

# 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

**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.

**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.

**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**

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

**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

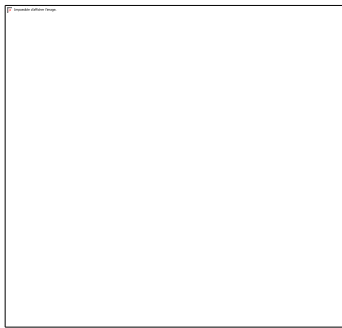
Paragraph E, substituted "requested" for "directed" near the beginning of the first sentence, and deleted "result of the" and substituted "in the case" for "therein" near the end; in Paragraph F, substituted "filed" for "rendered in a case" and deleted "thereof"; in Paragraph G, substituted "opening 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.

**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, this rule, relating to determination of incapacity and the Judicial Retirement Act, is 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, 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 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 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.** 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 meeting in the first quarter of 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.

**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 Clerk of Court is authorized to randomly assign one, two, and three-year terms for new members to achieve a staggering of terms. Standing committee members who are initially assigned a one or two-year term may be reappointed to two full three-year terms thereafter. No standing committee member shall serve for more than two full three-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.

**F. State bar representative.** The Board of Bar Commissioners may appoint a liaison to each standing committee. Any liaison appointed to the Disciplinary Board may participate in discussions pertaining to rule-making or matters of general Board policy but may not participate in pending disciplinary 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, taking notes of the committee's actions, 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 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 and voting in person, by telephone, videoconference or 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. **Rule-making procedure.** 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. Committees may make rule change recommendations to the Court on their own motion or upon the request of the Court, the bench, the bar, or the public. Committees shall make rule change recommendations to the Court in accordance with the following procedures.

(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 letter, or request committee staff to prepare a letter, 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 committee staff appointed by the Court for proper formatting prior to submission to the Court.

(3) When formatting, committee staff shall edit 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 sex to the real or apparent exclusion of the other sex and that does explicitly or implicitly refer to both sexes without distinguishing between them.

(4) Upon completion of formatting, the committee chair shall prepare, or request that committee staff prepare, a cover letter submitting the proposed rule change to the Court for consideration. The cover letter shall be sent to the chief justice, with copies to committee members, committee staff and the Clerk of Court. The cover letter 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 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 at least three (3) weeks 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 prepare, or request that committee staff prepare, a letter to the Court setting forth the committee's recommendation. The committee's recommendation 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's recommendation after the publication for comment period, the Court shall either

(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 Clerk of Court shall issue an order adopting the proposed rule change. The order shall include the effective date for the rule change. 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 at least forty-five (45) days prior to the effective date, 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.

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

(1) Courts of Limited Jurisdiction Committee which is responsible for Rules of Civil Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Procedure for the Municipal Courts and civil and criminal forms for the magistrate and municipal courts;

(2) Rules of Civil Procedure for the District Courts Committee which is responsible for Rules of Civil Procedure for the District Courts, and Civil Forms for the district courts;

(3) Appellate Rules Committee which is responsible for 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) Rules of Criminal Procedure for the District Courts Committee which is responsible for Rules of Criminal Procedure for the District Courts, and the Criminal Forms for the district courts;
- (8) Children's Court Rules Committee which is responsible for the Children's Court Rules and Forms;
- (9) 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 pursuant to those rules;
- (10) Board of Legal Specialization which is responsible for the Rules of Legal Specialization and for administering the Supreme Court specialization program pursuant to those rules;
- (11) 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 pursuant to those rules;
- (12) 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 pursuant to those rules;
- (13) Disciplinary Board which is responsible for the Rules Governing Discipline and for administering the Supreme Court program for disciplining attorneys pursuant to those rules;
- (14) Code of Professional Conduct Committee which is responsible for the Rules of Professional Conduct;
- (15) Code of Judicial Conduct Committee which is responsible for the Code of Judicial Conduct;
- (16) Metropolitan Courts Rules Committee which is responsible for the Rules of Civil Procedure for the Metropolitan Courts, Rules of Criminal Procedure for the Metropolitan Courts and civil and criminal forms for the metropolitan courts;

(17) Client Protection Fund Commission which is responsible for the Rules Governing the Client Protection Fund and for administering the client protection fund program pursuant to those rules;

(18) Judicial Performance Evaluation Commission which is responsible for the Rules Governing the Judicial Performance Evaluation Commission and for administering the program for evaluating judges pursuant to those rules; and

(19) Joint Committee on Rules of Procedure for New Mexico State Courts which is responsible for recommending uniform rule changes that may be needed for all levels of courts in criminal cases, civil cases, or both.

**L. 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.

[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.]

## ANNOTATIONS

**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".

**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 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 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 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 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).

**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).

### **23-107. 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 and metropolitan courts of the State of New Mexico are hereby authorized in accordance with the guidelines promulgated herewith which contain safeguards to ensure that this type 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.

#### **GUIDELINES:**

A. **Discretion of judges.** Live coverage of proceedings shall not be limited by the objection of counsel or parties, except that the court reserves to the individual courts the right to limit or deny coverage for good cause.

(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 presiding district judge 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 trial. Each trial judge may, in the judge's discretion, lengthen or shorten the time for advance notice for coverage of a particular trial.

**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 portable television camera operated by not more than one 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 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 still photographers, utilizing not more than one 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 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.

(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 may request, or object to, cameras in the courtroom by written motion, 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.

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.

**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 and metropolitan courts of New Mexico is prohibited.

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

## **ANNOTATIONS**

**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, 98 N.M. 261, 648 P.2d 300 (1982).

**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*, 106 N.M. 300, 742 P.2d 512 (1987).

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*, 98 N.M. 261, 648 P.2d 300 (1982), is not sufficient. *State v. Clark*, 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*, 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.** 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 for a three (3) year term. A chief judge may be re-elected to serve successive terms. In the event of a tie vote, the senior judge shall be the chief judge.

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 in the chief judge's 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;
- (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 supreme court 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.]

## **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 requirements and examples of correct forms of citation are included in an appendix immediately following this rule.

B. **State appellate court citations.** For citation to opinions of the New Mexico Supreme Court and New Mexico Court of Appeals, use of the vendor neutral citation with citation to both reporters is required. For citations for opinions issued prior to January 1, 1996, that do not have a vendor neutral citation, follow citation rules in *The Bluebook: A Uniform System of Citation*.

C. **Subsequent history.** Subsequent history, when cited, shall include the vendor neutral citation for certiorari information, as assigned by the Supreme Court. When a vendor neutral citation number is not available, the Supreme Court docket number shall be substituted for the vendor neutral citation.

D. **Pinpoint citations.** If a pinpoint citation is used:

(1) for opinions issued after 1996 that have a paragraph number, the paragraph number shall be used after the vendor neutral citation.

(2) for opinions issued prior to 1997 or if paragraph numbering is unavailable, the applicable page number of the New Mexico Reports and Pacific Reporter print publication shall be used.

**E. Citation to New Mexico statutes.** Citations to the New Mexico statutes shall be to the chapter, article and section of the 1978 compilation of the New Mexico Statutes Annotated (NMSA).

**F. Citation to court rules and uniform jury instructions.** Citation to the rules, uniform jury instructions and forms promulgated or approved by the Supreme Court shall be to the New Mexico Rules Annotated (NMRA) version by set and rule number. You may also use the citation form approved by the Supreme Court and published in the NMRA. For example, Rule 4A-100 NMRA provides that rules published in set number 4A of the NMRA may be cited as "Domestic Relations Form 4A-\_\_\_\_. If the rule has been amended since the date the proceedings were filed, it may be necessary to refer to the year of the version of the rule relied upon in the pleading or paper. In such cases the year of the NMRA is added after "NMRA".

**G. Administrative code.** If a pleading or paper cites a state agency rule or regulation, the New Mexico Administrative Code (NMAC) shall be cited using Title, Chapter, Part and Section. It may also be necessary to use a year after "NMAC" to identify the year of the rule applicable to the pending case;

**H. Bluebook citations.** Except as provided in Paragraphs A through F and the appendix of this rule, the form of citations as set forth in the current edition of *The Bluebook: A Uniform System of Citation* shall be used for all citation reference for all pleadings and other papers filed in all courts in this state.

[Approved, effective June 4, 2004, as amended by Supreme Court Order 05-8300-16, effective August 15, 2005; by Supreme Court Order 07-8300-11, effective May 10, 2007; by Supreme Court Order 08-8300-023, effective August 20, 2008.]

### **Appendix To Rule 23-112 NMRA**

The function of legal citation is to inform readers of the name, the location, the authority, and the date of legal documents in a brief and understandable form. In addition the citation enables the reader to find a document when the official citation is to a source that is unique, obscure, or otherwise not easily located.

For most citation questions, the legal writer will use the current edition of *The Bluebook, A Uniform Manual of Citation*. Citation form differs from the *Bluebook* only when New Mexico practice requires a different format, most notably for our statutes and rules.

If material within a direct quotation does not comply with Rule 23-112 NMRA or this appendix, reproduce the quotation as written, but note in brackets the form approved for use in New Mexico.

## I. NEW MEXICO APPELLATE COURT CITATIONS

### A. Supreme Court and Court of Appeals Opinions

1. For opinions of the New Mexico Supreme Court and New Mexico Court of Appeals, cite the vendor-neutral number followed by the New Mexico Reports and Pacific Reporter citations. When using the vendor-neutral citation, the court name and the year are not repeated in parentheses unless the year the opinion is filed differs from the date in the vendor-neutral citation.

Full citation: *Collier v. Pennington*, 2003-NMCA-064, ¶ 6, 133 N.M. 728, 69 P.3d 238.

Short citation: *Collier*, 2003-NMCA-064, ¶ 6.

2. If the date on which the opinion was filed differs from the date in the vendor-neutral citation, the year of filing should be included in a parenthetical.

Full citation: *State v. Pittmann*, 2006-NMCA-006, ¶ 2, 139 N.M. 29, 127 P.3d 1116 (filed 2005).

Short citation: *Pittmann*, 2006-NMCA-006, ¶ 2.

3. For opinions not yet published in the reporter system, but which have been assigned a vendor-neutral citation number, cite as follows:

Full citation: *Davis v. Farmers Ins. Co. of Ariz.*, 2006-NMCA-099, ¶ 26, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_, *cert. granted*, \_\_\_-NMCERT-\_\_\_, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_, (No. 29,895, Sept. 13, 2006).

Short citation: *Davis*, 2006 NMCA-099, ¶ 26.

4. For slip opinions with no vendor-neutral citation number, cite as follows:

• Supreme Court:

Full citation: *State v. Saiz*, No. 29,386, slip op. at 3 (N.M. Sup. Ct. July 22, 2002).

Short citation: *Saiz*, No. 29,386, slip op. at 3.

• Court of Appeals:

Full citation: *Mannick v. Wakeland*, No. 21,989, slip op. at 8-9 (N.M. Ct. App. Jan 4, 2002).

Short citation: *Mannick*, No. 21,989, slip op. at 8-9.

5. For citations for opinions issued prior to January 1, 1996, citation is first to New Mexico Reports, then to Pacific Reporter, followed by the year of the opinion in parentheses.

Full citation: *State v. Ogden*, 118 N.M. 234, 236, 880

P.2d 845, 847 (1994).

Short citation: *Ogden*, 118 N.M. at 236, 880 P.2d at 847.

Since opinions of the Court of Appeals issued before 1996 do not have a vendor-neutral citation that identifies the court, they require a parenthetical to identify the court and the year the opinion was filed.

Full citation: *State v. Fuentes*, 119 N.M. 104, 107, 888 P.2d 986, 989 (Ct. App.1994).

Short citation: *Fuentes*, 119 N.M. at 107, 888 P.2d at 989.

#### B. Subsequent History

Subsequent history, which, under *Bluebook* Rule 10.7, includes denials of certiorari if the case is less than two years old or the denial is particularly relevant, must include the vendor-neutral citation for certiorari information, including whether certiorari was granted, denied, or quashed, as assigned by the Supreme Court.

*State v. Boergadine*, 2005-NMCA-029, 137 N.M. 29, 107 P.3d 532, *cert. denied*, 2005-NMCERT-003, 137 N.M. 290, 110 P.3d 506.

**Note:** Electronic sources do not provide pinpoint citations to the page on which the case appears. Citation is therefore made to the page on which the certiorari table begins.

New Mexico Reports prior to Volume 134 do not include the vendor-neutral citation for certiorari tables. When a vendor-neutral certiorari table citation is not available, the Supreme Court docket number is substituted for the vendor neutral citation.

*State v. Joe*, 2003-NMCA-071, 133 N.M. 741, 69 P.3d 251, *cert. denied*, Sup. Ct. No. 28,019, 133 N.M. 727, 69 P.3d 237.

#### C. Pinpoint Citations

For opinions issued after 1996 that have paragraph numbers, pinpoint citation is to the vendor-neutral citation followed by the paragraph number in which the particular proposition for which the case is cited is to be found, followed by the pages of the New Mexico Reports and Pacific Reporter volumes on which the case begins. Pinpoint page numbers are not included since paragraph numbers appear in the reporters.

*State v. Joe*, 2003-NMCA-071, ¶ 12, 133 N.M. 741, 69 P.3d 251.

*State v. Pittmann*, 2006-NMCA-006, ¶ 6, 139 N.M. 29, 127 P.3d 1116 (filed 2005).

*Lozano v. GTE Lenkurt, Inc.*, 1996-NMCA-074, ¶ 16, 122 N.M. 103, 920 P.2d 1057.

Subsequent pinpoint citations in the same document use the short form of the case name followed by the vendor-neutral citation and paragraph number with no reporter citations.

*Joe*, 2003-NMCA-071, ¶ 12.

or

*Id.* ¶ 12.

For opinions issued prior to 1997, or if paragraph numbering is unavailable, the citation is to the pages of the New Mexico Reports and Pacific Reporter print publications where the opinion begins, followed by the pinpoint page citations:

*Vaca v. Whitaker*, 86 N.M. 79, 83, 519 P.2d 315, 319 (Ct. App. 1974).

Subsequent pinpoint citations in the same document use the short form of the case name followed by reporter citations to the relevant page.

*Vaca*, 86 N.M. at 83, 519 P.2d at 319.

#### D. Record Below and Pleadings

For citation to the record below of the case at issue, cite as follows:

Record proper, page one	[RP 1]
Transcript, page one	[Tr. 1]
Tape 6, May 9, 2007, counter #1303	[T.6, 5-9-07. 6/1303]
Compact Disc 2, May 9, 2007, counter 9:23:21	[CD 2, 5-9-07, 9:23:21]
Record proper 77, finding of fact 20	[RP 77, FOF 20]
Record proper 80, conclusion of law 5	[RP 80, COL 5]
Exhibit 5	[Ex. 5]
Deposition of John Smith, p. 30	[Dep. JS 30]
For citation to pleadings and court documents, cite as follows:	
Brief-in-Chief, p. 5	[BIC 5]
Answer Brief, p. 3	[AB 3]
Reply Brief, p. 2	[RB 2]
Calendar Notice, p. 1	[CN 1]
Memorandum in Opposition, p. 3	[MIO 3]
Dispositional Order of Affirmance, p. 4	[DOA 4]
Dispositional Order of Reversal, p. 2	[DOR 2]
Motion, p. 3	[MOT 3]

## II. CITATION TO NEW MEXICO STATUTES ANNOTATED (NMSA)

### A. NMSA 1978

Cite the New Mexico Statutes to the chapter, article, and section of NMSA 1978. The date in parentheses (following the first occurrence) is the date of the enactment or amendment of the particular section being cited, as shown in the history note following the section in the published versions of the statutes. The word "Section" is spelled out the first time the statute is cited if the reference to the statute is in a textual sentence. It is also spelled out for subsequent references to the statute when the reference is in a textual sentence or when it is the first word in a citation sentence. It is always

capitalized. In all other occurrences, use the "§" symbol.

1. First occurrence:

- In a textual sentence, cite as follows:

The Legislature enacted NMSA 1978, Section 39-3-1.1(C) (1998, as amended through 1999), to create a comprehensive scheme for appealing final decisions of certain administrative agencies.

- In a citation sentence, cite as follows:

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, as amended through 1999).

- In a citation clause, cite as follows:

Plaintiff asserts that jurisdiction is limited only by the venue statute, NMSA 1978, § 38-3-1(G) (1998), which states that . . . .

2. Subsequent occurrences:

- In a textual sentence, cite as follows:

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

- In a citation sentence, cite as follows:

See §§ 38-3-1(G) & 39-3-1.1(C).

or

Section 38-3-1(G).

- In a citation clause, cite as follows:

We are not persuaded that the Legislature could have intended the general jurisdictional and venue statutes, Sections 39-3-1.1 and 38-3-1, to unconstitutionally expand the appellate jurisdiction of the district courts.

or

The general jurisdiction and venue statutes, see §§ 39-3-1.1 and 38-3-1, do not expand the appellate jurisdiction of the district courts.

3. If a statute has been amended, and the applicable statute is the most recently amended version, cite to the most recent amendment:

NMSA 1978, § 30-2-1 (1994).

If the statute has been amended more than once, but the applicable version of the statute is an earlier version, cite to the applicable version, noting that it is no longer current and citing to the most recent amendment:

4. NMSA 1978, § 30-2-1 (1980, prior to amendments through 1994).

When referring to an entire act, such as the Procurement Code, cite the date of the original enactment and the date of the most recent amendment. Do NOT use "*et seq.*":

5. NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2006).

6. If the applicable statute has been repealed, cite the date of enactment and the date the statute was repealed:  
NMSA 1978, Section 60-13-12(B) (1989, repealed effective July 1, 2006).

B. Earlier Compilations

1. New Mexico Statutes 1953

Citation to New Mexico Statutes 1953 requires that the volume and supplemental pamphlets or pocket parts be specified in order to locate the statute in question. The section number precedes the compilation designation:

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

2. New Mexico Statutes 1941

Citation to the 1941 compilation does not require volume citation, but does require citation to the appropriate supplemental pocket part:

§ 51-619, 1941 Comp. (1953 Supp.).

or

Section 51-619, 1941 Comp. (1953 Supp.).

3. New Mexico Statutes 1929

The 1929 statutes were supplemented only in 1938. Statutes passed or amended between 1929 and 1938 should be cited to this supplement. Statutes passed or amended after 1938, but before the 1941 recompilation, should be cited to the session law:

§ 105-2525, Comp. St. 1929.

or

§ 105-167, Comp. St. 1929 (1938 Supp.).

4. New Mexico Statutes 1915

Cite the 1915 codification as 1915 Code. There are no supplements.

§ 1142, 1915 Code.

or

Section 1142, 1915 Code.

5. 1897 Compiled Laws of New Mexico

§ 3420, C. L. 1897.

or

Section 3420, C. L. 1897.

III. SESSION LAWS

- A. Session laws are cited by year, chapter, and section:

1986 N.M. Laws, ch. 38, § 7. (in a citation sentence or clause)

or

1986 N.M. Laws, ch. 38, Section 7. (in textual sentence)

- B. For years in which the Legislature met more than once, indicate the session in a parenthetical:  
1990 Laws (2d S.S.), ch. 2, § 56.
- C. Bills introduced in the Legislature are cited by title, number, and session:  
Navajo and English Educational Programming, H.B. 11, 47th Leg., 2d Sess. (N.M. 2006).  
Domestic Partner Benefits Bill, H.B. 86, 47th Leg., 1st Sess. (N.M. 2005).
- D. If passed and signed into law, the chapter number and codification, if available, should follow:  
Commercial Drivers License Changes, H.B. 250, 46th Leg., 1st Sess. (N.M. 2003), Laws 2003, ch. 51.  
Crimes Against Household Members Act, H.B. 512, 42nd Leg., 1st Sess. (N.M. 1995), Laws 1995, ch. 23, § 1, codified at NMSA 1978, § 30-3A-3(B) (1995).

#### IV. NEW MEXICO RULES ANNOTATED (NMRA)

- A. Citation to Court Rules, Forms, and Uniform Jury Instructions  
Rules, uniform jury instructions, and forms promulgated or approved by the Supreme Court are cited to the New Mexico Rules Annotated version by set and rule number.

First Occurrence	Subsequent Occurrence
Rule 5-103(C)(1)(a) NMRA.	Rule 5-103(C)(1)(a). or <i>id.</i> (if appropriate)
Form 9-406 NMRA.	Form 9-406. UJI 14-210.
UJI 14-210 NMRA.	or <i>id.</i> (if appropriate)

If the rule has been amended since the date the proceedings were filed, but the applicable version of the rule is an earlier version, cite to the applicable version, noting that the version is no longer current, and citing to the most recent amendment.

Rule 1-004 NMRA (1998, prior to amendments through March 2005).

- B. Superseded Rules  
From 1986 to 2000 the rules were codified as Supreme Court Rules
  1. Annotated, and should be cited by the rule number, followed by SCRA and the date of the pamphlet in which the rule is found:  
Rule 12-216 SCRA (1990 Pamp.).  
Rules in effect from 1978 to 1985 require more complete citation for
  2. identification, including citation to the NMSA judicial volume in which the rule appears:  
N.M. R. Civ. P. 16, NMSA 1978 (1980 Repl. Pamp.).



N.M. R. Crim. P. 47(a), NMSA 1978 (1980 Repl. Pamp.).  
N.M. R. Crim. P. 17(f), NMSA 1978 (1980 Repl. Pamp.).  
N.M. R. Evid. 803, NMSA 1978 (1982 Cum. Supp.).

3. Rules in effect during the period of the 1953 compilation are cited both by rule number and to NMSA 1953 in brackets:

N.M. R. Civ. P. 56 [§ 21-1-1(56), NMSA 1953 (1970 Repl.)].  
N.M. R. Crim. App. 601(b)(1) [§ 41-23A-601(b)(1),  
NMSA 1953 (1975 Supp.)].

## V. NEW MEXICO ADMINISTRATIVE CODE (NMAC)

### A. Current Rules

The format for full citation of material contained in the NMAC is the title number, the chapter number, the part number, the section number, "NMAC," and, if necessary to identify the applicable year, the effective date in parentheses. When a provision has been amended, the effective date is the effective date of the version that is being cited.

3.1.3.8 NMAC (10/31/1996).

When reference is to the whole part, the reference date shall be the original effective date together with the date of last amendment:

3.1.3.8 NMAC (11/5/85, as amended through 12/29/2000).

When citation below the level of a section is desired, cite as follows:

3.1.3.8(A) NMAC.

or

Subsection A of Section 3.1.3.8 of the Administrative Code.

### B. New Mexico Register

When it is not possible to cite to the New Mexico Administrative Code (e.g., if a provision has been repealed), cite to the New Mexico Register for rules promulgated by administrative agencies since 1990. The format is volume number in Roman numerals followed by the page and the date of promulgation in parentheses. Page numbering in the New Mexico Register was issue by issue through 1992, so both volume and issue numbers must be included when citing these volumes. Beginning in 1993, page numbering is in a single sequence throughout the volume, so issue numbers are not included in the citation. Note that rules published in early register volumes often retain rule numbering sequences developed by individual agencies, even though they are published in the register and made part of the administrative code.

Standards of Apprenticeship, XIII N.M. Reg., p. 1023.

Formal Complaints, NMPSC Rule 410, II N.M. Reg., No.16, p. 24 (8/9/91).

### C. Superseded Rules

Rules promulgated by New Mexico administrative agencies are effective when published in the New Mexico Register. A note following the date of promulgation should indicate that the rule has since been amended or repealed. The page numbering in the New Mexico Register was issue by

issue through 1992, so both volume and issue must be included in the citation. Beginning in 1993, page numbering is in a single sequence throughout the volume, so issue number is not included in the citation.

Standards of Apprenticeship, New Mexico Department of Labor, XIII N.M. Reg., p. 1023 (12/30/02, codified at 11.2.3.22 NMAC, as amended through 8/13/04).

Expedited Food Stamp Service, Certification Periods, Human Services Department, ISD FS-220, III N.M. Reg. No. 9, p.14 (5/15/92, amended and codified at 8.139.110.16 NMAC).

#### D. Pre-NMAC Rules

Prior to the creation of the New Mexico Administrative Code there existed no uniform numbering system for rules. Citation follows the practice of the individual agency:

Department of Labor, Job Training Division, Request for JTBA Funds, JSI No. 2-89 (12/18/86).

Board of Educational Finance, State Student Incentive Grant Program, BEF Rule 840 (2/27/85).

## ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated June 4, 2004, this rule is effective June 4, 2004.

**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.

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

**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.

### **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 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.

**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).

## 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		