

1 **7-501. Arraignment; first appearance.**

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

5 (1) the offense charged;

6 (2) the maximum penalty and mandatory minimum penalty, if any, provided
7 for the offense charged;

8 (3) the right to bail or the possibility of pretrial detention under Rule 5-401(G)
9 NMRA;

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

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

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

15 (7) the right, if any, to a jury trial;

16 (8) in those cases not within the court's trial jurisdiction the right to a
17 preliminary examination;

18 (9) that, if the defendant pleads guilty or no contest, it may have an effect upon
19 the defendant's immigration or naturalization status, and if the defendant is represented by counsel,
20 the court shall determine that the defendant has been advised by counsel of the immigration
21 consequences of a plea;

22 (10) that, if the defendant is charged with a crime of domestic violence or a
23 felony, a plea of guilty or no contest will affect the defendant's constitutional right to bear arms,

1 including shipping, receiving, possessing, or owning any firearm or ammunition, all of which are
2 crimes punishable under federal law for a person convicted of domestic violence or a felony; and
3 (11) that, if the defendant pleads guilty or no contest to a crime for which
4 registration as a sex offender is or may be required, and, if the defendant is represented by counsel,
5 the court shall determine that the defendant has been advised by counsel of the registration
6 requirement under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978].

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

9 **B. Offense within the court’s trial jurisdiction.** If the offense charged is within the
10 court’s trial jurisdiction, the court shall require the defendant to plead to the complaint under Rule
11 7-302, and if the defendant refuses to answer, the court shall enter a plea of “not guilty” for the
12 defendant. If, after entry of a plea of “not guilty,” the defendant remains in custody, the action
13 shall be set for trial as soon as possible.

14 **C. Defense of insanity.** If the defendant raises the defense of “not guilty by reason of
15 insanity at the time of commission of an offense,” after setting conditions of release, the action
16 shall be transferred to the district court.

17 **D. Waiver of arraignment or first appearance.** With prior approval of the court, an
18 arraignment or first appearance may be waived by the defendant filing a written waiver. A waiver
19 of arraignment and entry of a plea of not guilty or a waiver of first appearance shall be substantially
20 in the form approved by the Supreme Court.

21 **E. Felony offenses; preliminary examination.** If the offense is a felony and the
22 defendant waives preliminary examination, the court shall bind the defendant over to the district

1 court. If the defendant does not waive preliminary examination, the court shall proceed to conduct
2 such an examination in accordance with Rule 7-202 NMRA of these rules.

3 F. **Bail.** If the defendant has not been released by the court or the court's designee,
4 and if the offense charged is a bailable offense, the court shall enter an order prescribing conditions
5 of release in accordance with Rule 7-401 NMRA of these rules. However, the court may delay
6 entry of conditions of release for twenty-four (24) hours from the date of the initial appearance,
7 not to exceed the time limits in Rule 7-401(A) NMRA, if

8 (1) The defendant is charged with a felony offense

9 (a) involving the use of a firearm;

10 (b) involving the use of a deadly weapon resulting in great bodily harm
11 or death;

12 (c) which authorizes a sentence of life in prison without the possibility
13 of parole; or

14 (d) a public safety assessment instrument approved by the Supreme
15 Court for use in the jurisdiction flags potential new violent criminal activity for the defendant.

16 (2) The court shall immediately give notice to the prosecutor, the defendant and
17 defense counsel of record, or, if defense counsel has not entered an appearance, the local law office
18 of the public defender or, if no local office exists, the director of the contract counsel office of the
19 public defender, of the circumstances in Subparagraph F(1) above that warrant delaying entry of
20 conditions of release.

21 (3) If the prosecutor does not file an expedited motion for pretrial detention by
22 the date scheduled for the conditions of release hearing, the court shall issue an order setting
23 conditions of release pursuant to Rule 7-401 NMRA.

1 [As amended, effective March 1, 1987; October 1, 1987; September 1, 1990; October 1,
2 1996; November 1, 2000; as amended by Supreme Court Order No. 07-8300-030, effective
3 December 15, 2007; as amended by Supreme Court Order No. 18-8300-023, effective for all cases
4 filed on or after February 1, 2019; as amended by Supreme Court Order No. _____, effective
5 _____.]

6 **Committee commentary.** — If it is determined by the judge that the defendant is not
7 represented by counsel, and it further appears that the defendant may be indigent, if the judge
8 decides that no imprisonment will be imposed if the defendant is found guilty, then the court need
9 not advise the defendant of his right to assistance of counsel at every stage of the proceedings and
10 of the defendant’s right to representation by an attorney at state expense. However, if the judge
11 decides that imprisonment will be imposed or that this decision cannot be made at this stage of the
12 proceedings, then the judge shall advise the defendant of his right to assistance of counsel at every
13 stage of the proceedings and his right to be represented by an attorney at state expense if he is
14 indigent. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

15 The defendant may waive counsel so long as the waiver is knowingly, voluntarily, and
16 intelligently made and the defendant is aware of the possible disadvantages of proceeding without
17 the assistance of counsel. *State v. Greene*, 1977-NMSC-111, 91 N.M. 207, 572 P.2d 935; *North*
18 *Carolina v. Butler*, 441 U.S. 369 (1979).

19 [As amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on or
20 after February 1, 2019.]