RULES OF PROCEDURE FOR THE MUNICIPAL COURTS

ARTICLE 1
GENERAL PROVISIONS

8-101. Scope and title.

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

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

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

D. **Citation form.** These rules shall be cited by set and rule number, as in NMRA, Rule 8-

____.

[As amended, effective January 1, 1987.]

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 96.

Construction and application of constitutional provision against special or local laws regulating practice in courts of justice, 135 A.L.R. 365.

8-102. Conduct of court proceedings.

A. **Judicial proceedings.** Judicial proceedings should be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the people and to the litigants and in an atmosphere that bespeaks the responsibilities of those who are charged with the administration of justice. The taking of photographs in the courtroom during the progress of judicial proceedings or during any recess thereof and the transmitting or sound recording of such proceedings for broadcasting by radio or television introduce extraneous influences which tend to have a detrimental psychological effect on the participants and to divert them from the proper objectives of the trial; and no such action shall be done or permitted except as provided by Rule 8-601 of these rules.

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

[As amended, effective September 2, 1997; May 5, 1998.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, inserted "as provided by Rule 8-601 of these rules or" near the end of Paragraph A.

The 1998 amendment, effective May 5, 1998, deleted "or upon express approval of the Supreme Court" at the end of Paragraph A.

8-103. Rules; forms; fees.

A. **Rules.**

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

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

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

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

[As amended, effective January 1, 1987.]

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 24 et seq.

8-104. Time.

A. **Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any municipal court, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to

run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

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

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

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

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

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

ANNOTATIONS

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

8-105. Designation of judge.

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

B. **Transfer of records.** After designation of a temporary municipal court judge, whether by ordinance or order of the district court, the disqualified judge shall forthwith

send to the designated judge a copy of all proceedings in the action, pay to the designated judge all money received in the action and mark the records filed in the action "transferred by disqualification to" followed by the designated judge's name. The designated judge shall include in the court file a complete copy of the papers transferred by the disqualified judge and shall keep a record of all subsequent proceedings in the same manner as if the action had originally been filed with the designated judge.

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

[As amended, effective May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, in Paragraph A, substituted "with the ordinance" for "therewith" near the middle of the second sentence; in Paragraph B, substituted "filed in" for "of" near the end of the first sentence and substituted "in the court file a complete copy of the papers transferred by the disqualified judge" for "in his records the copy of proceedings in the action prior to its transfer, including a reference to the name of the disqualified judge".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 372, 379, 390, 396.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600, 37 A.L.R.4th 1004.

8-106. Disqualification; recusal.

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

B. **Recusal.** No judge shall sit in any action in which the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action. Upon receipt of notification of recusal from a judge, the municipal court shall give written notice to each party. Upon recusal, another judge shall be designated to conduct any further proceedings in the action in the manner provided by Rule 8-105 NMRA.

C. **Failure to recuse.** If a party believes that the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set forth the constitutional grounds alleged. Upon receipt of the notice, the judge may file a certificate of recusal in the action or enter an order finding that there

are not reasonable grounds for recusal. If within ten (10) days after the filing of notice of facts requiring recusal, the judge fails to file a certificate of recusal in the action, any party may certify that fact by letter to the district court of the county in which the action is pending with a copy of the notice of recusal. No filing fee shall be required for the filing of a letter certifying grounds for recusal described in Paragraph B of this rule. The party's certification to the district court shall be filed in the district court not less than five (5) days after the expiration of time for the municipal court judge to file a certificate of recusal or not less than five (5) days after the filing of an order in the municipal court finding the grounds alleged in the notice of recusal do not constitute reasonable grounds for recusal, whichever date is earlier. A copy of the letter shall also be filed with the metropolitan court. The district court shall make such investigation as the court deems warranted and enter an order in the action, either prohibiting the municipal court judge from proceeding further or finding that there are insufficient grounds to reasonably question the municipal court judge's impartiality under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct.

[As amended, effective May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, rewrote Pargraph B relating to municipal judges and added Paragraph C.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 372, 379, 390, 396.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600, 37 A.L.R.4th 1004.

8-107. Entry of appearance.

A. **Written entry of appearance.** Whenever counsel undertakes to represent a defendant in any criminal action, the attorney will file a written entry of appearance in the cause, unless the attorney has been appointed by written order of the court. For the purpose of this rule, the filing of any pleading signed by counsel constitutes an entry of appearance.

B. **Oral entry of appearance.** With permission of the court, an attorney may enter an appearance on behalf of a defendant by oral communication with the court, provided a written entry of appearance is filed within three (3) days.

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

[As amended, effective September 15, 2000.]

ANNOTATIONS

The 2000 amendment, effective September 15, 2000, in Subsection A, rewrote the first sentence; in Subsection B, inserted "With permission of the court" at the beginning and deleted "with the clerk of the court or the judge if there is not clerk" at the end and deleted the third sentence which read "Upon the making of an oral entry of appearance, the clerk of the court or the judge shall enter in the file the name, office address and telephone number of the attorney".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Appearance § 1 et seq.

6 C.J.S. Appearances § 17.

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

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

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

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

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

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

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

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 692 to 700, 901 to 935.

Presence of accused during view by jury, 30 A.L.R. 1357, 90 A.L.R. 597.

Personal presence of defendant and his counsel as necessary to the validity of discharge of jury in criminal case before reaching verdict, 150 A.L.R. 764.

Right of accused to be present at polling of jury, 49 A.L.R.2d 619.

Power to try one charged with misdemeanor in his absence, 68 A.L.R.2d 638.

Absence of convicted defendant during hearing or argument of motion for new trial or in arrest of judgment, 69 A.L.R.2d 835.

Propriety of criminal trial of one under influence of drugs or intoxicants at time of trial, 83 A.L.R.2d 1067.

Exclusion or absence of defendant, pending trial of criminal case, from courtroom, or from conference between court and attorneys, during argument on question of law, 85 A.L.R.2d 1111, 23 A.L.R.4th 955.

Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case, 33 A.L.R.4th 429.

23A C.J.S. Criminal Law §§ 1161 to 1167.

8-109. Withdrawn.

ANNOTATIONS

Withdrawals. - Pursuant to a court order dated June 16, 1997, this rule, defining "record", is withdrawn effective on and after September 2, 1997.

8-109A. Audio and audio-visual appearances of defendant.

A. **When permitted.** The court may permit a defendant or attorneys to appear through the use of a simultaneous audio or audio-visual communication when it will legitimately serve justice considering, among other issues, the economic needs of the parties. When an appearance through the use of an audio or audio-visual communication is conducted, the court may require the party requesting to appear by audio or audio-visual communication to pay the expense of the communication. Prior to an audio or audio-visual appearance, the defendant shall file with the court a written request to appear by audio or audio-visual communication substantially in the form approved by the Supreme Court. The judge shall conduct any audio or audio-visual proceeding in a place open to the public.

B. **Required audio-visual appearances.** The court may require the defendant to appear through the use of a simultaneous audio-visual communication for:

(1) an arraignment, initial appearance or bail hearing; or

(2) a sentencing proceeding, after conviction at trial or a plea of guilty or no contest, unless the court is to take testimony or a statement from someone other than the defendant.

C. **Conduct of required audio-visual proceedings.** The following conditions must be met for any required audio-visual proceeding conducted pursuant to Paragraph B of this rule:

(1) the defendant and the defendant's attorney, if any, shall have the ability of private, unrecorded communication;

(2) the judge, legal counsel, if any, and defendant shall be able to communicate and see each other through a two-way audio-visual communication between the court and the place of custody or confinement; and

(3) the proceedings shall be conducted in a place open to the public through the use of audio-visual equipment which will permit members of the public to simultaneously see and hear the proceedings contemporaneously with the judge.

D. **Construction of rule.** This rule shall not prohibit other audio or audio-visual appearances upon waiver of any right such person held in custody or confinement might have to be physically present. Nothing contained in this rule shall be construed as establishing a right for any person held in custody to appear by a two-way audio-visual communication system.

[Approved, effective November 1, 2000; as amended, effective July 1, 2002.]

ANNOTATIONS

Cross references. - For service and filing by fax, see Rule 8-209 NMRA.

For service and filing electronically, see Rule 8-210 NMRA.

For written waiver of appearance, see Criminal Form 9-104 NMRA.

For a written request to appear before the court by audio or audio-visual communications, Criminal Form 9-104A NMRA.

The 2002 amendment, effective July 1, 2002, in the third sentence of Paragraph A, substituted "request to appear by audio or audio-visual communication" for "waiver of appearance" and rewrote Paragraph C(1) which formerly read "the defendant and the defendant's legal counsel, if any, shall be together in one room at the time".

8-110. Contempt.

A. **Jurisdiction.** A municipal judge has jurisdiction to punish for contempt only for:

(1) disorderly behavior in the presence of the court or close enough to the court that it obstructs the administration of justice;

(2) misconduct of court officers in official transactions; and

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

B. **Disposition upon notice and hearing.** A contempt, except as provided in Paragraph C of this rule, shall be punished only after notice and hearing. The notice shall state the essential facts constituting the contempt charged. The notice may be given:

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

(2) by a summons;

(3) by a bench warrant; or

(4) by an order to show cause.

The defendant shall be entitled to bail as provided in these rules. The defendant shall be given sufficient notice of hearing to permit the preparation of a defense. If the defendant is found guilty of contempt, the court shall enter judgment and sentence within the limits of its jurisdiction.

C. **Direct contempt.** A direct contempt may be punished summarily if the judge by written order certifies to having seen or heard the conduct constituting the contempt and that it was committed in the presence of the court. The written order of contempt shall recite the facts and shall be signed by the judge and entered of record.

D. **Appeal.** Any person found guilty of contempt may appeal to the district court pursuant to the rules of procedure governing appeals from the municipal court.

[As amended, effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, made stylistic changes in Paragraph A, deleted former Paragraph B relating to summary disposition and redesignated former Paragraph C as paragraph B, rewrote the introductory language of Paragraph B, added Subparagraph B(4), and rewrote the last paragraph in Paragraph B, and added Paragraphs C and D.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contempt § 1 et seq.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600, 37 A.L.R.4th 1004.

Separate contempt punishments on successive refusals to respond to same or similar questions, 94 A.L.R.2d 1246.

Appealability of contempt adjudication or conviction, 33 A.L.R.3d 448.

Right to counsel in contempt proceedings, 52 A.L.R.3d 1002.

Picketing court or judge as contempt, 58 A.L.R.3d 1297.

Assault on attorney as contempt, 61 A.L.R.3d 500.

Affidavit or motion for disqualification of judge as contempt, 70 A.L.R.3d 797.

Power of court to impose standard of personal appearance or attire, 73 A.L.R.3d 353.

Contempt based on violation of court order where another court has issued contrary order, 36 A.L.R.4th 978.

Intoxication of witness or attorney as contempt of court, 46 A.L.R.4th 238.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order - anticipatory contempt, 81 A.L.R.4th 1008.

Lack of notice to contemnor at time of contemptuous conduct of possible criminal contempt sanctions as affecting prosecution for contempt in federal court, 76 A.L.R. Fed. 797.

17 C.J.S. Contempt § 1 et seq.

8-111. Non-attorney prosecutions.

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

B. **Other authorized appearances.** A municipal officer or employee may appear and prosecute any petty misdemeanor proceeding on behalf of the municipality if the

municipality has authorized the officer or employee to institute or cause to be instituted an action on behalf of the governmental entity.

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

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

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

[Adopted, effective July 1, 1988.]

ANNOTATIONS

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

ARTICLE 2
INITIATION OF PROCEEDINGS

8-201. Commencement of action.

A. **How commenced.** An action is commenced by filing with the court:

(1) a complaint consisting of a signed statement containing the facts, common name of the offense charged, and where applicable, a specific section number of the municipal ordinance or New Mexico Statutes Annotated, 1978 Compilation, which contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued by a state or local traffic enforcement officer pursuant to Section 66-8-130 NMSA 1978; or

(3) a citation issued by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated and the time and place to appear. Unless the person requests an earlier date,

the time specified in the citation shall be at least three (3) days after issuance of the citation.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed as soon as practicable with the municipal court.

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

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

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

E. **Arrest without a warrant; criminal complaint.** In all municipal court cases, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is in custody, the complaint shall be filed with the municipal court at the time it is given to the defendant. If the court is not open at the time the copy of the complaint is given to the defendant, and the defendant remains in custody, the complaint shall be filed the next business day of the court.

If the defendant is not in custody the next business day of the court, the complaint shall be filed with the court as soon as practicable.

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

[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997.]

ANNOTATIONS

Cross references. - For criminal complaint, see Rule 9-202 NMRA.

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, rewrote Paragraphs A and E to the extent that a detailed analysis would be impracticable.

The 1991 amendment, effective for cases filed in the municipal courts on or after November 1, 1991, in Paragraph E, rewrote the second sentence, which formerly read "The complaint shall at that time be filed with the municipal court", inserted "and the defendant remains in custody," in the third sentence, and added the last sentence.

The first 1997 amendment, effective May 1, 1997, rewrote Subparagraph (3) of Paragraph A.

The second 1997 amendment, effective September 15, 1997, added "A separate complaint shall be filed for each defendant" at the end of Subparagraph A(1) and added the last undesignated paragraph of Paragraph A.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Actions §§ 10, 11 et seq.

1A C.J.S. Actions § 237 et seq.

8-202. Probable cause determination.

A. **General rule.** A probable cause determination shall be made in all cases in which the arrest has been made without a warrant and the person has not been released upon some conditions of release. The probable cause determination shall be made by a municipal court judge promptly, but in any event within forty-eight (48) hours after custody commences and no later than the first appearance of the defendant whichever occurs earlier.

B. **Conduct of determination.** The determination of whether there is probable cause shall be nonadversarial and may be held in the absence of the defendant and of counsel. The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished. No witnesses shall be required to appear unless the court determines that there is a basis for believing that the appearance of one or more witnesses might lead to a finding that there is no probable cause. If the complaint and any attached statements fail to make a written showing of probable cause, an amended complaint or a statement of probable cause may be filed at the time of the probable cause determination with sufficient facts to show probable cause for detaining the defendant.

C. **Probable cause determination; conclusion.** If the court finds that there is no probable cause to believe that the defendant has committed an offense, the court shall dismiss the complaint without prejudice and order the immediate release of the defendant. If the court finds probable cause that the defendant committed an offense, the court shall review the conditions of release. If no conditions of release have been set and the offense is a bailable offense, the court shall set conditions of release in accordance with Rule 8-401. If the court finds that there is probable cause the court shall make such finding in writing.

[As amended, effective September 1, 1990; November 1, 1991.]

ANNOTATIONS

Cross references. - For probable cause determination, see Rule 9-207A NMRA.

For form on affidavit for arrest warrant, see Rule 9-209 NMRA.

For form on affidavit for bench warrant, see Rule 9-211 NMRA.

For statement of probable cause, see Rule 9-215 NMRA.

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, rewrote Paragraph A; deleted former Paragraph B, relating to time of determination, and redesignated former Paragraphs C and D as Paragraphs B and C; in Paragraph B, inserted "of whether there is probable cause" and substituted "nonadversarial" for "nonadversary" in the first sentence and added the last sentence; and rewrote Paragraph C.

The 1991 amendment, effective for cases filed in the municipal courts on or after November 1, 1991, in Paragraph A, substituted "promptly, but in any event within forty-eight (48) hours" for "within a reasonable time, but in any event within twenty-four (24) hours" in the second sentence and deleted the former last sentence, relating to expiration of the prescribed period on a Saturday, Sunday or legal holiday.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 5 Am. Jur. 2d Arrest §§ 47, 54.

Civil liability for improper issuance of search warrant or proceedings thereunder, 45 A.L.R. 605.

Search of automobile without a warrant by officers relying on description of persons suspected of a crime, 60 A.L.R. 299.

Sufficiency of showing probable cause for search warrant for intoxicating liquor, 74 A.L.R. 1418.

Arrest, or search and seizure, without warrant on suspicion or information as to unlawful possession of weapons, 92 A.L.R. 490.

Peace officer's delay in making arrest without a warrant for misdemeanor or breach of peace, 58 A.L.R.2d 1056.

Issuance of second search warrant after lapse of time for executing first, without additional showing of probable cause, 100 A.L.R.2d 525.

Propriety of considering hearsay evidence or other incompetent evidence in establishing probable cause for issuance of search warrant, 10 A.L.R.3d 359.

Propriety of consideration of credibility of witness in determining probable cause at state preliminary hearing, 84 A.L.R.3d 811.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse - state cases, 4 A.L.R.4th 196.

Admissibility of evidence discovered in search of defendant's property or residence authorized by one, other than relative, who is cotenant or common resident with defendant - state cases, 4 A.L.R.4th 1050.

Disputation of truth of matters stated in affidavit in support of search warrant - modern cases, 24 A.L.R.4th 1266.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse-state cases, 55 A.L.R. 5th 125.

6A C.J.S. Arrest § 6; 22 C.J.S. Criminal Law §§ 339, 349.

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

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

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Private citizen's right to institute mandamus to compel a magistrate or other appropriate official to issue a warrant, or the like, for an arrest, 49 A.L.R.2d 1285.

22 C.J.S. Criminal Law §§ 334 to 336; 72 C.J.S Process § 2 et seq.

8-204. Service of summons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[As amended, effective January 1, 1990.]

ANNOTATIONS

Cross references. - For forms on criminal summons, certificate of mailing, and return, see Rule 9-208 NMRA.

For form on motion for production, see Rule 9-409 NMRA.

Bracketed material. - The bracketed material in Paragraph F was inserted by the compiler. It was not approved by the Supreme Court and is not part of the rule.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 62B Am. Jur. 2d Process §§ 105 to 138.

Service of process upon actual agent of foreign corporation in action based on transactions outside of state, 30 A.L.R. 255, 96 A.L.R. 366.

Foreign railway corporation as subject to service of process in state in which it merely solicits interstate business, 46 A.L.R. 570, 95 A.L.R. 1478.

Constitutionality, construction, and applicability of statutes relating to service of process on unincorporated association, 79 A.L.R. 305.

Constitutionality, construction and effect of statute providing for service of process upon statutory agent in action against foreign corporation as regards communication to corporation of facts of service, 89 A.L.R. 658.

Power of state to provide for service, other than personal, of process upon nonresident individual doing business within the state so as to subject him to judgment in personam, 91 A.L.R. 1327.

Who, other than public official, may be served with process in action against foreign corporation doing business in state, 113 A.L.R. 9

Substituted service, service by publication, or service out of the state, in action in personam against resident or domestic corporation, as contrary to due process of law, 126 A.L.R. 1474, 132 A.L.R. 1361.

Delay in issuance or service of summons as requiring or justifying order discontinuing suit, 167 A.L.R. 1058.

Leaving process or notice at residence as compliance with requirement that party be served "personally" or "in person," "personally served," etc., 172 A.L.R. 521.

Cessation by foreign corporation of business within state as affecting designation of agent for service of process, 77 A.L.R.2d 676.

Attorney representing foreign corporation in litigation as its agent for service of process in unconnected actions or proceedings, 9 A.L.R.3d 738.

Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent, 17 A.L.R.3d 625.

Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 32 A.L.R.3d 112.

Stipulation extending time to answer or otherwise proceed as waiver of objection to jurisdiction for lack of personal service: state cases, 77 A.L.R.3d 841.

72 C.J.S. Process § 26 et seq.

8-205. Arrest warrants.

A. **To whom directed.** Whenever a warrant is issued in an action, it shall be directed to a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer or an Indian tribal or pueblo law enforcement officer. The person obtaining the warrant shall cause it to be entered into a law enforcement information system. A copy of the warrant shall be docketed in the case file. Upon arrest, the defendant shall be brought before the court without unnecessary delay.

B. **Arrest.** The warrant shall be executed by the arrest of the defendant. If the warrant is in the possession of the arresting officer at the time of the arrest, a copy shall be served on the defendant upon arrest. If the warrant is not in the officer's possession at the time of arrest, the officer shall inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable.

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

D. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; March 1, 2000.]

ANNOTATIONS

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

For the statutory requirement that the state police maintain a criminal identification system, see 29-3-1 NMSA 1978.

For the requirement that municipal peace officers obtain fingerprints of those arrested for DWI offenses, see 29-3-8 NMSA 1978.

For criminal process in driving while under the influence of intoxicating liquor or drugs, see 35-14-2 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added the second and third sentences in Paragraph A, the last sentence in Paragraph C, and Paragraph D.

The 2000 amendment, effective March 1, 2000, made gender neutral changes in Paragraph B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 408 to 410, 421, 422.

Necessity of showing warrant upon making arrest under warrant, 40 A.L.R. 62.

Liability for false imprisonment, of officer executing warrant for arrest as affected by its being returnable to wrong court, 40 A.L.R. 290.

Power of private person to whom warrant of arrest is directed to deputize another to make the arrest or to delegate his power in that respect, 47 A.L.R. 1089.

Territorial extent of power to arrest under a warrant, 61 A.L.R. 377.

Civil liability of officer making arrest under warrant as affected by his failure to exhibit warrant, or to state fact of, or substance of, warrant, 100 A.L.R. 188.

22 C.J.S. Criminal Law §§ 334 to 339.

8-206. Bench warrants.

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

B. **Law enforcement information system.** If a bench warrant is issued in a driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency. A copy of the warrant shall be docketed in the case file.

C. **Execution and return.** A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

D. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999.]

ANNOTATIONS

Cross references. - For form on affidavit for bench warrant, see Rule 9-211 NMRA.

For forms on bench warrant and return, see Rule 9-212 NMRA.

For the statutory requirement that the state police maintain a criminal identification system, see Section 29-3-1 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added Paragraphs B and D, redesignating former Paragraph B as Paragraph C, and in Paragraph C, in the first sentence, deleted "issued pursuant to Rule 8-205 of these rules" and made a minor stylistic change, and added the last sentence.

"Personal knowledge" exception. - The "personal knowledge" exception to the affidavit requirement appears to recognize that there is no point in the municipal judge executing an affidavit when the judge has personal knowledge of facts constituting probable cause. State v. Pinela, 113 N.M. 627, 830 P.2d 179 (Ct. App. 1992).

Municipal judge had sufficient "personal knowledge" to support the bench warrant from his review of the information on the unsworn affidavit from the clerk's office. State v. Pinela, 113 N.M. 627, 830 P.2d 179 (Ct. App. 1992).

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

8-207. Search warrants.

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

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

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

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

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

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

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

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

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

premises the property was taken. The inventory shall be signed by the officer and the person or persons in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whose possession or premises the property was taken and to the applicant for the warrant.

F. **Probable cause.** As used in this rule, "probable cause" shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses produced by the affiant, provided that such additional evidence shall be reduced to writing, supported by oath or affirmation and served with the warrant.

ANNOTATIONS

Cross references. - For form on affidavit for search warrant, see Rule 9-213 NMRA.

For forms on search warrant, authorization for nighttime search and return and inventory, see Rule 9-214 NMRA.

For application for inspectorial search order, see Rule 9-801 NMRA.

For forms on inspection order and return, see Rule 9-802 NMRA.

Citizen-informer rule. - In order to apply the citizen-informer rule, the affidavit must affirmatively set forth circumstances which would allow a neutral magistrate to determine the informant's status as a citizen-informer. State v. Hernandez, 111 N.M. 226, 804 P.2d 417 (Ct. App. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Searches and Seizures § 108 et seq.

Preventing, obstructing, or delaying service or execution of search warrant as contempt, 39 A.L.R. 1354.

Illustrations of distinction, as regards search and seizure, between papers or other articles which merely furnish evidence of crime, and the actual instrumentalities of crime, 129 A.L.R. 1296.

Previous illegal search for or seizure of property as affecting validity of subsequent search warrant or seizure thereunder, 143 A.L.R. 135.

Authority to consent for another to search and seizure, 31 A.L.R.2d 1078.

Issuance of second search warrant after lapse of time for executing first, without additional showing of probable cause, 100 A.L.R.2d 525.

Search and seizure: necessity that police obtain warrant before taking possession of, examining, or testing evidence discovered in search by private person, 47 A.L.R.4th 501.

Lawfulness of search of person or personal effects under medical emergency exception to warrant requirement, 11 A.L.R.5th 52.

What constitutes compliance with knock-and-announce rule in search of private premises - state cases, 85 A.L.R.5th 1.

79 C.J.S. Searches and Seizures § 128 et seq.

8-208. Service and filing of pleadings and other papers.

A. **Service; when required.** Unless the court otherwise orders, every pleading subsequent to the citation or complaint, every order not entered in open court, every paper relating to conditions of release or bond, every paper relating to discovery, every written motion other than one which may be heard ex parte, every written notice, demand and similar paper shall be served upon each of the parties.

B. **Service; how made.** When 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 it to the attorney or party at the attorney's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

Delivery of a copy within this rule means:

(1) handing it to the attorney or to the party in the office;

(2) sending a copy by facsimile or electronic transmission when permitted by Rule 8-209 NMRA or Rule 8-210 NMRA;

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

(4) 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

(5) placing a copy in a box maintained by the attorney or by court personnel for purposes of serving the attorney.

C. **Filing; certificate of service.** All papers after the citation or complaint required to be served upon a party, together with a certificate or affidavit of service, shall be filed with the court within a reasonable time after service.

D. **Filing with the court defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note on the form the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy or filing an electronic copy as may be permitted pursuant to Rule 8-209 NMRA or Rule 8-210 NMRA. A paper filed by electronic means in compliance with Rule 8-209 NMRA constitutes a written paper for the purpose of applying these rules. 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.

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

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

[As amended, effective March 1, 2000.]

ANNOTATIONS

The 2000 amendment, effective March 1, 2000, amended this rule to conform it with Rules 6-209 and 7-209 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61B Am. Jur. 2d Pleading §§ 899, 901.

71 C.J.S. Pleading §§ 407 to 415.

8-209. Service and filing of pleadings and other papers 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 pleading or 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 pleading or paper has the same effect as any other filing for all procedural and statutory purposes. The filing of pleadings and other 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, except if the paper or pleading is to be filed directly

with the judge, the judge may permit the papers to be faxed to a number designated by the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

B. **Facsimile transmission by court of notices, orders or writs; receipt of affidavits.** Facsimile transmission may be used by the court for issuance of any notice, order or writ or receipt of an affidavit. 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 eight and one-half by eleven (8 1/2 x 11) inches in size; legible; and typewritten or printed using a pica (10 pitch) type style or a twelve (12) point typeface. The right, left, top and bottom margins shall be at least one (1) inch. The pages shall be consecutively numbered at the bottom.

D. **Documents faxed directly to the court.** A pleading or paper may be faxed directly to the court if:

(1) the court has a plain paper fax machine;

(2) a fee is not required to file the pleading or paper;

(3) only one copy of the pleading or paper is required to be filed;

(4) the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

(5) the pleading or 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 pleadings or 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 pleading or 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 pleading or 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. **Transmission by facsimile.** A notice, order, writ, pleading or paper may be faxed to a party or attorney who has:

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

(2) a letterhead with a facsimile telephone number; or

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

Service by facsimile is accomplished when the transmission of the pleading or paper is completed.

H. **Proof of service by facsimile.** Proof of facsimile service must include:

(1) a statement that the pleading or paper was transmitted by facsimile transmission and that the transmission was reported as complete and without error;

(2) the time, date and sending and receiving facsimile machine telephone numbers; and

(3) the name of the person who made the facsimile transmission.

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

J. **"Signed" defined.** As used in these rules, "signed" includes an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

[Adopted, effective January 1, 1997.]

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 Section 14-15-4 NMSA 1978.

8-210. Electronic service and filing of pleadings and other papers.

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

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

(2) "document" includes the electronic representation of pleadings and other papers.

B. **Registration for electronic service.** The clerk of the Supreme Court shall maintain a register of attorneys who agree to accept documents by electronic transmission. The register shall include the attorney's name and preferred electronic mail address.

C. **Electronic transmission by the court.** The court may send any document by electronic transmission to an attorney registered pursuant to Paragraph B of this rule and to any other person who has agreed to receive documents by electronic transmission.

D. **Filing by electronic transmission.** Documents may be filed by electronic transmission in accordance with this rule and any technical specifications for electronic transmission:

(1) in any court that has adopted technical specifications for electronic transmission;

(2) if a fee is not required or if payment is made at the time of filing.

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

F. **Service by electronic transmission.** Service pursuant to Rule 8-208 of these rules may be made by electronic transmission on any attorney who has registered pursuant to Paragraph B of this rule and on any other person who has agreed to service in this manner.

G. **Time of filing.** If electronic transmission of a document is received 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 electronic transmission is received after the close of business, the document will be considered filed on the next business day of the court. For any questions of timeliness, the time and date registered by the court's computer will be determinative.

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

I. **Proof of service by electronic transmission.** Proof of service by electronic transmission shall be made to the court by a certificate of an attorney or affidavit of a non-attorney and shall include:

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

(2) the time, date and electronic address of the sender;

(3) the electronic address of the recipient;

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

[Approved, effective July 1, 1997.]

ARTICLE 3
PLEADINGS AND MOTIONS

8-301. General rules of pleading; captions.

A. **Caption.** Pleadings and papers filed in the municipal court shall have a caption or heading which shall briefly include:

(1) the name of the court as follows:

"State of New Mexico

City of _____

Municipal Court";

(2) the names of the parties; and

(3) a title that describes the cause of action or relief requested. The title of a pleading or paper shall have no legal effect in the action.

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

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

[As amended, effective December 17, 2001.]

ANNOTATIONS

Cross references. - For forms on criminal summons, certificate of mailing, and return, see Rule 9-208 NMRA.

The 2001 amendment, effective December 17, 2001, inserted "captions" in the rule heading; added Paragraph A; redesignated former Paragraphs A and B as present Paragraphs B and C; and deleted former Paragraph C, requiring that the name of the defendant be stated in the caption of every pleading.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 1, 2, 74 to 76.

71 C.J.S. Pleading §§ 5, 9.

8-302. Pleas allowed.

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

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

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

8-303. Amendment of complaints and citations.

A. **Defects, errors and omissions.** A complaint or citation shall not be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested or in any manner affected, because of any defect, error, omission, imperfection or repugnancy therein which does not prejudice the substantial rights of the defendant upon the merits. The court may at any time prior to a verdict cause the complaint or citation to be amended with respect to any such defect, error, omission, imperfection or repugnancy if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

B. **Surplusage.** Any unnecessary allegation contained in a complaint or citation may be disregarded as surplusage.

C. **Variances.** No variance between those allegations of a complaint or citation or any supplemental pleading which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for acquittal of the defendant unless such variance prejudices substantial rights of the defendant. The court may at any time allow the complaint or citation to be amended in respect to any variance to conform to the evidence. If the court finds that the defendant has been prejudiced by an amendment, the court may postpone the trial or grant such other relief as may be proper under the circumstances.

D. **Effect.** No appeal, or motion made after verdict, based on any such defect, error, omission, repugnancy, imperfection, variance or failure to prove surplusage shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in the defendant's defense on the merits.

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

[As amended, effective May 15, 2001.]

ANNOTATIONS

The 2001 ammendment, effective May 15, 2001, inserted "or citation" following "complaint" in the first and last sentences and substituted "if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced" for "or to charge a different offense" in the last sentence in Subsection A; redesignated former Subsection B as present Subsection E; and added present Subsections B, C, and D, conforming this rule to Rule 5-204.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading § 745 et seq.

71 C.J.S. Pleading §§ 275 to 322.

8-304. Motions.

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

B. **How made.** Motions may be made orally or in writing, unless the court directs they be in writing.

C. **Suppression of evidence.**

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

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

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

[As amended, effective January 1, 1987; September 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, inserted "before trial" near the end of Paragraph A; deleted the second and third sentences of Paragraph B, relating to supporting or opposing briefs or affidavits; and deleted former Paragraphs C through F and redesignated former Paragraphs G and H as present Paragraphs C and D, respectively.

8-305. Unnecessary allegations.

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

(1) time of the commission of offense;

(2) place of the commission of offense;

(3) means by which the offense was committed;

(4) value or price of any property;

(5) ownership of property;

(6) intent with which an act was done;

(7) description of any place or thing;

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

(9) the specific degree of the offense charged;

(10) exceptions to the offense charged; or

(11) any other similar allegation.

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A Am. Jur. 2d Pleading §§ 31 to 33, 35, 36, 57, 58, 623.

71 C.J.S. Pleading §§ 6, 26, 36.

8-306. Joinder; consolidation; severance.

A. **Joinder of offenses.** Two or more offenses shall be joined in one complaint with each offense stated in a separate count, if the offenses:

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

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

B. **Consolidation for preliminary examination or trial.** The court may order two or more complaints against a single defendant to be tried or heard on preliminary examination together if the offenses could have been joined in a single complaint. The court may consolidate for preliminary examination or trial of two or more defendants if the offenses charged are based on the same or related acts.

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

[As amended, effective September 1, 1990; September 15, 1997.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, substituted "may, with leave of the court," for "shall" near the beginning of Subparagraph (2) of Paragraph A.

The 1997 amendment, effective September 15, 1997, deleted "defendants" from the Paragraph A, heading, deleted former Subparagraphs A(2) and A(3) relating to joinder of defendants, rewrote Paragraph B, and inserted "motion for" in the paragraph heading, substituted "defendant or the prosecutor" for "party" and inserted "consolidation" and "in any complaint or by joinder for trial" in Paragraph C.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Actions § 103 et seq.

Right to severance where two or more persons are jointly accused, 70 A.L.R. 1171, 104 A.L.R. 1519, 131 A.L.R. 917, 54 A.L.R.2d 830.

Right to severance where codefendant has incriminated himself, 54 A.L.R.2d 830.

Appealability of order sustaining demurrer, or its equivalent, to complaint on ground of misjoinder or nonjoinder of parties or misjoinder of causes of action, 56 A.L.R.2d 1238.

Consolidated trial upon several indictments or information against same accused, over his objection, 59 A.L.R.2d 841.

Time for making application for consolidation of actions, 73 A.L.R.2d 739.

Appealability of state court order granting or denying consolidation, severance or separate trials, 77 A.L.R.3d 1082.

1A C.J.S. Actions §§ 105 et seq., 204 et seq.

ARTICLE 4
RELEASE PROVISIONS

8-401. Bail.

A. **Right to bail.** Pending trial, any person bailable under Article 2, Section 13 of the New Mexico Constitution, shall be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount set by the court, subject to any release conditions imposed pursuant to Paragraph C of this rule, unless the court determines that such release will not reasonably assure the appearance of the person as required. If the court determines that release on personal recognizance or upon execution of an unsecured appearance bond will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, in addition to any release conditions imposed pursuant to Paragraph C of this rule, the court shall order the pretrial release of such person subject to the first of the following types of secured bonds which will reasonably assure the appearance of the person as required and the safety of any person and the community:

(1) the execution of a bail bond in a specified amount executed by the person and secured by a deposit of cash of ten percent (10%) of the amount set for bail or secured by such greater or lesser amount as is reasonably necessary to assure the appearance of the person as required. The cash deposit may be made by or assigned to a paid surety licensed under the Bail Bondsmen Licensing Law [Chapter 59A, Article 51 NMSA 1978] provided such paid surety also executes a bail bond for the full amount of the bail set;

(2) the execution of a bail bond by the defendant or by unpaid sureties in the full amount of the bond and the pledging of real property as required by Rule 8-401A; or

(3) the execution of a bail bond with licensed sureties as provided in Rule 8-401B or execution by the person of an appearance bond and deposit with the clerk of the court, in cash, of one-hundred percent (100%) of the amount of the bail set, such deposit to be returned as provided in this rule.

Any bail, property or appearance bond shall be substantially in the form approved by the supreme court.

B. **Factors to be considered in determining conditions of release.** The court shall, in determining the type of bail and which conditions of release will reasonably assure

appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including:

(a) the person's character and physical and mental condition;

(b) the person's family ties;

(c) the person's employment status, employment history and financial resources;

(d) the person's past and present residences;

(e) the length of residence in the community;

(f) any facts tending to indicate that the person has strong ties to the community;

(g) any facts indicating the possibility that the person will commit new crimes if released;

(h) the person's past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and

(i) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of an offense under federal, state or local law;

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release; and

(5) any other facts tending to indicate the person is likely to appear.

C. **Additional conditions; conditions to assure orderly administration of justice.** The court, upon release of the defendant or any time thereafter, may enter an order, that such person's release be subject to:

(1) the condition that the person not commit a federal, state or local crime during the period of release; and

(2) the least restrictive of, or combination of, the following conditions the court finds will reasonably assure the appearance of the person as required, the safety of any other person and the community and the orderly administration of justice:

(a) a condition that the person remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(b) a condition that the person maintain employment, or, if unemployed, actively seek employment;

(c) a condition that the person maintain or commence an educational program;

(d) a condition that the person abide by specified restrictions on personal associations, place of abode or travel;

(e) a condition that the person avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(f) a condition that the person report on a regular basis to a designated pretrial services agency or other agency agreeing to supervise the defendant;

(g) a condition that the person comply with a specified curfew;

(h) a condition that the person refrain from possessing a firearm, destructive device or other dangerous weapon;

(i) a condition that the person refrain from excessive or any use of alcohol and any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

(j) a condition that the person undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(k) a condition that the person submit to a urine analysis or alcohol test upon request of a person designated by the court;

(l) a condition that the person return to custody for specified hours following release for employment, schooling, or other limited purposes;

(m) a condition that the person satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

D. **Explanation of conditions by court.** The release order of the court shall:

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct;

(2) advise the person of:

(a) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(b) the consequences for violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(c) the consequences of intimidating a witness, victim or informant or otherwise obstructing justice; and

(3) unless the defendant is released on personal recognizance, set forth the circumstances which requires that bail be set.

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

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

G. **Return of cash deposit.** If a person has been released by executing an appearance bond and depositing a cash deposit set pursuant to Subparagraph (1) or (3) of Paragraph A of this rule, when the conditions of the appearance bond have been performed and the defendant for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant, his personal representatives or assigns the sum which has been deposited.

H. **Release from custody by designee.** Any or all of the provisions of this rule, except the provisions of Paragraphs E and F of this rule, may be carried out by responsible persons designated in writing by the presiding judge of the municipal court. No person shall be qualified to serve as a designee if such person or such person's spouse is:

(1) related within the second degree of blood or marriage to a paid surety who is licensed to sell property or corporate bonds within this state; or

(2) employed by a jail or detention facility unless designated in writing by the presiding judge of the municipal court.

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

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

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

[As amended, effective August 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990.]

ANNOTATIONS

Cross references. - For form on order setting conditions of release and appearance bond, see Rule 9-302 NMRA.

For forms on bail bond and justification of sureties, see Rule 9-304 NMRA.

The first 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, rewrote Paragraphs A through E; in Paragraph F, inserted "increase or reduce the amount of bail set or" in the first sentence and substituted "If such amendment of the release order" for "If the imposition of such additional or different conditions" at the beginning of the second sentence; in Paragraph G, substituted "Subparagraph (1) or (3)" for "Subparagraph (3)"; and rewrote Paragraph H.

The second 1990 amendment, effective for cases filed in the municipal courts on or after December 1, 1990, in Paragraph H, substituted "by responsible persons" for "by a responsible person" and inserted "presiding judge of the municipal" in the first sentence; and, in Subparagraph (2), added the language beginning "unless designated" at the end.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 8A Am. Jur. 2d Bail and Recognizance § 1 et seq.

Necessity of acknowledgment of bail bond in open court, 38 A.L.R. 1108.

Bail pending appeal from conviction, 45 A.L.R. 458.

Amount of bail required in criminal action, 53 A.L.R. 399.

Arresting one who has been discharged on habeas corpus or released on bail, 62 A.L.R. 462.

Factors in fixing amount of bail in criminal cases, 72 A.L.R. 801.

Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 79 A.L.R. 13.

Fault or omission of justice of peace regarding bond, undertaking, or recognizance, as affecting party seeking appeal, 117 A.L.R. 1386.

Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond, 18 A.L.R.3d 1354.

When is a person in custody of governmental authorities for purpose of exercise of state remedy of habeas corpus - modern cases, 26 A.L.R.4th 455.

Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504.

Bail: duration of surety's liability on posttrial bail bond, 32 A.L.R.4th 575.

Bail: effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial, 32 A.L.R.4th 600.

Propriety of applying cash bail to payment of fine, 42 A.L.R.5th 547.

8 C.J.S. Bail § 2 et seq.

8-401A. Bail; unpaid surety.

Any bond authorized by Subparagraph (2) of Paragraph A of Rule 8-401 shall be signed by the owner(s) of the real property as surety for the bond. The affidavit must contain a description of the property by which the surety proposes to justify the bond and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety remaining undischarged and a statement that the surety is a resident of New Mexico and owns real property in this state having an unpledged and unencumbered net value equal to the amount of the bond. Proof may be required of the matters set forth in the affidavit. The provisions of this rule shall not apply to a paid surety.

[Approved effective October 1, 1987; as amended, effective September 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, substituted "Subparagraph (2)" for "Subparagraph (4)" near the beginning.

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

A. **Justification of sureties.** Any bond submitted to the court by a paid surety pursuant to Paragraph A of Rule 8-401 shall be signed by a bail bondsman, as surety, who is licensed under the Bail Bondsmen Licensing Law [Chapter 59A, Article 51 NMSA 1978] and who has timely paid all outstanding default judgments on forfeited surety bonds. A bail bondsman licensed as a limited surety agent shall file proof of appointment by an insurer by power of attorney with the bond. If authorized by law, a paid surety licensed under the Bail Bondsmen Licensing Law may deposit cash with the court in lieu of a surety or property bond, provided that the paid surety executes the appearance bond.

B. **Property bondsman.** If a property bond is submitted by a compensated surety, the bail bondsman or solicitor must be licensed as a property bondsman and must file, in each court in which he posts bonds, an irrevocable letter of credit in favor of the court, a sight draft made payable to the court and a copy of his license.

C. **Property bond in certain districts.** A real or personal property bond may be executed for the release of a person pursuant to Rule 8-401 in any municipality in which the chief judge of the district court upon concurrence of a majority of the district judges of the district has entered an order finding that the provisions of Paragraph B of this rule will result in the detention of persons otherwise eligible for pretrial release pursuant to Rule 8-401. If a property bond is submitted by a compensated surety pursuant to this paragraph, the bail bondsman or solicitor must be licensed as a property bondsman and must pledge or assign real or personal property owned by the property bondsman as security for the bail bond. In addition, a licensed property bondsman must file, in each court in which he posts bonds:

(1) proof of the licensed bondsman's ownership of the property used as security for the bonds; and

(2) a copy of the bondsman's license.

The bondsman must attach to the bond a current list of all outstanding bonds, encumbrances and claims against the property each time a bond is posted, using the court approved form.

D. **Limits on property bonds.** No single property bond submitted pursuant this rule can exceed the amount of real or personal property pledged. The aggregate amount of all

property bonds by the surety cannot exceed ten times the amount pledged. Any collateral, security or indemnity given to the bondsman by the principal shall be limited to a lien on the property of the principal, must be reasonable in relation to the amount of the bond and must be returned to the principal and the lien extinguished upon exoneration on the bond. If the collateral is in the form of cash or a negotiable security, it shall not exceed fifty percent (50%) of the amount of the bond and no other collateral may be taken by the bondsman. If the collateral is a mortgage on real property, the mortgage may not exceed one hundred percent (100%) of the amount of the bond. If the collateral is a lien on a vehicle or other personal property, it may not exceed one hundred percent (100%) of the bond. If the bond is forfeited, the bondsman must return any collateral in excess of the amount of indemnification and the premium authorized by the superintendent of insurance.

[Approved effective October 1, 1987; as amended, effective September 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, in Paragraph A, substituted "submitted to the court by a paid surety pursuant to" for "authorized by Subparagraph (5) of" in the first sentence and added the last sentence; and rewrote former Paragraph B to appear as Paragraphs B, C, and D.

8-402. Release.

A. **Release during trial.** A defendant released pending trial shall continue on release during trial under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions or termination of release are necessary to assure the defendant's presence during the trial or to assure that the defendant's conduct will not obstruct the orderly administration of justice.

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

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

(2) that the defendant's conduct will not obstruct the orderly administration of justice.

C. **Defendant in custody.** Nothing in this rule shall be construed to prevent the court from releasing pursuant to Rule 8-401 a defendant not released prior to or during trial.

[As amended, effective January 1, 1997.]

ANNOTATIONS

Cross references. - For release pending appeal, see Rule 8-703 NMRA.

The 1997 amendment, effective January 1, 1997, substituted "defendant" for "person" throughout the rule, deleted "under Rule 8-401" following the first "trial" and made stylistic changes in Paragraph A, inserted "or new trial" in the Paragraph B heading and inserted "or pending any new trial" near the middle of Paragraph B, deleted former Paragraph C relating to release after sentencing, and redesignated former Paragraph D as Paragraph C.

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

23A C.J.S. Criminal Law §§ 1168, 1169.

8-403. Revocation of release.

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

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

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

B. **Review of additional conditions.** A person may petition the district court for release, if pursuant to Paragraph A of this rule, new or additional conditions of release are imposed and:

(1) after twenty-four (24) hours from the time of the imposition of the new conditions, the person continues to be detained as a result of his inability to meet the new conditions of release; or

(2) the person is ordered released on a condition which requires that he return to custody after specified hours.

[Approved, effective July 1, 1988; as amended, effective September 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, in Paragraph A deleted "Paragraph A of" preceding "Rule 8-401" in Subparagraph (1), deleted former Subparagraph (2), imposing conditions authorized under Paragraph C of Rule 8-401, and redesignated former Subparagraph (3) as present Subparagraph (2); rewrote Paragraph B; and deleted Paragraph C, relating to record on review.

8-404, 8-405. Reserved.

8-406. Bail bonds; exoneration; forfeiture.

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

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

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

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

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

[Effective, October 1, 1987.]

8-407. Bail bonds; notice.

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

[Effective, October 1, 1987.]

ARTICLE 5
ARRAIGNMENT AND PREPARATION FOR TRIAL

8-501. Arraignment; first appearance.

A. **Explanation of rights.** Upon the first appearance of the defendant in response to a summons or warrant or arrest, the court shall determine that the defendant has been informed of the following:

(1) the offense charged;

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

(3) the right to bail;

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

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

(6) the right to remain silent, and that any statement made by the defendant may be used against the defendant.

The court may allow the defendant reasonable time and opportunity to make telephone calls and consult with counsel.

B. **Entry of plea.** The court shall require the defendant to plead to the complaint, pursuant to Rule 8-302 NMRA and if the defendant refuses to answer, the court shall enter a plea of "not guilty" for the defendant. If, after entry of a plea of "not guilty", the defendant remains in custody, the action shall be set for trial as soon as possible. If the defendant pleads "not guilty by reason of insanity" or if an issue is raised as to the mental competency of the defendant to stand trial, after setting conditions of release, the action shall be transferred to the district court.

C. **Waiver of arraignment.** With prior approval of the court, an arraignment may be waived by the defendant filing a written waiver of arraignment. A waiver of arraignment and entry of a plea shall be substantially in the form approved by the Supreme Court.

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

[As amended, effective March 1, 1987; October 1, 1987; September 1, 1990; October 1, 1996; November 1, 2000.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, substituted "and" for "or" in the catchline; rewrote the first sentence of Paragraph D and inserted the present second sentence therein; and in Paragraph F, substituted "the defendant's" for "his" near the end of the first sentence.

The 1996 amendment, effective October 1, 1996, deleted "and" from the rule heading, substituted "may" for "shall" in the last undesignated paragraph of Paragraph A, added the language beginning "and if the defendant" at the end of Paragraph B, inserted "or arraignment" in the paragraph heading of Paragraph E and throughout Paragraph E, inserted "legal" in Subparagraph E(1), inserted "if any" in Subparagraph E(2), and rewrote former Paragraph F relating to audio-visual arraignment to be Subparagraph E(3) and made related changes.

The 2000 amendment, effective November 1, 2000, rewrote the rule with little substantive change, except for the deletion of Paragraph E, relating to audio-visual appearances and arraignments. See now, Rule 8-109A NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 433 to 442.

Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 98 A.L.R.2d 966, 3 A.L.R.4th 1057.

Accused's right to assistance of counsel at or prior to arraignment, 5 A.L.R.3d 1269.

Admissibility of confession or other statement made by defendant as affected by delay in arraignment - modern state cases, 28 A.L.R.4th 1121.

22 C.J.S. Criminal Law §§ 357 to 364.

8-502. Pleas.

A. **Pleas.** A defendant who elects to waive the right to a trial may enter:

(1) a plea of guilty; or

(2) a plea of no contest, subject to the approval of the court.

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

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

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

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

(4) that if the defendant pleads guilty or no contest there will not be a trial in this case, so that by pleading guilty or no contest the defendant waives the right to a trial.

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

D. **Plea agreement procedure.**

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

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

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

(4) If the court finds the provisions of the agreement unacceptable after reviewing it and any presentence report, the court will allow the withdrawal of the plea, and the agreement will be void.

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

(6) Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to plead guilty or no contest to the crime charged or any other crime, or of statements

made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

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

[As amended, effective May 1, 1986; May 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective May 1, 1997, rewrote this rule to the extent that a detailed comparison would be impracticable.

8-503. Disposition without hearing.

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

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

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

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

(2) reckless driving;

(3) leaving the scene of an accident;

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

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 22 et seq.

8-504. Discovery.

A. **Disclosure by state.** Not less than ten (10) days before trial, the prosecution shall disclose and make available for inspection, copying and photographing any records, papers, documents and recorded statements made by witnesses or other tangible evidence in its possession, custody and control which are material to the preparation of the defense or are intended for use by the prosecution at the trial or were obtained from or belong to the defendant.

B. **Disclosure by defendant.** Not less than ten (10) days before trial, the defendant shall disclose and make available to the prosecution for inspection, copying and photographing any records, papers, documents or other tangible evidence in the defendant's possession, custody or control which the defendant intends to introduce in evidence at the trial.

C. **Witness disclosure.** Not less than ten (10) days before trial, the prosecution and defendant shall exchange a list of the names and addresses of the witnesses each intends to call at the trial. Upon request of a party, any witness named on the witness list shall be made available for interview prior to trial.

D. **Continuing duty to disclose.** If a party discovers additional material or witnesses which the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

E. **Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed, or introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

F. **"Statement" defined.** As used in this rule, "statement" means:

(1) a written statement made by a person and signed or otherwise adopted or approved by such person;

(2) any mechanical, electrical or other recording, or a transcription thereof, which is a recital of an oral statement; and

(3) stenographic or written statements or notes which are in substance recitals of an oral statement.

[As amended, effective January 1, 1995; September 15, 1997.]

Committee commentary. - Under Paragraphs A and B, the prosecution and defense are only required to disclose and permit inspection, copying or photographing of records, papers, documents and recorded statements of witnesses at the place where the records or statements are located. The expense of copying or photographing is to be paid by the party requesting a copy or photograph.

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

The 1995 amendment, effective January 1, 1995, rewrote the rule which formerly read: "At any time during the pendency of the action, upon request of the defendant, the municipal judge may order the prosecution to produce for inspection and copying any records, papers, documents or other tangible evidence in its possession and which are material to the preparation of the defense or are intended for use by the municipality at trial or were obtained from or belong to the defendant. No other discovery proceedings shall be permitted."

The 1997 amendment, effective September 15, 1997, added "Not less that ten (10) days before trial" at the beginning of Paragraphs A and B, substituted "disclose" for "produce", inserted "and photographing" and "recorded statements made by witnesses" and made a stylistic change in Paragraph A, inserted "and photographing" and made a stylistic change in Paragraph B, deleted "together with any recorded statement made by the witness" from the end of the first sentence in Paragraph C, and substituted "disclose and make available" for "produce or disclose" in Paragraph D.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 23 Am. Jur. 2d Depositions and Discovery §§ 400 to 467.

Mode of establishing that information obtained by illegal wiretapping has or has not led to evidence introduced by prosecution, 28 A.L.R.2d 1055.

Fingerprints, palm prints or bare footprints as evidence, 28 A.L.R.2d 1115, 45 A.L.R.4th 1178.

Court's power to determine, upon government's claim or privilege, whether official information contains state secrets or other matters disclosure of which is against public interest, 32 A.L.R.2d 391.

Statements of parties or witnesses as subject of pretrial or other disclosure, production, or inspection, 73 A.L.R.2d 12.

Taxation of costs and expenses in proceedings for discovery or inspection, 76 A.L.R.2d 953.

Right of accused in state courts to inspection or disclosure of evidence in possession of prosecution, 7 A.L.R.3d 8.

Right of defendant in criminal case to inspection of statement of prosecution's witness for purposes of cross-examination or impeachment, 7 A.L.R.3d 181.

Right of defense in criminal prosecution to disclosure of prosecution information regarding prospective jurors, 86 A.L.R.3d 571.

22A C.J.S. Criminal Law §§ 495 to 500.

8-505. Pretrial conference; scheduling order.

A. **Pretrial conference.** With or without the filing of a motion by a party, the court may order the parties to appear before the court to expedite the disposition of the case. Witnesses may not be called or subpoenaed for a pretrial conference unless ordered by the court.

B. **Pretrial scheduling order.** The court may enter a scheduling order that limits the time:

(1) to file and hear motions; and

(2) to complete discovery.

The scheduling order may also include:

(3) the dates for conferences or hearings before trial;

(4) a trial date; and

(5) any other matters deemed appropriate by the court.

[As amended, effective March 1, 2000; December 17, 2001.]

Committee commentary. - The purpose of this rule is to encourage negotiations to utilize more effectively judicial resources and to expedite the disposition of cases. Pre-trial conferences should be utilized for more than exchange of discovery materials.

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

The 2000 amendment, effective March 1, 2000, amended this rule to encourage the use of pre-trial conferences for more than exchange of discovery materials.

The 2001 amendment, effective December 17, 2001, inserted "scheduling order" in the rule heading; designated the former provisions of the rule as Paragraph A, adding the heading "Pretrial conference" and rewrote the second sentence that formerly provided the court may issue subpoenas at the request of a party; and added Paragraph B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21A Am. Jur. 2d Criminal Law §§ 1160, 1163.

Power of court to adopt general rule requiring pretrial conference as distinguished from exercising its discretion in each case separately, 2 A.L.R.2d 1061.

Binding effect of court's order entered after pretrial conference, 22 A.L.R.2d 599.

Appealability of order entered in connection with pretrial conference, 95 A.L.R.2d 1361.

23A C.J.S. Criminal Law §§ 1192 to 1194.

8-506. Dismissal of actions.

A. **Voluntary dismissal.** The prosecution may dismiss a citation or criminal complaint by filing a notice of dismissal. The notice of dismissal shall be substantially in the form approved by the Supreme Court. Unless otherwise stated in the notice, the dismissal is without prejudice. A notice of dismissal shall be filed prior to commencement of the trial.

B. **Bail bond.** The filing of a notice of dismissal under Paragraph A of this rule shall not automatically exonerate a bond prior to the expiration of six (6) months after the date the bond was executed. If, prior to the expiration of six (6) months the dismissed charges are filed in another court, the state shall notify the municipal court and the municipal court shall transfer any bond to that court.

C. **Refiled complaints.** If a citation or complaint is dismissed without prejudice and the charges are later refiled, at the time of refiling the charges, the prosecutor shall notify the municipal court of:

(1) the court in which the original charges were filed;

(2) the case file number of the dismissed charges;

(3) the name of the assigned judge at the time the charges were dismissed; and

(4) the reason the charges were dismissed.

D. **Time for trial.** If criminal charges are dismissed without prejudice and later refiled, the trial on the refiled charges shall be commenced within the unexpired time for trial pursuant to Paragraph E of this rule, unless the court, after notice and a hearing, finds good cause for the trial to commence one hundred eighty-two (182) days of the date the charges are refiled.

E. **Dismissal for failure to prosecute.** Any citation or complaint which is pending for more than one hundred eighty-two (182) days from the date of the arrest of the defendant or the filing of the complaint or citation against the defendant, whichever occurs latest, without commencement of a trial by the municipal court shall be dismissed with prejudice unless, after a hearing, the municipal judge finds that the defendant was responsible for the failure of the court to commence trial. After a citation or complaint is dismissed pursuant to this paragraph, a charge for the same offense shall not be filed in any court.

[As amended, effective August 1, 1999.]

Committee commentary. - For what is required for a showing of good faith, *see State v. Vigil*, 114 N.M. 431, 839 P.2d 641 (Ct. App. 1992) (state has the burden of demonstrating good-faith that it was not intent to circumvent the operation of the six-month rule); and *State v. Lucero*, 108 N.M. 548, 550, 775 P.2d 750, 752 (Ct. App.), cert. denied, 108 N.M. 433, 773 P.2d 1240 (1989) (amended complaint containing significant changes in the offenses charged superseded the original complaint for purposes of six-month rule). *See also State v. Bolton*, 1997-NMCA-007, 122 N.M. 831, 932 P.2d 1075 *(analysis of Lucero, Delgado and Coburn cases)*.

Cross references. - For form on order dismissing criminal complaint with prejudice, see Rule 9-414 NMRA.

For form on notice of dismissal of criminal complaint, see Rule 9-415 NMRA.

The 1999 amendment, effective on and after August 1, 1999, rewrote the rule, changing the time from six months to one hundred eighty-two days for any criminal citation or complaint within the magistrate court trial jurisdiction that has been dismissed without prejudice and later refiled.

Constitutional speedy trial analysis not required. - Even if a violation of the six month rule is found, the court is not required to automatically make a constitutional speedy trial analysis. County of Los Alamos v. Beckman, 120 N.M. 596, 904 P.2d 45 (Ct. App. 1995).

Six month rule violated. - Even though the defendant had made two requests for continuances, since a four-month delay in setting the case for trial after the second request could not be attributed to the defendant and the six month rule expired, dismissal was appropriate. County of Los Alamos v. Beckman, 120 N.M. 596, 904 P.2d 45 (Ct. App. 1995).

Six month rule not violated. - See State v. Fernandez, 117 N.M. 673, 875 P.2d 1104 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 512 to 519.

Mandamus to compel a court to reinstate or proceed with the hearing of appeal that it has erroneously dismissed, 4 A.L.R. 655.

Duty to dismiss criminal proceedings on motion of attorney general or prosecuting attorney, pursuant to promise of immunity, 66 A.L.R. 1378.

Power of court to enter nolle prosequi or dismiss prosecution, 69 A.L.R. 240.

Stage of trial at which plaintiff may take voluntary nonsuit, dismissal, or discontinuance, 89 A.L.R. 13, 126 A.L.R. 284.

Power and duty of court as to continuation of action or prosecution upon refusal of city, county, or district attorney to proceed therewith, 103 A.L.R. 1253.

Indictment or information which has been dismissed by prosecuting attorney as susceptible of reinstatement, 112 A.L.R. 386.

Nolle prosequi or discontinuance of prosecution in one court and instituting new prosecution in another court of coordinate jurisdiction, 117 A.L.R. 423.

Original notice of lis pendens as effective upon renewal of litigation after dismissal, reversal, or nonsuit, reserving right to begin another proceeding, 164 A.L.R. 515.

Delay in issuance or service of summons as requiring or justifying order discontinuing suit, 167 A.L.R. 1058.

Effect of nonsuit, dismissal or discontinuance of action on previous orders, 11 A.L.R.2d 1407.

Appellate review at instance of plaintiff who has requested, induced, or consented to dismissal or nonsuit, 23 A.L.R.2d 664.

Dismissal of plaintiff's case for want of prosecution as affecting defendant's counterclaim, setoff, or recoupment, or intervenor's claim for affirmative relief, 48 A.L.R.2d 748.

Effect of judgment dismissing action, or otherwise denying relief, for lack of jurisdiction or venue, 49 A.L.R.2d 1036.

Dismissal of civil action for want of prosecution as res judicata, 54 A.L.R.2d 473.

Attorney's authority to dismiss or otherwise terminate action, 56 A.L.R.2d 1290.

Dismissal of appeal or writ of error for want of prosecution as bar to subsequent appeal, 96 A.L.R.2d 312.

Attack on personal service as having been obtained by fraud or trickery, 98 A.L.R.2d 551.

Attorney's inaction as excuse for failure to timely prosecute action, 15 A.L.R.3d 674.

Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond, 18 A.L.R.3d 1354.

Power of trial court to dismiss prosecution or direct acquittal on basis of prosecutor's opening statement, 75 A.L.R.3d 649.

Construction, as to terms and conditions, of state statute or rule providing for voluntary dismissal without prejudice upon such terms and conditions as state court deems proper, 34 A.L.R.4th 778.

Application of speedy trial statute to dismissal or other termination of prior indictment or information and bringing of new indictment or information, 39 A.L.R.4th 899.

22 C.J.S. Criminal Law §§ 419 to 424.

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

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

ANNOTATIONS

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

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

ARTICLE 6
TRIALS

8-601. Conduct of trials.

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

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

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

D. **Transcription of proceedings.** With prior approval of the judge, a party in a municipal court proceeding or any person with a claim arising out of the same transaction or occurrence giving rise to the municipal court proceeding may, at the party's or person's expense, make a transcription of the testimony in the municipal court proceeding. Any person causing a transcription of testimony to be made pursuant to this rule shall make a copy of the transcription available to all parties in the municipal court proceeding. A transcription of the testimony in the municipal court may only be used in civil proceedings when permitted by Paragraph A of Rule 1-032 of the Rules of Civil Procedures for the District Courts and criminal proceedings when permitted by Paragraph N of Rule 5-503 of the Rules of Criminal Procedure for the District Courts and may not otherwise be broadcast or reproduced. As used in this rule, "transcription" shall mean a stenographic or tape recording.

[As amended, effective September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, substituted "Transcription of proceeding" for "Record" in the paragraph heading in Paragraph D and rewrote Paragraph D, which read "A party may cause a record, as defined in Rule 8-109, to be made of the proceeding at the expense of the party".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Continuance § 1 et seq.

Refusal of continuance in criminal trial, asked for on account of occurrences during trial, as abuse of discretion, 5 A.L.R. 914.

Right to continuance to procure witness to alibi, 41 A.L.R. 1530.

Right of attorney to have case continued to protect his compensation, 67 A.L.R. 42.

Right to continuance because counsel is in attendance at another court, 112 A.L.R. 593.

Physical condition or conduct of party, his family, friends, or witnesses during trial, tending to arouse sympathy of jury, as ground for continuance or mistrial, 131 A.L.R. 323.

Right of accused to continuance because of absence of witness who is fugitive from justice, 42 A.L.R.2d 1229.

Continuance of criminal case because of illness or death of counsel, 66 A.L.R.2d 267.

Admissions to prevent continuance sought to secure testimony of absent witness in criminal case, 9 A.L.R.3d 1180.

Withdrawal, discharge, or substitution of counsel in criminal case as ground for continuance, 73 A.L.R.3d 725.

8-602. Subpoenas.

A. **Form; issuance.**

(1) Every subpoena shall:

(a) state the name of the court from which it is issued;

(b) state the title of the action and the action number;

(c) command each person to whom it is directed to attend a trial or hearing and give testimony or to produce for trial or hearing designated books, documents or tangible things in the possession, custody or control of that person;

(d) state the time and date of the hearing or trial, the name of the judge before whom the witness is to appear or produce documents; and

(e) be substantially in the form approved by the Supreme Court.

(2) All subpoenas shall issue from the court for the court in which the matter is pending.

(3) The judge or clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall fill it in before service. The judge or clerk may issue a subpoena duces tecum to a party only if the subpoena duces tecum is completed by the party prior to issuance by the judge or clerk. An attorney authorized to practice law in New Mexico

and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court in which the case is pending.

(4) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

B. **Service.**

(1) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if that person's attendance is commanded:

(a) if the witness is to be paid from funds appropriated by the legislature to the administrative office of the courts for payment of state witnesses or for the payment of witnesses in indigency cases, by processing for payment to such witness the fee and mileage prescribed by regulation of the administrative office of the courts;

(b) for all persons not described in Subparagraph (1)(a) of this paragraph, by tendering to that person the full fee for one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The fee for per diem expenses shall not be prorated. If attendance is required for more than one (1) day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior to or at the same time as service of any subpoena commanding production of documents and things or inspection of premises before trial, notice shall be served on each party in the manner prescribed by Rule 6-209 NMRA;

(2) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

C. **Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(a) Unless specifically commanded to appear in person, a person commanded to produce and permit inspection of the premises and copying of designated books, papers, documents or tangible things need not appear in person at the hearing or trial.

(b) Subject to Subparagraph (2) of Paragraph D of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon all parties written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court by which the subpoena was issued. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)

(a) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance,

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iii) subjects a person to undue burden.

(b) The court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena if a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information,

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

If the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. **Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

E. **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court punishable by fine or imprisonment.

[As amended, effective January 1, 1987; January 1, 1994; May 1, 1994; May 1, 2002.]

ANNOTATIONS

Cross references. - For forms on subpoena and certificate of service, see Rule 9-503 NMRA.

For form on subpoena to produce document or object, see Rule 9-504 NMRA.

The 2002 amendment, effective May 1, 2002, rewrote the rule.

8-603. Blood and breath alcohol test reports; controlled substance chemical analysis reports.

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

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

(a) the report is of an analysis conducted by a laboratory certified by the scientific laboratory division of the health and environment department [department of health] to perform breath and blood alcohol tests;

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

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

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

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

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

(3) a written report of the conduct and results of a chemical analysis of a substance to determine if such substance is a controlled substance and the circumstances surrounding receipt and custody of the test sample if:

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

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

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

B. **Proof of mailing; authentication.** If the evidence is a written report of the conduct and results of a chemical analysis of breath, blood or controlled substance prepared pursuant to Subparagraph (1) or (3) of Paragraph A of this rule, except for the portion of the report which is completed by the law enforcement officer, proof of mailing and authentication of the report shall be by certificate on the report.

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

[As amended, effective October 1, 1987; October 1, 1991.]

ANNOTATIONS

Cross references. - For report of blood alcohol analysis, see Rule 9-505 NMRA.

Bracketed material. - The bracketed references to the department of health in Subparagraphs A(1)(a) and A(2)(a) were inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, relating to the department of health,

which is defined as including the scientific laboratory. The bracketed material was not approved by the Supreme Court and is not part of the rule.

The 1991 amendment, effective for cases filed in the municipal courts on or after October 1, 1991, added "controlled substance chemical analysis reports" to the catchline; in Paragraph A, rewrote Subparagraph (1)(a) and added Subparagraph (3); in Paragraph B, substituted "breath, blood or controlled substance" for "breath or blood" and inserted "or (3)"; and, in Paragraph C, inserted "chemical analysis of a controlled substance".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 357, 364, 366.

Requiring submission to physical examination or test as violation of constitutional rights, 25 A.L.R.2d 1407.

Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 A.L.R.2d 971.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112.

Motorist's right to private sobriety test, 45 A.L.R.4th 11.

22A C.J.S. Criminal Law §§ 759, 761 to 769, 852.

ARTICLE 7
JUDGMENT AND APPEAL

8-701. Judgment.

If the defendant has been found guilty, a judgment of guilty shall be rendered. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and filed. When a citation is issued in lieu of a criminal complaint in accordance with Rule 8-201, the back of the citation may serve as the final order or as the judgment and sentence when no jail time is imposed. The court shall give notice of entry of judgment and sentence in accordance with Paragraph B of Rule 8-208 NMRA.

[As amended, effective October 1, 1992; October 15, 2002.]

ANNOTATIONS

The 1992 amendment, effective for cases filed in the municipal courts on and after October 1, 1992, added the third sentence.

The 2002 amendment, effective October 15, 2002, deleted the former first sentence which read "If the defendant is acquitted, a judgment of not guilty shall be entered"; substituted "has been found guilty" for "is found guilty a written" in the present first sentence; substituted "rendered in open court and thereafter a written judgment and sentence shall be signed by the" for "signed by the municipal" in the second sentence; and in the fourth sentence, deleted "municipal" preceding "court" at the beginning and substituted "Paragraph B" for "Paragraph H" at the end of the sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.

Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.

24 C.J.S. Criminal Law §§ 1458 to 1505.

8-702. Advising defendant of right to appeal.

A. **Duty of court.** At the time of entering a judgment and sentence, the court shall advise the defendant of the defendant's right to a new trial in the district court. The court shall also advise the defendant that if the defendant wishes to appeal, a notice of appeal must be filed within fifteen (15) days after entry of the judgment and sentence.

B. **Duty of defendant.** The defendant has the duty of obtaining a trial before the district court within six (6) months of the date of the filing of the notice of appeal. A defendant shall request a trial date at the time of filing the notice of appeal.

C. **Automatic affirmance.** Any appeal which has not been tried by the district court within six (6) months after the date of the filing of the notice of appeal, will be dismissed and the judgment and sentence will be affirmed, unless the time has been extended by a justice of the New Mexico Supreme Court upon a showing of good cause.

[As amended, effective September 1, 1990; January 1, 1997; October 15, 2002.]

ANNOTATIONS

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, rewrote the introductory paragraph and former Paragraph A to appear as Paragraph A; in Paragraph B, substituted "The defendant" for "He", deleted "date" following "trial" in the first sentence, and added the last sentence; and, in Paragraph C, substituted "Any appeal which has not been" for "If his appeal is not", deleted "his appeal" preceding "will be dismissed", and substituted "the conviction" for "his conviction".

The 1997 amendment, effective January 1, 1997, deleted "or within fifteen (15) days after the filing of the notice of appeal" from the end of Paragraph B, and substituted "the right" for "his right" in Paragraph A.

The 2002 amendment, effective October 15, 2002, in Paragraph A, deleted "the municipal" from the bold heading, inserted "defendant's" preceding "right to a new trial" in the first sentence; and, in Paragraph C, substituted "judgment and sentence" for "conviction".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.

Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.

24 C.J.S. Criminal Law §§ 1680, 1686, 1688.

8-703. Appeal.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order of the municipal court may appeal, as permitted by law, to the district court of the county within which the municipal court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the municipal court. The three (3) day mailing period set forth in Rule 8-104 does not apply to the time limits set forth above. 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 municipal court shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed upon a municipality or against a defendant who is represented by a public defender or other court appointed counsel.

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

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

(2) promptly filing with the municipal court:

(a) a copy of the notice of appeal which has been endorsed by the clerk of the district court; and

(b) unless the appeal has been filed by the municipality or by a defendant represented by a public defender or other court appointed counsel, a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

(1) serve each party or each party's attorney in the proceedings in the municipal court with a copy of the notice of appeal in accordance with Rule 5-103 of the Rules of Criminal Procedure for the District Courts; and

(2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 5-103.

E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

F. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal in the municipal court pursuant to Paragraph B of this rule, the municipal court shall file with the clerk of the district court the record on appeal taken in the action in the municipal court. For purposes of this rule, the record on appeal shall consist of:

(1) a title page containing the caption of the case in the municipal court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

(2) a copy of all papers and pleadings filed in the municipal court;

(3) a copy of the judgment or final order sought to be reviewed with date of filing; and

(4) any exhibits

The municipal court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

Any party desiring a copy of the record on appeal shall be responsible for paying the cost of preparing the copy.

G. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the municipal court or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.

H. **Conditions of release.** At the time of the entry of the judgment and sentence, the municipal court shall review the conditions of release pending appeal to assure the conditions are sufficient to secure the appearance of the defendant and the judgment of the municipal court. The municipal court may utilize the criteria listed in Paragraph B of

Rule 8-401, and may also consider the fact of defendant's conviction and the length of sentence imposed. The conditions of release shall be included on the judgment and sentence. A defendant released pending trial shall continue on release pending an appeal to the district court under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions are necessary to assure the defendant's appearance or to assure that the defendant's conduct will not obstruct the orderly administration of justice. In the event the court requires a bail bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the court. If the court determines that the previously imposed conditions are not sufficient to assure the appearance of the defendant or the orderly administration of justice, the court may increase the amount of the bond on appeal or terminate the conditions of release to assure the appearance of the defendant or the orderly administration of justice. Nothing in this rule shall be construed to prevent the court from releasing a person not released prior to or during trial.

I. **Review of terms of release.** If the municipal court has refused release pending appeal or has imposed conditions of release which the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal. A copy of the petition for release which has been endorsed by the clerk of the district court shall be filed with the municipal court. If the district court releases the defendant on appeal, a copy of the order of release shall be filed in the municipal court.

J. **Trial de novo.** Trials upon appeals from the municipal court to the district court shall be de novo.

K. **Notice; trial de novo appeals.** In trial *de novo* appeals, the clerk of the district court shall give notice to all parties of the time and date set for a trial de novo not less than ten (10) days prior to the date set for trial. If the defendant is represented by counsel, the clerk shall give written notice to the defendant and the defendant's counsel. Notice to the defendant shall be mailed to the defendant's last known address.

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

M. **Extension of time.** The time limit specified in Paragraph L of this rule may be extended one time for a period not exceeding ninety (90) days upon a showing of good cause to a justice of the Supreme Court. The party seeking an extension of time shall file with the clerk of the Supreme Court a verified petition for extension concisely stating the facts petitioner deems to constitute good cause to extend the time period for trial. The petition shall be filed within the six (6) month period, except that it may be filed within ten (10) days after the expiration of the six (6) month period if it is based on

exceptional circumstances beyond the control of the party or trial court which justify the failure to file the petition within the six (6) month period. A party seeking an extension of time shall promptly serve a copy on opposing counsel. Within five (5) days after service of the petition, opposing counsel may file an objection to the extension setting forth the reasons for the objection. No hearing shall be held except upon order of the Supreme Court. If the Supreme Court finds that there is good cause for the granting of an extension beyond the six (6) month period, it shall fix the time limit within which the defendant must be tried. No other extension of time shall be allowed.

N. **Procedure on appeal.** Unless there is a conflict with this rule or Rules 8-702, 8-704 or 8-705 of these rules, the Rules of Criminal Procedure for the District Courts shall govern the procedure on appeal from the municipal court.

O. **Disposal of appeals.** The district court shall dispose of appeals by entry of a judgment or order disposing of the appeal. The court in its discretion may accompany the judgment or order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as precedent in subsequent cases. A mandate shall be issued by the court upon expiration of whichever of the following events occurs latest:

(1) fifteen (15) days after entry of the order disposing of the case;

(2) fifteen (15) days after disposition of a motion for rehearing; or

(3) if a notice of appeal is filed, upon final disposition of the appeal.

P. **Remand.** Upon expiration of the time for appeal from the judgment or final order of the district court, if the relief granted is within the jurisdiction of the municipal court, the district court shall remand the case to the municipal court for enforcement of the district court's judgment.

Q. **Appeal.** Any aggrieved person may appeal from a judgment of the district court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in accordance with the Rules of Appellate Procedure. The conditions of release and bond approved or continued in effect by the district court during the pendency of the appeal to the district court shall continue in effect pending appeal to the Court of Appeals, unless modified pursuant to Rule 12-205 of the Rules of Appellate Procedure.

R. **Return of record.** After final determination of the appeal, the clerk of the district court shall return the record on appeal to the municipal court.

[As amended, effective September 1, 1989; September 1, 1990; January 1, 1994; January 1, 1995; January 1, 1997.]

ANNOTATIONS

Cross references. - For form on notice of appeal, see Rule 9-607 NMRA.

For form on title page of transcript of criminal proceedings and certificate, see Rule 9-608 NMRA.

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

The 1990 amendment, effective for cases filed in the municipal courts on or after September 1, 1990, deleted Subparagraph (5) of Paragraph F, which read "(5) the record of the hearing in the municipal court, if any".

The 1994 amendment, effective January 1, 1994, in Paragraph A, deleted "by defendant" at the end of the paragraph heading and rewrote the paragraph, which read "A defendant who is aggrieved by any judgment rendered by the municipal court may appeal to the district court of the county within which the municipal court is located within fifteen (15) days after entry of the judgment or final order"; and deleted former Paragraph B relating to appeals by the municipality and redesignated the remaining paragraphs and made related changes accordingly.

The 1995 amendment, effective January 1, 1995, added Paragraph I, redesignated the remaining paragraphs accordingly and made related changes.

The 1997 amendment, effective January 1, 1997, in Paragraph A, substituted "aggrieved by the judgment or final order of" for "aggrieved by any final order or judgment rendered by" in the first sentence, inserted "in the district court" in the second sentence, and rewrote the last sentence; in Paragraph B, inserted "with proof of service" in Subparagraph (1) and "promptly" in Paragraph (2), and added Subparagraph (2)(b); rewrote Paragraphs C and D which formerly related to stay and docketing of the appeal, respectively; added Paragraph E; redesignated former Paragraph E as Paragraph F and rewrote that paragraph; added Paragraph G and redesignated former Paragraphs F through K as Paragraphs H through M; rewrote Paragraph H; added the last two sentences in Paragraph I; rewrote Paragraph J; substituted "appeals" for "cases" in Paragraph K; substituted "a trial *de novo* appeal" for "the appeal" in Paragraph L; rewrote Paragraph M; added Paragraph N; deleted former Paragraph L relating to final order and remand to municipal court; and added Paragraphs O to R.

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

Late filing of appeal. - Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. Trujillo v. Serrano, 117 N.M. 273, 871 P.2d 369 (1994).

Court error may excuse late appeal. - One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. Trujillo v. Serrano, 117 N.M. 273, 871 P.2d 369 (1994).

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Appellate Review § 1 et seq.

24 C.J.S. Criminal Law § 1660 et seq.

8-704. Harmless error; clerical mistakes.

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

B. **Clerical mistakes.** Clerical mistakes in final orders or other parts of the file and errors therein arising from oversight or omission may be corrected by the municipal court at any time on the judge's own initiative or on the request of any party after such notice to the opposing party, if any, as the court orders.

[As amended, effective January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, substituted "on the judge's own initiative" for "of his own initiative" in Paragraph B, and deleted the former last sentence of Paragraph B relating to correction of mistakes before filing the transcript.

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

8-705. Appeals; dismissals for failure to comply with rules or failure to appear.

A. **By the court.** When an appellant fails to comply with these rules, the district court shall notify the appellant that upon the expiration of ten (10) days from the date of the notice the appeal will be dismissed unless prior to that date appellant shows cause why the appeal should not be dismissed.

B. **Failure to appear; trial de novo appeals.** If the defendant fails to appear at the trial de novo, the district court shall set a hearing within thirty (30) days for the defendant to show good cause why the defendant's appeal should not be dismissed. The clerk of the district court shall mail notice of the hearing to the defendant and to the defendant's counsel at least ten (10) days prior to the hearing. If the defendant fails to show good cause for the failure to appear for trial, the district court may dismiss the appeal and remand the case to the municipal court for enforcement of the judgment and sentence. If the district court finds good cause for the defendant's failure to appear, the district court shall reschedule the trial:

(1) prior to the expiration of the six-month time period for trial provided by Rule 8-703; or

(2) within the time fixed by the Supreme Court if the defendant obtains an extension of time for trial pursuant to Rule 8-703.

C. **By motion of the appellee.** If the appellant fails to comply with these rules, the appellee may file a motion in the district court to dismiss the appeal. The motion shall identify the rule violated. The appellant shall have ten (10) days from the date of service to respond to the motion.

[Adopted, effective January 1, 1995; as amended, effective January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, substituted "date of the notice" for "date thereof" in Paragraph A, and substituted "fails" for "shall fail" in Paragraph C.

ARTICLE 8
SPECIAL PROCEEDINGS

8-801. Modification of sentence.

The municipal court may modify but shall not increase a sentence or fine at any time during the maximum period for which incarceration could have been imposed. No

sentence shall be modified without prior notification to all parties and a hearing thereon. No sentence shall be modified while the appeal is pending. Changing a sentence from incarceration to probation constitutes a permissible reduction of sentence under this rule. No judgment of conviction shall be changed. No fine paid shall be ordered returned.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 Am. Jur. 2d Criminal Law §§ 525 to 534, 588.

Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant, 96 A.L.R.2d 768.

24 C.J.S. Criminal Law §§ 1544 to 1548.

8-802. Return of the probation violator.

A. **Probation.** The court shall have the power to suspend or defer a sentence and impose conditions of probation during the period of suspension or deferral.

B. **Violation of probation.** At any time during probation if it appears that the probationer may have violated the conditions of probation:

(1) the court may issue a warrant or bench warrant for the arrest of a probationer for violation of any of the conditions of probation. The warrant shall order the probationer to the custody of the court or to any suitable detention facility;

(2) the court may issue a notice to appear to answer a charge of violation.

C. **Hearing.** On notice to the probationer, the court shall hold a hearing on the violation charged. If the violation is established, the court may continue the original probation, revoke the probation and either order a new probation or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of sentence was deferred, the court may impose any sentence which might originally have been imposed, but credit shall be given for time served on probation.

D. **Appeals.** The decision of the court to revoke probation may be appealed to the district court as otherwise provided in these rules. The only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the municipal court.

[As amended, effective September 1, 1989; May 1, 2002.]

ANNOTATIONS

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

The 2002 amendment, effective May 1, 2002, in Paragraph A, deleted "violation of probation" in the bold heading and deleted the second sentence relating to the violation of probation; and rewrote Pargraphs B and C relating to issuance of warrants and imposition of sentence, respectively.

Crediting of time served on probation. - A reading of Subsections B and C of 31-21-15 NMSA 1978, together, indicates that all time served on probation shall be credited unless the defendant is a fugitive. State v. Kenneman, 98 N.M. 794, 653 P.2d 170 (Ct. App. 1982).

Table of Corresponding Rules.

The first table below reflects the disposition of the former Rules of Procedure for the Municipal Courts. The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Rule of Procedure for the Municipal Courts.

The second table below reflects the antecedent provisions in the former Rules of Procedure for the Municipal Courts (right-hand column) of the present Rules of Procedure for the Municipal Courts (left-hand column).

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2	8-208
3	8-104
4	8-301
5	8-201
6	8-303
7	8-305
8	8-302
9	8-304
10 to 12	8-306
13	8-203
14	8-204
15	8-205
16	8-207
17	8-206

18 8-202
19 8-501
19.1 8-502
20 8-506
21 8-401
22 8-402
23 8-504
24 8-505
25 8-507
26 8-503
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30 8-602
31 8-701, 8-702,
8-801
31.1 8-802
32 8-105, 8-106
33 8-110
34 8-107
35 8-704
36 8-109
37 8-704
38 8-103
39 8-703
40 8-103
41 8-603

NMRA Former Rule

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8-104 3
8-105 32
8-106 32
8-107 34
8-108 28
8-109 36
8-110 33
8-201 5
8-202 18
8-203 13
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8-205 15
8-206 17
8-207 16
8-208 2
8-301 4
8-302 8
8-303 6
8-304 9
8-305 7
8-306 10 to 12
8-401 21
8-401A None
8-401B None
8-402 22
8-406 None
8-407 None
8-501 19
8-502 19.1
8-503 26
8-504 23
8-505 24
8-506 20
8-507 25
8-601 27
8-602 30
8-603 41
8-701 31(a)
8-702 31(c)
8-703 39
8-704 35, 37
8-801 31(b)
8-802 31.1

COURT ORDERS

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Friday July 30, 1976
IN THE MATTER OF THE :
ADOPTION OF THE : 8000 Misc.
MUNICIPAL COURT RULES :
This matter coming on for consideration by the court, and the court being sufficiently advised in the premises, Mr. Chief Justice Oman, Mr. Justice McManus, Mr. Justice Montoya, Mr. Justice Sosa and Mr. Justice Easley concurring;
NOW, THEREFORE, IT IS ORDERED that the Municipal Court Rules for the municipal courts

of the state of New Mexico be and the same are hereby adopted.
IT IS FURTHER ORDERED that the Municipal Court Rules be effective October 1, 1976.
IT IS FURTHER ORDERED that the clerk of this court be and she hereby is authorized and directed to give notice of the adoption of the Municipal Court Rules by printing and distributing the same to members of the bar of the state of New Mexico.
/s/ LaFEL E. OMAN
Chief Justice
/s/ JOHN B. McMANUS, Jr.
Justice
/s/ SAMUEL Z. MONTOYA
Justice
/s/ DAN SOSA, JR.
Justice
/s/ MACK EASLEY
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION AND :
AMENDMENT OF RULES OF PROCEDURE FOR : 8000 Misc.
THE MUNICIPAL COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Federici, Senior Justice Sosa, Justice Riordan, Justice Stowers, and Justice Walters concurring;
NOW, THEREFORE, IT IS ORDERED that Rule 31 is hereby amended;
IT IS FURTHER ORDERED that the Rule 31.1 is hereby adopted.
IT IS FURTHER ORDERED that the amendment of Rule 31 and the adoption of Rule 31.1 shall be effective on or after October 1, 1984;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of this amendment and adoption of by publishing the same in the NMSA 1978.
DONE at Santa Fe, New Mexico this 4th day of April, 1984.
/s/ WILLIAM R. FEDERICI
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ WILLIAM F. RIORDAN
Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
RULES 31 and 31.1, RULES OF : 8000 Misc.
PROCEDURE FOR THE MUNICIPAL COURT :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Federici, Senior Justice Sosa, Justice Riordan, Justice Stowers, and Justice Walters concurring;
NOW, THEREFORE, IT IS ORDERED that Rules 31 and 31.1 are hereby amended;
IT IS FURTHER ORDERED that the amendment of Rules 31 and 31.1 shall be effective on or after October 1, 1984;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of these amendments by publishing the same in the Bar Bulletin and the NMSA 1978.
DONE at Santa Fe, New Mexico this 1st day of August, 1984.
/s/ WILLIAM R. FEDERICI
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ WILLIAM F. RIORDAN
Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION OF :
RULE 19.1, RULES OF PROCEDURE FOR : 8000 Misc.
THE MUNICIPAL COURTS :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Federici, Senior

Justice Sosa, Justice Riordan, Justice Stowers, and Justice Walters concurring;
NOW, THEREFORE, IT IS ORDERED that Rule 19.1, Rules of Procedure for the Municipal Courts is hereby adopted;
IT IS FURTHER ORDERED that this adoption is hereby effective October 1, 1985.
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of this adoption by publishing the same in the Bar Bulletin and the NMSA 1978.
DONE at Santa Fe, New Mexico this 25th day of June, 1985.
/s/ WILLIAM R. FEDERICI
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ WILLIAM F. RIORDAN
Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT, :
OF THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Stowers, Senior Justice Sosa, Justice Federici, Justice Riordan and Justice Walters concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-501 of the Rules of Procedure for the Municipal Courts to provide for audio-visual arraignments be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of Rules of Procedure for the Municipal Courts shall be effective for cases filed in the Municipal Courts on or after March 1, 1987;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules of Procedure for the Municipal Courts by publishing the same in the NMSA 1978 and in the State Bar of New Mexico News

and Views.
DONE at Santa Fe, New Mexico this 17th day of December, 1986.
/s/ HARRY E. STOWERS, JR.
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ WILLIAM R. FEDERICI
Justice
/s/ WILLIAM F. RIORDAN
Justice
/s/ MARY C. WALTERS
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
RULE 8-401 OF THE RULES OF PROCEDURE : 8000 Misc.
FOR THE MUNICIPAL COURTS :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-401 of the Rules of Procedure for the Municipal Courts be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of Rules of Procedure for the Municipal Courts shall be effective for cases filed in the Municipal Courts on or after August 1, 1987;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the above Rules of Procedure for the Municipal Courts by publishing the same in the 1986 SCRA.
DONE at Santa Fe, New Mexico this 6th day of May, 1987.
/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice

/s/ RICHARD E. RANSOM
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION :
OF RULES 8-111 AND 8-403 OF THE : 8000 Misc.
RULES OF PROCEDURE FOR THE :
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the adoption of Rules 8-111 and 8-403 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;

IT IS FURTHER ORDERED that the above adoption of the above municipal court rules shall be effective for cases filed in the municipal courts on or after July 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the adoption of the above municipal court rules by publishing the same in the SCRA 1986.

DONE at Santa Fe, New Mexico this 26th day of May, 1988.

/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice
/s/ RICHARD E. RANSOM
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 8-204, 8-703 and 8-802 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Rules 8-703 and 8-802 of the above municipal court rules shall be effective for cases filed in the municipal courts on or after September 1, 1989;

IT IS FURTHER ORDERED that the above amendment of Rule 8-204 of the above municipal court rules shall be effective for cases filed in the municipal courts on or after January 1, 1990;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the adoption of the above municipal court rules by publishing the same in the SCRA 1986.

DONE at Santa Fe, New Mexico this 24th day of April, 1989.

/s/ DAN SOSA, JR.
Chief Justice

/s/ HARRY E. STOWERS, JR.
Justice

/s/ TONY SCARBOROUGH
Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the

court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Wilson concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 8-201, 8-202, 8-304, 8-306, 8-401, 8-401A, 8-401B, 8-403, 8-501, 8-702 and 8-703 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after September 1, 1990;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the adoption of the above municipal court rules by publishing the same in the SCRA 1986.
DONE at Santa Fe, New Mexico this 7th day of March, 1990.
/s/ DAN SOSA, JR.
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ KENNETH B. WILSON
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Wilson concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-401 of the Rules of Procedure for the Municipal Courts be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after December 1, 1990;

IT IS FURTHER ORDERED that the stay of the effective date of the provisions of Paragraph H of Rule 8-401 approved by this Court on September 4, 1990 is hereby rescinded effective on December 1, 1990;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the adoption of the above municipal court rules by publishing the same in the SCRA 1986.
DONE at Santa Fe, New Mexico this 19th day of October, 1990.
/s/ DAN SOSA, JR.
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ KENNETH B. WILSON
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :
This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Franchini concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-603 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after October 1, 1991;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the adoption of the above municipal court rules by publishing the same in the SCRA 1986.
DONE at Santa Fe, New Mexico this 9th day of May, 1991.
/s/ DAN SOSA, JR.

Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Montgomery and Justice Franchini concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-201 and 8-202 of the Rules of Procedure for the Municipal Courts be and the same hereby approved;

IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after November 1, 1991;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules of Procedure for the Municipal Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 13th day of August, 1991.

/s/ DAN SOSA, JR.
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-701 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after October 1, 1992;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules of Procedure for the Municipal Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 2nd day of July, 1992.

/s/ RICHARD E. RANSOM
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
THE RULES OF PROCEDURE FOR THE : 8000 Misc.
MUNICIPAL COURTS :

This matter coming on for consideration by the court and the

court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-703 of the Rules of Procedure for the Municipal Court be and the same is hereby approved;
IT IS FURTHER ORDERED that the above amendment of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after January 1, 1994;
IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules of Procedure for the Municipal Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.
DONE at Santa Fe, New Mexico this 27th day of August, 1993.
/s/ RICHARD E. RANSOM
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

NO. 94-8300
IN THE MATTER OF THE AMENDMENT AND
ADOPTION OF RULES OF PROCEDURE
FOR THE MUNICIPAL COURTS
This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Seth D. Montgomery, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Gene E. Franchini and Justice Stanley F. Frost concurring;
NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 8-504 and 8-703 of the Rules of Procedure for the Municipal Courts be and the same hereby are approved;
IT IS FURTHER ORDERED that Rule 8-705 of the Rules of Procedure for the Municipal Courts be and the same hereby is adopted;

IT IS FURTHER ORDERED that the above amendment and adoption of the Rules of Procedure for the Municipal Courts shall be effective for cases filed in the municipal courts on or after January 1, 1995;
IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the amendment of the Rules of Procedure for the Municipal Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.
DONE at Santa Fe, New Mexico this 30th day of September, 1994.
/s/ SETH D. MONTGOMERY
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 95-8300
IN THE MATTER OF THE AMENDMENT OF
RULE 8-110 FOR THE MUNICIPAL COURTS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-110 of the Rules of Procedure for the Municipal Courts be and the same hereby is approved;
IT IS FURTHER ORDERED that the above amendment of Rule 8-110 for the Municipal Courts shall be effective for cases filed on and after January 1, 1996;
IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the amendment of Rule

8-110 for the Municipal Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.
DONE at Santa Fe, New Mexico this 6th day of November, 1995.
/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice
/s/ PAMELA B. MINZNER
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT OF
OF THE RULES OF PROCEDURE
FOR THE MUNICIPAL COURTS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt the amendment to Rule 8-501, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;
NOW, THEREFORE, IT IS ORDERED that Rule 8-501 of the Rules of Courts of Limited Jurisdiction be and the same hereby is amended;
IT IS FURTHER ORDERED that the above amendment of the rule shall be effective for cases filed in the Magistrate, Metropolitan, and Municipal Courts on and after October 1, 1996;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the rule by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 26th day of August, 1996.
/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM

Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE ADOPTION
OF NMRA, 8-209 OF THE
RULES OF PROCEDURE FOR MUNICIPAL COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;
NOW, THEREFORE, IT IS ORDERED that the adoption of Rule 8-209 of the Rules of Procedure for Municipal Courts hereby is approved;
IT IS FURTHER ORDERED that the adoption of Rule 8-209 of the Rules of Procedure for Municipal Courts shall be effective on and after January 1, 1997;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the above rule by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 11th day of October, 1996.
/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice

/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT OF
THE CRIMINAL RULES AND FORMS FOR
CRIMINAL APPEALS FROM COURTS OF
LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee to approve amendments to Rules 6-402, 6-703, 6-704, 6-705, 7-402, 7-703, 7-704, 7-705, 7-706, 7-708, 7-709, 8-402, 8-703, 8-704, 8-705, and Forms 9-601, 9-602, 9-603, 9-607, 9-608, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring:
NOW, THEREFORE, IT IS ORDERED that the amendments of the above-referenced Rules and Forms hereby are approved for use in Courts of Limited Jurisdiction effective January 1, 1997; and
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Rules and Form for Courts of Limited Jurisdiction by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 30th day of October, 1996.
/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT OF
THE CRIMINAL RULES FOR
CRIMINAL APPEALS FROM COURTS OF
LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee to approve amendments to Rules 6-702, 7-702, and 8-702, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of the above-referenced Rules hereby are approved for use in Courts of Limited Jurisdiction effective January 1, 1997; and
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Rules for Courts of Limited Jurisdiction by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 12th day of November, 1996.
/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENT

OF RULE 8-210 NMRA OF THE MUNICIPAL
COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;
NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 8-210 of the Municipal Court Rules hereby is approved;
IT IS FURTHER ORDERED that the amendment of Rule 8-210 of the Municipal Court Rules shall be effective on and after July 1, 1997;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 28th day of January, 1997.
/s/ GENE E. FRANCHINI
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-201, 7-201, 8-201,
6-502, 7-502, 8-502, FORM 9-406A,
AND FORM 9-408A NMRA OF THE RULES
FOR THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-201, 7-201, 8-201, 6-502, 7-502, 8-502, Form 9-406A, and Form 9-408A of the Rules for Courts of Limited Jurisdiction hereby are approved;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules shall be effective on and after May 1, 1997;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 7th day of March, 1997.
/s/ GENE E. FRANCHINI
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-102, 8-102, 6-601, 7-601,
8-601, 7-702, 7-705, 8-109, AND FORM
9-510 NMRA OF THE RULES FOR THE COURTS
OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice

Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-102, 8-102, 6-601, 7-601, 8-601, 7-702, 7-705, 8-109, and Form 9-510 of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and form shall be effective on and after September 2, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 16th day of June, 1997.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-201, 7-201, 8-201,
6-306, 7-306, 8-306, 6-504,
7-504, AND 8-504 NMRA OF THE RULES
FOR THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-201, 7-201, 8-201, 6-306, 7-306, 8-306, 6-504, 7-504, and 8-504 of the Rules for Courts of Limited Jurisdiction hereby are approved;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules shall be effective on and after September 15, 1997;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and form by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 22nd day of July, 1997.
/s/ GENE E. FRANCHINI
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 98-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 6-102 and 8-102 NMRA OF
THE RULES FOR THE COURTS OF
LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the Court's own motion to amend Rules 6-102 and 8-102 NMRA of the Rules for the Courts of Limited Jurisdiction, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-102 and 8-102 NMRA of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules shall be effective immediately;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules by publishing the rules in NMRA and by having the Administrative Office of the Courts distribute to all judges in courts of limited jurisdiction.
DONE at Santa Fe, New Mexico, this 5th day of May, 1998.
/s/ GENE E. FRANCHINI
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 6-206, 6-207, 7-206, 7-207,
8-205, AND 8-206, AND FORMS 9-210,
9-212A, AND 9-505 NMRA OF THE RULES FOR
THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes, concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-206, 6-207, 7-206, 7-207, 8-205, and 8-206, and Forms 9-210, 9-212A, and 9-505 of the Rules for Courts of Limited Jurisdiction hereby are approved;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective on and after July

1, 1999;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 11th day of February, 1999.
/s/ PAMELA B. MINZNER
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-506, 7-506, AND 8-506,
AND FORMS 9-415 AND 9-415A NMRA OF
THE RULES FOR THE COURTS OF LIMITED
JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-506, 7-506, and 8-506, and Forms 9-415 and 9-415A of the Rules for Courts of Limited Jurisdiction hereby are approved;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective on and after August 1, 1999;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the

above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 18th day of June, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 2-203, 3-203, 4-902A,
6-206, 7-206, 8-205, 6-209, 7-209,
8-208, 6-505, 7-505, 8-505,
AND FORMS 9-210 AND 9-212B NMRA OF
THE RULES FOR THE COURTS OF LIMITED
JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-203, 3-203, 4-902A, 6-206, 7-206, 8-205, 6-209, 7-209, 8-208, 6-505, 7-505, 8-505, and Forms 9-210 and 9-212A of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective on and after March 1, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the

above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 4th day of January, 2000.
/s/ PAMELA B. MINZNER
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 2-108, 3-108, 6-107, 7-107,
AND 8-107 OF THE RULES FOR THE COURTS
OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-108, 3-108, 6-107, 7-107, and 8-107 of the Rules for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules shall be effective for cases filed on and after September 15, 2000;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 26th day of June, 2000.
/s/ PAMELA B. MINZNER

Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS OF
RULES 2-107, 2-111, 2-305, 3-107,
3-111, 3-305, 4-304, 4-305, 4-306A,
6-110A, 6-501, 7-110A, 7-501, 8-109A,
8-501, AND FORMS 9-104 and 9-104A OF
THE RULES FOR THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-107, 2-111, 2-305, 3-107, 3-111, 3-305, 4-304, 4-305, 4-306A, 6-110A, 6-501, 7-110A, 7-501, 8-109A, 8-501, and Forms 9-104 and 9-104A of the Rules for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective for cases filed on and after November 1, 2000;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 14th day of September, 2000.
/s/ PAMELA B. MINZNER

Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 01-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-303, 7-303 AND 8-303
AND ADOPTION OF NEW FORM 9-104B
FOR COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to approve amendments to Rules 6-303, 7-303, and 8-303, and to adopt new Form 9-104B, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-303, 7-303, and 8-303 NMRA of the Rules for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that new Form 9-104B hereby is ADOPTED;
IT IS FURTHER ORDERED that the amendments of Rules 6-303, 7-303, and 8-303 and adoption of new Form 9-104B NMRA of the Rules for Courts of Limited Jurisdiction shall be effective for cases filed on and after May 15, 2001, and
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and adoption of the new form by publishing the same in the Bar Bulletin and NMRA.
IT IS SO ORDERED.
DONE at Santa Fe, New Mexico, this 14th day of March, 2001.

/s/ PATRICIO M. SERNA
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 01-8300
IN THE MATTER OF THE AMENDMENTS OF RULES 2-203.1, 2-301, 2-304, 2-306, 3-203.1, 3-301, 3-304, 3-306, 6-301, 6-505, 7-301, 7-505, 8-301, AND 8-505, AND FORMS 4-307, 4-506, 9-411, 9-417, AND 9-418 OF THE RULES FOR COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules for Courts of Limited Jurisdiction Committee to adopt amendments to Rules 2-203.1, 2-301, 2-304, 2-306, 3-203.1, 3-301, 3-304, 3-306, 6-301, 6-505, 7-301, 7-505, 8-301, and 8-505, and Forms 4-307, 4-506, 9-411, 9-417 and 9-418 for Courts of Limited Jurisdiction, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-203.1, 2-301, 2-304, 2-306, 3-203.1, 3-301, 3-304, 3-306, 6-301, 6-505, 7-301, 7-505, 8-301, and 8-505, and Forms 4-307, 4-506, 9-411, 9-417 and 9-418 for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective for cases filed on or after December 17, 2001;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the

above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 22nd day of October, 2001.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE AMENDMENTS OF RULES 2-105, 2-106, 2-501, 2-502, 3-105, 3-106, 3-501,3-502, 4-101, 4-103, 4-104, 4-502, 6-105, 6-106, 6-606, 6-802, 7-105, 7-106, 7-606, 7-802, 8-105, 8-106, 8-602, 8-802, 9-101, 9-102, 9-103, 9-503, AND 9-504, FORMS 4-221, 9-206, 9-221, 9-501, AND ADOPTION OF NEW RULE 3-501.1 AND NEW FORMS 4-503 AND 4-504 OF THE RULES FOR COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules for Courts of Limited Jurisdiction Committee to adopt amendments to Rules 2-105, 2-106, 2-501, 2-502, 3-105, 3-106, 3-501, 3-502, 4-101, 4-103, 4-104, 4-502, 6-105, 6-106, 6-606, 6-802, 7-105, 7-106, 7-606, 7-802, 8-105, 8-106, 8-602, 8-802, 9-101, 9-102, 9-103, 9-503, and 9-504, and Forms 4-221, 9-206, 9-221, 9-501, and to adopt new Rule 3-501.1 and new Forms 4-503 and 4-504 for Courts of Limited Jurisdiction, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of the above-

referenced rules and forms for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that new Rule 3-501.1 and new Forms 4-503 and 4-504 hereby are ADOPTED;
IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms and new rule and forms shall be effective for cases filed on or after May 1, 2002;
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms and adoption of the new rule and forms by publishing the same in the Bar Bulletin and NMRA.
DONE at Santa Fe, New Mexico, this 22nd day of March, 2002.
/s/ PATRICIO M. SERNA
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 6-110A, 7-110A AND 8-109A
FOR COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to approve amendments to Rules 6-110A, 7-110A, and 8-109A, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 6-110A, 7-110A, and 8-109A NMRA of the Rules for Courts of Limited Jurisdiction hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 6-110A, 7-110A, and 8-109A NMRA of the Rules for Courts of Limited Jurisdiction shall be effective for cases filed on and after July 1, 2002, and
IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules by publishing the same in the Bar Bulletin and NMRA.
IT IS SO ORDERED.
DONE at Santa Fe, New Mexico, this 20th day of May, 2002.
/s/ PATRICIO M. SERNA
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE AMENDMENTS OF RULES
2-202, 3-202, 6-702, 7-702, 8-701, AND 8-702 OF
THE RULES FOR COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules for Courts of Limited Jurisdiction Committee to adopt amendments to Rules 2-202, 3-202, 6-702, 7-702, 8-701, and 8-702 for Courts of Limited Jurisdiction, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;
NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-202, 3-202, 6-702, 7-702, 8-701, and 8-702 for Courts of Limited Jurisdiction hereby are APPROVED;
IT IS FURTHER ORDERED that the amendments of the above-

referenced rules and forms shall be effective for cases filed on or after October 15, 2002;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 23rd day of August, 2002.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice