

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE  
MAGISTRATE COURTS AND THE RULES OF CRIMINAL PROCEDURE FOR THE  
METROPOLITAN COURTS  
PROPOSAL 2023-013**

**March 24, 2023**

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rules 6-302 and 7-302 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.

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**6-302. Pleas allowed.**

A. **Pleas and defenses.** The plea shall be one of the following: guilty, not guilty, or no contest. No other pleas shall be permitted. A plea of not guilty shall not operate as a waiver of any defense or objection. Defenses and objections not raised by the plea shall be asserted in the form of motions to dismiss or for appropriate relief. In actions not within magistrate trial jurisdiction, no plea shall be entered.

B. **Failure or refusal of defendant to enter a plea.** If the defendant fails to enter a plea, or stands mute, the court shall enter a plea of not guilty on behalf of such defendant.

C. **Rejection of pleas.** The court shall reject a plea of guilty or no contest if justice would not be served by acceptance of such plea.

D. **Plea agreement deadline.** Except in non-attorney prosecutions, a plea agreement between the parties that would eliminate the need for a trial shall be submitted for the court's consideration by a deadline set in the court's discretion, but in any event, no plea agreement shall be entered into later than five (5) days before the scheduled date for jury selection or commencement of a bench trial.

E. **Untimely plea agreements.** A request for the court to approve an untimely plea agreement less than five (5) days before trial shall not be granted except upon a written finding by the judge of good cause that excuses the untimely submission of the agreement. If the court denies

a request to accept an untimely plea agreement, the case shall proceed to trial on the scheduled date.

Notwithstanding the denial of a request to accept an untimely plea agreement, a defendant may elect to plead guilty to all charges leaving full sentencing discretion with the court, or the prosecution may elect to dismiss any and all charges with or without prejudice any time before or during trial.

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **7-302. Pleas allowed.**

A. **Pleas and defenses.** The plea shall be one of the following: guilty, not guilty, or no contest. No other pleas shall be permitted. A plea of not guilty shall not operate as a waiver of any defense or objection. Defenses and objections not raised by the plea shall be asserted in the form of motions to dismiss or for appropriate relief.

B. **Failure or refusal of defendant to enter a plea.** If the defendant refuses to enter a plea, or stands mute, the court shall enter a plea of not guilty on behalf of such defendant.

C. **Rejection of pleas.** The court shall reject a plea of guilty or no contest if justice would not be served by acceptance of such plea.

D. **Plea agreement deadline.** Except in non-attorney prosecutions, a plea agreement between the parties that would eliminate the need for a trial shall be submitted for the court's consideration by a deadline set in the court's discretion, but in any event, no plea agreement shall be entered into later than five (5) days before the scheduled date for jury selection or commencement of a bench trial.

E. **Untimely plea agreements.** A request for the court to approve an untimely plea agreement less than five (5) days before trial shall not be granted except upon a written finding by the judge of good cause that excuses the untimely submission of the agreement. If the court denies a request to accept an untimely plea agreement, the case shall proceed to trial on the scheduled date.

Notwithstanding the denial of a request to accept an untimely plea agreement, a defendant may elect to plead guilty to all charges leaving full sentencing discretion with the court, or the prosecution may elect to dismiss any and all charges with or without prejudice any time before or during trial.

[As amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019; 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>

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## [rules.supremecourt-grp] Rule Proposal Comment Form, 03/24/2023, 11:05 am

1 message

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

Fri, Mar 24, 2023 at 11:05 AM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your  
Name: Daniel Dietzel

Phone  
Number: (575)538-2925

Email: [Daniel@ldplawfirm.com](mailto:Daniel@ldplawfirm.com)

Proposal  
Number: 2023-013

Comment: A deadline to submit a plea agreement five days before a bench trial would possibly cause unintended effects. In a jurisdiction where cases are routinely resolved with plea agreements on the day of bench trial it removes the option of resolution and witnesses and defendants will be forced into trials that they do not want. This will cause unnecessary trauma for witnesses, and defendants will be more likely to appeal the magistrate courts decision and have a second trial, where it would not have been otherwise necessary.

If the option of a plea agreement is not available at a bench trial setting defendants will be incentivized to set matters for jury trial that they otherwise would have resolved at a bench trial with a plea. This will lead to much more scheduling issues as jury trials are quite difficult to set in normal times, let alone during COVID restrictions. In the jurisdiction I practice in no magistrate jury trial has yet been held within the time limits because of space issues surrounding jury selection. Making this problem worse would not benefit anyone.

This proposed rule change does not take into account the fact that most criminal defendants are indigent and their public defenders often can not contact them prior to hearings to negotiate a plea because they do not have working telephones, they change addresses or are homeless, and they do not have access to email on a regular basis. The proposed rule change does not take into account the fact that many witnesses can not be contacted before hearings for the same reasons and it is only when all parties are present at the same time that a resolution can be reached. This time is only at a bench trial setting in the magistrate court.

It is hard for me to see the benefit of this rule change. The only potential benefit I can see is for the judiciary who may feel that their schedule is not being respected because they schedule a bench trial for more time than a plea hearing and that time is "wasted" when a plea happens at a trial setting. However, receiving a plea upon five days notice does not give the court sufficient time to change their schedule to use the time that may have been freed up, so what would the plea deadline accomplish?

Judges that wish to set their own plea deadlines may already do that formally, or informally, and a plea deadline imposed upon the rest of the judges reduces their discretion, so who does the mandatory plea deadline benefit? I do not believe it will benefit anyone in my jurisdiction and when it was implemented as a temporary COVID measure it was not well received by anyone that I am aware of.



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

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## [rules.supremecourt-grp] Rule Proposal Comment Form, 04/14/2023, 9:15 am

1 message

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

Fri, Apr 14, 2023 at 9:15 AM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your  
Name: Jennifer Byrns

Phone  
Number: 505-577-4413

Email: [coajrb@nmcourts.gov](mailto:coajrb@nmcourts.gov)

Proposal  
Number: 2023-013

Comment: The proposed amendments to Rules 6-302 and 7-302 includes language stating:

"Notwithstanding the denial of a request to accept an untimely plea agreement, a defendant may elect to plead guilty to all charges leaving full sentencing discretion with the court, or the prosecution may elect to dismiss any and all charges with or without prejudice any time before or during trial."

The language stating that the prosecutor may elect to dismiss charges without prejudice any time during trial seems problematic. It suggests that a prosecutor can dismiss a charge after trial has commenced and then bring the charge later, however, if a prosecutor were to do that, it would result in a double jeopardy violation. Also, if a prosecutor dismisses a charge or charges before trial and then tries to bring them later, this could result in a joinder problem if related charges that had to be tried together under the joinder rules went ahead to trial.

Removal of the language "with or without prejudice" from this paragraph should be considered.



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

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

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**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  
Office of General Counsel  
Bernalillo County Metropolitan Court  
[401 Lomas Blvd NW](#)  
[Albuquerque, NM 87102](#)  
[PH: 841-8103](#)

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**Metro Court Comments for proposed rule amendments 2023-008 and 2023-013\_ 4-24-23.pdf**

122K



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  
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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](mailto: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

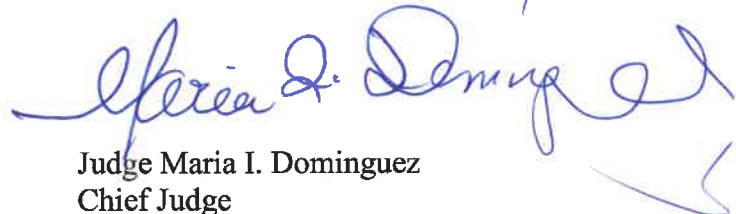
Elizabeth A. Garcia  
New Mexico Supreme Court  
April 24, 2023  
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reliable audio record. For this reason, the Court recommends that the reference to a “court reporter being present” be stricken from Subsection C. It should instead read: “When the defendant 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