

THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2020 OUT-OF-CYCLE AND YEAR-END RULE AMENDMENTS

Under Rule 23-106.1 NMRA, the Supreme Court adopts most rule changes once per year in the fall. In addition, the Court approved out-of-cycle rule amendments that became or will become effective before December 31, 2020. Because of the large number of out-of-cycle and year-end rule amendments for 2020, the actual text of the rule amendments will not be published in the Bar Bulletin or on the State Bar's website due to space constraints. Instead, what follows is a summary of the rule amendments that the Court recently approved, which will be effective December 31, 2020, and the out-of-cycle amendments which were or will be effective as noted below and in the history note at the end of each approved rule. All rule amendments approved by the Court in 2020 and the related orders are available on the Court's website, <https://supremecourt.nmcourts.gov/2020.aspx>.

Children's Court Rules and Forms

Voluntary relinquishment of parental rights and consent to adoption
[New Forms 10-541 and 10-542 NMRA]

The Supreme Court has approved the Children's Court Rules Committee's recommendation to adopt new Forms 10-541 and 10-542 NMRA to ensure that all legal requirements for relinquishing parental rights are met, and that the respondent's relinquishment and consent are knowing and voluntary.

Civil Forms

Consumer debt litigation in magistrate and metropolitan courts
[Form 4-226 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Form 4-226 NMRA to extend the consumer debt amendments adopted in 2016 for cases pending in the district courts to cases pending in the magistrate and metropolitan courts. As noted below, the Court also approved the Committee's recommendation to amend Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA for the same purpose.

Subpoena forms
[Forms 4-503, 4-504, 4-505, and 4-505A NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Forms 4-503, 4-504, 4-505, and 4-505A NMRA for consistency with the amendments the Committee recommended, and the Court approved, for Rules 1-045, 2-502, and 3-502 NMRA. In addition, the Court approved the Committee's

recommendations to make stylistic and structural changes recommended by prior committees that were consolidated into the Rules of Civil Procedure for State Courts Committee.

Tenant rights in eviction proceedings

[Forms 4-901, 4-901A, and 4-902 NMRA]

The Supreme Court has approved the recommendation to amend Forms 4-901, 4-901A, and 4-902 NMRA to clarify tenants' rights in eviction proceedings. The Court further approved certain modifications suggested by the Rules of Civil Procedure for State Courts Committee to the proposed amendments that were published for comment from August 31, 2020, to September 18, 2020.

Restrictions on use of social media

[Forms 4-963, 4-963A, 4-965, and 4-970 NMRA]

The Supreme Court has approved the Domestic Relations Rules Committee's recommendation to amend Forms 4-963, 4-963A, 4-965, and 4-970 NMRA to allow a court to prohibit a restrained party from posting comments on a protected party's social media accounts.

Form specific to petitioner no longer necessary

[Withdrawn Form 4-971 NMRA]

The Supreme Court has approved the Domestic Relations Rules Committee's recommendation to withdraw Form 4-971 NMRA, stipulated order of protection against petitioner. In 2019, the Supreme Court amended Form 4-970 NMRA, stipulated order of protection, which previously had been for use when the respondent was the restrained party, to be used when either the petitioner or the respondent is the restrained party. With the 2019 amendment to Form 4-970, Form 4-971 is no longer needed.

Rules for Minimum Continuing Legal Education

Self-study credit for participating in approved legal activities

[Rules 18-201 and 18-204 NMRA]

The Supreme Court has approved the recommendation of the Board of Bar Commissioners, in its role as the MCLE Board, to amend Rules 18-201 and 18-204 NMRA to permit the award of self-study credits for participating in various legal activities approved by the Board and to allow for the carry-over of self-study credits for one compliance year.

Withdrawal of Appendix A

[Withdrawn Appendix A to Rule Set 18]

The Supreme Court has approved the withdrawal of Appendix A to Rule Set 18, the Rules for Minimum Continuing Legal Education, as the regulations were outdated and conflicted with other rules implementing continuing education requirements.

Rules Governing Admission to the Bar

Appointment of non-board members to hearing committees [Rule 15-301 NMRA]

The Supreme Court has approved the Board of Bar Examiners' recommendation to amend Rule 15-301 NMRA to allow the board to appoint non-board members to hearing committees. The amendments to Rule 15-301 became effective August 31, 2020.

Rules Governing Discipline

Notifications to pro se parties under Rule 17-212 NMRA [Rule 17-212 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-212 NMRA to clarify the notification requirements for attorneys who have resigned or who have been suspended or disbarred, so it is clear that the required notice under the rule by such attorneys includes notice to self-represented parties.

Inventorying attorneys, client files, and trust fund disbursements [Rule 17-213 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-213 NMRA to add three provisions that would be applicable when an attorney or disciplinary counsel has been charged with inventorying files and disbursing trust funds of an attorney who is disbarred, suspended, or deceased, becomes incapacitated, or resigns. In addition to other notice requirements already present in the rule, the amendments require inventorying attorneys to give notice by publication of their appointment. The amendments also authorize disciplinary counsel to give notice by publication prior to the destruction of unclaimed client files. Finally, the amendments authorize an inventorying attorney to seek an order authorizing the payment of unclaimed trust funds to the New Mexico Client Protection Fund for safeguarding and disbursement to persons entitled to those remaining trust funds.

Electronic copy of transcripts [Rule 17-313 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rule 17-313 NMRA to provide that disciplinary counsel may provide an electronic copy of a transcript of disciplinary proceedings to the respondent attorney upon request.

Rules Governing the New Mexico Bar

Board of Bar Commissioner districts and representation; extension of commissioner terms when a commissioner is elected to the Board of Bar Commissioners
[Rule 24-101 NMRA]

The Supreme Court has approved the Board of Bar Commissioners of the State Bar of New Mexico's recommendation to amend Rule 24-101 NMRA to align the Board of Bar Commissioner districts with the state judicial districts and to permit a commissioner who has been elected to the Board of Bar Commissioners to extend the commissioner's term through the completion of the commissioner's term as immediate past president.

Recompilation
[Rule 24-101A NMRA, recompiled as Rule 24-101.1 NMRA]

The Supreme Court has approved recompiling Rule 24-101A NMRA as Rule 24-101.1 NMRA, consistent with the Court's preferred numbering system for the New Mexico Rules Annotated.

Rules of Appellate Procedure

Expedited appeals from orders regarding assisted outpatient treatment
[New Rule 12-207.1 NMRA]

The Supreme Court has approved the Appellate Rules Committee's recommendation to adopt new Rule 12-207.1 NMRA to provide a procedure for expedited appeals from orders regarding assisted outpatient treatment under NMSA 1978, Section 43-1B-9 (2016).

Rules of Civil Procedure for the District, Magistrate, and Metropolitan Courts

Depositions upon oral examination
[Rule 1-030 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend the committee commentary for Rule 1-030 NMRA to clarify that a party may not unilaterally exclude a non-party witness from observing a deposition, but may do so through court order.

Procedures governing subpoenas
[Rules 1-045, 2-502, and 3-502 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Rules 1-045, 2-502, and 3-502 NMRA to clarify that a person served with a subpoena may serve written objections on all parties or file a motion to quash the subpoena with the court and further to make stylistic changes recommended by prior committees that were consolidated into the Rules of Civil Procedure for State Courts Committee.

The Court also approved the Committee's recommendation to amend Rule 1-045 to permit service of a subpoena by mail in addition to personal service.

Finally, the Court approved the Committee's recommendation to amend Rules 2-502 and 3-502 to correct the inadvertent omission of language explaining that if a responding party objects to a subpoena, the issuing party may seek a court order to compel production, and further to clarify that a responding party may not answer a subpoena before the expiration of fourteen (14) days after the date of service of the subpoena.

Enforcement of mediated settlement agreements

[New Rule 1-106 NMRA]

The Supreme Court has approved the New Mexico Administrative Office of the Court's recommendation to adopt new Rule 1-106 NMRA to address the enforcement of mediated settlement agreements. Rule 1-106 became effective August 31, 2020.

Consumer debt litigation in magistrate and metropolitan courts

[Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA]

The Supreme Court has approved the Rules of Civil Procedure for State Courts Committee's recommendation to amend Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA to extend the consumer debt amendments adopted in 2016 for cases pending in the district courts to cases pending in the magistrate and metropolitan courts. As noted above, the Court also approved the Committee's recommendation to amend Form 4-226 NMRA for the same purpose.

Electronic filing in Metropolitan Court

[Rule 3-205 NMRA]

The Supreme Court has approved the Judicial Information Systems Council's Online Access Subcommittee's recommendation to amend Rule 3-205 NMRA to allow electronic filing in Metropolitan Court. Attorneys were able to register for and begin using the electronic filing system in the Metropolitan Court on a voluntary basis effective August 31, 2020, and electronic filing became mandatory on October 15, 2020.

Rules of Criminal Procedure for the District, Magistrate, and Metropolitan Courts and Rules of Procedure for the Municipal Courts

Timeliness of filing of information; bail bonds

[Rules 5-201, 6-202, and 7-202 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 5-201, 6-202, and 7-202 NMRA to provide an explicit remedy for a district attorney's failure to timely file an information in the district court

and to shorten the time limit for filing an information in circumstances where a defendant is in custody.

The Court also approved the Committee's recommendation to amend Rule 7-202 to correct the inadvertent omission of language explaining that in circumstances where a defendant is not discharged, the metropolitan court shall retain jurisdiction over the defendant and any bail bond for the shorter of two given time periods, in the same manner that magistrate courts now retain jurisdiction in like circumstances under the parallel provisions of Rule 6-202.

Arrests without a warrant

[Rules 5-210, 6-201, 6-206, 7-201, 7-206, 8-201, and 8-205 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 5-210, 6-201, 6-206, 7-201, 7-206, 8-201, and 8-205 NMRA for housekeeping purposes and to provide alternative remedies for an insufficiently explained violation of the requirement that a defendant arrested without a warrant be given a copy of the criminal complaint prior to being transferred to the custody of a detention facility.

Pretrial detention procedures

[Rules 5-301, 5-401, 5-403, 5-409, 6-409, 6-501, 7-409, and 7-501 NMRA]

The Supreme Court has approved the Ad hoc Committee to Review Pretrial Detention and Release's recommendation to amend Rules 5-301, 5-401, 5-403, 5-409, 6-409, 6-501, 7-409, and 7-501 NMRA to allow magistrate and metropolitan court judges to schedule a pretrial detention hearing and delay entry of conditions of release for up to twenty-four (24) hours from initial appearance without the need for a motion from the prosecutor when certain criteria are met; to set status review hearings for defendants who have been detained pretrial for more than one year; to grant the district court exclusive jurisdiction over a case after a pretrial detention motion has been filed; and to clarify the types of evidence that a district court may consider when ruling on a pretrial detention motion. The amendments to these rules will be effective November 23, 2020.

Non-attorney prosecutions in magistrate and metropolitan courts

[Rules 6-108 and 7-108 NMRA]

The Supreme Court has approved the Rules of Criminal Procedure for State Courts Committee's recommendation to amend Rules 6-108 and 7-108 NMRA to allow probation and compliance officers to prosecute probation violation proceedings in magistrate and metropolitan courts, and to make explicit the authority of a district attorney to appoint a special prosecutor in criminal cases that were initiated in those courts by a law enforcement officer or other non-attorney government employee and require a jury trial.

Uniform Jury Instructions - Civil

Instructions relating to common law contracts actions

[New UJI 13-834 NMRA; UJI 13-801, 13-808, 13-811, 13-812, 13-816, 13-817, 13-819, 13-825, 13-826, 13-827, 13-828, 13-835, 13-839, 13-841, and 13-861 NMRA; and UJI Chapter 8 Appendices]

The Supreme Court has approved the Uniform Jury Instructions – Civil Committee’s recommendation to adopt new UJI 13-834 NMRA and to amend UJI 13-801, 13-808, 13-811, 13-812, 13-816, 13-817, 13-819, 13-825, 13-826, 13-827, 13-828, 13-835, 13-839, 13-841, and 13-861 NMRA and the UJI Chapter 8 Appendices to address inconsistencies, inaccuracies, and confusing omissions relating to common law contracts actions. The amendments are the second part of a two-part project to amend Chapter 8 of the Uniform Jury Instructions. In the first part of the project, the Supreme Court approved amendments to address inconsistencies, inaccuracies, and confusing omissions relating to contracts for the sale of goods under the Uniform Commercial Code (UCC) by eliminating all provisions in Chapter 8 related to UCC sales.

Uniform Jury Instructions - Criminal

Procedure for instructing on uncharged offenses

[UJI 14-140, 14-1630, 14-1632, 14-1633, 14-1642, 14-1697, 14-2204, 14-2205, 14-2206, 14-2207, 14-2209, 14-2240, 14-2801, 14-2810, 14-2817, 14-2821, 14-5170, 14-5173, and 14-5174 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-140 NMRA to clarify the procedure for instructing on uncharged offenses. The Court also approved the Committee’s recommendation to amend the use notes to UJI 14-1630, 14-1632, 14-1633, 14-1642, 14-1697, 14-2204, 14-2205, 14-2206, 14-2207, 14-2209, 14-2240, 14-2801, 14-2810, 14-2817, 14-2821, 14-5170, 14-5173, and 14-5174 NMRA to reference UJI 14-140’s procedure for instructing on uncharged offenses.

Modifications to avoid judicial comment on the evidence

[UJI 14-985, 14-4320, and 14-4321 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-985, 14-4320, and 14-4321 to replace the phrase “[e]vidence has been presented that . . .” with the more neutral phrase “[a]n issue in this case is whether . . .” to avoid any comment on the evidence.

Arson; value of damage

[UJI 14-1701 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to amend UJI 14-1701 NMRA to more accurately reflect the language of the arson statute, NMSA 1978, Section 30-17-5 (2006). As currently written, UJI 14-1701 determines the degree of value based on the “market value” of the damaged property. However, the statute refers to the dollar value of the damage. *See* § 30-17-5(B)-(F).

Lost, destroyed, or uncollected evidence; adverse inference
[New UJI 14-5062 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to adopt new UJI 14-5062 NMRA to provide a uniform instruction for the adverse inference permitted in *State v. Chouinard*, 1981-NMSC-096, 96 N.M. 658, 634 P.2d 680, and *State v. Ware*, 1994-NMSC-091, 118 N.M. 319, 881 P.2d 679, after a finding that the State breached a duty to preserve evidence as recognized in *Chouinard*, 1981-NMSC-096, ¶¶ 16, 23, or acted in bad faith or with gross negligence by failing to collect material evidence, as recognized in *Ware*, 1994-NMSC-091, ¶¶ 25-26.

Procedure for instructing on lesser-included offenses
[New UJI 14-6002A and 14-6002B NMRA; UJI 14-6012 NMRA; and Withdrawn UJI 14-250, 14-625, and 14-6002 NMRA]

The Supreme Court has approved the Uniform Jury Instructions – Criminal Committee’s recommendation to adopt new UJI 14-6002A and 14-6002B NMRA, amend UJI 14-6012 NMRA, and withdraw UJI 14-250, 14-625, and 14-6002 NMRA to reflect the procedure for deliberations involving lesser-included offenses as set forth in *State v. Lewis*, 2019-NMSC-001, ¶¶ 22-25, 433 P.3d 276. The amendments create two instructions: one to describe the deliberation process (UJI 14-6002A) and a second to describe the process for returning verdicts (UJI 14-6002B). In addition, the Court approved the Committee’s recommendation to withdraw UJI 14-250 and 14-625 NMRA, specialized step-down instructions for homicide and child abuse resulting in death, because the proposed new UJI 14-6002A and 14-6002B would be adaptable to those offenses.

All rule amendments approved by the Supreme Court and the related orders can be viewed on the Supreme Court’s website at

<https://supremecourt.nmcourts.gov/2020.aspx>.

All Supreme Court approved rules and forms can be viewed on New Mexico OneSource, a publicly accessible website at

<https://nmonesource.com/nmos/en/nav.do>