

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE
DISTRICT COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE
MAGISTRATE COURTS, AND THE RULES OF CRIMINAL PROCEDURE FOR THE
METROPOLITAN COURTS
PROPOSAL 2023-008**

March 24, 2023

The Rules of Criminal Procedure for State Courts Committee has recommended new Rules 5-614.1 and 7-611.1 NMRA and amendments to Rules 5-607, 5-701, 6-603.1, 6-701, 7-603.1, and 7-701 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:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 24, 2023, 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.

5-607. Order of trial.

The order of trial shall be as follows:

- A. a qualified jury shall be selected and sworn to try the case;
- B. initial instructions as provided in Rule Set 14 NMRA, Uniform Jury Instructions - Criminal shall be given by the court;
- C. the state may make an opening statement. The defense may then make an opening statement or may reserve its opening statement until after the conclusion of the state's case;
- D. the state shall submit its evidence;
- E. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- F. the defense may then make an opening statement, if reserved;
- G. the defense may submit its evidence;
- H. the state may submit evidence in rebuttal;
- I. the defense may submit evidence in surrebuttal;
- J. at any time before submission of the case to the jury, the court may, for good cause shown, permit the state or defense to submit additional evidence;

K. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;

L. the instructions to be given shall be determined in accordance with Rule 5-608 NMRA. The court shall then instruct the jury;

M. the state may make a closing argument;

N. the defense may make a closing argument; [and]

O. the state may make a rebuttal argument[.] and

P. the court may determine the sufficiency of the evidence, whether or not a motion for directed verdict is made, after the return of the jury's verdict.

[As amended by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Nothing in the provisions of Paragraph E of this rule alters long-settled law that a defendant, by presenting evidence, “waive[s a] claim that the evidence at the close of the State’s case [is] insufficient for submission to the jury.” *State v. Lard*, 1974-NMCA-004, ¶ 4, 86 N.M. 71, 519 P.2d 307. However, under Paragraph K of this rule the defendant need no longer move for a directed verdict at the close of all of the evidence to preserve a claim that the evidence was insufficient to allow the case to go to the jury. *Lard*, 1974-NMCA-004, at ¶ 6; see *State v. Hernandez*, 1993-NMSC-007, ¶ 66, 115 N.M. 6, 946 P.2d 312 (pointing to Rule 5-607(K) in holding that a trial court’s “procedural lapse” in failing to rule on the sufficiency of the evidence at the close of all evidence itself “preserves the issue of sufficiency of the evidence for appellate review”).

The 1975 amendments to this rule inserted a new Paragraph B to allow for instructions at the outset of the trial as provided in Rule Set 14 NMRA, Uniform Jury Instructions - Criminal. In addition, a new Paragraph L of this rule alerts the court and counsel that the procedure for settling instructions at the close of the evidence is provided for in Rule 5-608 NMRA.

[As amended by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021.]

[NEW MATERIAL]

5-614.1. Judicial acquittal notwithstanding guilty verdict.

A. **Motion.** When the defendant has been found guilty, the court on motion of the defendant, or on its own motion, may enter judgment of acquittal if the court finds the evidence insufficient to sustain a guilty verdict.

B. **Time for making motion for acquittal.** A defendant may move for a judgment of acquittal, or renew such a motion, within fourteen (14) days after the jury returns a guilty verdict or after the court discharges the jury, whichever is later.

C. **Procedure; hearing.** When the defendant has been found guilty by a jury or by the court, a motion for acquittal may be dictated into the record, if a court reporter is present, and may be argued immediately after the return of the verdict. That motion may be in writing and filed with the clerk. That motion, written or oral, shall fully set forth the grounds upon which it is based.

D. **Waiver.** Failure to make a motion for acquittal shall not constitute a waiver of any error which has been properly brought to the attention of the court.

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

Committee commentary. — The district court has “inherent authority to determine whether the evidence presented at trial was legally insufficient to support a conviction.” *State v. Martinez*, 2022-NMSC-004, ¶¶ 1, 4, 26, 503 P.3d 313. When reviewing the sufficiency of the evidence following the return of a guilty verdict, the district court shall use the same standard employed by appellate courts in assessing whether sufficient evidence supports a conviction. *Id.* ¶ 12. That standard is as follows: “In reviewing the sufficiency of the evidence, [the district court] must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict. Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant’s version of the facts. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Galindo*, 2018-NMSC-021, ¶ 12, 415 P.3d 494 (internal quotation marks and citations omitted).

In cases when a defendant is charged with multiple offenses and the jury returns a guilty verdict on more than one charge, the district court may acquit the defendant on one of the charges while also entering judgment and sentencing the defendant on the remaining charge or charges that are supported by the jury’s guilty verdict. In a case like that, for purposes of creating a clear record on appeal, the district court shall issue one final order containing both the judgment and sentence for the convictions that were supported by sufficient evidence, as well as the judicial acquittal on the unsupported guilty verdicts.

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

5-701. Judgment; costs.

A. **Judgment.** If the defendant is found guilty, a judgment of guilty shall be rendered if the court makes the legal determination that sufficient evidence supports the verdict. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and filed. The clerk shall give notice of entry of judgment and sentence.

B. **Sentencing hearing.** Except for good cause shown, the sentencing hearing shall begin within ninety (90) days from the date the trial was concluded or the date a plea was entered.

C. **Judgment and sentence.** Within thirty (30) days after the conclusion of the sentencing hearing, the court shall enter a judgment and sentence.

D. **Costs and fees.** In ~~every~~ a case in which there is a conviction, costs and fees may be imposed as provided by law.

[As amended, effective December 1, 1998; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

6-603.1. Order of Trial

- A. a qualified jury shall be selected and sworn to try the case;
- B. initial instructions as provided in Rule Set 14 NMRA, Uniform Jury Instructions - Criminal shall be given by the court;
- C. the state may make an opening statement. The defense may then make an opening statement or may reserve its opening statement until after the conclusion of the state’s case;
- D. the state shall submit its evidence;

- E. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- F. the defense may then make an opening statement, if reserved;
- G. the defense may submit its evidence;
- H. the state may submit evidence in rebuttal;
- I. the defense may submit evidence in surrebuttal;
- J. at any time before submission of the case to the jury, the court may, for good cause shown, permit the state or defense to submit additional evidence;
- K. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- L. the instructions to be given shall be determined in accordance with Rule 6-609 NMRA. The court shall then instruct the jury;
- M. the state may make a closing argument;
- N. the defense may make a closing argument; ~~and~~
- O. the state may make a rebuttal argument~~[-]~~ and
- P. the court may determine the sufficiency of the evidence, whether or not a motion for directed verdict is made, after the return of the jury's verdict.

[As amended by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — This rule was added in 2021 to promote consistency in the framework within which a jury trial proceeds in New Mexico courts having criminal jurisdiction. *See* Rule 5-607 NMRA and the related committee commentary for more information; *see also* Rule 7-603.1 NMRA.

[As amended by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021.]

6-701. Judgment

A final order shall be entered in every case. If the defendant is found guilty, a judgment of guilty shall be rendered if the court makes the legal determination that sufficient evidence supports the verdict. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and filed. The court shall give notice of the final order in accordance with Paragraph B of Rule 6-209 NMRA. A final order includes, but is not limited to, a judgment and sentence or the back of the traffic citation on a penalty assessment where the defendant pled guilty or no contest and did not receive a deferred sentence. If the traffic citation is the final order, a copy need not be provided to the prosecution unless requested.

[As amended, effective October 1, 1992; January 1, 1995; as amended by Supreme Court Order No. 11-8300-013, effective April 25, 2011; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

7-603.1. Order of trial.

- A. a qualified jury shall be selected and sworn to try the case;
- B. initial instructions as provided in Rule Set 14 NMRA, Uniform Jury Instructions - Criminal shall be given by the court;

- C. the state may make an opening statement. The defense may then make an opening statement or may reserve its opening statement until after the conclusion of the state's case;
- D. the state shall submit its evidence;
- E. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- F. the defense may then make an opening statement, if reserved;
- G. the defense may submit its evidence;
- H. the state may submit evidence in rebuttal;
- I. the defense may submit evidence in surrebuttal;
- J. at any time before submission of the case to the jury, the court may, for good cause shown, permit the state or defense to submit additional evidence;
- K. out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- L. the instructions to be given shall be determined in accordance with Rule 7-609 NMRA. The court shall then instruct the jury;
- M. the state may make a closing argument;
- N. the defense may make a closing argument; ~~and~~
- O. the state may make a rebuttal argument[-] and
- P. the court may determine the sufficiency of the evidence, whether or not a motion for directed verdict is made, after the return of the jury's verdict.

[Adopted by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — This rule was added in 2021 to promote consistency in the framework within which a jury trial proceeds in New Mexico courts having criminal jurisdiction. See Rule 5-607 NMRA and the related committee commentary for more information; see also Rule 6-603.1 NMRA.

[Adopted by Supreme Court Order No. 21-8300-020, effective for all cases pending or filed on or after December 31, 2021.]

[NEW MATERIAL]

7-611.1 Judicial acquittal notwithstanding guilty verdict in on-record cases.

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 enter judgment of acquittal if the court finds the evidence insufficient to sustain a guilty verdict.

B. **Time for making motion for acquittal.** A defendant may move for a judgment of acquittal, or renew such a motion, within fourteen (14) days after the jury returns a guilty verdict or after the court discharges the jury, whichever is later.

C. **Procedure; hearing.** When the defendant has been found guilty by a jury or by the court, a motion for acquittal may be dictated into the record, if a court reporter is present, and may be argued immediately after the return of the verdict. That motion may be in writing and filed with the clerk. That motion, written or oral, shall fully set forth the grounds upon which it is based.

D. **Waiver.** Failure to make a motion for acquittal shall not constitute a waiver of any error which has been properly brought to the attention of the court.

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

Committee commentary. — In cases which may be appealed on the record, the metropolitan court has “inherent authority to determine whether the evidence presented at trial was legally insufficient to support a conviction.” *See State v. Martinez*, 2022-NMSC-004, ¶¶ 1, 4, 26, 503 P.3d 313. When reviewing the sufficiency of the evidence following the return of a guilty verdict, the metropolitan court shall use the same standard employed by appellate courts in assessing whether sufficient evidence supports a conviction. *Id.* ¶ 12. That standard is as follows: “In reviewing the sufficiency of the evidence, [the metropolitan court] must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict. Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant’s version of the facts. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Galindo*, 2018-NMSC-021, ¶ 12, 415 P.3d 494 (internal quotation marks and citations omitted).

In on-record cases when a defendant is charged with multiple offenses and the jury returns a guilty verdict on more than one charge, the metropolitan court may acquit the defendant on one of the charges while also entering judgment and sentencing the defendant on the remaining charge or charges that are supported by the jury’s guilty verdict. In a case like that, for purposes of creating a clear record on appeal, the metropolitan court shall issue one final order containing both the judgment and sentence for the convictions that were supported by sufficient evidence, as well as the judicial acquittal on the unsupported guilty verdicts.

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

7-701. Judgment.

A final order shall be entered in [~~every~~] a case. If the defendant is found guilty, a judgment of guilty shall be rendered if the court makes the legal determination that sufficient evidence supports the verdict. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and filed. The court shall give notice of the final order in accordance with Paragraph B of Rule 7-209 NMRA. A final order includes, but is not limited to, a judgment and sentence or the back of the traffic citation on a penalty assessment [~~where~~] when the defendant pled guilty or no contest and did not receive a deferred sentence. If the traffic citation is the final order, a copy need not be provided to the prosecution unless requested.

[As amended, effective October 1, 1992; January 1, 1995; as amended by Supreme Court Order No. 11-8300-014, effective April 25, 2011; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — The rule, as proposed by the committee, requires the court to impose costs against the defendant when there is a conviction. Former Rule 33 of the Rules of Criminal Procedure for the Magistrate Courts (*see now* Rules 6-701, 6-702 and 6-801 NMRA) made imposition of costs discretionary with the court.

[As amended, effective October 1, 1992; January 1, 1995; as amended by Supreme Court Order No. 11-8300-014, effective April 25, 2011.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Metro Court Comments for Proposed Rule Amendments

Amber Garcia <metramg@nmcourts.gov>

Mon, Apr 24, 2023 at 11:46 AM

Reply-To: metramg@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Greetings,

Please see attached letter from Metropolitan Court Chief Judge Maria I. Dominguez regarding comments on proposed rule amendments, specifically, Proposal 2023-008 "Order of Trial Judicial Acquittal Notwithstanding Guilty Verdict, and Judgment" and Proposal 2023-013 "Pleas Allowed."

Respectfully,

Amber Garcia, Paralegal
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Bernalillo County Metropolitan Court
[401 Lomas Blvd NW](#)
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Metro Court Comments for proposed rule amendments 2023-008 and 2023-013_ 4-24-23.pdf

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Chambers of
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April 24, 2023

VIA EMAIL

Elizabeth A. Garcia, Chief Clerk of the Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: *Proposal 2023-008* - Order of Trial, Judicial Acquittal Notwithstanding Guilty Verdict, and Judgment [Rules 5-614.1 and 7-611.1 NMRA and amendments to Rules 5-607, 5-701, 6-603.1, 6-701, 7-603.1 and 7-701 NMRA] and *Proposal 2023-013*-Pleas Allowed [Rule 6-302 and 7-302 NMRA]

Dear Ms. Garcia:

On behalf of the Metropolitan Court, we appreciate the opportunity to comment on the Rules regarding the Order of Trial, Judicial Acquittal Notwithstanding Guilty Verdict, Judgment, and Pleas Allowed.

1. *Proposal 2023-008*- Order of Trial, Judicial Acquittal Notwithstanding Guilty Verdict, and Judgment [Rules 5-614.1 and 7-611.1 NMRA and amendments to Rules 5-607, 5-701, 6-603.1, 6-701, 7-603.1 and 7-701 NMRA]

Proposal 2023-008 is intended to memorialize the Court's "inherent authority to determine whether the evidence presented at trial was legally sufficient to support a conviction." *State v. Martinez*, 2022-NMSC-004, ¶¶ 1, 4, 26. New Rule 7-611.1 applies, "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 enter judgment of acquittal if the court finds the evidence insufficient to sustain a guilty verdict." Pursuant to NMSA 1978, Section 34-8A-6, "The Metropolitan Court is a court of record for criminal actions involving driving while under the influence of intoxicating liquor or drugs or involving domestic violence." The Court does not have court reporters and instead has court monitors and utilizes *CourtSmart* to secure an accurate and

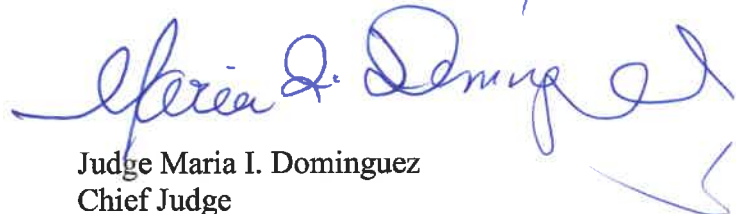
Elizabeth A. Garcia
New Mexico Supreme Court
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reliable audio record. For this reason, the Court recommends that the reference to a “court reporter being present” be stricken from Subsection C. It should instead read: “When the defendant has been found guilty by a jury or by the court, a motion for acquittal may be dictated into the record, if it is a record case and therefore is being monitored and recorded ~~if a court reporter is present~~, and may be argued immediately after the return of the verdict. That motion may be in writing and filed with the clerk. That motion, written or oral, shall fully set forth the grounds upon which it is based.”

2. *Proposal 2023-013* – Incorporation of Plea Deadlines [Rules 6-302 and 7-302 NMRA]

Proposal 2023-013 intends to impose deadlines for the submission of plea agreements that would eliminate the need for trial that conforms to New Mexico Supreme Court Order No. 22-8500-018. Bernalillo County Metropolitan Court operates under very short deadlines to adjudicate a high volume of criminal cases. Plea deadlines were initially incorporated in response to the COVID-19 Public Health Emergency have improved the Court’s judicial economy and allowed the Court to avoid the needless waste of time particularly in the scheduling of definite trial settings. With plea deadlines, there is adequate time set aside for a definite trial, and the lawyers are better prepared for trial. The impact of the plea deadlines and definite trial settings also reduces time away from employment and personal obligations for jurors, civilians, law enforcement officers, and other witnesses, as well as defendants. For these reasons, the Court is recommends that Proposal 23-013 be approved in its current form.

We appreciate the opportunity to share 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
Lissa Lowe, Acting Court Executive Officer
Arthur W. Pepin, Director, Administrative Office of the Courts