**9-414. Order dismissing criminal complaint.**

[For use with Magistrate Court Rule 6-506 NMRA,

Metropolitan Court Rule 7-506 NMRA and

Municipal Court Rule 8-506 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

IN THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COURT

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

v. No. \_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Defendant.

**ORDER DISMISSING CRIMINAL COMPLAINT**

This matter has come before the Court

[ ] upon the motion of the defendant that the above-styled cause be dismissed [with prejudice] for failure of the [(state) (city)] [state] [city] to prosecute, and the Court [finding] finds that the defendant was not responsible for the failure to complete the disposition of the criminal proceeding.

[ ] upon the defendant’s fulfillment of requirements specified in statute or by court order.

[ ] upon oral motion of the prosecution for dismissal of the complaint.

[ ] upon \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The complaint charges Defendant with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

It is hereby ordered that all the charges in the complaint filed in the above-styled cause be dismissed

[ ] with prejudice. The complaint may not be refiled.

[ ] without prejudice. The complaint may be refiled. If the complaint is refiled, Defendant shall promptly respond to any further communications from the court concerning the refiled charges.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge

**APPROVED:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant or counsel

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Prosecutor

(*This form must be signed by the prosecutor if the case is dismissed upon oral motion of the prosecution.*)

USE NOTES

1. This form is to be used only when all charges against Defendant are being dismissed. If some are dismissed and others are adjudicated, the court should use a judgment and sentence.

2. If the prosecution files a notice of dismissal, such as Form 9-415 NMRA, the court need not file an order of dismissal. The court may use this form if the prosecution orally moves for dismissal.

3. If the court has granted a motion to suppress, it is “an improper act” to also dismiss the case even when the court anticipates that the prosecution cannot prove its case. *State v. Montoya*, 2008-NMSC-043, ¶ 18, 144 N.M. 458, 188 P.3d 1209. This is “because once some evidence is suppressed, the [prosecution] is entitled to determine, for example, whether to pursue its case with its remaining evidence, dismiss its case with prejudice, or dismiss its case and refile it in district court.” *Id.*

[As amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]