor no longer has a business or residence at the judgment creditor’s last known address as shown in the court file; and

(b) the judgment creditor could not be located through a search of telephone and city directories in each county where the judgment creditor was known to have resided or maintained a place of business in this state; and

(2) proof of payment of the full amount of ~~[such]~~the judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs, has not been paid in full, payment into the court registry of the balance owed in accordance with Section 39-1-6.2 NMSA 1978 plus any court costs ~~[of court]~~ for receiving into and paying the money out of the registry of the court.

[As amended, effective July 1, 1990; January 1, 1997; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court No. _____, effective for all cases filed or pending on or after _____.].

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph B of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 3-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, and 3-702 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan and magistrate court rules for consumer debt claims with the district court rules.

Deutsche Bank Nat’l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046, provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing.” ~~[(Emphasis added.)]~~ Rule 1-060(B)(4) NMRA is equivalent to Rule 3-704(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment to Rule 3-704 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 3-704(B)(3) NMRA.

Rule 3-704(B)(5) NMRA now provides that noncompliance with the requirements of Rule 3-201(E)(2) NMRA or Rule 3-401(D) NMRA, or the failure to substantially comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment entered in a case controlled by Rule 3-201(E) NMRA. The addition of this language provides a ground for relief[;] but does not compel the metropolitan court to grant relief in every case in which the movant shows noncompliance with these consumer debt provisions. The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When the movant meets this requirement, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a motion to void the judgment under Rule 3-704(B)(3) NMRA does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]; as amended by Supreme Court No. _____, effective for all cases filed or pending on or after _____.]

3-706. ~~[Appeal]~~Right of appeal from metropolitan court~~[-on the record]~~.

A. ~~[Right of appeal.]~~**De novo and on-record appeals.** A party who is aggrieved by the judgment or final order in a civil action may appeal, as permitted by law, as follows: ~~[to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The three (3) day mailing period set forth in Rule 3-104 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions in any such appeal.]~~

(1) **De novo appeal.** If the appeal is an appeal de novo, arising from a decision of the metropolitan court under the Uniform Owner-Resident Relations Act, Sections 47-8-1 to -51 NMSA 1978, a party may appeal to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 3-706.1 NMRA.

(2) **On-record appeal.** If the appeal is an appeal on the record, a party may appeal to the Court of Appeals. The notice of appeal shall be filed in the metropolitan court within thirty (30) days after the final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 3-706.2 NMRA.

B. Calculation of time; fees and costs. The three (3)-day mailing period set forth in Rule 3-104 NMRA does not apply to the time limits set forth in Paragraph A of this rule. A notice of appeal filed after the announcement of a decision or return of the verdict, but before the judgment

or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions in the appeal.

~~B. — **Notice of appeal.** An appeal from the metropolitan court is taken by:~~

~~_____ (1) — filing with the clerk of the district court a notice of appeal with proof of service; and~~

~~_____ (2) — promptly filing with the metropolitan court:~~

~~_____ (a) — a copy of the notice of appeal which has been endorsed by the clerk of the district court; and~~

~~_____ (b) — a copy of the receipt of payment of the docket fee.~~

~~C. — **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the metropolitan court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.~~

~~D. — **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:~~

~~_____ (1) — serve each party or such party's attorney in the proceedings in the metropolitan court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA of the Rules of Civil Procedure for the District Courts; and~~

~~_____ (2) — file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA.~~

~~E. — **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court pursuant to Paragraph B of this rule, the metropolitan court shall file with the clerk of the district court a copy of the record on appeal taken in the action in the metropolitan court. For purposes of this rule, the record on appeal shall consist of:~~

~~_____ (1) — a title page containing the caption of the case in the metropolitan court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;~~

~~_____ (2) — a copy of all papers and pleadings filed in the metropolitan court;~~

~~_____ (3) — a copy of the judgment or order sought to be reviewed with date of filing;~~

~~_____ (4) — any exhibits; and~~

~~_____ (5) — any transcript of the proceedings made by the metropolitan court, either stenographically recorded or tape recorded. If the transcript of the proceedings is a tape recording, the metropolitan court clerk shall prepare and file with the district court a duplicate of the tape and index log.~~

~~Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The metropolitan court may order cash or other security to be deposited with the metropolitan court to secure payment of the cost.~~

~~The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.~~

~~F. — **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court on motion, or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.~~

~~_____~~ **G. Stay of proceedings to enforce a judgment.**

~~(1) Except as provided in Subparagraph (2) of this paragraph, when an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court. The bond may be posted at any time after docketing the appeal. The stay is effective when the supersedeas bond is approved by the metropolitan court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified by an appellate court, together with costs, attorneys' fees and interest, if any. The bond shall be enforceable upon dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties or collateral securing such bond, and the terms thereof, must be approved by and the amount fixed by the metropolitan court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees and interest, if any. In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral which is in, or may be placed in, the custody or control of the court and which has the effect of securing payment of and compliance with the judgment.~~

~~_____~~ (2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

~~_____~~ **H. District court review.** At any time after appeal is filed pursuant to Paragraph B of this rule, the district court may, upon motion and notice, review any action of, or any failure or refusal to act by, the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions or amount of a supersedeas bond, or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time within which to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

~~_____~~ **I. Procedure on appeal.** The Rules of Civil Procedure for the District Courts shall govern the procedure on appeal from the metropolitan court.

~~_____~~ **J. Remand.** Upon remand of the case by the district court to the metropolitan court, the metropolitan court shall enforce the mandate of the district court.

~~_____~~ **K. Transmittal of mandate.** After final determination of the appeal, the clerk of the district court shall transmit a copy of the mandate to the metropolitan court clerk.]

[As amended, effective September 1, 1989; January 1, 1994; July 1, 1996; as amended by Supreme Court Order No. 11-8300-021, effective May 27, 2011; as amended by Supreme Court Order No. _____; effective for all appeals filed on or after _____.]

Committee commentary. – Cross references. – For de novo appeals from metropolitan court, see Rule 3-706.1 NMRA. For on-record appeals from metropolitan court, see Rule 3-706.2 NMRA. [Adopted by Supreme Court Order No. _____; effective _____.]

[NEW MATERIAL]

3-706.1. De novo appeals from metropolitan court to district court.

A. **Notice of de novo appeal.** A de novo appeal from the metropolitan court is taken by

(1) filing the following with the clerk of the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office:

- (a) a notice of appeal with proof of service; and
- (b) a request for hearing as required by Rule 1-073(E); and

(2) promptly filing the following with the clerk of the metropolitan court:

(a) a copy of the notice of appeal that has been endorsed by the clerk of the district court; and

(b) a copy of the receipt of payment of the docket fee.

B. **Content of the notice of de novo appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the metropolitan court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

C. **Service of notice of de novo appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

(1) serve each party or the party's attorney in the proceedings in the metropolitan court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA; and

(2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA.

D. **Record on de novo appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court under Paragraph A of this rule, the metropolitan court shall file with the clerk of the district court a copy of the record on appeal taken in the action in the metropolitan court.

(1) For purposes of this rule, the record on appeal shall consist of

(a) a title page containing the caption of the case in the metropolitan court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

(b) a copy of all papers and pleadings filed in the metropolitan court;

(c) a copy of the judgment or order sought to be reviewed with date of filing;

(d) any exhibits; and

(e) any audio recording of the proceedings prepared at the request of a party. If an audio recording of the proceedings was requested by a party, the metropolitan court clerk shall prepare and file with the district court a duplicate of the audio recording and the index log.

(2) Any party desiring a copy of the transcript of the proceedings shall be responsible for the cost of preparing the copy.

(3) The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

E. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record sent to the district court.

F. Stay of proceedings to enforce a judgment.

(1) When an appeal is taken from a final decision or order of the metropolitan court under the Uniform Owner-Resident Relations Act, the appellant may obtain a stay in accordance with Section 47-8-47 NMSA 1978.

(2) Except as provided in Subparagraph (3) of this paragraph, when an appeal is taken, the appellant may obtain a stay of execution of a money judgment by posting a supersedeas bond with the clerk of the metropolitan court. The bond may be posted at any time after docketing the appeal. The stay is effective when the supersedeas bond is approved by the metropolitan court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified by the district court, together with costs, attorneys' fees and interest. The bond shall be enforceable on dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties, or collateral securing the bond, and the terms of those, must be approved by and the amount fixed by the metropolitan court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees, and interest. In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral which is in, or may be placed in, the custody or control of the court and which has the effect of securing payment of and compliance with the judgment.

(3) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of an appeal shall operate as a stay.

G. District court review of supersedeas. At any time after appeal is filed under Paragraph A of this rule, the district court may, on motion and notice, review any action of, or any failure or refusal to act by, the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond, or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

H. Transmittal of district court judgment. After final determination of the appeal, the clerk of the district court shall send a copy of the district court judgment to the metropolitan court clerk.

[Approved by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — NMSA 1978, Section 34-8A-6 was amended in 2019 to provide that the metropolitan court is not a court of record for civil actions brought pursuant to the Uniform Owner-Resident Relations Act, NMSA 1978, Sections 47-8-1 to -51.

Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Approved by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

3-706.2 On-record appeals from metropolitan court to court of appeals.

A. Filing the notice.

(1) A notice of appeal shall be filed within thirty (30) days after the judgment or order appealed from is filed in the metropolitan court clerk's office. The appeal shall be taken by filing a notice of appeal with the metropolitan court clerk's office within the time provided by this rule.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by Rule 12-201 NMRA, whichever period last expires.

B. Content of the notice of appeal. The notice of appeal shall specify:

(1) each party taking the appeal and each party against whom the appeal is taken;

(2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

(3) the name of the court to which the appeal is taken.

C. Attachment to notice of appeal. A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. Service of the notice of appeal. The appellant shall give notice of the filing of a notice of appeal by serving a copy on the Court of Appeals, metropolitan court, and trial counsel of record for each party other than the appellant. If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

E. Post-trial or post-judgment motions extending the time for appeal.

(1) If a party timely files a motion that has the potential to affect the finality of the underlying judgment or sentence, the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last such remaining motion. Those motions may include, but are not necessarily limited to, the following motions:

(a) a motion filed under Rule 3-704 NMRA;

(b) a motion for new trial filed under Rule 3-705 NMRA; or

(c) a motion to set aside a default judgment under Rule 3-702 NMRA.

(2) If a party timely files a motion listed in Subparagraph (1) of this paragraph and, before the motion is expressly disposed of by written order filed by the metropolitan court, the party files in the metropolitan court a notice stating that the motion is withdrawn, the time for filing a notice of appeal shall be determined from the date the notice of withdrawal is filed in the metropolitan court, unless another motion listed in Subparagraph (1) remains pending.

(3) A timely notice of appeal filed before the express written disposition by order or the withdrawal of any timely filed motion listed in Subparagraph (1) of this paragraph, whether the notice is filed before or after the motion is filed, becomes effective on the day on which the time for filing a notice of appeal commences to run. Until that time, the notice does not divest the metropolitan court of jurisdiction to dispose of the motion. A notice of appeal that becomes effective under this subparagraph brings up for review any disposition by order of any timely filed motion listed in Subparagraph (1) of this paragraph, without the necessity of attaching a copy of any order disposing of the motion to the notice of appeal.

(4) An order granting a motion for new trial in a civil case is not appealable and renders any prior judgment non-appealable.

F. Motion for extension of time.

(1) A party seeking an extension of time to file a notice of appeal shall file a motion in the metropolitan court before or no later than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal. The motion for extension of time shall be served on all parties. The metropolitan court has jurisdiction to rule on the motion regardless of whether a notice of appeal has been filed.

(2) If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause.

(3) If the motion is filed within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of excusable neglect or circumstances beyond the control of the appellant.

(4) A motion filed more than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal shall not be granted.

(5) An extension of time granted under this paragraph shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted. A party that has filed a motion for extension of time must file a notice of appeal within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice even if the motion for extension of time remains pending. The metropolitan court may grant the motion retroactively.

G. Grace period when notice is sent by mail or commercial courier. A notice of appeal that is sent by mail or commercial courier service to the metropolitan court shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA explicitly states that the notice of appeal was sent to the metropolitan court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The metropolitan court clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

H. Record on appeal.

(1) **Composition.** The papers and pleadings filed in the metropolitan court (the court file), or a copy thereof shall constitute the 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 metropolitan court or Court of Appeals. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA of the Rules Governing the Recording of Judicial Proceedings.

(2) **Transmission.** On receipt of a copy of the docketing statement, the metropolitan court clerk shall number consecutively the pages of the record proper and send it to the Court of Appeals so that it will be filed in the Court of Appeals no later than fourteen (14) days from the date the docketing statement is received by the metropolitan court. The first page, after the title page, of the record proper shall consist of a copy of the metropolitan court clerk's docket sheet with references to the page of the record proper for each entry. The metropolitan court clerk shall send a copy of this docket sheet to all counsel of record.

(3) ***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 metropolitan court or the Court of Appeals, on motion or on its own initiative, may direct that the omission be corrected, and a supplemental record proper sent to the Court of Appeals. The Court of Appeals shall notify the parties when it has ordered supplemental material on its own accord.

I. **Docketing the appeal.**

(1) ***Attorney or party responsible.*** Unless otherwise ordered by the Court of Appeals, trial counsel, or another attorney in the same office as trial counsel that is designated to handle on-record appeals, or the party, if not represented by an attorney, shall be responsible for preparing and filing a docketing statement in the Court of Appeals.

(2) ***When filed.*** Within thirty (30) days after filing the notice of appeal in the metropolitan court, the appellant shall file a docketing statement, if the appeal has been docketed in the Court of Appeals. But if the notice of appeal was filed before the express written disposition by order or the withdrawal of any timely filed post-trial or post-judgment motion listed in Paragraph E of this rule, then the docketing statement shall be filed within thirty (30) days after the notice of appeal becomes effective under Paragraph E of this rule.

(3) ***Service.*** The appellant shall serve a copy of the docketing statement on the metropolitan court clerk and on those persons who are required to be served with a notice of appeal under Paragraph D.

(4) ***Docketing statement in the Court of Appeals; contents.*** A docketing statement must satisfy all of the requirements contained in Rule 12-208(D) NMRA. For docketing statements filed in on-record appeals from the metropolitan court, the docketing statement must also contain a specific reference to the audio recording for each factual assertion made in the docketing statement. A “specific reference” requires a citation to the counter number or time reference of the audio recording that establishes a basis for the factual assertion made in the docketing statement. Failure to provide the information required by Rule 12-208(D) NMRA or this subparagraph, including the requirement of specific references to the audio recording, may result in sanctions up to and including dismissal of the appeal in accordance with Rule 12-312 NMRA.

J. **Appellate Procedure.** All further process on appeal not articulated in this rule will occur in accordance with the procedure articulated in Rule 12-609 NMRA and all applicable Rules of Appellate Procedure.

[Adopted by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

3-708. ~~[Tape]~~Audio recordings of proceedings.

A. **~~[Taping]~~Audio record of proceedings.** Every civil proceeding in the metropolitan court shall be ~~[tape]~~audio recorded if requested by a party. The summons shall contain notice of the right to request ~~[a taped]~~an audio record of the proceedings.

B. **Preservation of ~~[taped]~~audio record.** ~~[Tapes containing the]~~The audio record of proceedings shall be preserved for ninety (90) days after the entry of ~~[a final order in the proceedings. Any party desiring to preserve the tapes for a longer period of time may, within eighty (80) days after the filing of the final order, file a request to preserve the tapes containing the transcript of proceedings]~~a final order, if no appeal is filed; the entry of a mandate from the Court

of Appeals, if an on-record appeal is filed; or the receipt of a copy of the final judgment of the district court, if a de novo appeal is filed.

[As amended, effective May 1, 1994; July 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases filed or pending on or after _____.]

5-827. [Appeals]De novo appeals from metropolitan court to district court.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order of the metropolitan court in a criminal action that does not involve driving while under the influence or domestic violence offenses may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. Appeals from the metropolitan court to the district court shall be de novo. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. The ~~[three (3)-day]~~ three (3)-day mailing period set forth in Rule 7-104 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed and shall become effective when the judgment or order appealed from is filed in the metropolitan court clerk's office. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions or against a defendant who is represented by a public defender or court appointed counsel.

B. **Notice of appeal.** An appeal from the metropolitan court is taken by[÷]

(1) filing with the clerk of the district court a notice of appeal with proof of service; and

(2) promptly filing with the metropolitan court[÷]

(a) a copy of the notice of appeal which has been endorsed by the clerk of the district court; and

(b) ~~[unless the appeal has been filed by the state, a political subdivision of the state or by a defendant represented by a public defender or court appointed counsel,]~~ a copy of the receipt of payment of the docket fee[÷], unless the appeal has been filed by the state, a political subdivision of the state, or by a defendant represented by a public defender or court appointed counsel.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall[÷]

(1) serve each party or each party's attorney in the proceedings in the metropolitan court with a copy of the notice of appeal in accordance with Rule 5-103 NMRA~~[of the Rules of Criminal Procedure for the District Courts];~~ and

(2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 5-103 NMRA.

E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

F. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal in the metropolitan court ~~[pursuant to]~~ under Paragraph B of this rule, the

metropolitan court shall file with the clerk of the district court a copy of the record on appeal taken in the action in the metropolitan court.

 (1) For purposes of this rule, the record on appeal shall consist of the following:
[~~(1)~~] (a) a title page containing the caption of the case in the metropolitan court and names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
[~~(2)~~] (b) a copy of all papers and pleadings filed in the metropolitan court;
[~~(3)~~] (c) a copy of the judgment or final order sought to be reviewed with date of filing;
[~~(4)~~] (d) any exhibits; and
[~~(5)~~] (e) ~~[if the appeal is from a trial on the record, any transcript of the proceedings made by the metropolitan court. The metropolitan court clerk shall prepare and file with the district court]~~ a duplicate of the audio record of the proceedings and that record's index log.

 (2) The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

 (3) Any party desiring a copy of the record on appeal shall be responsible for [paying] the cost of preparing the copy.

G. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record ~~[transmitted]~~ sent to the district court.

H. **Conditions of release.** If the metropolitan court sets an appeal bond ~~[pursuant to]~~ under Rule 7-703 NMRA ~~[upon]~~ on filing of the notice of appeal, the appeal bond shall be transferred to the district court pending disposition of the appeal. The district court shall dispose of all matters relating to the appeal bond until remand to the metropolitan court.

I. **Review of terms of release.** If the metropolitan court has refused release pending appeal or has imposed conditions of release which the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal. A copy of the petition for release, which has been endorsed by the clerk of the district court, shall be filed with the metropolitan court. If the district court releases the defendant on appeal, a copy of the order of release shall be filed in the metropolitan court.

J. ~~[Trial de novo appeals. Except as otherwise provided by law for appeals involving driving while under the influence and domestic violence offenses, trials upon appeals from the metropolitan court to the district court shall be de novo.]~~ **Transfer.** When a party files an appeal with the district court that the district court determines should have been filed as an on-record appeal in the Court of Appeals, the district court shall enter an order of transfer to the Court of Appeals, explaining why the district court believes transfer is appropriate, and give prompt notice to the parties. The Court of Appeals will review the district court's transfer order in accordance with Rule 12-609(E) NMRA.

~~[K. — Rehearing; appeals on the record. Within ten (10) days after entry of a judgment or order disposing of an appeal on the record, any party may file a motion for rehearing. The motion shall set forth with particularity the points of law or fact which the movant believes the court has overlooked or misapprehended but shall not contain argument. No response to a motion~~

~~shall be permitted unless requested by the district court. The motion for rehearing shall be disposed of within fifteen (15) days after it is filed.]~~

~~[L.]~~**K. Disposal of appeals.** The district court shall dispose of appeals by entry of a judgment and sentence or other final order. The court in its discretion may accompany the judgment or order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as precedent in subsequent cases. A mandate shall be issued by the district court ~~[upon]~~on expiration of whichever of the following events occurs latest:

- (1) fifteen (15) days after entry of the order disposing of the case;
- (2) fifteen (15) days after disposition of a motion for rehearing; or
- (3) if a notice of appeal is filed, ~~[upon]~~on final disposition of the appeal.

~~[Upon remand of the case by the district court to the metropolitan court, the metropolitan court shall enforce the mandate of the district court.]~~

~~[M.]~~**L. Remand.** ~~[Upon]~~On expiration of the time for appeal from the final order or judgment of the district court, the district court shall remand the case to the metropolitan court for enforcement of the district court's judgment, and the metropolitan court shall enforce the mandate of the district court.

~~[N.]~~**M. Appeal.** An aggrieved party may appeal from a judgment of the district court to the ~~[New Mexico]~~ Supreme Court or ~~[New Mexico]~~ Court of Appeals, as authorized by law, in accordance with the Rules of Appellate Procedure. The conditions of release and bond approved or continued in effect by the district court during the pendency of the appeal to the district court shall continue in effect pending appeal to the Supreme Court or Court of Appeals, unless modified ~~[pursuant to]~~under Rule 12-205 NMRA ~~[of the Rules of Appellate Procedure]~~.

~~[O.]~~**N. Transmittal of the judgment and sentence or final order.** After final determination of the appeal, the clerk of the district court shall ~~[transmit]~~send a copy of the judgment and sentence or final order to the metropolitan court clerk.

[Adopted by Supreme Court Order No. 12-8300-018, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

~~[Committee commentary. — Section 34-8A-6C NMSA 1978 (as amended by Laws 1980, Chapter 142, Section 4), is so broad as to be in violation of the constitutional prohibition against double jeopardy. The rule as drafted limits appeals by the prosecution to a determination of the validity of the statute or ordinance under which the defendant was prosecuted, thus avoiding the statutory violation mentioned above.]~~

[Adopted by Supreme Court Order No. 12-8300-018, effective for all cases pending or filed on or after August 3, 2012; withdrawn by Supreme Court Order No. _____.]

7-611. Motion for new trial; appeals on the record.

A. **Motion.** In cases which may be appealed on the record, if the defendant has been found guilty, the court, on motion of the defendant~~[-]~~ or on its own motion, may grant a new trial if required in the interest of justice.

B. **Time for making motion for new trial.** A motion for new trial shall be made within ten (10) days after verdict or finding of guilty or within ~~[such]~~any further time as the court may fix during the ~~[ten (10)-day]~~ ten (10)-day period. ~~[If a motion for new trial is not granted within twenty (20) days from the date it is filed, the motion is automatically denied.]~~

C. **Extension of time for appeal.** If a party timely files a motion for new trial ~~[pursuant to]~~under this rule, the full time prescribed by Rule 7-703 NMRA for the filing of the notice of appeal shall commence to run and be computed from ~~[either]~~ the entry of an order expressly disposing of the motion for new trial~~[or the date of any automatic denial of the motion, whichever occurs first]~~. An order granting a motion for new trial is not appealable and renders any prior judgment non-appealable.

[Adopted, effective January 1, 1994; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

7-702. Advising defendant of right to appeal.

A. **Duty of metropolitan court.** At the time of entering a judgment and sentence, the court shall advise the defendant of the defendant's right to the following:

(1) ~~[if the appeal is an appeal de novo, to]~~ a new trial in the district court, if the appeal is an appeal de novo; or

(2) ~~[if the appeal is an appeal on the record, to]~~ an appeal on the record to the [district court] Court of Appeals.

B. ~~[Notice]~~ **Filing of the notice of appeal**~~[- filed in district court]~~. The court shall also advise the defendant that if the defendant wishes to appeal, the defendant may do so as follows: [a notice of appeal shall be filed in the district court within fifteen (15) days after entry of the judgment and sentence.]

(1) if the appeal is an appeal de novo, a notice of appeal shall be filed in the district court within fifteen (15) days after entry of the judgment and sentence; or

(2) if the appeal is an appeal on the record, a notice of appeal shall be filed in the metropolitan court within thirty (30) days after the entry of the judgement and sentence.

C. Appeal on the record or de novo.

(1) The following criminal appeals from metropolitan court shall be appeals on the record:

(a) driving while under the influence of intoxicating liquors or drugs; or

(b) "domestic abuse" of a "household member" as those terms are defined in Section 40-13-2 NMSA 1978 of the Family Violence Protection Act.

(2) All other criminal appeals from metropolitan court shall be de novo.

(3) If the defendant appeals from the conviction of more than one offense, one or more of which is an on the record conviction and one or more of which is a de novo appeal conviction, the appeal of all convictions shall be on the record. Unless the defendant appeals an on the record conviction, the appeal shall be a de novo appeal, even though the proceedings have been recorded.

D. **Audio recordings in on-record appeals.** An audio recording and corresponding index log shall be made of all criminal proceedings in which the metropolitan court is a court of record. When an appeal on the record is specifically permitted by law, the audio recording and corresponding index log shall be a part of the record on appeal. Audio records containing the transcript of the proceedings shall be preserved for ninety (90) days after the entry of mandate.

[As amended, effective September 1, 1990; January 1, 1994; January 1, 1997; September 2, 1997; October 15, 2002; as amended by Supreme Court Order No. 12-8300-020, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

~~[Committee commentary.—The timely disposition of appeals is an essential requirement of justice. It was brought to the committee's attention that the disposition of appeals on the record to the district court take significantly longer than *de novo* appeals.~~

~~The above amendments were taken from Rule 12-406 governing the disposition of appeals to the Supreme Court and Court of Appeals and Rule 1-054 requiring disposition in civil cases within 60 days after submission.]~~

~~[Commentary withdrawn by Supreme Court Order No. _____, effective _____.]~~

7-703. [Appeal] De novo appeal from metropolitan court to district court.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a criminal action, other than those identified in Rule 7-702 NMRA as requiring an on-record appeal, may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 5-827 NMRA.

B. **Conditions of release.** The appearance bond set to ensure the defendant's appearance for trial shall be released. The court may set an appeal bond to ensure the defendant's appearance in the district court on appeal and may set any conditions of release as are necessary to ensure the appearance of the defendant or the orderly administration of justice. The metropolitan court may ~~[utilize]~~use the criteria listed in Rule 7-401(C) NMRA and may also consider the fact of the defendant's conviction and the length of the sentence imposed. The amount of the appeal bond and the conditions of release shall be included on the judgment and sentence. Nothing in this rule shall be construed to prevent the court from releasing a person not released ~~[prior to]~~before or during trial. ~~[Upon]~~On filing of the notice of appeal, the appeal bond shall be transferred to the district court pending disposition of the appeal. The district court shall dispose of all matters relating to the appeal bond until remand to the metropolitan court.

C. **Review of terms of release.** If the metropolitan court has refused release pending appeal or has imposed conditions of release that the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal. A copy of the petition for release that has been endorsed by the clerk of the district court shall be filed with the metropolitan court. If the district court releases the defendant on appeal, a copy of the order of release shall be filed in the metropolitan court.

D. **Stay of execution of sentence.** Execution of any sentence, fine, fee, or probation shall be stayed pending the results of the appeal to the district court. An abstract of record of the defendant's conviction shall not be prepared and sent in accordance with Section 66-8-135 NMSA 1978 until the later of the following dates:

(1) expiration of the deadline for filing a notice of appeal under this rule if the defendant does not file a notice of appeal; or

(2) ten (10) days after remand from the district court or issuance of mandate by the Court of Appeals or Supreme Court if the defendant ~~[does file]~~ files a notice of appeal under this rule.

[As amended, effective July 1, 1988; September 1, 1989; September 1, 1990; January 1, 1994; January 1, 1994; January 1, 1995; January 1, 1997; February 16, 2004; as amended by Supreme Court Order No. 08-8300-056, effective January 15, 2009; by Supreme Court Order No. 12-8300-020, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme

Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — ~~[Section 34-8A-6C NMSA 1978 (as amended by Laws 1980, Chapter 142, Section 4), is so broad as to be in violation of the constitutional prohibition against double jeopardy. The rule as drafted limits appeals by the prosecution to a determination of the validity of the statute or ordinance under which the defendant was prosecuted, thus avoiding the statutory violation mentioned above.~~

~~Paragraph H was redesignated as Paragraph C and revised to clarify that bond liability terminates upon a finding of guilt pursuant to NMSA 1978, § 31-3-10 (1987). Paragraph D was added to clarify that all aspects of the sentence shall be stayed pending appeal because there were wide variances in interpretation and practice. The provision in Paragraph D regarding preparation and issuance of the abstract of record of the defendant's conviction is intended to reconcile the potentially conflicting ten (10) day deadline in NMSA 1978, Section 66-8-135 and the fifteen (15) day notice of appeal deadline in this rule and NMSA 1978, Section 34-8A-6.] Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.~~

[Adopted by Supreme Court Order No. 12-8300-020, effective August 3, 2012; as amended by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

7-703.1. On-record appeals from metropolitan court to Court of Appeals.

A. Right of appeal.

(1) A party who is aggrieved by the judgment or final order in a criminal action, resulting in a conviction of driving under the influence of intoxicating liquor or drugs or a conviction of domestic abuse as defined in Rule 7-702(C) NMRA, may appeal to the Court of Appeals, as permitted by law, by filing a notice of appeal in the metropolitan court within thirty (30) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 7-702(B)(2) NMRA.

(2) The additional three (3)-day period set forth in Rule 12-308(B) NMRA for certain kinds of service does not apply to the time limits set forth in Subparagraph (1) of this paragraph.

(3) A notice of appeal filed after the announcement of a decision or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed on the day that the metropolitan court judgment or order is filed.

B. Content of the notice of appeal. The notice of appeal shall specify:

(1) each party taking the appeal and each party against whom the appeal is taken;

(2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

(3) the name of the court to which the appeal is taken.

C. Attachment to notice of appeal. A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. Service of the notice of appeal. The appellant shall give notice of the filing of a notice of appeal by serving a copy on the appellate court, metropolitan court who took the record,

and trial counsel of record for each party other than the appellant. If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

E. Post-trial or post-judgment motions extending the time for appeal.

(1) If a party timely files a motion that has the potential to affect the finality of the underlying judgment or sentence, the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last such remaining motion. Those motions may include, but are not necessarily limited to, the following motions filed within thirty (30) days after the judgment or order appealed from is filed in the metropolitan court clerk's office:

- (a) a motion for new trial filed under Rule 7-611 NMRA; or
- (b) a motion for modification of a sentence filed under Rule 7-801

NMRA.

(2) If a party timely files a motion listed in Subparagraph (1) of this paragraph and, before the motion is expressly disposed of by written order filed with the metropolitan court clerk's office, the party files in the metropolitan court a notice stating that the motion is withdrawn, the time for filing a notice of appeal shall be determined from the date the notice of withdrawal is filed in the metropolitan court, unless another motion listed in Subparagraph (1) remains pending.

(3) A timely notice of appeal filed before the express disposition by order, or the withdrawal of any timely filed motion listed in Subparagraph (1) of this paragraph, whether the notice is filed before or after the motion is filed, becomes effective on the day on which the time for filing a notice of appeal commences to run. Until that time, the notice does not divest the metropolitan court of jurisdiction to dispose of the motion. A notice of appeal that becomes effective under this subparagraph brings up for review any disposition by order of any timely filed motion listed in Subparagraph (1) of this paragraph, without the necessity of attaching to the notice of appeal a copy of any order disposing of the motion.

F. Motion for extension of time.

(1) A party seeking an extension of time to file a notice of appeal shall file a motion in the metropolitan court before, or no later than thirty (30) days after, the expiration of the time otherwise prescribed by this rule for filing the notice of appeal. The motion for extension of time shall be served on all parties. The metropolitan court has jurisdiction to rule on the motion regardless of whether a notice of appeal has been filed.

(2) If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause.

(3) If the motion is filed within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of excusable neglect or circumstances beyond the control of the appellant.

(4) A motion filed more than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal shall not be granted.

(5) An extension of time granted under this paragraph shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted. A party that has filed a motion for extension of time must file a notice of appeal within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, even if the motion for extension of time remains pending. The metropolitan court may grant the motion for extension of time retroactively.

G. **Grace period when notice is sent by mail or commercial courier.** A notice of appeal that is sent by mail or commercial courier service to the metropolitan court shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which, in addition to the information otherwise required by Rule 12-307(E) NMRA, explicitly states that the notice of appeal was sent to the metropolitan court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The metropolitan court clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

H. **Record on appeal.**

(1) **Composition.** The papers and pleadings filed in the metropolitan court (the court file), or a copy thereof shall constitute the record proper. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA.

(2) **Transmission.** On receipt of a copy of the docketing statement, the metropolitan 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 no later than fourteen (14) days from the date the docketing statement is received by the metropolitan court. The first page, after the title page, of the record proper shall consist of a copy of the metropolitan court clerk's docket sheet with references to the page of the record proper for each entry. The metropolitan court clerk shall send a copy of this docket sheet to all counsel of record.

(3) **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 metropolitan court or the appellate court, on motion or on its own initiative, may direct that the omission be corrected and a supplemental record proper sent to the appellate court. The appellate court shall notify the parties when it has ordered supplemental material on its own accord.

I. **Docketing the appeal.**

(1) **Attorney or party responsible.** Unless otherwise ordered by the Court of Appeals, trial counsel, or another attorney in the same office as trial counsel that is designated to handle on-record appeals, or the party, if not represented by an attorney, shall be responsible for preparing and filing a docketing statement in the Court of Appeals.

(2) **When filed.** Within thirty (30) days after filing the notice of appeal in metropolitan court, the appellant shall file a docketing statement, if the appeal has been docketed in the Court of Appeals. But if the notice of appeal was filed before the express written disposition by order or the withdrawal of any timely filed post-trial or post-judgment motion listed in Paragraph E of this rule, then the docketing statement shall be filed within thirty (30) days after the notice of appeal becomes effective under Paragraph E.

(3) **Service.** The appellant shall serve a copy of the docketing statement on the metropolitan court clerk and on those persons who are required to be served with a notice of appeal under Paragraph D.

(4) **Docketing statement in the Court of Appeals; contents.** A docketing statement must satisfy all of the requirements contained in Rule 12-208(D) NMRA. For docketing statements filed in on-record appeals from the metropolitan court, the docketing statement must also contain a specific reference to the audio recording for each factual assertion made in the docketing statement. A "specific reference" requires a citation to the counter number or time

reference of the audio recording that establishes a basis for the factual assertion made in the docketing statement. Failure to provide the information required by Rule 12-208(D) NMRA or this subparagraph, including the requirement of specific references to the audio recording, may result in sanctions up to and including dismissal of the appeal in accordance with Rule 12-312 NMRA.

J. Conditions of release.

(1) ***Appearance bond; appeal bond.*** The appearance bond set to ensure the defendant's appearance for trial shall be released. The metropolitan court may set an appeal bond to ensure the defendant's appearance in the Court of Appeals and may set any conditions of release as are necessary to ensure the appearance of the defendant or the orderly administration of justice. The metropolitan court may use the criteria listed in Rule 7-401(C) NMRA and may also consider the defendant's conviction and the length of the sentence imposed. The amount of the appeal bond and the conditions of release shall be included on the judgment and sentence. Nothing in this rule shall be construed to prevent the court from releasing a person not released before or during trial.

(2) ***Review of terms of release.*** If the metropolitan court has refused release pending appeal or has imposed conditions of release that the defendant cannot meet, the defendant may file a motion to review conditions of release with the clerk of the Court of Appeals under Rule 12-205 NMRA at any time after the filing of the notice of appeal. A copy of the motion to review conditions of release that has been endorsed by the clerk of the Court of Appeals shall be filed with the metropolitan court. If the Court of Appeals releases the defendant on appeal, a copy of the order of release shall be filed in the metropolitan court.

K. Appellate Procedure. All further process on appeal not articulated in this rule will occur in accordance with the procedure articulated in Rule 12-609 NMRA and all applicable Rules of Appellate Procedure.

[Adopted by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Adopted by Supreme Court Order No. _____.]

[NEW MATERIAL]

12-609. On-record appeals from metropolitan court.

A. Scope. This rule governs the procedure for filing and perfecting direct appeals to an appellate court from the final judgments and orders of the metropolitan court in matters that proceed as on-record appeals. All applicable Rules of Appellate Procedure shall apply to the filing of on-record appeals with the modifications identified below and in Rule 3-706 NMRA, Rule 3-706.2 NMRA, Rule 7-702 NMRA, and Rule 7-703.1 NMRA. This rule does not create a right of appeal.

B. Substitution of metropolitan court. When these Rules of Appellate Procedure state that a duty is to be performed by, service is to be made on, or reference is made to the district court or a judge or clerk of the district court, the metropolitan court or a judge or clerk of the metropolitan court whose action is appealed from shall be substituted for the district court or a judge or clerk of the district court.

C. Initiating the appeal. The notice of appeal shall be filed as provided for in Rule 3-706 NMRA, Rule 3-706.2 NMRA, Rule 7-703 NMRA, and Rule 7-703.1 NMRA. The notice of

appeal shall be filed in the metropolitan court within thirty (30) days of the filing of the metropolitan court judgment or final order with the metropolitan court clerk's office. The docketing statement, the requirements for which are provided in Rule 12-208 NMRA of these rules and modified by Rule 3-706.2 NMRA and Rule 7-703.1 NMRA for on-record appeals, shall be filed with the clerk of the Court of Appeals, along with the docketing fee, within thirty (30) days of the filing of the notice of appeal.

D. **Sanctions.** Failure to comply with the Rules of Appellate Procedure or the requirements provided in Rule 3-706.2 NMRA or Rule 7-703.1 NMRA may result in sanctions up to and including dismissal in accordance with Rule 12-312 NMRA.

E. **Transfer.** When a party appeals a metropolitan court decision and the appeal is filed in the wrong appellate court, the district court in accordance with Rule 5-827(J) NMRA or the Court of Appeals under this rule shall enter an order of transfer to the appropriate court. When the district court has entered an order of transfer in accordance with Rule 5-827(J) NMRA, the Court of Appeals shall review that determination. If the Court of Appeals determines that jurisdiction over the appeal lies with the district court, the Court of Appeals shall enter an order rejecting the transfer. If the Court of Appeals determines that it has jurisdiction over the appeal and transfer was proper, the Court of Appeals shall issue an order accepting transfer. The appellant shall have thirty (30) days from the date the order accepting transfer is entered to file a docketing statement with the Court of Appeals. When the Court of Appeals has entered an order of transfer to the district court, the transfer is complete on filing, and the appellant shall proceed in the district court in accordance with Rule 5-827 NMRA.

[Adopted by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 01/19/2022, 9:33 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Wed, Jan 19, 2022 at 9:33 AM

Reply-To: "wolfgang.bomgardner@lopdm.us" <wolfgang.bomgardner@lopdm.us>

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

Your
Name: Wolfgang J. Bomgardner
Phone
Number: 5053693610
Email: wolfgang.bomgardner@lopdm.us
Proposal
Number: Proposal 2022-001

Comment: I am commenting in hopes that you will approve this proposal. The proposal provides clarity on the appeals process. Without that clarity, defendants cannot know with certainty what can be appealed, where it will be appealed too, and what the process looks like.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/02/2022, 11:29 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Wed, Feb 2, 2022 at 11:29 AM

Reply-To: "albdiv17proposedtxt@nmcourts.gov" <albdiv17proposedtxt@nmcourts.gov>

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

Your Name: Erin B. O'Connell

Phone Number: 505-841-7531

Email: albdiv17proposedtxt@nmcourts.gov

Proposal Number: 2022-001

Comment: Please see the attached letter.

Upload: [2022-02-02_Ltr-re-Proposed-Revisions-to-Rule-1-073.pdf](#)



2022-02-02_Ltr-re-Proposed-Revisions-to-Rule-1-073.pdf

296K



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

NANCY J. FRANCHINI
DISTRICT JUDGE

POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87103
505-841-7522
FAX: 505-841-5456

February 2, 2022

Rules of Civil Procedure Committee

Re: Revisions to Rule 1-073 NMRA; De novo review of metropolitan court appeals

Dear Chairwoman Zimmerman and Members of the Committee:

Thank you for the proposed revisions to Rule 1-073 NMRA pertaining to District Court de novo review of appeals from Metropolitan Court, which are revisions arising out of the 2019 changes to NMSA 1978, Section 34-8A-6(C) (2019) (providing that any party aggrieved by a judgment of the Metropolitan Court brought pursuant to the Uniform Owner-Resident Relations Act may appeal to the District Court and that “[t]he appeal shall be de novo”). We respectfully make the following suggestions in response to the proposed revisions to the Rule:

These comments do not concern any issues pending before the Court of Appeals and do not concern matters that may come before the District Court. Before turning to our comments on the proposed changes to the Rule, we feel compelled by our professional obligations to alert the Committee to certain disputed matters pending before the Court of Appeals. We are aware of two cases in which a dispute is being litigated as to whether the provision of Section 34-8A-6(C) that “[t]he appeal shall be de novo” was satisfied by the District Court. *See Matheny v. Clark*, No. A-1-CA-39275 (assigned to the general calendar on January 21, 2022) and *Monarch Properties v. Hanson*, No. A-1-CA-39833 (assigned to the general calendar on January 25, 2022). There may be other, similar cases that we are not aware of.

Our comments are not intended to be, nor should they be taken as, comments on what satisfies a “de novo appeal” for purposes of Section 34-8A-6(C). As we see it, the issue of whether any litigant has been provided a “de novo appeal” is an issue that could likely come before us as District Court Judges and must therefore be determined on a case-by-case basis. Rather, our comments here are intended only to respond to the Committee’s revisions to the *procedural* requirements that help ensure the District Court is providing the parties a “de novo appeal.” As you will see, we believe that retaining some procedural aspects of the prior Rule are helpful in providing the litigants the de novo appeal that Section 34-8A-6(C) requires.

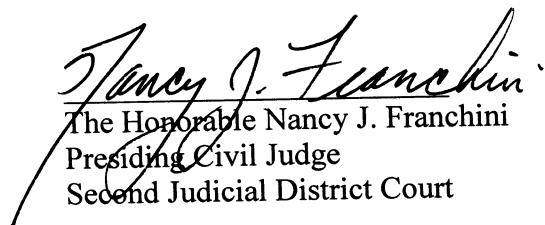
Former Paragraph (I), Statement of appellate issues. The proposed changes include eliminating the requirement to file a statement of appellate issues and a response. We suggest this requirement be retained, and further suggest adding a requirement to file a notice of completion of briefing similar to Rule 1-007.1(H) and cross-referencing LR2-119(D) (requiring briefing packages to be submitted to the assigned judge once the notice of completion of briefing is filed). Each of us has presided over de novo appeals of UORRA actions from the Metropolitan Court, and we have found that the statement of appellate issues has been helpful to our court in deciding most appeals. Again, leaving aside what constitutes a “de novo appeal” for any particular case, we are certain that a statement of appellate issues and response are useful in alerting and educating the judge on the issues and arguments before the court, in addition to helping the parties identify the issues in dispute. Like most cases in litigation, our experience is that not all cases on de novo appeal from the Metropolitan Court require a trial, such as when the parties have no dispute as to the factual record below and only a legal determination is necessary to resolve the matters on appeal. Many of the cases seen in our court do not dispute the facts below, and have been resolved by memorandum opinion or order after first requesting that the parties file a statement of appellate issues and response. Regardless, briefing from the parties is of considerable assistance to the judge in resolving the issues on appeal even if a trial is necessary. In those cases, we use the statement of appellate issues and response as a type of trial brief.

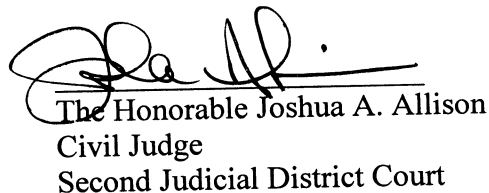
Former Paragraph (S), Disposal of appeals. This paragraph is proposed for elimination, and we suggest it be retained and revised to allow the assigned judge to dispose of any de novo appeal as otherwise allowed by the Rules of Civil Procedure for the District Courts. For example, an appeal could be properly disposed of by an order and memorandum opinion or by simple entry of judgment in favor of the presiding party. We also suggest the Rule retain the requirement for the clerk to issue a mandate. *See Bobrick v. State*, 1972-NMCA-048, ¶ 6, 83 N.M. 657, 495 P.2d 1104 (“[T]he transfer of jurisdiction from the appellate court to the [lower] court is accomplished upon issuance of the mandate.”); *State ex rel. King v. UU Bar Ranch Ltd. P'ship*, 2009-NMSC-010, ¶ 22, 145 N.M. 769, 205 P.3d 816 (providing mandate sets forth the extent of the jurisdiction of the lower court on remand).

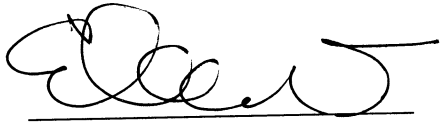
Addition of Paragraph for Failure to Comply with Rules. We suggest adding a paragraph imposing consequences for failure to comply with the Rule. Rule 1-074 NMRA and Rule 1-075 NMRA both have a paragraph that allows for dismissal or other *sua sponte* action in appropriate circumstances for failure to comply with the rule requirements. *See* Rule 1-074(X) & Rule 1-075(W). We suggest Rule 1-073 have a similar provision.

Thank you for your consideration of these suggestions and for your service on the Civil Rules Committee.

Sincerely,


The Honorable Nancy J. Franchini
Presiding Civil Judge
Second Judicial District Court


The Honorable Joshua A. Allison
Civil Judge
Second Judicial District Court

A handwritten signature in black ink, appearing to read 'Erin B. O'Connell', written over a horizontal line.

The Honorable Erin B. O'Connell
Civil Judge
Second Judicial District Court



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Bernalillo County Metropolitan Court's Comments on Proposals 2022-001 and 2022-002

1 message

Alesia Cappon <metranc@nmcourts.gov>

Thu, Feb 3, 2022 at 9:33 AM

Reply-To: metranc@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Cc: Artie Pepin <aocawp@nmcourts.gov>

Good morning,

Please see attached comments on Appeals from the Metropolitan Court and Pretrial Release and Detention from Bernalillo County Metropolitan Court Chief Judge Maria I. Dominguez.

Respectfully,

Alesia Cappon

--

Alesia Cappon

Deputy General Counsel

Office of the General Counsel

Bernalillo County Metropolitan Court

401 Lomas Blvd. NW (87102)

Albuquerque, NM 87103

Phone: (505) 841-8258

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Ltr to Jennifer Scott-NMSC comment on Proposal(s) 2022-001 and 2022-002 2-3-22.pdf

195K



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

February 3, 2022

VIA EMAIL

Jennifer L. Scott, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: NM Supreme Court Seeking Comment on
Proposal 2022-001-Appeals from the Metropolitan
Court [Rules 1-073, 2-705, 3-701; 3-704; 3-706; 3-
708; 5-827, 7-611; Rule 7-702 and 7-703, NMRA
and New Rules 3-706.1, 3-706.2 7-703.1, and 12-609
NMRA]; *Proposal 2022-002*-Pretrial Release &
Detention [Rules 5-106, 5-401, 5-409, 6-401, 6-403,
6-501, 7-401, Rule 7-403, Rule 7-409, 7-501, 8-401
and 8-403; and Form 9-303 NMRA]

Dear Ms. Scott:

On behalf of the Metropolitan Court, we appreciate the opportunity to comment on the Rules regarding Appeals from the Metropolitan Court and Pretrial Release & Detention.

1. *Proposal 2022-001*-Appeals from the Metropolitan Court Rules 1-073, 2-705, 3-701, 3-704, Rule 3-706, Rule 3-708, 5-827, 7-611, 7-702 and Rule 7-703 NMRA and New Rules 3-706.1, 3-706.2 7-703.1 and 12-609 NMRA

Proposal 2022-001 is intended to implement House Bill 279 (2019), which amended NMSA 1978, Section 34-8A-6, in part to provide that on-record driving while under the influence of intoxicating liquor or drugs ("DUI"), domestic violence, and civil cases (except for civil cases under the Uniform Owner Resident Relations Act) are appealed directly to the Court of Appeals, and all cases where the Metropolitan Court is not a court of record are appealed to the District Court. As to Rule 1-073 NMRA, it would be helpful if the committee commentary could clarify for practitioners what is meant by a "de novo appeal" as opposed to a "de novo trial." Section 34-8A-6(C) NMSA 1978 provides that in civil cases where the Metropolitan Court is not a court of record, "The appeal shall be de novo." Conversely, Section 39-3-1 NMSA 1978 provides, "All appeals

from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law.” While the annotations to Section 39-3-1 NMSA 1978 refer litigants to Section 34-8A-6 NMSA 1978 for appeals from Metropolitan Court, as there are so many self-represented litigants, particularly in civil actions, we think it would be helpful to clarify in the committee commentary to the rule what is meant by an appeal de novo or a de novo review as opposed to a trial de novo, and in particular, how these standards of review correspond with the requirements of Section 39-3-1 NMSA.

2. *Proposal 2022-002-Pretrial Release & Detention Rules 5-106, 5-401, 5-409, 6-401, 6-403, 6-501, 7-401, 7-403, 7-409, 7-501, 8-401, 8-403 and Form 9-303 NMRA*

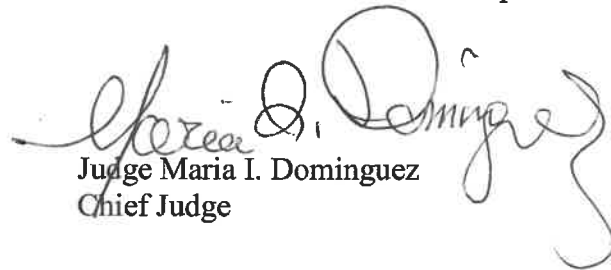
Bernalillo County Metropolitan has identified a concern about the proposed amendment to Subsection B of Rules 5-409, 6-409 and 7-409 NMRA that requires the movant to, “Specify whether the state intends to establish probable cause by way of grand jury proceedings or through a preliminary examination and, if the latter, whether the state is requesting that the preliminary examination and to expedited pretrial detention hearing be held concurrently.”

Grand Jury proceedings are to remain secret until the Indictment is returned by the grand jury. *See* NMSA 1978, §31-6-1, et. seq. “The grand jury is an ancient institution. It has always been venerated and highly prized in this country. It has been regarded as the shield of innocence against the plottings of private malice, as the defense of the weak against the oppression of political power, and as the guard of the liberties of the people against the encroachments of unfounded accusations from any source. These blessings accrue from the grand jury because its proceedings are secret and uninfluenced by the presence of those not officially and necessarily connected with it. It has been the practice for more than two hundred years for its investigations to be in private, except that the district attorney and his assistant are present. Secrecy is the vital requisite of grand jury procedure.” *State v. Hill*, 1975-NMCA-093, ¶ 7. “It is most important that the secrecy of the grand jury be maintained. For centuries grand jury sessions have been surrounded by a cloak of seclusion and secrecy that has been jealously guarded and preserved as the only means of insuring that the jury be permitted the freedom of action necessary for a vigorous and effective discharge of its duties.” *Baird v. State*, 1977-NMSC-067, ¶ 7. “The reasons for this ancient policy are many. Among them are: promoting freedom in the disclosure of crime; preventing coercion of grand jurors through outside influences and intimidation, thus allowing a freedom of deliberation and expressions of opinion which would otherwise be impossible; prohibiting the safety and anonymity of witnesses, thus encouraging the greatest possible latitude in their voluntary testimony; preventing forewarning to those whose criminal conduct has been uncovered; and protecting the good names of persons considered by the grand jury but not indicted.” *Id.* ¶ 8. For this reason, the Court recommends that the any reference to the grand jury be stricken from Subsection B of Rules 5-409, 6-409 and 7-409 NMRA. It should instead read: “The motion shall include the specific facts that warrant pretrial detention and shall specify whether the state is requesting that the preliminary examination and the expedited pre-trial detention hearing be held concurrently.” The reference to grand jury in the respective Committee Commentaries that references Paragraph B should also be removed.

Jennifer L. Scott, Clerk
New Mexico Supreme Court
February 3, 2022
pg. 3

Bernalillo County Metropolitan has identified a concern about the proposed amendment to Subsection C of Rules 5-409, 6-409 and 7-409 NMRA that requires the magistrate or metropolitan court proceed to conduct the defendant's first appearance under Rule 6-501 NMRA or 7-501 NMRA before it sends to the district court clerk a copy of the motion for pretrial detention and its jurisdiction is terminated. This directive is inconsistent with the purpose of first appearance, which is to determine probable cause and set conditions of release. Customarily, the judges of Metropolitan Court, upon the filing of an Expedited Motion for Pretrial Detention, are not proceeding with the first appearance, as the probable cause has occurred separately, and only the District Court may grant or deny the prosecutor's motion to preventatively detain the defendant or impose conditions of release, and only after a hearing. For this reason, the Court recommends that Subsection C of Rule 5-409, 6-409 and Rule 7-409 NMRA remain unchanged.

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.



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 Courts



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 11:52 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 11:52 AM

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

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

Your
Name: Michelle Haubert

Phone
Number: (505)603-5744

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Proposal
Number: 2022-001

Comment: Comments from the Division of Appellate Court Attorneys at the NMCA are attached. We are submitting a Word Document that provides substantive comments and identifies where we are suggesting more minor changes. We are also submitting copies of each of the individual rules that we are suggesting changes to with track changes and comments.
This attachment is Part 1 of 11.

Upload: [DACA-COMMENTS-TO-PROPOSED-AMENDMENTS-TO-ON-RECORD-RULES_Final.docx](#)



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DIVISION OF APPELLATE COURT ATTORNEYS COMMENTS TO PROPOSED AMENDMENTS TO RULES

District Court Civil Rule 1-073 NMRA. De novo appeals from metropolitan.

See attached Word document for minor edits to following portions of Rule 1-073:

Name of rule; (D)(1); (E); (F)

Magistrate Court Civil Rule 2-705 Appeals.

See attached Word document for minor edits to these subsections:

(E); (J)

Metropolitan Court Rule 3-704 Relief from Judgment or Order.

For reference, the proposed amendment to Section A provides:

A. Clerical mistakes. Clerical mistakes in judgments, orders, or parts of the record and errors ~~[therein arising]~~that arise from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party.~~[and after such notice, if any, as the court orders.]~~ During the pendency of an appeal, ~~[such]~~clerical mistakes may be so corrected before the appeal is docketed in the district court or appellate court.~~[, and thereafter~~

~~while]~~ While the appeal is pending, clerical mistakes may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

The meaning of “During the pendency of an appeal” and “While the appeal is pending” becomes unclear without the “and thereafter” language that the proposed amendment would remove from the rule because the sentences provide opposing guidance for what is permissible while an appeal is pending. For clarity, suggest the modifications noted below:

Clerical mistakes. Clerical mistakes in judgments, orders, or parts of the record and errors ~~[therein arising]~~that arise from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party.~~[and after such notice, if any, as the court orders.]~~ Once an appeal has been initiated, During the pendency of an appeal, ~~[such]~~clerical mistakes may be so corrected before the appeal is docketed in the district court or appellate court.~~[, and thereafter while]~~ While the appeal is pending Once the appeal is docketed, clerical mistakes may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

Alternatively, for clarity and consistency, suggest following the language of current District Court Civil Rule 1-060 NMRA Relief from Judgment. For reference, Rule 1-060 provides:

A. Clerical mistakes. Clerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, these mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

See attached Word document.

Metropolitan Court Civil Rules 3-706.1 De novo appeals from metropolitan court to district court and 3-708 Audio Recording of Proceedings.

The proposed amendment to Rule 3-708 requires the metropolitan court to make an audio recording only “if requested by a party.” If all civil appeals, except Uniform Owner Resident Relations Act case, are appealed to the Court of Appeals as “on-record” appeals, an audio recording of proceedings should be required, as they are for criminal cases. *Cf.* Rule 7-702(D) NMRA (“An audio recording and

corresponding index log *shall* be made of all criminal proceedings in which the metropolitan court is a court of record.”).

On January 15, 2016, the New Mexico Supreme Court accepted certification from this Court of *Padilla v. Torres*, No. S-1-SC-35619. *Padilla* raised the issue of whether placing the burden to request an audio-recording of a metropolitan court hearing upon the litigant who has a right to appeal, *see* Rule 3-708 NMRA, violates federal and state rights to appeal, equal protection, and due process.

Subsequently, the New Mexico Supreme Court agreed to review four additional cases raising substantially the same issue. *See Venie v. Velasquez*, No. S-1-SC-34790; *Boughton v. Sunport Plaza Apartments*, No. S-1-SC-35695; *Broadway Apartments v. Valdez*, No. S-1-SC-35696; *Seibert v. Segura*, No. S-1-SC-35799. These four cases have been held in abeyance, pending resolution in *Padilla*, No. S-1-SC-35619, which remains unresolved.

To avoid these potential constitutional challenges, suggest requiring that an audio recording be made of all metropolitan court proceedings. If this revision is made, also suggest eliminating references to audio recording prepared “at request of the party” contained in Rule 3-706.1 NMRA.

See attached Word documents for suggested revisions to Rules 3-708 and 3-706.1.

Metropolitan Court Rule 3-706.2 On-record appeals from metropolitan court to court of appeals.

Section (B)(3) “the name of the court to which the appeal is taken.” The purpose of this language is unclear; it seems to imply there is another court to which the appeal can be taken, when the rule solely governs on-record appeals which may only be taken to the Court of Appeals. Perhaps it is for the benefit of the Bar—to ensure they are considering the correct court—or to assist the metropolitan court—to know when a notice copy of the notice of appeal is filed there.

If not, suggest deleting this section as unnecessary. See Cmt. to Rule 7-703.1(B)(3) below; same suggestion to be consistent.

See attached Word document for minor edits to these subsections:

Name of rule; (H)(1); (I)(2)

Metropolitan Criminal Court Rule 7-611 Motion for New Trial

Section (C) of the proposed rule indicates that when a motion for new trial is timely filed, the time for filing a notice of appeal shall commence upon the entry of an order disposing of the motion. Suggest modifying the language to allow the time for filing a notice of appeal to commence either upon the entry of an order disposing of the motion or upon the filing of a notice withdrawing the motion. This change

would make the rule consistent with the time for commencing appeal under Rule 12-201(D)(3) NMRA.

See attached Word document for suggested revision.

Metropolitan Criminal Court Rule 7-702 Advising defendant of right to appeal.

For reference, the proposed amendment to Section A provides:

A. Duty of metropolitan court. At the time of entering a judgment and sentence, the court shall advise the defendant of the defendant's right to the following:

- (1) ~~[if the appeal is an appeal de novo, to]~~ a new trial in the district court, if the appeal is an appeal de novo; or
- (2) ~~[if the appeal is an appeal on the record, to]~~ an appeal on the record to the ~~[district court]~~ Court of Appeals.

Suggest changing (2) to read: “an appeal to the Court of Appeals, if the appeal is on-record” for parallel structure with (1).

See attached Word document for additional minor edits to these subsections:

(C)(1); (C)(2); (D)

Metropolitan Criminal Court Rule 7-703 De novo appeal from metropolitan court to district court.

See attached Word document for minor edits to this subsection:

(B)

Metropolitan Court Criminal Rule 7-703.1 On-record appeals from metropolitan court to Court of Appeals.

Subsection (B): See comment above regarding the same language contained in Metropolitan Court Rule 3-706.2(B)(3).

See attached Word document for minor edits to these subsections:

(D); (H)(2); (H)(3); (I)(2); (J)(1)

We also appreciate the committee commentary that there is no right to interlocutory appeal from metropolitan court, but wonder if it might be possible to include that language as part of the rule itself, for easy reference and citation.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 11:54 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 11:54 AM

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

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

Your Name: Michelle Haubert

Phone Number: 5056035744

Email: coamrh@nmcourts.gov

Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 2 of 11.

Upload: [Proposed-Amend.-Rule-1-073-PFC-1.3.22_Final-DACA-Cmt.docx](#)



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DISTRICT COURT CIVIL
RULE 1-073

Published for Comment
January 3, 2022

1-073. ~~Appeal~~ De novo appeals from metropolitan court to district court ~~[on the record]~~.

Commented [A1]: Suggest adding after court "to district court" to be consistent with the equivalent district court criminal procedure Rule 5-827

A. **Right of appeal.** A party who is aggrieved by the judgment or final order of the metropolitan court in a civil action ~~[in the metropolitan court]~~ arising under the Uniform Owner-Resident Relations Act, Sections 47-8-1 to -51 NMSA 1978, may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The ~~[three (3)-day]~~ three (3)-day mailing period set forth in Rule 1-006 does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision^[7] or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state, its political subdivisions, or the nonprofit corporations authorized to be formed under the Educational Assistance Act, Sections 21-21A-1 to -25 NMSA 1978, ~~[[21-21A-1 NMSA 1978]]~~ in ~~[any such]~~ the appeal.

B. **Notice of appeal.** An appeal from the metropolitan court is taken by:

- (1) filing with the clerk of the district court a notice of appeal with proof of service; and
- (2) promptly filing with the metropolitan court:
 - (a) a copy of the notice of appeal that has been endorsed by the clerk of the district court; and
 - (b) a copy of the receipt of payment of the docket fee.

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1 C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the
2 form approved by the Supreme Court. A copy of the metropolitan court judgment or final order
3 appealed from, showing the date of the judgment or final order, shall be attached to the notice of
4 appeal filed in the district court.

5 D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district
6 court, the appellant shall:

7 (1) serve each party or ~~[such]~~the party's attorney in the metropolitan court
8 proceedings with a copy of the notice of appeal in accordance with Rule 1-005 NMRA; and

9 (2) file proof of service with the clerk of the district court that a copy of the
10 notice of appeal has been served in accordance with Rule 1-005 NMRA~~[-and]~~.

11 ~~[(3) — if evidentiary or factual matters are involved in the appeal, file with the~~
12 ~~clerk of the district court a certificate of the clerk of the metropolitan court that satisfactory~~
13 ~~arrangements have been made with the metropolitan court for preparation and payment for the~~
14 ~~transcript of the proceedings.]~~

15 E. **Request for hearing.** An original request for hearing shall be filed at the time a
16 notice of appeal is filed. The request for hearing shall be in the form set forth in LR2-Form 703
17 NMRA or a substantially equivalent form approved by the Supreme Court. The following shall be
18 delivered to the assigned judge:

19 (1) a copy of the request for hearing;

20 (2) an original notice of hearing in the form set forth in LR2-Form 704 NMRA
21 or substantially equivalent form approved by the Supreme Court with sufficient copies for all
22 parties entitled to notice; and

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(3) stamped, addressed, plain (without return address) envelopes for all parties entitled to notice.

~~[E.]~~**F. Docketing the appeal.** ~~Upon~~~~Once a notice of appeal and proof of service have been filed and the docket fee, if required, has been paid, the filing of the notice of appeal and proof of service and payment of the docket fee, if required,~~ the clerk of the district court shall docket the appeal in the district court.

~~[F.]~~**G. Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court ~~[pursuant to]~~under Paragraph B of this rule, the metropolitan court shall file with the clerk of the district court the record on appeal taken in the action in the metropolitan court.

(1) For purposes of this rule, the record on appeal shall consist of:

~~[(1)]~~ (a) a title page containing the caption of the case in the metropolitan court and names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

~~[(2)]~~ (b) a copy of all papers and pleadings filed in the metropolitan court;

~~[(3)]~~ (c) a copy of the judgment or order sought to be reviewed with date of filing noted thereon;

~~[(4)]~~ (d) any exhibits; and

~~[(5)]~~ (e) any ~~[transcript]~~audio recording of the proceedings ~~[made by]~~prepared at the [metropolitan court, either stenographically recorded or tape recorded]request of a party. If ~~[the transcript]~~an audio recording of the proceedings ~~[is]~~was requested by a [tape recording] party, the metropolitan court clerk shall prepare and file with the district court a duplicate of the ~~[tape]~~audio recording and the index log.

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_____ (2) Any party desiring a copy of the transcript of the proceedings shall be responsible for ~~[paying]~~ the cost~~[, if any,]~~ of preparing ~~[such]~~ the copy.

_____ (3) The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

~~[G.]~~**H. Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court ~~[on motion,]~~ or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record ~~[transmitted]~~ sent to the district court.

~~[H.]~~**I. Stay of proceedings to enforce a judgment.**~~[Statement of appellate issues. A statement of appellate issues shall be filed with the district court as follows:]~~

(1) When an appeal is taken from a final decision or order of the metropolitan court under the Uniform Owner-Resident Relations Act, the appellant may obtain a stay in accordance with Section 47-8-47 NMSA 1978. ~~[the appellant's statement shall be filed and served within thirty (30) days from the date of service of the notice of filing of the record on appeal in the district court; and]~~

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of that appeal shall operate as a stay. ~~[the appellee's response shall be filed and served within thirty (30) days after service of the appellant's statement of issues.]~~

~~[I.]~~**Appellant's statement of appellate issues.** The appellant's statement of appellate issues, under appropriate headings and in the order here indicated, shall contain:

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RULE 1-073**

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1 ~~_____ (1) _____ a statement of the issues;~~

2 ~~_____ (2) _____ a summary of the proceedings which shall indicate briefly the nature of the~~
3 ~~case, the course of proceedings, and the disposition of the metropolitan court. The summary shall~~
4 ~~include a short recitation of all facts relevant to the issues presented for review, with appropriate~~
5 ~~references to the record on appeal showing how the issues were preserved in the proceedings~~
6 ~~before the metropolitan court;~~

7 ~~_____ (3) _____ an argument which shall contain the contentions of the appellant with~~
8 ~~respect to each issue presented in the statement of issues, with citations to the authorities, statutes~~
9 ~~and parts of the record on appeal relied upon. New Mexico decisions, if any, shall be cited; and~~

10 ~~_____ (4) _____ a statement of the precise relief sought.~~

11 ~~_____ J. _____ Appellee's statement of appellate issues; response.~~ The appellee's response shall
12 ~~conform to the requirements of Subparagraphs (1) to (4) of Paragraph I of this rule, except that a~~
13 ~~statement of the issues or a summary of the proceedings shall not be made unless the appellant's~~
14 ~~statement of issues or summary of the proceedings is disputed or is incomplete.~~

15 ~~_____ K. _____ References in statement of appellate issues.~~ References in the statement of
16 ~~appellate issues shall be to the pages of the record on appeal or, if the reference is to a tape~~
17 ~~recording, the approximate counter numbers of the tape as shown on the index log shall be used.~~
18 ~~If reference is made to evidence the admissibility of which is in controversy, reference shall be to~~
19 ~~the place in the record on appeal at which the evidence was identified, offered, and received or~~
20 ~~rejected.~~

21 ~~_____ L. _____ Length of statements of appellate issues.~~ Except by permission of the court, the
22 ~~argument portion of the appellant's statement of appellate issues shall not exceed eight (8) pages.~~

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1 Except by permission of the court, the argument portion of appellee's response shall not exceed
2 eight (8) pages.

3 ~~—— M. —~~ **Briefs.** Briefs may be filed only by leave of the district court and upon such
4 conditions as the court may direct.

5 ~~—— N. —~~ **Oral argument.** Upon motion of a party or on the court's own motion, the court
6 may allow oral argument.

7 ~~—— O. —~~ **Scope of review.** To preserve a question for review it must appear that a ruling or
8 decision by the metropolitan court was fairly invoked, but formal exceptions are not required, nor
9 is it necessary to file a motion for a new trial to preserve questions for review. Further, if a party
10 has no opportunity to object to a ruling or order at the time it is made, the absence of an objection
11 does not thereafter prejudice the party. This paragraph shall not preclude the district court from
12 considering jurisdictional questions or, in its discretion, questions involving:

13 ~~—— (1) —~~ general public interest; or

14 ~~—— (2) —~~ fundamental error or fundamental rights of a party.

15 ~~—— P. —~~ **Stay of proceedings to enforce a judgment.**

16 ~~—— (1) —~~ When an appeal is taken, the appellant may obtain a stay of the proceedings
17 to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court as
18 provided in the Rules of Civil Procedure for the Metropolitan Courts.

19 ~~—— (2) —~~ When an appeal is taken by the state, by an officer or agency of the state,
20 by direction of any department of the state, by any political subdivision or institution of the state
21 or by any municipal corporation, the taking of an appeal shall operate as a stay.]

22 [Q.] **Review of supersedeas.** At any time after an appeal is filed [pursuant to] under
23 Paragraph B of this rule, the district court may, [upon] on motion and notice, review any action

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RULE 1-073**

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of[;] or any failure or refusal to act by the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time [within which] to file in the district court a supersedeas bond complying with the requirements for a supersedeas bond set forth in the Rules of Civil Procedure for the Metropolitan Courts. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

~~[R. — **Rehearing.** A motion for reconsideration may be filed within ten (10) days after filing of the district court's final order. The three (3) day mailing period set forth in Rule 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and with particularity, but without argument, the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended. No response to a motion for rehearing shall be filed unless requested by the court.~~

~~— S. — **Disposal of appeals.** The district court shall dispose of appeals by entry of an appropriate order disposing of the appeal. The court in its discretion may accompany the order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as precedent in subsequent cases. A mandate shall be issued by the court upon expiration of whichever of the following events occurs latest:~~

- ~~———— (1) — fifteen (15) days after entry of the order disposing of the case;~~
- ~~———— (2) — fifteen (15) days after disposition of a motion for rehearing; or~~
- ~~———— (3) — if a notice of appeal is filed, upon final disposition of the appeal.~~

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1 ~~_____ T. **Remand.** Upon expiration of the time for appeal from the final order or judgment~~
2 ~~of the district court, the district court shall remand the case to the metropolitan court for~~
3 ~~enforcement of the district court's judgment.]~~

4 ~~[U.]~~K. **Appeal.** Any aggrieved person may appeal from a judgment of the district court to
5 the New Mexico Supreme Court or Court of Appeals, as authorized by law in accordance with the
6 Rules of Appellate Procedure. Any supersedeas bond approved by the metropolitan court, or
7 modified by the district court, shall continue in effect pending appeal to the Supreme Court or
8 Court of Appeals, unless modified [pursuant to]under Rule 12-207 NMRA. [of the Rules of
9 Appellate Procedure.]

10 [Adopted, effective January 1, 1996; as amended by Supreme Court Order No.
11 _____, effective for appeals filed on or after _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 11:55 am

1 message

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Your Name: Michelle Haubert

Phone Number: 5056035744

Email: coamrh@nmcourts.gov

Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 3 of 11.

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26K

1 **2-705. Appeal.**

2 A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil
3 action may appeal, as permitted by law, to the district court of the county within which the
4 magistrate court is located. The notice of appeal shall be filed in the district court within fifteen
5 (15) days after the judgment or final order appealed from is filed in the magistrate court. If a timely
6 notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days
7 after the date on which the first notice of appeal was served or within the time otherwise prescribed
8 by this rule, whichever period expires last. The ~~three (3)-day~~ three (3)-day mailing period set
9 forth in Rule 2-104 NMRA does not apply to the time limits set forth above. A notice of appeal
10 filed after the announcement of a decision, or return of the verdict, but before the judgment or
11 order is filed in the magistrate court, shall be treated as timely filed. Notwithstanding any other
12 provision of this rule, no docket fee or other cost shall be imposed against the state or its political
13 subdivisions in any ~~such~~ appeal.

14 B. **Notice of appeal.** An appeal from the magistrate court is taken by

15 (1) filing with the clerk of the district court a notice of appeal with proof of
16 service; and

17 (2) promptly filing the following with the magistrate court:

18 (a) a copy of the notice of appeal which has been endorsed by the clerk
19 of the district court; and

20 (b) a copy of the receipt of payment of the docket fee.

21 C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the
22 form approved by the Supreme Court. A copy of the magistrate court judgment or final order

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1 appealed from, showing the date of the judgment or final order, shall be attached to the notice of
2 appeal filed in the district court.

3 D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district
4 court, the appellant shall

5 (1) serve each party or ~~[such]~~the party's attorney in the proceedings in the
6 magistrate court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA ~~[of the~~
7 ~~Rules of Civil Procedure for the District Courts]~~; and

8 (2) file proof of service with the clerk of the district court that a copy of the
9 notice of appeal has been served in accordance with Rule 1-005 NMRA.

10 E. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the
11 notice of appeal with the magistrate court under Paragraph B of this rule, the magistrate court shall
12 file with the clerk of the district court the record on appeal taken in the action in the magistrate
13 court. For purposes of this rule, the record on appeal shall consist of the following:

14 (1) a title page containing the caption of the case in the magistrate court and
15 the names and mailing addresses of each party or, if the party is represented by counsel, the name
16 and address of the attorney;

17 (2) a copy of all papers and pleadings filed in the magistrate court;

18 (3) a copy of the judgment or order sought to be reviewed with date of filing;

19 and

20 (4) any exhibits.

21 The magistrate court clerk shall give prompt notice to all parties of the filing of the record on
22 appeal with the district court.

Commented [A1]: To be consistent with other rules containing similar language before a list.

1 F. **Correction or modification of the record.** If anything material to either party is
2 omitted from the record on appeal by error or accident, the parties by stipulation, or the magistrate
3 court or the district court, on proper suggestion or on its own initiative, may direct that the omission
4 be corrected and a supplemental record ~~[transmitted]~~sent to the district court.

5 G. **Stay of proceedings to enforce a judgment.**

6 (1) Except as provided in Subparagraph (2) of this paragraph, when an appeal
7 is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a
8 supersedeas bond with the clerk of the magistrate court. The bond may be posted at any time after
9 docketing the appeal. The stay is effective when the supersedeas bond is approved by the
10 magistrate court and shall continue in effect until final disposition of the appeal. The bond shall be
11 conditioned for the satisfaction of and compliance with the judgment in full, as may be modified
12 by an appellate court, together with costs, attorneys' fees, and interest, if any. The bond shall be
13 enforceable on dismissal of the appeal or affirmance of the judgment. If the judgment is reversed
14 or satisfied, the bond is void. The surety, sureties, or collateral securing ~~[such]~~the bond, and the
15 terms ~~[thereof]~~of those, must be approved by and the amount fixed by the magistrate court. If a
16 bond secured by personal surety or sureties is tendered, the bond may be approved only on notice
17 to the appellee. Each personal surety shall be required to show a net worth of at least double the
18 amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be
19 the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees, and interest,
20 if any. In determining the sufficiency of the surety or sureties and the extent to which the surety or
21 sureties shall be liable on the bond, or whether any surety will be required, the court shall take into
22 consideration the type and value of any collateral that is in, or may be placed in, the custody or

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control of the court and that has the effect of securing payment of and compliance with the judgment.

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of an appeal shall operate as a stay.

H. **District court review of supersedeas.** At any time after an appeal is filed under Paragraph B of this rule, the district court may, on motion and notice, review any action of, or any failure or refusal to act by, the magistrate court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond, or if it determines that the magistrate court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time ~~[within which]~~ to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the magistrate court by the party seeking the review.

I. **Procedure on appeal.** The Rules of Civil Procedure for the District Courts shall govern the procedure on appeal from the magistrate court.

~~[J.] **Remand.** On remand of the case by the district court to the magistrate court, the magistrate court shall enforce the mandate of the district court.]~~

~~[K.]~~ **Return of record and copy of judgment.** After final determination of the appeal, the clerk of the district court shall return the record on appeal to the magistrate court clerk and send a copy of the ~~of the~~ district court judgment to the magistrate court clerk.

[As amended, effective November 1, 1988; January 1, 1994; July 1, 1996; as amended by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31,

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1 2016; as amended by Supreme Court Order No. _____, effective for all appeals filed on or
2 after_____.]



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Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 11:57 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 11:57 AM

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 4 of 11.

Upload: [Proposed-Amend.-Rule-3-704-PFC-1.3.22_Final-DACA-Cmt.docx](#)



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3-704. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or parts of the record and errors ~~[therein arising]~~ that arise from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party, ~~[and after such notice, if any, as the court orders.]~~ Once an appeal has been initiated, During the pendency of an appeal, [such] clerical mistakes may be so corrected before the appeal is docketed in the district court or appellate court. [and thereafter while] Once the appeal is docketed While the appeal is pending, clerical mistakes may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** On motion and ~~[upon such]~~ on those terms as are just, the court may relieve a party or ~~[his]~~ the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (3) the judgment is void; ~~[or]~~
- (4) the judgment has been satisfied, released, or discharged, or a prior judgment ~~[upon]~~ on which it is based has been reversed or otherwise vacated~~[(-)]~~; or
- (5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 3-201(E) NMRA to comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with Form 4-226 NMRA.

Commented [A1]: See accompanying document, DACA COMMENTS TO PROPOSED AMENDMENTS TO RULES, for explanation of recommendation

A motion filed ~~[pursuant to]~~under Subparagraph (1) or (2) of this paragraph shall be filed not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation.

An order granting or denying relief from a final judgment under this rule may be appealed to the district court or appellate court in the same manner as other appeals from final judgments of the metropolitan court are taken.

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released, or discharged. The application shall be served ~~[upon]~~on the judgment creditor in the manner prescribed by Rule 3-202 NMRA for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at ~~[such]~~the hearing, a default satisfaction of judgment may be entered ~~[upon]~~on completion of the following:

(1) the filing of the return of service or an affidavit that after “diligent search” the judgment creditor could not be located. For purposes of this subparagraph, “diligent search” includes, but shall not be limited to, an affidavit that[.]

(a) the judgment creditor no longer has a business or residence at the judgment creditor’s last known address as shown in the court file; and

(b) the judgment creditor could not be located through a search of telephone and city directories in each county where the judgment creditor was known to have resided or maintained a place of business in this state; and

(2) proof of payment of the full amount of ~~[such]~~the judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs, has not been paid in full, payment into the court registry of the balance owed in accordance with Section 39-1-6.2 NMSA 1978 plus any court costs ~~[of court]~~ for receiving into and paying the money out of the registry of the court.

[As amended, effective July 1, 1990; January 1, 1997; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court No. _____, effective for all cases filed or pending on or after _____].

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph B of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 3-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, and 3-702 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan and magistrate court rules for consumer debt claims with the district court rules.

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046, provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing.” ~~[(Emphasis added.)]~~ Rule 1-060(B)(4) NMRA is equivalent to Rule 3-704(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment to Rule 3-704 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 3-704(B)(3) NMRA.

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RULE 3-704**

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Rule 3-704(B)(5) NMRA now provides that noncompliance with the requirements of Rule 3-201(E)(2) NMRA or Rule 3-401(D) NMRA, or the failure to substantially comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment entered in a case controlled by Rule 3-201(E) NMRA. The addition of this language provides a ground for relief[?] but does not compel the metropolitan court to grant relief in every case in which the movant shows noncompliance with these consumer debt provisions. The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When the movant meets this requirement, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a motion to void the judgment under Rule 3-704(B)(3) NMRA does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court No. _____, effective for all cases filed or pending on or after _____].



New Mexico
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Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 11:58 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 11:58 AM

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 5 of 11.

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26K

1 **3-706.1. De novo appeals from metropolitan court to district court.**

2 A. **Notice of de novo appeal.** A de novo appeal from the metropolitan court is taken
3 by

4 (1) filing the following with the clerk of the district court within fifteen (15)
5 days after the judgment or final order appealed from is filed in the metropolitan court clerk's office:

6 (a) a notice of appeal with proof of service; and

7 (b) a request for hearing as required by Rule 1-073(E); and

8 (2) promptly filing the following with the clerk of the metropolitan court:

9 (a) a copy of the notice of appeal that has been endorsed by the clerk of
10 the district court; and

11 (b) a copy of the receipt of payment of the docket fee.

12 B. **Content of the notice of de novo appeal.** The notice of appeal shall be
13 substantially in the form approved by the Supreme Court. A copy of the metropolitan court
14 judgment or final order appealed from, showing the date of the judgment or final order, shall be
15 attached to the notice of appeal filed in the district court.

16 C. **Service of notice of de novo appeal.** At the time the notice of appeal is filed in the
17 district court, the appellant shall:

18 (1) serve each party or the party's attorney in the proceedings in the
19 metropolitan court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA; and

20 (2) file proof of service with the clerk of the district court that a copy of the
21 notice of appeal has been served in accordance with Rule 1-005 NMRA.

22 D. **Record on de novo appeal.** Within fifteen (15) days after the appellant files a copy
23 of the notice of appeal with the metropolitan court under Paragraph A of this rule, the metropolitan

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RULE 3-706.1**

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[NEW MATERIAL]

1 court shall file with the clerk of the district court a copy of the record on appeal taken in the action
2 in the metropolitan court.

3 (1) For purposes of this rule, the record on appeal shall consist of

4 (a) a title page containing the caption of the case in the metropolitan
5 court and the names and mailing addresses of each party or, if the party is represented by counsel,
6 the name and address of the attorney;

7 (b) a copy of all papers and pleadings filed in the metropolitan court;

8 (c) a copy of the judgment or order sought to be reviewed with date of
9 filing;

10 (d) any exhibits; and

11 (e) ~~the any~~ audio recording of the proceedings prepared ~~at the request of~~
12 ~~a party by the metropolitan court. If an audio recording of the proceedings was requested by a party,~~
13 ~~T~~he metropolitan court clerk shall prepare and file with the district court a duplicate of the audio
14 recording and the index log.

15 (2) Any party desiring a copy of the transcript of the proceedings shall be
16 responsible for the cost of preparing the copy.

17 (3) The metropolitan court clerk shall give prompt notice to all parties of the
18 filing of the record on appeal with the district court.

19 E. **Correction or modification of the record.** If anything material to either party is
20 omitted from the record on appeal by error or accident, the parties by stipulation, or the
21 metropolitan court or the district court, on proper suggestion or on its own initiative, may direct
22 that the omission be corrected and a supplemental record sent to the district court.

23 F. **Stay of proceedings to enforce a judgment.**

Commented [MRH1]: If revision to require audio recording in all metropolitan court cases is accepted, suggest this change for consistency. See DACA COMMENT DOC for further explanation.

**METROPOLITAN COURT CIVIL
RULE 3-706.1
[NEW MATERIAL]**

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1 (1) When an appeal is taken from a final decision or order of the metropolitan
2 court under the Uniform Owner-Resident Relations Act, the appellant may obtain a stay in
3 accordance with Section 47-8-47 NMSA 1978.

4 (2) Except as provided in Subparagraph (3) of this paragraph, when an appeal
5 is taken, the appellant may obtain a stay of execution of a money judgment by posting a
6 supersedeas bond with the clerk of the metropolitan court. The bond may be posted at any time
7 after docketing the appeal. The stay is effective when the supersedeas bond is approved by the
8 metropolitan court and shall continue in effect until final disposition of the appeal. The bond shall
9 be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified
10 by the district court, together with costs, attorneys' fees and interest. The bond shall be enforceable
11 on dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied,
12 the bond is void. The surety, sureties, or collateral securing the bond, and the terms of those, must
13 be approved by and the amount fixed by the metropolitan court. If a bond secured by personal
14 surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each
15 personal surety shall be required to show a net worth of at least double the amount of the bond. If
16 the judgment is for the recovery of money, the amount of the bond shall be the amount of the
17 judgment remaining unsatisfied, together with costs, attorneys' fees, and interest. In determining
18 the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable
19 on the bond, or whether any surety will be required, the court shall take into consideration the type
20 and value of any collateral which is in, or may be placed in, the custody or control of the court and
21 which has the effect of securing payment of and compliance with the judgment.

(3) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of an appeal shall operate as a stay.

G. **District court review of supersedeas.** At any time after appeal is filed under Paragraph A of this rule, the district court may, on motion and notice, review any action of, or any failure or refusal to act by, the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions, or amount of a supersedeas bond, or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

H. **Transmittal of district court judgment.** After final determination of the appeal, the clerk of the district court shall send a copy of the district court judgment to the metropolitan court clerk.

[Approved by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — NMSA 1978, Section 34-8A-6 was amended in 2019 to provide that the metropolitan court is not a court of record for civil actions brought pursuant to the Uniform Owner-Resident Relations Act, NMSA 1978, Sections 47-8-1 to -51.

Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Approved by Supreme Court Order No. _____, effective _____.]



New Mexico
Courts

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Rule Proposal Comment Form, 02/03/2022, 12:00 pm

1 message

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Thu, Feb 3, 2022 at 12:00 PM

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

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 6 of 11.

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26K

3-706.2 On-record appeals from metropolitan court to Court of Appeals.

A. Filing the notice.

(1) A notice of appeal shall be filed within thirty (30) days after the judgment or order appealed from is filed in the metropolitan court clerk's office. The appeal shall be taken by filing a notice of appeal with the metropolitan court clerk's office within the time provided by this rule.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by Rule 12-201 NMRA, whichever period last expires.

B. Content of the notice of appeal. The notice of appeal shall specify:

(1) each party taking the appeal and each party against whom the appeal is taken; and

(2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

(3) the name of the court to which the appeal is taken.

C. Attachment to notice of appeal. A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. Service of the notice of appeal. The appellant shall give notice of the filing of a notice of appeal by serving a copy on the Court of Appeals, metropolitan court, and trial counsel of record for each party other than the appellant. If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

E. Post-trial or post-judgment motions extending the time for appeal.

Commented [AA1]: See accompanying DACA COMMENTS TO PROPOSED AMENDMENTS TO RULES document for explanation of this suggestion.

(1) If a party timely files a motion that has the potential to affect the finality of the underlying judgment or sentence, the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last such remaining motion. Those motions may include, but are not necessarily limited to, the following motions:

- (a) a motion filed under Rule 3-704 NMRA;
- (b) a motion for new trial filed under Rule 3-705 NMRA; or
- (c) a motion to set aside a default judgment under Rule 3-702 NMRA.

(2) If a party timely files a motion listed in Subparagraph (1) of this paragraph and, before the motion is expressly disposed of by written order filed by the metropolitan court, the party files in the metropolitan court a notice stating that the motion is withdrawn, the time for filing a notice of appeal shall be determined from the date the notice of withdrawal is filed in the metropolitan court, unless another motion listed in Subparagraph (1) remains pending.

(3) A timely notice of appeal filed before the express written disposition by order or the withdrawal of any timely filed motion listed in Subparagraph (1) of this paragraph, whether the notice is filed before or after the motion is filed, becomes effective on the day on which the time for filing a notice of appeal commences to run. Until that time, the notice does not divest the metropolitan court of jurisdiction to dispose of the motion. A notice of appeal that becomes effective under this subparagraph brings up for review any disposition by order of any timely filed motion listed in Subparagraph (1) of this paragraph, without the necessity of attaching a copy of any order disposing of the motion to the notice of appeal.

(4) An order granting a motion for new trial in a civil case is not appealable and renders any prior judgment non-appealable.

F. Motion for extension of time.

(1) A party seeking an extension of time to file a notice of appeal shall file a motion in the metropolitan court before or no later than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal. The motion for extension of time shall be served on all parties. The metropolitan court has jurisdiction to rule on the motion regardless of whether a notice of appeal has been filed.

(2) If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause.

(3) If the motion is filed within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of excusable neglect or circumstances beyond the control of the appellant.

(4) A motion filed more than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal shall not be granted.

(5) An extension of time granted under this paragraph shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted. A party that has filed a motion for extension of time must file a notice of appeal within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice even if the motion for extension of time remains pending. The metropolitan court may grant the motion retroactively.

G. Grace period when notice is sent by mail or commercial courier. A notice of appeal that is sent by mail or commercial courier service to the metropolitan court shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA explicitly states

1 that the notice of appeal was sent to the metropolitan court by mail or commercial courier service
2 and was postmarked by the United States Postal Service or date-stamped by the commercial
3 courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed
4 by this rule. The metropolitan court clerk's office shall file-stamp a notice of appeal with the date
5 on which it is actually received regardless of any postmark date set forth in the certificate of
6 service.

7 H. **Record on appeal.**

8 (1) **Composition.** The papers and pleadings filed in the metropolitan court (the
9 court file), or a copy thereof shall constitute the record proper. Depositions shall not be copied.
10 The original, if contained in the court file, shall be filed with the ~~appellate court~~Court of Appeals
11 and shall not be sealed except on the order of the metropolitan court or Court of Appeals. The
12 record proper shall be prepared in the manner provided by Rule 22-301 NMRA of the Rules
13 Governing the Recording of Judicial Proceedings.

14 (2) **Transmission.** On receipt of a copy of the docketing statement, the
15 metropolitan court clerk shall number consecutively the pages of the record proper and send it to
16 the Court of Appeals so that it will be filed in the Court of Appeals no later than fourteen (14) days
17 from the date the docketing statement is received by the metropolitan court. The first page, after
18 the title page, of the record proper shall consist of a copy of the metropolitan court clerk's docket
19 sheet with references to the page of the record proper for each entry. The metropolitan court clerk
20 shall send a copy of this docket sheet to all counsel of record.

21 (3) **Correction or modification of the record proper.** If anything material to
22 either party is omitted from the record proper by error or accident, the parties by stipulation, or the
23 metropolitan court or the Court of Appeals, on motion or on its own initiative, may direct that the

omission be corrected, and a supplemental record proper sent to the Court of Appeals. The Court of Appeals shall notify the parties when it has ordered supplemental material on its own accord.

I. **Docketing the appeal.**

(1) ***Attorney or party responsible.*** Unless otherwise ordered by the Court of Appeals, trial counsel, or another attorney in the same office as trial counsel that is designated to handle on-record appeals, or the party, if not represented by an attorney, shall be responsible for preparing and filing a docketing statement in the Court of Appeals.

(2) ***When filed.*** Within thirty (30) days after filing the notice of appeal in the metropolitan court, the appellant shall file a docketing statement ~~if the appeal has been docketed~~ in the Court of Appeals. But if the notice of appeal was filed before the express written disposition by order or the withdrawal of any timely filed post-trial or post-judgment motion listed in Paragraph E of this rule, then the docketing statement shall be filed within thirty (30) days after the notice of appeal becomes effective under Paragraph E of this rule.

(3) ***Service.*** The appellant shall serve a copy of the docketing statement on the metropolitan court clerk and on those persons who are required to be served with a notice of appeal under Paragraph D.

(4) ***Docketing statement in the Court of Appeals; contents.*** A docketing statement must satisfy all of the requirements contained in Rule 12-208(D) NMRA. For docketing statements filed in on-record appeals from the metropolitan court, the docketing statement must also contain a specific reference to the audio recording for each factual assertion made in the docketing statement. A “specific reference” requires a citation to the counter number or time reference of the audio recording that establishes a basis for the factual assertion made in the docketing statement. Failure to provide the information required by Rule 12-208(D) NMRA or

Commented [A2]: See same Cmt. to Rule 7-703.1(I)(2)

**METROPOLITAN COURT CIVIL
RULE 3-706.2
[NEW MATERIAL]**

**Published for Comment
January 3, 2022**

1 this subparagraph, including the requirement of specific references to the audio recording, may
2 result in sanctions up to and including dismissal of the appeal in accordance with Rule 12-312
3 NMRA.

4 J. **Appellate Procedure.** All further process on appeal not articulated in this rule will
5 occur in accordance with the procedure articulated in Rule 12-609 NMRA and all applicable Rules
6 of Appellate Procedure.

7 [Adopted by Supreme Court Order No. _____, effective for all appeals filed on or after
8 _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 12:01 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 12:01 PM

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

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

Your Name: Michelle Haubert

Phone Number: 5056035744

Email: coamrh@nmcourts.gov

Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 7 of 11.

Upload: [Proposed-Amend.-Rule-3-708-PFC-1.3.22_Final-DACA-Cmt.docx](#)



Proposed-Amend.-Rule-3-708-PFC-1.3.22_Final-DACA-Cmt.docx

22K

3-708. ~~[Tape]~~Audio recordings of proceedings.

A. ~~[Taping]~~Audio record of proceedings. Every civil proceeding in the metropolitan court shall be ~~[tape]~~audio recorded ~~if requested by a party. The summons shall contain notice of the right to request [a taped]an audio record of the proceedings.~~

B. **Preservation of ~~[taped]~~audio record.** ~~[Tapes containing the]~~The audio record of proceedings shall be preserved for ninety (90) days after the entry of ~~[a final order in the proceedings. Any party desiring to preserve the tapes for a longer period of time may, within eighty (80) days after the filing of the final order, file a request to preserve the tapes containing the transcript of proceedings]~~a final order, if no appeal is filed; the entry of a mandate from the Court of Appeals, if an on-record appeal is filed; or the receipt of a copy of the final judgment of the district court, if a de novo appeal is filed.

[As amended, effective May 1, 1994; July 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases filed or pending on or after _____.]



New Mexico
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Rule Proposal Comment Form, 02/03/2022, 12:02 pm

1 message

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Thu, Feb 3, 2022 at 12:02 PM

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 8 of 11.

Upload: [Proposed-Amend.-Rule-7-611-PFC-1.3.22_Final-DACA-Cmt.docx](#)



Proposed-Amend.-Rule-7-611-PFC-1.3.22_Final-DACA-Cmt.docx

25K

7-611. Motion for new trial; appeals on the record.

A. **Motion.** In cases which may be appealed on the record, if the defendant has been found guilty, the court, on motion of the defendant[?] or on its own motion, may grant a new trial if required in the interest of justice.

B. **Time for making motion for new trial.** A motion for new trial shall be made within ten (10) days after verdict or finding of guilty or within ~~such~~ any further time as the court may fix during the ~~[ten (10) day]~~ ten (10)-day period. ~~[If a motion for new trial is not granted within twenty (20) days from the date it is filed, the motion is automatically denied.]~~

C. **Extension of time for appeal.** If a party timely files a motion for new trial ~~[pursuant to]~~ under this rule, the full time prescribed by Rule 7-703 NMRA for the filing of the notice of appeal shall commence to run and be computed from ~~[either]~~ either the entry of an order expressly disposing of the motion for new trial or the filing of a notice by the movant in metropolitan court stating that the motion is withdrawn provided that the motion for new trial has not been expressly disposed of by order and there are no other motions that may affect the finality of the judgment that remain pending. ~~[or the date of any automatic denial of the motion, whichever occurs first]~~. An order granting a motion for new trial is not appealable and renders any prior judgment non-appealable.

[Adopted, effective January 1, 1994; as amended by Supreme Court Order No. _____,
effective for all cases pending or filed on or after _____.]

Commented [MRH1]: See accompanying document, DACA COMMENTS TO PROPOSED AMENDMENTS TO RULES, for explanation of recommendation



New Mexico
Courts

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Rule Proposal Comment Form, 02/03/2022, 12:03 pm

1 message

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Thu, Feb 3, 2022 at 12:03 PM

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 9 of 11.

Upload: [Proposed-Amend.-Rule-7-702-PFC-1.3.22_Final-DACA-Cmt.docx](#)



Proposed-Amend.-Rule-7-702-PFC-1.3.22_Final-DACA-Cmt.docx

26K

METROPOLITAN COURT CRIMINAL
RULE 7-702

Published for Comment
January 3, 2022

7-702. Advising defendant of right to appeal.

A. **Duty of metropolitan court.** At the time of entering a judgment and sentence, the court shall advise the defendant of the defendant's right to the following:

(1) ~~[if the appeal is an appeal de novo, to]~~ a new trial in the district court, if the appeal is an appeal de novo; or

(2) ~~[if the appeal is an appeal on the record, to]~~ an appeal on the record to the [district court] Court of Appeals. if the appeal is on-record.

Commented [AA1]: See accompanying document, DACA COMMENTS TO PROPOSED AMENDMENTS TO RULES, for explanation of recommendation

B. ~~[Notice]~~ **Filing of the notice of appeal**~~[filed in district court]~~. The court shall also advise the defendant that if the defendant wishes to appeal, the defendant may do so as follows: [a notice of appeal shall be filed in the district court within fifteen (15) days after entry of the judgment and sentence.]

(1) if the appeal is an appeal de novo, a notice of appeal shall be filed in the district court within fifteen (15) days after entry of the judgment and sentence; or

(2) if the appeal is an appeal on the record, a notice of appeal shall be filed in the metropolitan court within thirty (30) days after the entry of the judgement and sentence.

C. **Appeal on the record or de novo.**

(1) The following criminal appeals from metropolitan court shall be appeals on the record ~~to the Court of Appeals:~~

Commented [AA2]: Recommend for clarity for the Bar and pro se appellants.

(a) driving while under the influence of intoxicating liquors or drugs; or

(b) "domestic abuse" of a "household member" as those terms are defined in Section 40-13-2 NMSA 1978 of the Family Violence Protection Act.

(2) All other criminal appeals from metropolitan court shall be de novo to the district court.

Commented [AA3]: Same: recommend for clarity for the Bar and pro se appellants.

METROPOLITAN COURT CRIMINAL
RULE 7-702

Published for Comment
January 3, 2022

(3) If the defendant appeals from the conviction of more than one offense, one or more of which is an on the record conviction and one or more of which is a de novo appeal conviction, the appeal of all convictions shall be on the record. Unless the defendant appeals an on the record conviction, the appeal shall be a de novo appeal, even though the proceedings have been recorded.

D. Audio recordings in on-record appeals. An audio recording and corresponding index log shall be made of all criminal proceedings in which the metropolitan court is a court of record. When an appeal on the record is specifically permitted by law, the audio recording and corresponding index log shall be a part of the record on appeal. Audio records ~~containing the transcript of the proceedings~~ shall be preserved for ninety (90) days after the entry of mandate.

Commented [AA4]: Recommend deleting this portion because it seems unnecessary and potentially confusing.

[As amended, effective September 1, 1990; January 1, 1994; January 1, 1997; September 2, 1997; October 15, 2002; as amended by Supreme Court Order No. 12-8300-020, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

~~[Committee commentary. The timely disposition of appeals is an essential requirement of justice. It was brought to the committee's attention that the disposition of appeals on the record to the district court take significantly longer than *de novo* appeals.~~

~~The above amendments were taken from Rule 12-406 governing the disposition of appeals to the Supreme Court and Court of Appeals and Rule 1-054 requiring disposition in civil cases within 60 days after submission.]~~

[Commentary withdrawn by Supreme Court Order No. _____, effective _____.]



New Mexico
Courts

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Rule Proposal Comment Form, 02/03/2022, 12:04 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 12:04 PM

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

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Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 10 of 11.

Upload: [Proposed-Amend.-Rule-7-703-PFC-1.3.22_Final-DACA-Cmt.docx](#)



Proposed-Amend.-Rule-7-703-PFC-1.3.22_Final-DACA-Cmt.docx

24K

7-703. ~~[Appeal]~~ De novo appeal from metropolitan court to district court.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a criminal action, other than those identified in Rule 7-702 NMRA as requiring an on-record appeal, may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 5-827 NMRA.

B. **Conditions of release.** The appearance bond set to ensure the defendant's appearance for trial shall be released. The court may set an appeal bond to ensure the defendant's appearance in the district court on appeal and may set any conditions of release as are necessary to ensure the appearance of the defendant or the orderly administration of justice. The metropolitan court may ~~[utilize]~~use the criteria listed in Rule 7-401(C) NMRA and may also consider the fact of the defendant's conviction and the length of the sentence imposed. The amount of the appeal bond and the conditions of release shall be included on the judgment and sentence. Nothing in this rule shall be construed to prevent the court from releasing a person not released ~~[prior to]~~before or during trial. ~~[Upon]~~On filing of the notice of appeal, the appeal bond shall be transferred to the district court pending disposition of the appeal. The district court shall dispose of all matters relating to the appeal bond until remand to the metropolitan court.

C. **Review of terms of release.** If the metropolitan court has refused release pending appeal or has imposed conditions of release that the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal. A copy of the petition for release that has been endorsed by the clerk of the district court

Commented [A1]: Suggest adding "metropolitan" before court to be consistent with reference in the next sentence.

Commented [A2]: Suggest replacing with "in"

**METROPOLITAN COURT CRIMINAL
RULE 7-703**

**Published for Comment
January 3, 2022**

shall be filed with the metropolitan court. If the district court releases the defendant on appeal, a copy of the order of release shall be filed in the metropolitan court.

D. Stay of execution of sentence. Execution of any sentence, fine, fee, or probation shall be stayed pending the results of the appeal to the district court. An abstract of record of the defendant's conviction shall not be prepared and sent in accordance with Section 66-8-135 NMSA 1978 until the later of the following dates:

(1) expiration of the deadline for filing a notice of appeal under this rule if the defendant does not file a notice of appeal; or

(2) ten (10) days after remand from the district court or issuance of mandate by the Court of Appeals or Supreme Court if the defendant ~~[does file]~~ files a notice of appeal under this rule.

[As amended, effective July 1, 1988; September 1, 1989; September 1, 1990; January 1, 1994; January 1, 1994; January 1, 1995; January 1, 1997; February 16, 2004; as amended by Supreme Court Order No. 08-8300-056, effective January 15, 2009; by Supreme Court Order No. 12-8300-020, effective for all cases pending or filed on or after August 3, 2012; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — ~~[Section 34-8A-6C NMSA 1978 (as amended by Laws 1980, Chapter 142, Section 4), is so broad as to be in violation of the constitutional prohibition against double jeopardy. The rule as drafted limits appeals by the prosecution to a determination of the validity of the statute or ordinance under which the defendant was prosecuted, thus avoiding the statutory violation mentioned above.]~~

**METROPOLITAN COURT CRIMINAL
RULE 7-703**

**Published for Comment
January 3, 2022**

Paragraph H was redesignated as Paragraph C and revised to clarify that bond liability terminates upon a finding of guilt pursuant to NMSA 1978, § 31-3-10 (1987). Paragraph D was added to clarify that all aspects of the sentence shall be stayed pending appeal because there were wide variances in interpretation and practice. The provision in Paragraph D regarding preparation and issuance of the abstract of record of the defendant's conviction is intended to reconcile the potentially conflicting ten (10) day deadline in NMSA 1978, Section 66-8-135 and the fifteen (15) day notice of appeal deadline in this rule and NMSA 1978, Section 34-8A-6.] Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Adopted by Supreme Court Order No. 12-8300-020, effective August 3, 2012; as amended by Supreme Court Order No. _____, effective _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

Rule Proposal Comment Form, 02/03/2022, 12:05 pm

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Feb 3, 2022 at 12:05 PM

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

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

Your Name: Michelle Haubert

Phone Number: 5056035744

Email: coamrh@nmcourts.gov

Proposal Number: 2022-001

Comment: Comments from DACA are attached.
Part 11 of 11.

Upload: [Proposed-Amend.-Rule-7-703.1-PFC-1.3.22_Final-DACA-Cmt.docx](#)



Proposed-Amend.-Rule-7-703.1-PFC-1.3.22_Final-DACA-Cmt.docx

32K

7-703.1. On-record appeals from metropolitan court to Court of Appeals.

A. Right of appeal.

(1) A party who is aggrieved by the judgment or final order in a criminal action, resulting in a conviction of driving under the influence of intoxicating liquor or drugs or a conviction of domestic abuse as defined in Rule 7-702(C) NMRA, may appeal to the Court of Appeals, as permitted by law, by filing a notice of appeal in the metropolitan court within thirty (30) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office in accordance with Rule 7-702(B)(2) NMRA.

(2) The additional three (3)-day period set forth in Rule 12-308(B) NMRA for certain kinds of service does not apply to the time limits set forth in Subparagraph (1) of this paragraph.

(3) A notice of appeal filed after the announcement of a decision or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed on the day that the metropolitan court judgment or order is filed.

B. Content of the notice of appeal. The notice of appeal shall specify:

(1) each party taking the appeal and each party against whom the appeal is taken; and

(2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

~~(3) the name of the court to which the appeal is taken.~~

C. Attachment to notice of appeal. A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

Commented [AA1]: See accompanying DACA COMMENTS TO PROPOSED AMENDMENTS TO RULES document for explanation of this suggestion

**METROPOLITAN COURT CRIMINAL
RULE 7-703.1
[NEW MATERIAL]**

**Published for Comment
January 3, 2022**

D. Service of the notice of appeal. The appellant shall give notice of the filing of a

notice of appeal by serving a copy on the ~~appellate court~~ Court of Appeals, ~~metropolitan court who~~
~~took the record~~, and trial counsel of record for each party other than the appellant. If a party is not
represented by counsel, service shall be made by mailing a copy of the notice of appeal to the
party's last known address.

Commented [A2]: Suggest replacing with "Court of Appeals" to be consistent with how Rule 3-706.2(D), the civil procedure rule for metropolitan court is worded and because this Rule according to Paragraph (A) only applies to appeals to Court of Appeals .

Commented [AA3]: Suggest deleting "metropolitan court who took the record" since NOA is being filed in metro court

E. Post-trial or post-judgment motions extending the time for appeal.

(1) If a party timely files a motion that has the potential to affect the finality of
the underlying judgment or sentence, the full time prescribed in this rule for the filing of the notice
of appeal shall commence to run and be computed from the filing of an order expressly disposing
of the last such remaining motion. Those motions may include, but are not necessarily limited to,
the following motions filed within thirty (30) days after the judgment or order appealed from is
filed in the metropolitan court clerk's office:

(a) a motion for new trial filed under Rule 7-611 NMRA; or

(b) a motion for modification of a sentence filed under Rule 7-801
NMRA.

(2) If a party timely files a motion listed in Subparagraph (1) of this paragraph
and, before the motion is expressly disposed of by written order filed with the metropolitan court
clerk's office, the party files in the metropolitan court a notice stating that the motion is withdrawn,
the time for filing a notice of appeal shall be determined from the date the notice of withdrawal is
filed in the metropolitan court, unless another motion listed in Subparagraph (1) remains pending.

(3) A timely notice of appeal filed before the express disposition by order, or
the withdrawal of any timely filed motion listed in Subparagraph (1) of this paragraph, whether
the notice is filed before or after the motion is filed, becomes effective on the day on which the

time for filing a notice of appeal commences to run. Until that time, the notice does not divest the metropolitan court of jurisdiction to dispose of the motion. A notice of appeal that becomes effective under this subparagraph brings up for review any disposition by order of any timely filed motion listed in Subparagraph (1) of this paragraph, without the necessity of attaching to the notice of appeal a copy of any order disposing of the motion.

F. Motion for extension of time.

(1) A party seeking an extension of time to file a notice of appeal shall file a motion in the metropolitan court before, or no later than thirty (30) days after, the expiration of the time otherwise prescribed by this rule for filing the notice of appeal. The motion for extension of time shall be served on all parties. The metropolitan court has jurisdiction to rule on the motion regardless of whether a notice of appeal has been filed.

(2) If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause.

(3) If the motion is filed within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of excusable neglect or circumstances beyond the control of the appellant.

(4) A motion filed more than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal shall not be granted.

(5) An extension of time granted under this paragraph shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted. A party that has filed a motion for extension of time must file a notice of appeal within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice

**METROPOLITAN COURT CRIMINAL
RULE 7-703.1
[NEW MATERIAL]**

**Published for Comment
January 3, 2022**

of appeal, even if the motion for extension of time remains pending. The metropolitan court may grant the motion for extension of time retroactively.

G. **Grace period when notice is sent by mail or commercial courier.** A notice of appeal that is sent by mail or commercial courier service to the metropolitan court shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which, in addition to the information otherwise required by Rule 12-307(E) NMRA, explicitly states that the notice of appeal was sent to the metropolitan court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The metropolitan court clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

H. **Record on appeal.**

(1) **Composition.** The papers and pleadings filed in the metropolitan court (the court file), or a copy thereof shall constitute the record proper. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA.

(2) **Transmission.** On receipt of a copy of the docketing statement, the metropolitan court clerk shall number consecutively the pages of the record proper and send it to the ~~appellate court~~Court of Appeals so that it will be filed in the ~~appellate court~~Court of Appeals no later than fourteen (14) days from the date the docketing statement is received by the metropolitan court. The first page, after the title page, of the record proper shall consist of a copy of the metropolitan court clerk's docket sheet with references to the page of the record proper for

Commented [MRH4]: Suggest changing to Court of Appeals for clarity since this rules appears to only apply to appeals to Court of Appeals. See Paragraph A.

1 each entry. The metropolitan court clerk shall send a copy of this docket sheet to all counsel of
2 record.

3 (3) ***Correction or modification of the record proper.*** If anything material to
4 either party is omitted from the record proper by error or accident, the parties by stipulation, or the
5 metropolitan court or the ~~appellate court~~Court of Appeals, on motion or on its own initiative, may
6 direct that the omission be corrected and a supplemental record proper sent to the ~~appellate~~
7 ~~court~~Court of Appeals. The ~~appellate court~~Court of Appeals shall notify the parties when it has
8 ordered supplemental material on its own accord.

9 I. **Docketing the appeal.**

10 (1) ***Attorney or party responsible.*** Unless otherwise ordered by the Court of
11 Appeals, trial counsel, or another attorney in the same office as trial counsel that is designated to
12 handle on-record appeals, or the party, if not represented by an attorney, shall be responsible for
13 preparing and filing a docketing statement in the Court of Appeals.

14 (2) ***When filed.*** Within thirty (30) days after filing the notice of appeal in
15 metropolitan court, the appellant shall file a docketing statement, ~~if the appeal has been docketed~~
16 in the Court of Appeals. But if the notice of appeal was filed before the express written disposition
17 by order or the withdrawal of any timely filed post-trial or post-judgment motion listed in
18 Paragraph E of this rule, then the docketing statement shall be filed within thirty (30) days after
19 the notice of appeal becomes effective under Paragraph E.

20 (3) ***Service.*** The appellant shall serve a copy of the docketing statement on the
21 metropolitan court clerk and on those persons who are required to be served with a notice of appeal
22 under Paragraph D.

Commented [A5]: Since appeal can only be docketed in the Court of Appeals under this rule, suggest deleting this phrase.. See same Cmt. in 3-706.2(1)(2)

(4) *Docketing statement in the Court of Appeals; contents.* A docketing statement must satisfy all of the requirements contained in Rule 12-208(D) NMRA. For docketing statements filed in on-record appeals from the metropolitan court, the docketing statement must also contain a specific reference to the audio recording for each factual assertion made in the docketing statement. A “specific reference” requires a citation to the counter number or time reference of the audio recording that establishes a basis for the factual assertion made in the docketing statement. Failure to provide the information required by Rule 12-208(D) NMRA or this subparagraph, including the requirement of specific references to the audio recording, may result in sanctions up to and including dismissal of the appeal in accordance with Rule 12-312 NMRA.

J. **Conditions of release.**

(1) *Appearance bond; appeal bond.* The appearance bond set to ensure the defendant’s appearance for trial shall be released. The metropolitan court may set an appeal bond to ensure the defendant’s appearance in the Court of Appeals and may set any conditions of release as are necessary to ensure the appearance of the defendant or the orderly administration of justice. The metropolitan court may use the criteria listed in Rule 7- 401(C) NMRA and may also consider the defendant’s conviction and the length of the sentence imposed. The amount of the appeal bond and the conditions of release shall be included ~~on~~in the judgment and sentence. Nothing in this rule shall be construed to prevent the court from releasing a person not released before or during trial.

(2) *Review of terms of release.* If the metropolitan court has refused release pending appeal or has imposed conditions of release that the defendant cannot meet, the defendant may file a motion to review conditions of release with the clerk of the Court of Appeals under Rule

**METROPOLITAN COURT CRIMINAL
RULE 7-703.1
[NEW MATERIAL]**

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12-205 NMRA at any time after the filing of the notice of appeal. A copy of the motion to review conditions of release that has been endorsed by the clerk of the Court of Appeals shall be filed with the metropolitan court. If the Court of Appeals releases the defendant on appeal, a copy of the order of release shall be filed in the metropolitan court.

K. **Appellate Procedure.** All further process on appeal not articulated in this rule will occur in accordance with the procedure articulated in Rule 12-609 NMRA and all applicable Rules of Appellate Procedure.

[Adopted by Supreme Court Order No. _____, effective for all appeals filed on or after _____.]

Committee commentary. — Only a final judgment or final order of the metropolitan court may be appealed. There is no right to an interlocutory appeal from the metropolitan court.

[Adopted by Supreme Court Order No. _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Comments to Proposed Metro Court Appellate Rules

1 message

Thomas Prettyman <thomasp@nmlegalaid.org>

Thu, Feb 3, 2022 at 4:29 PM

Reply-To: thomasp@nmlegalaid.org

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

Cc: Riley Masse <rileym@nmlegalaid.org>, Dawn Vernooy <dawnv@nmlegalaid.org>, "Martinez, Maria" <maria@nmpovertylaw.org>, Serge Martinez <serge@sergemartinez.org>, Karen Meyers <kj.meyers@comcast.net>

Ms. Scott,

Attached is a letter with our comments on the proposed changes to the appellate rules for civil appeals from metropolitan court. Many thanks for considering them.

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Joint Comments of NMLA, NMCLP, Martinez and Meyers to Rules Proposal 2022-001,.pdf

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New Mexico Legal Aid, Inc.

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By email only to nmsupremecourtclerk@nmcourts.com

Jennifer L. Scott, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

*RE: Comments to Proposed Revisions to the Rules of Appellate Procedure
Proposal 2022-001*

Dear Ms. Scott:

We would like to comment on the proposed amendments to the rules for civil appeals from the metropolitan court.

Comments to Proposed Revisions to Rule 1-073 (De novo appeals from metropolitan court)

We support the Committee's clarification of the rule for these de novo appeals. We also propose the following changes to the proposed rule:

First, NMSA 1978, § 34-8A-6(D) provides for non-record, de novo appeals for "civil actions brought pursuant to the Uniform Owner Resident Relations Act" We ask that the rule be amended to further specify that the district court in such an appeal also shall consider de novo any additional claims, defenses or counterclaims asserted in such an action (which might, for example, include claims, defenses or counterclaims brought under the Fair Housing Act, the Unfair Practices Act, or common law contract, which are sometimes raised by tenant attorneys in response to UORRA restitution claims). This interpretation comports with the statute, which prescribes the avenue of appeal based on the statute under which the *action* – not the individual claims, counterclaims and defenses -- was brought.

Second, we also ask that the rule be amended to clarify that "civil actions brought pursuant to the Uniform Owner Resident Relations Act . . ." includes actions brought to enforce the Mobile Home Park Act, NMSA § 47-10-1 *et seq.* The Second Judicial District Court and the Court of Appeals currently treat MHPA cases as *not* "brought pursuant to the Uniform Owner Resident Relations Act." We ask the Supreme Court to revisit any current classification that requires MHPA appeals to be taken on-record to the Court of Appeals. .

UORRA and the MHPA are inextricably intertwined. UORRA generally applies to parties subject to the MHPA. NMSA 1978, § 47-10-18. The MHPA requires that MHPA restitution proceedings be “commenced and prosecuted in the manner described in [UORRA]”. NMSA 1978, § 47-10-4(A). Courts in MHPA cases are often called on to apply UORRA provisions on late fees, damage deposits, abatement, and appeals. NMSA 1978, §§ 47-8-15(D) (late fees), 47-8-18 (deposits), 47-8-27.2 (abatement), 47-8-47 (rent escrow and bond during appeal). Therefore, cases brought under the MHPA are brought pursuant to UORRA, and should be provided for in the rule. We believe it is important that these issues be clarified by the rule, because the different avenues of appeal have different deadlines – 15 days versus 30 days.

We also note that MHPA eviction cases, like UORRA eviction cases, are summary proceedings where trials are held just 7 to 10 days after service of summons, where there is almost never an opportunity for discovery, where the parties are usually pro se, and where most defendants speak their defenses and counterclaims in open court – usually in an unrecorded hearing – rather than filing a written answer. NMSA 1978, § 47-8-45 (defendant may raise any defense, setoff or counterclaim on the day of the hearing). These kinds of quick proceedings are precisely the kinds of cases for which de novo review is appropriate, especially given the few numbers of cases where appeals are brought.

Third, we propose that the new rule clarify that the Rules of Civil Procedure apply to these de novo appeals, as is provided in the parallel rule for de novo appeals from magistrate courts. *See* Rule 1-072(J) NMRA.

Fourth, we propose that the supersedeas language of 1-073(J) be clarified to state that it does not apply to the stay of execution of a writ of restitution under Section 47-8-47 of UORRA. UORRA provides for two statutory stays during an appeal: 1) the stay of execution of a writ of restitution, effected by timely payment of post-judgment rent as it comes due, and 2) stay of any money judgment, effected by payment of any bond set by the trial court. Section 47-8-47(A) provides a mechanism for the owner to ask the district court in a de novo appeal to lift the stay of execution of the writ of restitution where the appellate-tenant does not pay the post-judgment rent. Some owners have argued that the supersedeas language under the current magistrate court appeal rule 1-072 gives a district court the discretion to evict a tenant pending an appeal, despite the tenant’s compliance with Section 47-8-47(A). We propose that the rule clarify that subsection (J) does not apply to the stay of execution of a writ of restitution under Section 47-8-47(A).

Fifth, we propose that the rule be amended, consistent with proposed Rule 3-706.1(H), to provide that the district court enter judgment on the de novo appeal and transmit a copy of the judgment to the metropolitan court clerk for filing.

Sixth, we propose that the rule be amended to provide for transfer of a misfiled appeal to the appropriate court, as provided for in the parallel criminal Rule 5-827(J), because the ability to file a colorable appeal means the difference between tenants having a roof over their heads and their being homeless.

Comments to Proposed Revisions to Rule 3-706.1 (De novo appeals from metropolitan court to district court)

We propose that the supersedeas language of this proposed Rule 3-706.1(G) be clarified to state that it is subject to section 47-8-47 of UORRA.

Comments to Proposed Revisions to Rule 3-708 (Audio Recording of Proceedings)

We propose that the rule be further amended to provide that all on-record proceedings be recorded. First, the metropolitan court is, by law, a court-of-record for all civil actions other than those brought pursuant to UORRA. NMSA 1978, § 34-8A-6(B). Therefore, the statute itself requires these proceedings to be recorded. Second, metropolitan court litigants have a right of appeal under New Mexico law. N.M. Const. art. VI, § 27; NMSA 1978, § 34-8A-6(B) & (C). Not recording on-record proceedings deprives unwitting pro se litigants of this right of appeal. The civil rules should not permit litigants to unknowingly and unwillingly waive that right. The rules do not require that *district* court litigants affirmatively request a record in on-record proceedings, even though those litigants are usually represented by attorneys, who would know the importance of making a record. Instead, these proceedings are automatically recorded. Why then should the rules impose that requirement on metropolitan court litigants, who are almost always pro se and almost never understand that they will lose their right of appeal by not requesting a recording?

Recording all on-record proceedings imposes no significant burden on the metropolitan court. Recording a hearing requires the mere pressing of a button, and storage of these electronic files would be required only for 90 days after entry of the final order, unless an appeal is filed.

Because failure to record a *non-record* proceeding – i.e., proceedings brought pursuant to UORRA – does not impinge on the right of appeal, it seems appropriate to continue to record non-record proceedings only at the request of a party, as long as it is clear to all parties and to the trial courts that the case is not an on-record case.

Comments to Proposed Rules 3-706.2 and 12-609 (On-record appeals from metropolitan court)

We support the addition of this new rule to provide a mechanism for on-record appeals from metropolitan court. We propose that section (E), which cites to the proposed Rule 5-827(J) provision on transfer of misfiled criminal appeals, be amended to provide that this transfer provision applies as well to misfiled civil appeals.

Thank you for considering these comments.

Respectfully,

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