

## **THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2022 YEAR-END RULE AMENDMENTS**

Under Rule 23-106.1 NMRA, the Supreme Court has approved a number of changes to the rules, forms, and uniform jury instructions for the 2022 rulemaking cycle. What follows is a summary of those changes that the Court approved on November 1, 2022. The summary also includes out-of-cycle amendments approved by the Court this year. Unless otherwise noted below and in the history note at the end of each approved rule, form, or UJI, the amendments will take effect on December 31, 2022. The full text of the amendments in markup format and the related orders are available on the Court's website by clicking [here](#). Approved rule amendments will also appear on [NMSource.com](https://www.nmone.com) by their effective date.

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### **Ad Hoc Civil Backlog Committee**

#### ***Court-annexed arbitration in the Second Judicial District Court*** – Amended Rule LR2-603 NMRA

The Supreme Court approved amendments to Rule LR2-603 NMRA to increase the arbitration limit from \$25,000 to \$50,000. Under the amended rule, all civil cases filed in the Second Judicial District shall be referred to arbitration when no party seeks relief other than a money judgment and no party seeks an amount in excess of \$50,000. The amendments to Rule LR2-603 took effect on June 1, 2022.

### **Ad Hoc Criminal Justice Review Committee**

#### ***Judicial involvement in plea discussions in district court*** – Amended Rule 5-304 NMRA

On recommendation of the Ad Hoc Criminal Justice Review Committee, the Supreme Court provisionally approved amendments to Rule 5-304 NMRA to allow judicial participation in settlement conferences as a means to streamline the processing of criminal cases in district court. The amended rule took effect on January 18, 2022.

#### ***Notice of dismissal of criminal complaint*** – New Form 9-415.1 NMRA; Amended Form 9-415 NMRA

The Supreme Court adopted new Form 9-415.1 NMRA for notice of dismissal in DWI felony and non-felony cases and approved amendments to Form 9-415 NMRA for notice of dismissal in general felony and non-felony cases. Both forms notify the defendant that the state may refile the same criminal charges, or other charges resulting from the same incident, and that the defendant has a continuing obligation to inform the court of any changes in contact information. New Form 9-415.1 includes a notice that the dismissal of DWI charges does not affect any license revocation proceedings by the Motor Vehicle Division. The new and amended forms took effect on July 25, 2022.

***Case management and calculation of deadlines in criminal cases in the Eighth and Second Judicial Districts*** – New Rule LR8-301 NMRA; Amended Rule LR2-308 NMRA

The Supreme Court adopted new Rule LR8-301 NMRA and approved amendments to LR2-308 NMRA to implement and clarify preexisting procedures for effective case management of criminal cases in the Eighth and Second Judicial Districts, respectively. The new and amended rules took effect on September 12, 2022.

**Ad Hoc Technical Review Committee**

***Citations for pleadings and papers*** – Amended Rule 23-112 NMRA

The Supreme Court approved amendments to Rule 23-112 NMRA to address citation format for pleadings and other papers in state courts. The amendment took effect on March 31, 2022.

**Board of Bar Commissioners**

***Professional Practice Program*** – New Rule 24-112 NMRA

On recommendation of the State Bar of New Mexico Board of Bar Commissioners, the Supreme Court has adopted a new rule to provide for confidentiality in an attorney's use of the State Bar's Professional Practice Program, which is designed to support best practices and promote compliance with professional obligations by lawyers admitted to practice law in New Mexico.

**Children's Court Rules and Forms**

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

In 2021, the Supreme Court provisionally approved the Children's Court Rules Committee's proposal to approve rule amendments and adopt 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.

**Code of Professional Conduct Committee**

***Attorney licensing*** –New Rule 15-301.3 NMRA; Amended Rule 15-103 NMRA

On August 19, 2022, the Supreme Court approved amendments to Rule 15-103 and adopted new Rule 15-301.3. Under amended Rule 15-103, a "[l]icense to practice law shall not be denied based solely on the applicant's citizenship or immigration status." New Rule 15-301.3 creates a procedure for issuing limited law licenses to attorneys who (1) are married to active duty military service members stationed in New Mexico and (2) currently reside or plan to reside in New Mexico

within six months of the date of application for limited licensure. Under both rules, license applicants must certify their understanding of the Rules of Professional Conduct, including the succession planning requirements of Rule 16-119 NMRA; the Rules Governing Discipline, including the trust accounting requirements of Rule 17-204 NMRA; the Creed of Professionalism of the State Bar of New Mexico; and the rules of the Supreme Court of New Mexico and the New Mexico statutes relating to the conduct of attorneys.

***Practice by foreign lawyers*** – Amended Rules 16-505 and 24-106 NMRA

The Supreme Court has approved amendments to Rules 16-505 (Unauthorized practice of law; multijurisdictional practice of law) and 24-106 (Practice by nonadmitted lawyers) to make both rules consistent in their definitions of a “foreign lawyer” as one who is authorized to practice law in any other United States jurisdiction or before the highest court of record in any other country. Further, the amended rules permit limited practice by foreign lawyers who comply with the remainder of the applicable rules.

**Domestic Relations Rules Committee**

***Objections to recommendation of special commissioner or hearing officer*** – Amended Rules 1-053.1 and 1-053.2 NMRA

The Supreme Court has approved amendments to the provisions governing a party’s objection to the recommendations of a domestic violence special commissioner or a hearing officer in domestic relations and child support cases. The amended rules enumerate what must be included in a party’s objection and expand the window for filing an objection from ten (10) days to fourteen (14) days after the entry of the recommendations. In addition, the amendments clarify the district court’s process and standard of review when an objection to the recommendations has been raised.

***Kinship Guardianship Act proceedings*** – New Rules 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, and 1-156 NMRA; New Forms 4A-514, 4A-515, 4A-516, and 4A-517 NMRA; Amended Forms 4A-501, 4A-502, 4A-503, 4A-504, 4A-505, 4A-506, 4A-507, 4A-508, 4A-509, 4A-510, 4A-511, 4A-512, and 4A-513 NMRA

The Supreme Court has adopted new rules and forms and approved amendments to current domestic relations forms to simplify and guide the process in kinship guardianship cases, particularly in instances when a child’s parent has signed a voluntary placement agreement with the Child, Youth and Families Department (CYFD), *see* NMSA 1978, § 40-10B-3(M) (2020), and the guardian is eligible for subsidies under NMSA 1978, §§ 40-10B-16 to -18 (2020).

**Guardianship and Conservatorship Steering Committee**

***Financial filings in conservatorship proceedings*** – Amended Rule 1-145 NMRA

On recommendation of the Guardianship and Conservatorship Steering Committee, the Supreme Court provisionally approved new Rule 1-145 NMRA, which took effect on March 16,

2022. The new rule governs the filing of reports by a professional conservator in a conservatorship proceeding under NMSA 1978, Section 45-5-409 (2021).

## **Local Rules**

***First Judicial District Court Local Rules*** – New Rules LR1-117, LR1-406, LR1-407, LR1-408, LR1-409, LR1-410, and LR1-411 NMRA; Amended Rules LR1-102, LR1-104, LR1-106, LR1-108, LR1-111, LR1-112, LR1-113, LR1-114, LR1-201, LR1-202, LR1-302, LR1-401, LR1-403, and LR1-404 NMRA; Amended and Recompiled Rule LR1-116 NMRA; New Forms LR1-Form 701, LR1-Form 702, LR1-Form 703, LR1-Form 704A, and LR1-Form 704B NMRA

On recommendation of the First Judicial District Court, the Supreme Court has adopted new rules and forms and has approved amendments to the local rules of the First Judicial District concerning various subject matter and procedural requirements.

## **Rules of Civil Procedure for State Courts Committee**

***Expungement*** – New Rule 1-077.1 NMRA; Amended Rules 1-004 and 1-079 NMRA; New Forms 4-951 to -960.3 NMRA

On recommendation of the Rules of Civil Procedure for State Courts Committee, the Supreme Court provisionally adopted new rules and forms and approved amendments to Rules 1-004 and 1-079 NMRA to implement the Criminal Record Expungement Act, NMSA 1978, Sections 29-3A-1 to -9 (2019, as amended through 2021). The new and amended rules and forms took effect on January 28, 2022.

## **Rules of Criminal Procedure for State Courts Committee**

***Pretrial release and detention*** – Amended Rules 5-106, 5-401, 5-403, 5-409, 6-401, 6-403, 6-409, 6-501, 7-401, 7-403, 7-409, 7-501, 8-401, and 8-403 NMRA; Amended Form 9-303 NMRA

The Supreme Court has approved the Rules of Criminal Procedure of State Courts Committee's proposal to amend the rules and forms that address pretrial release and detention procedures in the district, magistrate, metropolitan, and municipal courts. Among other things, the proposed amendments achieve the following: (1) clarify the circumstances under which the district court may return jurisdiction to the magistrate or metropolitan court following a pretrial detention hearing, (2) require the court to conduct a status review hearing within a certain time frame for a defendant held in custody pending trial, and (3) revise provisions that address the district court's authority to conduct concurrent preliminary examination and pretrial detention hearings.

***Preliminary examination timing and witness testimony*** – Amended Rules 5-201, 5-302, 6-202, and 7-202 NMRA

The Supreme Court has approved amendments to Rules 5-201, 5-302, 6-202, and 7-202 NMRA, which clarify several procedural matters. First, under amended Rules 5-302, 6-202, and 7-202, a preliminary examination must be concluded *and a disposition entered* within the time

limits of Paragraph A of each rule. In addition, the amended rules contain a provision to trigger the time limits for preliminary examination in a case that has been dismissed and refiled by the prosecutor. The amendments also clarify how revocation or modification of conditions of release affect the time limits for preliminary examination, as well as permit witnesses to appear by audio-visual communication under “compelling circumstances.” Finally, under amended Rule 5-201, and as explained in the amended committee commentary to Rules 6-202 and 7-202, “Any offenses that are included in the bind-over order but not set forth in the criminal information shall be dismissed without prejudice” by the district court.

***Evidence at preliminary examination*** – New Rule 5-302.1 NMRA; Amended and Recompiled Rules 6-202.1 and 7-202.1 NMRA; Recompiled Rules 5-302.2 and 5-302.3 NMRA

The Supreme Court has approved amendments to the existing magistrate and metropolitan court Rules 6-608 and 7-608 NMRA to expand the exceptions to the Rules of Evidence that apply to preliminary examinations in limited jurisdiction courts. The Supreme Court has also adopted new Rule 5-302.1 NMRA to create consistent exceptions for preliminary examinations in the district court. Finally, the Court has approved the recompilation of the following rules: Rules 5-302A and 5-302B as Rules 5-302.2 and 5-302.3 NMRA, respectively, and Rules 6-608 and 7-608 NMRA as Rules 6-202.1 and 7-202.1 NMRA, respectively.

***Order on probation violation hearing*** – Amended Form 9-618 NMRA; Withdrawn Forms 9-619 and 9-620 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee’s proposal to combine three closely-related probation violation forms used in the magistrate and municipal courts into a single combined form, Form 9-618 NMRA entitled Order on Probation Violation Hearing. The Supreme Court has withdrawn Forms 9-619 and 9-620 NMRA.

***Redaction of witness information*** - New Rules 5-502.1, 6-504.1, 7-504.1, and 8-504.1 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee’s proposal to adopt new rules for district, magistrate, metropolitan, and municipal courts that would permit parties to redact from discovery the personal identifier and contact information of witnesses and victims to avoid disclosure of that information to the defendant and the public. Under the new rules, complete, unredacted discovery must still be provided to opposing counsel.

***Undeliverable summons*** – Amended Rules 5-209, 6-205, 7-205, and 8-204 NMRA

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee’s proposal to amend the district, magistrate, and metropolitan court rules that address the issuance of summons to avoid a situation where a defendant has not received the summons for the initial appearance and, as a result, is arrested and jailed on a warrant. The amendments grant the trial court discretion to make exceptions for a defendant’s failure to appear at the initial appearance when a mailed summons has been returned as not delivered. In such a case, the court

may direct personal service, issue a no-bond warrant so the defendant may be booked and released on recognizance, or cancel or quash an existing warrant and suspend the bench warrant fee.

## **Rules of Evidence Committee**

### ***Pretrial notice; other crimes, wrongs, or acts*** – Amended Rule 11-404 NMRA

The Supreme Court has approved amendments to Rule 11-404 NMRA based on the 2020 amendment to Federal Rule of Evidence 404(b). Under the amended rule, the prosecution must provide reasonable notice in writing before trial that the prosecution intends to offer evidence of crimes, wrongs, or other acts. In that notice, the prosecution must articulate “the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose.” The prosecution may give notice in any form during trial if good cause exists to excuse the lack of pretrial notice.

### ***Ancient documents*** – Amended Rule 11-803 NMRA

The Supreme Court has approved amendments to Rule 11-803(16) NMRA based on a 2017 amendment to Federal Rule of Evidence 803(16). Under the amended rule, the definition of ancient document has changed from a document “that is at least twenty (20) years old” to one “that was prepared before January 1, 1998.”

## **Supreme Court**

### ***Rulemaking and Standing Rules Committees*** – Amended Rules 23-106 and 23-106.1 NMRA

The Supreme Court approved amendments to Rules 23-106 and 23-106.1 NMRA to update the list of standing rules committees, to require committee chairs to file an annual report with the Supreme Court, and to grant committee chairs and committee staff the discretion to excuse a committee member’s absence from a given committee meeting if the committee member requests an excusal in writing.

### ***Rehearing in the Supreme Court*** – Amended Rule 12-404 NMRA

The Supreme Court approved amendments to Rule 12-404 NMRA to clarify the procedure on a motion for rehearing. The amendments took effect March 30, 2022.

### ***Clerk’s residence and office*** – Amended Rule 23-102 NMRA

The Supreme Court approved amendments to Rule 23-102 NMRA to remove the requirement that the Clerk of the Supreme Court reside in Santa Fe. The amendments took effect on March 30, 2022.

***Foreclosure Settlement Program*** – Amended Rule 1-054.2 NMRA; New Forms 4-228, 4-229, and 4-230 NMRA; Amended Forms 4-227 and 4-712 NMRA

The Supreme Court approved amendments to Rule 1-054.2 and Forms 4-227 and 4-712 NMRA and adopted new Forms 4-228, 4-229, and 4-230 NMRA in response to the creation of the Homeowner Assistance Fund, part of the American Rescue Plan Act of 2021, and the expansion of federal loss mitigation options aimed at curbing financial hardship caused by the COVID-19 pandemic. The new and amended rules and forms took effect on May 23, 2022.

***Forms to implement the Eviction Prevention and Diversion Program*** – New Forms 4-904A, 4-904B, 4-905A, 4-905B, 4-908A, 4-908B, 4-908C, 4-908D, and 4-923A NMRA

The Supreme Court adopted new forms to implement the Eviction Prevention and Diversion Program. The Program commenced with a pilot project in the Ninth Judicial District and expanded to the Second, Fifth, Tenth, and Twelfth Judicial Districts on April 1, 2022. The program is currently expanding statewide. The new forms took effect on February 1, 2022, for all cases that are subject to the Eviction Prevention and Diversion Program.

### **Uniform Jury Instructions – Civil**

***Conduct of jurors*** – Amended UJI 13-110 NMRA

The Supreme Court has approved the UJI-Civil Committee’s proposal to amend the introductory instruction given in civil jury trials to enhance the jury’s comprehension of permitted conduct during trial. In particular, the amended UJI 13-110 NMRA contains a more detailed and explicit seventh paragraph, which instructs jurors not to use electronic resources, including internet sites and social media, to comment on or obtain information about the parties, witnesses, counsel, or issues in the case.

***Unfair Practices Act*** – New UJIs 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, 13-2506 NMRA and Introduction and Appendix to Chapter 25 of the Uniform Jury Instructions – Civil

On recommendation of the UJI-Civil Committee, the Supreme Court adopted new UJIs for use in cases involving claims brought under the Unfair Practices Act, NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). The new instructions took effect on February 21, 2022.

***Whistleblower Protection Act*** - New UJIs 13-2321, 13-2322, 13-2323, 13-2324, 13-2325, 13-2326, and 13-2327 NMRA; Amended UJI 13-2300 NMRA

The Supreme Court has approved the UJI-Civil Committee’s proposal to adopt a set of new jury instructions, a special verdict form, and committee commentary for use in claims under the Whistleblower Protection Act (WPA), NMSA 1978, §§ 10-16C-1 to -4 (2010). The instructions explain the elements of a WPA claim and provide guidance on particular elements that may be disputed in a given case, as well as instruct on the statutory affirmative defense, NMSA 1978, § 10-16C-4. The general introduction to UJI Chapter 23 (Employment), UJI 13-2300 NMRA, has been amended accordingly.

### **Uniform Jury Instructions – Criminal**

***Incompetency and insanity*** – Amended UJIs 14-5101, 14-5104 , 14-6011, and 14-6014 NMRA

The Supreme Court has approved the UJI-Criminal Committee’s proposal to update the essential elements of the insanity instruction, UJI 14-5101, and the determination of competency instruction, UJI 14-5104, along with related instructions, to conform to precedent. Specifically, the amendments align the competency instruction with the Supreme Court’s guidance in *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691 (reiterating the test for competency laid out in *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 133 N.M. 246, 923, P.2d 10131), and revise the insanity instruction to reflect guidance from *State v. White*, 1954-NMSC-050, ¶ 10, 58 N.M. 324, 270 P.2d 727 (explaining that “insanity . . . is a true disease of the mind, normally extending over a considerable period of time, as distinguished from a sort of momentary insanity arising from the pressure of circumstances”).

***Aggravated fleeing a law enforcement officer*** – Amended UJI 14-2217 NMRA

The Supreme Court has approved the UJI-Criminal Committee’s proposal to amend the aggravated fleeing instruction in response to the holding of *State v. Vest* that a defendant can be convicted of aggravated fleeing a law enforcement officer if the defendant drives in a dangerous manner while fleeing, regardless of whether there is another person in the vicinity of the police pursuit. 2021-NMSC-020, ¶ 6, 488 P.3d 626. The amendments modify the second element of the instruction to encompass willful and careless conduct that endangered “or could have endangered the life of another person.” The committee commentary has been expanded to explain that the focus of the crime is on the social harm of the defendant’s conduct and not the particular result of that conduct.

***Escape from jail and inmate release programs*** - New UJIs 14-2228A, 14-2228B, and 14-2228C NMRA; Amended UJI 14-2221 NMRA; Withdrawn UJI 14-2228 NMRA

The Supreme Court has approved the UJI-Criminal Committee’s proposal to amend the use notes and commentary of the escape from jail instruction, UJI 14-2221 NMRA, and to adopt three new instructions specifically addressing escape from a jail release program, UJI 14-2228A NMRA, escape from a penitentiary release program, UJI 14-2228B NMRA, and escape from a community custody release program, UJI 14-2228C NMRA.

***Falsification of documents*** - Amended UJI 14-4402 NMRA

The Supreme Court has approved the UJI-Criminal Committee’s proposal to amend the falsification of documents instruction and commentary to instruct the jury on the definition of “material fact.” Under the amended instruction, a “material fact is a fact that is integral to the right to Medicaid payments and that has a natural tendency to influence the Human Services Department to pay for [services].”

***Failure to appear*** - Amended UJI 14-2229 NMRA

The Supreme Court has approved the UJI-Criminal Committee’s proposal to modify the first element of the failure to appear instruction to include the severity of the charges in the



underlying proceeding where the defendant failed to appear, in conformance with NMSA 1978, Section 31-3-9 (1999).

***Justifiable homicide by public officer or employee*** – Amended UJI 14-5173 NMRA

The Supreme Court has approved amendments to UJI 14-5173 NMRA to bring the instruction in line with the requirements of NMSA 1978, Section 30-6-2(B) (1989), as recommended in *State v. Mantelli*, 2002-NMCA-033, ¶ 48, 131 N.M. 692, 42 P.3d 272. The amended instruction requires the jury to assess the totality of the circumstances to determine whether the defendant acted as a reasonable officer at the time of the killing.

***Criminal trespass and breaking and entering*** – Amended UJIs 14-1401, 14-1402, 14-1410 NMRA

The Supreme Court has approved amendments to the UJIs for criminal trespass and breaking and entering to align the elements of the offenses with guidance from the Court of Appeals in *State v. Ancira*, 2022-NMCA-053, ¶¶ 28-31, 517 P.3d 292 (holding that the plain language of NSMA 1978, Section 30-14-1(B) (1995) requires proof of actual knowledge that permission to enter had been denied as opposed to proof of what a reasonable person would have understood).

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

<https://supremecourt.nmcourts.gov/2022-2/>