UNANNOTATED

Rules of Appellate Procedure

ARTICLE 1
Applicability of Rules; Jurisdiction

12-101. Scope and title of rules.

A. **Scope of rules.** These rules govern procedure in the Supreme Court and the Court of Appeals.

B. **Title.** These rules may be known as the Rules of Appellate Procedure and cited as Rule 12-___ NMRA. (For example, this rule may be cited as Rule 12-101 NMRA.)

[As amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — The citation format in Paragraph B of this rule complies with the Appendix to Rule 23-112 NMRA, which includes examples of correct forms of citation to be used in all papers and pleadings filed in New Mexico state courts.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-102. Appeals; where taken.

A. **Supreme Court.** The following appeals shall be taken to the Supreme Court:

(1) appeals from the district courts in which a sentence of death or life imprisonment has been imposed;

(2) appeals from the Public Regulation Commission;

(3) appeals from the granting of writs of habeas corpus; and

(4) appeals in any other matter in which jurisdiction has been specifically reserved to the Supreme Court by the New Mexico Constitution or by Supreme Court order or rule.

B. **Court of Appeals.** All other appeals shall be taken to the Court of Appeals.

[As amended, effective June 1, 1994; September 1, 1995; June 15, 2000.]

ARTICLE 2
Appeals from District Court

12-201. Appeal as of right; when taken.

A. **Filing notice.**

(1) A notice of appeal shall be filed

(a) if the appeal is filed from a decision or order suppressing or excluding evidence or requiring the return of seized property under Section 39-3-3(B)(2) NMSA 1978, within ten (10) days after the decision or order appealed from is filed in the district court clerk's office; and

(b) for all other appeals, within thirty (30) days after the judgment or order appealed from is filed in the district court clerk's office.

(2) The additional three (3)-day period set forth in Rule 12-308(B) NMRA for certain kinds of service does not apply to the time limits set forth in Subparagraph (1) of this paragraph.

(3) A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the district court clerk's office shall be treated as filed after that filing and on the day of the filing.

B. **Cross-appeals.**

(1) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period last expires.

(2) If more than one party files a notice of appeal, the party to file the first notice of appeal shall be deemed the appellant, and any opposing party filing a notice of appeal shall be a cross-appellant, unless the court orders otherwise.

C. **Review without cross-appeal.** An appellee may, without taking a cross-appeal or filing a docketing statement or statement of the issues, raise issues on appeal for the purpose of enabling the appellate court to affirm, or raise issues for determination only if the appellate court should reverse, in whole or in part, the judgment or order appealed from.

D. **Post-trial or post-judgment motions extending the time for appeal.**

(1) If any party timely files a motion that has the potential to affect the finality of the underlying judgment or sentence, the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last such remaining motion. Those motions may include, but are not necessarily limited to, the following:

(a) a motion under Section 39-1-1 NMSA 1978, Rule 1-050(B) NMRA, Rule 1-052(D) NMRA, or Rule 1-059 NMRA;

(b) a motion under Rule 1-060(B) NMRA, Rule 5-614 NMRA, or Rule 5-801(A) NMRA that is filed not later than thirty (30) days after the filing of the judgment; or

(c) a motion to reconsider a ruling that is filed within the permissible time period for initiating an appeal.

(2) If any party timely files a motion under a rule or statute that provides that the motion is automatically denied if not granted within a specified period of time, the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from either the filing of an order expressly disposing of the last such remaining motion or the date of any automatic denial of the last such remaining motion, whichever occurs first. But the time to appeal shall be determined under Subparagraph (1) of this paragraph if a motion listed in that subparagraph remains pending.

(3) If a party timely files a motion listed in Subparagraphs (1) or (2) of this paragraph and, before the motion is expressly disposed of by order or automatically denied, the party files in the district court a notice stating that the motion is withdrawn, the time for filing a notice of appeal shall be determined from the date the notice of withdrawal is filed in the district court, unless another motion listed in those subparagraphs remains pending.

(4) A timely notice of appeal filed before the express disposition by order, the automatic denial, or the withdrawal of any timely filed motion listed in Subparagraphs (1) or (2) of this paragraph, whether the notice is filed before or after the motion is filed, becomes effective on the day on which the time for filing a notice of appeal commences to run under Subparagraphs (1), (2), and (3) of this paragraph. Until that time, the notice does not divest the district court of jurisdiction to dispose of the motion. A notice of appeal that becomes effective under this subparagraph brings up for review any disposition by order or automatic denial of any timely filed motion listed in Subparagraphs (1) or (2) of this paragraph, without the necessity of attaching a copy of any order disposing of the motion to the notice of appeal.

(5) An order granting a motion for new trial in a civil case is not appealable and renders any prior judgment non-appealable.

(6) The three (3)-day period set forth in Rule 12-308(B) does not apply to any time limits under this paragraph.

E. **Motion for extension of time.**

(1) A party seeking an extension of time to file a notice of appeal shall file a motion in the district court before or not later than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal. The motion for extension of time shall be served on all parties. The district court has jurisdiction to rule on the motion regardless of whether a notice of appeal has been filed.

(2) If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause.

(3) If the motion is filed within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of excusable neglect or circumstances beyond the control of the appellant.

(4) A motion filed more than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal shall not be granted.

(5) An extension of time granted under this paragraph shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted. A party that has filed a motion for extension of time must file a notice of appeal within thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice even if the motion for extension of time remains pending. The district court may grant the motion retroactively.

F. **Grace period when notice is sent by mail or commercial courier.** A notice of appeal that is sent by mail or commercial courier service to the court in which it is to be filed shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA explicitly states that the notice of appeal was sent to the court in which it is to be filed by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

[As amended, effective July 1, 1990; September 1, 1991; April 1, 1998; December 4, 1998; January 1, 2000; as amended by Supreme Court Order No. 05-8300-018, effective October 11, 2005; by Supreme Court Order No. 06-8300-036, effective February 1, 2007; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme

Court Order No. 16-8300-014, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018.]

Committee commentary. — Rule 12-201 NMRA addresses the time within which a notice of appeal from an appealable order or judgment must be filed. In 2013, the committee amended Paragraphs D and E to clarify, codify, and to a limited extent reform current practice. Prior amendments to the rules of civil procedure and appellate procedure have largely eliminated the automatic denial of post-trial or post-judgment motions that extend the time to appeal—so-called "tolling" motions. The 2013 amendments were prepared in conjunction with amendments to the rules of civil procedure that address motions for reconsideration specifically and provide for a uniform thirty (30)-day filing period for post-trial or post-judgment motions brought under a procedural rule or under NMSA 1978, Section 39-1-1. The amendments to Paragraph D, in addition to adding clarity, address the effect of a withdrawn tolling motion on the time to appeal. They also address the efficacy of a notice of appeal that is filed before all timely filed post-trial or post-judgment tolling motions have been disposed of. The amendments allow the district court to dispose of any timely filed post-trial or post-judgment motion even if a notice of appeal has been filed; the notice does not divest the district court of jurisdiction to rule on the motion.

Paragraph A determines the basic time within which to appeal, which may be affected by tolling motions (Paragraph D) or by a motion for an extension of time (Paragraph E).

Paragraph B addresses cross-appeals. The three (3)-day period set forth in Rule 12-308(B) NMRA for certain kinds of service applies to the time limits for filing a notice of cross-appeal under Subparagraph (B)(1) of this rule.

Paragraph D addresses the effect of post-trial or post-judgment motions on the time to appeal. In 2016, the committee amended Paragraph D of this rule to clarify the effect in a criminal case of a timely filed motion that has the potential to affect the finality of the underlying judgment or sentence. As in civil cases, these motions render a criminal judgment or sentence non-final and toll the time to appeal until each motion is expressly disposed of, automatically denied, or withdrawn. *See, e.g., State v. Suskiewich*, 2014-NMSC-040, ¶ 17, 339 P.3d 614 ("[A] motion to reconsider filed within the permissible appeal period suspends the finality of an appealable order or judgment and tolls the time to appeal until the district court has ruled on the motion."); *State v. Romero*, 2014-NMCA-063, ¶ 13, 327 P.3d 525 (holding that the defendants' pending motions for sentence reconsideration made the underlying district court proceedings non-final and the appeals premature).

Most cases will fall under Subparagraph (D)(1), which gives effect to the common tolling motions that, if timely filed, extend the appeal time until the motion is disposed of by the district court. In addition, Subparagraph (D)(1) treats as a tolling motion a motion under Rule 1-060(B) NMRA, Rule 5-614 NMRA, or Rule 5-801(A) NMRA, if the motion is filed within thirty (30) days following the entry of the judgment.

Although most automatic denial provisions have been eliminated from the rules, *see, e.g*., 2006 amendment to Rule 1-059(D) NMRA; 2009 amendment to Rule 5-614 NMRA, or have been rendered inoperative, *see* Rule 1-054.1 NMRA and committee commentary, some remain, *e.g*., Rule 7-611(B) NMRA; Rule 10-252(D) NMRA. Subparagraph (D)(2) deals with cases in which a post-trial or post-judgment motion still subject to automatic denial may be filed. The last sentence of Subparagraph (D)(2) ensures that, in the event of a combination of post-trial or post-judgment motions in which some motions may be subject to automatic denial and some not, the appeal time does not begin to run until all timely filed post-trial or post-judgment motions have been disposed of either by automatic denial, where applicable, or by express written order.

Subparagraph (D)(3) recognizes a party's right to withdraw a pending post-trial or post-judgment motion and proceed directly to appeal. *See also* committee commentary to Rules 1-050, 1-052, 1-059, and 1-060 NMRA. Any tolling effect provided by the motion continues until the motion is withdrawn. The rule is intended to avoid a situation in which a party who elects to withdraw a post-trial or post-judgment motion inadvertently misses the appeal time. *Cf. Vanderwerf v. SmithKline Beecham Corp*., 603 F.3d 842 (10th Cir. 2010) (because motion withdrawn months after filing is treated as if it had never been made, appeal time was not tolled). Withdrawal of a tolling motion is without significance to the appeal time if other tolling motions remain pending. The rule does not address the effect that withdrawal of a post-trial or post-judgment motion may have on appellate issue preservation.

Subparagraph (D)(4) addresses when a notice of appeal that has been filed before all timely post-trial or post-judgment motions have been disposed of becomes effective. A timely motion listed in Subparagraphs (D)(1) or (D)(2) makes a final judgment non-final until the motion is expressly disposed of, automatically denied, or withdrawn, and a notice of appeal filed before that time arrives is premature. *Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865; *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, 147 N.M. 303, 222 P.3d 675. The district court retains jurisdiction to dispose of any and all timely post-trial or post-judgment motions listed in Subparagraphs (D)(1) or (D)(2), subject to any automatic denial of the motion or to withdrawal of the motion by the filing party, even after a notice of appeal has been filed. As long as the motion is timely, even if it is filed after the filing of the notice of appeal, the district court has jurisdiction to rule on it. This portion of the rule supersedes *State v. McClaugherty*, 2008-NMSC-044, ¶¶ 21-24, 144 N.M. 483, 188 P.3d 1234, which held that a district court does not have jurisdiction to rule on a post-judgment motion that is filed in the district court and directed against a final judgment when a timely notice of appeal has already been filed, transferring jurisdiction to the Court of Appeals. The change is intended to ensure that all timely post-trial and post-judgment motions are addressed by the district court before the case is transferred to an appellate court for review.

Under Subparagraph (D)(4), a notice of appeal from an underlying judgment or order that is prematurely filed before the disposition of all post-trial or post-judgment motions will eventually become effective to appeal the underlying judgment or order. *Cf*.

Paragraph A (addressing filing of notice after ruling is announced but before filing of judgment or order). In these circumstances, the notice of appeal also brings up for review the disposition of any post-trial or post-judgment motion that has not been withdrawn. It is not necessary to attach any order disposing of a post-trial or post-judgment motion to a notice of appeal that was filed before the motion was disposed of in order to include the disposition of the motion within the scope of the appeal.

Paragraph E permits a party to move in the district court for an extension of the time for filing a notice of appeal by up to thirty (30) days beyond the time prescribed by Paragraphs A and D. The motion may be made before or after the prescribed time has expired and is subject to different standards depending on when it is filed. It may be filed before or after the notice of appeal has been filed. The motion must be filed not later than thirty (30) days after the expiration of the time prescribed by Paragraphs A and D. The notice of appeal must be filed within the maximum time allowable under Paragraph E. Therefore, a party must file a notice of appeal within thirty (30) days after the time prescribed by Paragraphs A and D expires, even if the party's motion for extension of time remains pending and the party does not know whether the motion will be granted. The district court may grant an extension of time retroactively, but only within the limits allowed by Paragraph E.

Nothing in Paragraph F precludes any relief that might be available under Paragraph E of this rule.

[Amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-014, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018.]

12-202. Appeal as of right; how taken.

A. **Filing the notice of appeal.** An appeal permitted by law as of right from the district court shall be taken by filing a notice of appeal with the district court clerk within the time allowed by Rule 12-201 NMRA.

B. **Content of the notice of appeal.** The notice of appeal shall specify

(1) each party taking the appeal and each party against whom the appeal is taken, except that in appeals concerning children involved in litigation under the provisions of the Children's Code, the provisions of Rule 12-305(H) NMRA, shall be followed;

(2) the name and address of appellate counsel if different from the person filing the notice of appeal; and

(3) the name of the court to which the appeal is taken.

C. **Attachment to notice of appeal.** A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

D. **Additional requirements for appeals in criminal cases.** In addition to the requirements set forth in Paragraphs B and C of this rule, the following are required, when applicable, with a notice of appeal in criminal cases:

(1) a notice of appeal by the state under Section 39-3-3(B)(2) NMSA 1978 shall also include the certificate of the district attorney required by the statute;

(2) if the notice of appeal names the appellate division of the public defender as appellate counsel, a copy of the order appointing the appellate division of the public defender shall be attached to the notice of appeal; and

(3) if the appeal is an appeal taken from the district court in which a sentence of death or life imprisonment has been imposed, and the proceedings are not audio recorded, a designation of proceedings shall be filed at the same time as the notice of appeal in accordance with Rule 12-211(C)(5) NMRA.

E. **Service of the notice of appeal.** The appellant shall give notice of the filing of a notice of appeal

(1) in criminal cases, including those involving criminal contempt, and in delinquency cases, including those involving serious youthful offenders and youthful offenders, by serving a copy on the appellate court, appellate division of the attorney general, appellate division of the public defender when the public defender is appointed on appeal, trial judge, trial counsel of record for each party other than the appellant, and court monitor or court reporter who took the record;

(2) in the following cases:

(a) child abuse and neglect proceedings;

(b) proceedings involving the termination of parental rights; and

(c) cases arising under the Children's Code and governed by the Children's Court Rules other than delinquency cases, by serving a copy on the appellate court, trial judge, trial counsel of record for each party other than the appellant, children's court attorney for the Children, Youth and Families Department, and court monitor or court reporter who took the record; and

(3) in all other cases, by serving a copy on the appellate court, trial judge, court monitor or court reporter who took the record, and trial counsel of record for each party other than the appellant.

F. **Service on party.** If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party's last known address.

G. **Related appeals.** A party shall disclose any related or prior appeals of which the party is aware in any docketing statement or statement of the issues filed under Rule 12-208 NMRA. A party has a continuing obligation to alert the appellate court to any related appeals that come to the party's attention.

[As amended, effective September 1, 1993; September 15, 2000; as amended by Supreme Court Order No. 05-8300-003, effective March 15, 2005; by Supreme Court Order No. 06-8300-011, effective May 15, 2006; by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017.]

Committee commentary. — In 2016, the paragraph regarding joint and consolidated appeals was withdrawn from this rule, and a new Rule 12-317 NMRA was adopted to address joint and consolidated appeals.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-203. Interlocutory appeals.

A. **Application for interlocutory appeal.** An appeal from an interlocutory order containing the statement prescribed by Section 39-3-3(A)(3) NMSA 1978 or Section 39-3-4(A) NMSA 1978 is initiated by filing an application for interlocutory appeal with the appellate court clerk within fifteen (15) days after the entry of such order in the district court. Copies of the application shall be served by the applicant on all persons who are required to be served with a notice of appeal under Rule 12-202 NMRA. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph.

B. **Content of application.** The application shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court, a statement of the question itself and a statement of the reasons why a substantial ground exists for a difference of opinion on the question, and why an immediate appeal may materially advance the ultimate termination of the litigation. The statement of reasons shall contain case references, where available, and shall contain a summary of the applicant's arguments. A copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating to the order shall be attached to the application. Any other documentary matters of record that will assist the appellate court in exercising its discretion may also be attached. The docket fee shall accompany the application, but no docketing statement or statement of the issues is required.

C. **Form of papers; number of copies.** An application for interlocutory appeal shall conform to the requirements of Rules 12-305 and 12-306 NMRA.

D. **Response.** Any other party may file a response, with attachments, if any, with the appellate court clerk within fifteen (15) days after service of the application and shall serve a copy on the appellant. The appellate court may deny the application prior to the filing of a response. The appellate court may set a hearing on the application.

E. **Reply.** A reply is not permitted without leave of the appellate court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

F. **Grant of application; assignment.** If an application for interlocutory appeal is granted, the case may be assigned to a calendar, and the appellate court clerk shall give notice of the assignment in accordance with Rule 12-210 NMRA. The district court clerk shall transmit a copy of the record proper on receipt of the notice of calendar assignment or of the proposed summary disposition. The granting of an application shall automatically stay the proceedings in the district court unless otherwise ordered by the appellate court.

[As amended, effective January 1, 1997; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-203A. Recompiled.

12-203.1. Appeals to the Court of Appeals from orders granting or denying class action certification.

A. **Application for appeal from order on class action certification.** An appeal from an order granting or denying class action certification under Rule 1-023(F) NMRA is initiated by filing an application for such appeal with the Court of Appeals clerk within fifteen (15) days after entry of the order. Copies of the application shall be served by the applicant on the district court clerk and all persons who are required to be served with a notice of appeal under Rule 12-202 NMRA. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits in this paragraph.

B. **Content of the application.** A copy of the certification order from which appeal is sought and any findings of fact, conclusions of law, and opinion relating to the order shall be attached to the application. Any other documentary matters of record that will assist the Court in exercising its discretion may also be attached. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the docket fee shall accompany the application, but no docketing statement is required. The application shall contain a concise statement of the following:

(1) each question being presented;

(2) the facts necessary to an understanding of each question presented;

(3) the relief sought; and

(4) the reasons why the certification order

(a) is likely to terminate the litigation, independent of the merits, because it would be impracticable for the party seeking class certification to maintain the action absent certification or because class certification would create irresistible pressure on the opposing party to settle, and why the order is questionable or erroneous;

(b) presents an unsettled and fundamental issue of law in relation to class actions that is important to the specific litigation and the general state of the law and is likely to evade review on appeal from a final judgment; or

(c) is manifestly erroneous.

C. **Form of papers; number of copies.** An application for appeal from an order granting or denying class action certification shall conform to the requirements of Rules 12-305 and 12-306 NMRA.

D. **Response.** Any other party may file a response, with attachments, if any, with the Court within fifteen (15) days after service of the application and shall serve a copy on the applicant. The Court may deny the application prior to the filing of a response. The Court may set a hearing on the application.

E. **Reply.** A reply is not permitted without leave of the Court, which may be granted upon a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

F. **Grant of application; assignment.** If an application for appeal from an order granting or denying class action certification is granted, the case may be assigned to a calendar, and the Court of Appeals clerk shall give notice of the assignment in accordance with Rule 12-210 NMRA. The district court clerk shall transmit a copy of the record proper upon receipt of the notice of calendar assignment or of the proposed summary disposition.

G. **Stay of proceedings in district court.** The granting of the application shall not stay proceedings in the district court unless ordered by the district court or the Court of Appeals. A party seeking a stay of the proceedings in district court shall first seek such an order from the district court, and any party may thereafter seek appellate review of the district court’s ruling under Rule 12-207 NMRA.

[Approved, effective October 11, 2005; as amended by Supreme Court Order No. 08-8300-018, effective August 4, 2008; 12-203A recompiled and amended as 12-203.1 by Supreme Court Order No. 16-8300-012, effective for all cases pending or filed on or after December 31, 2016.]

12-204. Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction.

A. **Scope.** This rule governs appeals under Rule 5-405 NMRA from orders regarding release or detention. The provisions of Rule 12-201 NMRA, Rule 12-208 NMRA, Rule 12-210 NMRA, and Rule 12-404 NMRA shall not apply to appeals under this rule.

B. **Computation of time.** All time periods set forth in this rule shall be construed as calendar days, and the manner of computing time set forth in Rule 12-308 NMRA for periods of less than eleven (11) days shall not apply. If the last day of a time period prescribed by this rule falls on a weekend, court holiday, or other day that the appellate court is closed or unavailable for filing, the required action shall be deemed timely if taken on the next day that the court is open and available for filing. The additional three (3)-day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time periods set forth in this rule. The court shall not extend the time periods set forth in this rule.

C. **Initiating the appeal.**

(1) ***Motion.*** An appeal under this rule shall be initiated by filing a motion with the clerk of the appropriate appellate court within ten (10) days after the decision of the district court is filed. The motion shall specify the decision appealed from and shall include, by attachments, any materials deemed necessary for consideration of the matter by the appellate court, including any available audio recording or stenographic transcript of the hearing in district court. The docket fee shall be paid at the time the motion is filed, subject to the provisions of Rule 12-304 NMRA.

(2) ***Notice.*** The appellant shall give notice of the filing of the motion to the appellate division of the attorney general, appellate division of the public defender, trial judge, and trial counsel of record for each party other than the appellant.

(3) ***Stay of proceedings.*** An appeal under this rule does not stay the proceedings in the trial court.

D. **Appellate court review.**

(1) ***Initial evaluation.*** The appellate court clerk shall docket the appeal upon receipt of the motion and present it to the court. The appeal may be submitted to a panel of three (3) justices or judges for decision. Within five (5) days of the filing of the motion, the appellate court shall do one of the following:

(a) if it appears that the appeal is without merit, affirm the decision of the district court in accordance with Subparagraph (D)(2) of this rule; or

(b) order the appellee to file a response within five (5) days of the date of the order requesting the response.

(2) ***Disposition.***

(a) *Time.* The appellate court shall review the appeal in an expedited manner. If the appellate court has ordered the appellee to file a response, the court shall dispose of the appeal within seven (7) days after the response is filed. If the appellee fails to file a timely response, the court shall dispose of the appeal within five (5) days after the response was due.

(b) *Standard of review.* The decision of the district court shall be set aside only if it is shown that the decision

(i) is arbitrary, capricious, or reflects an abuse of discretion;

(ii) is not supported by substantial evidence; or

(iii) is otherwise not in accordance with law.

(c) *Effect.* The appellate court's final disposition shall be effective in accordance with the following provisions.

(i) A final disposition in the Court of Appeals shall not be subject to a motion for rehearing and shall not be effective until eleven (11) days after filing the disposition with the appellate court clerk unless a petition for writ of certiorari is filed under Paragraph E of this rule, in which case the Court of Appeals' disposition shall be automatically stayed pending the outcome of the proceeding on certiorari. If a petition for writ of certiorari is not filed within the time deadline in Paragraph E of this rule, the Court of Appeals shall immediately issue its mandate.

(ii) A final disposition in the Supreme Court shall not be subject to a motion for rehearing, and its mandate shall issue immediately.

E. **Further review by certiorari.**

(1) Notwithstanding the time provisions in Rule 12-502(B) NMRA, a party may seek review of a decision of the Court of Appeals by filing a petition for writ of certiorari under Rule 12-502 NMRA no later than ten (10) days after the disposition is filed in the Court of Appeals.

(2) The cover page of the petition shall be labeled "Expedited Petition for Writ of Certiorari." In all other respects, the form and content of a petition shall be governed by the provisions of Rule 12-502 NMRA.

(3) The petition may be submitted to a panel of three (3) justices for decision. The Supreme Court shall review the petition in an expedited manner. No response to the petition shall be filed except as directed by order of the Supreme Court, provided that the respondent shall have a right to file a response, as directed by the Supreme Court, before any petition is granted.

(4) The final disposition of a petition shall be effective upon filing with the Supreme Court clerk and shall not be subject to a motion for rehearing. If the petition is denied, a copy of the Supreme Court order shall be immediately delivered to the Court of Appeals, which shall immediately issue its mandate in accordance with Rule 12-402(C) NMRA. If the petition is granted, the final decision disposing of the certiorari proceeding shall also constitute the mandate of the Supreme Court.

[As amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

Committee commentary. — This rule addresses appeals under Article II, Section 13 of the New Mexico Constitution and NMSA 1978, Section 39-3-3(A)(2). An appeal under this rule should be filed in the Court of Appeals or the Supreme Court, as jurisdiction may be vested by law. The Supreme Court has "exclusive jurisdiction over interlocutory appeals . . . in cases where the defendant faces a possible sentence of life imprisonment or death." *State v. Brown*, 2014-NMSC-038, ¶ 17, 338 P.3d 1276. This rule was amended in 2017 in response to the 2016 amendment to Article II, Section 13. As amended, Article II, Section 13 (1) permits a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community, and (2) requires the district court to release a defendant who is in custody solely due to financial inability to post a secured bond. "An appeal from an order denying bail shall be given preference over all other matters." N.M. Const. Art. II, § 13.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

12-205. Release pending appeal in criminal matters.

A. **Appeal by the state.** When the state appeals an order dismissing a complaint, information, or indictment, the district court shall consider releasing the defendant on personal recognizance or unsecured appearance bond pending final determination of

the appeal. When the state appeals an order suppressing or excluding evidence or requiring the return of seized property, the defendant may be released under conditions determined in accordance with Rule 5-401 NMRA.

B. **Motion to review conditions of release.** Upon motion, the district court shall initially set conditions of release pending appeal. A motion by either party for modification of the conditions of release shall first be made to the district court and may be decided without the presence of the defendant. If the district court has refused release pending appeal or has imposed conditions of release pending appeal that the defendant cannot meet, a motion for modification of the conditions may be made to the appropriate appellate court. If the case has not been previously docketed in the appellate court, subject to the provisions of Rule 12-304 NMRA, the docket fee shall accompany the motion. The motion may be made at any time and shall be determined promptly by the appellate court on the papers, affidavits, and portions of the record presented by the parties.

C. **Further review by certiorari.** A party may seek review of a decision of the Court of Appeals by filing a petition for writ of certiorari under Rule 12-502 NMRA. Upon the granting of a petition for certiorari by the Supreme Court, the defendant may file a motion in the Supreme Court for modification of conditions of release in accordance with Paragraph B of this rule.

D. **United States Supreme Court.** Upon filing an appeal or a petition for writ of certiorari in the United States Supreme Court, the defendant may file a motion for modification of conditions of release with the appellate court whose decision is sought to be reviewed.

E. **Further appeal by state.** If the state files a petition for rehearing or for certiorari in the Supreme Court or in the United States Supreme Court, and the mandate is stayed in accordance with Rule 12-402 NMRA, the defendant may file a motion for release or modification of conditions of release with the appellate court whose decision is sought to be reviewed.

[As amended by Supreme Court Order No. 07-8300-019, effective August 13, 2007; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

Committee commentary. — The Supreme Court has exclusive appellate jurisdiction over the conditions of release pending appeal in a case where the defendant faces a possible sentence of life imprisonment or death or in a case where the district court has imposed a sentence of life imprisonment or death. *See* N.M. Const. art. VI, § 2; *State v. Brown*, 2014-NMSC-038, ¶ 17, 338 P.3d 1276.

[Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

12-206. Stay pending appeal in children's court matters.

A. **Application in the Court of Appeals.** A party appealing a judgment of the children's court, after a denial of a stay by the children's court, may request that the judgment be stayed by filing and serving an application for stay in the Court of Appeals at any time after the notice of appeal has been filed. If the case has not been previously docketed in the Court, the docket fee or order granting free process shall accompany the motion. Both the appellate division of the attorney general and the children's court attorney shall be served. Filing and service shall be governed by Rule 12-307 NMRA.

B. **Contents of application.** All applications to stay the judgment of the children's court shall include

(1) a concise statement of such facts presented to the children's court necessary for an understanding of the application;

(2) a concise statement of the reasons why the judgment should be stayed, including a statement whether those reasons were presented to the children's court as a part of the appellant's case below;

(3) a concise statement of how suitable provisions will be made for the care and custody of the child if a stay is granted; and

(4) certified copies, showing the filing dates, of the petition initiating the children's court action, the judgment and any findings of the children's court, and the notice of appeal. The application may also include documentary evidence presented to the children's court; provided, however, that any document not formally admitted as evidence or filed with the children's court clerk must include a certificate of counsel that the evidence was presented to the children's court.

C. **Response.** Any response to the application shall be filed and served within ten (10) days after service of the application. Filing and service shall be governed by Rule 12-307 NMRA. The response may include

(1) a concise statement of facts presented to the children's court that are necessary for an understanding of the application but were not stated in the application;

(2) a concise statement of reasons why the application should be denied;

(3) any documentary evidence presented to the children's court; provided, however, that any document not formally admitted as evidence or filed with the children's court clerk must include a certificate of counsel that the evidence was presented to the children's court; and

(4) any statements or documents relied on by the children's court in denying the stay as well as the record of children's court hearing denying the stay.

D. **Reply.** A reply is not permitted without leave of the Court, which may be granted upon a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

E. **Stay pending disposition of the application.** At any time after the application has been filed, the Court may grant a stay pending disposition of the application.

F. **Disposition of the application.** The application for stay shall be considered by the Court as soon as practicable, and in any event not later than fifteen (15) days after the granting of any stay pending disposition. The Court, in its discretion, may consider the matter with or without a hearing or oral argument. The Court may review the official transcript of proceedings if filed in the Court or any unofficial transcript of proceedings that is stipulated to and presented by the parties. Either party may seek a review of the decision of the Court by filing a petition for writ of certiorari under Rule 12-502 NMRA.

[As amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — This rule does not apply to a motion to stay a children's court custody order pending expedited appeal under Rule 12-206.1 NMRA.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-206A. Recompiled.

12-206.1. Expedited appeals from children's court custody hearings.

A. **Scope.** This rule governs expedited appeals to the Court of Appeals from custody hearings in the children's court under Section 32A-4-18 NMSA 1978 and Rule 10-315 NMRA of the Children's Court Rules. The provisions of Rules 12-208 and 12-210 NMRA shall not apply to appeals under this rule.

B. **Computation of time.** All time periods set forth in this rule shall be construed as calendar days, and the manner of computing time set forth in Rule 12-308 NMRA for periods of less than eleven (11) days shall not apply. If the last day of a time period prescribed by this rule falls on a weekend, court holiday, or other day that the Court of Appeals is closed or unavailable for filing, the required action shall be deemed timely if taken on the next day that the Court is open and available for filing. The three (3)-day mailing period set forth in Rule 12-308 NMRA shall not apply to the time periods set forth in this rule.

C. **Initiating the appeal.** An appeal under this rule shall be initiated by filing a declaration of expedited appeal with the Court of Appeals within five (5) days after the

order appealed from is filed in the children's court. The appellant shall pay the appropriate docket fee at the time of filing, subject to the provisions of Rules 12-304 and 23-114 NMRA. The declaration of expedited appeal shall be filed by trial counsel and shall be served on the children's court, trial judge, trial counsel of record for each party other than the appellant, and court monitor or court reporter who took the record.

D. **Declaration of expedited appeal; attachments; contents.**

(1) Trial counsel for the appellant shall attach the following items to the declaration of expedited appeal:

(a) a copy of the order appealed from; and

(b) an audio recording of the custody hearing held in the children's court under Section 32A-4-18 NMSA 1978.

(2) The declaration of expedited appeal shall include the following information:

(a) the name of each party taking the appeal and the name of each party against whom the appeal is taken, provided that the provisions of Rule 12-305(G) NMRA shall be followed;

(b) a statement that the appellant is appealing from an order entered under Section 32A-4-18 NMSA 1978 that grants legal custody of a child to, or withholds it from, one or more of the parties named to the appeal;

(c) the date of the order appealed from and a statement showing that the appeal was timely filed;

(d) a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented;

(e) a statement of the issues presented by the appeal, including a statement of how they arose and how they were preserved in the children's court. The statement of the issues should be short and concise and should not be repetitious. General conclusory statements such as "the order of the children's court is not supported by the law or the facts" will not be accepted;

(f) for each issue, a list of authorities believed to support the contentions of the appellant and any contrary authorities known by the appellant and, where known, the applicable standard of review. Argument on the law shall not be included, but a short, simple statement of the proposition for which each authority is cited shall accompany the citation; and

(g) a reference to all related or prior appeals.

E. **Record on appeal.** Within one (1) day of receipt of the declaration of expedited appeal, the children's court clerk shall electronically transmit to the Clerk of the Court of Appeals a certificate stating that a copy of all pleadings, papers, and orders filed in the case have been entered into the children's court's electronic case management system. The children's court's electronic case file, together with the audio recording submitted by trial counsel under Subparagraph (D)(1)(b) of this rule, shall constitute the record on appeal, unless the Clerk of the Court of Appeals requests the children's court clerk to prepare and transmit the record proper under Rule 12-209 NMRA.

F. **Course of proceedings.**

(1) ***Initial evaluation.*** Within ten (10) days of the filing of the declaration of expedited appeal, the Court of Appeals shall do one of the following:

(a) If it appears that the appeal is without merit, affirm the order of the children's court in accordance with Subparagraph (F)(2) of this rule; or

(b) Order the parties other than the appellant to file a response within ten (10) days of the date of the order requesting the response.

(2) ***Disposition.***

(a) *Time.* The Court of Appeals shall dispose of the appeal within thirty (30) days of the date that the declaration of expedited appeal is filed with the Court, provided that the Court may extend the time period for disposition by up to fifteen (15) days when necessary to protect the health and safety of a child who is a subject of the underlying abuse and neglect proceeding.

(b) *Form.* Disposition of the appeal shall be by order of the Court of Appeals, and no written explanation of the Court's ruling shall be required. If the Court determines that a written opinion is warranted, it may issue an opinion with the order or at a later date.

(c) *Effect.* The order of the Court of Appeals shall be effective upon filing and shall constitute the mandate. An order issued under this subparagraph shall not be subject to rehearing by the Court of Appeals or to further review by the Supreme Court under Rule 12-502 NMRA.

G. **Stay.** Upon motion of a party or upon the Court of Appeals' own motion, the Court may stay the order that is the subject of the appeal for good cause shown, provided that the stay shall not preclude the continuation of the proceedings in the children's court or toll the time periods set forth in Rule 10-343 NMRA. A party to the appeal may file a response to a motion to stay within five (5) days of the filing of the motion, provided that the Court of Appeals may grant a stay prior to the filing of a response when necessary to protect the health and safety of the child. The Court shall rule on a motion to stay within ten (10) days of the date that the motion is filed.

[Adopted by Supreme Court Order No. 14-8300-004, effective for all cases filed on or after July 1, 2014; 12-206A recompiled as 12-206.1 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-207. Supersedeas and stay in civil matters.

A. **Appellate court review.** At any time after a notice of appeal has been filed and the docket fee paid, the appellate court may, upon motion and notice, review any action of, or any failure or refusal to act by, the district court dealing with supersedeas or stay, irrespective of whether a docketing statement or statement of the issues has been filed.

B. **Application or motion for relief.** Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made in the first instance in the district court. A motion for review of the district court's action may be made to the appellate court, but the motion shall show that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Notice of the motion shall be given to all parties.

C. **Filing of the motion.** A motion for review of a supersedeas or stay shall be filed with the appellate court clerk.

D. **Standard of review.** The decision of the district court shall be set aside only if it is shown that the decision:

(1) is arbitrary, capricious or reflects an abuse of discretion;

(2) is not supported by substantial evidence; or

(3) is otherwise not in accordance with law.

E. **Additional time to file supersedeas bond.** If the appellate court modifies the terms, conditions or amount of a supersedeas bond or if it determines that the district court should have allowed supersedeas and failed to do so on proper terms and conditions, it shall enter an appropriate order and it may grant additional time, not to exceed fifteen (15) days from the date of such order, within which to file in the district court a supersedeas bond complying with the standards prescribed in such order. Upon the entry of such order, the appellate court clerk shall give prompt notice thereof to the district court clerk.

[As amended, effective April 1, 1998.]

12-207.1. Expedited appeals from orders regarding assisted outpatient treatment.

A. **Scope.** This rule governs appeals from orders regarding assisted outpatient treatment under Section 43-1B-9 NMSA 1978. The provisions of Rules 12-201, 12-208, 12-210, and 12-404 NMRA shall not apply to appeals under this rule.

B. **Computation of time.** All time periods set forth in this rule shall be construed as calendar days, and the manner of computing time set forth in Rule 12-308 NMRA for periods of less than eleven (11) days shall not apply. If the last day of a time period prescribed by this rule falls on a weekend, court holiday, or other day that the appellate court is closed or unavailable for filing, the required action shall be deemed timely if taken on the next day that the appellate court is open and available for filing. The additional three (3)-day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time periods set forth in this rule. The appellate court shall not extend the time periods set forth in this rule.

C. **Initiating the appeal.**

(1) ***Motion.*** An appeal under this rule shall be initiated by filing a motion with the Clerk of the Court of Appeals within ten (10) days after the decision of the district court is filed. The motion shall specify the decision appealed from and shall include any materials deemed necessary for consideration of the matter by the appellate court, including any available audio recording or stenographic transcript of the hearing in district court. The appellant shall pay the appropriate docket fee at the time of filing, subject to Rule 12-304 NMRA.

(2) ***Notice.*** The appellant shall give notice of the filing of the motion to the district court, trial judge, trial counsel for the appellee, the qualified professional whose affidavit accompanied the petition, and the court monitor who took the record.

(3) ***No stay of proceedings.*** An appeal under this rule does not stay the proceedings in the district court.

(4) ***Title.*** The motion shall bear the title, “motion for expedited appeal regarding assisted outpatient treatment.”

(5) ***Sealing.*** All court records related to these proceedings shall be automatically sealed as provided in Rule 12-314(C)(14) NMRA.

D. **Appellate court review.**

(1) ***Initial evaluation.*** Upon receipt of the motion, the appellate court clerk shall docket the appeal and present it to the court. The appeal may be submitted to a panel of three (3) judges for decision. Within five (5) days of the filing of the motion, the appellate court shall do one of the following:

(a) if the written order of the district court does not contain findings in accordance with Sections 43-1B-3 and -8 NMSA 1978 of the Assisted Outpatient Treatment Act, issue an order of limited remand to the district court for the entry of an order containing those findings;

(b) if it appears that the appeal is without merit, affirm the decision of the district court in accordance with Subparagraph (D)(3) of this rule; or

(c) order the appellee to file a response within five (5) days of the date the order requesting the response is filed.

(2) ***Remand.*** If the appellate court remands the case to the district court for the entry of an order containing the findings required by Sections 43-1B-3 and -8 NMSA 1978 of the Assisted Outpatient Treatment Act, once the district court order is entered or the time designated in the remand order has expired, the appellant shall be responsible for filing a notice with the Court of Appeals within twenty-four (24) hours of the order being entered or the time having expired. The notice shall inform the Court of Appeals of the status of proceedings in the district court. The notice shall bear the title, "notice regarding remand in expedited appeal from assisted outpatient treatment."

(3) ***Disposition.***

(a) *Time.* The Court of Appeals shall review the appeal in an expedited manner.

(i) If the Court of Appeals has ordered the appellee to file a response, the Court shall dispose of the appeal within seven (7) days after the response is filed. If the appellee fails to file a timely response, the Court shall dispose of the appeal within five (5) days after the response was due.

(ii) If the Court of Appeals has issued an order of remand, the Court shall proceed under either Subparagraph (D)(1)(b) or (D)(1)(c) of this rule within five (5) days of the appellant's filing of the notice regarding remand in expedited appeal from assisted outpatient treatment. If the district court has failed to act within the time provided in the appellate court's order of limited remand, reversal may be appropriate.

(b) *Effect.* The appellate court's final disposition shall be effective in accordance with the following provisions:

(i) A final disposition in the Court of Appeals shall not be subject to a motion for rehearing and shall not be effective until eleven (11) days after filing the disposition with the appellate court clerk. If a petition for writ of certiorari is filed under Paragraph E of this rule, the Court of Appeals' disposition shall be automatically stayed pending the outcome of the proceeding on certiorari. If a petition for writ of certiorari is not filed within the time deadline in Paragraph E of this rule, the Court of Appeals shall immediately issue its mandate after the time deadline has expired.

(ii) A final disposition in the Supreme Court shall not be subject to a motion for rehearing, and its mandate shall issue immediately.

E. **Further review by certiorari.**

(1) A party may seek review of a final disposition of the Court of Appeals by filing a petition for writ of certiorari under Rule 12-502 NMRA no later than ten (10) days after the disposition is filed in the Court of Appeals. The time provisions in Rule 12-502(B) NMRA do not apply.

(2) The cover page of the petition shall be labeled "expedited petition for writ of certiorari." In all other respects, the form and content of a petition shall be governed by the provisions of Rule 12-502 NMRA.

(3) The petition may be submitted to a panel of three (3) justices for decision. The Supreme Court shall review the petition in an expedited manner. No response to the petition shall be filed except as directed by order of the Supreme Court.

(4) The final disposition of a petition shall be effective upon filing with the Supreme Court clerk and shall not be subject to a motion for rehearing. If the petition is denied, a copy of the Supreme Court order shall be immediately delivered to the Court of Appeals, which shall thereafter immediately issue its mandate in accordance with Rule 12-402(C) NMRA. If the petition is granted, the final decision disposing of the certiorari proceeding shall also constitute the mandate of the Supreme Court.

[Adopted by Supreme Court Order No. 20-8300-009, effective for all cases pending or filed on or after December 31, 2020.]

12-208. Docketing the appeal.

A. **Attorney responsible.** Unless otherwise ordered by the Court, trial counsel shall be responsible for preparing and filing a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court.

B. **When filed.** Within thirty (30) days after filing the notice of appeal in all appeals except those under Rules 12-203, 12-203.1, 12-204, 12-603, and 12-604 NMRA, the appellant shall file a docketing statement, if the appeal has been docketed in the Court of Appeals, or a statement of the issues, if the appeal has been docketed in the Supreme Court. But if the notice of appeal was filed before the express disposition by order or the automatic denial or the withdrawal of any timely filed post-trial or post-judgment motion listed in Subparagraphs (1) or (2) of Rule 12-201(D) NMRA, then the docketing statement or statement of the issues shall be filed within thirty (30) days after the notice of appeal becomes effective under Rule 12-201(D)(4) NMRA.

C. **Service.** The appellant shall serve a copy of the docketing statement or statement of the issues on the district court clerk and on those persons who are required to be served with a notice of appeal under Rule 12-202 NMRA.

D. **Docketing statement in the Court of Appeals; contents.** A docketing statement shall contain

(1) a statement of the nature of the proceeding;

(2) the date of the judgment or order sought to be reviewed, and a statement showing that the appeal was timely filed;

(3) a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented;

(4) a statement of the issues presented by the appeal, including a statement of how they arose and how they were preserved in the trial court, but without unnecessary detail. The statement of the issues should be short and concise and should not be repetitious. General conclusory statements such as "the judgment of the trial court is not supported by the law or the facts" will not be accepted;

(5) for each issue, a list of authorities believed to support the contentions of the appellant and any contrary authorities known by appellant and, where known, the applicable standard of review. Argument on the law shall not be included, but a short, simple statement of the proposition for which the case or text is cited shall accompany the citation;

(6) a statement specifying whether the entire proceedings were audio recorded, and if not, identifying the portion of the proceedings, other than the record proper, not audio recorded;

(7) a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any; and

(8) where applicable, a copy of the order appointing appellate counsel.

E. **Statement of the issues in the Supreme Court; contents.** A statement of the issues shall contain each issue to be presented by the appeal, including a statement of how the issue arose, how each issue was preserved in the trial court, and a statement of the court's jurisdiction, but without unnecessary detail. A statement of the issues shall contain a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any. The statement of the issues should be concise and accurate and should not be repetitious. General conclusory statements such as "the judgment of the trial court is not supported by the law or the facts" will not be accepted.

F. **Amendment.** The Court of Appeals may, on good cause shown, allow the amendment of the docketing statement. The Supreme Court may, on good cause shown, allow the amendment of a statement of the issues.

G. **Cross-appeals.** A party who files a cross-appeal in accordance with Rule 12-201(B) NMRA shall file a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with this rule within thirty (30) days after the notice of appeal is filed by the cross-appellant and shall pay a docket fee as provided in Paragraph H of this rule.

H. **Docket fee.** Except where free process has been granted on appeal, the docket fee shall accompany the filing of a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court unless the party filing the docketing statement or statement of the issues has already paid a docket fee.

I. **Response not permitted.** No response to a docketing statement or statement of the issues is allowed.

J. **Failure to serve docketing statement or statement of the issues.** On a monthly basis, the district court clerk shall forward to the appellate court a list of all criminal cases in which a notice of appeal has been on file for at least sixty (60) days but in which the district court has not been served with a copy of a docketing statement or a statement of the issues.

[As amended, effective October 1, 1995; April 1, 1998; January 1, 2000; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — In addition to minor technical amendments, Rule 12-208 NMRA was amended in 2013 to accommodate the situation that can arise under the 2013 amendments to Rule 12-201(D) NMRA, under which a notice of appeal may be filed before the disposition of certain timely filed post-trial or post-judgment motions but does not become effective until the last such motion is disposed of expressly by an order of the district court, is automatically denied, or is withdrawn. *See* Rule 12-201(D)(4) NMRA. In such a situation, the docketing statement or statement of issues is not required to be filed until thirty (30) days after the notice of appeal becomes effective, so that the appellant can frame the docketing statement or statement of issues with knowledge of the disposition of the post-trial or post-judgment motions.

[Adopted by Supreme Court Order No. 13-8300-032 , effective for all cases pending or filed on or after December 31, 2013.]

12-209. The record proper (the court file).

A. **Composition.** The papers and pleadings filed in the district court (the court file), or a copy thereof shall constitute the record proper. Depositions shall not be copied. The original, if contained in the court file, shall be filed with the appellate court and shall not be sealed except on the order of the district court or appellate court. The record proper shall be prepared in the manner provided by Rule 22-301 NMRA of the Rules Governing the Recording of Judicial Proceedings.

B. **Transmission.** On receipt of a copy of the docketing statement or statement of issues, the district court clerk shall number consecutively the pages of the record proper and send it to the appellate court so that it will be filed in the appellate court not later than fourteen (14) days from the date the docketing statement or statement of issues is received by the district court. The first page, after the title page, of the record proper shall consist of a copy of the district court clerk's docket sheet with references to the page of the record proper for each entry. The district court clerk shall send a copy of this docket sheet to all counsel of record. The district court clerk shall include a statement of the costs of the record proper. The appellant shall pay for the record proper within ten (10) days of the filing of the docketing statement or statement of issues.

C. **Correction or modification of the record proper.** If anything material to either party is omitted from the record proper by error or accident, the parties by stipulation, or the district court or the appellate court on motion or on its own initiative, may direct that the omission be corrected, and a supplemental record proper transmitted to the appellate court. The appellate court shall notify the parties when it has ordered supplemental material on its own accord.

D. **Documents filed during pendency of appeal.** Copies of all documents filed in the district court during the pendency of the appeal shall be transmitted to the appellate court for inclusion in the record proper, unless otherwise ordered by the appellate court.

E. **Return of record proper.** After final determination of the appeal, if the original of the record proper has been filed under Paragraph A of this rule, the appellate court clerk shall return the record proper to the district court clerk.

[As amended, effective July 1, 1990; January 1, 2000; July 29, 2005; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-210. Calendar assignments for direct appeals.

A. **Scope.** This rule applies to direct appeals from the district court or an administrative agency to the Court of Appeals and to the limited categories of cases where direct appeals from the district court or an administrative agency must be brought directly to the Supreme Court. An appellate court may use the calendar assignments set forth in this rule to facilitate the disposition of other types of proceedings.

B. **Calendar assignment; notice.** The appellate courts use a calendar assignment as a screening tool. After the filing of the docketing statement in the Court of Appeals or the statement of the issues in the Supreme Court, as provided in Rule 12-208 NMRA, the Court shall assign the case to either the general, summary, or legal calendar. The assignment may be made by a single judge or justice and shall be based on the record proper and either the docketing statement or the statement of the issues. The appellate court clerk shall file and promptly serve notice of the assignment on the parties and the district court clerk. The date stamped on the calendar notice is the date of service for purposes of Rule 12-308 NMRA.

C. **General calendar.** Both the Supreme Court and the Court of Appeals use the general calendar. The following provisions apply to a case assigned to the general calendar.

(1) ***Designation of transcripts, depositions, and exhibits.*** The transcript of proceedings, depositions, and exhibits shall be designated and filed as provided in Rules 12-211 and 12-212 NMRA.

(2) ***Briefing schedule.*** The filing of either the transcript of proceedings or the notice of nondesignation of transcript triggers the commencement of the briefing schedule. The appellate court clerk shall notify the parties that the briefing time has commenced. Unless otherwise ordered by the Court,

(a) the appellant shall file and serve a brief in chief within forty-five (45) days after service of notice by the appellate court clerk that all transcripts of proceedings have been filed in the appellate court, or if no transcript is filed, either because the appellant does not deem any part of the proceedings necessary for the appeal or because no proceedings were held in the district court, within forty-five (45) days after the appellant serves its notice of nondesignation of transcript under Rule 12-211(C)(1) NMRA;

(b) the appellee shall file and serve an answer brief within forty-five (45) days after service of the brief of the appellant;

(c) the appellant may file and serve a reply brief within twenty (20) days after service of the brief of the appellee; and

(d) briefs on cross-appeals shall be filed and served as provided in Rule 12-318 NMRA.

(3) ***Submission and oral argument.*** After briefing is complete, the appellate court clerk shall submit the case to the Court for decision. The Court may order oral argument at its discretion.

D. **Summary calendar.** Both the Supreme Court and the Court of Appeals use the summary calendar. The following provisions apply to a case assigned to the summary calendar.

(1) ***Notice of proposed summary disposition.*** Absent an order from the Court based on a showing of good cause, no briefs, transcript of proceedings, depositions, or exhibits shall be filed. Unless otherwise ordered, the case will be submitted for review on the record proper and either the docketing statement or the statement of the issues. After initial review by the Court, the appellate court clerk shall file and serve a notice of proposed summary disposition, stating the basis for the Court's proposed disposition of the case.

(2) ***Memoranda in opposition or support.*** The parties shall have twenty (20) days from the date of service of the notice of proposed disposition to file and serve a memorandum in opposition or a memorandum in support, setting forth reasons why the proposed disposition should or should not be made and why the case should or should not remain assigned to the summary calendar. The parties shall not argue issues that are not contained in either the docketing statement or the statement of the issues. The Court may, for good cause shown, permit the appellant to amend the docketing statement or the statement of the issues. The appellant may combine a motion to amend the docketing statement or the statement of the issues with a memorandum in opposition.

(3) ***Length limitations for summary calendar memoranda.*** Except by permission of the Court, memoranda filed under Subparagraph (2) of this paragraph shall comply with Rule 12-305 NMRA and the following length limitations.

(a) *Body of the memorandum defined.* The body of the memorandum consists of headings, footnotes, quotations, and all other text, except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(b) *Page limitation.* The body of the memorandum shall not exceed thirty-five (35) pages unless the memorandum complies with Subparagraph (3)(c) of this paragraph.

(c) *Type-volume limitation.* The body of the memorandum shall not exceed either eleven thousand (11,000) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or one thousand two hundred (1,200) lines, if the party uses a monospaced type style or typeface, such as Courier.

(d) *Statement of compliance.* If the body of the memorandum exceeds the page limitations of Subparagraph (3)(b) of this paragraph, then the memorandum must contain a statement that it complies with the limitations of Subparagraph (3)(c) of this paragraph. If the memorandum is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the memorandum as defined in Subparagraph (3)(a) of this

paragraph. If the memorandum is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the memorandum. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

(4) ***Submission without oral argument.*** After reviewing any memoranda in support of or in opposition to the proposed summary disposition, the Court will reassign the case to the general or legal calendar and notify the parties of the new calendar assignment, issue another notice of proposed summary disposition, or proceed to decide the case summarily. The Court's disposition of cases on the summary calendar may be in any form permitted under Rule 12-405 NMRA. No oral argument shall be heard on cases assigned to the summary calendar.

E. **Legal calendar.** The Court of Appeals uses the legal calendar. The following provisions apply to a case assigned to the legal calendar.

(1) ***Legal issues.*** No transcript of proceedings, depositions, or exhibits shall be filed.

The case will be submitted to the Court and decided on legal issues.

(2) ***Briefing schedule.*** The parties shall submit briefs prior to decision on the legal calendar, and except for cases assigned to the expedited bench decision program in the Court of Appeals under Paragraph F of this rule, briefing time shall commence from the date of service of the appellate court clerk's notice of the calendar assignment. Unless otherwise ordered by the Court,

(a) the appellant shall file and serve a brief in chief within thirty (30) days;

(b) the appellee shall file and serve an answer brief within thirty (30) days after service of the brief of the appellant;

(c) the appellant may file and serve a reply brief within twenty (20) days after service of the brief of the appellee; and

(d) briefs on cross-appeals shall be filed and served as provided in Rule 12-318 NMRA.

(3) ***Submission and oral argument.*** After briefing is complete, the Court of Appeals clerk shall submit the case to the Court for decision. No oral argument shall be allowed on cases assigned to the legal calendar unless otherwise ordered by the Court of Appeals.

F. **Expedited bench decision program in the Court of Appeals.** The Court of Appeals may assign a case to its expedited bench decision program, which is governed by a Court of Appeals miscellaneous order. The most recent version of the order may

be viewed on the Court of Appeals website, at https://www.nmcourts.gov/Court-of-Appeals/.

[As amended, effective July 1, 1990; August 1, 1992; January 1, 1997; January 1, 2000; September 15, 2000; as amended by Supreme Court Order No. 10-8300-045, effective February 9, 2011; by Supreme Court Order No. 12-8300-035, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 17-8300-015, effective for all cases pending or filed on or after December 31, 2017.]

Committee commentary. — The 2017 amendments to this rule clarify that the calendaring assignments covered by this rule are generally used only in direct appeals from either the district court or an administrative agency to the appellate courts, including the majority of the cases heard by the Court of Appeals. The majority of cases that reach the Supreme Court are governed by the rules governing writs, including matters invoking the original jurisdiction of the Supreme Court, *see* Rule 12-504 NMRA, and matters seeking discretionary review of decisions of either the district court, *see* Rule 12-501 NMRA, or the Court of Appeals, *see* Rule 12-502 NMRA. The 2017 amendments also eliminated the legal calendar for the Supreme Court, where it is no longer utilized.

The summary calendar described in Paragraph D of this rule is used primarily by the Court of Appeals but may be used occasionally by the Supreme Court.

The expedited bench decision program described in Paragraph F of this rule is used only by the Court of Appeals. Although the Supreme Court does not use an expedited process to dispose of direct appeals, the Supreme Court may expedite the briefing and oral argument schedule for certain categories of time-sensitive cases in which the Court has granted a petition for writ of certiorari, as described in Rule 12-502(M) NMRA.

[Adopted by Supreme Court Order No. 17-8300-015, effective for all cases pending or filed on or after December 31, 2017.]

12-211. Transcript of proceedings.

A. **Transcript of proceedings.** As used in these rules:

(1) "transcript of proceedings" includes audio recordings of the proceedings and stenographic transcripts of the proceedings; and

(2) "audio recording" includes any tape, digital or other electronic recording of the proceedings. Audio recordings must comply with standards established by the Supreme Court.

B. **Audio recorded proceedings.**

(1) Where the transcript of proceedings is an audio recording, within fifteen (15) days after the receipt of the general calendar assignment, the district court clerk shall prepare and send the original and two (2) duplicates of the recording and index log to the appellate court and shall prepare and retain one (1) duplicate. Unless otherwise ordered by the appellate court, upon motion by the appellant, the transcript shall include the entire proceedings, including pretrial, trial and post-trial proceedings. The district court clerk shall include a statement of the cost of the audio recordings. After final determination of the appeal, the appellate court shall preserve the original audio recording for storage in accordance with approved retention schedules as maintained by the office of the appellate court clerk.

(2) The appellant shall make satisfactory arrangements with the district court clerk for the cost of the duplicate copies of the audio recording. Proof that satisfactory arrangements have been made shall be filed in the district court within five (5) days of service of the general calendar assignment. Such proof of satisfactory arrangements shall be by certificate of the district court clerk.

C. **Proceedings not audio recorded.**

(1) Where the proceedings are not audio recorded, and except for those cases described in subparagraph (5) of this paragraph, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the district court and serve on the appellate court and the other parties to the appeal a description of the parts of the proceedings which the appellant intends to include in the transcript. If the appellant does not intend to designate any part of the proceedings for inclusion in the transcript, either because the appellant does not deem any part of the proceedings necessary for the appeal or because no proceedings were held in the district court, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the appellate court and serve on the other parties to the appeal a notice that a transcript will not be designated. The appellant shall designate all portions of the proceedings material to the consideration of the issues presented in the docketing statement or statement of the issues, but shall designate only those portions of the proceedings that have some relationship to the issues on appeal. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation or the notice of nondesignation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.

(2) Each party designating a portion of the stenographic transcript of proceedings shall make satisfactory arrangements with the court reporter for payment of the cost of that portion of the transcript. Proof that satisfactory arrangements have been made shall be filed with the district court clerk within fifteen (15) days of the designation. Such proof of satisfactory arrangements shall be by certificate of the reporter.

(3) Except for computer-aided transcripts, within sixty (60) days after the filing of the last certificate of satisfactory arrangements, the court reporter shall file with the district court three (3) copies of the designated transcript of proceedings with a certificate of the court reporter that such copies are true and correct copies of the transcript of proceedings. If the transcript is a computer-aided transcript, the transcript shall be filed within thirty (30) days after the filing of the last certificate of satisfactory arrangements. The transcript shall be in the form required by Rule 12-305 NMRA of these rules and Rule 22-302 of the Rules Governing the Recording of Judicial Proceedings. The transcript of proceedings shall include a statement of the cost of the transcript. The district court clerk shall serve notice on all parties of the filing of the transcript.

(4) Within fifteen (15) days after service of the notice of filing of the transcript of proceedings, any party may file with the district court clerk, and serve on the opposing party, objections to the stenographic transcript. A hearing on the objections shall be held by the district court within fifteen (15) days after the filing of the objections. At the hearing the district court shall resolve the objections and, if necessary, order appropriate corrections to be made. If no objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court when the time for filing objections has expired. If objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court within ten (10) days after the hearing on the objections.

(5) If an appeal is taken from the district court in which a sentence of death or life imprisonment has been imposed and the proceedings are not audio recorded, the parties shall proceed in accordance with this rule, except that the designation of proceedings shall be filed at the same time as the notice of appeal. The proceedings beginning with the opening statement and ending with the return of the verdict on the guilt phase shall be deemed to be designated in every case. The appellant shall designate any other portions of the proceedings material to the consideration of the issues to be raised on appeal, but shall designate only those portions of the proceedings that have some relationship to those issues. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.

D. **Disagreements over cost.** In case of disagreement over the cost of a stenographic transcript or duplicates of an audio recording, a party may file with the district court a motion for determination by the district court of the amount of compensation to be paid. The district court may order the payment or collateral to be deposited in the registry of the district court to secure payment of the cost.

E. **Extensions of time.** Each appellant shall be responsible for the timely preparation and filing of the transcript of proceedings. Any extension of time for filing a

transcript of proceedings may be granted only by the appellate court. Any motion for extension of time must be supported by an affidavit from the responsible court reporter, court monitor, district court clerk or other party whose duty it is to prepare the transcript of proceedings or to duplicate the master audio recording unless this affidavit is waived by the appellate court for good cause shown. The affidavit shall set forth the pending cases in which the reporter or court monitor has transcripts ordered, the estimated dates on which such transcripts will be completed and the reasons an extension is necessary in this case. If the transcript is computer-aided, the motion shall also be accompanied by a written statement signed by the managing court reporter stating the reasons why the managing court reporter supports or opposes the requested extension.

F. **Failure to file transcript of proceeding.** If the appellant shall fail to cause the transcript of proceedings to be filed in the appellate court within the time limit prescribed by this rule, the district court or the appellate court, upon motion, shall make such orders as will prevent such default from prejudicing any other party's appeal in the same case.

G. **Filing in appellate court.** Upon receipt of the transcript of proceedings, the appellate court clerk shall serve notice of the filing on all parties and the district court clerk.

H. **Unavailability or inaudibility of transcript; statement of proceedings.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript of proceedings is unavailable or inaudible, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. If no court reporter or court monitor was present at the proceedings, the statement shall be prepared and filed in the district court within fifteen (15) days after service of the notice of a general calendar assignment. If a court monitor was present at the proceedings, but the audio recorded transcript is totally or partially unavailable or inaudible, the statement shall be filed in the district court within fifteen (15) days after the filing of an audio recorded transcript of proceedings in the appellate court or within thirty (30) days after service of the notice of a general calendar assignment, whichever is earlier. If a court reporter was present at the proceedings, but the stenographic transcript is totally or partially unavailable, the statement shall be filed in the district court within fifteen (15) days after the time the stenographic transcript of proceedings is due to be filed in the district court. The statement shall be served on the appellee, who may file objections or propose amendments thereto within fifteen (15) days after service. If there are any objections or proposed amendments thereto, the objections or amendments shall be submitted to the district court for settlement and approval. Within fifteen (15) days after filing of the objections or amendments, the district court shall settle and approve the transcript of proceedings. Upon approval, the district court clerk shall include the transcript of proceedings in the record proper and immediately transmit it to the appellate court. The appellate court may extend the time limits set forth in this paragraph for good cause shown.

I. **Stipulated transcript of proceedings.** The parties may agree upon a statement of facts and proceedings and stipulate that they deem the statement sufficient for purposes of review, and the statement shall be filed as a transcript of proceedings within sixty (60) days of service of the general calendar assignment, unless otherwise ordered by the appellate court.

J. **Separate appeals.** When separate appeals are taken by more than one party, only one transcript of proceedings shall be required.

K. **Supplemental transcript of proceedings.** After the transcript of proceedings has been filed, the appellate court may, upon its own motion or upon motion of either party and for good cause shown, order or allow a supplemental transcript of proceedings. The appellate court shall set the time for filing the supplemental transcript of proceedings in the appellate court.

L. **Designations in cases involving appointed appellate counsel.** In cases where counsel other than trial counsel is appointed to represent a party on appeal, trial counsel shall be responsible for designating the record on appeal and for performing all other duties of counsel in this rule.

[As amended, effective July 1, 1990; December 1, 1993; January 1, 1997; April 1, 1998; September 15, 2000; March 15, 2005; as amended by Supreme Court Order No. 06-8300-014, effective July 15, 2006; by Supreme Court Order No. 12-8300-035, effective for all cases filed or pending on or after January 7, 2013.]

12-212. Exhibits and depositions; general calendar cases.

A. **Depositions and documentary exhibits.** A designation of depositions and exhibits that are documents, maps, charts, photographs, recordings, videotapes or the like, shall be filed by the appellant within fifteen (15) days after service of the general calendar assignment. If the appellant does not intend to designate any such depositions or exhibits for inclusion in the record on appeal, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the appellate court and serve on the other parties to the appeal a notice that no depositions or exhibits will be designated. Within fifteen (15) days of service of appellant's designation or notice of non-designation, appellee may designate further depositions and documentary exhibits. The designations shall be filed with the district court clerk and served on the appellate court and the other parties to the appeal. The district court clerk shall send to the appellate court all the designated depositions and documentary exhibits with the transcript of proceedings.

B. **Non-documentary exhibits.** The appellate court may designate non-documentary exhibits upon the request of either party made on or before the time for filing designations of documentary exhibits. The request shall be filed in the appellate court and shall concisely set forth the reason why each exhibit is necessary for the appeal. The appellate court shall determine which exhibits shall be included and shall

notify the parties and the district court clerk. At the time the transcript of proceedings is sent to the appellate court, the district court clerk shall also send all non-documentary exhibits designated by the appellate court.

C. **Supplemental exhibits.** The appellate court may, upon its own motion or upon motion of any party and for good cause shown, order or allow additional exhibits to be forwarded to the appellate court.

D. **Return of exhibits.** After final determination of the appeal, the appellate court clerk shall cause the exhibits to be returned to the district court.

[As amended, effective July 1, 1990; September 1, 1990; January 1, 1997; as amended by Supreme Court Order No. 12-8300-017, effective for all cases pending or filed on or after August 3, 2012.]

12-213. Recompiled.

12-214. Recompiled.

12-215. Recompiled.

12-216. Recompiled.

ARTICLE 3
General Provisions

12-301. Parties and substitution.

A. **Death of a party.** If a party dies after notice of appeal is filed or while a proceeding is otherwise pending, the personal representative of the deceased party may be substituted as a party on motion filed in the appellate court by the representative or by any party. The motion of a party shall be served upon the representative as provided in Rule 12-307 NMRA. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate court directs. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. If a party entitled to appeal dies before notice of appeal, the notice may be filed by the party's personal representative or if none, by the party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this rule.

B. **Substitution for other causes.** If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure provided in Paragraph A of this rule.

C. **Public officers; death or separation from office.**

(1) When a public officer is a party to an appeal or other proceeding in the appellate court in the officer's official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who is a party to an appeal or other proceeding in the officer's official capacity may be described by official title rather than by name, unless the court otherwise directs.

[As amended, effective September 1, 1991.]

12-302. Appearance, withdrawal, or substitution of attorneys; changes of address or telephone number.

A. **Signatures.** The original of each brief, motion, or other paper filed shall bear the signature of at least one of the counsel filing it, or if a party is proceeding pro se, the signature of the party. A “signature” means an original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

B. **Appearance.** An attorney or firm shown as participating in the filing of any brief, motion, or other paper shall, unless otherwise indicated, be deemed to have appeared in the cause. If an attorney’s appearance is limited under Rule 16-102(C) NMRA, the limitation shall be specified on the cover page and in the signature block of each paper filed by the attorney under the limited appearance, and the cover page and signature block of the paper shall include an address where service may be made on the client.

C. **Motion to withdraw.**

(1) No attorney or firm that has appeared without limitation in a cause may withdraw from it without filing a motion to withdraw and obtaining an order from the appellate court. The appellate court may condition withdrawal upon substitution of other counsel, the filing by the attorney’s client of an address at which service may be made on the client, or other requirements as ordered by the appellate court. Proof of service by the withdrawing attorney shall be made on all other parties. Attorneys whose appearances are limited as set forth in Paragraph B of this rule need not obtain consent of the appellate court before withdrawing or otherwise ceasing to act in the matter,

except if the purpose of the limited representation is not completed. An attorney from a firm or agency may file a withdrawal of appearance from a particular case by notice if at least one attorney of the firm or agency remains in the case.

(2) Where the Court of Appeals appoints an attorney in a proceeding arising from a petition alleging abuse or neglect, from a motion to terminate parental rights, or from a custody hearing, the attorney may file a motion to withdraw with the Court of Appeals within (15) fifteen days after the Court of Appeals issues a decision fully disposing of the issues on appeal. If an attorney files a motion to withdraw with the Court of Appeals as provided herein, then the attorney must notify the client of the filing of the motion to withdraw and inform the client when a petition for a writ of certiorari may be filed with the Supreme Court under Rule 12-502(B) NMRA. An order disposing of the motion to withdraw is the final action by the Court of Appeals for purposes of Rule 12-502(B) NMRA.

D. **Notice of change of address or telephone number.** Counsel for a party, or any party proceeding pro se, shall promptly give notice of any change of mailing address or telephone number by filing a notice with the clerk of the court in each pending cause in which counsel or the party is appearing and by serving the notice upon all other counsel and pro se parties.

E. **Nonadmitted counsel in civil cases.**

(1) Counsel not admitted to practice law in New Mexico, but who are admitted to practice law and in good standing in another jurisdiction, may, upon compliance with Rule 24-106 NMRA, sign briefs, motions, and other papers, and may orally argue before the appellate court, only in association with counsel admitted to practice law and in good standing in New Mexico. New Mexico counsel shall sign the first paper filed in the appellate court, and New Mexico counsel's name and address shall appear on all subsequent papers filed. Unless excused by the appellate court, New Mexico counsel shall also be present in person in all proceedings.

(2) Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another jurisdiction and that they have complied with Rule 24-106 NMRA. Such affidavit shall be filed with the first paper filed in the appellate court, or as soon as practicable after a party decides on representation by nonadmitted counsel. If nonadmitted counsel has already filed an affidavit in compliance with Rule 24-106 NMRA in a lower court, then a copy of that affidavit shall be filed in the appellate court. Upon filing of the affidavit, nonadmitted counsel will be deemed admitted subject to the other terms and conditions of this paragraph. Proof of service of the affidavit shall be made as provided in Rule 12-307 NMRA. A separate motion and order are not required for the participation of nonadmitted counsel.

(3) For good cause shown, the appellate court may revoke the privilege of any nonadmitted counsel to appear in any proceeding.

(4) New Mexico residents not admitted to practice law in this state may not appear as counsel, except pro se.

F. **Nonadmitted counsel in criminal cases.**

(1) Counsel not admitted to practice law in New Mexico but who are admitted to practice law and in good standing in another jurisdiction may, upon compliance with Rule 5-108 NMRA, sign briefs, motions, and other papers, and may orally argue before the appellate court, only in association with counsel admitted to practice law and in good standing in New Mexico. New Mexico counsel shall sign the first paper filed in the appellate court, and New Mexico counsel's name and address shall appear on all subsequent papers filed. Unless excused by the appellate court, New Mexico counsel shall also be present in person in all proceedings.

(2) Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another jurisdiction and that they have complied with Rule 5-108 NMRA. Such affidavit shall be filed with the first paper filed in the appellate court, or as soon as practicable after a party decides on representation by nonadmitted counsel. If nonadmitted counsel has already filed an affidavit in compliance with Rule 5-108 NMRA in a lower court, then a copy of that affidavit shall be filed in the appellate court. Upon filing of the affidavit, nonadmitted counsel will be deemed admitted subject to the other terms and conditions of this paragraph. Proof of service of the affidavit shall be made as provided in Rule 12-307 NMRA. A separate motion and order are not required for the participation of nonadmitted counsel, unless nonadmitted counsel has not previously complied with Rule 5-108 NMRA.

(3) For good cause shown, the appellate court may revoke the privilege of any nonadmitted counsel to appear in any proceeding.

(4) New Mexico residents not admitted to practice law in this state may not appear as counsel, except pro se.

G. **Capital appellate counsel.** The defendant in any appeal in a case in which a sentence of death may be imposed must be represented by at least two (2) attorneys, one (1) of whom meets the minimum standards set forth in this paragraph for first-chair capital appellate defense attorneys and another who meets the minimum standards set forth in this paragraph for first-chair or second-chair capital appellate defense attorneys.

(1) The minimum standards for first-chair capital appellate defense attorneys include the following:

(a) membership in good standing of any state bar;

(b) a minimum of five (5) years active trial or appellate experience in criminal cases as a licensed attorney immediately preceding appointment;

(c) prior experience in the last three (3) years as lead counsel or co-counsel in the appeal of at least six (6) felony jury convictions in federal or state court, at least two (2) of which were murder convictions; and

(d) completion within two (2) years prior to entry of appearance of at least twelve (12) hours of training in capital representation in a program approved by the Law Offices of the Public Defender and qualified for New Mexico MCLE credit.

(2) The minimum standards for second-chair capital appellate defense attorneys include the following:

(a) membership in good standing of any state bar;

(b) a minimum of three (3) years active trial or appellate experience in criminal cases as a licensed attorney immediately preceding appointment;

(c) prior experience in the last eighteen (18) months as lead counsel in the appeal of at least four (4) felony convictions in state or federal court; and

(d) completion within two (2) years prior to entry of appearance of at least twelve (12) hours of training in capital representation in a program approved by the Law Offices of the Public Defender and qualified for New Mexico MCLE credit. This requirement may be met within one (1) year after appointment as second-chair counsel in a death penalty appeal.

The district court shall require any attorney who enters an appearance to show that the attorney is a qualified capital appellate defense attorney in accordance with the requirements of this paragraph. If the district court determines that the defendant is not represented by two (2) qualified capital appellate defense attorneys, at least one (1) of whom is qualified to act as first chair, the district court, in the case of indigent defendants, shall order the Law Offices of the Public Defender to appoint one (1) or more qualified attorneys to ensure that the defendant is represented as required by this paragraph.

[As amended, effective September 1, 1993; January 1, 1997; May 1, 2003; January 20, 2005; as amended by Supreme Court Order No. 05-8300-018, effective October 11, 2005; by Supreme Court Order No. 07-8300-024, effective November 1, 2007; by Supreme Court Order No. 08-8300-016, effective June 20, 2008; by Supreme Court Order No. 09-8300-010, effective May 6, 2009; by Supreme Court Order No. 11-8300-017, effective May 16, 2011; by Supreme Court Order No. 12-8300-025, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. S-1-RCR-2024-00110, effective for all cases pending or filed on or after December 31, 2024.]

Committee commentary. — New Mexico has enacted an Electronic Authentication Documentation Act which provides for the Secretary of State to register electronic signatures using the public key technology. *See* NMSA 1978, § 14-15-4.

In 2016, Paragraph C of this rule was amended, and former Paragraph D was omitted, to more accurately reflect the procedure for attorney withdrawal or substitution in cases before the appellate courts. The 2016 revisions reflect that an individual attorney, law firm, or governmental agency may withdraw from a case only upon motion and order from the appellate court, except that an attorney of a law firm or governmental agency may withdraw from a case by filing a notice with the appellate court if at least one other attorney from the firm or agency remains in the case. When a successor attorney from a law firm or governmental agency enters an appearance in a case, the original attorney retains discretion either to stay in the case or to file a notice of withdrawal.

The 2024 amendments to Rule 12-302 NMRA allow motions to withdraw by appellate counsel whom the Court of Appeals appoints in proceedings involving appeals from adjudications of abuse or neglect or the termination of parental rights. After the Court of Appeals issues a decision fully disposing of the issues on appeal, court-appointed counsel may file a motion to withdraw and, after filing, must inform their client both of the motion to withdraw and by when a petition for a writ of certiorari may be filed with the Supreme Court. Under the 2024 amendments to Rule 12-302 NMRA, the filing of a motion to withdraw extends the time by which a party may file a petition for a writ of certiorari. The final action of the Court of Appeals for purposes of seeking certiorari review under Rule 12-502(B) NMRA is the order disposing of the motion to withdraw. Accordingly, the withdrawal of court-appointed counsel in appellate proceedings involving adjudications of abuse or neglect or the termination of parental rights does not decrease the time ordinarily allowed to a party seeking certiorari review of a judgment by the Court of Appeals.

[As amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. S-1-RCR-2024-00110, effective for all cases pending or filed on or after December 31, 2024.]

12-303. Appointment of counsel.

A. **Criminal cases and delinquency proceedings.**

(1) ***Appeal by the defendant or respondent.*** Unless trial counsel intends to continue the representation or appellate counsel has been retained, trial counsel for the defendant in a criminal case or the respondent in a children's court delinquency proceeding shall, before filing of the notice of appeal, seek a district court order appointing the appellate division of the public defender department. If the district court orders the appointment, and the public defender appellate division is unable to represent the defendant or respondent on appeal or is unable to arrange for contract representation, the district court shall appoint appellate counsel. Before making an

appointment, the district court, in its discretion, may hold a hearing to determine the eligibility for appointed counsel.

(2) ***Appeal by the state.*** If the notice of appeal has been filed by the state, trial counsel for the defendant in a criminal case or the respondent in a delinquency proceeding shall be responsible for representing the defendant or respondent on appeal unless, within five (5) days after service of the notice of appeal, the district court orders the appointment of the appellate division of the public defender department.

(3) ***Filing and mailing of order.*** If the district court appoints the appellate division of the public defender department or other counsel to represent on appeal a defendant in a criminal case or a respondent in a delinquency proceeding, the district court shall file the order appointing counsel and promptly submit a copy to the appellate court, appellate division of the office of the attorney general, and appellate division of the public defender department.

(4) ***Review by appellate court.*** Within ten (10) days after entry of a district court order denying the appointment of counsel, the defendant in a criminal case or the respondent in a delinquency proceeding may file in the appellate court a motion to review the district court order. The motion shall describe any relevant testimony presented to the district court and shall be accompanied by a copy of the motion filed in the district court, along with a copy of any relevant documentary evidence presented to the district court, and a copy of the order denying the motion. Review under this paragraph shall proceed in accordance with the procedure set forth in Rule 12-204(B)-(C) NMRA except that the public defender shall also be entitled to file a response.

B. **Abuse and neglect proceedings.** Unless trial counsel intends to continue the representation or appellate counsel has been retained to represent the respondent in an abuse and neglect proceeding, including a proceeding to terminate parental rights, trial counsel shall be responsible for seeking an order from the Court of Appeals appointing appellate counsel.

[As amended by Supreme Court Order No. 14-8300-004, effective for all cases filed on or after July 1, 2014.]

Committee commentary. — This rule addresses appointment of appellate counsel in criminal cases and in children's court cases governed by the Children's Court Rules. *See* Rule 10-101(A)(1) NMRA. The committee revised this rule in 2014 to clarify that the Court of Appeals, not the district court, appoints appellate counsel in abuse and neglect proceedings, including proceedings to terminate parental rights.

In the unusual circumstance of an appeal from proceedings under the Families in Need of Court-Ordered Services Act, NMSA 1978, §§ 32A-3B-1 to -22, the appointment of appellate counsel would be governed by Paragraph B of this rule. *See* Rule 10-101(A)(6) NMRA ("[U]nless otherwise provided, the rules and forms governing abuse

and neglect proceedings shall apply to proceedings pursuant to the Families in Need of Court-Ordered Services Act.").

[Adopted by Supreme Court Order No. 14-8300-004, effective for all cases filed on or after July 1, 2014.]

12-304. Free process on appeal.

A. **Workers' compensation cases.** The provisions of the Workers' Compensation Act shall govern fees and other costs in workers' compensation cases.

B. **Criminal and children's court cases.**

(1) A defendant in a criminal case or a respondent in a children's court case who is represented by the public defender department may proceed on appeal without the payment of docket or other fees.

(2) A defendant in a criminal case, a respondent in a children's court case or any other person who has been determined to be entitled to free process in the trial court may proceed on appeal without a further determination of indigency except as provided in Rule 12-303 NMRA. A copy of the district court order determining indigency shall be filed in the Court of Appeals with the docketing statement and in the Supreme Court with the statement of the issues.

C. **Civil cases.** Rule 23-114 NMRA shall govern free process on appeal in civil cases.

D. **Appeals by the state.** The state, or a political subdivision of the state, may proceed on appeal without the payment of the docket fee.

[As amended, effective April 1, 1998; as amended by Supreme Court Order No. 07-8300-042, effective February 25, 2008.]

12-305. Form of papers prepared by parties.

A. **Scope.** This rule applies to briefs, motions, applications, petitions, and all other papers, except exhibits, prepared by parties or their attorneys and filed in the appellate court.

B. **General requirements.** All papers filed by a represented party or an attorney shall be

(1) clearly legible;

(2) computer-generated or typewritten on good quality white paper, eight and one-half by eleven (8 1/2 x 11) inches in size, with left, right, top, and bottom margins of one (1) inch;

(3) paginated with consecutive page numbers at the bottom;

(4) stapled at the upper left-hand corner; and

(5) signed in accordance with Rule 12-302(A) NMRA, with the signature block containing the name, address, and telephone number of counsel filing the paper.

C. **Handwritten papers.** Self-represented, non-attorney litigants may file handwritten papers. The submission of handwritten papers is discouraged. Handwritten papers shall be

(1) clearly legible;

(2) written in black or blue ink on white paper, eight and one-half by eleven (8 1/2 x 11) inches in size, with no more than thirty (30) lines per page and fifteen (15) words per line, and left, right, top, and bottom margins of one (1) inch;

(3) paginated with consecutive page numbers at the bottom;

(4) signed in accordance with Rule 12-302(A) NMRA, with the signature block containing the name, address, and telephone number of the party filing the paper.

D. **Minimum size for type style or typeface.** Except for handwritten papers, all papers shall be computer-generated or typed using either a proportionally-spaced or monospaced type style or typeface.

(1) A proportionally-spaced type style or typeface, such as Times New Roman, must include serifs and must be fourteen (14) point or larger. The cover page of a brief, docketing statement, or statement of issues may be eleven (11) point or larger if necessary to fit all information required by Paragraphs F and G of this rule on a single page. A proportionally-spaced type style or typeface varies the horizontal spacing of each character based on its relative shape.

(2) A monospaced type style or typeface, such as Courier, may not contain more than ten (10) characters per inch. A monospaced type style or typeface allots the same amount of horizontal space for each character, whatever the relative shape of the characters.

E. **Spacing.** All papers shall be double-spaced, except that information required by Paragraph F of this rule, cover page, table of contents, table of authorities, headings, subheadings, footnotes, quotations, signature blocks, and addresses contained in a certificate of service may be single-spaced.

F. **Caption.** The front page of all papers shall show

(1) the name of the appellate court;

(2) the parties to the appeal and their status below and on appeal, with the plaintiff, petitioner, or party initiating the proceeding in the trial court or administrative body listed first (e.g., John Doe, Plaintiff-Appellee v. Richard Roe, Defendant-Appellant), or, for extraordinary writ proceedings filed under Rule 12-504 NMRA, the party or parties seeking the writ, the respondent(s), and the name(s) of the real parties in interest, if any, with the party seeking the writ listed first;

(3) the docket number in the appellate court if one has been assigned; and

(4) the title of the paper being filed.

G. **Cover page.** The front cover of a docketing statement, statement of the issues, or brief shall also show

(1) the county or administrative body in which the case was filed or tried, except for briefs filed in the Supreme Court under Rule 12-502 NMRA;

(2) the name of the trial judge or administrative officer, except for briefs filed in the Supreme Court under Rule 12-502 NMRA;

(3) the name, mailing address, and telephone number of counsel filing the document, or, if a party is not represented by counsel, the name, address, and telephone number of the party; and

(4) if the party requests oral argument under Rule 12-319(B)(1) NMRA, a statement on the front cover of the party's brief that oral argument is requested.

H. **Captions in appeals under the Children's Code.** In appeals concerning children involved in litigation under the provisions of the Children's Code, the captioning shall conform to the following practice:

(1) in criminal appeals involving a child adjudicated as a delinquent offender under Article 2 of the Children's Code, the caption should identify the child by the child's first name and the first initial of the child's last name, and the status of the child on appeal should be listed as "Child-Appellant" or "Child-Appellee," as the case may be;

(2) in criminal appeals involving a child adjudicated as a serious youthful offender or youthful offender and sentenced as an adult under Article 2 of the Children's Code, the caption should identify the child by the child's full first and last name, and the status of the child on appeal should be listed as "Defendant-Appellant" or "Defendant-Appellee," as the case may be;

(3) in civil appeals involving a child who is the subject of an abuse and neglect proceeding or a termination of parental rights proceeding under Article 4 of the Children's Code, the caption should identify the child and the child's parents by their first names and the first initial of their last names, and should name any guardian ad litem;

(4) in all other appeals involving a child under the provisions of the Children's Code, the caption should identify the child, and the child's parents when necessary, by their first names and the first initial of their last names, and should name any guardian ad litem.

[As amended, effective July 1, 1990; August 1, 1992; September 1, 1995; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 05-8300-018, effective October 11, 2005; by Supreme Court Order No. 07-8300-024, effective November 1, 2007; as amended by Supreme Court Order No. 09-8300-014, effective May 25, 2009; as amended by Supreme Court Order No. 10-8300-001, effective April 12, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — In an effort to provide additional options for producing more readable documents, the 2007 amendments to this rule move the formatting requirements for transcripts and records proper to new Rule 12-305.1 NMRA and otherwise restate the formatting requirements for all other papers filed with the appellate courts. Of particular note are the new minimum type style or typeface requirements set forth in Paragraph D of this rule. For example, except for handwritten papers, all papers filed with the Court must now use a proportionally-spaced or monospaced type style or typeface.

A proportionally-spaced type style or typeface allots a different amount of space to each letter based on the particular size and shape of that letter. Proportional fonts use less space and, therefore, less paper to print. A commonly used proportionally-spaced type style is Times New Roman. A monospaced type style or typeface look like typewritten text because each letter uses the same amount of space on the page regardless of its size or shape. A commonly used monospaced type style is Courier.

If a proportionally-spaced type style or typeface is used, it must include serifs and it must be fourteen (14) point or larger. If a monospaced type style or typeface is used, it may not contain more than ten (10) characters per inch. If the practitioner is not sure whether a particular type style or typeface is proportionally-spaced or monospaced, the rule provides guidance by stating that Times New Roman is a proportionally-spaced type style and Courier is a monospaced type style. The selection of a particular proportionally-spaced or monospaced type style is a matter of personal preference, but the choice must comply with the requirements of Paragraph D of this rule. Moreover, the choice will determine the applicable minimum type-volume limitations set forth in these rules if the practitioner chooses to exceed the traditional page limitations set forth in these rules. *See* Rule 12-318(F)(3) NMRA and Rule 12-502(D)(3) NMRA.

[Adopted by Supreme Court Order No. 07-8300-024, effective November 1, 2007; as amended by Supreme Court Order No. 10-8300-001, effective April 12, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-305.1. Form of transcripts of proceedings and records proper.

A. **Preparation of transcripts of proceedings and records proper.** Copies of stenographic transcripts of proceedings shall be reproduced from the original transcript by any duplicating or copying process that produces a clear black image on white paper or shall be typed or printed on white paper. The format of transcripts of proceedings shall comply with the provisions of Paragraphs B and C of this rule. Transcripts and records proper shall be bound and paginated with consecutive page numbers at the bottom.

B. **Cover page.** The front cover shall show:

(1) the name of the appellate court;

(2) the parties to the appeal and their status below and on appeal, with the plaintiff, petitioner or party initiating the proceeding in the trial court or administrative body listed first (e.g., John Doe, Plaintiff-Appellee v. Richard Roe, Defendant-Appellant);

(3) the county or administrative body in which the case was filed or tried;

(4) the name of the trial judge or administrative officer;

(5) the title of the paper being filed; and

(6) the name, mailing address and telephone number of all counsel or, if a party is not represented by counsel, the name, mailing address and telephone number of the party.

C. **Caption in appeals under the Children's Code.** In appeals concerning children involved in litigation under the provisions of the Children's Code, the captioning shall conform to the following practice:

(1) in criminal appeals involving a child adjudicated as a delinquent offender under Article 2 of the Children's Code, the caption should identify the child by the child's first name and the first initial of the child's last name, and the status of the child on appeal should be listed as "Child-Appellant" or "Child-Appellee", as the case may be;

(2) in criminal appeals involving a child adjudicated as a serious youthful offender or youthful offender and sentenced as an adult under Article 2 of the Children's Code, the caption should identify the child by the child's full first and last name, and the

status of the child on appeal should be listed as "Defendant-Appellant" or "Defendant-Appellee", as the case may be;

(3) in civil appeals involving a child who is the subject of an abuse and neglect proceeding or a termination of parental rights proceeding under Article 4 of the Children's Code, the caption should identify the child and the child's parents by their first names and the first initial of their last names, and should name any guardian ad litem;

(4) in all other appeals involving a child under the provisions of the Children's Code, the caption should identify the child, and the child's parents when necessary, by their first names and the first initial of their last names, and should name any guardian ad litem.

[Approved by Supreme Court Order No. 07-8300-024 effective November 1, 2007.]

12-306. Number of copies of papers.

A. **Scope of rule.** This rule governs the number of copies of briefs, motions and other papers to be filed in the appellate court unless otherwise provided by these rules or by the appellate court.

B. **Copy; definition.** As used in this rule, "copy" includes the original.

C. **Papers filed in the Supreme Court.** The following numbers of copies of papers shall be filed in the Supreme Court:

(1) notices of appeal in cases in which the notice of appeal is originally filed in the Supreme Court:	one (1);
(2) statement of the issues:	three (3);
(3) motions for extension of time or page limits and responses thereto:	one (1);
(4) motions for leave to file amicus briefs and responses thereto:	one (1);
(5) briefs in chief, answer briefs, reply briefs, amicus briefs and correspondence and supplemental authorities submitted pursuant to Subparagraph (2) of Paragraph (D) of Rule 12-213 NMRA:	seven (7);
(6) motions to amend papers and responses thereto:	one (1);
(7) motions for rehearing and briefs in support thereof and responses thereto:	six (6);
(8) petitions for writs of certiorari and responses thereto:	seven (7);
(9) all other motions, responses and briefs in support thereof or opposition thereto:	four (4);

(10) all other papers: seven (7).

D. **Papers filed in the Court of Appeals.** The following numbers of copies of papers shall be filed in the Court of Appeals:

(1) briefs in chief, answer briefs, reply briefs and amicus briefs: six (6);

(2) correspondence and supplemental authorities submitted pursuant to Subparagraph (2) of Paragraph (D) of Rule 12-213 NMRA: four (4);

(3) all motions, responses, and briefs in support thereof or opposition thereto, and all other papers: one (1).

[As amended, effective July 1, 1990; April 1, 1998; May 1, 2003, as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; by Supreme Court Order No. 07-8300-024, effective November 1, 2007; by Supreme Court Order No. 11-8300-025, effective for appeals filed on or after June 28, 2011.]

12-307. Service and filing of papers.

A. **Filing by a party.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court. “Filing” shall include filing a facsimile copy or filing an electronic copy as may be permitted under Rule 12-307.1 NMRA or Rule 12-307.2 NMRA. If a party has filed a paper using electronic or facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. Filing by mail is not complete until actual receipt. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

B. **Service of all papers required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall be served by such party or person acting for the party on all other parties to the proceeding. Service shall be made at or before the time of filing the paper with the court.

C. **Service; how made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney’s or party’s last known address. Service by mail is complete upon mailing.

D. **Definitions.** As used in this rule:

(1) “Delivering a copy” means:

(a) handing it to the attorney or to the party;

(b) sending a copy by facsimile or electronic transmission when permitted by Rule 12-307.1 NMRA or Rule 12-307.2 NMRA;

(c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

(d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

(e) leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

(i) the court, in its discretion, chooses to provide such a location; and

(ii) service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

(2) "Mailing a copy" means sending a copy by first class mail with proper postage.

E. **Proof of service.** Except as provided in Rules 12-307.1 and 12-307.2 NMRA, proof of service shall be in the form of written acknowledgment of service by the person served, certificate of the clerk of the court or of the attorney making service, or affidavit of any other person. It shall state the manner and date of service, the names of the persons served, and the addresses used for service. Such proof of service shall be filed with the papers or immediately after service is effected.

F. **Filing and service by the court.** Unless otherwise ordered by the court, the court shall serve all written court orders and notices of hearing on the parties. The court may file papers before serving them on the parties. For papers served by the court, the certificate of service need not indicate the manner of service. For purposes of Rule 12-308(B) NMRA, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court's certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in Subparagraph (D)(1)(e) of this rule.

G. **Filing and service by an inmate.** The following provisions apply to documents filed and served by an inmate confined to an institution:

(1) If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.

(2) The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(3) Whenever service of a document on a party is permitted by mail, the document is deemed mailed at the time of deposit in the institution's internal mail system addressed to the parties on whom the document is served.

(4) The date of filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date on which the document was deposited in the institution's internal mail system.

(5) A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

(6) Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

[As amended, effective July 1, 1990; August 1, 1992; September 1, 1995; April 1, 1998; June 15, 2000; October 11, 2005; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006; as amended by Supreme Court No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Committee commentary. — Paragraph G governs the filing and service of documents by an inmate confined to an institution. A court generally will not consider pro se pleadings filed by an inmate who is represented by counsel. *See, e.g., State v. Martinez*, 1981-NMSC-016, ¶ 3, 95 N.M. 421, 622 P.2d 1041 (providing that no constitutional right permits a defendant to act as co-counsel in conjunction with the defendant's appointed counsel); *State v. Boyer*, 1985-NMCA-029, ¶ 15, 103 N.M. 655, 712 P.2d 1 (explaining that "once a defendant has sought and been provided the assistance of appellate counsel, that choice binds the defendant, absent unusual circumstances" (citation omitted)).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

12-307.1. Filing and service by facsimile.

A. **Facsimile copies permitted to be filed.** Subject to the provisions of this rule, a party may file a facsimile copy of any paper by faxing a copy directly to the court or by faxing a copy to an intermediary agent who files it in person with the court. A facsimile copy of a paper has the same effect as any other filing for all procedural and statutory purposes. The filing of papers with the court by facsimile copy shall be made by faxing them to the clerk of the court at a number designated by the clerk. Each appellate court shall designate one or more telephone numbers to receive fax filings.

B. **Facsimile service by court of notices, orders or writs.** Facsimile service may be used by the court for issuance of any notice, order or writ. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

C. **Paper size and quality.** No facsimile copy shall be filed with the court unless it is on plain paper and substantially satisfies all of the requirements of Rule 12-305 of these rules.

D. **Filing by facsimile.** A paper may be filed with the court by facsimile transmission if:

(1) a fee is not required to file the paper;

(2) only one copy of the paper is required to be filed; and

(3) the paper to be filed is preceded by a cover sheet with the names of the sender and the intended recipient, any applicable instructions, the voice and facsimile telephone numbers of the sender, an identification of the case, the docket number and the number of pages transmitted.

E. **Facsimile copy filed by an intermediary agent.** Facsimile copies of papers filed in person by an intermediary agent are not subject to the restrictions of Paragraph D of this rule.

F. **Time of filing.** If facsimile transmission of a paper faxed is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court's facsimile machine will be determinative.

G. **Service by facsimile.** Any document required to be served by Paragraph B of Rule 12-307 NMRA may be served on a party or attorney by facsimile transmission if the party or attorney has:

(1) listed a facsimile telephone number on a paper filed with the court in the action; or

(2) agreed to be served with a copy of the paper by facsimile transmission.

Service of a paper by facsimile is accomplished when the transmission is successfully completed.

H. **Proof of service by facsimile.** Proof of service by facsimile shall be in the form of written acknowledgment of service by the person served, certificate of the clerk of the court or of the attorney making service or affidavit of any other person. It shall state:

(1) that the paper was served by facsimile transmission; and

(2) the date of service and telephone numbers of the sending and receiving facsimile machines.

I. **Demand for original.** A party shall have the right to inspect and copy any paper that has been filed or served by facsimile transmission if the paper has a statement signed under oath or affirmation or penalty of perjury.

J. **Conformed copies.** Upon request of a party, the clerk shall stamp additional copies provided by the party of any paper filed by facsimile transmission.

[Approved, effective January 1, 1997; as amended, January 1, 2000; as amended by Supreme Court Order No. 06-8300-021, effective December 18, 2006.]

12-307.2. Electronic service and filing of papers.

A. **Definitions.** As used in these rules

(1) "electronic transmission" means email or other transfer of data from computer to computer other than by facsimile transmission;

(2) "document" includes the electronic representation of pleadings and other papers but does not include a record proper filed under Rule 12-209 NMRA, a transcript filed under Rule 12-211 NMRA, or an exhibit filed under Rule 12-212 NMRA; and

(3) "EFS" means the electronic filing system approved by the Supreme Court for use by attorneys to file and serve documents by electronic transmission in Supreme Court or Court of Appeals proceedings.

B. **Filing by electronic transmission authorized; mandatory registration for attorneys.**

(1) In any proceeding in the Supreme Court or Court of Appeals, the filing of documents by electronic transmission through the EFS is mandatory for any party represented by an attorney, which includes attorneys who represent themselves.

(2) Self-represented parties are prohibited from filing documents by electronic transmission and shall continue to file documents through the other methods authorized by the Rules of Appellate Procedure.

(3) Parties represented by attorneys shall file documents by electronic transmission even if another party to the action is self-represented or is exempt from electronic filing under Paragraph M of this rule.

(4) Unless exempted under Paragraph M of this rule, for any case pending or filed in the Supreme Court or Court of Appeals on or after the effective date of this rule, the following attorneys shall register with the EFS and add service contacts for those parties that they represent in cases governed by this rule:

(a) any attorney required to file documents by electronic transmission under this rule; and

(b) any attorney who is deemed to have entered an appearance under Rule 12-302(B) NMRA and who has not withdrawn in accordance with Rule 12-302(C) NMRA.

(5) Every registered attorney shall provide a valid, working, and regularly checked email address for the EFS. The Court shall not be responsible for inoperable email addresses or unread email sent from the EFS.

C. **Filing fees; no fees charged for use of the EFS; non-electronic payment of docket fees required; dismissal for untimely payment of docket fee.**

(1) Except for the payment of any docket fee required under the Rules of Appellate Procedure, no other fees shall be charged for the filing or service of documents by electronic transmission through the EFS.

(2) Payments currently cannot be accepted by the Supreme Court or Court of Appeals through the EFS or by other electronic payment methods.

(3) Notwithstanding any other provision in these rules requiring the payment of a docket fee at the time a document is filed, any docket fee required under the Rules of Appellate Procedure for initiating a case in the Supreme Court or Court of Appeals through the EFS shall be paid by check no later than five (5) days after the attorney is notified through the EFS that the case has been accepted for filing.

(4) A check for payment of a docket fee under this paragraph shall include a notation providing the docket number of the case to which the payment applies.

(5) Failure to timely pay the docket fee as required under Subparagraph (3) of this paragraph may, on the Court's own motion, result in the dismissal of the case without prejudice to a timely motion for reinstatement filed under Subparagraph (6) of this paragraph.

(6) A motion for reinstatement of any case dismissed without prejudice under Subparagraph (5) of this paragraph may be filed within fifteen (15) days after the date of the dismissal order provided that payment of the docket fee is delivered to the Court clerk on or before the date that the motion for reinstatement is submitted for filing through the EFS.

(7) A motion for reinstatement may be granted on a showing of good cause, and any proceeding reinstated under the provisions of this subparagraph shall be deemed initiated on the date that the proceeding was originally filed.

D. **Service by electronic transmission.**

(1) Any document required to be served by Rule 12-307(B) NMRA may be served on a party or attorney by electronic transmission of the document if

(a) the attorney for the party to be served has registered with the EFS under this rule or Rule 1-005.2 NMRA;

(b) the party or attorney has agreed to be served with documents by email; or

(c) the party or attorney has listed an email address on a paper filed with the Court.

(2) Documents filed by electronic transmission through the EFS may be served by an attorney through the EFS or may be served through other methods authorized by this rule, Rule 12-307 NMRA, or Rule 12-307.1 NMRA.

(3) Electronic service is accomplished when the transmission of the document is completed. If within two (2) days after service by electronic transmission, a party served by electronic transmission notifies the sender of the electronic transmission that the document cannot be read, the document shall be served by any other method authorized by Rule 12-307 NMRA as designated by the party to be served.

(4) Proof of service by a party or attorney shall be in the form of written acknowledgment of service by the person served, certificate of the attorney making service, or affidavit of any other person and shall state the following:

(a) the name of the person who sent the document;

(b) the date of service and email address of the sender and recipients; and

(c) a statement that the document was served by electronic transmission and that the transmission was successful.

(5) The Court shall serve all written court orders and notices on the parties unless otherwise ordered by the Court. The Court may file documents before serving them on the parties. The Court may serve any document by electronic transmission to an attorney who has registered with the EFS under this rule or Rule 1-005.2 NMRA and to any other party or attorney who has agreed to receive documents by electronic transmission or who has listed an email address on a document filed with the Court. For documents served by the Court, proof of service shall be in the form of a certificate of the Court clerk, which shall state the date of service and identify the parties served but

need not indicate the method of service. For purposes of Rule 12-308(B) NMRA, documents served by the Court shall be deemed served by mail, regardless of the actual manner of service, unless the Court clerk's certificate of service unambiguously states otherwise.

E. **Single transmission.** Whenever a rule requires multiple copies of a document to be filed only a single transmission is necessary.

F. **Time of filing.** For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight on the day preceding the next business day of the Court it will be considered filed on the immediately preceding business day of the Court. For any questions of timeliness, the time and date registered by the Court's computer will be determinative. For purposes of filing by electronic transmission only, notwithstanding rejection of an attempted filing through the EFS or its placement into an error queue for additional processing, the date and time that the filer submits the electronic filing envelope will serve as the filing date and time for purposes of meeting any filing deadline.

G. **Signatures.**

(1) All electronically filed documents shall be deemed to contain the filing attorney's signature pursuant to Rule 12-302 NMRA. Attorneys filing by electronic transmission thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document.

(2) If a document filed by electronic transmission contains a signature block from an original paper document containing a signature, the signature in the electronic document may represent the original signature in the following ways:

(a) by scanning or other electronic reproduction of the signature; or

(b) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

(3) All documents filed by electronic transmission that are signed by the Court shall be scanned or otherwise electronically produced so that the original signature is shown.

H. **Format of documents; protected personal identifier information; EFS user guide.** All documents filed by electronic transmission shall be formatted in accordance with the Rules of Appellate Procedure and shall comply with all procedures for protected personal identifier information under Rule 12-314 NMRA. The Court may make available a user guide on its website to provide guidance with the technical operation of

the EFS. In the event of any conflicts between these rules and the user guide, the rules shall control.

I. **Demand for original; electronic conversion of paper documents.**

(1) Original paper documents filed or served electronically, including original signatures, shall be maintained by the attorney filing the document and shall be made available, upon reasonable notice, for inspection by other parties or the Court. If an original paper document is filed by electronic transmission, the electronic version of the document shall conform to the original paper document. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

(2) For cases in which electronic filing is mandatory, if an attorney who is exempt under Paragraph M of this rule or a self-represented party files a paper document with the Court, the Court clerk shall convert such document into electronic format for filing. The filing date shall be the date on which the paper document was filed even if the document is electronically converted and filed at a later date. The Court clerk shall retain such paper documents as long as required by applicable statutes and Court rules.

J. **Electronic file stamp and confirmation receipt; effect.** The Court clerk's endorsement of an electronically filed document shall have the same force and effect as a manually affixed file stamp. When a document is filed through the EFS, it shall have the same force and effect as a paper document and a confirmation receipt shall be issued by the system that includes the following information:

(1) the case name and docket number;

(2) the date and time of filing as defined under Paragraph F of this rule;

(3) the document title;

(4) the name of the EFS service provider;

(5) the email address of the person or entity filing the document; and

(6) the page count of the filed document.

K. **Conformed copies.** Upon request of a party, the Court clerk shall stamp additional copies provided by the party of any paper filed by electronic transmission. A file-stamped copy of a document filed by electronic transmission can be obtained through the EFS. Certified copies of a document may be obtained from the Court clerk.

L. **Technical difficulties.** Substantive rights of the parties shall not be affected when the EFS is not operating through no fault of the filing attorney.

M. **Requests for exemptions from electronic filing requirement.**

(1) An attorney may file a petition with the Supreme Court requesting an exemption, for good cause shown, from the mandatory electronic filing requirements under this rule. The petition shall set forth the specific facts offered to establish good cause for an exemption. No docket fee shall be charged for filing a petition with the Supreme Court under this subparagraph.

(2) Upon a showing of good cause, the Supreme Court may issue an order granting an exemption from the mandatory electronic filing requirements of this rule. An exemption granted under this subparagraph remains in effect for one (1) year from the date of the order and may be renewed by filing another petition in accordance with Subparagraph (1) of this paragraph.

(3) An attorney granted an exemption under this paragraph may file documents in paper format. When filing paper documents under an exemption granted under this paragraph, the attorney shall attach to the document a copy of the Supreme Court exemption order. The Court clerk shall scan the attorney's paper document into the electronic filing system including the attached Supreme Court exemption order. No fee shall be charged for scanning the document. The attorney remains responsible for serving the document in accordance with these rules and shall include a copy of the Supreme Court exemption order with the document that is served.

(4) An attorney who receives an exemption under this paragraph may nevertheless file documents by electronic transmission without seeking leave of the Supreme Court provided that the attorney complies with all requirements under this rule. By doing so, the attorney does not waive the right to exercise any exemption granted under this paragraph for future filings.

[Approved, effective July 1, 1997; as amended by Supreme Court Order No. 06-8300-031, effective January 15, 2007; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 17-8300-009, effective for all cases pending or filed on or after August 21, 2017.]

12-308. Time.

A. **Computing time.** This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more*.** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less*.** When the period is stated in days but the number of days is ten (10) days or less,

(a) exclude the day of the event that triggers the period;

(b) exclude intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) ***Period stated in hours*.** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) ***Unavailability of the court for filing*.** If any location of the appellate court is closed or is unavailable for filing at any time that such location the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that such location of the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that such location of the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) ***"Last day" defined*.** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) ***"Next day" defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) ***"Legal holiday" defined.*** "Legal holiday" means the day that the following are observed by the judiciary:

(a) New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day (traditionally observed on the day after Thanksgiving), Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

B. **Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, or by deposit at a location designated for an attorney at a court facility under Rule 12-307(D)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

C. **Public posting of regular court hours.** The court shall publicly post the hours that it is regularly open.

[As amended, effective September 1, 1991; September 1, 1993; January 1, 1997; as amended by Supreme Court No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. S-1-RCR-2023-00046, effective for all cases pending or filed on or after December 31, 2024.]

Committee commentary. — In 2014, the Joint Committee on Rules of Procedure amended the time computation rules, including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and restyled the rules to more closely resemble the federal rules of procedure. *See* Fed. R. Civ. Pro. 6; Fed. R. Crim. Pro. 45.

Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable for filing due to weather, technological problems, or other circumstances. When an appellate court permits the filing of a paper at alternate locations, and one of those locations is closed and therefore unavailable for filing under Subparagraph (A)(4) of this rule, the filing deadline is extended as if all locations are closed. A person relying on Subparagraph (A)(4) to extend the time for filing a paper should be prepared to

demonstrate or affirm that any location of the court was closed or unavailable for filing at the time that the paper was due to be filed under Subparagraph (A)(1), (A)(2), or (A)(3).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

12-309. Motions.

A. **Use of motion.** Unless otherwise prescribed by these rules, all applications for an order or other relief shall be made by filing a motion.

B. **Content and filing.** Motions shall be filed, together with any supporting affidavits or other papers, with proof of service on all parties as provided in Rule 12-307 NMRA. A motion shall state concisely and with particularity the relief sought and the ground on which it is based. If the case has not been previously docketed in the appellate court, subject to the provisions of Rule 12-304 NMRA and Rule 23-114 NMRA, the docket fee shall accompany the motion.

C. **Opposition or concurrence.** Prior to filing a motion, the moving party shall attempt to ascertain whether the motion will be opposed by any other party. The motion shall recite whether, on inquiry by counsel for the movant, any other party has expressed an intention to oppose or not oppose the motion or why the position of another party was not obtained after reasonable effort.

D. **Briefs.** Motions directed to the appellate court's discretion in procedural matters, such as motions seeking extensions of time and motions for leave to exceed length limitations, need not be accompanied by briefs. Such motions shall state with particularity the reasons for the request. Other motions may be accompanied by a separate brief.

E. **Responses.** An adverse party may file and serve a response within fifteen (15) days after service of movant's motion.

F. **Replies.** A reply is not permitted without leave of the appellate court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

[As amended, effective October 1, 1995; January 1, 2000; as amended by Supreme Court Order No. 10-8300-045, effective February 9, 2011; by Supreme Court Order No. 12-8300-005, effective for requests to file replies under Rule 12-309 NMRA on or after April 20, 2012; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-310. Duties of clerks.

A. **Records.** The appellate court clerk shall make and keep a record of the papers filed and tendered for filing in such manner and form as the appellate court may, from time to time, direct.

B. **Copies.** Copies of filed documents may be furnished to counsel by the appellate court clerk upon payment of a reasonable charge for reproducing the same, the rate of charge to be fixed from time to time by the appellate court.

C. **Borrowed materials.** Unless otherwise ordered by the court, a party, an attorney of record, or an agent of an attorney of record may borrow the record proper, transcript of proceedings, or exhibits by signature upon a form promulgated by the appellate court clerk. These borrowed materials shall be returned at such time as may be designated by the clerk, not later than the date of submission of the cause to the court. Failure to return any borrowed materials on or before a date so designated may be punished as contempt.

D. **Opinions.** Immediately after an opinion is filed, the appellate court shall email or call one attorney of record for each party in the case to advise the attorney of the result and shall send each attorney one (1) copy, in paper or electronic form, of the opinion on request.

E. **Certiorari.** The Supreme Court clerk shall promptly advise one attorney of record for each party in the case of the action taken by the Supreme Court on any petition for a writ of certiorari.

[As amended, effective September 1, 1991; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-311. Process.

Process of the supreme court shall be in the name of the chief justice of the supreme court. Process of the court of appeals shall be in the name of the chief judge of the court of appeals. It shall be in such form as may be prescribed by the appellate court and attested by the signature of the appellate court clerk and the seal of the court.

12-312. Failure to comply with rules.

A. **Appellant's failure to file.** If an appellant fails to file a docketing statement in the Court of Appeals, statement of the issues in the Supreme Court or a brief in chief as provided by these rules, such failure may be deemed sufficient grounds for dismissal of the appeal by the appellate court.

B. **Appellee's failure to file.** If an appellee fails to file an answer brief as provided by these rules, the cause may be submitted upon the brief of appellant, and appellee may not thereafter be heard, except by permission of the appellate court.

C. **Non-complying notice of appeal.** An appeal filed within the time limits provided in these rules shall not be dismissed for technical violations of Rule 12-202 which do not affect the substantive rights of the parties.

D. **Other sanctions.** For any failure to comply with these rules or any order of the court, the appellate court may, on motion by appellant or appellee or on its own initiative, take such action as it deems appropriate in addition to that set out in Paragraphs A and B of this rule, including but not limited to citation of counsel or a party for contempt, refusal to consider the offending party's contentions, assessment of fines, costs or attorney fees or, in extreme cases, dismissal or affirmance.

[As amended, effective April 1, 1998.]

12-313. Mediation.

A. **Mediation conference; scheduling and purpose.** The appellate mediation office, under the direct supervision of an appellate mediator, may schedule and conduct mediation conferences in any matter pending before the appellate court. The primary purposes of a mediation conference are to explore settlement and to simplify issues. Matters related to processing of the appeal may also be discussed.

B. **Participation of counsel and parties.** Counsel and self-represented litigants shall participate in every scheduled mediation conference and in related discussions. Generally, a party represented by counsel may participate but need not unless required by the appellate mediator. Conferences are conducted in person or as directed by the appellate mediation office.

C. **Preparation of counsel for mediation conference; settlement authority.** In preparing for the initial conference, counsel shall consult with their clients and obtain as much authority as feasible to settle the case and to agree on case management matters. These obligations continue through the mediation process.

D. **Confidentiality.** Statements made during a mediation conference and in related discussions are confidential and shall not be disclosed to any court by the appellate mediation office, counsel, or the parties. *See* Rule 11-408 NMRA. The appellate mediator shall not communicate anything to the other side that was revealed in a private discussion without authorization from counsel or the party. The proceedings shall not be recorded by counsel or the parties. Judges and justices, their law clerks, court staff attorneys, and administrative court personnel shall not have access to information related to settlement that is generated by the activities of the appellate mediation office.

E. **Conference order; mediator authority.** The appellate mediator may cause an order to be entered controlling the course of the mediation proceedings. All conference orders and other directives from the appellate mediation office shall be treated as any other court directive.

F. **Extensions.** The time allowed by Rule 12-208 NMRA for filing a docketing statement, by Rule 12-211 NMRA for causing a transcript to be filed, by Rule 12-212 NMRA for designating exhibits and depositions, and by Rules 12-210 and 12-318 NMRA for filing briefs and memoranda is not automatically tolled pending a mediation conference, but the appellate mediator has authority to grant extensions of time, either sua sponte or on request. If no extension order is granted, the applicable time limits continue to run.

G. **Request for mediation conference.** Counsel, a self-represented litigant, or any appellate court judge or justice working on a case may request a mediation conference by contacting the appellate mediation office. All requests shall be kept confidential. The appellate mediator shall determine whether a conference will be held.

H. **Sanctions.** The appellate court may impose sanctions if counsel or a party fails to comply with the procedures set forth in this rule or an order entered under this rule.

[As amended by Supreme Court Order No.17-8300-015, effective for all cases pending or filed on or after December 31, 2017.]

12-314. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “court record” means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the Court, and the register of actions and docket entries used by the Court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the Court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and Court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the Court or as required by Paragraphs C or D of this rule.

C. **Limitations on public access.** In addition to court records protected pursuant to Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the Court:

(1) appeals in proceedings commenced under the Children’s Mental Health and Developmental Disabilities Code, Chapter 32A, Article 6A NMSA 1978, subject to the disclosure requirements in Section 32A-6A-24 NMSA 1978;

(2) appeals in proceedings commenced under the Adoption Act, Chapter 32A, Article 5 NMSA 1978;

(3) appeals in proceedings to detain a person commenced under Section 24-1-15 NMSA 1978;

(4) appeals in proceedings for testing commenced under Section 24-2B-5.1 NMSA 1978;

(5) appeals in proceedings commenced under the Adult Protective Services Act, Sections 27-7-14 to 27-7-31 NMSA 1978;

(6) appeals in proceedings commenced upon an application for an order for wiretapping, eavesdropping or the interception of any wire or oral communication under Section 30-12-3 NMSA 1978;

(7) appeals in proceedings commenced under the Family in Need of Court-Ordered Services Act, Chapter 32A, Article 3B NMSA 1978;

(8) appeals in proceedings commenced under the Abuse and Neglect Act, Chapter 32A, Article 4 NMSA 1978;

(9) appeals in proceedings commenced for the appointment of a person to serve as guardian for an alleged incapacitated person subject to the disclosure requirements of Subsection I of Section 45-5-303 NMSA 1978;

(10) appeals in proceedings commenced under the Mental Health and Developmental Disabilities Code, Chapter 43, Article 1 NMSA 1978, subject to the disclosure requirements in Section 43-1-19 NMSA 1978;

(11) appeals in proceedings to determine competency under Chapter 31, Article 9 NMSA 1978;

(12) appeals in proceedings commenced for the appointment of a conservator subject to the disclosure requirements of Subsection M of Section 45-5-407 NMSA 1978;

(13) appeals in proceedings commenced to remove a firearm-related disability under Section 34-9-19(D) NMSA 1978; and

(14) appeals in proceedings commenced under the Assisted Outpatient Treatment Act, Chapter 43, Article 1B NMSA 1978, subject to the disclosure requirements in Section 43-1B-14 NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a Court order.

D. **Protection of personal identifier information.**

(1) The Court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the Court's judicial function. If the Court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible Court web sites. The Court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the Court with the person's name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

E. **Motion to seal court records required.** Except as provided in Paragraphs C and D of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 12-309 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been filed or is to be filed. Any party or member of the public may file a

response to the motion to seal under Rule 12-309 NMRA. The movant shall lodge the court record with the court pursuant to Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph F. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

F. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the Court unless the court record was previously filed with the Court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rule 12-305 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the Court orders it filed. If the Court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a file-stamped copy of the Court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

G. **Requirements for order to seal court records.**

(1) The Court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The Court may order that a court record be filed under seal only if the Court by written order finds and states facts that establish the following:

(a) the existence of an overriding interest that overcomes the right of public access to the court record;

(b) the overriding interest supports sealing the court record;

(c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;

(d) the proposed sealing is narrowly tailored; and

(e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

H. **Sealed court records as part of record on appeal.**

(1) Court records sealed in the district, magistrate, metropolitan, or municipal court that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court. Requests to unseal such records or modify a sealing order entered in the district, magistrate, metropolitan, or municipal court shall be filed in the appellate court pursuant to Paragraph I of this rule if the case is pending on appeal.

(2) Court records sealed under the provisions of this rule in the Court of Appeals that are filed in the Supreme Court shall remain sealed in the Supreme Court. The Supreme Court Justices and staff may have access to the sealed court records unless otherwise ordered by the Supreme Court.

I. **Motion to unseal court records.**

(1) A sealed court record shall not be unsealed except by Court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 12-309 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the Court shall consider the matters addressed in Subparagraph (1) of Paragraph G. If the Court grants the

motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the Court's order unseals only part of the court record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the Court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

J. **Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt or subject to other sanctions as the Court deems appropriate.

[Adopted by Supreme Court Order No. 10-8300-009, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 10-8300-023, temporarily suspending Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No. 10-8300-037, extending the temporary suspension of Paragraph D for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 11-8300-011, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017.]

Committee commentary. — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public’s right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that all court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases identified in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the

legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless, a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule.

Aside from entire categories of cases that may warrant limitations on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., NMSA 1978, § 7-1-4.2(H) (providing for confidentiality of taxpayer information); NMSA 1978, § 14-6-1(A) (providing for confidentiality of patient health information); NMSA 1978, § 24-1-9.5 (limiting disclosure of test results for sexually transmitted diseases); NMSA 1978, § 29-10-4 (providing for confidentiality of certain arrest record information); NMSA 1978, § 29-12A-4 (limiting disclosure of local crime stoppers program information); NMSA 1978, § 29-16-8 (providing for confidentiality of DNA information); NMSA 1978, § 31-25-3 (providing for confidentiality of certain communications between victim and victim counselor); NMSA 1978, § 40-8-2 (providing for sealing of certain name change records); NMSA 1978, § 40-6A-312 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); NMSA 1978, § 40-10A-209 (providing for limitations on disclosure of certain information during proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act); NMSA 1978, § 40-13-7.1 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); NMSA 1978, § 40-13-12 (providing for limits on internet disclosure of certain information in domestic violence cases); NMSA 1978, § 44-7A-18 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of such items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph G of this rule before deciding whether to seal any particular court record.

Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion, the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled "conditionally under seal". If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the

substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court's register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A

copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 10-8300-009, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 11-8300-011, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011.]

12-315. Court Interpreters.

A. **Scope and definitions.** This rule applies to all proceedings filed in the appellate court. The following definitions apply to this rule:

(1) "case participant" means a party, witness, or other person required or permitted to participate in a proceeding governed by these rules;

(2) "interpretation" means the transmission of a spoken or signed message from one language to another;

(3) "transcription" means the interpretation of an audio, video, or audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice mail messages, that is memorialized in a written transcript for use in a court proceeding;

(4) "translation" means the transmission of a written message from one language to another;

(5) "court interpreter" means a person who provides interpretation or translation services for a case participant;

(6) "certified court interpreter" means a court interpreter who is certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts or who is acknowledged in writing by the Administrative Office of the Courts as a court interpreter certified by another jurisdiction that is a member of the Consortium for Language Access in the Courts;

(7) "justice system interpreter" means a court interpreter who is listed on the Registry of Justice System Interpreters maintained by the Administrative Office of the Courts;

(8) "language access specialist" means a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements;

(9) "non-certified court interpreter" means a justice system interpreter, language access specialist, or other court interpreter who is not certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts;

(10) "sight translation" means the spoken or signed translation of a written document; and

(11) "written translation" means the translation of a written document from one language into a written document in another language.

B. **Identifying a need for interpretation.**

(1) The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. The need for a court interpreter may be identified by the court or by a case participant. A court interpreter shall be appointed if one is requested.

(2) A party is responsible for notifying the court upon service a notice of setting of oral argument that a court interpreter is needed for the party.

(3) If a party fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay.

(4) Notwithstanding any failure of a party or other case participant to notify the court of a need for a court interpreter, the court shall appoint a court interpreter for a case participant whenever it becomes apparent from the court's own observations or from disclosures by any other person that a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding.

C. **Appointment of court interpreters.**

(1) When a need for a court interpreter is identified under Paragraph B of this rule, the court shall appoint a certified court interpreter except as otherwise provided in this paragraph.

(2) Upon approval of the court, the parties may stipulate to the use of a non-certified court interpreter without complying with the waiver requirements in Paragraph D of this rule.

(3) To avoid the appearance of collusion, favoritism, or exclusion of English speakers from the process, a justice or judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party's attorney shall not act as a court interpreter for the proceeding, except that a party and the party's attorney may engage in confidential attorney-client communications in a language other than English.

(4) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraph (d) of this paragraph. If the court has made diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a language access specialist or less qualified non-certified court interpreter only after the following requirements are met:

(a) the court provides notice to the parties substantially in a form approved by the Supreme Court that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter but none is reasonably available and has concluded after evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding that an accurate and complete interpretation of the proceeding can be accomplished with a less qualified non-certified court interpreter;

(b) the court finds on the record that the proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting to provide an accurate and complete interpretation for the proceeding;

(c) the court finds on the record that the proposed court interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters Code of Professional Responsibility set forth in Rule 23-111 NMRA; and

(d) with regard to a non-certified signed interpreter, in no event shall the court appoint a non-certified signed language interpreter who does not, at a minimum, possess both a community license from the New Mexico Regulations and Licensing

Department and a generalist interpreting certification from the Registry of Interpreters for the Deaf.

D. **Waiver of the right to a court interpreter.** Any case participant identified as needing a court interpreter under Paragraph B of this rule may at any point in the case waive the services of a court interpreter with approval of the court only if the court explains in open court through a court interpreter the nature and effect of the waiver and finds on the record that the waiver is knowingly, voluntarily, and intelligently made. If the case participant is the defendant in a criminal appellate proceeding, the waiver shall be in writing and the court shall further determine that the defendant has consulted with counsel regarding the decision to waive the right to a court interpreter. The waiver may be limited to particular proceedings in the case or for the entire case. With the approval of the court, the case participant may retract the waiver and request a court interpreter at any point in the proceedings.

E. **Procedures for using court interpreters.** The following procedures shall apply to the use of court interpreters:

(1) **Qualifying the court interpreter.** Before appointing a court interpreter to provide interpretation services to a case participant, the court shall qualify the court interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may use the questions in Form 4-114 or 9-109 NMRA to assess the qualifications of the proposed court interpreter. A certified court interpreter is presumed competent, but the presumption is rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified court interpreter, the court shall inquire on the record into the following matters:

(a) whether the proposed court interpreter has assessed the language skills and needs of the case participant in need of interpretation services; and

(b) whether the proposed court interpreter has any potential conflicts of interest.

(2) **Instructions regarding the role of the court interpreter during trial.** Before the court interpreter begins interpreting for a party, the court shall instruct the parties and others present in the courtroom regarding the role of the court interpreter.

(3) **Oath of the court interpreter.** Before a court interpreter begins interpreting, the court shall administer an oath to the court interpreter as required by Section 38-10-8 NMSA 1978, which shall be given on the record in open court.

(4) **Objections to the qualifications or performance of a court interpreter.** A party shall raise any objections to the qualifications of a court interpreter when the court is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon as the party learns of any information calling into question the qualifications of the court interpreter. A party shall raise any objections to court interpreter error at the

time of the alleged interpretation error or as soon as the party has reason to believe that an interpretation error occurred that affected the outcome of the proceeding.

(5) **Record of the court interpretation.** Upon the request of a party, the court may make and maintain an audio recording of all spoken language court interpretations or a video recording of all signed language interpretations. Unless the parties agree otherwise, the party requesting the recording shall pay for it. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings.

(6) **Court interpretation for multiple case participants.** When more than one case participant needs a court interpreter for the same spoken language, the court may appoint the same court interpreter to provide interpretation services for those case participants. When more than one case participant needs court interpretation for a signed language, separate court interpreters shall be appointed for each case participant. If a party needs a separate court interpreter for attorney-client communications during a court proceeding, prior to the commencement of the court proceeding, the party shall obtain a court interpreter of the party's own choosing and at the party's own expense. If the party is a criminal defendant represented by court-appointed counsel, a court interpreter for attorney-client communications may be paid as allowed under the Indigent Defense Act and Public Defender Act.

(7) **Use of team court interpreters.** To avoid court interpreter fatigue and promote an accurate and complete court interpretation, when the court anticipates that a court proceeding requiring a court interpreter for a spoken language will last more than two (2) hours the court shall appoint a team of two (2) court interpreters to provide interpretation services for each spoken language. For court proceedings lasting less than two (2) hours, the court may appoint one (1) court interpreter but the court shall allow the court interpreter to take breaks approximately every thirty (30) minutes. The court shall appoint a team of two (2) court interpreters for each case participant who needs a signed language court interpreter when the court proceeding lasts more than one (1) hour. If a team of two (2) court interpreters are required under this subparagraph, the court may nevertheless proceed with only one (1) court interpreter if the following conditions are met:

(a) two (2) qualified court interpreters could not be obtained by the court;

(b) the court states on the record that it contacted the Administrative Office of the Courts for assistance in locating two (2) qualified court interpreters but two (2) could not be found; and

(c) the court allows the court interpreter to take a five (5)-minute break approximately every thirty (30) minutes.

(8) **Use of court interpreters for translations and transcriptions.** If a court interpreter is required to provide a sight translation, written translation, or transcription

for use in a court proceeding, the court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription. Whenever possible, the court shall provide the court interpreter with advance notice of the need for a translation or transcription before the court proceeding begins and, if possible, the item to be translated or transcribed.

(9) **Modes of court interpretation.** The court shall consult with the court interpreter and case participants regarding the mode of interpretation to be used to ensure a complete and accurate interpretation.

(10) **Remote spoken language interpretation.** Court interpreters may be appointed to serve remotely by audio or audio-video means approved by the Administrative Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably available for in-person attendance in the courtroom. Electronic equipment used during the hearing shall ensure that all case participants hear all statements made by all case participants in the proceeding. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow for consecutive interpreting of each sentence. The electronic equipment that is used must permit attorney-client communications to be interpreted confidentially.

(11) **Court interpretation equipment.** The court shall consult and coordinate with the court interpreter regarding the use of any equipment needed to facilitate the interpretation.

(12) **Removal of the court interpreter.** The court may remove a court interpreter for any of the following reasons:

(a) inability to adequately interpret the proceedings;

(b) knowingly making a false interpretation;

(c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;

(d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;

(e) failing to appear as scheduled without good cause;

(f) misrepresenting the court interpreter’s qualifications or credentials;

(g) acting as an advocate; or

(h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter’s Code of Professional Responsibility.

(13) **Cancellation of request for a court interpreter.** A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. **Payment of costs for the court interpreter.** Unless otherwise provided in this rule, and except for court interpretation services provided by an employee of the court as part of the employee's normal work duties, all costs for providing court interpretation services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts consistent with guidelines issued by the Administrative Office of the Courts.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

Committee commentary. — This rule governs the procedure for the use of court interpreters in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter Standards of Practice and Payment Policies issued by the Administrative Office of the Courts (the AOC Standards), also provide guidance to the courts on the certification, use, and payment of court interpreters. But in the event of any conflicts between the AOC Standards and this rule, the rule controls.

The rule requires the use of certified court interpreters whenever possible but permits the use of less qualified interpreters in some situations. For purposes of this rule, a certified court interpreter may not be reasonably available if one cannot be located or if funds are not available to pay for one. But in all instances, before a court may use a non-certified court interpreter, the court must contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may in fact be available to pay for a certified court interpreter.

The rule does not attempt to set forth the criteria for determining who should be a certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC. When a court interpreter is certified by the AOC, the certified court interpreter is placed on the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC and can be viewed on its web site. A certified court interpreter is also issued an identification card by the AOC, which can be used to demonstrate to the court that the cardholder is a certified court interpreter.

In collaboration with the New Mexico Center for Language Access (NMCLA), the AOC is also implementing a new program for approving individuals to act as justice system interpreters and language access specialists who are specially trained to provide many interpretation services in the courts that do not require a certified court interpreter. Individuals who successfully complete the Justice System Interpreting course of study offered by the NMCLA are approved by the AOC to serve as justice system interpreters and will be placed on the AOC Registry of Justice System Interpreters. Those who are

approved as justice system interpreters will also be issued identification cards that may be presented in court as proof of their qualifications to act as a justice system interpreter. Under this rule, if a certified court interpreter is not reasonably available, the court should first attempt to appoint a justice system interpreter to provide court interpretation services. If a justice system interpreter is not reasonably available, the court must contact the AOC for assistance before appointing a non-certified court interpreter for a court proceeding.

In addition to setting forth the procedures and priorities for the appointment of court interpreters, this rule also provides procedures for the use of court interpreters within the courtroom. In general, the court is responsible for determining whether a juror needs a court interpreter, and the parties are responsible for notifying the court if they or their witnesses will need a court interpreter. But in most cases, the court will be responsible for paying for the cost of court interpretation services, regardless of who needs them. However, the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.

Although this rule generally applies to all court interpreters, the court should be aware that in some instances the procedures to follow will vary depending on whether a spoken or signed language court interpreter is used. Courts should also be aware that in some instances when court interpretation services are required for a deaf or hard-of-hearing individual, special care should be taken because severe hearing loss can present a complex combination of possible language and communication barriers that traditional American Sign Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-hearing individual is having trouble understanding a court interpreter and there is an indication that the person needs other kinds of support, the court should request assistance from the AOC for a language assessment to determine what barriers to communication exist and to develop recommendations for solutions that will provide such individuals with meaningful access to the court system.

While this rule seeks to provide courts with comprehensive guidance for the appointment and use of court interpreters, the courts should also be aware that the AOC provides additional assistance through a full-time program director who oversees the New Mexico Judiciary's court interpreter program and who works in tandem with the Court Interpreter Advisory Committee appointed by the Supreme Court to develop policies and address problems associated with the provision of court interpreter services in the courts. Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure of the proper procedure for providing court interpretation services under this rule, the court is encouraged, and sometimes required under this rule, to seek assistance from the AOC to ensure that all case participants have full access to the New Mexico state court system.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

12-316. Bankruptcy proceedings; stays.

A. **Notice of stay.** Upon becoming aware of any bankruptcy court stay that may affect the appeal, a party shall file a written notice in the appellate court.

B. **Status reports.** Once a party has notified the appellate court of a bankruptcy court stay, the appellant shall thereafter file quarterly reports in the appellate court setting forth the status of the bankruptcy proceeding, unless otherwise ordered by the appellate court.

C. **Termination or modification.** Upon becoming aware of the termination or modification of any bankruptcy court stay that may affect the pending appeal, the appellant shall file a written notice in the appellate court.

[Adopted by Supreme Court Order No. 14-8300-008, effective for all cases filed or pending on or after December 31, 2014.]

Committee commentary. — This rule does not preclude parties other than the appellant from providing status reports or notice of termination or modification to the appellate court.

[Adopted by Supreme Court Order No. 14-8300-008, effective for all cases filed or pending on or after December 31, 2014.]

12-317. Joint or consolidated appeals.

A. **Joint appeals.** When two (2) or more parties are entitled to appeal from a single judgment or order, and their interests are such as to make joinder practicable, they may file a joint notice of appeal. When two (2) or more parties have filed separate timely notices of appeal from a single judgment or order, the appeals may be joined by order of the appellate court. The parties then proceed on appeal as a single appellant.

B. **Consolidated appeals.** When two (2) or more parties to the same case or different cases have filed separate timely notices of appeal, the appeals may be consolidated by order of the appellate court. The appellate court may consolidate appeals on its own motion or on motion of a party. When requesting consolidation, a party shall specify by motion the specific aspects of the appeal, such as the record, the briefing, or the oral argument, that should be consolidated.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-318. Briefs.

A. **Brief in chief.** The brief in chief of the appellant, under appropriate headings and in the order indicated in this rule, shall contain the following:

(1) a table of contents, which shall list each section heading and the page on which that section begins. The appellant may raise issues in addition to those raised in the docketing statement or statement of the issues unless the appellee would be prejudiced.

(a) When the transcript of proceedings is an audio recording, after the listing of section headings, the table of contents shall include either a statement of the name of the manufacturer and model of the device used in citing references to the transcript, together with a statement of how many counters or units are on one side of a tape when that tape is played on the device (*e.g.*, Sony BM-25 with 730 counters per tape side), or a statement that the transcript citations conform to the official log.

(b) When the transcript of proceedings is a digital or other electronic recording, after the listing of section headings, the table of contents shall include a statement that references to the recorded transcript are by elapsed time from the start of the recording (*e.g.*, "Tr. 10:25" indicates a point occurring ten minutes and twenty-five seconds after the start of the recording).

(c) If the brief exceeds the page limits contained in Subparagraph (F)(2) of this rule, after any statement regarding the method of citing the transcript, the table of contents shall include a statement of compliance as required by Paragraph G of this rule;

(2) a table of authorities, arranged in separate headings for each type of authority cited, listing cases alphabetically (New Mexico decisions separately from decisions from other jurisdictions), statutes, and other authorities, with page references;

(3) a summary of proceedings, briefly describing the nature of the case, the course of proceedings, and the disposition in the court below, and including a summary of the facts relevant to the issues presented for review. This summary shall contain citations to the record proper, transcript of proceedings, or exhibits supporting each factual representation, in accordance with the citation format found in the Appendix to Rule 23-112 NMRA. A contention that a verdict, judgment, or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing on the proposition;

(4) an argument which, with respect to each issue presented, shall contain a statement of the applicable standard of review, the contentions of the appellant, and a statement explaining how the issue was preserved in the court below, with citations to authorities, record proper, transcript of proceedings, or exhibits relied on. Applicable New Mexico decisions shall be cited. The argument shall set forth a specific attack on any finding, or the finding shall be deemed conclusive. A contention that a verdict, judgment, or finding of fact is not supported by substantial evidence shall be deemed

waived unless the argument identifies with particularity the fact or facts that are not supported by substantial evidence; and

(5) a conclusion containing a precise statement of the relief sought.

B. **Answer brief.** The appellee may file an answer brief responding to each brief in chief but is encouraged to consolidate arguments into a single answer brief when appropriate. A consolidated answer brief shall be titled as such on its cover page. An answer brief shall conform to the requirements of the brief in chief, but a summary of proceedings shall not be included unless deemed necessary.

C. **Reply brief.** The appellant may file a reply brief responding to each answer brief but is encouraged to consolidate arguments into a single reply brief when appropriate. A consolidated reply brief shall be titled as such on its cover page. A reply brief shall conform to the requirements of Subparagraphs (A)(1), (2), and (4) of this rule, and shall reply only to arguments or authorities presented in the answer brief.

D. **Supplemental briefs and authorities.**

(1) Except for those briefs specified in this rule, no briefs may be filed without prior approval of the appellate court.

(2) When pertinent and significant authorities come to the attention of counsel after counsel's brief has been filed, or after oral argument but before decision, counsel shall promptly advise the appellate court clerk, by notice and without argument, with a copy to all counsel, setting forth the citations and attaching a copy, if available. The notice shall be filed and served in accordance with Rule 12-307 NMRA. The notice shall refer either to the page of the brief or to a point argued orally to which the citations pertain.

E. **Citations.** All authorities shall be cited in accordance with Rule 23-112 NMRA.

F. **Length, preparation, and service of briefs.** The requirements of Rule 12-305 NMRA apply to briefs.

(1) ***Body of the brief defined*.** The body of the brief in chief, answer brief, amicus brief, or reply brief consists of headings, footnotes, quotations, and all other text except the cover page, caption, table of contents, table of authorities, signature blocks, statement regarding oral argument, if any, and certificate of service.

(2) ***Page limit*.** Except by permission of the court, or unless it complies with Subparagraph (F)(3) of this rule, the body of a brief in chief, answer brief, or amicus brief shall not exceed thirty-five (35) pages. Except by permission of the court, or unless it complies with Subparagraph (F)(3) of this rule, the body of the reply brief shall not exceed fifteen (15) pages.

(3) ***Type-volume limit*.** Except by permission of the court, the body of a brief in chief, answer brief, or amicus brief shall not exceed eleven thousand (11,000) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or one thousand two hundred (1,200) lines, if the party uses a monospaced type style or typeface, such as Courier. The body of a reply brief shall not exceed four thousand four hundred (4,400) words, if the party uses a proportionally-spaced type style or typeface, or four hundred eighty (480) lines, if the party uses a monospaced type style or typeface.

(4) ***Attachments prohibited*.** No documents shall be attached to briefs.

(5) ***Service*.** Briefs shall be served in accordance with Rule 12-307 NMRA.

G. **Statement of compliance.** Under Subparagraph (A)(1)(c) of this rule, if a brief exceeds the page limits of Subparagraph (F)(2) of this rule, then the brief shall contain a statement that it complies with the limits of Subparagraph (F)(3) of this rule. If the brief is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the brief. If the brief is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the brief. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

H. **Time of filing.** Unless otherwise ordered by the appellate court or as these rules prescribe, Rule 12-210 NMRA governs the time and order of filing briefs.

I. **Cross-appeals.** In cross-appeals, the brief in chief, the answer brief, and the reply brief shall comply with this rule. The party who first files a notice of appeal or, if both parties file on the same day, the plaintiff in the proceedings below, shall be the appellant. The appellant's brief in chief shall be filed as provided in Rule 12-210 NMRA. The appellee's answer brief and brief in chief on cross-appeal shall be filed simultaneously as separate documents and shall be filed within forty-five (45) days after service of the brief in chief of the appellant in cases assigned to the general calendar and within twenty (20) days after service in cases assigned to the legal calendar. The appellant's reply brief and answer brief to the brief in chief on cross-appeal shall be filed simultaneously as separate documents within forty-five (45) days after service of the answer brief and brief in chief on cross-appeal in cases assigned to the general calendar and within twenty (20) days after service in cases assigned to the legal calendar. A cross-appellant may file a reply brief within twenty (20) days after service of the answer brief responding to cross-appellant's brief in chief.

J. **Failure to comply.** Briefs that fail to comply with the requirements of this rule may be returned for correction or rejected by the appellate court, in addition to other sanctions provided in Rule 12-312(D) NMRA.

[As amended, effective July 1, 1990; September 1, 1991; September 1, 1993; January 1, 1997; July 1, 1998; January 1, 2000; November 1, 2003; March 15, 2005; as amended by Supreme Court Order No. 07-8300-024 effective November 1, 2007; by Supreme Court Order No. 10-8300-001, effective April 12, 2010; 12-213 recompiled and amended as 12-318 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2024-00106, effective for all cases pending or filed on or after December 31, 2024.]

Committee commentary. — In 2016, the committee renumbered Rule 12-213 NMRA and placed it in the general provisions article as Rule 12-318 NMRA.

In an effort to provide additional options for producing more readable documents, the 2007 amendments to this rule allow practitioners to exceed the traditional page limitations for a brief if the brief complies with the type-volume limitations set forth in the new Subparagraph (F)(3) of the rule. Specifically, briefs in chief, answer briefs, and amicus briefs that exceed the traditional thirty-five (35) page limit may not contain more than eleven thousand (11,000) words or one thousand two hundred (1,200) lines in the body of the brief, depending on whether a proportionally-spaced or monospaced type style or typeface is used. *See* Subparagraph (F)(1) for a definition of the body of the brief. Similarly, if the body of the reply brief exceeds the traditional fifteen (15) page limit, the body of the brief may not contain more than four thousand four hundred (4,400) words or four hundred eighty (480) lines, again depending on whether a proportionally-spaced or monospaced type style or typeface is used. If a proportionally-spaced type style or typeface is used, the word-count limit applies. If a monospaced type style or typeface is used, the line-count limit applies. In either case, if the traditional page limit is exceeded, a statement of compliance must be included as provided by Paragraph G of this rule to show that the brief complies with the applicable type-volume limitation.

[Adopted by Supreme Court Order No. 07-8300-024 effective November 1, 2007; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-319. Oral argument.

A. **Oral argument.** The appellate court may order oral argument at its discretion. No oral argument shall be heard on cases assigned to the summary calendar.

B. **Request for oral argument.** Any party may request oral argument by including on the cover page or first page of the opening brief a statement that oral argument is requested. The requesting party may separately set out a concise statement of the reasons why oral argument would be helpful to a resolution of the issues.

C. **Settings.**

(1) ***Notice of setting*.** Settings for oral argument will be fixed by the appellate court and notice thereof given by the appellate court clerk.

(2) ***Motion to reset oral argument*.** Except for good cause shown, a motion to reset oral argument shall be made within ten (10) days after service of notice of setting.

D. **Order and content of argument.** Unless otherwise ordered, the petitioner, movant, or party first filing a notice of appeal shall open and close the argument. If notices are filed on the same day, the plaintiff in the proceeding below shall open and close the argument. Unless the appellate court directs otherwise, a cross-appeal or separate, related appeal shall be argued when the initial appeal is argued. Counsel for the same side should avoid duplicative argument. Counsel must not read at length from briefs, records, or authorities. Counsel should assume that the justices or judges have read the briefs before oral argument.

E. **Time for argument.** The time for oral argument shall not exceed twenty (20) minutes on each side for motions, petitions, or applications and thirty (30) minutes on each side as to all other matters unless the time is extended or restricted by the appellate court.

F. **Use of physical exhibits; removal.** A party may use physical exhibits at argument only on prior motion and leave of the appellate court. The motion shall concisely state why the use of the exhibits may significantly aid in the appellate court's decisional process, shall indicate whether opposing counsel has any objection to the use of the exhibits, and shall be filed at least ten (10) days before the scheduled argument date. A party whose motion to use physical exhibits has been granted must make arrangements with the appellate court clerk to have the exhibits placed in the courtroom before court convenes on the date of argument. After argument, counsel shall remove the exhibits from the courtroom unless the appellate court otherwise directs. If counsel seeks to distribute documents or other material to the justices or judges during oral argument, counsel shall provide the necessary copies directly to the appellate court clerk during the argument at the appropriate time, with a copy to opposing counsel, and the appellate court clerk will then distribute the material to each justice or judge.

G. **Nonappearance of parties.** If a party fails to appear to present argument, the appellate court may, in its discretion, hear argument on behalf of the opposing party.

H. **Joint argument.** Two or more cases involving the same or related questions may be heard together on request of a party or by order of the appellate court.

I. **Participating justices or judges.** A justice or judge who did not hear the original argument may participate in the decision of any cause by reviewing a recording or transcript of the original oral argument.

[As amended, effective December 1, 1993; May 1, 2003; as amended by Supreme Court Order No. 10-8300-001, effective April 12, 2010; 12-214 recompiled and amended as 12-319 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. S-1-RCR-2024-00114, effective for all cases filed on or after November 1, 2024.]

Committee commentary. — In 2016, the committee renumbered Rule 12-214 NMRA and placed it in the general provisions article as Rule 12-319 NMRA.

Paragraph B was revised in 2010, and again in 2016, to adopt a new method of requesting oral argument for all types of appellate proceedings, except appeals assigned to the summary calendar. Oral argument may be requested by a statement on the first page or cover of any brief, petition, motion, or application filed by the party. The request may be supported by a statement of reasons appearing in the brief, petition, motion, or application. This method is similar to that adopted by other courts and eliminates the need for a separately filed request for oral argument.

When considering whether to request oral argument, a party should consider whether the dispositive issue or issues have been authoritatively decided, whether the facts and legal arguments are adequately presented in the briefs and record, and whether the appellate court's decisional process will be significantly aided by oral argument.

As a courtesy to the appellate court, counsel should file a notice of non-availability setting forth any dates that counsel is unavailable to attend oral argument. A notice of non-availability should be filed at the earliest practicable time.

A party is not required to use all the allotted time for oral argument. Before argument starts, the party that opens oral argument may reserve time for rebuttal. If the party that opens oral argument does not use all of the time allotted for the opening argument, the party may seek leave of court to reserve the unused time for rebuttal. Points of substance may not be reserved for rebuttal.

[Adopted by Supreme Court Order No. 10-8300-001, effective April 12, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-320. Amicus curiae.

A. **Leave to file.** A brief of an amicus curiae may be filed only on order of the appellate court. A motion for leave to file an amicus brief shall identify the interest of the prospective amicus curiae and shall state the reasons why a brief of an amicus curiae would assist the Court. The brief shall be conditionally filed with the motion for leave, unless otherwise ordered by the Court. An amicus brief should bring to the attention of the appellate court relevant matters that are not covered in the briefs of the parties. Motion practice under this rule shall be conducted in accordance with Rule 12-309 NMRA unless otherwise specified in this rule. The Court may act on a motion for leave

to file an amicus brief prior to the filing of any response. If the Court permits an amicus curiae to participate, the brief that amicus curiae conditionally filed with the motion is deemed filed, and amicus curiae shall not file or serve a duplicate copy of the amicus brief.

B. **Oral argument.** The party whose position is supported by amicus curiae may share with an amicus the party's allotted time for oral argument. No additional time shall be granted except by leave of Court.

C. **Disclosure.** A brief filed under this rule shall indicate whether counsel for a party authored the brief in whole or in part and whether that counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the amicus curiae, its members, or its counsel, who made the monetary contribution. The disclosure shall be made in a footnote on the first page of the text.

D. **Direct appeals and cases in which discretionary review has been granted.** Amicus participation in direct appeals and cases in which discretionary review has been granted shall proceed according to Paragraphs A through C of this rule and the following requirements.

(1) ***Notice.*** A prospective amicus curiae shall ensure that parties receive notice of the intention to file a motion and brief at least fourteen (14) days prior to the due date of the motion and brief. The body of the brief of the amicus curiae shall indicate that all parties received timely notice of the intent to file the brief.

(2) ***Briefing schedule.*** Unless otherwise ordered by the appellate court,

(a) a prospective amicus curiae shall file its motion and brief within seven (7) days after the due date of the principal brief of the party whose position it supports;

(b) an opposing party shall file any response to an amicus brief supporting the appellant or petitioner within forty-five (45) days after the appellate court grants amicus curiae leave to participate;

(c) an opposing party shall file any response to an amicus brief supporting the appellee or respondent within twenty (20) days after the appellate court grants amicus curiae leave to participate; and

(d) an amicus curiae is not permitted to file a reply without leave of the appellate court, which may be granted upon a showing of good cause.

(3) ***Form.*** A brief of an amicus curiae shall comply with the length limitations for a brief in chief and shall otherwise comply with the formatting requirements of Rules 12-305 and 12-318 NMRA.

E. **Other proceedings.** The appellate court may permit an amicus curiae to assist the court in determining whether to grant a request for discretionary review or extraordinary relief, such as an application for interlocutory appeal under Rule 12-203 NMRA, a petition for a writ of certiorari under Rule 12-502 NMRA, or a petition for an extraordinary writ under Rule 12-504 NMRA. Amicus participation under this paragraph shall proceed according to Paragraphs A through C of this rule. A brief under this paragraph shall comply with any length or formatting requirements that apply to the corresponding submission.

[As amended, effective July 1, 1990; September 1, 1993; as amended by Supreme Court Order No. 06-8300-014, effective July 15, 2006; by Supreme Court Order No. 11-8300-025, effective for all appeals filed on or after June 28, 2011; as amended by Supreme Court Order No. 13-8300-034, effective for all cases pending or filed on or after December 31, 2013; 12-215 recompiled and amended as 12-320 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — In 2016, the committee renumbered Rule 12-215 NMRA and placed it in the general provisions article as Rule 12-320 NMRA.

The addition in 2016 of new Paragraph E with respect to amicus briefs in "other proceedings" recognizes that amicus participation may be permitted in matters seeking discretionary review by the appellate courts, such as petitions for writs of certiorari and applications for interlocutory appeal, and in other proceedings seeking extraordinary relief. Amicus participation in these matters should focus on the grounds for which discretionary or extraordinary review is provided, *see, e.g*., Rule 12-502(C)(2)(d) NMRA (grounds for certiorari to the court of appeals); NMSA 1978, § 39-3-4(A) (1999) (grounds for interlocutory appeal), and should avoid arguments on the merits of the underlying case in which review is being sought.

Paragraph C requires amicus briefs to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel contributed money with the intention of funding the preparation or submission of the brief. A party's or counsel's payment of general membership dues to an amicus need not be disclosed. Paragraph C also requires amicus briefs to state whether any other "person" (other than the amicus, its members, or its counsel) contributed money with the intention of funding the brief's preparation or submission, and, if so, to identify all such persons. "Person," as used in Paragraph C, includes artificial persons as well as natural persons.

Paragraph C is not intended to deter the filing of any amicus brief but rather to preserve the integrity and transparency of amicus practice in New Mexico's appellate courts. The disclosure requirement is modeled on United States Supreme Court Rule 37.6. Coordination between the amicus and the party whose position the amicus supports is permitted and may be desirable, to the extent that it helps to avoid duplicative arguments. Coordination, such as sharing drafts of briefs, need not be disclosed under Paragraph C. *Cf*. Eugene Gressman et al., *Supreme Court Practice* 739 (9th ed. 2007)

(Supreme Court Rule 37.6 does not "require disclosure of any coordination and discussion between party counsel and amici counsel regarding their respective arguments . . . .").

[Approved by Supreme Court Order No. 13-8300-034, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-321. Scope of review; preservation.

A. **Preserving issues for review.** To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

B. **Exceptions.**

(1) Subject matter jurisdiction of the trial or appellate court may be raised at any time.

(2) This rule does not preclude a party from raising or the appellate court, in its discretion, from considering issues that by case law, statute, or rule may be raised for the first time on appeal. These issues include, but are not limited to, issues involving

(a) general public interest;

(b) plain error;

(c) fundamental error; or

(d) fundamental rights of a party.

[As amended, effective September 1, 1993; 12-216 recompiled and amended as 12-321 by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — In 2016, the committee renumbered Rule 12-216 NMRA and placed it in the general provisions article as Rule 12-321 NMRA.

Preservation serves three primary purposes. *State v. Bell*, 2015-NMCA-028, ¶ 2, 345 P.3d 342. First, preservation allows the trial court an opportunity to cure claimed errors. *Id*. Second, it allows "the opposing party a fair opportunity to respond to the claim of error and to show why the [trial] court should rule against that claim." *Id*. (alteration in original). And third, it creates a record from which the appellate court may "make an informed decision." *Id*.

Subparagraph (B)(2) sets forth a non-exhaustive list of issues that may be raised for the first time on appeal, including fundamental error. Although the doctrine of fundamental error generally applies only in criminal cases, our appellate courts have applied the doctrine "in civil cases under the most extraordinary and limited circumstances." *Estate of Gutierrez v. Meteor Monument, L.L.C.*, 2012-NMSC-004, ¶ 33, 274 P.3d 97; *see, e.g., Gracia v. Bittner*, 1995 NMCA-064, ¶¶ 24-26, 120 N.M. 191, 900 P.2d 351.

Rule 1-046 NMRA of the Rules of Civil Procedure for the District Courts and Rule 11-103 NMRA of the Rules of Evidence also address preservation.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-322. Courtroom closure.

A. **Courtroom proceedings open.** All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the appellate court entered under this rule. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of an order for courtroom closure. Unless otherwise ordered by the court, the following persons may be present during a closed courtroom proceeding: the parties and their attorneys, court employees and security personnel, and victims and victims representatives as defined in the Victims of Crime Act, Section 31-26-3 NMSA 1978. This rule does not affect the court's inherent authority to impose reasonable time, place, and manner limitations on public access to the courtroom, including reasonable limitations on broadcasting, televising, photographing, and recording of court proceedings as set forth in Rule 23-107 NMRA.

B. **Motion for courtroom closure.** A motion for courtroom closure must advance an interest that overrides the public's interest in attending the proceeding.

(1) ***Motion of the court.*** If the appellate court determines on the court's own motion that a courtroom proceeding should be closed, the court shall file and serve on each party an order to show cause why the proceeding should not be closed.

(2) ***Motion of a party, or other interested person or entity.*** A written motion for courtroom closure shall be filed and served within fifteen (15) days after service of notice setting a matter for hearing or oral argument, unless upon good cause shown the appellate court waives the time requirement.

(3) ***Response.*** A party opposing a motion for courtroom closure or responding to an order to show cause may file a written response within fifteen (15) days after service of the motion or order to show cause, unless a different time period is ordered by the appellate court. A reply is not permitted without leave of the court, which may be granted upon a showing of good cause.

(4) ***Response by non-party.*** Any member of the public may file a written response to a motion for courtroom closure at any time before the hearing required under Paragraph C of this rule.

(5) ***Continuance.*** In the appellate court's discretion or at the request of the parties, the court may continue a courtroom proceeding to allow time to file written responses.

C. **Public hearing.** Unless the appellate court denies a motion for courtroom closure on the pleadings, the court shall hold a public hearing on any proposed courtroom closure considered under Subparagraph (B)(1) or (B)(2) of this rule.

(1) ***Notice of hearing to the public.*** Media organizations, persons, and entities that have requested to receive notice of proposed courtroom closures shall be given timely notice of the date, time, and place of any hearing under this paragraph. Any member of the public shall be permitted a reasonable opportunity to be heard at the hearing.

(2) ***In camera review.*** Although the appellate court is required to hold a public hearing on a motion for courtroom closure, this rule does not preclude the court from holding part of a hearing in camera for the limited purpose of reviewing sensitive or confidential information relevant to the motion. Any evidence or argument tendered to the court for an in camera review that is not ordered to be disclosed shall be placed under seal and preserved for appellate review. The record of the in camera hearing shall not be revealed without an order of the court.

D. **Order for courtroom closure.** An order for courtroom closure shall be in writing, shall articulate the overriding interest being protected, and shall specify the appellate court's findings underlying the order. The court may order the exclusion of the public from all or part of a courtroom proceeding only if

(1) the court concludes that such order is necessary to preserve an overriding interest that is likely to be prejudiced if the courtroom is not closed;

(2) the order for courtroom closure is narrowly tailored to protect the overriding interest; and

(3) the court has considered reasonable alternatives to courtroom closure.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — Both the United States Constitution and the New Mexico Constitution guarantee a criminal defendant the right to a public trial. *See* U.S. Const. amend. VI; N.M. Const. art. II, § 14. The New Mexico Constitution also guarantees certain crime victims "the right to attend all public court proceedings the accused has

the right to attend." N.M. Const. art. II, § 24; *see also* NMSA 1978, Section 31-26-4(E) (1999) (same). Additionally, the public has a First Amendment right to attend criminal trials. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 566-67 (1980). Consistent with these constitutional rights, New Mexico statute requires all courtroom proceedings to be open to the public unless otherwise provided by law. *See* NMSA 1978, § 34-1-1 (1851) ("Except as provided in the Children's Code [32A-1-1 NMSA 1978] and in other laws making specific provisions for exclusion of the public, all courts of this state shall be held openly and publicly, and all persons whatsoever shall be freely admitted to the courts and permitted to remain so long as they shall observe good order and decorum.").

Numerous statutes identify particular types of information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., committee commentary to Rule 12-314 NMRA (listing statutory confidentiality provisions). This rule does not authorize automatic courtroom closure for proceedings involving information designated by statute as confidential. Instead, if a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule. And statutory confidentiality provisions notwithstanding, the appellate court must still engage in the balancing test set forth in Paragraph D of this rule before deciding whether to close any particular proceeding and must provide for public notice and hearing as set forth in Paragraph C of this rule prior to entering any order for courtroom closure.

The prerequisites to a courtroom closure order, as set forth in Paragraph D, are taken from *State v. Turrietta*, 2013-NMSC-036, ¶¶ 17, 19, 308 P.3d 964, which provides that the court cannot order a full or partial closure of the courtroom unless the closure is warranted under the four-factor "overriding interest" standard set forth in *Waller v. Georgia*, 467 U.S. 39 (1984). Under *Waller*,

[1] the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, [2] the closure must be no broader than necessary to protect that interest, [3] the [appellate] court must consider reasonable alternatives to closing the proceeding, and [4] it must make findings adequate to support the closure.

Turrietta, 2013-NMSC-036, ¶ 17 (quoting *Waller*, 467 U.S. at 48).

Courts are obligated to consider reasonable alternatives to courtroom closure. *See id*. ¶¶ 28, 30; *Presley v. Georgia*, 558 U.S. 209, 214-15 (2010). The range of reasonable alternatives available to the court will depend on the circumstances.

This rule permits public participation prior to the issuance of an order closing a courtroom proceeding. Under Subparagraph (B)(2), a non-party may file a motion for courtroom closure if such non-party has a sufficient interest in closing the proceeding, for example, if such non-party is the subject of testimony or evidence. Under Paragraph C, the public is entitled to notice and an opportunity to be heard before a courtroom proceeding is closed. The court shall follow the procedure developed by the Supreme

Court for providing notice of public hearings to media organizations and other persons and entities who have requested to receive notice under Subparagraph (C)(1) of this rule.

This rule shall not diminish the appellate court's inherent authority to exclude disruptive persons from the courtroom to ensure decorum, prevent distractions, and ensure the fair administration of justice.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016.]

ARTICLE 4
Disposition

12-401. Dismissal.

A. **Dismissal in district court.** If an appeal has not been docketed, the appeal may be dismissed by the district court upon motion of the appellant or by the parties upon the filing of a stipulation of the parties affected by the appeal. The district court clerk shall advise the appellate court in writing of the dismissal.

B. **Dismissal in appellate court.**

(1) ***Stipulated dismissal.*** Prior to entry of disposition, if all of the parties affected by an appeal or other proceeding sign and file with the appellate court clerk an agreement that the same be dismissed, an order of dismissal shall be entered and mandate or other process of the court shall issue immediately.

(2) ***Dismissal on appellant's motion.*** An appeal or other proceeding may be dismissed by the appellate court after motion by the appellant or party instituting the proceeding and upon such terms as are fixed by the appellate court or agreed upon by the affected parties. The motion shall state whether the opposition or concurrence of all affected parties has been sought as required by Rule 12-309(C) NMRA.

(3) ***Dismissal on appellee's motion.*** An appeal or other proceeding may be dismissed by the appellate court after motion by an appellee and upon such terms as are fixed by the appellate court. The motion shall state whether the opposition or concurrence has been sought by all affected parties as required by Rule 12-309(C) NMRA. If the motion is based on the failure to file a docketing statement or statement of the issues, the appellee shall pay the docket fee set by statute for such motions.

(4) ***Dismissal on appellate court's motion.*** An appeal or other proceeding may be dismissed by an appellate court for failure to comply with rules under Rule 12-312 NMRA.

C. **Notice of dismissal.** The appellate court clerk shall transmit a conformed copy of any dismissal entered under this rule to the district court, board, commission, administrative agency, or official whose action was sought to be reviewed.

[As amended, effective July 1, 1990; as amended by Supreme Court Order No.14-8300-008, effective for all cases filed or pending on or after December 31, 2014.]

Committee commentary. — The docket fee for a motion under Subparagraph (B)(3) of this rule is set by either NMSA 1978, Section 34-2-5(A) (2003) (Supreme Court), or NMSA 1978, Section 34-5-6(A) (2003) (Court of Appeals).

[Adopted by Supreme Court Order No. 14-8300-008, effective for all cases filed or pending on or after December 31, 2014.]

12-402. Issuance and stay of mandate.

A. **Entry of disposition.** Writings evidencing disposition by the appellate court shall be filed with the appellate court clerk and the filing constitutes entry thereof.

B. **Supreme Court.** Unless otherwise ordered, mandate shall not issue until expiration of fifteen (15) days after the latest of the following events:

(1) entry of disposition of the proceedings;

(2) the Supreme Court's modification of its disposition on the Court's own motion; or

(3) the Supreme Court's modification of its disposition following the grant of a timely motion for rehearing under Rule 12-404 NMRA.

C. **Court of Appeals.** Mandate from the Court of Appeals shall not issue until the time has elapsed for seeking certiorari in the Supreme Court. If certiorari is sought, mandate shall not issue until final disposition of the application for the writ or, if the writ is granted, until final action on the cause by the Supreme Court. For good cause shown, the Court of Appeals may recall its mandate within ten (10) days of issuance thereof.

D. **Stipulated mandate.** The appellate court may, on stipulation of the parties, issue mandate or other process prior to the time or times above specified.

E. **Stay of mandate pending appeal or application for certiorari in the United States Supreme Court.** A stay or recall of the mandate pending appeal or application to the United States Supreme Court for a writ of certiorari may be granted on motion. The stay shall not exceed sixty (60) days unless the period is extended for cause shown. If during the period of the stay there is filed with the appellate court clerk a notice from the clerk of the United States Supreme Court that the party who has obtained the stay has filed an appeal or a petition for the writ in that court, the stay shall

continue until final disposition. On the filing of a copy of an order denying the petition for writ of certiorari or dismissing the appeal, or a judgment affirming the decision of the court, the mandate shall issue immediately. If the petition for writ of certiorari seeks review of a decision of the Court of Appeals, and if the Court of Appeals has denied a stay or recall of mandate under this paragraph, the petitioner may obtain review of the Court of Appeals' action in the Supreme Court by filing a motion in the Supreme Court within ten (10) days of the Court of Appeals' denial.

[As amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-403. Costs and attorney fees.

A. **Recovery.** Unless otherwise provided by law, the appellate court may, in its discretion, award costs to the prevailing party on request. A party may request costs in a motion filed within fifteen (15) days after entry of disposition. Costs may be apportioned by the appellate court in such manner as it may direct.

B. **Allowable costs.** Allowable costs may include the following:

(1) docket fee or other fees paid in the appellate court;

(2) costs of preparing the record proper and the transcript of proceedings, as reflected by the certificates of the district court clerk and the court reporter;

(3) reasonable attorney fees for services rendered on appeal in causes where the award of attorney fees is permitted by law;

(4) damages under Section 39-3-27 NMSA 1978, if it is determined that the appeal is frivolous, not in good faith, or merely for purposes of delay; and

(5) any other costs as the appellate court may deem proper.

[As amended, effective September 1, 1993; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-404. Rehearings.

A. **Motion; when filed.** A motion for rehearing may be filed within fifteen (15) days after filing of the appellate court's disposition, or any subsequent modification of its disposition, unless the time is shortened or enlarged by order. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this rule. The motion shall state briefly and with particularity, but without argument, the points of law or fact which in the opinion of the movant the court has overlooked or misapprehended. If the motion is based on a point of law or fact not raised, briefed, or argued by any party but relied on by the court in its disposition of the matter, the motion

shall specifically so state, and shall be accompanied by a brief in support thereof. In all other cases the movant may, but is not required to, file a brief in support of the motion at the time it is filed. No response to a motion for rehearing shall be filed unless requested by the court. If a motion for rehearing is granted, the appellate court clerk shall give notice thereof and any party who has not filed a brief on rehearing may, within fifteen (15) days after notice, file a brief addressed to the issues on rehearing. There shall be no other briefs or argument unless the appellate court shall otherwise direct.

B. **How granted.**

(1) ***Supreme Court***. Rehearing in the Supreme Court may be granted on the request of any three justices. Any member of the current court may participate in a rehearing or consideration of a motion for rehearing irrespective of whether the justice participated in the original decision or was a member of the court at the time the original decision was filed. When necessary the court may designate any justice or judge to participate in a rehearing or consideration of a motion for rehearing.

(2) ***Court of Appeals***. Rehearing in the Court of Appeals may be granted at the request of any two judges who participated in the hearing or decision. If any judge of the Court who participated in the hearing or decision is unable, for any reason, to participate in a rehearing or consideration of a motion for rehearing, the chief judge or acting chief judge shall designate another judge or acting judge of the Court as a replacement, and the judge so designated shall have the same duties and authority as though the judge had participated in the hearing and concurred in the decision.

C. **Effect on decision or opinion.** The granting of a motion for rehearing shall have the effect of suspending the decision or opinion of the appellate court until final determination by the appellate court.

[As amended, effective September 1, 1991; September 1, 1993; January 1, 1997; as amended by Supreme Court Order No. 09-8300-010, effective May 6, 2009; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-007, effective for all cases pending or filed on or after March 30, 2022.]

12-405. Opinions.

A. **Necessity.** It is unnecessary for the appellate court to write precedential opinions in every case. Disposition by order, decision or memorandum opinion does not mean that the case is considered unimportant. It does mean that the disposition is not precedent. Non-precedential dispositions may be cited for any persuasive value and may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.

B. **Disposition by order, decision or memorandum opinion.** The appellate court may dispose of a case by non-precedential order, decision or memorandum opinion under the following circumstances:

(1) The issues presented have been previously decided by the Supreme Court or Court of Appeals;

(2) The presence or absence of substantial evidence disposes of the issue;

(3) The issues are answered by statute or rules of court;

(4) The asserted error is not prejudicial to the complaining party; or

(5) The issues presented are manifestly without merit.

C. **Precedential effect; publishing opinions.** Except for any disposition under Paragraph B of this rule, opinions become precedent when filed pursuant to Paragraph A of Rule 12-402 NMRA unless suspended pursuant to Paragraph C of Rule 12-404 NMRA. A petition for a writ of certiorari filed pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Supreme Court. Except for dispositions under Paragraph B of this rule, all opinions shall be published in an authenticated, digital format by the New Mexico Compilation Commission and collectively known as the New Mexico Appellate Reports unless the Supreme Court directs otherwise.

D. **Citation.** Any citation to a non-precedential disposition from any jurisdiction shall indicate in a parenthetical that the disposition is non-precedential or unpublished and shall otherwise be in accordance with the Appendix to Rule 23-112 NMRA. If a party cites a non-precedential disposition that is unavailable in a publicly accessible electronic database, the party shall separately file and serve a copy contemporaneously with the brief or other paper in which it is cited.

[As amended by Supreme Court Order No. 11-8300-031, effective for cases pending or filed on or after September 12, 2011; by Supreme Court Order No. 12-8300-006, effective March 1, 2012; as amended by Supreme Court Order No. S-1-RCR-2024-00109, effective December 31, 2024.]

Committee commentary. — "Non-precedential dispositions" referred to in this rule are also commonly described as unpublished opinions or dispositions. In addition to the citation requirements in Paragraph D of this rule, all citations to unpublished orders, decisions, and memorandum opinions must comply with the applicable provisions in Rule 23-112 NMRA and the most current edition of The Bluebook: A Uniform System of Citation. For purposes of this rule, the New Mexico Compilation Commission’s web site is a publicly accessible electronic database that provides free access to some unpublished orders, decisions, and memorandum opinions issued by the New Mexico

Supreme Court and Court of Appeals. A publicly accessible electronic database also includes pay-for-access sites like Westlaw and Lexis.

[Adopted by Supreme Court Order No. 11-8300-031, effective for cases pending or filed on or after September 12, 2011.]

12-406. Timely disposition of appeals.

A. **Timely disposition of appeal required.** The timely disposition of appeals is an essential requirement of justice.

B. **Submission to panel.** In any appeal or other case pending before the Supreme Court or Court of Appeals on a nonsummary calendar, the Court should render a decision or otherwise dispose of the case within six (6) months of the date the case is submitted to a panel for disposition. The clerk shall notify the parties at the time of submission that the case has been submitted.

C. **Tolling of time.** If after submission, supplemental briefing is ordered, if the case is referred for settlement or under any similar circumstances, the time for disposition shall be tolled.

[Approved, effective July 1, 1990; as amended by Supreme Court Order No. 05-8300-018, effective October 11, 2005.]

Committee commentary. — This rule was amended in 2005 to reflect lengthened briefing times and the actual time required by court procedures prior to submission of a case to a panel for decision and also to eliminate the burdensome record-keeping requirements in the former rule. The former rule had been adopted in 1990 and provided not only for timely disposition of appeals but also for periodic statements of reason why a case had not been disposed of in a period consistent with the rule.

The former rule indicated a decision should be filed within ten (10) months of the notice of appeal. Since the enactment of the former rule, Rule 12-210 NMRA has been amended to lengthen the parties' briefing times. In addition, it did not appear that the former rule considered the time required in the Court of Appeals to initially calendar or recalendar a case or the time required in both appellate courts to make satisfactory arrangements, copy and transmit the record proper, inspect the transcript for errors, and transmit the transcript to the appellate court. The time from notice of appeal to decision should include time for (1) filing the docketing statement (30 days - Rule 12-208 NMRA), (2) payment for and transmission of the record proper (14 days minimum - Rule 12-209(B) NMRA), (3) assignment to calendar (21 to 90 days or greater depending on recalendaring - Rule 12-210 NMRA), (4) designation, satisfactory arrangements, preparation of transcript, objection period, transmission to appellate court (15 + 15 + 60 + 15 + 7 = 112 days, assuming no cross-designations and no objections - Rule 12-211(C) NMRA), (5) briefing time (111 days - Rule 12-210(B) NMRA; Rule 12-308(B)

NMRA) and (6) time for submission in the next month after briefing is completed (30 days), for a total of 319 days or more.

For both courts, the period of time between the initiation of a case and disposition often lengthens as a result of events outside the sole control of the courts. For this reason, and in order to concentrate at present on the period of time within the sole control of the appellate courts, no aspirational goal is included for the period of time between the initiation of a case in one of the appellate courts and its disposition by that court. Nevertheless, the times allowed by the rules to prepare the record and transcript, calendar the case, and brief the issues is a measure of the length of delay to be expected after the initiation of a case and before its submission to a panel for decision.

The former rule required a decision within three months of submission. The respective courts are closer to an average of six (6) months as time from submission to disposition. The Supreme Court suggested the six-month time frame to the Committee in hopes that the enactment of this rule will encourage both appellate courts to decide most of their cases within six (6) months of submission. Thus, the period for a case to be decided after submission is aspirational.

ARTICLE 5
Writs

12-501. Certiorari from the Supreme Court to the district court regarding denial of habeas corpus.

A. **Scope of rule.** This rule governs petitions for the issuance of writs of certiorari seeking review of denials of habeas corpus petitions by the district court under Rule 5-802 NMRA of the Rules of Criminal Procedure.

B. **Time.** Petitions for writs of certiorari shall be filed with the Supreme Court clerk within thirty (30) days of entry of the district court's order denying the petition. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the petition shall be accompanied by the docket fee. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph.

C. **Extensions of time to file petition.**

(1) Before the time for filing a petition has expired, on a showing of good cause, the Supreme Court may extend the time for filing the petition for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this rule.

(2) After the time has expired for filing a petition, on a showing of excusable neglect or circumstances beyond the control of the petitioner, the Supreme Court may extend the time for filing a petition for a period not to exceed thirty (30) days from the expiration of time otherwise provided by this rule.

(3) After sixty (60) days from the time of the order denying the petition, the Supreme Court may extend the time for filing the petition on a showing of good cause and circumstances beyond the control of the petitioner.

(4) In computing time under this paragraph, the three (3) day mailing period set forth in Rule 12-308 NMRA does not apply.

D. **Petition; contents.** The petition, not exceeding ten (10) pages, shall have attached a copy of the petition for writ of habeas corpus and attachments filed in district court, the response, if any, and a copy of the district court's denial thereof, and shall contain

(1) a description of the proceedings in district court relating to the petition, showing whether an evidentiary hearing was held in district court, and if so, a summary of the evidence presented therein;

(2) a direct and concise argument showing that the district court's decision was erroneous; and

(3) a prayer for relief.

E. **Briefs, records, and transcripts.** In the event the writ of certiorari is issued, additional briefs, the record, and transcripts may be filed only as directed by the Supreme Court.

F. **Service.** Service of any paper shall be made and proof thereof accomplished in accordance with Rule 12-307 NMRA.

G. **Copies.** If the petition for writ of certiorari has been filed pro se by a petitioner adjudged indigent, only the original petition shall be filed. In all other cases, copies shall be filed in accordance with Rule 12-306 NMRA.

[As amended by Supreme Court Order No. 09-8300-010, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014 and Order No. 14-8300-027, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-502. Certiorari from the Supreme Court to the Court of Appeals.

A. **Scope of rule.** This rule governs petitions for the issuance of writs of certiorari seeking review of decisions of the Court of Appeals.

B. **Time.** The petition for writ of certiorari shall be filed with the Supreme Court clerk within thirty (30) days after final action by the Court of Appeals and served immediately on the respondent. Subject to the provisions of Rule 12-304 NMRA and Rule 23-114

NMRA, the petition shall be accompanied by the docket fee. The three (3) day period set forth in Rule 12-308(B) NMRA does not apply to the time limits set by this paragraph. Final action by the Court of Appeals shall be the filing of its decision with the Court of Appeals clerk unless timely motion for rehearing is filed, in which event, final action shall be the disposition of the last motion for rehearing that was timely filed.

C. **Petition.**

(1) ***Cover.*** The cover of the petition shall show the names of the parties, with the plaintiff, petitioner, or party initiating the proceeding in the trial court or administrative body listed first (e.g., State of New Mexico, Plaintiff-Respondent vs. John Doe, Defendant-Petitioner), and the name, mailing address, and telephone number of counsel filing the petition, or, if a party is not represented by counsel, the name, mailing address, and telephone number of the party.

(2) ***Contents.*** The petition shall contain a concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(a) the date of entry of the decision and any order on motion for rehearing;

(b) the questions presented for review (the Court will consider only the questions set forth in the petition);

(c) the facts material to the questions presented;

(d) the basis for granting the writ, specifying where applicable:

(i) any decision of the Supreme Court with which it is asserted the decision of the Court of Appeals is in conflict, and showing of such conflict, including a quotation from that part of the Court of Appeals decision, if any, and a quotation from the part of the Supreme Court decision showing the alleged conflict;

(ii) any decision of the Court of Appeals with which it is asserted the decision from which certiorari is sought is in conflict, and showing of such conflict, including a quotation from that part of the Court of Appeals decision, if any, and a quotation from that part of the prior Court of Appeals decision showing the alleged conflict;

(iii) what significant question of law under the Constitution of New Mexico or the United States is involved; or

(iv) the issue of substantial public interest that should be determined by the Supreme Court;

(e) a direct and concise argument amplifying the reasons relied on for granting the writ, including specific references to the briefs filed in the Court of Appeals showing where the questions were presented to the Court of Appeals;

(f) a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any; and

(g) a prayer for relief, including whether the case should be remanded to the Court of Appeals for consideration of issues not raised in the petition if the relief requested is granted.

(3) ***Attachments.***

(a) A petitioner shall attach to the petition a copy of the decision of the Court of Appeals and, if the Court of Appeals decided the case on the summary calendar, a copy of any calendaring notices.

(b) A petitioner seeking review of an action of the Court of Appeals involving review of an administrative proceeding under Rule 12-505 NMRA shall attach to the petition a copy of the final order or judgment of the district court, any district court findings or decision leading to its final order or judgment, and a copy of the administrative decision under review by the district court.

(c) If a motion for rehearing was filed, the motion and the order of the Court of Appeals on the motion shall be attached to the petition.

D. **Length limitations.** Except by permission of the Supreme Court, the petition shall comply with Rule 12-305 NMRA and the following length limitations.

(1) ***Body of the petition defined.*** The body of the petition consists of headings, footnotes, quotations, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) ***Page limitation.*** Unless the petition complies with Subparagraph (D)(3) of this rule, the body of the petition shall not exceed ten (10) pages.

(3) ***Type-volume limitation.*** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface, such as Courier.

E. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (D)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (D)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of

the petition as defined in Subparagraph (D)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

F. **Cross-petitions.** If more than one party files a petition for writ of certiorari, the party to file the first petition shall be denominated petitioner, and any party filing a subsequent petition shall be denominated a cross-petitioner, unless the Supreme Court orders otherwise.

G. **Conditional cross-petition.** Any party may, within fifteen (15) days of service of a petition for writ of certiorari, file a conditional cross-petition for writ of certiorari, to be considered only if the Court grants the petition. Subject to the provisions of Rule 12-304 NMRA and Rule 23-114 NMRA, the conditional cross-petition shall be accompanied by the docket fee. A conditional cross-petition shall be clearly identified as conditional on the cover. Material attached to a petition need not be attached again to a conditional cross-petition. A conditional cross-petition shall be governed by the other provisions of this rule, except Paragraph B.

H. **Response.** A respondent may file a response to the petition within fifteen (15) days of service of the petition or within fifteen (15) days of the granting of the petition. The response shall comply with Paragraphs D and E of this rule.

I. **Reply.** A reply is not permitted without leave of the Supreme Court, which may be granted upon a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

J. **Notice to and action by the Court of Appeals.** The Supreme Court clerk shall deliver a copy of the petition to the Court of Appeals clerk. At the Supreme Court's request, the Court of Appeals clerk shall deliver the record proper and any designated transcripts and exhibits to the Supreme Court.

K. **Briefs.** In the event the writ of certiorari is issued, additional briefs may be filed only as directed by the Supreme Court. Unless the Court orders otherwise, such additional briefs shall conform to the requirements set forth in Rule 12-318 NMRA and the following.

(1) In cases from the Court of Appeals general calendar, the petitioner shall file and serve a brief in chief within forty-five (45) days after service of the order granting the petition for writ of certiorari.

(2) In cases from the Court of Appeals summary or legal calendar, the transcript of proceedings, if designated, or the notice of non-designation of transcript shall be filed as provided in Rule 12-211 NMRA, and the parties' designations of

exhibits and depositions shall be filed as provided in Rule 12-212 NMRA. The petitioner shall file and serve a brief in chief within forty-five (45) days after notice from the Supreme Court clerk that the record proper and all designated transcripts and exhibits from the relevant lower court or agency have been filed in the Supreme Court.

(3) The respondent shall file and serve an answer brief within forty-five (45) days after service of the brief in chief. The petitioner may file and serve a reply brief within twenty (20) days after service of the answer brief. The time limits for briefs on cross-appeals are governed by Rule 12-318(I) NMRA.

L. **Oral argument.** The Supreme Court may order oral argument at its discretion. A party may request oral argument as set forth in Rule 12-319 NMRA.

M. **Expedited decision process.** The Supreme Court may order an expedited briefing and oral argument schedule in a time-sensitive case. If the Supreme Court orders expedited review, the record forwarded by the Court of Appeals clerk to the Supreme Court clerk shall include

(1) all briefs filed in the Court of Appeals, if the Court of Appeals disposed of the case on the general or legal calendar; and

(2) all memoranda filed in response to notices of proposed disposition under Rule 12-210(D)(2) NMRA, if the Court of Appeals disposed of the case on the summary calendar.

N. **Service.** Service of any paper shall be made and proof of service accomplished in accordance with Rule 12-307 NMRA.

O. **Copies.** If the petition for writ of certiorari has been filed pro se by a petitioner adjudged indigent, only the original petition shall be filed. In all other cases, copies shall be filed in accordance with Rule 12-306 NMRA.

[As amended, effective July 1, 1990; August 1, 1992; October 1, 1995; January 1, 2000; November 1, 2003; as amended by Supreme Court Order No. 07-8300-024, effective November 1, 2007; by Supreme Court Order No. 09-8300-031, effective August 24, 2009, for all pending cases in the district courts and the Court of Appeals; as amended by Supreme Court Order No. 17-8300-015, effective for all cases pending or filed on or after December 31, 2017.]

Committee commentary. — The committee made several changes to this rule in 2017, as follows: (1) a new Subparagraph (C)(2)(f), requiring the petitioner to alert the Supreme Court to any related or prior appeals consistent with a similar obligation contained in Rules 12-202 and 12-208 NMRA, which is an obligation that continues through the pendency of the case; (2) a new Paragraph F, clarifying how parties should be denominated when opposing parties file separate petitions for certiorari; (3) a new Paragraph I, addressing replies; (4) amendments to Paragraphs K and L to provide

more detailed information about briefing and oral argument in a case where the petition for writ of certiorari has been granted from one of the various Court of Appeals dockets; and (5) a new Paragraph M, regarding the Supreme Court's expedited process for briefing and oral argument in time-sensitive cases.

The 2007 amendments to this rule allow practitioners to exceed the traditional page limitations for a petition, conditional cross-petition, or response if the pleading complies with the type-volume limitations set forth in Subparagraph (D)(3) and is accompanied by a statement as provided by Paragraph E to show that the pleading complies with the applicable type-volume limitation. And, in the exercise of the Supreme Court's rule-making power, the time limit in Paragraph B for the filing of a petition was expanded from the twenty (20)-day limit contained in NMSA 1978, Section 34-5-14(B) to thirty (30) days.

See Cummings v. State, 2007-NMSC-048, ¶ 17, 142 N.M. 656, 168 P.3d 1080; *see also State v. Arnold*, 1947-NMSC-043, ¶ 11, 51 N.M. 311, 183 P.2d 845. ("Once the legislature has authorized the appeal, reasonable regulations affecting the time and manner of taking and perfecting the same are procedural and within this court's rule making power.").

[Adopted by Supreme Court Order No. 09-8300-031, effective August 24, 2009, for all pending cases in the district courts and the Court of Appeals; as amended by Supreme Court Order No. 17-8300-015, effective for all cases pending or filed on or after December 31, 2017.]

12-503. Writs of error.

A. **Scope.** This rule governs the procedure for issuance of a writ of error by the Supreme Court or Court of Appeals to the district court.

B. **Court of Appeals; authority to issue.** Under Article VI, Section 29 of the New Mexico Constitution, the Supreme Court authorizes the Court of Appeals to issue writs of error in those cases over which it would have appellate jurisdiction from a final judgment.

C. **Time.** A petition for writ of error shall be filed within thirty (30) days after the order sought to be reviewed is filed in the district court clerk's office. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to this time limit.

D. **Parties.** The first party to file a petition for writ of error, and any party joining in that petition, shall be designated an "appellant." Any opposing party, regardless of whether that party has also filed a petition, shall be designated an "appellee." The district court shall not be a party to the proceeding on a writ of error.

E. **Contents.** A party seeking a writ of error shall attach to the petition a copy of the order of the district court, with the date of filing noted on its face, and shall include in the petition

(1) a concise statement of the nature of the case, a summary of the proceedings, the disposition below, and the facts relevant to the petition;

(2) a concise statement of how the order sought to be reviewed

(a) conclusively determines the disputed question;

(b) resolves an important issue completely separate from the merits of the action; and

(c) would be effectively unreviewable on appeal from a final judgment because the remedy by way of appeal would be inadequate; and

(3) any other matters of record that will assist the appellate court in exercising its discretion.

F. **Length limitations.** Except by permission of the appellate court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) ***Body of the petition defined.*** The body of the petition consists of headings, footnotes, quotations, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) ***Page limitation.*** Unless the petition complies with Subparagraph (E)(3) of this rule, the body of the petition shall not exceed ten (10) pages.

(3) ***Type-volume limitation.*** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface, such as Courier.

G. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (F)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (F)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (F)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

H. **Filing.** The petition shall be filed in the court that would have appellate jurisdiction over a final judgment in the case along with the appellate docket fee or free process order.

I. **Service.** The party filing the petition shall serve a copy of it on all other parties to the proceeding and on the district court judge.

J. **Response.** Any party may file a response to a petition for writ of error within fifteen (15) days of service of the petition. The response shall comply with Paragraphs F and G of this rule and shall be served on all other parties and on the district court judge.

K. **Reply.** A reply is not permitted without leave of the appellate court, which may be granted upon a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of the response and must include the proposed reply.

L. **Proceedings on issuance of writ.** The appellate court in its discretion may issue the writ. On issuance of the writ, the court shall assign the case to a calendar, and the parties shall proceed in accordance with Rule 12-210 NMRA. The district court clerk shall transmit a copy of the record proper on receipt of the notice of calendar assignment. On issuance of the writ, a copy of the writ shall be served on all persons required to be served under Rule 12-202 NMRA.

M. **Stay on issuance of the writ.** On issuance of the writ, a party seeking either a stay of the order that is the subject of the writ of error or a stay of proceedings pending appeal shall first seek such an order from the district court, and any party may thereafter seek appellate review of the district court's ruling under Rule 12-205, 12-206, or 12-207 NMRA.

[As amended, effective December 1, 1993; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-504. Other extraordinary writs from the Supreme Court.

A. **Scope of rule.** This rule governs the procedure for the issuance of all writs in the exercise of the Supreme Court's original jurisdiction except for writs of certiorari to the Court of Appeals under Rule 12-502 NMRA and the district courts under Rule 12-501 NMRA, and writs of error under Rule 12-503 NMRA.

B. **Initiation of proceedings.**

(1) Extraordinary writ proceedings in the exercise of the Supreme Court's original jurisdiction shall be initiated by filing with the Supreme Court clerk a verified petition of the party seeking the writ. Subject to the provisions of Rule 12-304 NMRA and Rule 23-114 NMRA, the appropriate docket fee shall accompany the petition. As used in this rule, a "verified petition" is one that contains a statement under oath that the

signer has read the petition and that the statements contained in the petition are true and correct to the best of the signer's knowledge, information, and belief. The statement under oath need not be notarized. The petition shall set forth the following:

(a) the grounds on which jurisdiction of the Supreme Court is based;

(b) the circumstances making it necessary or proper to seek the writ in the Supreme Court if the petition might lawfully have been made to some other court in the first instance;

(c) the name or names of the real parties in interest, if any, if the respondent is a justice, judge, or other public officer or employee, court, board, or tribunal, purporting to act in the discharge of official duties;

(d) the ground or grounds on which the petition is based, and the facts and law supporting the same stated in concise form; and

(e) a concise statement of the relief sought.

(2) Any opinions, orders, transcripts, or other papers indicating the respondent's position on the matter in question shall be attached to the petition, if available. Any pleadings or other papers may be attached if they are necessary and appropriate to inform the Court adequately regarding the circumstances out of which the petition arises and the basis for granting relief.

(3) If the circumstances giving rise to the petition appear to the petitioner to require the Court to act on an emergency basis, the petition shall clearly be designated in its title as an "emergency" petition.

C. **Proceedings and disposition.**

(1) The respondent, the real parties in interest, and the attorney general may file a response to the petition. A response shall comply with the requirements of Paragraphs G and H of this rule. The Court may act on a petition prior to the filing of a response. A reply is not permitted without leave of the Court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of a response and must include the proposed reply.

(2) If it appears to a majority of the Court that the petition is without merit, concerns a matter more properly reviewable by appeal, or seeks relief prematurely, it may be denied summarily.

(3) If the petition is not summarily denied, the Court may direct the respondent, the real parties in interest, and the attorney general to file a response or further response to the petition, may request briefs on the issues presented in the

petition, or may set a hearing on the petition, and the matter shall proceed accordingly or as otherwise ordered by the Court.

(4) If the petitioner is entitled to a writ or relief other than that requested in the petition, the petition shall not be denied, and the Court shall grant the writ or relief to which the petitioner is entitled.

D. **Stays.**

(1) A party filing a petition for an extraordinary writ and also seeking a stay of some action by the respondent pending disposition of the petition shall include the phrase “and Request for Stay” in the title of the petition in addition to complying with other requirements of this paragraph. The respondent, the real parties in interest, and the attorney general may file a response to the request for stay, which may be joined with a response to the petition. The Court may act on a request for stay prior to the filing of a response. A reply is not permitted without leave of the Court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of a response and must include the proposed reply.

(2) The Court may issue a stay to the respondent without notice to the respondent or the real parties in interest only if

(a) it clearly appears from the verified petition or by affidavit filed with the Court that immediate and irreparable injury, loss, or damage will result to the petitioner before the respondent or real parties in interest can be heard in opposition;

(b) it clearly appears from the verified petition or by affidavit filed with the Court that no loss or damage will result to the respondent or any real parties in interest, or, if loss or damage will occur, what that loss or damage will be; and

(c) the petitioner certifies in writing to the Court the efforts, if any, that have been made to give notice and the reasons supporting the petitioner’s claim that notice should not be required.

(3) If a request for stay is granted under this rule, the respondent, the real parties in interest, and the attorney general may move to have the stay vacated, and the Court may act on the motion with or without notice as deemed appropriate.

E. **Service.** Service of all papers filed under the rule shall be made under Rule 12-307 NMRA on the petitioner, the respondent, any real parties in interest and, if the respondent is as described in Subparagraph (B)(1)(c) of this rule, the attorney general.

F. **Costs and fees.** In disposing of a petition or request for stay, the Court may, in its discretion, assess costs and may, as permitted by law, award attorney fees.

G. **Length limitations.** Except by permission of the Court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) ***Body of the petition defined.*** The body of the petition consists of headings, footnotes, quotations, a request for stay, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) ***Page limitation.*** Unless the petition complies with Subparagraph (G)(3) of this rule, the body of the petition shall not exceed twenty (20) pages; or

(3) ***Type-volume limitation.*** The body of the petition shall not exceed six thousand (6,000) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or six hundred fifty-five (655) lines, if the party uses a monospaced type style or typeface, such as Courier.

H. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (G)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (G)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (G)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

[As amended, effective January 1, 1988; September 1, 1991; September 1, 1993; January 1, 1997; as amended by Supreme Court Order No. 08-8300-018, effective August 4, 2008; by Supreme Court Order No. 10-8300-027, effective December 3, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-505. Certiorari from the Court of Appeals regarding district court review of administrative decisions.

A. **Scope of rule.** This rule governs review by the Court of Appeals of decisions of the district court

(1) from administrative appeals under Rule 1-074 NMRA, Rule 1-077 NMRA, or Section 39-3-1.1 NMSA 1978; and

(2) from constitutional reviews of decisions and orders of administrative agencies under Rule 1-075 NMRA.

B. **Scope of review.** A party aggrieved by the final order of the district court in any case described in Paragraph A of this rule may seek review of the order by filing a

petition for writ of certiorari with the Court of Appeals, which may exercise its discretion whether to grant the review.

C. **Time.** The petition for writ of certiorari shall be filed with the clerk of the Court of Appeals within thirty (30) days after entry of the final action by the district court. A copy of the petition shall be served immediately on the respondent. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the petition shall be accompanied by the docket fee. The three (3)-day period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph. Final action by the district court shall be the filing of a final order or judgment in the district court unless timely motion for rehearing is filed, in which event, final action shall be the disposition of the last motion for rehearing that was timely filed.

D. **Petition.**

(1) ***Cover*.** The cover of the petition shall show the names of the parties, with the plaintiff, petitioner, or party initiating the proceeding in the administrative agency listed first (*e.g.*, State of New Mexico, Plaintiff v. John Doe), and the name, mailing address, and telephone number of counsel filing the petition, or, if a party is not represented by counsel, the name, mailing address, and telephone number of the party.

(2) ***Contents*.** The petition shall contain a concise statement showing

(a) the date of entry of the judgment or final order of the district court and any order entered by the court on a motion for rehearing;

(b) the questions presented for review by the Court of Appeals (the Court will consider only the questions set forth in the petition);

(c) the facts material to the questions presented;

(d) the basis for granting the writ, specifying where applicable

(i) the citation to any decision of the Supreme Court or Court of Appeals with which it is asserted the final order of the district court is in conflict, including a quotation from the part of the Court of Appeals or Supreme Court decision showing the alleged conflict with the district court decision;

(ii) the citation to any statutory provision, ordinance, or agency regulation with which it is asserted the final order of the district court is in conflict and appropriate quotations from the statutes, ordinances, or regulations showing the alleged conflict with the district court decision;

(iii) what significant question of law under the Constitution of New Mexico or the United States is involved; or

(iv) the issue of substantial public interest that should be determined by the Court of Appeals;

(e) a direct and concise argument amplifying the reasons relied upon for granting the writ, including specific references to the statement of appellate or review issues filed in the district court, showing where the questions were presented to the district court; and

(f) a prayer for relief, including whether the case should be remanded to the district court for consideration of issues not raised in the petition if the relief requested is granted.

(3) ***Attachments*.** A copy of the final order or judgment of the district court, any district court findings or decision leading to the final order or judgment, a copy of the administrative decision under review by the district court, and a copy of the appellant's and appellee's statements of appellate or review issues filed in the district court shall be attached to the petition. Any other documentary matters of record that will assist the Court in exercising its discretion may also be attached.

E. **Length limitations.** Except by permission of the Court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) ***Body of the petition defined*.** The body of the petition consists of headings, footnotes, quotations, and all other text except any cover page, table of contents, table of authorities, signature blocks, and certificate of service.

(2) ***Page limitation*.** Unless the petition complies with Subparagraph (E)(3) of this rule, the body of the petition shall not exceed ten (10) pages; or

(3) ***Type-volume limitation*.** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, such as Times New Roman, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface, such as Courier.

F. **Statement of compliance.** If the body of the petition exceeds the page limitations of Subparagraph (E)(2) of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (E)(3) of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, such as Times New Roman, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (E)(1) of this rule. If the petition is prepared using a monospaced type style or typeface, such as Courier, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

G. **Conditional cross-petition.** Any party may, within fifteen (15) days of service of a petition for writ of certiorari, file a conditional cross-petition, to be considered only if the Court grants the petition. Subject to the provisions of Rule 12-304 NMRA and Rule 23-113 NMRA, the petition shall be accompanied by the docket fee. A conditional cross-petition shall be clearly identified as conditional on the cover. Material attached to the petition need not be attached again to a conditional cross-petition. A conditional cross-petition shall be governed by the other provisions of this rule, except Paragraph C.

H. **Notice to district court.** The petitioner shall file with the clerk of the district court a copy of the petition for a writ of certiorari.

I. **Response.** A respondent may file a response to the petition within fifteen (15) days of service of the petition. The response shall comply with Paragraphs E and F of this rule.

J. **Reply.** A reply is not permitted without leave of the Court, which may be granted on a showing of good cause. A motion seeking leave to file a reply must be filed and served within seven (7) days after service of a response and must include the proposed reply.

K. **Grant of petition; assignment.** If the petition for writ of certiorari is granted by the Court, the case may be assigned to a calendar and the appellate court clerk shall give notice of the assignment in accordance with Rule 12-210 NMRA. On receipt of the calendar assignment, the district court clerk shall transmit a copy of the record on appeal, which shall include the record on review filed in the district court by the administrative agency, as well as any other papers and pleadings filed in the district court.

L. **Oral argument.** Oral argument shall not be allowed unless directed by the Court of Appeals.

M. **Review by Supreme Court.** Within thirty (30) days after the disposition of a petition for writ of certiorari by the Court of Appeals, a party may seek further review from a decision of the Court of Appeals or a denial of certiorari by the Court of Appeals by filing a petition for writ of certiorari with the Supreme Court under Rule 12-502 NMRA.

[Approved, effective September 1, 1998; as amended effective September 1, 2002; November 1, 2003; as amended by Supreme Court Order No. 06-8300-011, effective May 15, 2006; by Supreme Court Order No. 09-8300-020, effective September 4, 2009; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018.]

ARTICLE 6
Special Proceedings

12-601. Direct appeals from administrative decisions where the right to appeal is provided by statute.

A. **Scope of rule.** This rule governs the procedure for filing and perfecting direct appeals to an appellate court from orders, decisions, or actions of boards, commissions, administrative agencies, or officials when the right to a direct appeal is provided by statute. This rule applies to both rulemaking and adjudicatory proceedings by the administrative entity. To the extent of any conflict, this rule supersedes any statute providing for the time or other procedure for filing or perfecting an appeal with an appellate court. This rule does not create a right of appeal and does not govern petitions for writs filed in the Supreme Court or appeals to the district court.

B. **Initiating the appeal.** Direct appeals from orders, decisions, or actions of boards, commissions, administrative agencies, or officials shall be taken by filing a notice of appeal with the appellate court clerk, together with the docket fee and proof of service on the agency involved and all parties and participants entitled to notice under Paragraphs C and D of this rule in accordance with Rule 12-307 NMRA, within thirty (30) days from the date of the order, decision, or action appealed from. The additional three (3)-day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time limits for filing a notice of appeal under this paragraph. Within thirty (30) days of the filing of the notice of appeal, the appellant shall file a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with Rule 12-208 NMRA, and the appeal shall proceed in accordance with these rules, notwithstanding any provision of law to the contrary.

C. **Intervention as a party-appellee in rulemaking proceedings.**

(1) In any appeal challenging the adoption of a rule by an administrative entity, a participant in the rulemaking proceeding is entitled to notice of the appeal under Paragraph B of this rule and may move to intervene in the appeal as a party-appellee as of right if

(a) the participant was a party to the rulemaking proceeding under the applicable rules or procedures of the administrative entity;

(b) the participant initiated the rulemaking proceeding; or

(c) the participant participated actively in the rulemaking proceeding, during which it presented evidence relating to matters that the administrative entity was required to consider in deciding whether to adopt the rule at issue.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the rulemaking proceeding may move to intervene in the appeal as a party-appellee only at the discretion of the appellate court.

(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.

D. **Intervention as a party-appellee in adjudicatory proceedings.**

(1) In any appeal challenging an adjudicatory action by an administrative entity, a participant in the adjudicatory proceeding is entitled to notice of the appeal under Paragraph B of this rule and may move to intervene in the appeal as a party-appellee as of right if the participant was a party to the adjudicatory proceeding under the applicable rules or procedures of the administrative entity.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the proceeding may intervene in the appeal as a party-appellee only at the discretion of the appellate court.

(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.

E. **Substitution of administrative entity.** Whenever in these rules a duty is to be performed by, service is to be made on, or reference is made to the district court or a judge or clerk of the district court, the board, commission, administrative agency, or official whose action is appealed from shall be substituted for the district court or a judge or clerk of the district court, except that any request for extension of time must be made to the appellate court.

F. **Grace period when notice is sent by mail or commercial courier.** A notice of appeal that is sent by mail or commercial courier service to the court in which it is to be filed shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA, explicitly states that the notice of appeal was sent to the appellate court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

[As amended, effective July 1, 1990; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 07-8300-019, effective August 13, 2007; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011,

effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018.]

Committee commentary. — New Paragraphs C and D were added in 2013 in response to the New Mexico Supreme Court's opinion in *New Energy Economy, Inc. v. Vanzi*, 2012-NMSC-005, 274 P.3d 53, which addresses what level of participation in an administrative proceeding is required before a participant may be considered a "party" that is entitled to notice of an appeal challenging the administrative action and is permitted, but not required, to intervene as an appellee for the purpose of defending the action. The Court held that those who participated in a "legally significant manner" in a rulemaking proceeding before the administrative tribunal have the right to participate as parties to an appeal. *Id.* ¶ 47. Providing technical testimony or the kind of evidence that directly informs the inquiries of the rulemaking tribunal in reaching its decision are listed as non-exclusive examples of the types of evidence that support finding a "legally significant" contribution to a rulemaking proceeding. *Id.* ¶¶ 37-39. In an adjudicatory proceeding, the general rule is that only parties to the administrative proceeding are entitled to notice or have a right to participate in an ensuing appeal. *Id.* ¶ 56.

The new paragraphs are largely based upon the particular factual and procedural setting of *New Energy Economy* and, in other cases, should be applied with consideration of the factors that the Supreme Court considered important to determining whether participation in a rulemaking process was "legally significant."

The appellate court hearing the appeal may take reasonable steps to encourage efficiency and avoid unnecessary duplication in the event of a considerable number of intervening parties, e.g. by ordering consolidated briefing from similarly situated parties. *Id.* ¶¶ 48-50.

[Adopted by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013.]

12-602. Appeals from a judgment of criminal contempt of the Court of Appeals.

A. **How taken.** A notice of appeal from an appealable judgment of criminal contempt of the Court of Appeals shall be filed with the Court of Appeals clerk within thirty (30) days after filing of the judgment appealed from. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph.

B. **Statement of the issues; further procedure.** Within thirty (30) days of the filing of the notice of appeal, the appellant shall file a statement of the issues in the Supreme Court in accordance with Rule 12-208 NMRA. Thereafter, the appeal shall proceed in accordance with these rules.

C. **Duties of clerk.** The duties required by these rules to be performed by the district court and the clerk thereof shall be performed by the Court of Appeals clerk.

[As amended, effective April 1, 1998; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-603. Appeals to the Supreme Court in actions challenging candidacies or nominating petitions; primary or general elections; school board recalls and recalls of elected county officials.

A. **Scope.** This rule governs the following:

(1) appeals taken under Section 1-8-18 NMSA 1978, Section 1-8-35 NMSA 1978, Section 1-14-5 NMSA 1978, Section 22-7-9.1 NMSA 1978 and Section 22-7-12 NMSA 1978; and

(2) appeals from final orders of the district court in election recall proceedings involving elected county officials initiated under Article X, Section 9 of the New Mexico Constitution.

B. **Notice of appeal; preparation of record.**

(1) Notice of appeal, with proof of service on the district court and all parties to the action, shall be filed in the Supreme Court with the certificate of counsel or certificate of appellant required by Paragraph D of this rule. The notice of appeal and certificate shall be filed in the Supreme Court within the time period specified by the statute pursuant to which the appeal is taken or within thirty (30) days of the date the district court's final decision under Article X, Section 9 of the New Mexico Constitution is filed in the district court clerk's office. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph.

(2) The appellant shall make all arrangements necessary to ensure that the district court clerk prepares the record for transmission to the Supreme Court clerk. The record shall include a complete copy of all documents filed in the district court and any available audio recording or stenographic transcript of any hearings held in the district court. The district court clerk shall file the record required under this subparagraph with the Supreme Court no later than two (2) days after the notice of appeal and certificate are filed with the Supreme Court. If necessary, the transcript of any hearings in the district court may be supplemented in accordance with the provisions in Subparagraphs (l)(1) and (l)(2) of this rule.

C. **Content of notice of appeal.** The notice of appeal shall state that the appeal is taken to the Supreme Court and shall specify that the appeal is one of the following:

(1) a candidacy appeal under Section 1-8-18 NMSA 1978;

(2) a nominating petition appeal under Section 1-8-35 NMSA 1978;

(3) an election contest appeal under Section 1-14-5 NMSA 1978;

(4) an appeal from a district court decision in an election recall proceeding under Article X, Section 9 of the New Mexico Constitution;

(5) a school board member recall appeal under Section 22-7-9.1 NMSA 1978; or

(6) an appeal challenging a school board member recall petition under Section 22-7-12 NMSA 1978.

D. **Certificate of counsel or appellant.** At the same time that the notice of appeal is filed in the Supreme Court, the appellant shall pay the appropriate docket fee, subject to the provisions of Rule 12-304 NMRA and 23-114 NMRA, and shall file a certificate of counsel, or if the appellant is not represented by counsel, a certificate of the appellant, with proof of service on all parties and the district court. Either certificate shall include the following:

(1) the name or names of the real parties in interest, if any, when the respondent is a justice, judge or other public officer or employee, court, board or tribunal, purporting to act in the discharge of official duties;

(2) the names, business addresses, and telephone numbers of all counsel appearing in the district court and of those parties not represented by counsel;

(3) a statement of the nature of the proceeding;

(4) the date of entry of the decision appealed from and an acknowledgment that the notice of appeal was timely filed with the Supreme Court at the same time as the certificate;

(5) a concise statement of the facts material to consideration of the questions presented; and

(6) a concise statement of the points relied upon for reversal, including a concise, accurate statement of the case summarizing all facts material to a consideration of the points presented, but without unnecessary detail. General conclusory statements such as "the judgment of the trial court is not supported by the law or facts" will not be accepted.

E. **Involuntary dismissal.** If the appellant fails to file a timely notice of appeal or certificate in accordance with the requirements of this rule, the appeal shall be dismissed forthwith by the Supreme Court.

F. **Notice of proceedings.**

(1) Immediately upon the filing of the notice of appeal and certificate, the Supreme Court clerk shall notify the Court of the docketing of the appeal.

(2) If it appears to a majority of the Court that the appeal is without merit, the decision of the district court may be summarily affirmed in accordance with Paragraph J of this rule.

(3) If the appeal is not summarily affirmed, the Court may order one or more of the following:

(a) direct the other parties to the appeal to file a response;

(b) request briefs under Paragraph H of this rule; or

(c) set a hearing.

(4) If the Court decides to set a hearing, notwithstanding the provisions of Rule 23-102(D) NMRA, the Supreme Court clerk shall give notice of the setting in the most expeditious manner practicable and the hearing shall proceed in accordance with Paragraph I of this rule.

G. **Stay.** The appellant may seek a stay pending appeal in accordance with the provisions of Rule 12-207 NMRA.

H. **Briefs.** Briefs may be filed only upon, and in accordance with, the directions of the Supreme Court.

I. **Hearing.** At the hearing appellant shall be limited to arguing the points specified in the certificate filed under Paragraph D. Appellee may present any grounds for affirmance of the trial court's decision. For the purpose of making available such portions of the district court proceedings as may not appear in the record filed with the Supreme Court under Subparagraph (B)(2) of this rule, the appellant shall, unless a complete transcript of proceedings is available, have present at the hearing the following:

(1) the court reporter who reported the district court proceedings, with the reporter's notes; and

(2) any audio recording of the district court proceedings or any part thereof made by the court monitor or other court-designated official, together with equipment and personnel necessary to play back such portions as may be required.

J. **Disposition.** Disposition of the appeal shall be by order of the Supreme Court, which may, but need not be, accompanied by a written opinion. The order of the

Supreme Court shall be effective upon filing the same with the Supreme Court clerk, and there shall be no rehearing. Upon filing the order, the Supreme Court clerk shall forthwith furnish to each party to the appeal and the district court a certified copy of the order. The order shall constitute the mandate of the Supreme Court.

[As amended effective October 11, 2005; as amended by Supreme Court Order No. 09-8300-020, effective September 4, 2009; by Supreme Court Order No. 12-8300-010, effective March 5, 2012; as amended by Supreme Court Order No. 15-8300-021, effective for all cases pending or filed on or after December 31, 2015.]

Committee commentary. — The 2009 amendments to this rule are intended to bring within the scope of Rule 12-603 the appeal of election recall proceedings involving elected county officials under Article X, Section 9 of the New Mexico Constitution. The Court of Appeals in *Sparks v. Graves*, 2006-NMCA-030, 139 N.M. 143, 130 P.3d 204, accepted jurisdiction to consider an appeal from an election recall proceeding involving an elected county official under Article X, Section 9 of the New Mexico Constitution because no constitutional provision, statute or court rule specifically vested appellate jurisdiction in the Supreme Court. *See* Rule 12-102(B) NMRA (providing that the Court of Appeals shall have appellate jurisdiction over all appeals except those enumerated in Paragraph A of Rule 12-102).

By the 2009 amendments to this rule, appellate jurisdiction over election recall proceedings under Article X, Section 9 of the New Mexico Constitution is now specifically vested in the Supreme Court. *See Graves*, 2006-NMCA-030, ¶ 11 ("Consistent with Section 34-5-8(A) [NMSA 1978], Rule 12-102(A)(4) NMRA requires appeals to be taken to the Supreme Court when jurisdiction has been specifically reserved to the Supreme Court by the New Mexico Constitution or by Supreme Court order or rule.") (emphasis added). *See also State v. Arnold*, 51 N.M. 311, 314, 183 P.2d 845, 846 (1947) ("The creating of a right of appeal is a matter of substantive law and outside the province of the court's rule making power. Nevertheless, once the legislature has authorized the appeal, reasonable regulations affecting the time and manner of taking and perfecting the same are procedural and within this court's rule making power."); Seth D. Montgomery & Andrew S. Montgomery, Jurisdiction as May Be Provided by Law: Some Issues of Appellate Jurisdiction in New Mexico, 36 N.M. L. Rev. 215, 219, 237-241 (2006) (noting the Supreme Court's statutory authority under Section 34-5-8(B) NMSA to transfer cases wholesale from the Court of Appeals to the Supreme Court as a means of case management).

Consistent with the Court's rule-making authority, and to provide continuity with the time requirements for other election recall appeals governed by this rule, these amendments provide that Article X, Section 9 appeals are commenced by filing a notice of appeal with the district court within five (5) days of the district court's final decision. *See Maples v. State*, 110 N.M. 34, 36, 791 P.2d 788, 790 (1990) (recognizing that the Supreme Court has "the power to set the time for all appeals from final orders").

Although the Legislature has authorized municipalities to adopt election recall procedures for municipal officials, there are no express statutory provisions authorizing judicial review of municipal election recalls proceedings. *See, e.g.*, Section 3-14-16 NMSA 1978 and Section 3-15-7 NMSA 1978. Accordingly, these amendments do not purport to encompass municipal election recall proceedings that may be authorized by local ordinance.

[Adopted by Supreme Court Order No. 09-8300-020, effective September 4, 2009.]

12-604. Proceedings for removal of public officials within the jurisdiction of the Supreme Court.

A. **Scope.** This rule governs all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute.

B. **Filing of charges.** Charges alleging specific facts constituting one or more constitutional or statutory grounds for removal will be entertained by the Court on presentment by the governor, the attorney general, or any regularly empaneled grand jury. Any such grand jury presentment shall be immediately certified to the Court by the district court clerk where such presentment is filed.

C. **Prosecution.** All charges so presented to the Court shall be prosecuted by the attorney general unless the attorney general shall decline to act, except that the governor, in case of presentment by the governor, may request the designation of another attorney, in either of which events the Court will appoint another attorney.

D. **Service.** On any such presentment, the Court shall make and enter its order directing service on the accused and specifying the time for appearance and answer.

E. **Answer.** Within the time prescribed in the order, the accused may, by way of answer, object to the sufficiency of any charge or specification or deny the truth thereof. Any charge or specification legally sufficient and not denied shall be taken as admitted.

F. **Failure to appear.** If the accused fails to appear, the Court will proceed to hear and determine the charges in the accused's absence.

G. **Trial.** The issues shall be tried to the Court without a jury. To the extent that such are applicable and do not conflict with the rules of the Court, the Rules of Civil Procedure for the District Courts and the Rules of Evidence shall govern the conduct of the trial. The prosecution shall have the burden of proof.

H. **Judgment.** The decision and judgment of the Court shall be final. Unless the judgment shall expressly provide otherwise, no motion for rehearing or for new trial shall be permitted, and the judgment shall take effect at once.

I. **Fees.** No docket fee or filing fee shall be required in any removal proceedings. Witness fees and other costs shall be taxed in such manner as may be determined by the Court in its discretion.

[As amended, effective December 1, 1993; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-605. Withdrawn.

12-606. Certification and transfer from the Court of Appeals to the Supreme Court.

Any certification of a matter to the Supreme Court by the Court of Appeals under Subsection C of Section 34-5-14 NMSA 1978, or transfer of a matter to the Supreme Court by the Court of Appeals under Section 34-5-10 NMSA 1978, is subject to the Supreme Court's inherent authority under Article VI, Section 3 of the New Mexico Constitution to review and accept certification or transfer orders of the Court of Appeals. An order of the Supreme Court granting certification or transfer shall direct the Court of Appeals to forward the file in the cause, including all copies of transcripts and briefs filed in the Court of Appeals, which shall thereafter be treated as filed with the Supreme Court. The Court of Appeals clerk shall then give prompt notice to all parties. After certification or transfer has been accepted by the Supreme Court, the parties shall be entitled to file in the Supreme Court such additional briefs and other documents within such time as they would have been entitled to file in the Court of Appeals had the matter not been accepted for certification or transfer. The Supreme Court may direct the filing of other or supplemental briefs and may limit the questions to be argued. A party may file a request for oral argument in accordance with Rule 12-319 NMRA.

[As amended, effective January 1, 1997; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — The 2016 amendments to this rule serve two purposes. First, with respect to the certification of cases from the Court of Appeals to the Supreme Court, under NMSA 1978, Section 34-5-14, the amendments make clear, consistent with current practice, that the Supreme Court has the inherent constitutional authority to accept or reject such certification, and that a certification is final only when the Supreme Court issues an order accepting the certification. *See Martinez v. Chavez*, 2008-NMSC-021, 144 N.M. 1, 183 P.3d 145. The amendments then defer the obligations under this rule until such certification is accepted. Second, the amendments also apply the same procedure to the transfer of cases from the Court of Appeals to the Supreme Court under NMSA 1978, Section 34-5-10.

[Adopted by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-607. Certification from other courts to the Supreme Court.

A. **Power to answer.**

(1) The Supreme Court may answer by formal written opinion questions of law certified to it by a court of the United States, an appellate court of another state, a tribe, Canada, a Canadian province or territory, Mexico, or a Mexican state if the answer may be determinative of an issue in pending litigation in the certifying court and the question is one for which answer is not provided by a controlling

(a) appellate opinion of the New Mexico Supreme Court or the New Mexico Court of Appeals; or

(b) constitutional provision or statute of this state.

(2) The Supreme Court may answer by formal written opinion questions of law certified to it by a New Mexico stream adjudication court if

(a) the answer may materially advance the ultimate resolution of the adjudication; and

(b) the question is one for which answer is not provided by a controlling

(i) appellate opinion of the New Mexico Supreme Court or the New Mexico Court of Appeals; or

(ii) constitutional provision or statute of this state.

B. **Method of invoking.** The court certifying a question of law shall issue a certification order and forward it to the Supreme Court.

C. **Contents of certification request.** A certification order must contain

(1) the names and addresses of counsel of record and parties appearing without counsel;

(2) the question of law to be answered;

(3) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose. If the parties cannot agree on a statement of facts, the certifying court shall determine the relevant facts and state them as part of its certification order; and

(4) a statement acknowledging that the Supreme Court may reformulate the question.

D. **Response.** The Supreme Court shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

E. **Briefs.** Unless otherwise ordered by the Supreme Court, the Court, in its acceptance of certification, shall designate which party shall file the first brief on the question certified. Unless otherwise ordered, the first brief shall be filed within forty-five (45) days of mailing of notification by the Court that it will answer the question certified. The opposing party shall file its answer brief or briefs within forty-five (45) days of service of the first brief. A reply brief may be filed within twenty (20) days of service of the answer brief. Briefs and service thereof shall be in the manner and form provided in Rules 12-302, 12-305, 12-307, 12-308, and 12-318 NMRA.

F. **Oral argument.** Oral argument shall be as provided in Rule 12-319 NMRA for appeals.

G. **Record.** The Supreme Court, on its own motion or on motion of any party, may request that copies of all or any portion of the record before the certifying court be filed with the Court.

H. **Opinion.** The Supreme Court shall forward to the certifying court and all parties a copy of its formal written opinion answering the question certified.

[As amended, effective December 1, 1993; January 1, 1997; December 4, 1998; provisionally approved and amended by Supreme Court Order No. 07-8300-014 for one year, effective June 13, 2007; provisionally approved by Supreme Court Order No. 08-8300 for one additional year, effective June 9, 2008; provisionally approved by Supreme Court Order No. 09-8300-016, for one additional year, effective May 12, 2009; approved by Supreme Court Order No. 10-8300-019, effective May 11, 2010; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]

12-608. Certification from the district court to the Court of Appeals.

Any certification of a matter to the Court of Appeals by the district court under Section 39-3-1.1 NMSA 1978 shall be accompanied by the district court file, including all copies of transcripts of the agency and briefs filed in the district court, which shall thereafter be treated as filed with the Court of Appeals. The clerk of the district court shall give prompt notice to all parties of the certification of any matter to the Court of Appeals. After certification, the court shall issue a calendar notice and the case shall proceed in accordance with Rule 12-210 NMRA. The Court of Appeals may direct the filing of other or supplemental briefs and may limit the questions to be argued. A party may file a request for oral argument within fifteen (15) days of the date of certification, and otherwise in accordance with Rule 12-319 NMRA.

[Approved, effective January 1, 2000; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after December 31, 2016.]