

THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2021 YEAR-END RULE AMENDMENTS

Under Rule 23-106.1 NMRA, the Supreme Court has approved a number of rule changes for the 2021 rule-making cycle. What follows is a summary of new rule amendments that the Court approved on November 1, 2021. The summary also includes out-of-cycle rule amendments that the Court approved prior to November 1. Unless otherwise noted below and in the history note at the end of each approved rule, most new rule amendments will go into effect on December 31, 2021. The full text of the rule amendments in markup format and the related orders are available on the Court's website by clicking [here](#). Approved rule amendments will also appear in [NMOneSource.com](#) by their effective date.

Attorney Licensing and MCLE Rules

Attorney Licensing and MCLE Requirements - Rules 15-302, 16-104, 17-202, 17-203, 17-204, 17-212, 17-301, 17A-003, 18-101, 18-102, 18-201, 18-203, 18-204, 18-301, 24-102, and 24-111 NMRA; New Rules 24-102.1 and 24-102.2 NMRA; and Withdrawn Rules 18-103, 18-202, 18-302, and 18-303 NMRA

The Supreme Court has approved amendments to Rules 15-302, 16-104, 17-202, 17-203, 17-204, 17-212, 17-301, 17A-003, 18-101, 18-102, 18-201, 18-203, 18-204, 18-301, 24-102, and 24-111 NMRA; the adoption of new Rules 24-102.1 and 24-102.2 NMRA; and the withdrawal of Rules 18-103, 18-202, 18-302, and 18-303 NMRA. Currently, annual requirements for bar dues and MCLE are on two separate tracks with different deadlines. These rule amendments consolidate the two separate processes into a single set of requirements, deadlines, and fees. The umbrella rule is Rule 24-102 NMRA, which has been expanded to include all annual license renewal requirements. The other proposed amendments align with those set forth in Rule 24-102. References to former rule numbers throughout the various rule sets have been updated accordingly.

Children's Court Rules and Forms

Fostering Connections Act proceedings - Rules 10-101, 10-103, 10-121, and 10-345; New Rules 10-360, 10-801, and 10-802 NMRA; and New Forms 10-901, 10-902, 10-903, 10-904, 10-905, 10-906, 10-907, and 10-908 NMRA

On September 28, 2021, the Supreme Court provisionally approved the Children's Court Rules Committee's proposal to adopt rule amendments and new rules and forms for use in proceedings under the Fostering Connections Act. The purpose of the Act, which was passed in 2019 and amended in 2020, is to provide ongoing support and services for young adults who age out of the foster care system without permanency. The rule amendments and new rules and forms take effect on November 12, 2021.

Code of Professional Conduct

Lawyer succession planning - New Rule 16-119 NMRA

The Supreme Court has approved the Code of Professional Conduct Committee's proposal to adopt a new Rule 16-119 NMRA. The new rule requires every lawyer practicing in New Mexico to have a written succession plan, either alone or as part of a law firm plan, specifying the steps to be taken in the event of the lawyer's incapacity, disability, or death. To allow for ample notice and training, the amendments will be effective for registration statement submitted under Rule 24-102.1 NMRA on or after October 1, 2022.

Lawyer communications and solicitation of clients - Rules 16-701, 16-702, and 16-703 NMRA; and Withdrawn Rules 16-704 and 16-705 NMRA

The Supreme Court has approved the Code of Professional Conduct Committee's proposal to amend Rules 16-701, 16-702, and 16-703 NMRA to incorporate certain of the 2018 amendments to the ABA Model Rules of Professional Conduct. Because the amendments to Rules 16-701, 16-702, and 16-703 also incorporate some provisions and commentary from Rules 16-704 and 16-705 NMRA, Rules 16-704 and 16-705 are being withdrawn.

Local Rules

Local Safe Exchange and Supervised Visitation Programs in the Ninth and Twelfth Judicial District Courts - New Rules LR9-406 and LR12-402 NMRA

On September 21, 2021, the Supreme Court approved the Domestic Relations Rules Committee's proposal to adopt new Local Rules LR9-406 and LR12-402 NMRA, which establish safe exchange and supervised visitation programs in the ninth and twelfth judicial districts. The new rules took effect on September 21, 2021.

Rules of Civil Procedure and Civil Forms

Mandatory pre-filing and pre-judgment certifications in foreclosure actions - New Rules 1-003.3 and 1-054.2 NMRA; and New Forms 4-227 and 4-712 NMRA

On August 2, 2021, the Supreme Court approved new Rules 1-003.3 and 1-054.2 NMRA and new Forms 4-227 and 4-712 NMRA for use in foreclosure actions. New Rule 1-003.3 requires a plaintiff initiating a foreclosure complaint to certify pre-filing notice using new Form 4-227. New Rule 1-054.2 requires a plaintiff in a foreclosure action to certify loan modification and loss mitigation negotiations, using new Form 4-712, as a precondition to the entry of a judgment. The new rules and forms took effect on September 7, 2021.

Production of documents and things - Rule 1-034 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Rule 1-034 NMRA to (1) clarify that in answering a request for production, the

responding party shall permit inspection in its entirety unless the responding party files a proper objection; (2) require the responding party to state the specific reasons for an objection to a request for production; (3) require the responding party to state whether the response includes all responsive materials; and (4) if the responding party withholds any responsive materials based on an objection, require the objection to clearly describe with reasonable particularity the materials withheld for each objection. The Court also approved committee commentary that further explains the amendments.

Electronic filing and service fees as recoverable costs - Rules 1-054, 2-701, and 3-701 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Rules 1-054, 2-701, and 3-701 NMRA to clarify that electronic filing and service fees are recoverable costs.

Court trust account requirements - Rule 1-102 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Rule 1-102 NMRA to clarify that district courts must deposit litigant funds within two (2) business days of receipt in a bank that is a member of the Federal Deposit Insurance Corporation and in an account that is distinct from the court's accounts for general funds. The amendments also specify that funds deposited in a court trust fund checking account must be invested and maintained in a financial institution located within the court's judicial district and in accordance with governing statutes and any regulation prescribed by the Director of the Administrative Office of the Courts. The amendments also replace the references to "social security number" and "employer identification number" with the more-inclusive term "taxpayer identification number," and also cite Form W-9 (Request for Taxpayer Identification Number and Certification) by name.

Mandatory viewing of New Mexico Courts' Guardianship and Conservatorship Orientation Program videos - New Rule 1-144 NMRA

On January 14, 2021, the Supreme Court approved new Rule 1-144 NMRA, which requires all prospective guardians and conservators to view the Court's orientation program videos. The new rule took effect on February 1, 2021.

Tribal court personal representative - Rule 1B-102 NMRA; and Forms 4B-801 and 4B-802 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Rule 1B-102 NMRA, and Forms 4B-801 and 4B-802 NMRA, to clarify that a domiciliary foreign personal presentative includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs. Additionally, the amendments to Forms 4B-801 and 4B-802 NMRA recognize tribal court appointments. Finally, the amendments to Form 4B-801 NMRA allow "equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs" to serve as a substitute for Letters of Administration or Letters Testamentary, recognizing that tribal courts may title documents differently than probate courts.

Summons and order for free process - Rules 2-202 and 3-202 NMRA; and Forms 4-204 and 4-223 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Rules 2-202 and 3-202 NMRA by replacing “incapacitated” with “incompetent” for consistency with Rules 1-004(I) and 1-017(D) NMRA applicable to the district courts. Additionally, the Court has approved amendments to Rules 2-202 and 3-202 NMRA, as well as Form 4-204 NMRA, to permit *pro se* parties to serve a summons by mail. Finally, the Court has approved amendments to Form 4-223 NMRA to specify the methods of service a person seeking free service of process must first attempt in the district, magistrate, and metropolitan courts.

Electronic filing in civil cases in magistrate and metropolitan courts - Rules 2-205 and 3-205 NMRA

On January 19, 2021, the Supreme Court approved amendments to Rules 2-205 and 3-205 NMRA that require attorneys to file documents electronically in civil cases in the magistrate and metropolitan courts. The amendments took effect on March 5, 2021.

Title page of transcript of civil proceedings - Form 4-708 NMRA

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's proposal to amend Form 4-708 NMRA for consistency with the comparable criminal form, Form 9-608 NMRA, to reflect that the court clerk, rather than the judge, issues the title page of a transcript of civil proceedings.

Forms for use during the gradual lifting of the stay of writs of garnishment and execution in consumer debt collection cases - New Forms 4-805.1 and 4-805.2 NMRA

Effective September 1, 2021, the Supreme Court approved new Forms 4-805.1 and 4-805.2 NMRA, which are applications for writs of garnishment and writs of execution in consumer debt collection cases. The new forms are in effect for a limited time only, through January 31, 2022. The forms are intended for use in conjunction with the Court's order that enacted a gradual lifting of the stay of writs of garnishment and execution that was imposed in response to the COVID-19 public health emergency.

Guardian's report and certificate of completion of adult guardian and conservator orientation program - Form 4-996 NMRA; and New Form 4-999.2 NMRA

Effective June 22, 2021, the Supreme Court approved amendments to Form 4-996 NMRA, Guardian's Report, to provide more information about a protected person who does not live in a facility, and the adoption of new Form 4-999.2, Certificate of Completion of Adult Guardian and Conservator Orientation Program, for use with Rule 1-144 NMRA, which mandates the viewing of orientation program videos for all prospective guardians and conservators.

Rules of Criminal Procedure and Criminal Forms

Order of trial - Rule 5-607 NMRA; and New Rules 6-603.1 and 7-603.1 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Rule 5-607 NMRA to clarify and make housekeeping changes to its text and committee commentary, and to adopt new Rules 6-603.1 and 7-603.1 NMRA that import Rule 5-607's sequence of trial events into jury trial practice in the magistrate and metropolitan courts.

Time limits for filing citations - Rules 6-201, 7-201, and 8-201 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Rules 6-201, 7-201, and 8-201 NMRA to incorporate an express time limitation for the filing of a citation and an explicit remedy—the potential dismissal of the citation with prejudice—for a late-filed citation.

Interview subpoenas - Rule 6-606 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Rule 6-606 NMRA to provide that a judge-issued subpoena in magistrate court will lie “only after good faith efforts to secure an interview . . . have been unsuccessful[.]” the same criterion that governs the issuance of interview subpoenas in metropolitan court under Rule 7-606 NMRA.

Time limits for probation violation hearings - Rules 6-802, 7-802, and 8-802 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Rules 6-802, 7-802, and 8-802 NMRA to provide explicit time limits for the holding of a probation violation hearing in the limited jurisdiction criminal courts.

Waiver of counsel and other public defender forms - Forms 9-401, 9-403, 9-403A, and 9-403B NMRA; and Withdrawn Form 9-401A NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Forms 9-401, 9-403, 9-403A, and 9-403B NMRA, and to withdraw Form 9-401A NMRA, to adopt a single, detailed “Waiver of Counsel Advisement” for use in all courts of criminal jurisdiction, align the form provisions governing the appointment of defense counsel with the current policies of the Law Offices of the Public Defender, and clarify the form provisions governing appeals of indigency determinations.

Dismissal of criminal charges on completion of deferred sentence - Form 9-603A NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's proposal to amend Form 9-603A NMRA to make clear the mandatory nature of the dismissal remedy available to a defendant upon the defendant's completion of the terms of a deferred sentence without revocation.

Uniform Jury Instructions – Civil

Insurance has no bearing - UJI 13-208 NMRA

The Supreme Court has approved the UJI-Civil Committee's proposal to amend UJI 13-208 NMRA to align the instruction with jurors' current understanding of the role played by insurance and to provide for possible use of the instruction prior to the commencement of a trial.

Request for admission - New UJI 13-215 NMRA

The Supreme Court has approved the UJI-Civil Committee's proposal to adopt new UJI 13-215 NMRA to address the introduction of admitted facts at trial. The new instruction provides jurors with the definition of a request for admission and informs them of the effect of an admitted fact at trial.

Uniform Jury Instructions – Criminal

Explanation of trial procedure - UJI 14-101 NMRA

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend UJI 14-101 NMRA to simplify instructions on outside communications and internet use and to clarify that jurors ordinarily will not receive transcripts of witness testimony.

Procedure for instructing on uncharged offenses - UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-358, 14-359, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend the Use Notes to UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA to reference the procedure for instruction on uncharged offenses outlined in UJI 14-140 NMRA.

Stalking and aggravated stalking - UJI 14-331 and 14-333 NMRA

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend UJI 14-331 and 14-333 NMRA to conform more closely to the language of NMSA 1978, Section 30-3A-3 (2009), defining the crime of stalking, and NMSA 1978, Section 30-3A-3.1 (1997), defining the crime of aggravated stalking.

***Reliance in fraud* - UJI 14-1640 NMRA**

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend the committee commentary to UJI 14-1640 NMRA to reference the definition of reliance provided in *State v. Garcia*, 2016-NMSC-034, 384 P.3d 1076, and to remove outdated citations.

***Securities offenses* - UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA**

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA to update statutory references and style conventions.

***Life without possibility of release or parole* - UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7031, 14-7032, and 14-7034 NMRA; and Withdrawn UJI 14-7029, 14-7030, 14-7030A, and 14-7033 NMRA**

The Supreme Court has approved the UJI-Criminal Committee's proposal to amend UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7031, 14-7032, and 14-7034 NMRA to provide instructions for sentencing proceedings for life imprisonment without possibility of release or parole in response to the repeal of the death penalty and in conformity with *State v. Chadwick-McNally*, 2018-NMSC-018, 414 P.3d 326, Rule 5-705 NMRA, and amendments to Rule 14-101 NMRA. The Court has also approved the Committee's recommendation to withdraw UJI 14-7029, 14-7030, 14-7030A, and 14-7033 NMRA.

**THE RULE AMENDMENTS SUMMARIZED ABOVE
CAN BE VIEWED IN THEIR ENTIRETY AT THE
NEW MEXICO SUPREME COURT WEBSITE**

<https://supremecourt.nmcourts.gov/supreme-court/opinions-rules-and-forms/approved-amendments-to-rules-and-forms/2021-2/>