

**5-401. Pretrial release.**

**A. Hearing.**

(1) **Time.** If a case is initiated in the district court, and the conditions of release have not been set by the magistrate or metropolitan court, the district court shall conduct a hearing under this rule and issue an order setting the conditions of release as soon as practicable, but in no event later than

(a) if the defendant remains in custody, three (3) days after the date of arrest if the defendant is being held in the local detention center, or five (5) days after the date of arrest if the defendant is not being held in the local detention center; or

(b) arraignment, if the defendant is not in custody.

(2) **Right to counsel.** If the defendant does not have counsel at the initial release conditions hearing and is not ordered released at the hearing, the matter shall be continued for no longer than three (3) additional days for a further hearing to review conditions of release, at which the defendant shall have the right to assistance of retained or appointed counsel.

**B. Right to pretrial release; recognizance or unsecured appearance bond.** Pending trial, any defendant eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution[7] shall be ordered released pending trial on the defendant's personal recognizance or ~~upon~~on the execution of an unsecured appearance bond in an amount set by the court, unless the court makes written findings of particularized reasons why the release will not reasonably ensure the appearance of the defendant as required. The court may impose non-monetary conditions of release under Paragraph D of this rule, but the court shall impose the least restrictive condition or combination of conditions that will reasonably ensure the appearance of the defendant as required and the safety of any other person or the community.

1           C.     **Factors to be considered in determining conditions of release.** In determining  
2 the least restrictive conditions of release that will reasonably ensure the appearance of the  
3 defendant as required and the safety of any other person and the community, the court shall  
4 consider any available results of a pretrial risk assessment instrument approved by the Supreme  
5 Court for use in the jurisdiction, if any, and the financial resources of the defendant. In addition,  
6 the court may take into account the available information [~~concerning~~]about

7                   (1)     the nature and circumstances of the offense charged, including whether the  
8 offense is a crime of violence or involves alcohol or drugs;

9                   (2)     the weight of the evidence against the defendant;

10                  (3)     the history and characteristics of the defendant, including

11                           (a)     the defendant's character, physical and mental condition, family  
12 ties, employment, past and present residences, length of residence in the community, community  
13 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record  
14 [~~concerning~~]about appearance at court proceedings; and

15                           (b)     whether, at the time of the current offense or arrest, the defendant  
16 was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense  
17 under federal, state, or local law;

18                   (4)     the nature and seriousness of the danger to any person or the community  
19 that would be posed by the defendant's release;

20                   (5)     any other facts tending to indicate the defendant may or may not be likely  
21 to appear as required; and

22                   (6)     any other facts tending to indicate the defendant may or may not commit  
23 new crimes if released.

1           D.     **Non-monetary conditions of release.** In its order setting conditions of release, the  
2 court shall impose a standard condition that the defendant not commit a federal, state, or local  
3 crime during the period of release. The court may also impose the least restrictive particularized  
4 condition, or combination of particularized conditions, that the court finds will reasonably ensure  
5 the appearance of the defendant as required, the safety of any other person and the community,  
6 and the orderly administration of justice, which may include the condition that the defendant

7                   (1)     remain in the custody of a designated person who agrees to assume  
8 supervision and to report any violation of a release condition to the court, if the designated person  
9 is able reasonably to assure the court that the defendant will appear as required and will not pose  
10 a danger to the safety of any other person or the community;

11                   (2)     maintain employment, or, if unemployed, actively seek employment;

12                   (3)     maintain or commence an educational program;

13                   (4)     abide by specified restrictions on personal associations, place of abode, or  
14 travel;

15                   (5)     avoid all contact with an alleged victim of the crime or with a potential  
16 witness who may testify ~~concerning~~ about the offense;

17                   (6)     report on a regular basis to a designated pretrial services agency or other  
18 agency agreeing to supervise the defendant;

19                   (7)     comply with a specified curfew;

20                   (8)     refrain from possessing a firearm, destructive device, or other dangerous  
21 weapon;

22                   (9)     refrain from any use of alcohol or any use of an illegal drug or other  
23 controlled substance without a prescription by a licensed medical practitioner;

(10) refrain from any use of cannabis, cannabis products, or synthetic cannabinoids without a certification from a licensed medical practitioner;

~~[(10)]~~ (11) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

~~[(11)]~~ (12) submit to a drug test or an alcohol test on request of a person designated by the court;

~~[(12)]~~ (13) return to custody for specified hours ~~[following]~~after release for employment, schooling, or other limited purposes; and

~~[(13)]~~ (14) satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as required and the safety of any other person and the community.

E. **Secured bond.** If the court makes findings of the reasons why release on personal recognizance or unsecured appearance bond, in addition to any non-monetary conditions of release, will not reasonably ensure the appearance of the defendant as required, the court may require a secured bond for the defendant's release.

(1) ***Factors to be considered in setting secured bond.***

(a) In determining whether any secured bond is necessary, the court may consider any facts tending to indicate that the particular defendant may or may not be likely to appear as required.

(b) The court shall set secured bond at the lowest amount necessary to reasonably ensure the defendant's appearance and with regard to the defendant's financial ability to secure a bond.

(c) The court shall not set a secured bond that a defendant cannot afford for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

(d) Secured bond shall not be set by reference to a predetermined schedule of monetary amounts fixed according to the nature of the charge.

(2) ***Types of secured bond.*** If a secured bond is determined necessary in a particular case, the court shall impose the first of the following types of secured bond that will reasonably ensure the appearance of the defendant.

(a) ***Percentage bond.*** The court may require a secured appearance bond executed by the defendant in the full amount specified in the order setting conditions of release, secured by a deposit in cash of ten percent (10%) of the amount specified. The deposit may be returned as provided in Paragraph M of this rule.

(b) ***Property bond.*** The court may require the execution of a property bond by the defendant or by unpaid sureties in the full amount specified in the order setting conditions of release, secured by the pledging of real property in accordance with Rule 5-401.1 NMRA.

(c) ***Cash or surety bond.*** The court may give the defendant the option of either

(i) a secured appearance bond executed by the defendant in the full amount specified in the order setting conditions of release, secured by a deposit in cash of one hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph M of this rule, or

(ii) a surety bond executed by licensed sureties in accordance with Rule 5-401.2 NMRA for one hundred percent (100%) of the full amount specified in the order setting conditions of release.

**F. Order setting conditions of release; findings ~~regarding~~about secured bond.**

(1) *Contents of order setting conditions of release.* The order setting conditions of release shall

(a) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(b) advise the defendant of

(i) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(ii) the consequences for violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest, revocation of pretrial release, and forfeiture of bond; and

(iii) the consequences of intimidating a witness, victim, or informant, or otherwise obstructing justice.

(2) *Written findings ~~regarding~~about secured bond.* The court shall file written findings of the individualized facts justifying the secured bond, if any, as soon as possible, but no later than two (2) days after the conclusion of the hearing.

**G. Pretrial detention.**

(1) If the prosecutor files a motion for pretrial detention, the court shall follow the procedures set forth in Rule 5-409 NMRA.

(2) The court may schedule a detention hearing within the time limits set forth in Rule 5-409(F)(1) NMRA and give notice to the prosecutor and defendant when

(a) ~~[The]~~ the defendant is charged with a felony offense

(i) involving the use of a firearm;

(ii) involving the use of a deadly weapon resulting in great bodily harm or death<sup>5</sup>;

(iii) which authorizes a sentence of life in prison without the possibility of parole<sup>5</sup>; or

(b) ~~[A]~~ a public safety assessment tool approved by the Supreme Court for use in the jurisdiction flags potential new violent criminal activity for the defendant.

(3) If the prosecutor does not file ~~[an expedited]~~ a motion for pretrial detention by the date scheduled for the detention hearing, the court shall treat the hearing as a pretrial release hearing under this rule and issue an order setting conditions of release.

**H. Case pending in district court; motion for review of conditions of release.**

(1) ***Motion for review.*** If the district court requires a secured bond for the defendant's release under Paragraph E of this rule or imposes non-monetary conditions of release under Paragraph D of this rule, and the defendant remains in custody twenty-four (24) hours after the issuance of the order setting conditions of release as a result of the defendant's inability to post the secured bond or meet the conditions of release in the present case, the defendant shall, on motion of the defendant or the court's own motion, be entitled to a hearing to review the conditions of release.

(2) ***Review hearing.*** The district court shall hold a hearing in an expedited manner, but in no event later than five (5) days after the filing of the motion. The defendant shall

1 have the right to assistance of retained or appointed counsel at the hearing. Unless the order setting  
2 conditions of release is amended and the defendant is [~~thereupon~~]then released, the court shall  
3 state in the record the reasons for declining to amend the order setting conditions of release. The  
4 court shall consider the defendant's financial ability to secure a bond. No defendant eligible for  
5 pretrial release under Article II, Section 13 of the New Mexico Constitution shall be detained  
6 solely because of financial inability to post a secured bond unless the court determines by clear  
7 and convincing evidence and makes findings of the reasons why the amount of secured bond  
8 required by the court is reasonably necessary to ensure the appearance of the particular defendant  
9 as required. The court shall file written findings of the individualized facts justifying the secured  
10 bond as soon as possible, but no later than two (2) days after the conclusion of the hearing.

11 (3) ***Work or school release.*** A defendant who is ordered released on a condition  
12 that requires that the defendant return to custody after specified hours shall, on motion of the  
13 defendant or the court's own motion, be entitled to a hearing to review the conditions imposed.  
14 Unless the requirement is removed and the defendant is released on another condition, the court  
15 shall state in the record the reason for the continuation of the requirement. A hearing to review  
16 conditions of release under this subparagraph shall be held by the district court within five (5) days  
17 of the filing of the motion. The defendant shall have the right to assistance of retained or appointed  
18 counsel at the hearing.

19 (4) ***Subsequent motion for review.*** The defendant may file subsequent motions  
20 for review of the order setting conditions of release, but the court may rule on subsequent motions  
21 with or without a hearing.

22 I. **Amendment of conditions.** The court may amend its order setting conditions of  
23 release at any time. If the amendment of the order may result in the detention of the defendant or



1 in more restrictive conditions of release, the court shall not amend the order without a hearing. If  
2 the court is considering revocation of the defendant's pretrial release or modification of the  
3 defendant's conditions of release for violating ~~the~~ a condition of release, the court shall follow  
4 the procedures set forth in Rule 5-403 NMRA.

5 J. **Record of hearing.** A record shall be made of any hearing held by the district court  
6 under this rule.

7 K. **Cases pending in magistrate, metropolitan, or municipal court; petition for**  
8 **release or review by district court.**

9 (1) *Case within magistrate, metropolitan, or municipal court trial*  
10 *jurisdiction.* A defendant charged with an offense that is within magistrate, metropolitan, or  
11 municipal court trial jurisdiction may file a petition in the district court for review of the magistrate,  
12 metropolitan, or municipal court's order setting conditions of release only after the magistrate,  
13 metropolitan, or municipal court has ruled on a motion to review the conditions of release under  
14 Rule 6-401(H) NMRA, Rule 7-401(H) NMRA, or Rule 8-401(G) NMRA. The defendant shall  
15 attach to the district court petition a copy of the magistrate, metropolitan, or municipal court order  
16 disposing of the defendant's motion for review.

17 (2) *Felony case.* A defendant charged with a felony offense who has not been  
18 bound over to the district court may file a petition in the district court for release under this rule at  
19 any time after the defendant's arrest.

20 (3) *Petition; requirements.* A petition under this paragraph shall include the  
21 specific facts that warrant review by the district court and may include a request for a hearing. The  
22 petitioner shall promptly

(a) file a copy of the district court petition in the magistrate, metropolitan, or municipal court;

(b) serve a copy on the district attorney; and

(c) provide a copy to the assigned district court judge.

(4) ***Magistrate, metropolitan, or municipal court's jurisdiction pending determination of the petition.*** ~~Upon~~ On the filing of a petition under this paragraph, the magistrate, metropolitan, or municipal court's jurisdiction to set or amend the conditions of release shall be suspended pending determination of the petition by the district court, unless the case is dismissed or a finding of no probable cause is made. The magistrate, metropolitan, or municipal court shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the magistrate, metropolitan, or municipal court while the district court petition is pending. The magistrate, metropolitan, or municipal court's order setting conditions of release, if any, shall remain in effect unless and until the district court issues an order amending the conditions of release.

(5) ***District court review.*** The district court shall rule on the petition in an expedited manner. Within three (3) days after the petition is filed, the district court shall take one of the following actions:

(a) set a hearing no later than ten (10) days after the filing of the petition and promptly ~~transmit~~ send a copy of the notice to the magistrate, metropolitan, or municipal court;

(b) deny the petition summarily; or

(c) amend the order setting conditions of release without a hearing.

(6) *District court order; transmission to magistrate, metropolitan, or municipal court.* The district court shall promptly [~~transmit~~]send to the magistrate, metropolitan, or municipal court a copy of the district court order disposing of the petition, and jurisdiction over the conditions of release shall revert to the magistrate, metropolitan, or municipal court.

L. **Expedited trial scheduling for defendant in custody.** The district court shall provide expedited priority scheduling in a case in which the defendant is detained as a result of inability to post a secured bond or meet the conditions of release. The court shall hold a status review hearing in any case in which the defendant has been held for more than six (6) months and every six (6) months thereafter. The purpose of the status review hearing is to conduct a meaningful review of the progress of the case. If the court determines that insufficient progress has been made, then the court shall issue an appropriate scheduling order.

M. **Return of cash deposit.** If a defendant has been released by executing a secured appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions of the appearance bond have been performed and the defendant's case has been adjudicated by the court, the clerk shall return the sum that has been deposited to the person who deposited the sum, or that person's personal representatives or assigns.

N. **Release from custody by designee.** The chief judge of the district court may designate by written court order responsible persons to implement the pretrial release procedures set forth in Rule 5-408 NMRA. A designee shall release a defendant from custody [~~prior to~~]before the defendant's first appearance before a judge if the defendant is eligible for pretrial release under Rule 5-408 NMRA, but may contact a judge for special consideration based on exceptional circumstances. No person shall be qualified to serve as a designee if the person or the person's

1 spouse is related within the second degree of blood or marriage to a paid surety who is licensed to  
2 sell property or corporate bonds within this state.

3       **O. Bind over to district court.** For any case that is not within magistrate or  
4 metropolitan court trial jurisdiction, ~~upon~~on notice to that court, any bond shall be transferred to  
5 the district court ~~upon~~on the filing of an information or indictment in the district court.

6       **P. Evidence.** Information offered in connection with or stated in any proceeding held  
7 or order entered under this rule need not conform to the New Mexico Rules of Evidence.

8       **Q. Forms.** Instruments required by this rule, including any order setting conditions of  
9 release, appearance bond, property bond, or surety bond, shall be substantially in the form  
10 approved by the Supreme Court.

11       **R. Judicial discretion; disqualification and excusal.** Action by any court on any  
12 matter relating to pretrial release shall not preclude the subsequent statutory disqualification of a  
13 judge. A judge may not be excused from setting initial conditions of release or reviewing a lower  
14 court's order setting or revoking conditions of release unless the judge is required to recuse under  
15 the provisions of the New Mexico Constitution or the Code of Judicial Conduct.

16 [As amended, effective January 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990;  
17 September 1, 2005; as amended by Supreme Court Order No. 07-8300-029, effective December  
18 10, 2007; by Supreme Court Order No. 10-8300-033, effective December 10, 2010; as amended  
19 by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after  
20 December 31, 2014; as amended by Supreme Court Order No. 17-8300-005, effective for all cases  
21 pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 20-8300-013,  
22 effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme

Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31, 2022.]

**Committee commentary.** — This rule provides “the mechanism through which a person may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section 13 was amended (1) to permit a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community[;], and (2) to require the pretrial release of a defendant who is in custody solely due to financial inability to post a secured bond. This rule was derived from the federal statute governing the release or detention of a defendant pending trial. *See* 18 U.S.C. § 3142.

This rule was amended in 2017 to implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure for the Magistrate Courts, *see* [Rules] Rule 6-401 NMRA, the Rules of Criminal Procedure for the Metropolitan Courts, *see* Rule 7-401 NMRA, and the Rules of Procedure for the Municipal Courts, *see* Rule 8-401 NMRA.

Time periods specified in this rule are computed in accordance with Rule 5-104 NMRA.

Just as assistance of counsel is required at a detention hearing under Rule 5-409 NMRA that may result in a denial of pretrial release based on dangerousness, Subparagraphs (A)(2), (H)(2), and (H)(3) of this rule provide that assistance of counsel is required in a proceeding that may result in denial of pretrial release based on reasons that do not involve dangerousness, such as a simple inability to meet a financial condition.

As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or unsecured bond unless the court determines that ~~[such]~~any release, in addition to any non-monetary conditions of release under Paragraph D, will not reasonably ensure the appearance of the defendant and the safety of any other person or the community.

Paragraph C lists the factors the court should consider when determining conditions of release. In all cases, the court is required to consider any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction, if any, and the financial resources of the defendant.

Paragraph D lists various non-monetary conditions of release. The court must impose the least restrictive condition, or combination of conditions, that will reasonably ensure the appearance of the defendant as required and the safety of any other person and the community. *See Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard conditions ~~[prior to]~~before a court appearance, the judge should review the conditions at the defendant's first appearance to determine whether any particularized conditions should be imposed under the circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions of release to ensure the orderly administration of justice. This provision was derived from the American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The court should make a determination ~~[as to]~~on whether the defendant can afford to pay all or a ~~[portion]~~part of the cost, or whether the court has the authority to waive the cost, because detaining a defendant ~~[due to]~~because of inability to pay the cost associated with a condition of release is comparable to detaining a defendant ~~[due to]~~because of financial inability to post a secured bond.

As set forth in Paragraph E, the only purpose for which the court may impose a secured bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which the defendant must be present. *See State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the punishment to be imposed by the court.”); *see also* NMSA 1978, § 31-3-2(B)(2) (1993) (authorizing the forfeiture of bond ~~upon~~on the defendant’s failure to appear).

The 2017 amendments to this rule clarify that the amount of secured bond must not be based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to the nature of the charge. Instead, the court must consider the individual defendant’s financial resources and must set secured bond at the lowest amount that will reasonably ensure the defendant’s appearance in court after the defendant is released.

Secured bond cannot be used for the purpose of detaining a defendant who may pose a danger to the safety of any other person or the community. *See Brown*, 2014-NMSC-038, ¶ 53 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set high bail for the purpose of preventing a defendant’s pretrial release.”); *see also Stack v. Boyle*, 342 U.S. 1, 5 (1951) (stating that secured bond set higher than the amount reasonably calculated to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A felony defendant who poses a danger that cannot be mitigated through the imposition of non-monetary conditions of release under Paragraph D of this rule should be detained under Article II, Section 13 of the New Mexico Constitution and Rule 5-409 NMRA.

The court should consider the authorized types of secured bonds in the order of priority set forth in Paragraph E.

1           The court must first consider requiring an appearance bond secured by a cash deposit of  
2     ~~[10%]~~ten percent (10%). No other percentage is permitted under the rule. If ~~this~~ a cash deposit  
3     of ten percent (10%) is inadequate, the court then must consider a property bond ~~[where the]~~  
4     involving property that belongs to the defendant or other unpaid surety. If neither of these options  
5     is sufficient to reasonably ensure the defendant's appearance, the court may require a cash or surety  
6     bond for the defendant's release. If the court requires a cash or surety bond, the defendant has the  
7     option either to execute an appearance bond and deposit ~~[100%]~~one hundred percent (100%) of  
8     the amount of the bond with the court or to purchase a bond from a paid surety. Under  
9     Subparagraph (E)(2)(c), the defendant alone has the choice to post the bond by a one hundred  
10    percent (100%) cash deposit or a surety. The court does not have the option to set a cash-only bond  
11    or a surety-only bond; it must give the defendant the choice of either. A paid surety may execute  
12    a surety bond or a real or personal property bond only if the conditions of Rule 5-401.2 NMRA  
13    are met.

14           Paragraph F governs the contents of an order setting conditions of release. *See* Form 9-303  
15    NMRA (order setting conditions of release). Paragraph F also requires the court to make written  
16    findings justifying the imposition of a secured bond, if any. Judges are encouraged to enter their  
17    written findings on the order setting conditions of release at the conclusion of the hearing. If more  
18    detailed findings are necessary, the judge should make ~~[such]~~any supplemental findings in a  
19    separate document within two (2) days of the conclusion of the hearing.

20           Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section  
21    13 of the New Mexico Constitution. If the defendant poses a danger to the safety of any other  
22    person or the community that cannot be addressed through the imposition of non-monetary  
23    conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files



1 a motion for pretrial detention, the district court must follow the procedures set forth in Rule 5-  
2 409 NMRA. Paragraph G was amended in 2020 to permit the court to automatically schedule a  
3 pretrial detention hearing in certain categories of cases. However, [~~prior to~~]before the hearing, the  
4 prosecutor retains the burden of filing an expedited motion for pretrial detention under Rule 5-409  
5 NMRA. If the prosecutor does not file [~~such~~]that motion [~~prior to~~]before the hearing, then the court  
6 is to set conditions of release rather than consider detention.

7 Paragraphs H and K provide avenues for a defendant to seek district court review of the  
8 conditions of release. Paragraph H applies to a defendant whose case is pending before the district  
9 court. Paragraph K sets forth the procedure for a defendant whose case is pending in the magistrate,  
10 metropolitan, or municipal court. Article II, Section 13 of the New Mexico Constitution requires  
11 the court to rule on a motion or a petition for pretrial release “in an expedited manner” and to  
12 release a defendant who is being held solely [~~due to~~]because of financial inability to post a secured  
13 bond. A defendant who wishes to present financial information to a court to support a motion or  
14 petition for pretrial release may present Form 9-301A NMRA (pretrial release financial affidavit)  
15 to the court. The defendant shall be entitled to appear and participate personally with counsel  
16 before the judge conducting any hearing to review the conditions of release, rather than by any  
17 means of remote electronic conferencing.

18 Paragraph L requires the district court to prioritize the scheduling of trial and other  
19 proceedings for cases in which the defendant is held in custody [~~due to~~]because of inability to post  
20 bond or meet the conditions of release. *See generally United States v. Salerno*, 481 U.S. 739, 747  
21 (1987) (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not  
22 violate due process, in part [~~due to~~]because of “the stringent time limitations of the Speedy Trial  
23 Act, 18 U.S.C. § 3161”); Am. Bar Ass’n, *ABA Standards for Criminal Justice: Pretrial Release*,

Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice.”). This rule does not preclude earlier or more regular status review hearings. The purpose of the hearing is to determine how best to expedite a trial in the case. A meaningful review of the progress of the case includes assessment of the parties’ compliance with applicable deadlines, satisfaction of discovery obligations, and witness availability, among other matters. If the court determines that the parties have made insufficient progress on these measures, then it shall issue an appropriate scheduling order.

Under NMSA 1978, Section 31-3-1 (1972), the court may appoint a designee to carry out the provisions of this rule. As set forth in Paragraph N, a designee must be designated by the chief district court judge in a written court order. A person may not be appointed as a designee if ~~[such]~~the person is related within the second degree of blood or marriage to a paid surety licensed in this state to execute bail bonds. A jailer may be appointed as a designee. Paragraph N and Rule 5-408 NMRA govern the limited circumstances under which a designee shall release an arrested defendant from custody ~~[prior to]~~before that defendant’s first appearance before a judge.

Paragraph O requires the magistrate or metropolitan court to transfer any bond to the district court ~~[upon]~~on notice from the district attorney that an information or indictment has been filed. *See* Rules 6-202(E)-(F), 7-202(E)-(F) NMRA (requiring the district attorney to notify the magistrate or metropolitan court of the filing of an information or indictment in the district court).

Paragraph P of this rule dovetails with Rule 11-1101(D)(3)(e) NMRA. Both provide that the Rules of Evidence are not applicable to proceedings in district court with respect to matters of pretrial release. ~~[Like]~~ As with courts in other types of proceedings ~~[where]~~ in which the Rules of Evidence do not apply, ~~[at]~~ a court presiding over a pretrial release hearing ~~[the court]~~ is

1 responsible “for assessing the reliability and accuracy” of the information presented. *See United*  
2 *States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing  
3 the judge “retains the responsibility for assessing the reliability and accuracy of the government’s  
4 information, whether presented by proffer or by direct proof”); *see also United States v. Marshall*,  
5 519 F. Supp. 751, 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge  
6 considers has sufficient indicia of reliability to support its probable accuracy, the information may  
7 properly be taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir.1983); *State v.*  
8 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation  
9 revocation hearing, the court should focus on the reliability of the evidence).

10 Consistent with Rule 5-106 NMRA, a party cannot exercise the statutory right to excuse a  
11 judge who is setting initial conditions of release. *See* NMSA 1978, § 38-3-9 (1985). Paragraph R  
12 of this rule does not prevent a judge from ~~[being recused under the provisions of the New Mexico~~  
13 ~~Constitution or the Code of Judicial Conduct]~~ filing a recusal either on the court’s own motion or  
14 motion of a party. *See* N.M. Const. art. VI, § 18; Rule 21-211 NMRA.

15 [As amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; as  
16 amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or  
17 after July 1, 2017; as amended by Supreme Court Order No. 20-8300-021, effective for all cases  
18 pending or filed on or after November 23, 2020; as amended by Supreme Court Order No. 22-  
19 8300-015, effective for all cases pending or filed on or after December 31, 2022.]