

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE  
DISTRICT COURTS  
PROPOSAL 2023-011**

**March 24, 2023**

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rule 5-302.3 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](mailto: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.

---

**5-302.3. 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 the filing of a petition to investigate criminal conduct or malfeasance proscribed by state law that is signed by not less than the greater of two-hundred (200) registered voters or two percent of the registered voters of the county. A petitioner may use Form 9-200 NMRA.

B. ~~[Verification of petition.]~~ **Duties of the district court.** The district court ~~[has the responsibility to]~~ must make both a factual determination that a citizen petition to convene a grand jury meets the procedural requirements of Article II, Section 14 and a legal determination that the petition seeks a legitimate inquiry into alleged criminal conduct or malfeasance proscribed by state law.

(1) **Verification of petition.** The district court must verify the signatures contained in the petition. The district court may verify the signatures by any number of methods, including but not limited to

- |                              |  |
|------------------------------|--|
| [ <del>(1)</del> ] (a)       | requiring each signatory to provide an address of record;      |
| [ <del>(2)</del> ] (b)       | verifying other identifying information such as dates of birth |
| and social security numbers; |  |
| [ <del>(3)</del> ] (c)       | a handwriting comparison by a qualified witness; or            |
| [ <del>(4)</del> ] (d)       | obtaining testimony from questionable signatories.             |

(2) **Validity of petition.** The petition to convene a grand jury must identify with reasonable specificity the alleged criminal conduct or unlawful malfeasance to be investigated. The district court must determine whether the petition seeks to investigate conduct that lies within the permissible scope of grand jury inquiry. If the petition does not reasonably specify alleged conduct that, if true, would warrant a true bill of indictment, the district court must deny the petition.

C. **Assistance of prosecuting attorney.** Upon the filing of the petition, the district court shall assign the district attorney or the district attorney's assistants, unless otherwise disqualified, to assist the district court in notifying the target of the grand jury petition and, if the grand jury is convened, in carrying out the duties of the grand jury.

D. **Notice to target; timing**

If a target of the potential grand jury investigation is identifiable in the citizen petition, the prosecuting attorney assisting the district court shall use reasonable diligence to notify the target in writing no later than thirty (30) days before the scheduled hearing on the validity of the petition. Target notices shall be substantially in the form approved by the Supreme Court. The writing shall notify the target of

(1) the existence of a citizen petition to convene a grand jury to investigate the target for an alleged crime;

(2) the nature of the crime alleged in the petition;

(3) the date of the alleged crime;

(4) any applicable statutory citations;

(5) the target's right to intervene;

(6) the target's right to testify in a subsequent grand jury proceeding;

(7) the target's right not to testify in a subsequent grand jury proceeding;

(8) the target's right to submit exculpatory evidence to the district attorney for presentation to the grand jury in a subsequent grand jury proceeding; and

(9) the target's right to the assistance of counsel during a subsequent grand jury investigation.

E. **Opportunity to intervene.** Before ruling on the validity of the grand jury petition, the district court shall permit any identifiable target of a grand jury investigation initiated by petition to intervene in the matter.

[C.] **F. Convening a citizen-petition grand jury.** If the district court determines both that the petition meets the procedural requirements of Article II, Section 14 and seeks to investigate reasonably specific alleged criminal conduct or unlawful malfeasance, 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 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; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**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, “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 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,]~~ Upon the filing of the petition to convene a grand jury, the district court shall assign the district attorney or his assistants, unless otherwise disqualified, [shall attend and conduct the grand jury.] to assist the district court in notifying the target of the grand jury petition and, if the grand jury is convened, in carrying out the duties of the grand jury. *See* NMSA 1978, § 31-6-7(C) (2001). If a district attorney is disqualified for ethical reasons or other good cause under Paragraph C, 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).

[Adopted by Supreme Court Order No. 15-8300-010, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

---

## [rules.supremecourt-grp] Rule Proposal Comment Form, 04/24/2023, 4:58 pm

1 message

---

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

Mon, Apr 24, 2023 at 4:58 PM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your  
Name: LARRY

Phone  
Number: 575 910 0300

Email: [larrym\\_gdc@hotmail.com](mailto:larrym_gdc@hotmail.com)

Proposal  
Number: 2023-011

Comment: Comments as to the revision of rules 5-302.3 A and B

The New Mexico Constitution clearly states that a grand jury be convened by such judge upon the filing of a petition therfor signed by not less than etc.....

The language of the Constitutional provision could not be more clear, when the citizens file a petition the court convenes a grand jury.

The question is do your revisions go so far as to invade this enumerated right of the citizens?

The Supreme Court does not have the authority to amend the rights enumerated in the constitution, this revision clearly goes beyond a revision of rules. This rule change seeks to grant authority to district courts to reject a citizen initiated grand jury petition at its own discretion for reasons other than the reasons stated in the constitution, an obvious invasion of the right of the citizens to initiate a grand jury investigation.

This proposed change by law is an amendment to the constitution and should be addressed as such.

The process as is and after revision does not allow or provide the citizens the opportunity to defend the submitted citizen initiated petition against an intervening party or target. The revision only requires the DA to notify the target not represent the citizens that filed the petition. Revisions as proposed negates the need for a grand jury investigation if the judge decides the matter prior to the grand jury investigation. Only providing for intervening targets evidence and testimony and not the initiating citizens we do not have an equitable situation.

We actually had these issues in Case S-1-SC -39072 early 2022 and late 2021. Counsel for the Governor proposed these exact changes in that case.

Any reasonable person can see we need to revise the process and maybe revise the laws however this court only has authority to revise policy and procedures not change laws or amend the constitution.

THANK YOU for taking the time to read my comments, I sincerely do appreciate the opportunity to comment.

Larry Marker