

# Supreme Court General Rules

## **23-101. Terms, sessions and hearings.**

A.

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

B.

Motions. Except as otherwise specifically ordered, a session will be held on the Wednesday after the first Monday of each month for hearing motions. All motions as to which the time for filing briefs has expired will be heard on such motion days or be deemed submitted on briefs.

C.

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

D.

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

[As amended, effective January 1, 1987.]

Cross-references. - For continuation of case from term to term, see 39-3-6 NMSA 1978 and Rule 12-402. For oral argument, see Rule 12-214.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 20, 44 to 48.  
21 C.J.S. Courts §§ 147 to 169.

## **23-102. Clerk of the court.**

A.

Residence. The clerk of this court shall reside and keep his office at the seat of state government. He shall not practice law in any of the courts of the state.

B.

Original papers and records. The clerk shall not permit original papers or records to be taken from his office, or from the courtroom, without a court order.

C.

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

D.

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

E.

Decision of court. Unless otherwise directed by counsel, the clerk will notify one attorney of record on each side of a case of the result of the decision of the court therein.

F.

Copies of opinion. Immediately after an opinion is rendered in a case, the clerk will transmit one (1) copy thereof to one counsel of record on each side of the case, without charge.

G.

Docket entry. The clerk will enter cases on the docket in the order in which the transcripts on appeal and the order granting writs in cases of error are filed in his office. The date of the allowance of the appeal or the issuance of the writ of error, together with the name of the judge who tried the case, will also be entered on the docket by the clerk.

H.

Documents not complying with rules. It shall be the duty of the clerk to enforce the several requirements of these rules by refusing to file documents not complying therewith.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 15A Am. Jur. 2d Clerks of Court § 1 et seq. 14 C.J.S. Clerks of Court § 1 et seq.

### **23-103. Seal and process.**

A.

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

PLEASE REFER TO NEW MEXICO STATUTES 1978 FOR THE CORRECT FORM.

B.

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 26. 21 C.J.S. Courts § 5.

### **23-104. Conduct of court proceedings.**

A.

Judicial proceedings. The purpose of judicial proceedings is to ascertain the truth. Such 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 broadcasting, televising, photographing

and recording of court proceedings in the appellate, district and metropolitan courts of the State of New Mexico is authorized in accordance with the provisions of revised Canon 21-300 of the Code of Judicial Conduct.

B.

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

[As amended, effective September 1, 1989.]

The 1989 amendment, effective September 1, 1989, in the last sentence in Paragraph A, substituted "appellate, district and metropolitan courts" for "appellate courts and in the district courts".

### **23-105. Determination of incapacity; Judicial Retirement Act.**

A.

Application and resignation. Any judge of the district court or justice of the supreme court seeking retirement because of incapacity from carrying on the duties of his office due to physical or mental disability shall file a written application and a resignation from office with the clerk of the supreme court.

B.

Contents of application. The application shall state the facts giving rise to the applicant's claimed physical or mental disability, and shall be accompanied by a certificate of a qualified doctor in which shall be detailed the facts concerning applicant's condition, together with the doctor's diagnosis and prognosis. The resignation shall state that it is to become effective on approval of retirement by the supreme court and appointment and qualification of a successor.

C.

Action by court. Within five (5) days after receipt of such application, the supreme court (if the application shall be from a justice thereof, such justice shall not participate) shall:

(1) upon the basis of the application and medical report or reports as shall be required by the supreme court, enter an order finding the applicant entitled to retirement benefits provided under the Judicial Retirement Act; or

(2) give notice of hearing to be held not sooner than five (5) days thereafter, and not

later than ten (10) days thereafter. Such notice shall be mailed to applicant's residence.

D.

Physical examination. Prior to such hearing, applicant shall be examined by one or more qualified physicians named by the supreme court in the notice of hearing, after which examination and before the hearing the examining doctor shall file a written report with the supreme court, with a copy thereof being made available to applicant on written request to the supreme court.

E.

Rights of applicant. At the hearing, applicant shall be permitted to appear in person or by attorney and present any facts by witnesses, affidavits or otherwise, which are material to the issue. Applicant shall be given an opportunity to examine the doctors appointed by the court, by deposition or in person. Applicant shall pay all reasonable expenses for said doctors' services, time and travel expense.

F.

Hearing procedure. The supreme court may continue said hearing, adjourn the same or otherwise rule in connection therewith so as to best arrive at a conclusion concerning applicant's entitlement. The procedure shall be informal and there shall be no requirement that the Rules of Evidence in court be enforced.

G.

Order finding incapacity. When satisfied concerning the issue of applicant's physical or mental disability, the court shall enter its order.

H.

Finding of incapacitation. If said applicant shall be found incapacitated under the Judicial Retirement Act, and so entitled to the retirement allowance thereunder, the order entered in connection therewith shall state that applicant's resignation is accepted and that applicant is entitled to the annual retirement allowance provided by law during the continuance of his disability, in the amount provided by law.

I.

Certification of order. A copy of this order shall be certified to the state treasurer and shall constitute authority to pay to applicant the annual retirement allowance provided by law. Applicant's resignation and the fact of his incapacity shall be certified to the governor of New Mexico so that the vacancy so created may be filled by appointment.

J.

Finding of no incapacity. If said applicant shall be determined to be not qualified for retirement under the Judicial Retirement Act, an order so holding shall be entered, and no application from the same judge or justice of the supreme court shall be filed sooner than one (1) year after such determination.

K.

Cessation of disability. At any time, not oftener than once in any calendar year, that it shall be made to appear to the supreme court that the disability resulting in retirement may have ceased to exist, unless the retired judge or justice shall agree in writing to termination of benefits, the supreme court shall hold a hearing to determine if in fact the disability is continuing. The notice and hearing procedure shall be the same as provided in Paragraphs E and F of this rule. The retired judge or justice may be required to submit to medical examination by a doctor or doctors selected by the supreme court, at his own expense. A copy of the medical report of all examining doctors shall be filed with the court and on written request a copy shall be furnished to the retired judge or justice.

L.

Termination of benefits. If the retired judge or justice shall agree in writing to the termination of benefits, or if it shall be determined after hearing that the disability has ceased to exist, an order terminating the retirement allowance shall be duly entered and certified to the state treasurer, and shall constitute authority to the state treasurer to cease paying the retirement allowance.

M.

Reinstatement of retirement benefits. After retirement allowance shall have been terminated under Paragraph L of this rule, a judge or justice may apply for reinstatement of his retirement allowance. The procedure thereon shall be the same as in Paragraphs A to I, inclusive, except that no resignation shall be required. Application for reinstatement of retirement allowance shall not be made oftener than once in any year.

Judicial Retirement Act. - The provisions of the Judicial Retirement Act are presently compiled as 10-12-1 to 10-12-13 NMSA 1978. See 10-12-12 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges § 17.  
48A C.J.S. Judges §§ 26, 40-52, 76, 85.

## **23-106. Supreme court committees.**

A.

Authority to appoint. The supreme court may appoint standing committees and special or temporary committees to make recommendations to the court and/or to assist the court in drafting and revising rules and instructions of the supreme court.

B.

Composition of committees. All standing committees will be comprised of nine members who will be appointed by the court to reflect geographical balance and to represent the various factions of the bar, i.e., prosecutors, defense attorneys, private attorneys and government attorneys. Special or temporary committees will be comprised of as many members as the court deems necessary with the same considerations of balance as for standing committees.

C.

Chairperson. The courts shall appoint a chair and vice-chair for each standing and special or temporary committee. The chair shall have the authority to call meetings of the committee on whatever basis deemed necessary to ensure that the work of the committee is accomplished. The chair will preside at all meetings. In the absence of the chair, the vice-chair shall assume the authority of the chair.

D.

Terms of appointment. Standing committee members, including the chair and vice-chair, shall be appointed for a term of three (3) years. No member shall serve for more than two terms unless ordered by court. Members of special or temporary committees shall be appointed for a term decided by the court; however, said term shall not exceed three (3) years. If any committee member, including the chair or vice-chair, shall be absent from three consecutive committee meetings, that person is deemed to have resigned from the committee. Said resignation shall be reported to the court by the chair or vice-chair in writing. Any member, including the chair or vice-chair, may resign at any time during his term by informing the court in writing.

E.

State bar representative. The Board of Bar Commissioners may appoint a liaison to each standing, special or temporary committee.

F.

Committee staff. The court may appoint or contract for such staff as may be needed for each committee. The staff attorney will be responsible for notifying the members and the liaison of meetings, taking attendance, recording votes, taking notes of the committee's meetings, drafting and revising rules and instructions, and any other duties requested by the court or the chair or vice-chair. It shall not be necessary for committees to keep minutes or make any record of their proceedings.

G.

Quorum and voting. All appointed members, including the chair and vice-chair, shall have one vote. Staff attorneys, guests and liaisons may participate in meetings, but may not vote. A quorum of the committee, five voting members, must be present and voting before any committee business may be adopted and recommended to the court. Committees may, however, meet and discuss matters without a quorum present.

H.

Rule-making procedure. Committees may make recommendations to the court on their own motion or upon the request of the court or the bar.

(1) When a majority of the voting quorum so votes, rules or instructions shall be submitted to the staff appointed by the court for proper formatting prior to submission to the court.

(2) Upon submission to the court and after its review of the recommended rules or instructions, the court shall:

(a) adopt;

(b) reject;

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

(d) modify on their own motion; or

(e) send back to the committee for further drafting or revising.

(3) If new rules or amendments are recommended to the Rules of Professional Conduct, Rules Governing Discipline, Rules Governing the New Mexico Bar, Rules Governing Admission to the Bar, or the Code of Judicial Conduct, said recommendations may be submitted to the president of the New Mexico State Bar prior to the court's final action on such proposal in order to provide for input from the bar. Upon final enactment by the court on such rules or amendments, they may be submitted for publication by the state bar at least forty-five (45) days prior to the effective date. If the supreme court determines that it is necessary to have a different effective date than that provided for in this subparagraph, it shall so provide in its order of adoption.

(4) After any rule or instruction has been approved by the court, arrangements shall be made for publication by the state bar, if necessary, and the compilation commission in the judicial volumes of the NMSA. Rules and instructions shall be published by the state bar if they will become effective prior to the next publication date of the NMSA



Advanced Annotation Service or yearly supplement or if required by Subparagraph (3) of Paragraph H.

I.

Standing committees. The following is a list of supreme court standing committees:

(1) Courts of Limited Jurisdiction Committee. Responsible for Rules of Civil Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Procedure for the Metropolitan Courts, Rules of Civil Procedure for the Municipal Courts, and civil and criminal forms for the courts of limited jurisdiction.

(2) Rules of Civil Procedure for the District Courts Committee. Responsible for Rules of Civil Procedure for the District Courts, and Civil Forms for the District Courts.

(3) Appellate Rules Committee. Responsible for Rules of Appellate Procedure.

(4) Rules of Evidence Committee.

(5) Uniform Jury Instructions-Civil Committee.

(6) Uniform Jury Instruction-Criminal Committee. Responsible for Uniform Jury Instructions-Criminal, Rules of Procedure for the Children's Court, Rules of Criminal Procedure for the District Courts, and the criminal forms for the district courts.

(7) Minimum Continuing Legal Education Committee. Responsible for administering the Minimum Continuing Legal Education program pursuant to supreme court rules.

(8) Specialization Board. Responsible for implementing and administering the supreme court specialization program.

J.

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

[As amended, effective August 15, 1986.]

Effective dates. - Pursuant to a supreme court order dated August 13, 1986, the above provisions of this rule are effective August 15, 1986.

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

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

The broadcasting, televising, photographing and recording of court proceedings in the supreme court, court of appeals, district and metropolitan courts of the State of New Mexico are hereby authorized in accordance with the guidelines promulgated herewith which contain safeguards to ensure that this type of media coverage shall not detract from the dignity of the court proceedings or otherwise interfere with the achievement of a fair and impartial hearing.

#### GUIDELINES:

##### A.

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

(1) Media coverage in the courts is subject at all times to the authority of the judge or judges to: (a) control the conduct of the proceedings before the court; (b) ensure decorum and prevent distractions; and (c) ensure fair administration of justice in the pending cause.

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

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

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

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

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

##### B.

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

C.

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

D.

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

E.

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

- (1) All equipment shall be operated behind the rail.
- (2) Not more than one portable television camera operated by not more than one camera person shall be permitted. Only natural lighting shall be used. Cameras shall be quiet and shall be placed and operated as unobtrusively as possible within the courtroom at a location approved by the court. The cameras shall be in place at least fifteen (15) minutes before the proceedings begin.
- (3) Not more than two audio systems shall be permitted. All running wires shall be securely taped to the floor. Multiple radio feeds shall be provided by a junction box.
- (4) Not more than two still photographers, utilizing not more than one still camera each, shall be permitted. The cameras must not produce any distracting sounds. Only natural lighting shall be used. Still photographers shall remain in one place during the proceedings, but they may shift positions during breaks or recess.
- (5) Tape recorders may be used by members of the media, so long as they do not constitute a distraction during the proceedings.
- (6) Any pooling arrangements necessary shall be the sole responsibility of the media and must be concluded prior to coverage without calling upon the court to mediate any dispute regarding appropriate media and personnel.

F.

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

G.

Objections limited.

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

(2) Any party may request, or object to, cameras in the courtroom by written motion, which may be supported by affidavits, which motion shall be filed not later than fifteen (15) days prior to trial. No other evidence shall be presented.

The trial court shall consider the motion and grant or deny the same. The trial judge shall state his reasons for his ruling on the record.

H.

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

I.

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

[As amended, effective September 1, 1989.]

The 1989 amendment, effective September 1, 1989, in the introductory language and in Paragraph I, inserted the reference to metropolitan courts.

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

Showing of prejudice required to bar media coverage. - The tendency of television cameras in the courtroom to make a defendant nervous or rattled is certainly a likely effect to be considered, but if defendant has failed to present any evidence in support of

his assertion that televising portions of the proceedings would prejudice the presentation of his testimony, he will be overruled on this challenge. *State v. Hovey*, 106 N.M. 300, 742 P.2d 512 (1987).

If the defendant objects to media coverage he must make a prima facie showing that he will be prejudiced by the media coverage. A general assertion that the coverage will make the defendant nervous, unsupported by affidavits which address the discretionary standard articulated in *State ex rel. New Mexico Press Ass'n v. Kaufman*, 98 N.M. 261, 648 P.2d 300 (1982), is not sufficient. *State v. Clark*, 108 N.M. 288, 772 P.2d 322 (1989).

Defendant abandoned his conditional pretrial request to bar television coverage of his allocution by failing to pursue the issue and by later failing to mention any potential problem with media coverage in his motion to allocute. *State v. Clark*, 108 N.M. 288, 772 P.2d 322 (1989).

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

### **23-108. Court library use.**

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

[Effective April 1, 1988.]

Effective dates. - Pursuant to a supreme court order dated February 3, 1988, this rule is effective April 1, 1988.

### **23-109. Presiding judges.**

A.

Appointment. The presiding judge of each judicial and metropolitan district shall be selected on the basis of demonstrated administrative ability, and not upon considerations of length of tenure in office or systematic rotation of the office, by courtesy or by any factor other than ability. Presiding judges shall be elected by a majority of the judges in multi-judge districts for a period of not less than three years to serve for such term during good behavior and at the pleasure of the supreme court. A presiding judge may be re-elected to serve successive terms. In the event of tie votes, the tie shall be broken and the presiding judge shall be appointed by the supreme court.

B.

Duties and responsibilities. The supreme court imposes upon the presiding judge of each district the obligation and responsibility, and hereby grants plenary authority to said presiding judge, to implement and enforce the following activities in his or her respective district:

- (1) prepare, with the assistance of appropriate committees of the court, proposed local rules to expedite and facilitate the business of the court; submit the proposed rules for consideration of the judges of the court and, upon approval by a majority of the judges and filing with the supreme court, the district shall publish and distribute the adopted rules;
- (2) call and preside over regular and special meetings of the judges or an elected representative committee of the judges as may be required by the business of the court, distributing to all judges a prepared agenda before any such meeting;
- (3) appoint standing and special committees of judges as may be advisable to assist in the proper performance of the duties and functions of the court;
- (4) designate one of the judges to act in the presiding judge's absence or inability to act;
- (5) exercise responsibility as the administrative authority in accordance with the provisions of the New Mexico Judicial Branch Personnel Rules and ensure the enforcement of those rules;
- (6) exercise general supervision, coordination and direction of business of the court;
- (7) assign, reassign or consolidate cases as convenience or necessity requires;
- (8) apportion and reapportion the business of the court among the several judges as equitably as possible. Except with respect to specialty courts consisting of a single judge, cases shall be assigned by random selection designed so that each judge will receive substantially the same number and type of cases. If a judge is unable to administer the cases assigned to him within a reasonable time, or if there are other justifiable reasons, the presiding judge, in consultation with the other judges, may reassign cases to other judges within the district;
- (9) have published for general distribution copies of a current calendar setting forth the judicial assignments of the judges, the time and places assigned for hearing court matters, and any special calendaring requirement deemed necessary by the presiding judge;
- (10) prepare an orderly plan of vacations for all court personnel, and for attendance at schools, conferences and workshops for judges and other court personnel;

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

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

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

(14) coordinate the use of space, equipment and facilities of the court;

(15) oversee juror management;

(16) implement and monitor compliance with all policies, rules and regulations issued by the supreme court;

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

C.

Reporting. The presiding judge shall immediately report to the supreme court the failure or refusal of any judge to comply with the directives issued in accordance with Paragraph B by the presiding judge.

[Effective June 1, 1988.]

Effective dates. - Pursuant to a court order dated May 24, 1988, this rule is effective June 1, 1988.