

Supreme Court General Rules

23-101. Terms, sessions and hearings.

A. **Term of court.** The Supreme Court shall hold one term each year, commencing on the second Wednesday in January, and shall be at all times in session at the seat of government; provided that the Court may, from time to time, take such recess as in its judgment may be proper. (N.M. Const., art. 6, § 7) If any cause shall not be decided during the term at or during which it was argued or submitted, it shall stand and be deemed continued from term to term until disposed of.

B. **Motions and petitions.** Except as otherwise specifically ordered, a session may be held on each Wednesday for hearing motions and petitions. A motion or petition as to which the time for filing pleadings has expired may be set for hearing on a Wednesday or be deemed submitted on the pleadings.

C. **Criminal cases and cases of general public interest.** Criminal cases and cases involving matters of general public interest or policy may be advanced for oral argument or decision by leave of the court and upon the motion of either party.

D. **Participation of justices.** Whenever the panel of justices before whom a law question has been heard desire, other justices may be called in to take part in the decision, upon a perusal of the record and briefs, without a formal reargument, unless one of the parties makes objection.

[As amended, effective January 1, 1987; August 17, 1999.]

ANNOTATIONS

The 1999 amendment, effective August 17, 1999, in Paragraph B, in the first sentence, substituted "may" for "will", "each Wednesday for hearing motions and petitions" for "the Wednesday after the first Monday of each month"; in the second sentence, substituted "A motion or petition as to which the time for filing pleadings has expired may be set for hearing on a Wednesday or be deemed submitted on the pleadings" for "All motions as to which the time for filing briefs has expired will be heard on such motion days or be deemed submitted on briefs"; in Paragraph D, inserted "panel of" preceding "justices", substituted "desires, other" for "shall be desire, other of the"; and deleted "at the argument" from the end of the paragraph.

Cross references. — For continuation of case from term to term, see 39-3-6 NMSA 1978 and Rule 12-402 NMRA.

For oral argument, see Rule 12-214 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 Am. Jur. 2d Courts §§ 4, 21 et seq.

21 C.J.S. Courts §§ 111 to 123.

23-102. Clerk of the Court.

A. **Residence.** The clerk of this Court shall reside in Santa Fe. The office of the clerk shall be located in the Supreme Court building. The clerk shall not practice law in any of the courts of the state.

B. **Original papers and records.** Original papers or records may not be taken from the clerk's office, or from the courtroom, without permission from the clerk.

C. **Return of borrowed items.** Any transcript, brief or other document filed in the Supreme Court and supplied to counsel for use must be returned to the court file in the clerk's office on or before the date of submission of the cause. The clerk shall so require in all cases. A failure of counsel to comply with this rule shall constitute contempt.

D. **Oral argument.** The clerk will make up the calendars for oral arguments of cases giving attorneys at least five (5) days' notice of the setting of cases in which they appear as record counsel.

E. **Decision of court.** Unless otherwise requested by counsel, the clerk will notify one attorney of record on each side of a case of the decision of the Court in the case.

F. **Copies of opinion.** Immediately after an opinion is filed, the clerk will transmit one (1) copy to one counsel of record on each side of the case, without charge.

G. **Docket entry.** The clerk will enter cases on the docket in the order in which opening documents are filed in the clerk's office. The date of the allowance of the appeal or the issuance of the writ of error, together with the name of the judge who tried the case, will also be entered on the docket by the clerk.

H. **Documents not complying with rules.** It shall be the duty of the clerk to enforce the requirements of these rules and the Rules of Appellate Procedure by refusing to file documents not complying therewith.

[As amended, effective August 17, 1999.]

ANNOTATIONS

The 1999 amendment, effective August 17, 1999, in Paragraph A, changed the seat of residence of the clerk from the seat of state government to Santa Fe and the clerk's office will be located in the Supreme Court building; in Paragraph B, documents taken from the courtroom or clerk's office can only be taken with permission from the clerk, not a court order; in Paragraph C, substituted "court file in the clerk's office" for "files"; in Paragraph E, substituted "requested" for "directed" near the beginning of the first sentence, and deleted "result of the" and substituted "in the case" for "therein" near the

end; in Paragraph F, substituted "filed" for "rendered in a case" and deleted "thereof"; in Paragraph G, substituted "opening documents" for "the transcripts on appeal and the order granting writs in cases of error"; in Paragraph H, deleted "several" near the beginning and inserted "and the Rules of Appellate Procedure" near the end.

Cross references. — For duties of clerks, see Rule 12-310 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A Am. Jur. 2d Clerks of Court § 1 et seq.

21 C.J.S. Court § 236 et seq.

23-103. Seal and process.

A. **Seal.** The seal shall contain the words "Supreme Court" on the upper part of the outer edge, and the words "State of New Mexico" on the lower part of the outer edge, running from left to right; and there shall be in the center the figure of a woman holding in her left hand the scales of justice, in her right a sword with the point resting level with her feet. (Specifications as follows):



B. **Process.** Process of this court shall be in the name of the chief justice of the Supreme Court of New Mexico and shall be in such form as shall be prescribed by the court, and shall be attested by the signature of the clerk and the seal of this court.

ANNOTATIONS

Cross references. — For process of supreme court and court of appeals, see Rule 12-311 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 Am. Jur. 2d Courts § 8.

23-104. Conduct of court proceedings.

A. **Judicial proceedings.** The purpose of judicial proceedings is to ascertain the truth. Judicial proceedings should be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the

people and to the litigants, and in an atmosphere that reflects the responsibilities of those who are charged with the administration of justice. The broadcasting, televising, photographing and recording of court proceedings in the appellate, district and metropolitan courts of the State of New Mexico is authorized in accordance with the provisions of Rule 23-107 of these rules.

B. Nonjudicial proceedings. Proceedings, other than judicial proceedings, designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be photographed in or broadcast from the courtroom with the permission and under the supervision of the court.

[As amended, effective September 1, 1989; August 17, 1999.]

ANNOTATIONS

The 1999 amendment, effective August 17, 1999, in Paragraph A, substituted "Judicial" for "Such" at the beginning of the second sentence, substituted "reflects" for "bespeaks" near the middle of the second sentence, and substituted "Rule 23-107 of these rules" for "revised Canon 21-300 of the Code of Judicial Conduct" at the end of the third sentence.

23-105. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated September 28, 1994, 23-105 NMRA, relating to determination of incapacity and the Judicial Retirement Act, was withdrawn effective September 28, 1994.

23-106. Supreme Court rules committees.

A. Authority to appoint. The Supreme Court may appoint standing committees and ad hoc committees to assist the Court with its rule-making function and to make recommendations to the Court for drafting and revising rules, forms, and uniform jury instructions for approval by the Court. As used in this rule and in Rule 23-106.1 NMRA, a committee includes a board or commission created by the Court for the same purposes.

B. Composition of committees. Most standing committees will be comprised of nine (9) members appointed by the Court to reflect geographical balance and to represent the various factions of the bar, such as prosecutors, defense attorneys, private attorneys, and government attorneys, but the Court in its discretion may appoint more or fewer than nine (9) members to any standing committee. Ad hoc committees will be comprised of as many members as the Court deems necessary with the same considerations of balance as for standing committees.

C. Chairperson; duties; subcommittees. The Court may appoint a chair and vice-chair for each committee. The chair shall have the authority to call meetings of the committee on whatever basis deemed necessary to ensure that the work of the committee is accomplished, and shall call at least one (1) meeting each year to evaluate the operation of the rules for which the committee is responsible and set future meeting dates for the remainder of the year. The chair will preside at all meetings and is responsible for communicating with the Court on behalf of the committee. In the absence of the chair, the chair may designate another committee member or committee staff to assume the authority of the chair, provided that committee staff temporarily designated to chair the committee may not vote and shall not count for establishing a quorum. The chair may appoint one or more subcommittees, as deemed necessary, to develop recommendations for consideration by the standing committee. The members of a subcommittee may include members from the standing committee and other individuals with experience and expertise the chair determines would be helpful to the work of the subcommittee.

D. Terms of appointment. Standing committee members shall be appointed for a term of three (3) years. The Court may appoint a standing committee member to fill a partial term created by the departure of another member. When a new standing committee is created, the Supreme Court clerk is authorized to randomly assign one (1), two (2), and three (3)-year terms for new members to achieve a staggering of terms. Standing committee members who are initially assigned a one (1) or two (2)-year term, or who are appointed to complete the remainder of an unexpired term of a prior member, may be reappointed to two (2) full three (3)-year terms thereafter. No standing committee member shall serve for more than two (2) full three (3)-year terms unless ordered by the Court. Members of ad hoc committees may be appointed by the Court with or without membership terms. Any standing or ad hoc committee member may resign at any time during the member's term by informing the Court in writing.

E. Committee participation required. All committee members are expected to actively participate in committee business and regularly attend committee meetings. Upon a committee member's absence from two (2) consecutive committee meetings, the committee member shall receive notice from the chair or committee staff that a third consecutive absence shall be deemed to be a resignation from the committee under the provisions of this paragraph. Any failure to receive the foregoing notice notwithstanding, if any committee member, including the chair, is absent from three (3) consecutive committee meetings, that person is deemed to have resigned from the committee. The resignation shall be reported to the Court, in writing, by the chair or committee staff, and the chair or committee staff may recommend to the Court that a committee member not be required to resign under the provisions of this rule due to exceptional circumstances. For purposes of this paragraph, an absence shall be defined as,

- (1) failing to attend a regularly scheduled committee meeting for any reason;
- or

(2) contributing to the lack of a quorum that results in the cancellation of a regularly scheduled committee meeting.

F. State bar representative. The Board of Bar Commissioners may appoint a liaison to each standing committee. Any liaison appointed to the Judicial Performance Evaluation Commission, Disciplinary Board or Board of Bar Examiners may participate in discussions pertaining to rule-making or matters of general policy but may not participate in executive sessions and other confidential proceedings or in pending disciplinary or admission matters.

G. Supreme Court liaison. The chief justice may appoint a liaison justice to a committee.

H. Committee staff. The Court may appoint or contract for such staff as may be needed for each committee. If appointed, the committee staff shall be responsible for providing notice of meetings, assisting the chair with setting the agenda for meetings and other duties of the chair, drafting and revising rules, forms, and uniform jury instructions, serving as a liaison between the committee and the Court, and any other duties requested by the Court. It shall not be necessary for committee staff to keep minutes.

I. Quorum and voting. All appointed members, including the chair, shall have one (1) vote. Voting by proxy is not permitted. Committee staff, guests, and liaisons may participate in meetings, but may not vote. A quorum of the committee consists of a majority of its voting members, including the chair. A quorum includes any member who is present in person, by telephone, by videoconference, or by other electronic communication. A quorum shall be present and voting before any committee business may be adopted and recommended to the Court. Committees may, however, meet and discuss matters without a quorum present.

J. Standing committees. The following is a list of Supreme Court standing committees:

(1) Rules of Civil Procedure for State Courts Committee, which is responsible for the Rules of Civil Procedure for the District Courts, the Rules of Civil Procedure for the Magistrate Courts, the Rules of Civil Procedure for the Metropolitan Courts, the Probate Court Rules and Forms, and the civil forms for the district courts, magistrate courts, and metropolitan courts;

(2) Rules of Criminal Procedure for State Courts Committee, which is responsible for the Rules of Criminal Procedure for the District Courts, the Rules of Criminal Procedure for the Magistrate Courts, the Rules of Criminal Procedure for the Metropolitan Courts, the Rules of Procedure for the Municipal Courts, and the criminal forms for the district courts, magistrate courts, metropolitan courts, and municipal courts;

(3) Appellate Rules Committee, which is responsible for the Rules of Appellate Procedure;

(4) Rules of Evidence Committee, which is responsible for the Rules of Evidence;

(5) Uniform Jury Instructions-Civil Committee, which is responsible for the Uniform Jury Instructions-Civil;

(6) Uniform Jury Instruction-Criminal Committee, which is responsible for the Uniform Jury Instructions-Criminal;

(7) Children's Court Rules Committee, which is responsible for the Children's Court Rules and Forms;

(8) Minimum Continuing Legal Education Board, which is responsible for the Rules of Minimum Continuing Legal Education and for administering the Minimum Continuing Legal Education program under those rules;

(9) Board of Legal Specialization, which is responsible for the Rules of Legal Specialization and for administering the Supreme Court specialization program under those rules;

(10) Board Governing the Recording of Judicial Proceedings, which is responsible for the Rules Governing the Recording of Judicial Proceedings and for administering the program for court reporters and court monitors under those rules;

(11) Board of Bar Examiners, which is responsible for the Rules Governing Admission to the Bar and for administering the Supreme Court program for the admission of attorneys under those rules;

(12) Disciplinary Board, which is responsible for the Rules Governing Discipline, the Rules Governing the Unauthorized Practice of Law, and for administering the Supreme Court program for disciplining attorneys under those rules;

(13) Code of Professional Conduct Committee, which is responsible for the Rules of Professional Conduct;

(14) Code of Judicial Conduct Committee, which is responsible for the Code of Judicial Conduct;

(15) Client Protection Fund Commission, which is responsible for the Rules Governing the Client Protection Fund and for administering the client protection fund program under those rules;

(16) Judicial Performance Evaluation Commission, which is responsible for the Rules Governing the Judicial Performance Evaluation Commission and for administering the program for evaluating judges under those rules; and

(17) Domestic Relations Rules Committee, which is responsible for the rules of procedure and forms specifically applicable to domestic relations and domestic violence proceedings.

K. Failure to comply. Failure to comply with any or all of the provisions of this rule shall not affect the validity of any rules adopted by the Supreme Court or the validity of any action taken by a committee that is approved by the Supreme Court.

[As amended, effective August 15, 1986; August 1, 1992; August 17, 1999; January 11, 2002; February 23, 2004; as amended by Supreme Court Order 06-8300-02, effective January 11, 2006; by Supreme Court Order 07-8300-03, February 12, 2007; by Supreme Court Order No. 10-8300-014, effective May 10, 2010; by Supreme Court Order No. 12-8300-036, effective July 1, 2013; as amended by Supreme Court Order No. 14-8300-018, effective December 31, 2014; as amended by Supreme Court Order No. 15-8300-016, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-026, effective December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017, provided rules committee chairs with the power to appoint subcommittees, added the Judicial Performance Evaluation Commission to the list of standing committees to which the Board of Bar Commissioners may appoint a liaison, added limitations to the role of state bar representatives on standing committees, and revised the list of standing committees and their functions; in Paragraph C, in the heading, after “Chairperson”, added “duties; subcommittees”, and added the last two sentences of the paragraph; in Paragraph F, after “appointed to the”, added “Judicial Performance Evaluation Commission”, after “general”, deleted “board”, and after “participate in”, added “executive sessions and other confidential proceedings or in”; and in Paragraph J, Subparagraph J(1), deleted “Courts of Limited Jurisdiction Rules Committee, which is responsible for the Rules of Civil Procedure for the Magistrate Courts, the Rules of Criminal Procedure for the Magistrate Courts, the Rules of Procedure for the Municipal Courts, and the civil and criminal forms for the magistrate and municipal courts” and added the new language of the subparagraph, in Subparagraph J(2), deleted “Rules of Civil Procedure for the District Courts Committee, which is responsible for the Rules of Civil Procedure for the District Courts, and the civil forms for the district courts” and added the new language of the subparagraph, deleted former Subparagraph J(7), which provided for the Rules of Criminal Procedure for the District Courts Committee, and redesignated former Subparagraphs J(8) through J(15) as Subparagraphs J(7) through J(14), respectively, deleted former Subparagraph J(16), which provided for the Metropolitan Courts Rules Committee, and redesignated former Subparagraphs J(17) and J(18) as Subparagraphs J(15) and J(16), respectively,

deleted Subparagraph J(19), which provided for the Joint Committee on Rules of Procedure for New Mexico State Courts, and redesignated former Subparagraph J(20) as Subparagraph J(17), and deleted former Subparagraph J(21), which provided for the Probate Court Rules Committee.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-016, effective December 31, 2015, redefined “absence” for purposes of committee participation, removed the strict schedule and procedure for the rules committees’ rulemaking activity, and made stylistic changes throughout; in Paragraph A, after “As used in this rule”, added “and in Rule 23-106.1 NMRA”, in Paragraph E, after “an absence”, deleted “includes instances when a regularly scheduled committee meeting is canceled for lack of a quorum under Paragraph I of this rule, except for those members who indicated their intent to attend the meeting before it was canceled” and added “shall be defined as” and added Subparagraphs (1) and (2); deleted Paragraph J relating to requests for rule changes; deleted Paragraph K relating to rule-making schedules; deleted Paragraph L relating to requirements for rules committee recommendations to the Supreme Court; redesignated Paragraphs M and N as Paragraphs J and K, respectively; in various subparagraphs throughout Paragraph J changed “pursuant to those rules” to “under those rules”; and in Paragraph K, after “provisions of this rule”, deleted “by the Supreme Court”, and after “Supreme Court”, added “or the validity of any action taken by a committee that is approved by the Supreme Court”.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-018, effective December 31, 2014, added a three year term for standing committee members to provide for staggered terms; provided that liaisons to the Disciplinary Board or the Board of Bar Examiners may not participate in pending disciplinary or admission matters; eliminated the scheduling restrictions on consideration of rule changes submitted after July 1; provided a list of rule changes that are eligible for annual rule-making concerning uniform jury instructions; increased the comment period on proposed rule changes to thirty days; provided that the Disciplinary Board for the Rules Governing the Unauthorized Practice of Law and the Probate Court Rules Committee are standing committees; in Paragraph D, in the third sentence, after “two (2), and”, added “three (3)-year”, and in the fourth sentence, after “assigned to one (1) or”, added “two (2)-year”; in Paragraph F, in the second sentence, after “Disciplinary Board”, added “or Board of Bar Examiners” and after “pending disciplinary”, added “or admission”; in Paragraph H, in the second sentence, after “duties of the chair”, deleted “taking notes of the committee’s action”; in Paragraph I, in the fifth sentence, after “member who is present”, deleted “and voting”; in Paragraph K, changed “Subparagraph 4” to “Subparagraph 5” throughout; in Paragraph K (1), deleted former Subparagraph (a) which provided that rule change requests submitted after July 1 could not be considered until July 1 of the following year; in the current Subparagraph (a), after “January 1 of the”, deleted “following” and added “next”; in Paragraph K (1)(c), after “July 1 of the”, deleted “following” and added “next”; in Paragraph K (2), in the introductory sentence, after “Probate Court”, added “Rules and”; deleted former Paragraph K (2)(a) which provided that rule change requests submitted after July 1 in an odd-numbered year could not be considered until July 1 of the next odd-numbered year; in Paragraph K (3),

in the title, after “evidence rules”, deleted “and all other rule changes” and added “and ethics rules; changes”, and in the introductory sentence, after “Rules of Evidence”, deleted “and all other rule sets listed in Subparagraphs (1) or (2) of this paragraph” and added “the Rules of Professional Conduct, and the Code of Judicial Conduct”, and after “the following”, added “two (2)-year”; deleted former Paragraph K (3)(a) which provided that rule change requests submitted after July 1 in an even-numbered year could not be considered until July 1 of the next even-numbered year; added Paragraph K (4); in Paragraph L (4), in the first sentence, deleted “Upon completion of formatting the” and added “The”; in Paragraph L (6), in the second sentence, after “comment period shall be”, deleted “at least three (3) weeks” and added “thirty (30) days, unless otherwise ordered by the Court”; in Paragraph M (13), after “Rules Governing Discipline”, added “the Rules Governing the Unauthorized Practice of Law”; and added Paragraph M (21).

The 2012 amendment, approved by Supreme Court Order No. 12-8300-036, effective July 1, 2013, provided that members appointed to complete an unexpired term of a prior member may be appointed to two full three year terms; provided that an absence includes failure of a member to indicate intent to attend a meeting that is cancelled for lack of a quorum; provided the procedure for requesting rule changes; established rule making procedures; in the title of rule, after “committees”, added “and rule-making procedures”; in Paragraph D, in the fourth sentence, after “a one or two-year term”, added “or who are appointed to complete the remainder of an unexpired term of a prior member”, and after “reappointed to two (2) full”, added “three (3)-year”, and in the fifth sentence, after “serve for more than two (2) full”, added “three (3)-year”; in Paragraph E, added the last sentence; in Paragraph J, deleted the former title of the paragraph “Rule-making Procedure” and added the new title, added the second sentence, and in the third sentence, deleted “Committees may make rule change recommendations to the Court on their own motion or upon the request of the Court” and added “Rule change requests may be filed by the Court’s rules committees”; and Paragraph K; in Paragraph L, added the title of the paragraph; and in Paragraph M, added Subparagraph (20).

The 2010 amendment, approved by Supreme Court Order No. 10-8300-014, effective May 10, 2010, in the title of the rule, added the word "rules"; in Paragraph A, in the first sentence, after "standing committees and" deleted "special or temporary" and added "ad hoc"; after "ad hoc committees to" added "assist the Court with its rule-making function and to"; after "recommends to the Court" deleted "and to assist the Court in", and added the word "for"; and after "drafting and revising rules" changed "and instructions of the Supreme Court" to "forms and uniform jury instructions for approval by the Court"; and added the second sentence; in Paragraph B, in the first sentence, after "comprised of nine members" deleted "who will be"; after "various factions of the bar" deleted the abbreviation "i.e." and added "such as"; and after "government attorneys" added the remainder of the sentence; deleted the former second sentence which provided for the number of members of the Code of Professional Conduct Committee, the Appellate Rules Committee, the Board of Bar Examiners, and the Disciplinary Board; and at the beginning of the second sentence, added "Ad hoc"; in Paragraph C, in the first sentence, after "vice-chair for each" deleted "standing and special or temporary"; in the second sentence, after "work of the committee is

accomplished" added the remainder of the sentence; in the third sentence, after "preside at all meetings" added the remainder of the sentence; and in the fourth sentence, after "In the absence of the chair", deleted "the vice-chair or the chair's designee shall" and added "the chair may designate another committee member or committee staff to" and after "assume the authority of the chair", added the remainder of the sentence; in Paragraph D, in the first sentence, after "Standing committee members", deleted "including the chair and vice-chair"; added the second, third and fourth sentences; in the fifth sentence, at the beginning of the sentence, after the word "No", added "standing committee"; after "for more than two", added "full three-year"; in the sixth sentence, after "Members of", deleted "special or temporary" and added "ad hoc"; and after "ad hoc committees", deleted "shall be appointed for a term decided by the Court; however, said term shall not exceed three (3) years" and added the remainder of the sentence; and added the seventh sentence; in Paragraph E, added the first and second sentences; in the third sentence, at the beginning of the sentence, added "Any failure to receive the foregoing notice notwithstanding, if" and deleted the word "If"; and after "including the chair", deleted "or vice-chair, shall be" and added the word "is"; in the fourth sentence, after "reported to the Court", added "in writing" and after "in writing, by the chair or", deleted "vice-chair in writing" and added the remainder of the sentence; and deleted the former last sentence which permitted any member, including the chair or vice-chair, to resign during the member's term by informing the Court in writing; in Paragraph F, in the first sentence, after "to each standing", deleted "special or temporary" and added the second sentence; in Paragraph H, in the second sentence, after "If appointed, the", changed "staff attorney will be responsible for notifying the members and liaison of meetings" to "committee staff shall be responsible for providing notice of meetings, assisting the chair with setting the agenda for meetings and other duties of the chair"; after "drafting and revising rules", changed "and instructions" to "forms and uniform jury instructions, serving as a liaison between the committee and the Court" and after "duties requested by the Court", deleted "or the chair or vice-chair"; and in the third sentence, after "necessary for committee", added the word "staff" and after "to keep minutes", deleted "or make any record of their proceedings"; in Paragraph I, in the first sentence, after "including the chair", deleted "and vice-chair"; added the second sentence; in the third sentence, at the beginning of the sentence, added "Committee staff" and deleted "Staff attorneys"; added the fifth sentence; and in the sixth sentence, at the beginning of the sentence, added "A quorum shall" and deleted "five voting members, must"; in Paragraph J, added the first sentence; in the second sentence, after "Committees may make", added "rule change"; after "request of the Court", changed "or the bar" to "the bench, the bar, or the public"; added the third sentence; and after the third sentence, changed former Subparagraph (2) to new Subparagraph (4), changed former Subparagraph (3) to new Subparagraph (6), changed former Subparagraph (4) to new Subparagraph (8), changed former Subparagraph (5) to new Subparagraph (9), and changed former Subparagraph (6) to new Subparagraph (10); in Subparagraph (1) of Paragraph J, in the first sentence, after "voting quorum", added the remainder of the sentence; and added the second sentence; in Subparagraph (2) of Paragraph J, added the language that occurs before "shall be submitted to" and deleted "so votes, rules or instructions"; and after "shall be submitted to" deleted "the staff attorney" and added "committee staff"; in Subparagraph

(3) of Paragraph J, in the first sentence, after "When formatting", added "committee staff shall edit all proposed rule changes to conform to the Supreme Court Rules Drafting Manual, and" and deleted "all proposed amendments and new rules"; and after "the meaning of the rule", added the word "change"; in Paragraph J, added Subparagraph (4), including Items (a) through (e) and added Subparagraph (5), including Items (a) through (d); in Subparagraph (6) of Paragraph J, in the first sentence, at the beginning of the sentence, after "If the", added "Court decides to publish for comment the"; and after "publish for comment the proposed", deleted "amendments or new rules" and added the remainder to the sentence; and added the second and third sentences; in Subparagraph (7) of Paragraph J, at the beginning of the sentence, added "If a proposed rule change is" and deleted the word "are"; after "the Court may", deleted the word "request" and added the word "direct"; and after "the committee to", deleted "respond to" and added the word "review"; and after "received by the Court", added the remainder of the sentence; added the second sentence; and added the third sentence, including Items (a) through (d); in Subparagraph (8) of Paragraph J, in the introductory sentence, after "Upon receipt of the committee's", changed "response to the comments, and after its review of the recommended rules or instructions, any comments received by the Court and the committee's remarks to the comments, the Court shall" to "recommendation after the publication for comment period, the Court shall, either"; in Item (a) of Subparagraph (8) of Paragraph J, after the word "adopt", added "the committee's recommendation on the proposed rule change"; in Item (b) of Subparagraph (8) of Paragraph J, after the word "reject", added "the committee's recommendation on the proposed rule change"; in Item (d) of Subparagraph (8) of Paragraph J, after the word "modify", added "the committee's recommendation on the proposed rule change" and deleted "on their own motion"; in Item (e) of Subparagraph (8) of Paragraph J, after "send back", deleted "to the committee" and added "the committee's recommendation on the proposed rule change"; in Subparagraph (9) of Paragraph J, deleted the former first sentence which provided that if new rules or amendments are recommended to the Rules of Professional Conduct, Rules Governing Discipline, Rules Governing the New Mexico Bar, Rules Governing Admission to the Bar, or the Code of Judicial Conduct, the recommendations shall be submitted to the president of the New Mexico State Bar prior to the Court's final action to provide for input from the bar; in the first sentence, after "Upon final", deleted the word "enactment" and added the word "approval"; and after "approval by the Court", deleted "on such rules or amendments", and added the remainder of the sentence; and in the third sentence, added the language that occurs before "at least forty-five (45) days" and deleted "they may be submitted for publication by the state bar"; after "prior to the effective date", added "unless" and deleted the period and word "If"; and after "determines that it is necessary", deleted "to have a different effective date than that provided for in this subparagraph, it shall so provide in its order of adoption" and added the remainder of the sentence; in Subparagraph (10) of Paragraph J, in the first sentence, after "After any rule", deleted "or instruction" and added the word "change"; and after "made for publication by the", deleted "state bar, if necessary, and the"; added the second sentence; and deleted the former second sentence which provided that rules and amendments shall be published by the state bar if they will become effective prior to the next publication date of the NMSA Advanced Annotation Service or yearly

supplement if required by Subparagraph (5) of Paragraph J; in Subparagraph (1) of Paragraph K, after "Magistrate Courts, Rules of", deleted the word "Civil"; in Subparagraph (4) of Paragraph K, after the word "Committee", added the remainder of the sentence; in Subparagraph (5) of Paragraph K, after the word "Committee", added the remainder of the sentence; in Subparagraph (6) of Paragraph K, after the word "Committee", added the remainder of the sentence; in Subparagraph (8) of Paragraph K, after the word "Committee", added the remainder of the sentence; in Subparagraph (9) of Paragraph K, after "Legal Education", deleted the word "Committee" and added the word "Board"; after "responsible for", added "the Rules of Minimum Continuing Legal Education"; in Subparagraph (10) of Paragraph K, at the beginning of the sentence, changed "Specialization Board" to "Board of Legal Specialization"; after "responsible for", added "the Rules of Legal Specialization and for" and deleted "implementing and"; and after "specialization program", added "pursuant to those rules"; in Subparagraph (11) of Paragraph K, after the word "Board Governing", deleted the word "Reporting" and added "the Recording" and after "Judicial Proceedings", added the remainder of the sentence; in Subparagraph (12) of Paragraph J, after "Bar Examiners", added the remainder of the sentence; in Subparagraph (13) of Paragraph J, after "Disciplinary Board", added the remainder of the sentence; in Subparagraph (14) of Paragraph J, after the word "Committee", added the remainder of the sentence; in Subparagraph (15) of Paragraph J, after the word "Committee", added the remainder of the sentence; and in Paragraph J, added Subparagraphs (17) through (19).

The 2007 amendment, approved by Supreme Court Order 07-8300-03, effective February 12, 2007, amended Paragraph J(1) to delete the metropolitan court rules from the responsibility of the Courts of Limited Jurisdiction and to add a new Subparagraph 16 creating a Metropolitan Court Rules Committee and making that committee responsible for the metropolitan court rules and forms.

The 2006 amendment, approved by Supreme Court Order 06-8300-02, effective January 10, 2006, amended Subparagraph (1) of Paragraph I to add the second sentence relating to the drafting of rules using gender-neutral language.

The 2002 amendment, effective January 11, 2002, deleted "Rules of Civil Procedure for the District Court Committee shall be comprised of twelve members" near the middle of the first sentence in Paragraph B.

The 1999 amendment, effective August 17, 1999, in Paragraph A, substituted "and" for "and/or" preceding "to assist the Court"; in Paragraph B, added the second sentence pertaining to the number of committee members for a certain committees; in Paragraph C, substituted "may" for "shall" in the first sentence, in the last sentence, inserted "or the chair's designee" following "vice-chair"; redesignated Paragraphs F through J and Paragraphs G through K; added a Paragraph F pertaining to a Supreme Court liaison; in Paragraph G, inserted "If appointed" at the beginning of the second sentence, and substituted "taking notes of the committee's actions" for "taking attendance, recording votes"; in Paragraph I(1), inserted "attorney" preceding "staff", in Paragraph I(2), substituted "it may publish for comment the proposed amendments or new rules" for

"and"; added a new Paragraph I(3), rewrote Paragraph I(2) as present Paragraphs I(2) and I(4), and rewrote the beginning of Paragraph I(4), redesignated Paragraph I(3) as Paragraph I(5), and redesignated Paragraph I(4) as Paragraph I(6), and substituted "New Mexico Rules Annotated" for "the judicial volumes of the NMSA" at the end of the first sentence, and substituted "(5) of this Paragraph" for "(3) of Paragraph H"; in Paragraph J(2) and (3) inserted "which is" following "Committee"; in Paragraph J(7) inserted "which is" following "Committee" and deleted "Rules of Procedure for the Children's Court" preceding "Rules of Criminal Procedure"; renumbered Paragraphs J(8) and (9) as J(9) and (10) and added Paragraphs J(8) and J(11) through J(16).

The 1992 amendment, effective August 1, 1992, substituted "The Court" for "The courts" at the beginning of Paragraph C; and, in Paragraph I, redesignated former Subparagraphs (7) and (8) as present Paragraphs (8) and (9), respectively and added the present Subparagraph (7) designation to provisions formerly in Subparagraph (6), inserting in Subparagraph (7) the first sentence and deleting "Uniform Jury Instructions-Criminal" following "Responsible for".

Law reviews. — For article, "Separation of Powers and the Judicial Rule-Making Power in New Mexico: The Need for Prudential Restraints," see 15 N.M.L. Rev. 407 (1985).

23-106.1. Supreme Court rule-making procedures.

A. **Requests for rule changes.** For purposes of this rule, a rule change includes amendments to, or the withdrawal of, existing rules, forms, and uniform jury instructions as well as the adoption of new rules, forms, or uniform jury instructions. All requests for rule changes shall be filed with the Supreme Court clerk and shall be immediately forwarded by the clerk to the appropriate committee appointed under Rule 23-106 NMRA for consideration without the need for prior review or approval by the Court. No docket fee shall be charged for filing a rule change request. Rule change requests shall be submitted in the form of a petition filed with the Supreme Court clerk by any member of the Court's rules committees, the bench, the bar, or the public. A petition requesting a rule change shall include the following:

- (1) a statement of the reasons why the rule change request is needed;
- (2) citations to any constitutional provisions, statutes, case law, rules, or regulations supporting the rule change request, as well as any known contrary authority;
- (3) a draft of the proposed new or amended rule, form, or uniform jury instruction; and
- (4) any supporting documentation.

B. **Rule-making schedule.** Rule-making shall proceed under the following annual cycle unless the Court declares emergency circumstances to exist under Paragraph C of this rule:

(1) **Recommendation to publish for comment; deadline.** Any proposed rule change that a committee recommends publishing for comment that is submitted to the Court after January 1 shall not be considered by the Court for publication for comment until January 1 of the next year unless the Court declares emergency circumstances to exist under Paragraph C of this rule;

(2) **Publication for comment; timing and duration.** All proposed rule changes that are published for comment shall be published in the month of March with a thirty (30)-day comment period unless otherwise ordered by the Court;

(3) **Committee recommendation; deadline.** Any proposed rule change that a committee recommends adopting that is submitted to the Court after July 1 shall not be considered for approval by the Court until July 1 of the next year unless the Court declares emergency circumstances to exist under Paragraph C of this rule;

(4) **Court action.** Any committee recommendation submitted to the Court on or before July 1 shall be acted on by the Court by November 1 of the same year unless otherwise ordered by the Court; and

(5) **Effective date.** All approved rule changes shall be approved as of November 1 with an effective date of December 31 for cases pending or filed on or after that date unless otherwise ordered by the Court.

C. Out-of-cycle rule-making; emergency circumstances defined. Emergency circumstances for varying from the time deadlines set forth in Paragraph B of this rule may include, with prior approval of the Court, the following:

- (1) rule changes needed because of new case law;
- (2) rules changes needed because of statutory changes;
- (3) rule changes needed because of changes to ABA model rules or other model rules upon which a New Mexico rule is based;
- (4) rule changes needed to address imminent threats to the efficient administration of justice; or
- (5) other emergency circumstances as determined by the Court.

D. Requirements for rules committee recommendations. Committees shall make rule change recommendations to the Court in accordance with the following procedure:

- (1) When a majority of the voting quorum votes to reject a request for a rule change submitted by anyone other than a committee member, the chair shall prepare a committee report for submission to the Court explaining the reasons why the committee

recommends against the requested rule change. The Court may accept the committee's recommendation to take no action on the requested rule change or direct the committee to draft a proposed rule change for the Court's consideration.

(2) When a majority of the voting quorum votes to recommend a proposed rule change, the proposed rule change recommendation shall be submitted to the Court in proper format under Subparagraph (D)(3) of this rule with the committee report required under Subparagraph (D)(4) of this rule.

(3) The committee shall format all proposed rule changes to conform to the Supreme Court Rules Drafting Manual, and gender-neutral language shall be used unless the use of gender-neutral language would alter the meaning of the rule change or compromise its clarity. For purposes of this subparagraph, "gender-neutral language" means language that does not explicitly or implicitly refer to one gender to the real or apparent exclusion of any other gender.

(4) The committee chair shall prepare a committee report that submits the proposed rule change to the Court for consideration. The committee report shall be filed with the the Supreme Court clerk, who shall submit it to the Court for consideration in accordance with the applicable deadlines in Subparagraphs (B)(1) or (B)(3) of this rule or immediately upon filing if submitted as an out-of-cycle rule change request under Paragraph C of this rule. The committee report shall address the following matters:

- (a) who initiated the request for the rule change;
- (b) the purpose of the proposed rule change;
- (c) whether the committee unanimously recommends the proposed rule change and, if not, sets forth the minority view;
- (d) whether the committee recommends publishing the proposed rule change for comment before adoption; and
- (e) whether the committee recommends that the proposed rule change apply to future cases only or to pending cases as well.

(5) Upon submission of the committee report and proposed rule change to the Court, it may take the following actions:

- (a) publish for comment the proposed rule change;
- (b) adopt the proposed rule change without publication for comment;
- (c) reject the committee's proposed rule change; or
- (d) return the proposed rule change to the committee for further review.

(6) If the Court decides to publish for comment the proposed rule change, committee staff shall post the proposed rule change on the Court's web site and send notice of the publication for comment by email to all judges and to all members of the bar who have provided an email address for the Court's Roll of Attorneys and may also publish the proposed rule change in the Bar Bulletin. The comment period shall be thirty (30) days, unless otherwise ordered by the Court, and may be extended at the discretion of the Court. All comments received may be posted on the Court's web site for public viewing.

(7) If a proposed rule change is published for comment, after the comment deadline, the Court may direct the committee to review any comments received by the Court and provide a follow-up recommendation in light of the comments received. The chair shall submit a committee report to the Court setting forth the committee's recommendation. The committee report shall,

(a) specifically address each comment that was received and explain why the committee did or did not revise the proposed rule change in light of the comment;

(b) state whether the committee unanimously recommends adopting the proposed rule change and, if not, sets forth the minority position;

(c) state whether the committee recommends republication of any revisions to the proposed rule change that the committee recommends, and

(d) state the basis for the committee recommending whether the proposed rule change should apply to future cases only or to pending cases as well.

(8) Upon receipt of the committee report after the publication for comment period, the Court shall do one of the following:

(a) adopt the committee's recommendation on the proposed rule change;

(b) reject the committee's recommendation on the proposed rule change;

(c) meet with committee representatives to discuss the recommendations;

(d) modify the committee's recommendation on the proposed rule change; or

(e) send back the committee's recommendation on the proposed rule change for further drafting or revising.

(9) Upon final approval by the Court of a proposed rule change, the Supreme Court clerk shall issue an order adopting the proposed rule change. The order shall include the effective date for the rule change. At least forty-five (45) days prior to the effective date, the approved rule change and Court order shall be posted on the New Mexico Compilation Commission's web site, and notice of the approved rule change

shall be sent by email to all judges and to all members of the bar who have provided an email address for the Court's Roll of Attorneys, unless the Supreme Court determines that it is necessary for the rule change to become effective immediately upon adoption.

(10) After any rule change has been approved by the Court, arrangements shall be made for publication by the Compilation Commission in the New Mexico Rules Annotated. An approved rule change also may be published in the Bar Bulletin at the Court's discretion.

E. Failure to comply. Failure to comply with any or all of the provisions of this rule by the Supreme Court shall not affect the validity of any rules adopted by the Supreme Court.

[Approved by Supreme Court Order No. 15-8300-016, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-026, effective December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017, revised the procedure for requesting a rule change, revised the procedure for a rules committee recommendation of a rule change, and changed the deadline by when a committee recommendation for a rule change shall be acted on by the Supreme Court; in Paragraph A, in the introductory paragraph, after "Rule change requests", deleted "may be filed by the" and added "shall be submitted in the form of a petition filed with the Supreme Court clerk by any member of the", added "A petition requesting a rule change shall include the following:", and added Subparagraphs A(1) through A(4); in Subparagraph B(4), after "the Court by", deleted "October" and added "November"; in Paragraph D, Subparagraph D(1), after "the chair shall prepare a", deleted "letter, or request committee staff to prepare a letter," and added "committee report for submission", in Subparagraph D(2), after "shall be submitted", deleted "to committee staff appointed by the Court for proper formatting prior to submission", and after "to the Court", added "in proper format under Subparagraph (D)(3) of this rule with the committee report required under Subparagraph (D)(4) of this rule", in Subparagraph D(3), deleted "When formatting, committee staff shall edit" and added "The committee shall format", in Subparagraph D(4), in the introduction, after "chair shall prepare", deleted "or request that committee staff prepare, a cover letter submitting" and added "a committee report that submits", after "The" in the second sentence, deleted "cover letter shall be sent to the chief justice, with copies to committee members, committee staff, and" and added "committee report shall be filed with", after "Supreme Court clerk", added "who shall submit it to the Court for consideration in accordance with the applicable deadlines in Subparagraphs (B)(1) or (B)(3) of this rule or immediately upon filing if submitted as an out-of-cycle rule change request under Paragraph C of this rule", and after "The" in the third sentence, deleted "cover letter" and added "committee report", in Subparagraph D(5), in the introductory clause, after "submission of the", added "committee report and", in Subparagraph D(7), in the introduction, after "chair shall", deleted "prepare, or request that committee staff prepare, a letter" and added

“submit a committee report”, and after “The” in the third sentence, deleted “committee’s recommendation” and added “committee report”, and in Subparagraph D(8), in the introductory clause, after “receipt of the”, deleted “committee’s recommendation” and added “committee report”.

23-107. Broadcasting, televising, photographing, and recording of court proceedings; guidelines.

The broadcasting, televising, photographing, and recording of court proceedings in the Supreme Court, Court of Appeals, district courts, magistrate courts, and metropolitan courts of the State of New Mexico are hereby authorized in accordance with the guidelines set forth in this rule, which establishes safeguards to ensure that these types of media coverage shall not detract from the dignity of the court proceedings or otherwise interfere with the achievement of a fair and impartial hearing.

A. **Discretion of the court.** Live coverage of proceedings shall not be limited by the objection of counsel or parties, except that the Supreme Court reserves to the individual courts the right to limit or deny coverage for good cause, in light of the guidelines in this rule, or in accordance with Subparagraph (G)(2) of this rule.

(1) Media coverage in the courts is subject at all times to the authority of the judge or judges to

(a) control the conduct of the proceedings before the court;

(b) ensure decorum and prevent distractions; and

(c) ensure fair administration of justice in the pending cause.

(2) The court has sole and plenary discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, relocated witnesses, and juveniles.

(3) Neither the jury nor any member of the jury may be filmed in or near the courtroom, nor shall the jury selection process be filmed.

(4) The judge has discretionary power to forbid coverage whenever the judge is satisfied that coverage may have a deleterious effect on the paramount right of the defendant to a fair trial.

(5) Audio pickup, broadcast, or recording of a tender of evidence offered by a party for the purpose of determining admissibility made before the judge out of the hearing of the jury is not permitted.

(6) Audio pickup, broadcast, photography, televising, or recording of a conference in the courtroom between members of the court, court and counsel, co-counsel, or counsel and client is not permitted.

B. Notice. The broadcasters, photographers, and recorders shall notify the clerk of the particular court at least twenty-four (24) hours in advance of coverage of their desire to cover the proceeding. Each trial judge may, in the judge's discretion, lengthen or shorten the time for advance notice for coverage of a particular proceeding.

C. Decorum. The decorum and dignity of the court, the courtroom, and the proceedings must be maintained at all times. Court customs must be followed, including appropriate attire. Movement in the courtroom shall be limited, except during breaks or recess. The changing of tapes, film magazines, film, and similar actions during the proceedings shall be avoided.

D. Standards. The media shall maintain high journalistic standards regarding the fairness, objectivity, and quality of the coverage allowed under these guidelines.

E. Equipment and personnel. Unless otherwise agreed upon by the court, equipment and personnel within the courtroom or hearing room shall be limited as follows:

(1) All equipment shall be operated behind the rail;

(2) Not more than one (1) portable television camera operated by not more than one (1) camera person shall be permitted. Only natural lighting shall be used. Cameras shall be quiet and shall be placed and operated as unobtrusively as possible within the courtroom at a location approved by the court. The cameras shall be in place at least fifteen (15) minutes before the proceedings begin;

(3) Not more than two (2) audio systems shall be permitted. All running wires shall be securely taped to the floor. Multiple radio feeds shall be provided by a junction box;

(4) Not more than two (2) still photographers, utilizing not more than one (1) still camera each, shall be permitted. The cameras must not produce any distracting sounds. Only natural lighting shall be used. Still photographers shall remain in one (1) place during the proceedings, but they may shift positions during breaks or recess;

(5) Tape recorders may be used by members of the media, so long as they do not constitute a distraction during the proceedings; and

(6) Any pooling arrangements necessary shall be the sole responsibility of the media and must be concluded prior to coverage without calling upon the court to mediate any dispute regarding appropriate media and personnel.

F. Inapplicability to individuals. The privileges granted by these rules may be exercised only by persons or organizations that are part of the news media.

G. Objections limited.

(1) An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any news media persons or organization seeking to exercise a privilege conferred upon them by these rules, any order, or ruling of any judge under these rules.

(2) Any party, or any person or entity with a sufficient interest, may object to cameras in the courtroom by filing a motion for courtroom closure under Rule 1-104 NMRA, Rule 2-114 NMRA, Rule 3-114 NMRA, Rule 5-124 NMRA, Rule 6-116 NMRA, Rule 7-115 NMRA, or Rule 12-322 NMRA.

H. Impermissible use of media material. None of the film, videotape, still photographs, or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceeding.

I. Other courts. The broadcasting, televising, photographing, and recording of court proceedings in courts other than the appellate, district, magistrate, and metropolitan courts of New Mexico is prohibited.

[As amended, effective September 1, 1989; August 17, 1999; as amended by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-020, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-020, effective December 31, 2018, included magistrate courts within the scope of the rule, clarified that the court's exercise of its discretion in limiting or denying coverage of proceedings is subject to the guidelines of this rule and other rules of courtroom closure; in the introductory paragraph, after "district courts", added "magistrate courts", and deleted "GUIDELINES"; in Paragraph A, after "for good cause", added "in light of the guidelines in this rule, or in accordance with Subparagraph (G)(2) of this rule"; in Subparagraph G(2), added "Rule 2-114 NMRA", and "Rule 6-116 NMRA"; and in Paragraph H, after "district", added "magistrate".

The 2016 amendment, approved by Supreme Court Order No. 16-8300-022, effective December 31, 2016, revised the provision relating to objections to cameras in the courtroom, and made stylistic changes; in the introductory paragraph, after "Court of Appeals, district", added "courts", after "in accordance with the guidelines", deleted

“promulgated herewith” and added “set forth in this rule”, after “which”, deleted “contain” and added “establishes”, after “to ensure that”, deleted “this type” and added “these types”; in Paragraph A, in the heading, after “Discretion of”, deleted “judges” and added “the court”, in the introductory sentence, after “except that the”, deleted “court” and added “Supreme Court”; in Subparagraph A(2), after “The”, deleted “presiding district judge” and added “court”; in Paragraph B, after “desire to cover the”, deleted “trial” and added “proceeding”, and after “coverage of a particular”, deleted “trial” and added “proceeding”; in Subparagraph G(2), after “Any party,”, added “or any person or entity with a sufficient interest”, after “may”, deleted “request, or”, after “in the courtroom by”, deleted “written” and added “filing a”, after “motion”, deleted “which may be supported by affidavits, which motion shall be filed not later than fifteen (15) days prior to trial. No other evidence shall be presented.” and added “for courtroom closure under Rule 1-024 NMRA, Rule 3-114 NMRA, Rule 5-124 NMRA, rule 7-115 NMRA, or Rule 12-322 NMRA”, and deleted “The trial court shall consider the motion and grant or deny the same. The trial judge shall state the judge’s reasons for the judge’s ruling on the record.”.

The 1999 amendment, effective August 17, 1999, made gender neutral changes throughout the rule.

The news media had standing in the supreme court to intervene in a criminal case to question the validity of a lower court order impairing its ability to report the news. The proper approach lies in a separate action for declaratory judgment, mandamus or prohibition. *State ex rel. New Mexico Press Ass’n v. Kaufman*, 1982-NMSC-060, 98 N.M. 261, 648 P.2d 300.

Showing of prejudice required to bar media coverage. — The tendency of television cameras in the courtroom to make a defendant nervous or rattled is certainly a likely effect to be considered, but if defendant has failed to present any evidence in support of his assertion that televising portions of the proceedings would prejudice the presentation of his testimony, he will be overruled on this challenge. *State v. Hovey*, 1987-NMSC-080, 106 N.M. 300, 742 P.2d 512.

If the defendant objects to media coverage he must make a prima facie showing that he will be prejudiced by the media coverage. A general assertion that the coverage will make the defendant nervous, unsupported by affidavits which address the discretionary standard articulated in *State ex rel. New Mexico Press Ass’n v. Kaufman*, 1982-NMSC-060, 98 N.M. 261, 648 P.2d 300, is not sufficient. *State v. Clark*, 1989-NMSC-010, 108 N.M. 288, 772 P.2d 322, cert. denied, 493 U.S. 923, 110 S. Ct. 291, 107 L. Ed. 2d 271 (1989), *overruled on other grounds*, *State v. Henderson*, 1996-NMCA-089, 109 N.M. 655, 789 P.2d 603.

Defendant abandoned his conditional pretrial request to bar television coverage of his allocution by failing to pursue the issue and by later failing to mention any potential problem with media coverage in his motion to allocute. *State v. Clark*, 1989-NMSC-010, 108 N.M. 288, 772 P.2d 322, cert. denied, 493 U.S. 923, 110 S. Ct. 291, 107 L. Ed. 2d

271 (1989), *overruled on other grounds*, *State v. Henderson*, 1996-NMCA-089, 109 N.M. 655, 789 P.2d 603.

Law reviews. — For comment, "Procedural and Substantive Rights to the Media Govern Requests to Restrict News Coverage of Criminal Cases: State ex rel. New Mexico Press Ass'n v. Kaufman," see 14 N.M.L. Rev. 401 (1984).

23-108. Court library use.

The supreme court and the district court libraries of the State of New Mexico shall be open to the public on regular court business days. Individual courts may by rule limit public access to their libraries, provided such rules adequately ensure that the public is not denied access to the law.

[Effective, April 1, 1988.]

23-109. Chief judges.

A. Selection; term; vacancies for unexpired terms.

(1) Each judicial district and each metropolitan court shall have a chief judge. The chief judge of a judicial district or metropolitan court shall be selected in the manner provided by the constitution by a majority of the sitting judges in that judicial district or metropolitan court who have been duly appointed or elected and taken the oath of office. A chief judge may be re-elected to serve successive terms. In the event of a tie vote, the senior judge among those who are tied shall be the chief judge.

(2) Effective December 31, 2014, upon the expiration of the term of a sitting chief judge in a judicial district or metropolitan court, the next election for the chief judge of that judicial district or metropolitan court shall be for a term of at least two (2) years but no more than three (3) years, with said term to expire on May 15. Thereafter, every three (3) years, the election of a chief judge for that judicial district or metropolitan court shall take place on or before April 15 for a three (3)-year term to begin on May 15.

(3) In the event of a vacancy before the expiration of a term for a chief judge, the vacancy shall be filled as follows:

(a) If the remainder of the term of the vacancy is less than one (1) year, an election shall be held to elect a new chief judge to serve the remainder of the term plus a new three (3)-year term;

(b) If the remainder of the term of the vacancy is more than one (1) year, an election shall be held to elect a new chief judge to serve the remainder of the term and, at the expiration of that term, an election shall be held to elect a chief judge for a new three (3)-year term; and

(c) The Chief Justice may appoint an acting chief judge for a judicial district or metropolitan court until a new chief judge is elected to serve the remainder of an unexpired term under this subparagraph.

B. Duties and Responsibilities. The chief judge of each judicial district and each metropolitan court district shall have the administrative responsibility for that judicial district or metropolitan court and shall

- (1) administer established policy concerning the court's internal operations;
- (2) call and preside over regular and special meetings of the judges;
- (3) appoint standing and special committees as may be advisable to assist in the proper performance of the duties and functions of the court;
- (4) designate one of the judges to act during the chief judge's temporary absence or inability to act;
- (5) exercise responsibility as the administrative authority in accordance with the provisions of law and the New Mexico Judicial Branch Personnel Rules and ensure the enforcement of those rules;
- (6) exercise general supervision, coordination, and direction of business of the court;
- (7) supervise performance of the court's administrative office;
- (8) supervise court finances, including financial planning and preparation, and presentation of court budgets;
- (9) coordinate the use of space, equipment, and facilities of the court;
- (10) assign, reassign, or consolidate cases among the several judges as equitably as possible. Except with respect to specialty courts consisting of a single judge, cases shall be assigned by random selection designed so that each judge will receive substantially the same number and type of cases. If a judge is unable to administer the cases assigned to such judge within a reasonable time, or if there are other justifiable reasons, the chief judge, in consultation with the other judges, may reassign cases to other judges within the district except for cases previously assigned by the Chief Justice as an out-of-district designation;
- (11) have published for general distribution copies of a current calendar setting forth the judicial assignments of the judges, the times and places assigned for hearing court matters, and any special calendaring requirement deemed necessary by the chief judge;

(12) prepare an orderly plan of vacations for all court personnel, and for attendance at schools, conferences, and workshops for judges and other court personnel;

(13) provide an orientation program for new judges as soon as possible after their election or appointment;

(14) provide for liaison between the court and other governmental or civic agencies;

(15) when appropriate, meet with or designate a judge or judges to meet with committees of the bench, bar, news media, or community to review problems and to promote understanding of the administration of justice;

(16) oversee juror management;

(17) implement and monitor compliance with all policies, rules, and regulations issued by the Supreme Court;

(18) perform such other administrative and substantive functions as are necessary for the efficient operations of the court on a day-to-day basis.

C. Reporting. The chief judge shall advise the Chief Justice of the failure or refusal of any judge of such court to comply with the Code of Judicial Conduct or an established policy, rule, or regulation of such court or the Supreme Court.

[Effective, June 1, 1988; as amended, effective, July 1, 1990; as amended by Supreme Court Order 14-8300-003, effective April 23, 2014; as amended by Supreme Court Order 14-8300-018, effective December 31, 2014.]

ANNOTATIONS

The second 2014 amendment, approved by Supreme Court Order No. 14-8300-018, effective December 31, 2014, provided a schedule for the election of chief judges; provided that the term of office of chief judge expires on May 15; provided that the term of office of chief judge is three years; provided a transition period to implement the election schedule; provided for the filling of vacancies in the office of chief judge; in Paragraph A, in the title, added “vacancies for unexpired terms”; in Paragraph A (1), in the second sentence, after “provided by the constitution”, deleted “for a three (3)-year term” and added the remainder of the sentence; added Paragraph A (3); in Paragraph B (4), after “judges to act”, deleted “in” and added “during” and after “chief judge’s”, added “temporary”; and in Paragraph B (10), in the third sentence, after “other judges within the district”, added the remainder of the sentence.

The first 2014 amendment, approved by Supreme Court Order No. 14-8300-004, effective April 23, 2014, clarified the selection of the chief judge when there is a tie vote;

and in Paragraph A, in the last sentence, after “the senior judge”, added “among those who are tied”.

23-110. Commission on professionalism.

A. **Purpose and duties.** The purpose of the Commission on Professionalism is to

- (1) support the concept and principles of professionalism;
- (2) promote competence, civility, integrity, and respect for the rule of law, for other lawyers and the courts, for clients and the public, and fidelity to lawyers' roles as officers of the court and as problem solvers;
- (3) create and promote an awareness of professionalism by all members of the New Mexico bench and bar and reinforce the values of professionalism;
- (4) support the "Bridge the Gap: Transitioning into the Profession" mentorship program of the State Bar of New Mexico, which includes the following:
 - (a) certifying and recommending mentors to the Supreme Court for appointment;
 - (b) developing and implementing training materials for new mentors in accordance with the mentorship program guidelines; and
 - (c) providing notice to the MCLE Board of a mentor's appointment to the Bridge the Gap program and certifying completion of participation as a mentor for continuing legal education credit;
- (5) serve as the oversight and advisory commission for professionalism training, education and resources to support a catalyst for positive change;
- (6) uphold and support the definition of professionalism; and
- (7) serve as a forum for communication, support and collaboration among legal constituencies in New Mexico.

B. **Commission established; composition.** There is established a Commission on Professionalism to be composed of members from the profession and the public as follows: three (3) judges; seventeen (17) lawyers; the Dean of the University of New Mexico School of Law; the president of the University of New Mexico School of Law Student Bar Association; one member representing the paralegal division; and one (1) public member.

C. **Appointment and terms.** The voting members of the Commission on Professionalism shall be as follows:

- (1) Chief Justice of New Mexico Supreme Court, or designee;
- (2) Chief judge of the United States District Court for the District of New Mexico, or designee;
- (3) One (1) state district court judge appointed by the Supreme Court for a two (2) year term;
- (4) President of the Board of Bar Commissioners, or designee;
- (5) President of the New Mexico criminal defense lawyers association, or designee;
- (6) President of the New Mexico trial lawyers association, or designee;
- (7) President of the New Mexico defense lawyers association, or designee;
- (8) President of the New Mexico district attorneys association, or designee;
- (9) Chair of the young lawyers division of the State Bar of New Mexico, or designee;
- (10) Chair of the senior lawyers division of the State Bar of New Mexico, or designee;
- (11) Chair of the solo and small firm section of the State Bar of New Mexico, or designee;
- (12) President, or designee, of each of the following voluntary bar associations: Hispanic bar association; Indian bar association; black lawyers association; women's bar association; and New Mexico lesbian and gay lawyers association;
- (13) Chair of the minimum continuing legal education board, or designee;
- (14) Chair of the disciplinary board, or designee;
- (15) One (1) active status member of the state bar appointed by the president of the board of bar commissioners for a two (2) year term;
- (16) One (1) active status member of the state bar appointed by the New Mexico Supreme Court for a two (2) year term;
- (17) Chair of the paralegal division of the State Bar of New Mexico, or designee;
- (18) Dean of the University of New Mexico School of Law, or designee;

(19) President of the University of New Mexico School of Law student bar association, or designee;

(20) One (1) public member appointed by the president of the Board of Bar Commissioners, or an entity designated by the president, for a two (2) year term.

D. Ex-officio non-voting members. The director of the Administrative Office of the Courts and the executive director of the State Bar of New Mexico shall serve as ex-officio members of the commission.

E. Co-chairs. The chief justice of the New Mexico Supreme Court and the president of the Board of Bar Commissioners shall serve as co-chairs of the commission.

F. Removal. Any appointed voting member of the commission may be removed as a member by majority vote of the members of the commission, for cause, including but not limited to, failure to attend to the duties and responsibilities of the commission or for non-attendance at three (3) consecutive meetings of the commission.

G. Terms; quorum. Terms of voting members shall commence on January 1, and the length of term shall continue as provided by their position or otherwise stated in these rules. A quorum of the commission consists of nine (9) voting members, including the chair. A quorum includes any member who is present and voting in person, by telephone, videoconference or other electronic communication, A quorum shall be present and voting before any commission business may be adopted and recommended to the Board of Bar Commissioners, MCLE Board or New Mexico Supreme Court. The commission may, however, meet and discuss matters without a quorum present.

H. Administration and staffing. The State Bar of New Mexico shall

(1) administer to the commission and shall develop and approve the goals, duties, programs, budget, operation and staffing of the commission; and

(2) provide an annual status and progress report to the New Mexico Supreme Court on the goals, programs, accomplishments and operation of the Commission on Professionalism.

I. Review of policies. The Board of Bar Commissioners and the New Mexico Supreme Court shall review and approve all policies relating to the Commission on Professionalism.

[Approved, effective May 2, 2000; as amended by Supreme Court Order No.11-8300-023, effective April 6, 2011.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-023, effective April 6, 2011, required the commission to support the Bridge the Gap mentorship program; eliminated the requirement that the commission uphold and support MCLE requirements; changed the composition of the commission by reducing the number of judges to three judges, increasing the number of lawyers to seventeen lawyers, adding the president of the law school student bar association as a member, and reducing the public members to one public member; changed the appointment and terms of members of the commission by reducing the number of district court judges to one judge who is appointed by the Supreme Court for a term of two years, adding the chairs of the senior lawyers division and the solo and small firm section and the president of the lesbian and gay lawyers association as members of the commission, and requiring the Supreme Court to appoint an active status member of the bar for a term of two years; eliminated the provision that the terms of all members of the commission expire on December 31; required a quorum of nine members to adopt business and recommendations of the commission; eliminated the authority of the commission to conduct business through committees; required the Supreme Court to review and approve policies relating to the commission; and eliminated the duty of the commission to develop a mission statement, goals, objectives, responsibilities, programs and activities.

23-111. Court interpreters; code of professional responsibility.

A. **Defendants in criminal proceedings.** A court interpreter who is assigned to interpret for a non-English speaking defendant in a criminal proceeding shall not interpret for a non-English speaking juror in the same proceedings.

B. **Release of court interpreter.** A court interpreter who begins to interpret in any civil or criminal proceeding shall continue to interpret until the conclusion of the proceedings unless released by the trial judge.

C. **Interpreter Code.** Each certified court interpreter shall agree and sign the following "Court Interpreters Code of Professional Responsibility":

"Court Interpreters

Code of Professional Responsibility

A. **Officers of the court.** Certified court interpreters are highly skilled professionals who fulfill an essential role in the administration of justice and in the protection of the Fourth and Sixth Amendment rights for non-English speaking persons. In their capacity as officers of the court, court interpreters are bound to a professional code of ethics to ensure due process of law.

B. **Canons.**

(1) Canon 1. Official court interpreters act strictly in the interests of the court they serve.

(2) Canon 2. Official court interpreters reflect proper court decorum and act with dignity and respect to the officials and staff of the court.

(3) Canon 3. Official court interpreters avoid professional or personal conduct which would discredit the court.

(4) Canon 4. Official court interpreters, except upon court order, shall not disclose any information of a confidential nature about court cases obtained while performing interpreting duties.

(5) Canon 5. Official court interpreters respect the restraints imposed by the need for confidentiality and secrecy as protected under applicable federal and state law. Interpreters shall disclose to the court, and to the parties in a case, any prior involvement with that case, or private involvement with the parties or others significantly involved in the case.

(6) Canon 6. Official court interpreters undertake to inform the court of any impediment in the observance of this Code or of any effort by another to cause the Code to be violated.

(7) Canon 7. Official court interpreters work unobtrusively with full awareness of the nature of the proceedings.

(8) Canon 8. Official court interpreters fulfill a special duty to interpret accurately and faithfully without indicating any personal bias, avoiding even the appearance of partiality.

(9) Canon 9. Official court interpreters maintain impartiality by avoiding undue contact with witnesses, attorneys, litigants and their families, and any unauthorized contact with jurors. This should not limit, however, those appropriate contacts necessary to prepare adequately for their assignment.

(10) Canon 10. Official court interpreters refrain from giving advice of any kind to any party or individual and from expressing personal opinion in a matter before the court.

(11) Canon 11. Official court interpreters perform to the best of their ability to assure due process for the parties, accurately state their professional qualifications, and refuse any assignment for which they are not qualified or under conditions which substantially impair their effectiveness.

Official court interpreters preserve the level of language used, and the ambiguities and nuances of the speaker, without any editing. Implicit in the knowledge of their

limitations is the duty to correct any error of interpretation, and demonstrate their professionalism by requesting clarification of ambiguous statements or unfamiliar vocabulary and to analyze objectively any challenge to their performance. Interpreters have the duty to call to the attention of the court any factors or conditions which adversely affect their ability to perform adequately.

(12) Canon 12. Official court interpreters accept no remuneration, gifts, gratuities, or valuable consideration in excess of their authorized compensation in the performance of their official interpreting duties. Additionally, they avoid conflict of interest or even the appearance thereof.

(13) Canon 13. Official court interpreters support other official interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court, and by never taking advantage of knowledge obtained in the performance of official duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

(14) Canon 14. Official court interpreters of the New Mexico state courts willingly accept and agree to this code, and understand that appropriate sanctions may be imposed by the court for willful violations.

C. Ethical standards and responsibilities.

(1) The interpreter shall render a complete and accurate interpretation.

(2) The interpreter shall remain impartial.

(3) The interpreter shall maintain confidentiality.

(4) The interpreter shall confine himself or herself to the role of interpreting.

(5) The interpreter shall be prepared for any type of proceeding or case.

(6) The interpreter shall ensure that the duties of the interpreter's office are carried out under working conditions that are in the best interest of the court.

(7) The interpreter shall be familiar with and adhere to all of these ethical standards, and shall maintain high standards of personal and professional conduct to promote public confidence in the administration of justice.

Interpreter's signature

Interpreter's name (*print*)

Date

Address"

[Approved, effective February 16, 2004; as amended by Supreme Court Order 05-8300-12, effective September 1, 2005.]

ANNOTATIONS

The 2005 amendment, approved by Supreme Court Order 05-8300-12, effective September 1, 2005, added new Paragraphs A and B and designated the prior rule as Paragraph C.

23-112. Citations for pleadings and other papers.

A. **Applicability; citation rule appendix.** This rule governs the form of citations included in pleadings and papers filed in the courts of this state. Additional citation guidelines and examples of correct forms of citation are included in an appendix immediately following this rule and are posted on the Supreme Court's website at nmsupremecourt.nmcourts.gov.

B. Citation to New Mexico appellate opinions.

(1) **Official citation.** All precedential opinions issued by the Supreme Court of New Mexico and the New Mexico Court of Appeals shall be assigned an official citation by the Clerk of the Supreme Court that includes the year the opinion was released, the initials of the Court that issued the opinion, and a three-digit number assigned sequentially as opinions are released for publication each calendar year.

(2) **Official citation required; use of parallel citation.** Use of the official citation form is required for citations to all opinions of the Supreme Court and the Court of Appeals. When a pinpoint citation is used, it shall consist of a paragraph symbol and a paragraph number placed after the official citation. Parallel citation to the *New Mexico Reports* is mandatory, and citation to the *Pacific Reporter* is discretionary. Do not cite the unofficial hardbound volumes of the New Mexico Appellate Reports.

(3) **Exception for papers and pleadings filed by a self-represented litigant.** A self-represented litigant may cite an opinion of the Supreme Court or the Court of Appeals using either the official citation, a citation to the *New Mexico Reports*, or a citation to the *Pacific Reporter*. The self-represented litigant's use of any parallel citation is discretionary.

C. **Citation to New Mexico statutes.** Citations to the New Mexico statutes shall be to the chapter, article, and section of the official 1978 compilation of the *New Mexico Statutes Annotated* (NMSA 1978), followed by parentheses containing the year of the statute's enactment or the most recent amendment applicable to the pending case. The official compilation of the NMSA 1978 is published by the New Mexico Compilation Commission, the official legal publisher for the State of New Mexico.

D. Citation to New Mexico court rules, uniform jury instructions, and forms. Citations to the rules, uniform jury instructions, and forms promulgated or approved by the Supreme Court shall be to the set and rule number of the *New Mexico Rules Annotated* (NMRA), which is the official compilation of New Mexico state court rules published by the New Mexico Compilation Commission.

E. Citation to the New Mexico Administrative Code. Citations to the rules or regulations of a state agency shall be to the title, chapter, part, and section of the New Mexico Administrative Code (NMAC).

F. Bluebook citations. Except as provided in this rule and its appendix, all pleadings and other papers filed in all courts in this state shall follow the form of citations set forth in the current edition of *The Bluebook: A Uniform System of Citation*.

[Approved, effective June 4, 2004, as amended by Supreme Court Order No. 05-8300-016, effective August 15, 2005; by Supreme Court Order No. 07-8300-011, effective May 10, 2007; by Supreme Court Order No. 08-8300-023, effective August 20, 2008; by Supreme Court Order No. 13-8300-013, effective July 1, 2013, for papers to be filed on or after August 1, 2013.]

Appendix To Rule 23-112 NMRA

TECHNICAL AND CITATION INFORMATION

Please note that the New Mexico appellate courts will use the most recent edition of the *Bluebook*.

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I. New Mexico Constitution. [*Bluebook* Rule 11]

A. **Textual sentence:**

Accordingly, there was no violation of Article VI, Section 7 of the New Mexico Constitution.

B. **Citation sentence:**

N.M. Const. art. VI, § 7.

II. New Mexico Cases. [*See generally Bluebook* Rule 10]

- Official citation.** A standard official citation (also known in other states as vendor-neutral or public domain citation) is assigned by the Clerk of the Supreme Court to each precedential opinion. In 2013 the Supreme Court assigned official citations and paragraph numbers to all New Mexico cases from Volume 1 of the *New Mexico Reports* forward. Citation to New Mexico caselaw shall be to the official citation. Parallel citation to the *New Mexico Reports* through Volume 150, the final published volume, is mandatory. Parallel citation to the *Pacific Reporter* is discretionary. Citation to the unofficial hardbound volumes of the *New Mexico Appellate Reports* shall not be used under any circumstances. Pinpoint citations shall reference the appropriate paragraph number(s), rather than page
- A.

number(s). Use page numbers for pinpoint citations **ONLY** if the official citation and/or paragraph numbers are not available.

(1) **First occurrence:**

Bianco v. Horror One Prods., 2009-NMSC-006, ¶ 10, 145 N.M. 551.

or

State v. Dickert, 2012-NMCA-004, ¶ 28. [published after Volume 150 of the *New Mexico Reports*]

or

For example, in *Bianco v. Horror One Productions*, we held that a statute, which provides that a district court retains control over a final judgment for thirty days and for such further time as may be necessary to enable the court to dispose of post-judgment motions, applies to workers' compensation cases. 2009-NMSC-006, ¶ 10, 145 N.M. 551.

(2) **With parallel citation to the *Pacific Reporter*:**

Bianco v. Horror One Prods., 2009-NMSC-006, ¶ 10, 145 N.M. 551, 202 P.3d 810.

or

State v. Dickert, 2012-NMCA-004, ¶ 28, 268 P.3d 515. [published after Volume 150 of the *New Mexico Reports*]

(3) **Subsequent occurrences:**

Bianco, 2009-NMSC-006, ¶ 10.

or

Dickert, 2012-NMCA-004, ¶ 28.

or

Id. ¶ 28.

NOT *Id.* at ¶ 28.

(4) **With footnote:**

Bianco v. Horror One Prods., 2009-NMSC-006, ¶ 5 n.1, 145 N.M. 551.

or

Bianco v. Horror One Prods., 2009-NMSC-006, ¶ 5 n.1, 145 N.M. 551, 202 P.3d 810.

or

. . . as the Court described so eloquently in *Bianco*. 2009-NMSC-006, ¶ 5 n.1.

or

Bianco, 2009-NMSC-006, ¶ 5 n.1.

or

Id. ¶ 5 n.1.

Self-represented litigants. A self-represented litigant may cite New

- B. Mexico cases using either the official citation, a citation to the *New Mexico Reports*, or a citation to the *Pacific Reporter*. Use of any

parallel citations is discretionary. Use page numbers for pinpoint citations if paragraph numbers are not available.

(1) **First occurrence:**

(a) **Official citation only:**

State v. Jones, 1995-NMCA-073, ¶ 18.

(b) ***New Mexico Reports* only:**

State v. Jones, 120 N.M. 185, 190 (Ct. App. 1995).

(c) ***Pacific Reporter* only:**

State v. Jones, 899 P.2d 1139, 1144 (Ct. App. 1995).

(d) ***New Mexico Reports* and *Pacific Reporter* only:**

State v. Jones, 120 N.M. 185, 190, 899 P.2d 1139, 1144 (Ct. App. 1995).

(2) **Subsequent occurrences:**

(a) **Official citation only:**

Jones, 1995-NMCA-073, ¶ 18.

or

Id. ¶ 18.

(b) ***New Mexico Reports* only:**

Jones, 120 N.M. at 190.

or

Id. at 190.

(c) ***Pacific Reporter* only:**

Jones, 899 P.2d at 1144.

or

Id. at 1144.

(d) ***New Mexico Reports* & *Pacific Reporter* only:**

Jones, 120 N.M. at 190, 899 P.2d at 1144.

or

Id. at 190, 899 P.2d at 1144.

C. **Formal, precedential opinion that has not yet been assigned a citation.** To cite a formal, precedential opinion that has not yet received any or all of its official or *Pacific Reporter* citations, use one of the following forms.

(1) **First occurrence:**

State v. Largo, 2012-NMSC-015, ¶ 17, 278 P.3d 532.

(2) **Subsequent occurrences:**

Largo, 2012-NMSC-015, ¶ 17.

or

Id. ¶ 17

(3) **Certiorari granted in the opinion under consideration:**

State v. Huettl, 2013-NMCA-038, ¶ 17, *cert. granted*, 2013-NMCERT-003.

- Non-precedential (unpublished) cases.** To cite a non-precedential decision of the Supreme Court or a non-precedential memorandum opinion of the Court of Appeals, use the following forms and indicate in a parenthetical that the disposition is non-precedential in accordance with Rule 12-405(D) NMRA.

(1) **First occurrence:**

State v. Macias, No. 33,065, dec. at 3 (N.M. Sup. Ct. Mar. 11, 2013) (non-precedential).

or

Mannick v. Wakeland, No. 21,989, mem. op. at 8-9 (N.M. Ct. App. Jan. 4, 2002) (non-precedential).

(2) **Subsequent occurrences:**

Macias, No. 33,065, dec. at 3.

or

Mannick, No. 21,989, mem. op. at 8-9.

III. New Mexico Statutes. [See generally *Bluebook* Rule 12]

Cite New Mexico statutes using the chapter, article, and section of the official 1978 compilation of the *New Mexico Statutes Annotated* (NMSA 1978). Following the first occurrence, include in parentheses the year of the statute's enactment or the most recent amendment applicable to the pending case, as shown in the history note in the NMSA 1978. Spell out and capitalize the word "Section" whenever a reference to a statute is in a textual sentence and whenever "Section" is the first word in a citation sentence. In all other occurrences, use the section symbol, "§."

A. **First occurrence:**

(1) **Textual sentence:**

The Legislature enacted NMSA 1978, Section 39-3-1.1(C) (1999), to create a comprehensive scheme for appealing final decisions of certain administrative agencies. [If a previous version of the statute is being cited, rather than the most recent version, cite it as: NMSA 1978, Section 39-3-1.1(C) (1998, amended 1999).]

(2) **Citation sentence:**

In 1998, the Legislature created a comprehensive scheme for appealing the final decisions of certain administrative agencies. See NMSA 1978, § 39-3-1.1(C) (1998, amended 1999).

(3) **Citation clause:**

Plaintiff asserts that jurisdiction is limited only by the venue statute, NMSA 1978, § 38-3-1(G) (1988), which states that . . .

(4) **Multiple subsections in a citation sentence or citation clause:**

NMSA 1978, § 66-8-102(B), (D) (2010).

(5) **Entire act or range of statutes in a citation sentence:**

Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2011). [Cite the date of the original enactment and the date of the most recent amendment. Do **NOT** use "*et seq.*"]

(6) **Entire act or a range of statutes in a textual sentence:**

Additionally, Taxpayers argue that NMSA 1978, Sections 10-2-1 to -12 (1876, as amended through 1967), which they call the "Bond Act," requires Department employees to obtain "faithful performance bond[s]."

B. **Subsequent occurrences:**

(1) **Textual sentence:**

Plaintiff suggests that this statutory provision does not conflict with the specific restrictions in Section 39-3-1.1(C).

(2) **Citation sentence:**

See § 38-3-1(G); § 39-3-1.1(C).

or

Section 38-3-1(G).

or

See §§ 13-1-28 to -199.

(3) **Citation clause:**

We are not persuaded that the Legislature could have intended the general jurisdiction and venue statutes, § 38-3-1.1; § 38-3-1, to unconstitutionally expand the appellate jurisdiction of the district courts.

or

The general jurisdiction and venue statutes, see § 38-3-1.1; § 38-3-1, do not expand the appellate jurisdiction of the district courts.

IV. **Prior Compilations of New Mexico Statutes.**

A. **Citation sentence:**

NMSA 1953, § 59-10-2.1 (1973).

NMSA 1953, § 59-10-12.12 (1975) (Vol. 9, 2d Repl., Part 1, 1975 Pocket Supp.).

NMSA 1941, § 38-1813 (1945) (1951 Pocket Supp.).

NMSA 1929, § 11-804 (1933) (1938 Supp.).

NMSA 1915, § 131 (1897).

For usage in textual sentences and citation clauses, follow the principles illustrated by the examples in the New Mexico Statutes section.

V. **New Mexico Session Laws.**

- A. **Textual sentence:**
Chapter 38, Section 7 of New Mexico Laws of 1987 . . .
- B. **Citation clause:**
1987 N.M. Laws, ch. 38, § 7.
- C. **Session law with a web site address:**
H.B. 13, 50th Leg., 1st Sess. (N.M. 2011), *available at*
<http://www.nmlegis.gov/Sessions/11%20Regular/final/HB0013.pdf>.

VI. New Mexico Judicial Rules, Uniform Jury Instructions, and Forms.

If citing a previous version, include in parentheses the year of the version that is being cited.

- A. **Rules.**
 - (1) **First occurrence:**
Rule 5-103(C)(1)(a) NMRA.
 - (2) **Subsequent occurrences:**
Rule 5-103(C)(1)(a).
 - (3) **Previous version:**
Rule 5-103 NMRA (1998).
- B. **Uniform Jury Instructions.**
 - (1) **First occurrence:**
UJI 14-3104 NMRA.
 - (2) **Subsequent occurrences:**
UJI 14-3104.
- C. **Forms.**
 - (1) **First occurrence:**
Form 9-406 NMRA.
 - (2) **Subsequent occurrences:**
Form 9-406.

VII. New Mexico Attorney General Opinions.

- A. N.M. Att’y Gen. Op. 91-06 (1991).

VIII. New Mexico Administrative Code (NMAC). [*See generally* 1.24.10.9 NMAC]

Regulations contained in the NMAC may be cited using a short citation format that includes the title number, chapter number, part number, and section number, separated by periods and followed by "NMAC." When citing a previous version of a regulation, include in parentheses the effective date of the version that is being cited.

- A. **Citing a section.**
 - (1) **Current version:**
3.1.3.8 NMAC.

(2) **Current version with pinpoint citation:**

3.1.3.8(A) NMAC.

(3) **Previous version with effective date:**

3.1.3.8 NMAC (10/31/1996).

Citing a whole part. When reference is to the whole part, include in

B. parentheses the original effective date together with the date of the last amendment.

3.1.3 NMAC (07/19/1967, as amended through 12/29/2000).

IX. New Mexico Municipal Ordinances. [*Bluebook* Rule 12.9.2]

A. Albuquerque, N.M., Rev. Ordinances ch. 3, art. II, § 3-2-15(D) (1974, amended 2001).

X. Citation to the Record and Pleadings.

A. **Use bold face for citation to the record below of the case at issue:**

Volume 2, record proper, page 497, paragraph 21	[2 RP 497 ¶ 21]
Volume 3, supplemental record proper, page 561, paragraph 2	[3 SRP 561 ¶ 2]
June 12, 2012 Vol. 1 of transcript, page 3, line 4	[6-12-12 1 Tr. 3:4]
May 9, 2007 tape 6, counter 1303	[5-9-07 6 T 1303]
May 9, 2007 compact disc 2, counter 9:23:21	[5-9-07 2 CD 9:23:21]
May 9, 2007 compact disc 2, counter 9:23:21 to -37	[5-9-07 2 CD 9:23:21-37]
Record proper 77, finding of fact 20	[RP 77 FOF 20] or [RP 77 ¶ 20]
Record proper 80, conclusion of law 5	[RP 80 COL 5] or [RP 80 ¶ 20]
Plaintiff's exhibit 5	[Plaintiff's Ex. 5]
Deposition of John Smith, page 30, line 16	[Dep. JS 30:16]
B. Citation to pleadings and court documents:	
Brief in Chief, page 5	[BIC 5]
Answer Brief, page 3	[AB 3]
Reply Brief, page 2	[RB 2]
Calendar Notice, page 1	[CN 1]
Memorandum in Opposition, page 3	[MIO 3]
Dispositional Order of Affirmance, page 4	[DOA 4]
Dispositional Order of Reversal, page 2	[DOR 2]
May 3, 2012 Motion, page 3	[5-3-12 MOT 3]
January 27, 2012 Order, page 2	[1-27-12 ORD 2]

XI. United States Constitution. [*Bluebook* Rule 11]

A. **Textual sentence:**

Accordingly, there was no violation of Article I, Section 8 of the United States Constitution.

B. **Citation sentence:**

U.S. Const. art. 1, § 8.

XII. United States Supreme Court Opinions. [*Bluebook* T1.1]

Citation to just the *United States Reports*, when available, is sufficient.

When the *United States Reports* citation is not available, cite the *Supreme*

A. *Court Reporter*, if available. If neither the *United States Reports* nor the *Supreme Court Reporter* is available, cite the *United States Supreme Court Reports, Lawyers' Edition*.

Barker v. Wingo, 407 U.S. 514, 520 (1972).

XIII. Federal Opinions. [*See generally* *Bluebook* T1 for specific courts and abbreviations]

A. **Citation sentence.** Follow the principles illustrated by the examples in the New Mexico Cases section.

Sage Realty Corp. v. Ins. Co. of N. Am., 34 F.3d 124 (2d Cir. 1994).

Richter v. Van Amberg, 97 F. Supp. 2d 1255, 1261 (D.N.M. 2000).

Beaufort Transfer Co. v. Fischer Trucking Co., 357 F. Supp. 662, 667 (E.D. Mo. 1973).

XIV. United States Code and Federal Regulations.

United States Code. [*Bluebook* Rules 12.2 & 12.3] Cite the *United States Code* (U.S.C.) rather than the two unofficial versions, the *United States Code Annotated* (U.S.C.A.) and the *United States Code Service* (U.S.C.S.).

A. For the year, cite the most recent edition of the U.S.C. (currently 2006), which is published every six years, or the supplement (currently 2011), **NOT** the date of enactment, amendment, or the date found in either the U.S.C.A. or the U.S.C.S. Cite the unofficial versions only if a statute was enacted or amended after the latest edition or supplement of the code.

(1) **Textual sentence:**

This case addresses the relationship between the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-1963 (2006), which sets "minimum Federal standards for the removal of Indian children from their families," § 1902, and the New Mexico Abuse and Neglect Act, NMSA 1978, §§ 32A-4-1 to -34 (1993, as amended through 2009), which governs the State's transfer of custody of a child in cases of abuse or neglect.

(2) **Citation sentence:**

Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1) (2006).

or

18 U.S.C. § 924(e)(1) (2006).

or, if found only in the Supplement,
12 U.S.C. § 5511(a) (Supp. 2011).

- B. **Code of Federal Regulations.** [*Bluebook* Rule 14] Cite the section or sections relied upon rather than the part. Include in parentheses the most recent edition of the code.

(1) **Citation sentence:**

28 C.F.R. § 104.43(a) (2011).

- C. **Federal Register.** [*Bluebook* Rule 14] When citing, give both the page on which the regulation begins and the page(s) on which the cited content appears.

(1) **Citation sentence:**

See Pueblo of Santa Ana Liquor Ordinance, 71 Fed. Reg. 17,903, 17,910 (Apr. 7, 2006).

XV. Out-of-State Constitutions. [*Bluebook* Rule 11]

A. **Textual sentence:**

Accordingly, there was no violation of article 1, section 12 of the South Carolina Constitution.

B. **Citation sentence:**

S.C. Const. art. 1, § 12.

XVI. Out-of-State Cases. [*Bluebook* Rule 10 & T1]

- A. **Citation sentence.** Follow the principles illustrated by the examples in the New Mexico Cases section. When a reporter has the name of the state in its title, i.e., the Cal. Rptr. or the N.Y. Supp., do not include the state abbreviation in the date parenthetical.

State v. Barness, 200 N.W.2d 300 (Minn. 1972) (per curiam).

City of Austin v. Travis Cnty. Landfill Co., 25 S.W.3d 191, 197 (Tex. Ct. App. 1999), rev'd, 73 S.W.3d 234 (Tex. 2002).

Ashley v. State, 614 So. 2d 486 (Fla. 1993).

People v. Curtis, 37 Cal. Rptr. 2d 304, 312 (Ct. App. 1994).

- B. **Official, vendor-neutral, or public domain citation format.** Follow a state's convention regarding use of any official, vendor-neutral, or public domain citation format. For example, applicable in Colorado to opinions published on or after January 1, 2012, "Legal practitioners and self-represented parties will be permitted—but not required—to use the public domain citation format instead of citing to the *Pacific Reporter*. Irrespective of which citation format is used, a parallel citation to the other format is also not required." Chief Justice Directive 12-01, Colorado Supreme Court (Jan. 3, 2012), available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf.

(1) **Colorado public domain citation:**

People v. Esparza, 2012 CO 22, ¶ 11.

Alpenhof, LLC v. City of Ouray, 2013 COA 9, ¶ 18.

XVII. Out-of-State Statutes. [See generally *Bluebook* Rule 12 & T1]

Following the first occurrence, include in parentheses the year of the statute's enactment or the most recent amendment applicable to the pending case.

A. First occurrence:

Cal. Penal Code § 647.6(a)(1) (1995).

Ind. Code Ann. § 11-8-8-5(b)(1) (2013).

Mont. Code Ann. § 46-23-502(9)(b) (2007).

S.C. Code Ann. § 23-3-430(A) (2010).

B. Subsequent occurrences:

Cal. Penal Code § 647.6(a).

Ind. Code Ann. § 11-8-8-5(b)(1).

Mont. Code Ann. § 46-23-502(9).

S.C. Code Ann. § 23-3-430.

XVIII. Law Review Articles and Other Secondary Sources.

Include as much information, including page numbers, as is helpful to locate the citation.

A. Law Reviews. [*Bluebook* Rule 16]

(1) **First occurrence:**

Roberta K. Flowers, *What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors*, 63 *Mo. L. Rev.* 699 (1998).

(2) **Subsequent occurrences:**

Flowers, *supra*, at 712-16, 766.

B. Treatises. [*Bluebook* Rule 15]

(1) **First occurrence:**

5 Wayne R. LaFave et al., *Criminal Procedure* § 20.3(j), at 421-28 (3d ed. 2007).

(2) **Subsequent occurrences:**

5 LaFave, *supra*, § 20.3(i), at 417.

or

Id. at 425.

or

Id. § 20.2(j), at 422-23.

C. Restatements. [*Bluebook* Rule 12.9.5]

(1) **First occurrence:**

Restatement (Third) of Prop.: Servitudes § 1.2(1), at 12 (2000).

Restatement (Second) of Torts § 623A cmt. a (1977).

(2) **Subsequent occurrences:**

Restatement (Second) of Torts § 623A cmt. a, at 335.

- D. **Legal Encyclopedias.** [*Bluebook* Rule 15.8]
- (1) **First occurrence:**
40 C.J.S. *Homicide* § 164 (2006).
24 Am. Jur. 2d *Divorce & Separation* § 118 (2008).
 - (2) **Subsequent occurrences:**
40 C.J.S. *Homicide* § 164.
24 Am. Jur. 2d *Divorce & Separation* § 118.
- E. **American Law Reports (A.L.R.).** [*Bluebook* Rule 16.7.6]
- (1) **First occurrence:**
Earl L. Kellett, Annotation, *Proof of Injury to Reputation as Prerequisite to Recovery of Damages in Defamation Action—Post-Gertz Cases*, 36 A.L.R. 4th 807, § 2[b] (1985).
 - (2) **Subsequent occurrences:**
Kellett, Annotation, 36 A.L.R. 4th 807, § 2[b].
- F. **Internet Citations.** [*Bluebook* Rule 18]
- (1) **Direct citations to Internet sources:**
N.M. Corr. Dep't Policies, Inmate Discipline CD-090101(C)(1) (Jan. 25, 2012), <http://corrections.state.nm.us/policies/docs/CD-090100.pdf>.
 - (2) **Parallel citations to Internet sources:**
Denise D. Fort, The Utton Center, *Water Matters!*, Adjudications 4-1 (2013), available at <http://uttoncenter.unm.edu/projects/water-matters.php> (follow "Water Matters!" hyperlink).

[Appendix, Adopted June 4, 2004; as amended by Supreme Court Order No. 13-8300-013, effective July 1, 2013, for papers to be filed on or after August 1, 2013.]

Committee commentary. — Self-represented litigants must follow the same rules of procedure that apply to other litigants. See *Newsome v. Farer*, 103 N.M. 415, 419, 708 P.2d 327, 331 (1985) ("Although pro se pleadings are viewed with tolerance, a pro se litigant, having chosen to represent himself, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar." (internal citation omitted)). However, Subparagraph (B)(3) provides a limited exception for self-represented litigants in recognition of the fact that they often lack access to electronic databases and other legal research materials.

[Adopted by Supreme Court Order No. 13-8300-013, effective July 1, 2013, for papers to be filed on or after August 1, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-013, effective July 1, 2013, simplified and clarified the form of citations; provided that the form of citations in the appendix are guidelines, rather than required forms; provided for the assignment of official citations to precedential opinions by the Clerk of the Supreme Court; provided that the official citation form to opinions of New Mexico appellate courts and parallel citations to the New Mexico Reports are mandatory, that citations to the Pacific Reporter are discretionary, and that citations to New Mexico Appellate Reports are prohibited; provided that parallel citations by self-represented litigants are discretionary; required that citations to New Mexico statutes be to the New Mexico Statutes Annotated 1978 published by the New Mexico Compilation Commission; required that citations to New Mexico statutes be followed by a statement of the year of the statute's most recent enactment or amendment applicable to the pending case; required that citations to rules, jury instructions, and forms be to the New Mexico Rules Annotated published by the New Mexico Compilation Commission; revised the Appendix in its entirety; in Paragraph A, in the second sentence, after "Additional citations", deleted "requirements" and added "guidelines" and after "following this rule", added the remainder of the sentence; in Paragraph B, deleted the former title "State appellate citations" and added the current title; added Subparagraph (1) of Paragraph B; in Subparagraph (2) of Paragraph B, added the title of the subparagraph, in the first sentence, added "Use of the official citation form is required for", after "for citations to", added "all", and after "Court of Appeals", deleted "use of the vendor neutral citation with citation to both reporters is required", deleted the former second sentence, which required the use of the Bluebook form of citation for opinions that do not have a vendor neutral citation, added the second, third, and fourth sentences; added Subparagraph (3) of Paragraph B; deleted Paragraph C, which provided rules for citation of subsequent history; deleted Paragraph D which provided rules for pinpoint citations; in Paragraph C, in the first sentence, after "and section of the", added "official", after "New Mexico Statutes Annotated (NMSA 1978)", added the remainder of the sentence, and added the second sentence; in Paragraph D, in the title of the paragraph, added "**and forms**", in the first sentence, after "Supreme Court shall be to the", added "set and rule number of the", after "New Mexico Statutes Annotated (NMSA 1978)", deleted "version by set and rule number" and added "which is the official compilation of the New Mexico state court rules published by", deleted the former second through fifth sentences, which provided for use of the citation form approved by the Supreme Court published in the NMRA and for citation to rules that were amended after the proceeding was filed; in Paragraph E, in the title, before "Code", deleted "Administrative" and added "Citation to the New Mexico Administrative", deleted the former first sentence which specified the content of the citation, deleted the former second sentence which provided for use of the year of the rule applicable to the pending case, and added the current language of the rule which restated the former first sentence; in Paragraph F, after "Except as provided in", deleted "Paragraphs A through I and the appendix of", after "provided in this rule", added "and its appendix, all pleadings and other papers filed in all courts of this state shall follow", after "form of citations", deleted "as", and after "A Uniform System of Citation", deleted "shall be used for all citation reference for all pleadings and other papers filed in all courts of this state"; and deleted the former appendix in its entirety and added the current appendix.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-023, effective August 20, 2008, added the last sentence in Subsection A; deleted examples of citations in Subsections B through G; deleted the rule in Subsection B for citation of opinions not yet published in the reporter system; deleted the rule in Subsection D for using short citation forms for cases that have been cited within the same general textual discussion; deleted the rule in Subsection E for citation of compilation references; deleted the reference in Subsection H to the 18th edition 2005 of *The Bluebook, A Uniform System of Citation* and provided that the form of citations shall be as set forth in the current edition of the *Bluebook*; and added the Appendix.

The 2007 amendment, approved by Supreme Court order 07-8300-11, effective May 10, 2007, amended Paragraph G to change "Subpart" to "Section".

The 2005 amendment, approved by Supreme Court order 05-8300-16, effective August 15, 2005 amended Paragraph H to change the bluebook edition from the 17th to the 18th edition.

23-113. Providing court information to self-represented litigants.

A. **Self-represented litigant, court staff; defined.** For purposes of this rule, a self-represented litigant is any person who appears, or is contemplating an appearance, in any court in this state without attorney representation and court staff includes all judicial branch employees except judges, settlement facilitators, and mediators.

B. **Permitted information.** When communicating with a self-represented litigant, court staff are permitted to:

- (1) encourage the self-represented litigant to obtain legal advice from a licensed New Mexico attorney without recommending a specific attorney;
- (2) provide information about available pro bono, free or low-cost civil legal services, legal aid programs and lawyer referral services without endorsing a specific service;
- (3) provide information about available statutory or court-approved forms, pleadings and instructions without providing advice or recommendations as to any specific course of action;
- (4) answer questions about what information is being requested on forms without providing the self-represented litigant with the specific words to put in a form;
- (5) provide, orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries, if available, and without advising whether a particular definition is applicable to the self-represented litigant's situation;

(6) provide, orally or in writing, citations to constitutions, statutes, administrative rules or regulations, court rules and case law, but are not required to search for the citation and are not permitted to perform legal research as defined in Subparagraph (4) of Paragraph C of this rule or advise whether a particular provision is applicable to the self-represented litigant's situation;

(7) provide publically available, non-sequestered information on docketed cases;

(8) provide general information about court processes, procedures and practices, including court schedules and how to get matters scheduled;

(9) provide information about mediation, parenting courses, courses for children of divorcing parents and any other appropriate information approved by the court for self-represented litigants;

(10) provide, orally or in writing, information on local court rules and administrative orders;

(11) provide information regarding proper courtroom conduct and decorum; and

(12) provide general information about community resources without endorsing a specific resource.

C. Prohibited information. When communicating with a self-represented litigant, court staff are prohibited from:

(1) providing, orally or in writing, any interpretation or application of legal terminology, constitutional provisions, statutory provisions, administrative rules or regulations, court rules and case law based on specific facts or the self-represented litigant's particular circumstances;

(2) providing, orally or in writing, information that must be kept confidential by statute, administrative rule or regulation, court rule, court order or case law;

(3) creating documents or filling in the blanks on forms on behalf of self-represented litigants;

(4) performing direct legal research by applying the law to specific facts or expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative rules or regulations, court rules, court orders or case law to the self-represented litigant's particular circumstances;

(5) explaining court orders or decisions except as permitted by Subparagraph (8) of Paragraph B of this rule;

- (6) telling the self-represented litigant what to say in court;
- (7) assisting or participating in any unauthorized or inappropriate communications with a judge on behalf of the self-represented litigant outside the presence of the other party;
- (8) indicating, orally or in writing, whether the self-represented litigant should file a case in court;
- (9) predicting the outcome of a case filed in court; and
- (10) indicating, orally or in writing, what the self-represented litigant should do or needs to do.

D. Immunity. Despite any information provided to self-represented litigants pursuant to this rule, self-represented litigants remain responsible for conducting themselves in an appropriate manner before the court and representing themselves in compliance with all applicable constitutional and statutory provisions, administrative rules or regulations, court rules, court orders and case law. Court staff shall be immune from suit, as provided by statute or common law, for any information provided to a self-represented litigant.

[Approved by Supreme Court Order 08-8300-03, effective January 22, 2008.]

23-114. Free process in civil cases.

A. Eligibility. In any civil matter, if the court finds that a party is indigent or otherwise unable to pay a fee or fees payable to the court or the cost of service of process, the court may waive such fee or fees and the cost of service of process shall be paid by the state.

(1) An applicant is presumed indigent if the applicant is the current recipient of aid from a state or federally administered public assistance program such as Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Disability Security Income (DSI), Department of Health, Case Management Service (DHMS), Food Stamps, Medicaid, or public assisted housing.

(2) An applicant who is not presumptively indigent can nevertheless establish indigency by showing in the application that the applicant's annual gross income does not exceed one hundred eighty-five percent (185%) of the current federal poverty guidelines established by the United States Department of Labor.

(3) A presumption of indigency under this rule does not require the court to grant free process if it appears from the application that the applicant is otherwise able to pay.

(4) Even if an applicant cannot establish indigency, the court may still grant full or partial free process if, in the court's discretion, the court finds that the applicant is not reasonably able to pay fees or costs.

B. Procedure.

(1) A party seeking free process shall file with the court clerk an application for free process with an attached affidavit of indigency and a proposed order for free process. The application, affidavit and proposed order shall be in the form set forth in Forms 4-222 and 4-223 NMRA. The court may decide an application for free process ex parte and without hearing. If an application for free process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application.

(2) Upon the filing of an attorney certificate in the form set forth in Form 4-224 NMRA, certifying that a party

(a) is represented by

(i) an attorney pursuant to a referral from a local pro bono committee for a judicial district created pursuant to Supreme Court order,

(ii) a legal services organization,

(iii) a nonprofit organization, a department of which has as its primary purpose the furnishing of legal services to indigent persons,

(iv) private counsel working on behalf of or under the auspices of such organization, or

(b) has met the income qualifications of a legal services organization and attended a training program designed and presented by the legal services organization to assist self-represented litigants in filing their own action in court, the court shall enter an order providing that all fees and costs relating to filing the action and service of process shall be waived without the necessity of an application for free process or affidavit of indigency from the party. In the court's discretion, the order may provide that any applicable alternative dispute resolution fee is not waived.

(3) Upon the award of any judgment to a party allowed free process, the court may order the party to pay court fees and costs. If a pro se party becomes represented subsequent to being allowed free process, the party shall submit another application for free process along with an affidavit and proposed order. If a case is closed and reinstatement or reopening sought, the party shall submit another application, affidavit and proposed order.

(4) An attorney representing a party allowed free process must also file a certificate stating that no fee has been received, and promising that in case any fee is

paid for legal services, the attorney shall first deduct court fees and service of process costs and pay them to the court administrator.

(5) If at any time the court discovers that information in an application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, and that an order of free process was improvidently granted, the court may require the applicant or other appropriate party to pay for any costs or fees that were waived. The court may exercise its discretion to impose sanctions for failure to comply with an order of the court issued pursuant to this subparagraph, up to and including dismissal.

[Approved by Supreme Court Order 07-8300-44, effective February 25, 2008; as amended by Supreme Court Order 08-8300-30, effective November 17, 2008; by Supreme Court Order No. 10-8300-043, effective February 9, 2011.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-043, effective February 9, 2011, in Paragraph A(1), after "(SSI)", deleted "Social Security Disability Income (SSDI)"; in Paragraph A(2), after "applicant's annual", added "gross" and after "income does not exceed", deleted "one hundred-fifty percent (150%)" and added "one hundred eighty-five percent (185%)"; and in Paragraph B(2), added Subparagraph (b).

The 2008 amendment, approved by Supreme Court Order No. 08-8300-30, effective November 17, 2008, in Subparagraph (2) of Paragraph B, added "Upon the filing of an attorney certificate in the form set forth in Form 4-224 NMRA, certifying that"; added "an attorney pursuant to a referral from a local pro bono committee for a judicial district created pursuant to Supreme Court order"; deleted "a legal aid society"; added the provision that upon the filing of an attorney certificate, "the court shall enter an order providing that" all fees and costs shall be waived without the necessity of an application "for free process or affidavit of indigency from the party", and added the last sentence; and in Subparagraph (4) of Paragraph B, changed "affidavit" to "certificate" and deleted the sentence which provided that the affidavit should provide that the attorney is satisfied as to the truth contained in the client's affidavit of indigency.

23-115. Unsworn affirmations under penalty of perjury.

Unless expressly provided by any other rule approved by the Supreme Court, any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a court proceeding as a notarized written statement, provided that the statement includes the following:

- A. the date that the statement was given;
- B. the signature of the person who gave the statement; and

C. a written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct.

[Adopted by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]

Committee commentary. — This rule is substantially identical to the 2014 amendments to Rule 1-011 NMRA, which provide an alternative to notarization for written statements in civil proceedings in the district courts. This rule authorizes the same alternative to notarization in all proceedings and courts of this state. For further information about this rule’s scope and effect, see the committee commentary to Rule 1-011.

[Adopted by Supreme Court Order No. 14-8300-023, effective December 31, 2014.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-024, effective November 18, 2015, in the introductory sentence, added “Unless expressly provided by any other rule approved by the Supreme Court”.

Table Of Corresponding Rules

The first table below reflects the disposition of the former Supreme Court Miscellaneous Rules. The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Supreme Court General Rule.

The second table below reflects the antecedent provisions in the former Supreme Court Miscellaneous Rules (right-hand column) of the present Supreme Court General Rules (left-hand columns).

Former Rule	NMRA	Former Rule	NMRA
1	23-101	6, 7	Withdrawn
2	23-102	8	23-106
3	23-103	9	23-107
4	23-104		
5	23-105		

NMRA	Former Rule	NMRA	Former Rule
23-101	1	23-105	5
23-102	2	23-106	8
23-103	3	23-107	9
23-104	4		

