Rules of Procedure for the Municipal Courts

Article 1

General Provisions

8-101. Scope and title.

A.

Scope and title. These rules govern the procedure for the enforcement of municipal ordinances in the municipal courts.

B.

Construction. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every municipal court action. They shall not be construed to extend or limit the jurisdiction of any court or to abridge, enlarge or modify the substantive rights of any litigant.

C.

Title. These rules shall be known as the Rules of Procedure for the Municipal Courts.

D.

Citation form. These rules shall be cited by set and rule number, as in SCRA 1986, Rule 8-

[As amended, effective January 1, 1987.]

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 30. Construction and application of constitutional provision against special or local laws regulating practice in courts of justice, 135 A.L.R. 365.

8-102. Conduct of court proceedings.

A.

Judicial proceedings. 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 bespeaks the responsibilities of those who are charged with the administration of justice. The taking of

photographs in the courtroom during the progress of judicial proceedings or during any recess thereof and the transmitting or sound recording of such proceedings for broadcasting by radio or television introduce extraneous influences which tend to have a detrimental psychological effect on the participants and to divert them from the proper objectives of the trial; and no such action shall be done or permitted except upon express approval of the supreme court.

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.

8-103. Rules; forms; fees.

A.

Rules.

(1) Each municipal court or division thereof may from time to time make and amend rules governing its practice not inconsistent with law or these rules. Such rules may relate to office hours and procedures, to the performance of clerical duties by clerical assistants and to other procedures for effecting a just, speedy and inexpensive determination of causes pending before such court.

(2) To be effective any rule promulgated by a municipal court and any amendments thereto shall be filed with the clerk of the court and made readily available to members of the public.

B.

Forms. Forms used in the municipal courts shall be substantially in the form approved by the supreme court.

C.

Costs or fees prohibited. No costs or fees of any kind shall be collected by any court for any filing or proceeding under Rule 8-105 or 8-106.

[As amended, effective January 1, 1987.]

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 83, 85.
21 C.J.S. Courts §§ 170 to 172.

8-104. Time.

A.

Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any municipal court, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

B.

Enlargement. When, by these rules or by a notice given hereunder or by order of court, an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time, in its discretion:

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done, but it may not extend the time for commencement of trial under Rule 8-506 or for taking an appeal under Rule 8-703.

C.

For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereon shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may, for cause shown, be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

D.

Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 C.J.S. Pleading § 416.

8-105. Designation of judge.

A.

Appointment of temporary municipal judge. Upon recusal or disqualification of a municipal judge, or if by reason of absence, death, sickness or other cause, a municipal judge is unable or unavailable to perform the duties of the municipal judge, a temporary municipal judge shall be appointed in the manner prescribed by law. If no municipal ordinance shall govern the temporary appointment of a municipal court judge, or if none shall be appointed in accordance therewith, the district court, upon certification of that fact by letter from the municipal court judge or any party, will designate a qualified elector of the municipality to sit as municipal court judge in the action.

B.

Transfer of records. After designation of a temporary municipal court judge, whether by ordinance or order of the district court, the disqualified judge shall forthwith send to the designated judge a copy of all proceedings in the action, pay to the designated judge all money received in the action and mark his records of the action "transferred by disqualification to [designated judge's name]". The designated judge shall include in his records the copy of proceedings in the action prior to its transfer, including a reference to the name of the disqualified judge, and shall keep a record of all subsequent proceedings in the same manner as if the action had originally been filed with the designated judge.

C.

Obtaining records. After designation of a temporary municipal court judge because of the inability or unavailability of the municipal court judge to perform his duties, the designated judge shall take such action as may be necessary to obtain the files in the case, and all proceedings shall thereafter be conducted as if the action had originally been filed with the designated judge.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 372, 379, 390, 396.
Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600; 37 A.L.R.4th 1004.

8-106. Disqualification; recusal.

A.

Disqualification. No right to peremptory disqualification exists in the municipal court.

B.

Recusal. Whenever the municipal judge before whom the action is pending is disqualified by the terms of the New Mexico Constitution or the Code of Judicial Conduct, he shall not sit in the action and shall give notice of recusal to all other parties.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 372, 379, 390, 396.
Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600; 37 A.L.R.4th 1004.

8-107. Entry of appearance.

A.

Written entry of appearance. Unless appointed by written order of the court, counsel undertaking representation of a defendant in municipal court shall file a written entry of appearance in the cause. For the purpose of this rule, the filing of any pleading signed by counsel constitutes an entry of appearance.

B.

Oral entry of appearance. An attorney may enter an appearance on behalf of a defendant by oral communication with the court, provided a written entry of appearance is filed with the clerk of the court or the judge if there is no clerk, within three (3) days thereafter. Upon the making of an oral entry of appearance, the clerk of the court or the judge shall enter in the file the name, office address and telephone number of the attorney.

C.

Duration of representation. An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 5 Am. Jur. 2d Appearance § 13.
6 C.J.S. Appearances § 17.

8-108. Presence of the defendant; appearance of counsel.

A.

Presence required. The defendant shall be present at the arraignment and at every stage of the trial, including the imposition of any sentence, except as otherwise provided by these rules.

B.

Continued presence not required. The further progress of any proceeding, including the trial, shall not be prevented whenever a defendant, initially present at such proceeding:

(1) is voluntarily absent after the proceeding has commenced; or

(2) engages in conduct which justifies excluding the defendant from the proceeding.

C.

Presence not required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) The municipal court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the absence of the defendant.

Cross-references. - For forms on waiver of appearance and certificate of defense counsel, see Form 9-104.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 692 to 700, 901 to 935.
Presence of accused during view by jury, 30 A.L.R. 1357; 90 A.L.R. 597.
Personal presence of defendant and his counsel as necessary to the validity of discharge of jury in criminal case before reaching verdict, 150 A.L.R. 764.
Right of accused to be present at polling of jury, 49 A.L.R.2d 640.
Power to try one charged with misdemeanor in his absence, 68 A.L.R.2d 638.
Absence of convicted defendant during hearing or argument of motion for new trial or in arrest of judgment, 69 A.L.R.2d 835.
Right of accused to be present at trial as violated by trial while under influence of drugs or intoxicants, 83 A.L.R.2d 1069.
Exclusion or absence of defendant, pending trial of criminal case, from courtroom, or from conference between court and attorneys, during argument on question of law, 85 A.L.R.2d 1111; 23 A.L.R.4th 955.
Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case, 33 A.L.R.4th 429.
23A C.J.S. Criminal Law §§ 1161 to 1167.

8-109. Record.

As used in these rules, the term "record" means:

(A) stenographic notes which must be transcribed when a "record" is required to be filed;

(B) a statement of facts and proceedings stipulated to by the parties for purposes of review; or

(C) any mechanical, electrical or other recording. No broadcast or reproduction of any mechanical, electrical or other recording shall be made for any person other than an official of the court without the express written consent of the New Mexico Supreme Court.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 51 to 55.
21 C.J.S. Courts §§ 225 to 237.

8-110. Contempt.

A.

Jurisdiction. A muncipal judge has jurisdiction to punish for contempt of its authority only for:

(1) misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice;

(2) misbehavior of court officers in official transactions;

(3) disobedience or resistance to any lawful order, rule, process, decree or command of the court.

B.

Summary disposition. A contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

C.

Disposition upon notice and hearing. A contempt, except as provided in Paragraph B of this rule, shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged and describe it as such. The notice may be given:

(1) orally by the judge in open court in the presence of the person charged with the

contempt;

(2) by a summons; or

(3) by a bench warrant.

The person charged with the contempt shall be entitled to bail as provided in these rules. Upon a finding of guilt, the court shall enter judgment and sentence within the limits of its jurisdiction.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contempt § 1 et seq.
Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.
Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600; 37 A.L.R.4th 1004.
Separate contempt punishments on successive refusals to respond to same or similar questions, 94 A.L.R.2d 1246.
Appealability of contempt adjudication or conviction, 33 A.L.R.3d 448.
Right to counsel in contempt proceedings, 52 A.L.R.3d 1002.
Picketing court or judge as contempt, 58 A.L.R.3d 1297.
Assault on attorney as contempt, 61 A.L.R.3d 500.
Affidavit or motion for disqualification of judge as contempt, 70 A.L.R.3d 797.
Power of court to impose standard of personal appearance or attire, 73 A.L.R.3d 353.
Contempt based on violation of court order where another court has issued contrary order, 36 A.L.R.4th 978.
Intoxication of witness or attorney as contempt of court, 46 A.L.R.4th 238.
Lack of notice to contemnor at time of contemptuous conduct of possible criminal contempt sanctions as affecting prosecution for contempt in federal court, 76 A.L.R. Fed. 797.
17 C.J.S. Contempt § 1 et seq.

8-111. Non-attorney prosecutions.

A.

Peace officers and private citizens. Municipal police officers and individual private citizens acting in their own behalf may file criminal complaints against persons in the municipal court that has jurisdiction over the alleged offense. Criminal complaints shall be limited to charges within the trial jurisdiction of the court.

B.

Other authorized appearances. A municipal officer or employee may appear and prosecute any petty misdemeanor proceeding on behalf of the municipality if the municipality has authorized the officer or employee to institute or cause to be instituted

an action on behalf of the governmental entity.

C.

Trial procedures. Municipal police officers, municipal employees appearing on behalf of a governmental entity as provided in Paragraph B, and individual private citizens acting in their own behalf, on complaints they have filed, shall be authorized to testify and present evidence to the court. In the court's discretion, such parties may also ask questions of witnesses, either directly or through the court, and may make statements bringing pertinent facts and legal authorities to the court's attention.

D.

Special prosecutor. Nothing in this rule shall be construed to allow a private attorney to prosecute a case for any party without first having been duly appointed as a special prosecutor by the city attorney for the municipality in which the court is located.

E.

City attorney. Nothing in this rule shall be construed to prevent the city attorney of the municipality in which the complaint is filed from dismissing the case or entering an appearance and assuming prosecutorial control over the case.

[Adopted, effective July 1, 1988.]

Effective dates. - Pursuant to a court order dated May 26, 1988, this rule is effective for cases filed in the municipal courts on or after July 1, 1988.

Officer may not continue magistrate or municipal case in district court. - A peace officer who has prosecuted a criminal case in magistrate or municipal court may not continue to prosecute the case in district court after an appeal of the magistrate or municipal court judgment has been filed in district court. 1989 Op. Att'y Gen. No. 89-27.

Article 2

Initiation of Proceedings

8-201. Commencement of action.

A.

How commenced. An action is commenced by filing a complaint or by issuing a citation if the municipality by ordinance shall have provided that the first process may be by citation. A copy of every citation issued shall be delivered to the person cited, and the original shall be filed as soon as practicable with the municipal court.

B.

Jurisdiction. Municipal courts have jurisdiction in all cases as may be provided by law.

C.

Where commenced. The action shall be commenced in the municipality where the offense is alleged to have been committed.

D.

When commenced. All prosecutions for the commission of any offense made punishable by ordinance shall be commenced within the time provided by law.

E.

Arrest followed by complaint. When a law enforcement officer makes an arrest without a warrant for violation of a municipal ordinance, such officer shall take the arrested person to the municipal court without unnecessary delay. In such cases, a complaint shall be filed and a copy given to the defendant forthwith.

F.

Name of defendant. In every complaint or citation, the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which such defendant can be identified with reasonable certainty.

Cross-references. - For form on criminal complaint, see Form 9-202.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Actions §§ 83, 86 to 90, 98. 1A C.J.S. Actions § 237 et seq.

8-202. Probable cause determination.

A.

General rule. All persons taken into custody without a warrant and not released upon some conditions of release, shall be afforded a determination of probable cause.

B.

Time of determination. The determination shall be made within a reasonable time, but in any event within five (5) days after custody commences.

C.

Conduct of determination. The determination shall be nonadversary and may be held in the absence of the defendant and of counsel. The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished. No witnesses shall be required to appear unless the court determines that there is a basis for believing that the appearance of one or more witnesses might lead to a finding that there is no probable cause.

D.

Conclusion. If the court finds probable cause to believe that the defendant has committed an offense, the defendant may be detained or released on conditions of release; otherwise, the defendant shall be released immediately.

Cross-references. - For form on affidavit for arrest warrant, see Form 9-209. For form on affidavit for bench warrant, see Form 9-211.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 5 Am. Jur. 2d Arrest §§ 24, 32.
Civil liability for improper issuance of search warrant or proceedings thereunder, 45 A.L.R. 605.
Search of automobile without a warrant by officers relying on description of persons suspected of a crime, 60 A.L.R. 299.
Sufficiency of showing probable cause for search warrant for intoxicating liquor, 74 A.L.R. 1418.
Arrest, or search and seizure, without warrant on suspicion or information as to unlawful possession of weapons, 92 A.L.R. 490.
Peace officer's delay in making arrest without a warrant for misdemeanor or breach of peace, 58 A.L.R.2d 1056.
Issuance of second search warrant after lapse of time for executing first, without additional showing of probable cause, 100 A.L.R.2d 525.
Propriety of considering hearsay evidence or other incompetent evidence in establishing probable cause for issuance of search warrant, 10 A.L.R.3d 359.
Propriety of consideration of credibility of witness in determining probable cause at state preliminary hearing, 84 A.L.R.3d 811.
Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse - state cases, 4 A.L.R.4th 196.
Admissibility of evidence discovered in search of defendant's property or residence authorized by one, other than relative, who is cotenant or common resident with defendant - state cases, 4 A.L.R.4th 1050.
Disputation of truth of matters stated in affidavit in support of search warrant - modern

cases, 24 A.L.R.4th 1266.
6A C.J.S. Arrest § 6; 22 C.J.S. Criminal Law §§ 339, 349.

8-203. Issuance of warrant for arrest and summons.

A.

Issuance. Upon the docketing of any action, the court may issue an arrest warrant or summons. No warrant or summons shall issue except upon a sworn statement of the facts showing probable cause that an offense has been committed. The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished. Before ruling on a request for a warrant, the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses produced by the affiant, provided that such additional evidence shall be reduced to writing and supported by oath or affirmation.

B.

Preference for summons. The court shall issue a summons, unless in its discretion and for good cause shown, the court finds that the interests of justice may be better served by the issuance of a warrant for arrest.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 62 Am. Jur. 2d Process § 5.
Private citizen's right to institute mandamus to compel a magistrate or other appropriate official to issue a warrant, or the like, for an arrest, 49 A.L.R.2d 1285.
22 C.J.S. Criminal Law §§ 334 to 336; 72 C.J.S Process § 2 et seq.

8-204. Service of summons.

A.

Service by mail. Service of a summons shall be by mail unless the court directs that personal service be made.

B.

Issuance. Upon receipt of a complaint, the clerk shall docket the action, forthwith issue a summons and deliver it for service. Upon the request of the prosecution, separate or additional summons shall issue against any defendant. Any defendant may waive the issuance or service of summons.

C.

Execution; form. The summons shall be signed by the judge or the clerk, be directed to the defendant, and must contain:

(1) the name of the court and municipality in which the complaint is filed, the docket number of the case and the name of the defendant to whom the summons is directed;

(2) a direction that the defendant appear at the time and place set forth;

(3) the name and address of the prosecuting attorney, if any, shall be shown on every summons, otherwise the address of the law enforcement entity filing the complaint;

(4) The summons shall be substantially in the form approved by the supreme court.

D.

Summons; time to appear. Service shall be made at least ten (10) days before the defendant is required to appear. If service is made by mail an additional three (3) days shall be added pursuant to Rule 8-104. Service by mail is complete upon mailing.

E.

Summons; service of copy. The summons and complaint shall be served together. The prosecution shall furnish the person making service with such copies as are necessary.

F.

Summons; by whom served. In criminal actions any process may be served by the chief of police or any authorized full-time law enforcement officer [or] any other person who is over the age of eighteen (18) years and not a party to the action. Service may be made outside the municipal boundaries when provided by law. Service outside the municipal limits shall be made in the manner provided by law.

G.

Summons; service by mail. A summons and complaint may be served upon any defendant by the clerk of the court, the judge or the prosecutor mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served. If a defendant fails to appear in person, or by counsel when permitted by these rules, at the time and place specified in the summons, the court may:

(1) issue a warrant for the defendant's arrest, and thereafter the action shall be treated as if the warrant had been the first process in the action; or

(2) direct that service of such summons and complaint may be made by a person authorized by Paragraph F of this rule in the manner prescribed by Paragraph H of this rule.

H.

Summons; how served. Service may be made as provided by law:

(1) upon an individual, other than a minor or an incompetent person, by delivering a copy of the summons and of the complaint to him personally; or if the defendant refuses to receive such, by leaving same at the location where he has been found; and if the defendant refuses to receive such copies or permit them to be left, such action shall constitute valid service. If the defendant be absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over fifteen (15) years; and if there be no such person available or willing to accept delivery, then service may be made by posting a copy of the summons and of the complaint in the most public part of the defendant's premises and by mailing to the defendant at his last known address copies of the process;

(2) upon a domestic or foreign corporation or upon a partnership or other unincorporated association by delivering a copy of the summons and of the complaint to an officer, to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and if the statute so requires, service shall be made by also mailing a copy to the defendant; upon a partnership by delivering a copy of the summons and of the complaint to any general partner; and upon other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association. If the person refuses to receive such copies, such action shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge thereof.

Service shall be made with reasonable diligence, and the original summons with proof of service shall be returned to the clerk of the court from which it was issued.

I.

Return. If service is made by mail pursuant to Paragraph G of this rule, return shall be made by the defendant appearing as required by the summons. If service is by personal service pursuant to Paragraph H of this rule, the person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. When service is made by a full-time law enforcement officer, proof thereof shall be by certificate; and when made by a person other than a full-time law enforcement officer, proof thereof shall be made by

affidavit. Where service within the state includes mailing, the return shall state the date and place of mailing.

J.

Construction of terms. Wherever the terms "summons", "process", "service of process" or similar terms are used, such shall include the summons, complaint and any other papers required to be served.

[As amended, effective January 1, 1990.]

Cross-references. - For forms on criminal summons, certificate of mailing, certificate of service and affidavit of service by other person making service, see Form 9-208. For form on motion for production, see Form 9-409.

The 1989 amendment, effective for cases filed in the municipal courts on or after January 1, 1990, redesignated the first two sentences of the introductory paragraph of former Paragraph B as present Paragraph E and rewrote the remaining language of former Paragraph B and redesignated it as present Paragraph H; deleted former Paragraph C, relating to proof of service; and added present Paragraphs B to G, I and J.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 62 Am. Jur. 2d Process §§ 27 to 129.
Service of process upon actual agent of foreign corporation in action based on transactions outside of state, 30 A.L.R. 255; 96 A.L.R. 366.
Foreign railway corporation as subject to service of process in state in which it merely solicits interstate business, 46 A.L.R. 570; 95 A.L.R. 1478.
Constitutionality, construction, and applicability of statutes relating to service of process on unincorporated association, 79 A.L.R. 305.
Constitutionality, construction and effect of statute providing for service of process upon statutory agent in action against foreign corporation as regards communication to corporation of facts of service, 89 A.L.R. 658.
Power of state to provide for service, other than personal, of process upon nonresident individual doing business within the state so as to subject him to judgment in personam, 91 A.L.R. 1327.
Who, other than public official, may be served with process in action against foreign corporation doing business in state, 113 A.L.R. 9.
Substituted service, service by publication, or service out of the state, in action in personam against resident or domestic corporation, as contrary to due process of law, 126 A.L.R. 1474; 132 A.L.R. 1361.
Delay in issuance or service of summons as requiring or justifying order discontinuing suit, 167 A.L.R. 1058.
Leaving process or notice at residence as compliance with requirement that party be served "personally" or "in person," "personally served," etc., 172 A.L.R. 521.
Cessation by foreign corporation of business within state as affecting designation of agent for service of process, 77 A.L.R.2d 676.

Attorney representing foreign corporation in litigation as its agent for service of process in unconnected actions or proceedings, 9 A.L.R.3d 738.
Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent, 17 A.L.R.3d 625.
Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 32 A.L.R.3d 112.
Stipulation extending time to answer or otherwise proceed as waiver of objection to jurisdiction for lack of personal service: state cases, 77 A.L.R.3d 841.
72 C.J.S. Process § 26 et seq.

8-205. Arrest warrants.

A.

To whom directed. Whenever a warrant is issued in an action, it shall be directed to a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer or an Indian tribal or pueblo law enforcement officer. Upon arrest, the defendant shall be brought before the court without unnecessary delay.

B.

Arrest. The warrant shall be executed by the arrest of the defendant. If the arresting officer has the warrant in his possession at the time of the arrest, a copy shall be served on the defendant upon arrest. If the officer does not have the warrant in his possession at the time of arrest, the officer shall then inform the defendant of the offense and of the fact that a warrant has been issued, and a copy of the warrant shall be served on the defendant as soon as practicable.

C.

Return. The arresting officer shall make a return to the court which issued the warrant and notify immediately all law enforcement agencies previously advised of the issuance of the warrant for arrest that the defendant has been arrested.

Cross-references. - For forms on warrant for arrest and return where defendant is found, see Form 9-210.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 408 to 410, 421, 422.
Necessity of showing warrant upon making arrest under warrant, 40 A.L.R. 62.
Liability for false imprisonment, of officer executing warrant for arrest as affected by its being returnable to wrong court, 40 A.L.R. 290.
Power of private person to whom warrant of arrest is directed to deputize another to make the arrest or to delegate his power in that respect, 47 A.L.R. 1089.

Territorial extent of power to arrest under a warrant, 61 A.L.R. 377.
Civil liability of officer making arrest under warrant as affected by his failure to exhibit warrant, or to state fact of, or substance of, warrant, 100 A.L.R. 188.
22 C.J.S. Criminal Law §§ 334 to 339.

8-206. Bench warrants.

A.

Failure to appear or act. If any person who has been ordered by the municipal judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or to do the thing so ordered, the court may issue a warrant for the person's arrest. Unless the municipal judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause.

B.

Execution and return. A bench warrant shall be executed and return thereon made in the same manner as an arrest warrant issued pursuant to Rule 8-205 of these rules.

Cross-references. - For form on affidavit for bench warrant, see Form 9-211. For forms on bench warrant and return, see Form 9-212.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22 C.J.S. Criminal Law § 355.

8-207. Search warrants.

A.

Issuance. A warrant may be issued by the court to search for and seize any:

(1) property which has been obtained or is possessed in a manner which constitutes a violation of a municipal ordinance;

(2) property designed or intended for use or which is or has been used as the means of committing a violation of a municipal ordinance;

(3) property which would be material evidence in a prosecution for a violation of a municipal ordinance; or

(4) person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B.

Contents. A search warrant shall be executed by a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer, an Indian tribal or pueblo law enforcement officer or a civil officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C.

Form. A search warrant shall be substantially in the form approved by the supreme court.

D.

Execution. A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property under the warrant shall give to the person from whose possession or premises the property was taken a copy of the affidavit for search warrant, and the search warrant and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant and inventory at the place from which the property was taken.

E.

Return. The return shall be made promptly after execution of the warrant to the municipal court issuing the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken. The inventory shall be signed by the officer and the person or persons in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whose possession or premises the property was taken and to the applicant for the warrant.

F.

Probable cause. As used in this rule, "probable cause" shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is

a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses produced by the affiant, provided that such additional evidence shall be reduced to writing, supported by oath or affirmation and served with the warrant.

Cross-references. - For form on affidavit for search warrant, see Form 9-213. For forms on search warrant, authorization for nighttime search and return and inventory, see Form 9-214. For application for inspectorial search order, see Form 9-801. For forms on inspection order and return, see Form 9-802.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Searches and Seizures §§ 35 to 83.
Preventing, obstructing, or delaying service or execution of search warrant as contempt, 39 A.L.R. 1354.
Illustrations of distinction, as regards search and seizure, between papers or other articles which merely furnish evidence of crime, and the actual instrumentalities of crime, 129 A.L.R. 1296.
Previous illegal search for or seizure of property as affecting validity of subsequent search warrant or seizure thereunder, 143 A.L.R. 135.
Authority to consent for another to search and seizure, 31 A.L.R.2d 1078.
Issuance of second search warrant after lapse of time for executing first, without additional showing of probable cause, 100 A.L.R.2d 525.
What constitutes compliance with knock-and-announce rule in search of private premises - state cases, 70 A.L.R.3d 217.
Search and seizure: necessity that police obtain warrant before taking possession of, examining, or testing evidence discovered in search by private person, 47 A.L.R.4th 501.
79 C.J.S. Searches and Seizures §§ 63 to 84.

8-208. Service and filing of papers.

A.

When required. Unless the municipal court otherwise orders, every pleading subsequent to the complaint, every order not entered in open court, every written motion unless it is one as to which a hearing ex parte is authorized, and every written notice, demand and similar paper shall be served on each party; however, nothing herein shall be construed to require that a plea pursuant to Rule 8-302 of these rules be in writing.

B.

How made. When a party is represented by an attorney, service shall be made upon the attorney unless service upon the party himself is ordered by the court.

C.

Method of service. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court or the judge if there is no clerk, who shall place it in the court file. "Delivering a copy" within this rule shall mean: handing it to the attorney or to the party; or leaving it at his office with his secretary or other person in charge; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his usual place of abode with some person of his family above fifteen (15) years of age and informing such person of the contents thereof except that if no such person be found willing to accept a copy, posting the copy in the most public part of the person's abode; or, leaving it in a mail depository authorized by the attorney to be served.

D.

Service by mail. Service by mail shall be deemed complete upon mailing. "Mailing" shall include deposit in an outgoing mail container which is maintained in the usual and ordinary course of business of the serving attorney.

E.

Filing. All original papers, copies of which are required to be served upon parties, must be filed with the court either before service or immediately thereafter.

F.

Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the judge if there is no clerk. When papers are filed with the court, the date of filing and the identity of the person receiving the papers shall be noted thereon and the papers placed in the court file.

G.

Proof of service. Except as otherwise provided in these rules or by order of court, proof of service shall be made by the certificate of an attorney of record or, if made by any other person, by the affidavit of such person. Such certificate or affidavit shall be filed with the clerk or endorsed on the pleading, motion or other paper required to be served.

H.

Notice. A party giving notice shall provide sufficient information to give actual notice of the event and shall communicate such notice to the attorney for the party to be given notice or to the party himself if he has no attorney. Except as otherwise ordered by the

court, notice may be by any method accepted in the usual course of business.

I.

Filing of motions. Whenever, by these rules, a party is required to "move" within a specified time or a motion is required to be "made" within a specified time, the motion shall be deemed to be made at the time it is filed or at the time it is served, whichever is earlier.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 350, 351.
71 C.J.S. Pleading §§ 407 to 415.

Article 3

Pleadings and Motions

8-301. General rules of pleading.

A.

Plaintiff. All actions shall be brought in the name of the municipality as plaintiff.

B.

Adoption by reference. Statements made in one part of a pleading may be adopted by reference in another part of the same pleading.

C.

Name of defendant. In the caption of every pleading, the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which such defendant can be identified with reasonable certainty.

Cross-references. - For forms on criminal summons, certificate of mailing, certificate of service and affidavit of service by other person making service, see Form 9-208.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 1, 53, 54.
71 C.J.S. Pleading §§ 5, 9.

8-302. Pleas allowed.

A.

Pleas allowed. The plea shall be one of the following: guilty, not guilty, not guilty by reason of insanity or nolo contendere. No other pleas shall be permitted. A plea of not guilty or not guilty by reason of insanity shall not operate as a waiver of any defense or objection. If the defendant pleads not guilty by reason of insanity, the municipal court shall transfer the action to the district court pursuant to Rule 8-507 of these rules.

B.

Rejection of pleas. The court shall reject a plea of guilty or nolo contendere if justice would not be served by acceptance of such plea.

C.

Refusal of defendant to enter a plea. If the defendant fails to enter a plea, the court shall enter a plea of not guilty on behalf of such defendant.

8-303. Amendment of complaints and citations.

A.

Defects, errors and omissions. A complaint shall not be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested or in any manner affected, because of any defect, error, omission, imperfection or repugnancy therein which does not prejudice the substantial rights of the defendant upon the merits. The court may at any time prior to a verdict cause the complaint to be amended in respect to any such defect, error, omission, imperfection or repugnancy or to charge a different offense.

B.

Continuances. If a complaint or citation is amended, the court shall grant such continuance as justice requires.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 306 to 338. 71 C.J.S. Pleading §§ 275 to 322.

8-304. Motions.

A.

Subject matter. In all actions, any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised by motion.

B.

How made. Motions may be made orally or in writing, unless the court directs they be in writing. The court may require supporting or opposing briefs or affidavits to be filed with a motion or within a specified time thereafter. A copy of every such brief or affidavit shall be served upon each opposing party.

C.

Hearing dates. When a motion is made prior to trial, the court may set a date for a hearing on the motion or defer consideration of it until trial.

D.

Decisions on motions. The court shall issue its decision on every motion made before or during trial no later than the end of the trial.

E.

Notice; written motions; oral motions; hearings.

(1) A copy of every written motion shall be served upon all other parties by the proponent thereof, at the time of the filing of the motion.

(2) Upon receiving any oral motion prior to trial, the court shall ascertain from the proponent thereof whether all parties have received notice of the motion, and the court may refuse to entertain the motion at that time if all parties have not been notified. Except as provided in Paragraph F of this rule, the court may accept and act upon a motion without notice to the other parties, when the giving of such notice is not reasonably practicable, but the court shall thereafter require the proponent of the motion to give notice of the motion and any action taken thereon.

(3) Upon setting a hearing for any matter raised by motion or deferring consideration thereon until trial, the court shall cause every party to be given notice of: (a) the matter to be considered; and (b) the time the matter will be considered.

F.

Limit on ex parte motions. The following motions shall not be considered without prior notice to all parties:

(1) motions attacking the sufficiency of a complaint or citation;

(2) motions attacking the jurisdiction of the court;

(3) motions for dismissal;

(4) motions attacking the constitutionality of any ordinance;

(5) motions regarding the admissibility of evidence;

(6) motions to review conditions of release;

(7) motions seeking the disclosure of the identity of an informant; and

(8) motions for severance or joinder of parties.

G.

Suppression of evidence.

(1) A person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence.

(2) A person aggrieved by a confession, admission or other evidence may move to suppress such evidence.

H.

Notice and hearing. No motion shall be decided without a hearing following prior notice to all parties.

[As amended, effective January 1, 1987.]

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 C.J.S. Courts § 172.

8-305. Unnecessary allegations.

A.

Examples. It shall be unnecessary for a complaint or citation to contain the following allegations unless such allegations are necessary to give the defendant notice of the offense charged:

(1) time of the commission of offense;

(2) place of the commission of offense;

(3) means by which the offense was committed;

(4) value or price of any property;

(5) ownership of property;

(6) intent with which an act was done;

(7) description of any place or thing;

(8) the particular character, number, denomination, kind, species or nature of money, checks, drafts, bills of exchange or other currency;

(9) the specific degree of the offense charged;

(10) exceptions to the offense charged; or

(11) any other similar allegation.

B.

Effect of surplusage. The municipality may include any of the unnecessary allegations set forth in Paragraph A of this rule in a complaint or citation without thereby enlarging or amending such complaint or citation, and such allegations shall be treated as surplusage.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 23 to 27, 45, 46.
71 C.J.S. Pleading §§ 6, 26, 36.

8-306. Joinder; consolidation; severance.

A.

Joinder; offenses; defendants.

(1) Two or more offenses shall be joined in one complaint with each offense stated in a separate count, if the offenses:

(a) are of the same or similar character, even if not part of a single scheme or plan; or

(b) are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

(2) Two or more defendants shall initially be joined in the same complaint:

(a) when each of the defendants is charged with accountability for each offense included; or

(b) when, even if not all of the defendants are charged in each count, the several

offenses charged: (i) were part of a common scheme or plan; or (ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of others.

(3) Failure to join offenses or defendants as required by this rule shall not be grounds for dismissal of any complaint, and joinder may be effected by filing an amended complaint.

B.

Consolidation; offenses; defendants.

(1) The court shall order two or more complaints against a single defendant to be tried together if the offenses could have been joined in a single complaint.

(2) The court shall initially consolidate the trials of two or more defendants if the defendants could have been joined in a single complaint under Paragraph A of this rule.

C.

Severance. If it appears that a party is prejudiced by a joinder of offenses or of defendants, the court may order separate trials of offenses, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection in camera any statements or confessions made by the defendants which the prosecution intends to introduce in evidence at the trial.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Actions §§ 104 to 115, 127 to 134, 156 to 161.
Right to severance where two or more persons are jointly accused, 70 A.L.R. 1171; 104 A.L.R. 1519; 131 A.L.R. 917; 54 A.L.R.2d 830.
Right to severance where codefendant has incriminated himself, 54 A.L.R.2d 830.
Appealability of order sustaining demurrer, or its equivalent, to complaint on ground of misjoinder or nonjoinder of parties or misjoinder of causes of action, 56 A.L.R.2d 1238.
Consolidated trial upon several indictments or information against same accused, over his objection, 59 A.L.R.2d 841.
Time for making application for consolidation of actions, 73 A.L.R.2d 739.
Separate trials in prosecution for criminal conspiracy as to gambling, 91 A.L.R.2d 1201.
Appealability of state court order granting or denying consolidation, severance or separate trials, 77 A.L.R.3d 1082.
1A C.J.S. Actions §§ 105 et seq., 204 et seq.

Article 4

Release Provisions

8-401. Bail.

A.

Right to bail. Pending trial, any person bailable under Article 2, Section 13 of the New Mexico Constitution, at his first appearance before a court, shall be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount set by the court, unless the court determines, in the exercise of its discretion, that such release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in custody of a designated person or organization agreeing to supervise the person;

(2) place restrictions on the travel, association or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit with the clerk of the court, in cash, of a percentage of the amount of the bail set, such deposit to be returned as provided in this rule;

(4) require the execution of an appearance bond and bail bond in a specified amount and the filing with the court of an affidavit by an unpaid surety describing the real property which is justification for the bond;

(5) require the execution of a bail bond with sufficient sureties, or the deosit of cash in lieu thereof; or

(6) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours or that the person report at specified intervals to a probation officer, law enforcement officer or other person designated by the court.

B.

Factors to be considered in determining conditions of release. In determining which conditions of release will reasonably assure appearance, the court shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, length of residence in the community and record of prior convictions, if any; any indication that the defendant

is an alcoholic or addicted to drugs; the defendant's record of appearance at court proceedings or of flight to avoid prosecution.

C.

Additional conditions; conditions to assure orderly administration of justice. After a hearing and upon a showing that there exists a danger that the defendant will commit a serious crime, will seek to intimidate witnesses or will otherwise unlawfully interfere with the orderly administration of justice, the court, upon release of the defendant or any time thereafter, may enter an order:

(1) prohibiting the defendant from possessing any dangerous weapon; or

(2) imposing any other condition necessary to assure the orderly administration of justice. If additional conditions are imposed, the court shall state in the record the reasons for the imposition of such additional conditions. If the court, after a hearing pursuant to this paragraph, enters an order imposing additional conditions to assure the orderly administration of justice, the defendant shall be entitled, upon application, to a review of such conditions pursuant to Paragraph E of this rule.

D.

Explanation of conditions by court. A court authorizing the release of a person under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violation of the conditions of his release and shall advise such person that a warrant for his arrest will be issued immediately upon any such violation.

E.

Review of conditions of release. A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have a hearing to review the conditions imposed. Unless the conditions of release are amended and the person is thereupon released, the court shall state in the record the reasons for continuing the conditions of release. A person who is ordered released on a condition which requires that he return to custody after specified hours, upon application, shall be entitled to have a hearing to review the conditions imposed. Unless the requirement is removed and the person is thereupon released on another condition, the court shall state in the record the reason for the continuation of the requirement. A hearing to review conditions of release pursuant to this paragraph shall be held by the court imposing the conditions.

F.

Amendment of conditions. The court ordering the release of a person on any condition specified in this rule may amend its order at any time to impose additional or different conditions of release. If the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of Paragraph E of this rule shall apply.

G.

Return of cash deposit. If a person has been released by executing an appearance bond and depositing a cash deposit set pursuant to Subparagraph (3) of Paragraph A of this rule, when the conditions of the appearance bond have been performed and the defendant for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant, his personal representatives or assigns the sum which has been deposited.

H.

Release from custody by designee. The provisions of Paragraphs A, B and D of this rule shall, upon arrest, be carried out by a responsible person designated by the court. If a person has not been released by the designee, he shall forthwith be brought before the municipal judge who shall enter an order prescribing conditions of release in accordance with this rule.

I.

Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the Rules of Evidence.

J.

Forms. Instruments required by this rule shall be substantially in the form approved by the supreme court.

K.

Judicial discretion. Action by any court on any matter relating to bail shall not preclude the constitutional disqualification of a judge.

[As amended, effective August 1, 1987, and October 1, 1987.]

Cross-references. - For form on record of responses to questions at release hearing, see Form 9-301. For form on release order, see Form 9-302. For form on appearance bond, see Form 9-303. For forms on bail bond and justification of sureties, see Form 9-304.

The first 1987 amendment, effective for cases filed in the municipal courts on or after August 1, 1987, in Paragraph A, substituted "Pending trial, any person bailable under Article II, Section 13 of the New Mexico Constitution, at his first appearance before a court" for "Every person, at the first appearance before a court" at the beginning of the introductory paragraph, deleted "on a form which has been approved by the supreme court" following "appearance bond" in Paragraph (3), added Paragraph (4), redesignated former Paragraphs (4) and (5) as present Paragraphs (5) and (6), and deleted "on a form which has been approved by the supreme court" following "bail bond"; in Subsection C, substituted "defendant" for "person" in two places in the introductory paragraph and once in Paragraph (1); deleted the former last sentence in Paragraph F, relating to review of the conditions of release of a defendant at liberty; deleted Paragraph G, relating to review of conditions of release of defendant detained or required to return to custody after specified hours; redesignated former Paragraphs H and I as present Paragraphs G and H; substituting "defendant for whom bail was required has been" for "person" in Paragraph G; deleted former Paragraph J, relating to justification of sureties; added present Paragraphs I through K; redesignated former Paragraph K and present Paragraph L; added present Paragraphs M and N.

The second 1987 amendment, effective for cases filed in the municipal courts on or after October 1, 1987, in Paragraph A(1) substituted "supervise the person" for "supervise him"; in Paragraph A(4) substituted "by an unpaid surety" for "by the surety"; in Paragraph H inserted "judge" following "municipal" in the second sentence; deleted former Paragraphs I, J, and K, relating to exoneration of bond, property bond, and bail bond, respectively; and redesignated former Paragraphs L, M, and N as present Paragraphs I, J, and K, respectively.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 8 Am. Jur. 2d Bail and Recognizance § 1 et seq.
Necessity of acknowledgment of bail bond in open court, 38 A.L.R. 1108.
Bail pending appeal from conviction, 45 A.L.R. 458.
Amount of bail required in criminal action, 53 A.L.R. 399.
Arresting one who has been discharged on habeas corpus or released on bail, 62 A.L.R. 462.
Factors in fixing amount of bail in criminal cases, 72 A.L.R. 801.
Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 79 A.L.R. 13.
Fault or omission of justice of peace regarding bond, undertaking, or recognizance, as affecting party seeking appeal, 117 A.L.R. 1386.
Right to apply cash bail to payment of fine, 92 A.L.R.2d 1084.
Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond, 18 A.L.R.3d 1354.
When is a person in custody of governmental authorities for purpose of exercise of state remedy of habeas corpus - modern cases, 26 A.L.R.4th 455.
Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504.
Bail: duration of surety's liability on posttrial bail bond, 32 A.L.R.4th 575.
Bail: effect on liability of bail bond surety of state's delay in obtaining indictment or

bringing defendant to trial, 32 A.L.R.4th 600.
8 C.J.S. Bail § 2 et seq.

8-401A. Bail; unpaid surety.

Any bond authorized by Subparagraph (4) of Paragraph A of Rule 8-401 shall be signed by the owner(s) of the real property as surety for the bond. The affidavit must contain a description of the property by which the surety proposes to justify the bond and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety remaining undischarged and a statement that the surety is a resident of New Mexico and owns real property in this state having an unpledged and unencumbered net value equal to the amount of the bond. Proof may be required of the matters set forth in the affidavit. The provisions of this rule shall not apply to a paid surety.

[Effective October 1, 1987.]

Effective dates. - Pursuant to a supreme court order dated September 9, 1987, this rule is effective for cases filed in the municipal courts on or after October 1, 1987.

8-401B. Bail bonds; justification of compensated sureties.

A.

Justification of sureties. Any bond authorized by Subparagraph (5) of Paragraph A of Rule 8-401 shall be signed by a bail bondsman, as surety, who is licensed under the Bail Bondsmen Licensing Law [Article 51, Chapter 59A NMSA 1978] and who has timely paid all outstanding default judgments on forfeited surety bonds. A bail bondsman licensed as a limited surety agent shall file proof of appointment by an insurer by power of attorney with the bond.

B.

Property bondsman. A bail bondsman or solicitor licensed as a property bondsman must pledge or assign real or personal property owned by the property bondsman as security for the bail bond. A licensed property bondsman must file, in each court in which he posts bonds, proof of ownership of the property used as security for the bonds and an assignment in favor of the court, such as an irrevocable letter of credit, deed of trust or other similar instrument as well as a copy of his license. The bondsman must attach to the bond a current list of all outstanding bonds, encumbrances and claims against the property each time a bond is posted, using the court approved form. No single property bond can exceed the amount of real or personal property pledged. The aggregate amount of all property bonds by the surety cannot exceed ten times the amount pledged. Any collateral, security or indemnity given to the bondsman by the

principal must be reasonable in relation to the amount of the bond and must be returned to the principal and the lien extinguished upon exoneration on the bond. If the collateral is in the form of cash or a negotiable security, it shall not exceed the amount of the bond and no other collateral may be taken by the bondsman. If the collateral is a mortgage on real property, the mortgage may not exceed one hundred and fifty (150%) percent of the amount of the bond. If the collateral is a lien on a vehicle or other personal property, it may not exceed one hundred and fifty (150%) percent of the bond. If the bond is forfeited, the bondsman must return any collateral in excess of the amount of indemnification and the premium authorized by the superintendent of insurance.

[Effective October 1, 1987.]

Effective dates. - Pursuant to a supreme court order dated September 9, 1987, this rule is effective for cases filed in the municipal courts on or after October 1, 1987.

8-402. Release.

A.

Release during trial. A person released pending trial under Rule 8-401 shall continue on release during trial under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions or termination of release is necessary to assure the presence of the person during the trial or to assure that the conduct of the person will not obstruct the orderly administration of justice.

B.

Release pending sentence. A person released pending or during trial shall continue on release pending the imposition of sentence under the same terms and conditions as previously imposed, unless the surety has been released or the court has determined that other terms and conditions or termination of release is necessary to assure:

(1) that such person will not flee the jurisdiction of the court; or

(2) that the conduct of such person will not obstruct the orderly administration of justice.

C.

Release after sentencing. After imposition of a judgment and sentence, the court, upon motion of the defendant, shall establish conditions of release pending appeal or a motion for new trial. The court may utilize the criteria listed in Paragraph B of Rule 8-401 and may also consider the fact of defendant's conviction and the length of sentence imposed. If the court requires a bail bond in an amount greater than the amount established for release pending trial and if the surety has not been discharged by order of the court, a new bond need be furnished only for the additional amount. In the event

the court requires a bail bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the court.

D.

Person in custody. Nothing in this rule shall be construed to prevent the court from releasing, pursuant to Rule 8-401, a person not released prior to or during trial.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 513, 516. 23A C.J.S. Criminal Law §§ 1168, 1169.

8-403. Revocation of release.

A.

Procedure; custody of defendant. The court on its own motion or upon motion of the prosecuting attorney may at any time have the defendant arrested to review conditions of release. Upon review the court may:

(1) impose any of the conditions authorized under Paragraph A of Rule 8-401;

(2) after a hearing pursuant to Paragraph C of Rule 8-401, impose any of the conditions authorized under Paragraph C of Rule 8-401, to assure the orderly administration of justice; or

(3) after a hearing and upon a showing that the defendant has been indicted or bound over for trial on a charge constituting a serious crime allegedly committed while released pending adjudication of a prior charge, revoke the bail or recognizance.

B.

Review of additional conditions. If pursuant to Paragraph A of this rule, conditions authorized by Paragraph A of Rule 8-401 are imposed:

(1) a person for whom such new conditions are imposed and who after twenty-four (24) hours from the time of the imposition of the new conditions continues to be detained as a result of his inability to meet the new conditions of release; or

(2) a person ordered released on a condition which requires that he return to custody after specified hours shall be entitled, upon application, to a review of such conditions pursuant to Paragraph E of Rule 8-401.

C.

Record of review. If the court after a hearing pursuant to Paragraph A of this rule enters an order imposing new conditions, the defendant shall be entitled, upon application, to a review of such conditions pursuant to Paragraph E of Rule 8-401, provided that, in such review, the court shall consider the record of any hearing held pursuant to this rule and any additional evidence the court may permit.

[Effective July 1, 1988.]

Effective dates. - Pursuant to a court order dated May 26, 1988, this rule is effective for cases filed in the municipal courts on or after July 1, 1988.

8-404, 8-405. Reserved.

8-406. Bail bonds; exoneration; forfeiture.

A.

Exoneration of bond. Unless otherwise ordered for good cause, a bond shall be only exonerated if the municipal attorney approves.

B.

Surrender of an offender by a paid surety. A person who is released upon execution of a bail bond by a paid surety may be arrested by the paid surety if the court has revoked the defendant's conditions of release pursuant to Rule 8-403 or if the court has declared a forfeiture of the bond pursuant to the provisions of this rule. If the paid surety delivers the defendant to the court prior to the entry of a judgment of default on the bond, the court may absolve the bondsman of responsibility to pay all or part of the bond.

C.

Forfeiture. If there is a breach of condition of a bond, the court may declare a forfeiture of the bail. If a forfeiture has been declared, the court shall hold a hearing on the forfeiture prior to entering a judgment of default on the bond. A hearing on the forfeiture shall be held thirty (30) or more days after service of the Notice of Forfeiture and Order to Show Cause on the clerk of the court in the manner provided by Rule 8-407.

D.

Setting aside forfeiture. The court may direct that a forfeiture be set aside in whole or in part upon a showing of good cause why the defendant did not appear as required by the bond or if the defendant is surrendered by the surety into custody prior to the entry of a judgment of default on the bond.

E.

Default judgment; execution. If, after a hearing, the forfeiture is not set aside, a default judgment on the bond shall be entered by the court. If the default judgment is not paid within ten (10) days after it is filed and served on the surety in the manner provided by Rule 8-407, execution may issue thereon. Notwithstanding any provision of law, no other refund of the bail bond shall be allowed.

[Effective October 1, 1987.]

Effective dates. - Pursuant to a supreme court order dated September 9, 1987, this rule is effective for cases filed in the municipal courts on or after October 1, 1987.

8-407. Bail bonds; notice.

By entering into a bond in accordance with the provisions of these rules, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion of the district attorney or upon the court's own motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the obligors at their last known addresses.

[Effective October 1, 1987.]

Effective dates. - Pursuant to a supreme court order dated September 9, 1987, this rule is effective for cases filed in the municipal courts on or after October 1, 1987.

Article 5

Arraignment and Preparation for Trial

8-501. Arraignment or first appearance.

A.

Explanation of rights. Upon the first appearance of the defendant before the municipal court in response to a summons or warrant or following arrest, the municipal judge shall inform the defendant of the following:

(1) the offense charged;

(2) the penalty provided by ordinance for the offense charged;

(3) the right to bail;

(4) the right, if any, to the assistance of counsel at every stage of the proceedings;

(5) the right, if any, to representation by an attorney at municipal expense; and

(6) the right to remain silent, and that any statement made by the defendant may be used against the defendant. The municipal judge shall then allow the defendant reasonable time and opportunity to make telephone calls and consult with counsel.

B.

Entry of plea. The court shall thereafter require the defendant to plead to the complaint, pursuant to Rule 8-302 of these rules.

C.

Bail. If the defendant has not been released by the court or its designee, the court shall enter an order prescribing conditions of release in accordance with Rule 8-401 of these rules.

D.

Waiver of arraignment. An arraignment may be waived, with the consent of the court, by the defendant filing a written plea of not guilty prior to or at the time set for arraignment. An entry of a plea of not guilty shall be substantially in the form approved by the supreme court.

E.

Audio-visual appearance. The first appearance of the defendant before the court may be through the use of a two-way audio-video communication if the following conditions are met:

(1) the defendant and his counsel are together in one room at the time of the first apperance before the court; and

(2) the judge, legal counsel and defendant are able to communicate and see each other through a two-way audio-video system which may also be heard and viewed in the courtroom by members of the public.

F.

Audio-visual arraignment. The arraignment of the defendant before the court may be through the use of a two-way audio-video communication provided that, prior to entry or acceptance of a plea of guilty, the court assures that the plea is made after a knowing, intelligent waiver by the defendant of his right to trial. No plea shall be accepted by the

court unless the conditions set forth in Subparagraphs (1) and (2) of Paragraph E of this rule are met.

[As amended, effective March 1, 1987 and October 1, 1987.]

The first 1987 amendment, effective for cases filed in the municipal courts on or after March 1, 1987, added Paragraph E.

The second 1987 amendment, effective October 1, 1987, in Paragraph E, deleted "arraignment or" preceding "first appearance" in the introductory paragraph and deleted former Paragraph (3) which read "no plea is entered by the court except a plea of not guilty"; and added Paragraph F.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 433 to 442.
Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 98 A.L.R.2d 966; 3 A.L.R.4th 1057.
Accused's right to assistance of counsel at or prior to arraignment, 5 A.L.R.3d 1269.
Admissibility of confession or other statement made by defendant as affected by delay in arraignment - modern state cases, 28 A.L.R.4th 1121.
22 C.J.S. Criminal Law §§ 357 to 364.

8-502. Plea agreements.

A.

Pleas. A defendant charged with a non-traffic criminal offense or any of the following traffic offenses: driving while intoxicated, driving while under the influence of drugs, reckless driving, and driving on a suspended or revoked license, may plead as follows: (1) guilty; (2) not guilty; or (3) no contest, subject to the approval of the court.

B.

Advice to defendant. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge to which the plea is offered;

(2) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made; and

(4) that if he pleads guilty or no contest there will not be a further trial of any kind, so

that by pleading guilty or no contest he waives the right to a trial.

C.

Ensuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or no contest results from prior discussions between the government and the defendant or his attorney.

D.

Plea agreement procedure.

(1) The government or its agent and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or no contest to a charged offense or to a lesser or related offense, the government or its agent will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.

(2) If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or no contest in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed it shall be reduced to writing on a form approved by the supreme court, and the court shall require the disclosure of the agreement in open court at the time that the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea and advise the defendant that if he persists in his guilty plea or plea of no contest the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to

plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

E.

Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

[As amended, effective May 1, 1986.]

8-503. Disposition without hearing.

A.

General. The municipal court may establish, by rule, procedures governing disposition of cases without a hearing. Any such rule shall specify the offenses to which the rule applies. Such rule shall not apply to any offense amounting to a breach of the peace or to any other class of offenses specifically excluded from operation of the rule by the court.

B.

Procedure. An offense shall not be disposed of without a hearing unless the person charged signs an appearance, plea of no contest and waiver of trial. Prior to signing, the person charged shall be informed of the right to trial and that signing will constitute a plea of no contest and will have the effect of a judgment of guilty by the court. Provision may be made for the person charged to enter an appearance and plea no contest and remit the appropriate scheduled penalty to the court by mail. If such provision is made, the charging law enforcement officer will deliver the warnings required under this paragraph, provide a form to the person charged for an entry of appearance and plea of no contest, inform the person charged of the scheduled penalty and provide a business reply envelope addressed to the municipal court.

C.

Definition. As used in this rule, the term "breach of the peace" includes but is not limited to each of the following:

(1) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic drug;

(2) reckless driving;

(3) leaving the scene of an accident;

(4) operating a motor vehicle while under suspension, revocation or cancellation of a driver's license; and

(5) any offense or violation of rules or orders of court for which an arrest or bench warrant has been issued.

Cross-references. - For form on plea of no contest, see Form 9-407.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 82 to 86.
21 C.J.S. Courts § 177.

8-504. Discovery.

At any time during the pendency of the action, upon request of the defendant, the municipal judge may order the prosecution to produce for inspection and copying any records, papers, documents or other tangible evidence in its possession and which are material to the preparation of the defense or are intended for use by the municipality at the trial or were obtained from or belong to the defendant. No other discovery proceedings shall be permitted.

Cross-references. - For form on order for production, see Form 9-410.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 23 Am. Jur. 2d Depositions and Discovery §§ 400 to 467.
Mode of establishing that information obtained by illegal wiretapping has or has not led to evidence introduced by prosecution, 28 A.L.R.2d 1055.
Discovery and inspection of fingerprint, palm print, or bare footprint evidence, 28 A.L.R.2d 1133; 45 A.L.R.4th 1178.
Court's power to determine, upon government's claim or privilege, whether official information contains state secrets or other matters disclosure of which is against public interest, 32 A.L.R.2d 391.
Statements of parties or witnesses as subject of pretrial or other disclosure, production, or inspection, 73 A.L.R.2d 12.
Privilege or immunity as affecting statements of parties or witnesses as subject of pretrial or other disclosure, production, or inspection, 73 A.L.R.2d 84.
Taxation of costs and expenses in proceedings for discovery or inspection, 76 A.L.R.2d 953.
Right of accused in state courts to inspection or disclosure of evidence in possession of prosecution, 7 A.L.R.3d 8.
Right of defendant in criminal case to inspection of statement of prosecution's witness for purposes of cross-examination or impeachment, 7 A.L.R.3d 181.
Right of defense in criminal prosecution to disclosure of prosecution information

regarding prospective jurors, 86 A.L.R.3d 571.
22A C.J.S. Criminal Law §§ 495 to 500.

8-505. Pretrial conference.

At any time after the commencement of the action with or without the filing of a motion by a party, the municipal judge may order the parties to appear before the court to clarify the pleadings and to consider such other matters as may aid in the disposition of the case. The court may issue subpoenas for the attendance of witnesses at the request of a party.

Cross-references. - For form on notice of pretrial conference, see Form 9-411.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21A Am. Jur. 2d Criminal Law §§ 717, 953.
Power of court to adopt general rule requiring pretrial conference as distinguished from exercising its discretion in each case separately, 2 A.L.R.2d 1061.
Binding effect of court's order entered after pretrial conference, 22 A.L.R.2d 599.
Appealability of order entered in connection with pretrial conference, 95 A.L.R.2d 1361.
23A C.J.S. Criminal Law §§ 1192 to 1194.

8-506. Dismissal of actions.

A.

Voluntary dismissal. A complaint or citation or a count therein may be dismissed by the prosecution by filing a notice of dismissal at any time before trial. Unless otherwise stated in the notice, the dismissal is without prejudice. The notice shall be presented, before filing, to the municipal judge who shall endorse thereon that the action or count is dismissed.

B.

Dismissal for failure to prosecute. Any charge which is pending for six (6) months from the date of the arrest of the defendant or the filing of the complaint or citation against the defendant, whichever occurs latest, without commencement of a trial by the municipal court shall be dismissed with prejudice unless, after a hearing, the municipal judge finds that the defendant was responsible for the failure of the court to commence trial. If a complaint or citation is dismissed pursuant to this paragraph, a charge for the same offense shall not thereafter be filed in any court.

Cross-references. - For form on order dismissing criminal complaint with prejudice, see Form 9-414. For form on notice of dismissal of criminal complaint, see Form 9-415.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 512 to 519.
Mandamus to compel a court to reinstate or proceed with the hearing of appeal that it has erroneously dismissed, 4 A.L.R. 655.
Duty to dismiss criminal proceedings on motion of attorney general or prosecuting attorney, pursuant to promise of immunity, 66 A.L.R. 1378.
Power of court to enter nolle prosequi or dismiss prosecution, 69 A.L.R. 240.
Stage of trial at which plaintiff may take voluntary nonsuit, dismissal, or discontinuance, 89 A.L.R. 13; 126 A.L.R. 284.
Power and duty of court as to continuation of action or prosecution upon refusal of city, county, or district attorney to proceed therewith, 103 A.L.R. 1253.
Indictment or information which has been dismissed by prosecuting attorney as susceptible of reinstatement, 112 A.L.R. 386.
Nolle prosequi or discontinuance of prosecution in one court and instituting new prosecution in another court of coordinate jurisdiction, 117 A.L.R. 423.
Original notice of lis pendens as effective upon renewal of litigation after dismissal, reversal, or nonsuit, reserving right to begin another proceeding, 164 A.L.R. 515.
Delay in issuance or service of summons as requiring or justifying order discontinuing suit, 167 A.L.R. 1058.
Effect of nonsuit, dismissal or discontinuance of action on previous orders, 11 A.L.R.2d 1407.
Appealability of dismissal of complaint with respect to an additional party, 16 A.L.R.2d 1041.
Appellate review at instance of plaintiff who has requested, induced, or consented to dismissal or nonsuit, 23 A.L.R.2d 664.
Dismissal of plaintiff's case for want of prosecution as affecting defendant's counterclaim, setoff, or recoupment, or intervenor's claim for affirmative relief, 48 A.L.R.2d 748.
Effect of judgment dismissing action, or otherwise denying relief, for lack of jurisdiction or venue, 49 A.L.R.2d 1036.
Dismissal of civil action for want of prosecution as res judicata, 54 A.L.R.2d 473.
Attorney's authority to dismiss or otherwise terminate action, 56 A.L.R.2d 1290.
Dismissal of appeal or writ of error for want of prosecution as bar to subsequent appeal, 96 A.L.R.2d 312.
Motion to dismiss on ground of obtaining personal service by fraud or trickery, 98 A.L.R.2d 600.
Attorney's inaction as excuse for failure to timely prosecute action, 15 A.L.R.3d 674.
Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond, 18 A.L.R.3d 1354.
Power of trial court to dismiss prosecution or direct acquittal on basis of prosecutor's opening statement, 75 A.L.R.3d 649.
Construction, as to terms and conditions, of state statute or rule providing for voluntary dismissal without prejudice upon such terms and conditions as state court deems proper, 34 A.L.R.4th 778.
Application of speedy trial statute to dismissal or other termination of prior indictment or information and bringing of new indictment or information, 39 A.L.R.4th 899.
22 C.J.S. Criminal Law §§ 419 to 424.

8-507. Insanity or incompetency; transfer to district court.

If the defendant pleads "not guilty by reason of insanity" or if an issue is raised as to the mental competency of the defendant to stand trial, the action shall be transferred to the district court for further proceedings pursuant to the Rules of Criminal Procedure for the District Courts.

Cross-references. - For form on transfer order, see Form 9-404.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Insanity of accused as affecting right to bail in criminal case, 11 A.L.R.3d 1385.

Article 6

Trials

8-601. Conduct of trials.

A.

Continuances. Continuances shall be granted for good cause shown at any stage of the proceedings.

B.

Evidence. Evidence shall be admitted in accordance with the New Mexico Rules of Evidence. The trial shall be conducted expeditiously, but each party shall be permitted to present the position of that party amply and fairly.

C.

Oath of witnesses. The municipal court shall administer the following oath to each witness: "Do you solemnly swear (or affirm) that the testimony you give is the truth, the whole truth and nothing but the truth, under penalty of perjury?"

D.

Record. A party may cause a record, as defined in Rule 8-109, to be made of the proceeding at the expense of that party.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Continuance §§ 4, 27. Refusal of continuance in criminal trial, asked for on account of occurrences during trial, as abuse of discretion, 5 A.L.R. 914.

Right to continuance to procure witness to alibi, 41 A.L.R. 1530.
Right of attorney to have case continued to protect his compensation, 67 A.L.R. 42.
Right to continuance because counsel is in attendance at another court, 112 A.L.R. 593.
Physical condition or conduct of party, his family, friends, or witnesses during trial, tending to arouse sympathy of jury, as ground for continuance or mistrial, 131 A.L.R. 323.
Right of accused to continuance because of absence of witness who is fugitive from justice, 42 A.L.R.2d 1229.
Continuance of criminal case because of illness or death of counsel, 66 A.L.R.2d 267.
Admissions to prevent continuance sought to secure testimony of absent witness in criminal case, 9 A.L.R.3d 1180.
Withdrawal, discharge, or substitution of counsel in criminal case as ground for continuance, 73 A.L.R.3d 725.
21 C.J.S. Courts § 172.

8-602. Subpoenas.

A.

For attendance of witnesses. Every subpoena shall be issued by the municipal judge or clerk of the court, shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

B.

For production of documentary evidence. A subpoena may command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion upon the advancement by the defendant in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

C.

Issuance. The municipal judge or clerk may issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

D.

Personal service. A subpoena may be served by the sheriff, a deputy sheriff, a municipal police officer or any other person who is not a defendant and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person within the county in which the municipality is located.

E.

Service by mail. Service of subpoena may be made by mail in the manner provided for serving the summons, complaint and form of answer.

F.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the municipal court from which the subpoena was issued. The municipal judge shall not hold any person in contempt of court if service of the subpoena has been made by mail unless there has been presented to the court evidence, in addition to that contained in the return and certificate of the judge or clerk of the court, that the person received the delivery of the subpoena or that a subpoena was personally served on the person in accordance with Paragraph D of this rule.

Cross-references. - For forms on subpoena and certificate of service, see Form 9-503. For form on subpoena to produce document or object, see Form 9-504.

8-603. Blood and breath alcohol test reports.

A.

Admissibility. In any prosecution of an offense within the trial jurisdiction of the municipal court, in which prosecution a convicted defendant is entitled to an appeal de novo, the following evidence is not to be excluded under the hearsay rule, even though the declarant may be available as a witness:

(1) a written report of the conduct and results of a chemical analysis of breath or blood for determining blood alcohol concentration and the circumstances surrounding receipt and custody of the test sample if:

(a) the report is of an analysis conducted by an authorized agency of the State of New Mexico or any of its political subdivisions, other than a law enforcement agency or agency under the direction and control of a law enforcement agency;

(b) the report is on a form approved by the supreme court and is regular on its face; and

(c) a legible copy of the report was mailed to the donor of the sample at least ten (10)

days before trial;

(2) a print-out produced by a breath-testing device which performs an analysis of the defendant's breath to determine blood alcohol concentration if:

(a) the law enforcement officer who operated the device is certified to operate the device by the scientific laboratory of the health and environment department; and

(b) upon request, the calibration testing records for a reasonable period of time surrounding the defendant's test are made available to the defendant for inspection prior to trial. The defendant may request a copy to be made of the testing records at the defendant's expense.

B.

Proof of mailing; authentication. If the evidence is a written report of the conduct and results of a chemical analysis of breath or blood prepared pursuant to Subparagraph (1) of Paragraph A of this rule, except for the portion of the report which is completed by the law enforcement officer, proof of mailing and authentication of the report shall be by certificate on the report.

C.

Admissibility of other evidence. Nothing in this rule shall limit the right of a party to call witnesses to testify as to the matters covered in a blood or breath alcohol print-out or report or affect the admissibility of any other relevant evidence.

[As amended, effective October 1, 1987.]

Cross-references. - For forms on report of analysis of breath and blood alcohol, certificate of receiving clerk, certificate of analyst, certificate of supervisor and certificate of mailing, see Form 9-505.

The 1987 amendment, effective for cases filed in the municipal courts on or after October 1, 1987, inserted "and breath" in the catchline; in Paragraph A, added "the following evidence is not to be excluded under the hearsay rule, even though the declarant may be available as a witness" in the introductory paragraph, designated a portion of the former introductory paragraph as present Paragraph (1), deleting "is not excluded by the hearsay rule, even though the declarant is available as a witness" following "test sample", redesignated former Paragraphs (1), (2, and (3) as Paragraphs (a), (b), and (c), and added Paragraph (2); rewrote Paragraph B, which read "Proof of mailing, and authentication of the report (except for the portion thereof which is completed by a law enforcement officer) shall be by certificate on the report"; and, in Paragraph C, substituted "a blood or breath alcohol print-out or report" for "such report" and "any other relevant evidence" for "any evidence other than this report".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 357, 364, 366.
Requiring submission to physical examination or test as violation of constitutional rights, 25 A.L.R.2d 1407.
Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 A.L.R.2d 971.
Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112.
Motorist's right to private sobriety test, 45 A.L.R.4th 11.
22A C.J.S. Criminal Law §§ 759, 761 to 769, 852.

Article 7

Judgment and Appeal

8-701. Judgment.

If the defendant is acquitted, a judgment of not guilty shall be entered. If the defendant is found guilty a written judgment and sentence shall be signed by the municipal judge and filed. The municipal court shall give notice of entry of judgment and sentence in accordance with Paragraph H of Rule 8-208.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.
Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.
24 C.J.S. Criminal Law §§ 1458 to 1505.

8-702. Advising defendant of right to appeal.

At the time of entering judgment and sentence, the court shall advise the defendant of his right to a new trial in the district court. The court shall also advise the defendant that:

A.

Time limits. His appeal must be filed within fifteen (15) days after entry of the judgment and sentence;

B.

Duty of defendant. He has the duty of obtaining a trial date before the district court within six (6) months of the date of the filing of the notice of appeal; and

C.

Automatic affirmance. If his appeal is not tried by the district court within six (6) months from the date of the filing of the notice of appeal, his appeal will be dismissed and his conviction affirmed, unless the time has been extended by a justice of the New Mexico Supreme Court upon a showing of good cause.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.
Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.
24 C.J.S. Criminal Law §§ 1680, 1686, 1688.

8-703. Appeal.

A.

Right of appeal by defendant. A defendant who is aggrieved by any judgment rendered by the municipal court may appeal to the district court of the county within which the municipal court is located within fifteen (15) days after entry of the judgment or final order.

B.

Right of appeal by municipality. The municipality may appeal to the district court of the county within which the municipal court is located within fifteen (15) days after entry of the judgment of the municipal court holding an ordinance or section thereof invalid or unconstitutional or a complaint or part thereof not legally sufficient. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed upon a municipality in any such appeal.

C.

Notice of appeal. An appeal from the municipal court is taken by:

(1) filing with the clerk of the district court a notice of appeal; and

(2) filing with the municipal court a copy of the notice of appeal which has been endorsed by the clerk of the district court.

D.

Stay. An appeal from conviction and sentence shall have the effect of a stay of execution of the judgment of the municipal court until final determination of the appeal,

subject to the defendant being allowed such credit as may be provided by law for time spent in official confinement while awaiting the outcome of the appeal.

E.

Docketing the appeal. The clerk of the district court shall collect the docket fee, or an appropriate affidavit of indigency, for filing an appeal. The municipal court shall transmit the order fixing conditions of release and bond, if any, and a transcript of all proceedings taken in the action to the clerk of the district court within ten (10) days after the filing of the notice of appeal. Upon the filing of the notice of appeal, the municipal court shall give notice of the appeal to each party in the action or to the attorney for any party who is represented by an attorney.

F.

Transcript. The transcript shall include:

(1) title page containing caption of the case in the municipal court and names and mailing addresses of counsel;

(2) all pleadings including any record of proceedings made by the municipal court;

(3) any exhibits;

(4) the judgment sought to be reviewed with date of filing noted thereon; and

(5) the record of the hearing in the municipal court, if any.

G.

Conditions of release. Pending final determination of the appeal, the defendant shall be entitled to bail at the time of filing notice of appeal. The municipal court shall establish conditions of release pending appeal sufficient to secure the appearance of the defendant and the judgment of the municipal court. The municipal court may utilize the criteria listed in Paragraph B of Rule 8-401, and may also consider the fact of defendant's conviction and the length of sentence imposed. Nothing in this rule shall be construed to prevent the court from releasing a person not released prior to or during trial.

H.

Review of terms of release. If the municipal court has refused release pending appeal or has imposed conditions of release which the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal.

I.

Trial de novo. All trials upon appeals from the municipal court to the district court shall be de novo and shall be governed by the Rules of Criminal Procedure for the District Courts.

J.

Disposition; time limitations. The district court shall try the appeal within six (6) months after the filing of the notice of appeal. Any appeal pending in the district court six (6) months after the filing of the notice of appeal without disposition shall be dismissed and the cause remanded to the municipal court for enforcement of its judgment.

K.

Extension of time. The time limits specified in Paragraph J of this rule may be extended one time for a period not exceeding ninety (90) days upon a showing of good cause to a justice of the supreme court. The party seeking an extension of time beyond the six (6) month appeal limit of Paragraph J of this rule shall, within said six (6) month period, file with the clerk of the supreme court a verified petition for extension concisely stating the facts petitioner deems to constitute good cause and forthwith serve a copy thereof on the opposing party. No other extension of time shall be allowed.

L.

Final order; remand to municipal court. Upon final disposition of the appeal, the district court shall issue a final order on appeal in substantially the form approved by the supreme court. If a timely appeal is not taken from the final order of the district court, the district court clerk shall remand the case to the municipal court for enforcement of the district court's final order or such other disposition as may be ordered by the district court. If no appeal is taken the final order shall serve as the mandate.

[As amended, effective September 1, 1989.]

Cross-references. - For form on notice of appeal, see Form 9-607. For form on title page of transcript of criminal proceedings and certificate, see Form 9-608.

The 1989 amendment, effective for cases filed in the municipal courts on or after September 1, 1989, added Paragraph L.

Trial commenced beyond time limit not barred. - A trial in the district court commenced beyond the time limit is not a jurisdictional bar. Rather, the beneficiary of the rule has to raise the issue in order to reap the benefits of the rule. Village of Ruidoso v. Rush, 97 N.M. 733, 643 P.2d 297 (Ct. App. 1982).

And court must uphold agreement not to raise bar of time limitation. - It is unfair in the due process sense for the district court to negate the prosecutor's agreement not to assert the six-month rule under Subdivisions (j) and (k) (now Paragraphs J and K). Village of Ruidoso v. Rush, 97 N.M. 733, 643 P.2d 297 (Ct. App. 1982).

A defendant is not entitled to a trial de novo on direct contempt charges which took place before a municipal court. City of Bernalillo v. Aragon, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983).

Officer may not continue case in district court. - A peace officer who has prosecuted a criminal case in magistrate or municipal court may not continue to prosecute the case in district court after an appeal of the magistrate or municipal court judgment has been filed in district court. 1989 Op. Att'y Gen. No. 89-27.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Appeal and Error § 1 et seq.
24 C.J.S. Criminal Law § 1660 et seq.

8-704. Harmless error; clerical mistakes.

A.

Harmless error. Error in either the admission or the exclusion of evidence and error or defect in any ruling, order, act or omission by the court or by any of the parties is not grounds for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take any such action appears to the court inconsistent with substantial justice.

B.

Clerical mistakes. Clerical mistakes in final orders or other parts of the file and errors therein arising from oversight or omission may be corrected by the municipal court at any time on its own initiative or on the request of any party after such notice to the opposing party, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the transcript is filed in the district court and thereafter, while the appeal is pending, may be corrected with leave of the district court.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law § 586; 58 Am. Jur. 2d New Trial § 31.
21 C.J.S. Courts § 230; 66 C.J.S. New Trial § 13.

Article 8

Special Proceedings

8-801. Modification of sentence.

The municipal court may modify but shall not increase a sentence or fine at any time during the maximum period for which incarceration could have been imposed. No sentence shall be modified without prior notification to all parties and a hearing thereon. No sentence shall be modified while the appeal is pending. Changing a sentence from incarceration to probation constitutes a permissible reduction of sentence under this rule. No judgment of conviction shall be changed. No fine paid shall be ordered returned.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.
Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.
24 C.J.S. Criminal Law §§ 1544 to 1548.

8-802. Return of the probation violator.

A.

Probation; violation of probation. The court shall have the power to suspend or defer a sentence and impose conditions of probation during the period of suspension or deferral. If probation has been imposed, upon receipt of a sworn affidavit alleging a violation of said probation, the court shall issue a criminal summons to appear and answer to the charge of violation of said probation.

B.

Issuance of warrants. The court shall issue a warrant for the arrest of the defendant when a summons cannot be served, when the defendant fails to appear, or for other good cause shown.

C.

Imposition of sentence. If, upon a hearing, the violation is established with such reasonable certainty as to satisfy the conscience of the court, the court may continue or revoke the probation, and may require the probationer to serve the balance of the sentence imposed or any lesser sentence. If the defendant was serving a suspended sentence, credit must be given for the time served while on suspension.

D.

Appeals. The decision of the court to revoke probation may be appealed to the district court as otherwise provided in these rules. The only issue the district court will address

on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the municipal court.

[As amended, effective September 1, 1989.]

The 1989 amendment, effective for cases filed in the municipal courts on or after September 1, 1989, substituted the present second sentence of Paragraph C for the former second sentence, which read "Credit must be given for the time served on probation".