

**DISTRICT COURT CRIMINAL
RULE 5-302.3
[AMENDED AND RECOMPILED FROM RULE 5-302B]**

**Supreme Court Approved
November 1, 2022**

~~[5-302B]~~5-302.3. Citizen grand jury proceedings.

A. **Citizen petition to convene a grand jury.** Under Article II, Section 14 of the New Mexico Constitution, the district court shall order a grand jury to convene ~~[upon]~~ on the filing of a petition signed by not less than the greater of two-hundred (200) registered voters or two percent (2%) of the registered voters of the county. A petitioner may use Form 9-200 NMRA.

B. **Verification of petition.** The district court has the responsibility to make a factual determination that a citizen petition to convene a grand jury meets the requirements of Article II, Section 14 by verifying the signatures contained in the petition. The district court may verify the signatures by any number of methods, including but not limited to

(1) requiring each signatory to provide an address of record;

(2) verifying other identifying information such as dates of birth and social security numbers;

(3) a handwriting comparison by a qualified witness; or

(4) obtaining testimony from questionable signatories.

C. **Convening a citizen-petition grand jury.** If the district court determines that the petition meets the requirements of Article II, Section 14 of the New Mexico Constitution, the court shall convene a grand jury in accordance with Sections 31-6-1 to -15 NMSA 1978, unless the district court elects to submit the matter to a grand jury that has already been convened, and shall direct the grand jury to make inquiry into all potential violations of law described in the petition that the judge determines are proper subjects of grand jury investigation, ~~[pursuant to]~~ under Section 31-6-9 NMSA 1978.

[Adopted by Supreme Court Order No. 15-8300-010, effective for all cases pending or filed on or after December 31, 2015; Rule 5-302B recompiled and amended as Rule 5-302.3 by Supreme

Court Order No. 22-8300-023, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — In *Convisser v. Ecovercity*, 2013-NMSC-039, ¶ 1, 308 P.3d 125, the New Mexico Supreme Court held that “determining whether a grand jury petition is supported by the requisite number of ‘registered voters’ is a judicial function calling for the exercise of judicial discretion” Under Article II, Section 14 of the New Mexico Constitution, “a grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county” The easiest way to verify whether a petition meets this requirement is to require signatories to provide an address. *See Convisser*, 2013-NMSC-039, ¶ 26 (stating that other states with citizen-initiated grand jury provisions most commonly verify signatories through the use of voter addresses). However, ~~[voters]~~ voters’ addresses are not required. The district court may use other verification aids such as dates of birth, social security numbers, handwriting comparisons by qualified witnesses, or testimony from questionable signatories. *See id.* ¶ 27.

If the district court determines that the petition meets the requirements of Article II, Section 14 of the New Mexico Constitution, the district attorney or ~~[his]~~ the district attorney’s assistants, unless otherwise disqualified, shall attend and conduct the grand jury. *See* NMSA 1978, § 31-6-7(C) ~~[(2004)]~~ (2003). If a district attorney is disqualified for ethical reasons or other good cause under Paragraph C of this rule, the district attorney may appoint a practicing member of the state bar to act as special assistant district attorney who shall have authority to act only in the specific case or matter for which the appointment was made. *See* NMSA 1978, § 36-1-23.1 (1984). If the district attorney’s office fails or refuses to act under Paragraph C, the attorney general is authorized to act on behalf of the state. *See* NMSA 1978, § 8-5-3 (1933).

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