

## **THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2023 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 2023 rulemaking cycle. What follows is a summary of those changes that the Court approved on November 1, 2023. The summary also includes out-of-cycle amendments that the Court approved on November 1, 2023. Unless otherwise noted below and in the history note at the end of each approved rule, form, or UJI, most amendments will take effect on December 31, 2023. 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 [NMOneSource.com](#) by their effective date.

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### **Children's Court Rules Committee**

#### ***Detention Hearings and Conditions of Release in the Children's Court*** – Amended Rule 10-225 NMRA

On recommendation of the Children's Court Rules Committee, the Supreme Court approved amendments to Rule 10-225 NMRA to harmonize language in subparagraphs (A)(1) to (4) and eliminate any possible conflict between the subparagraphs and any burden shifting issue arising from the rule in its current form.

#### ***Notification to Tribes of Change of Placement*** – Amended Forms 10-565 and 10-566 NMRA

The Supreme Court approved the Children's Court Rules Committee's proposal to amend forms for Notice of Change of Placements that would ensure consistency with federal law, Bureau of Indian Affairs (BIA) Regulations, and BIA Guidelines related to placement of Indian children. The Supreme Court also approved the Committee's recommendation to incorporate provisions of the New Mexico Indian Family Protection Act, NMSA 1978, Sections 32A-28-1 to -42 (2022, as amended through 2023), which requires the filing of a notice demonstrating that the relevant tribe was notified of the change of placement, and seeks to clarify what types of attorneys are entitled to notice and where a child is placed.

#### ***Consent Decree Order*** – Amended Form 10-714 NMRA

The Supreme Court approved amendments to the consent decree form that would incorporate the statutory protection provided under NMSA 1978, Section 32A-2-22(E) (2005). The amendments are intended to ensure a child is properly informed of the statutory protection and that the child receives the benefit of a dismissal with prejudice upon completion of the terms of a consent decree.

#### ***Educational Decision Maker Form*** – Amended Form 10-564 NMRA

The Supreme Court approved amendments to Form 10-564 NMRA to ensure consistency with NMSA 1978, Section 32A-4-2(D) (2018) and federal law related to the privacy of educational

records. The amendments clarify the duties of an appointed educational decision maker to ensure the child's education and care are not negatively impacted when a parent is unable or unwilling to make decisions regarding their child's education.

## **Code of Judicial Conduct Committee**

### ***Acceptance of Gifts*** – Amended Rule 21-313 NMRA

On recommendation of the Code of Judicial Conduct Committee, the Supreme Court approved amendments to the committee commentary to Rule 21-313 NMRA to clarify that, in nearly all situations, free or discounted legal services are gifts that judges are prohibited from accepting.

### ***Judicial Disqualification*** – Amended Rule 21-211 NMRA

The Supreme Court approved amendments to the committee commentary to Rule 21-211 NMRA to delineate the circumstances under which a judge's present attorney-client relationships are grounds for disqualification.

## **Code of Professional Conduct Committee**

### ***Safekeeping Property*** – Amended Rule 16-115 NMRA

The Supreme Court approved the Code of Professional Conduct Committee's proposal to amend Rule 16-115 NMRA to clarify procedures for trust account balances containing a lawyer's own funds and methods of paying bank service charges on lawyer trust accounts.

## **New Mexico Supreme Court Commission on Equity and Justice**

### ***Requirements for Equity in Justice and Professionalism*** – Amended Rule 18-201 NMRA

On recommendation of the New Mexico Supreme Court Commission on Equity and Justice, the Supreme Court approved amendments to Rule 18-201 NMRA and its associated committee commentary to require one (1) hour of equity in justice credit as part of the required twelve (12) CLE credits and to explain the required professionalism credit.

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

### ***Judgment Notwithstanding the Verdict*** – New Rules 5-614.1 and 7-611.1 NMRA; Amended Rules 5-607, 5-701, 6-603.1, 6-701, 7-603.1, and 7-701 NMRA

On recommendation of the Rules of Criminal Procedure for State Courts Committee, the Supreme Court adopted new Rules 5-614.1 and 7-611.1 NMRA and approved amendments of various rules of criminal procedure for the district, magistrate, and metropolitan courts to address procedures for post-verdict judgment of acquittal in light of *State v. Martinez*, 2022-NMSC-004, 503 P.3d 313.

***Definition of Local Detention Center*** – Amended Rules 5-401, 5-403, 6-401, 6-403, 6-506, 6-802, 7-401, 7-403, 7-506, 7-802, 8-401, 8-403, 8-506, and 8-802 NMRA

The Supreme Court approved amendments of various rules of criminal procedure for the district, magistrate, and metropolitan courts to define local detention centers and to clarify that a local detention center is one that is commonly used by the district court and need not necessarily be within the territorial jurisdiction of the court.

***Filing of Criminal Complaint in District Court*** – Amended Rule 5-201 NMRA

The Supreme Court approved amendments to the commentary of Rule 5-201 NMRA to dispel confusion about the proper process and venue for the filing of a criminal complaint in district and inferior courts.

***Citizen Grand Jury*** – Amended Rule 5-302.3 NMRA

The Supreme Court approved amendments to Rule 5-302.3 NMRA and its associated committee commentary to clarify the processes related to grand jury proceedings, including verification of the petition, determining the validity of the petition, assignment of the prosecuting attorney, and notice to the target.

***Grand Jury Time Limits*** – Amended Rule 5-302.2 NMRA

The Supreme Court approved amendments to Rule 5-302.2 NMRA and its associated committee commentary to address grand jury time limits. The amendments are intended to address the ambiguity in the grand jury rule regarding the time limits for commencing a grand jury proceeding and to amend the rules to conform with the law requiring that a grand jury be impaneled within the time limits for commencing a preliminary examination.

***Right to Jury Trial in Magistrate Court*** – Amended Rules 6-602, 6-603, 7-602, and 7-603 NMRA

The Supreme Court approved amendments of various rules of criminal procedure to align the procedures for jury trials in the metropolitan and magistrate courts. The Supreme Court also approved technical amendments of these rules to create conformity with the NMRA.

***Probable Cause Determinations for Criminal Complaints*** – Amended Form 9-201 NMRA

The Supreme Court approved amendments to the criminal complaint form to remove the option, “complaint dismissed without prejudice,” based on the Rules of Criminal Procedure for State Courts Committee’s assessment that the option is not relevant to a probable cause determination.

## **Rules of Evidence Committee**

### ***Fifth Amendment Invocation*** – Amended Rule 11-513 NMRA

The Supreme Court approved amendments to Rule 11-513 NMRA to clarify that the prohibition of a comment on the invocation of the privilege against self-incrimination would not apply in non-criminal proceedings.

## **State Bar of New Mexico**

### ***Self-Study MCLEs*** – Amended Rule 18-204 NMRA

The Supreme Court approved the State Bar of New Mexico's proposal to amend Rule 18-204 NMRA to remove the limit on self-study credits that an attorney may obtain for required CLE credits and to require previously recorded courses to be pre-approved by the Board of Bar Commissioners and have procedures/technology to verify an attorney's attendance and attentiveness during the program.

### ***State Bar Young Lawyers Division*** – Amended Rule 24-101 NMRA

The Supreme Court approved amendments to Rule 24-101 NMRA to expand membership in the State Bar of New Mexico Young Lawyers Division to all New Mexico attorneys who have practiced law in any state for ten (10) years or less.

## **Uniform Jury Instructions-Civil Committee**

***Bad Faith Duty to Defend*** – New UJI 13-1703A NMRA; Amended Chapter 17 Introduction and UJIs 13-1701, 13-1702, 13-1704, 13-1705, 13-1706, 13-1707, 13-1708, 13-1709, 13-1710, 13-1711, 13-1712, 13-1713, 13-1714, 13-1715, 13-1716, and 13-1718 NMRA; Amended and Recompiled UJI 13-1703 NMRA as UJI 13-1703B NMRA; Withdrawn UJI 13-1717 NMRA

On recommendation of the UJI-Civil Committee, the Supreme Court adopted new UJI 13-1703A NMRA, approved amendments to the UJIs in Chapter 17, approved the amendment and recompilation of UJI 13-1703 NMRA as UJI 13-1703B NMRA, and has withdrawn UJI 13-1717 NMRA. These amendments are intended to implement changes in the law and provide a thorough review and revision of substantive instructions, use notes, and committee commentary throughout the chapter.

## **Uniform Jury Instructions-Criminal Committee**

***Leaving the Scene of an Accident*** – New UJIs 14-4513, 14-4514, 14-4515, and 14-4516 NMRA

On recommendation of the UJI-Criminal Committee, the Supreme Court has adopted four new UJIs to address a void in the jury instructions noted by the Court of Appeals in *State v. Esparza*, 2020-NMCA-050, 475 P.3d 815. The new UJIs address various crimes described in NMSA 1978, Section 66-7-201 (1989), and NMSA 1978, Section 66-7-202 (1978), including

failing to stop or give information or render aid where an accident results in great bodily harm or death, knowingly failing to stop or give information or render aid where an accident results in great bodily harm or death, failing to stop or give information or render aid where an accident does not result in that degree of injury, and failing to stop or give information or render aid when an accident only involves damage to a vehicle.

***Facilitative Use of Deadly Weapon*** – New UJI 14-135 NMRA; Amended UJIs 14-305, 14-306, 14-355, 14-356, 14-375, 14-376, 14-2202, and 14-2203 NMRA

The Supreme Court requested the UJI-Criminal Committee to offer recommendations consistent with the Court’s definition of use of a deadly weapon in the context of assault as set forth in *State v. Zachariah G.*, 2022-NMSC-003, 501 P.3d 451. As a result, the Court has adopted new UJI 14-135 NMRA to clarify the definition of use of a deadly weapon and approved amendments to related UJIs concerning use of a deadly weapon and facilitative use.

***Aggravated Fleeing in the Third Degree*** – Amended UJI 14-2217 NMRA

The Supreme Court approved amendments proposed by the UJI-Criminal Committee to address revised statutory language concerning NMSA 1978, Section 30-22-1.1 (2022) in the elements, use notes, and committee commentary of UJI 14-2217 NMRA.

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

<https://supremecourt.nmcourts.gov/14056-2/>