

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS AND THE CIVIL FORMS
PROPOSAL 2019-008**

March 4, 2019

The Rules of Civil Procedure Committee has recommended amendments to Rules 1-072 and 1-073 NMRA and the adoption of new Form 4-711 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 3, 2019, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

1-072. Appeal from magistrate courts in trial de novo cases.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil action in the magistrate court may appeal, as permitted by law, to the district court of the county within which the magistrate court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the magistrate court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The three (3) day mailing period set forth in Rule 1-006 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the magistrate court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 NMSA 1978] in any such appeal.

B. **Notice of appeal.** An appeal from the magistrate court is taken by:
(1) filing with the clerk of the district court a notice of appeal with proof of service; and

- (2) promptly filing with the magistrate court:
 - (a) a copy of the notice of appeal that has been endorsed by the clerk of the district court; and
 - (b) a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the magistrate court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

- (1) serve each party or such party's attorney in the proceedings in the magistrate court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA; and
- (2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA.

E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

F. **Jury trial.** Any party may demand a jury trial by filing a demand and paying the jury fees as provided by Rule 1-038 NMRA. A demand for jury trial shall be filed at the time the notice of appeal is filed in the district court, but not later than:

- (1) thirty (30) days after service of the notice of appeal on each party to the action;
- or
- (2) ten (10) days after the last pleading is filed, if additional pleadings are filed pursuant to Paragraph I of this rule.

G. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the magistrate court pursuant to Paragraph B of this rule, the magistrate court shall file with the clerk of the district court the record on appeal taken in the action in the magistrate court. For purposes of this rule, the record on appeal shall consist of:

- (1) a title page containing the caption of the case in the magistrate court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
- (2) a copy of all papers and pleadings filed in the magistrate court;
- (3) a copy of the judgment or order sought to be reviewed with date of filing noted thereon;
- (4) any exhibits; and
- (5) any transcript of the proceedings made by the magistrate court, either stenographically recorded or tape recorded. If the transcript of the proceedings is a tape recording, the magistrate court shall prepare and file with the district court a duplicate of the tape and index log.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy.

The magistrate court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

H. **Correction or modification of the record.** If anything material to either party is

omitted from the record on appeal by error or accident, the parties by stipulation, or the magistrate court on motion, or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.

I. **Pleadings.** The complaint and other pleadings filed in the magistrate court shall be the complaint and pleadings in the district court. An amended complaint may be filed within thirty (30) days after service of the notice of appeal. An amended complaint shall be served in the manner provided by Rule 1-004 NMRA of these rules. If an amended complaint is filed, a responsive pleading shall be filed within thirty (30) days and served as provided by these rules.

J. **Procedure on appeal.** Unless otherwise provided by this rule, all other Rules of Civil Procedure for the District Courts shall apply to appeals from the magistrate court.

K. **Stay of proceedings to enforce a judgment.**

(1) When an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the magistrate court as provided in the Rules of Civil Procedure for the Magistrate Courts.

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

L. **Review of supersedeas.** At any time after an appeal is filed pursuant to Paragraph B of this rule, the district court may, upon motion and notice, review any action of, or any failure or refusal to act by the magistrate court dealing with supersedeas or stay. If the district court modifies the terms, conditions or amount of a supersedeas bond or if it determines that the magistrate court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time within which to file in the district court a supersedeas bond complying with the requirements for a supersedeas bond set forth in the Rules of Civil Procedure for the Magistrate Courts. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the magistrate court clerk by the party seeking the review.

M. **Rehearing.** A motion for reconsideration may be filed within ten (10) days after filing of the district court's final order. The three (3) day mailing period set forth in Rule 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and with particularity, but without argument, the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended. No response to a motion for rehearing shall be filed unless requested by the court.

N. **Disposal of appeals.** The district court shall dispose of appeals by entry of an appropriate order disposing of the appeal. The court in its discretion may accompany the order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as precedent in subsequent cases. A mandate shall be issued by the court upon expiration of whichever of the following events occurs latest:

- (1) [~~fifteen (15)~~] thirty (30) days after entry of the order disposing of the case;
- (2) [~~fifteen (15)~~] thirty (30) days after disposition of a motion for rehearing; or
- (3) if a notice of appeal is filed, upon final disposition of the appeal.

O. **Remand.** Upon expiration of the time for appeal from the judgment or final order of the district court, if the relief granted is within the jurisdiction of the magistrate court, the district court shall remand the case to the magistrate court for enforcement of the district court's judgment.

P. **Appeal.** Any aggrieved person may appeal from a judgment of the district court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in accordance with the Rules of Appellate Procedure. Any supersedeas bond approved by the magistrate court, or modified by the district court, shall continue in effect pending appeal to the Supreme Court or Court of Appeals, unless modified pursuant to Rule 12-207 of the Rules of Appellate Procedure. [Adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective _____.]

1-073. Appeal from metropolitan court on the record.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil action in the metropolitan court may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The three (3) day mailing period set forth in Rule 1-006 does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 NMSA 1978] in any such appeal.

B. **Notice of appeal.** An appeal from the metropolitan court is taken by:

- (1) filing with the clerk of the district court a notice of appeal with proof of service; and
- (2) promptly filing with the metropolitan court:
 - (a) a copy of the notice of appeal that has been endorsed by the clerk of the district court; and
 - (b) a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the metropolitan court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

- (1) serve each party or such party's attorney in the metropolitan court proceedings with a copy of the notice of appeal in accordance with Rule 1-005;
- (2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA; and
- (3) if evidentiary or factual matters are involved in the appeal, file with the clerk of the district court a certificate of the clerk of the metropolitan court that satisfactory arrangements have been made with the metropolitan court for preparation and payment for the transcript of the proceedings.

E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

F. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court pursuant to Paragraph B of this rule, the metropolitan court shall file with the clerk of the district court the record on appeal taken in the action in the metropolitan court. For purposes of this rule, the record on appeal shall consist of:

- (1) a title page containing the caption of the case in the metropolitan court and names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
- (2) a copy of all papers and pleadings filed in the metropolitan court;
- (3) a copy of the judgment or order sought to be reviewed with date of filing noted thereon;
- (4) any exhibits; and
- (5) any transcript of the proceedings made by the metropolitan court, either stenographically recorded or tape recorded. If the transcript of the proceedings is a tape recording, the metropolitan court clerk shall prepare and file with the district court a duplicate of the tape and index log.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy.

The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

G. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court on motion, or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.

H. **Statement of appellate issues.** A statement of appellate issues shall be filed with the district court as follows:

- (1) the appellant's statement shall be filed and served within thirty (30) days from the date of service of the notice of filing of the record on appeal in the district court; and
- (2) the appellee's response shall be filed and served within thirty (30) days after service of the appellant's statement of issues.

I. **Appellant's statement of appellate issues.** The appellant's statement of appellate issues, under appropriate headings and in the order here indicated, shall contain:

- (1) a statement of the issues;
- (2) a summary of the proceedings which shall indicate briefly the nature of the case, the course of proceedings, and the disposition of the metropolitan court. The summary shall include a short recitation of all facts relevant to the issues presented for review, with appropriate references to the record on appeal showing how the issues were preserved in the proceedings before the metropolitan court;
- (3) an argument which shall contain the contentions of the appellant with respect to each issue presented in the statement of issues, with citations to the authorities, statutes and parts of the record on appeal relied upon. New Mexico decisions, if any, shall be cited; and

(4) a statement of the precise relief sought.

J. **Appellee's statement of appellate issues; response.** The appellee's response shall conform to the requirements of Subparagraphs (1) to (4) of Paragraph I of this rule, except that a statement of the issues or a summary of the proceedings shall not be made unless the appellant's statement of issues or summary of the proceedings is disputed or is incomplete.

K. **References in statement of appellate issues.** References in the statement of appellate issues shall be to the pages of the record on appeal or, if the reference is to a tape recording, the approximate counter numbers of the tape as shown on the index log shall be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be to the place in the record on appeal at which the evidence was identified, offered, and received or rejected.

L. **Length of statements of appellate issues.** Except by permission of the court, the argument portion of the appellant's statement of appellate issues shall not exceed eight (8) pages. Except by permission of the court, the argument portion of appellee's response shall not exceed eight (8) pages.

M. **Briefs.** Briefs may be filed only by leave of the district court and upon such conditions as the court may direct.

N. **Oral argument.** Upon motion of a party or on the court's own motion, the court may allow oral argument.

O. **Scope of review.** To preserve a question for review it must appear that a ruling or decision by the metropolitan court was fairly invoked, but formal exceptions are not required, nor is it necessary to file a motion for a new trial to preserve questions for review. Further, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party. This paragraph shall not preclude the district court from considering jurisdictional questions or, in its discretion, questions involving:

- (1) general public interest; or
- (2) fundamental error or fundamental rights of a party.

P. **Stay of proceedings to enforce a judgment.**

(1) When an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court as provided in the Rules of Civil Procedure for the Metropolitan Courts.

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

Q. **Review of supersedeas.** At any time after an appeal is filed pursuant to Paragraph B of this rule, the district court may, upon motion and notice, review any action of, or any failure or refusal to act by the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions or amount of a supersedeas bond or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time within which to file in the district court a supersedeas bond complying with the requirements for a supersedeas bond set forth in the Rules of Civil Procedure for the Metropolitan Courts. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

R. **Rehearing.** A motion for reconsideration may be filed within ten (10) days after filing

of the district court's final order. The three (3) day mailing period set forth in Rule 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and with particularity, but without argument, the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended. No response to a motion for rehearing shall be filed unless requested by the court.

S. **Disposal of appeals.** The district court shall dispose of appeals by entry of an appropriate order disposing of the appeal. The court in its discretion may accompany the order with a formal or memorandum opinion. Opinions shall not be published and shall not be used as precedent in subsequent cases. A mandate shall be issued by the court upon expiration of whichever of the following events occurs latest:

- (1) [~~fifteen (15)~~] thirty (30) days after entry of the order disposing of the case;
- (2) [~~fifteen (15)~~] thirty (30) days after disposition of a motion for rehearing; or
- (3) if a notice of appeal is filed, upon final disposition of the appeal.

T. **Remand.** Upon expiration of the time for appeal from the final order or judgment of the district court, the district court shall remand the case to the metropolitan court for enforcement of the district court's judgment.

U. **Appeal.** Any aggrieved person may appeal from a judgment of the district court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in accordance with the Rules of Appellate Procedure. Any supersedeas bond approved by the metropolitan court, or modified by the district court, shall continue in effect pending appeal to the Supreme Court or Court of Appeals, unless modified pursuant to Rule 12-207 of the Rules of Appellate Procedure.

[Adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

4-711. Mandate to magistrate court or metropolitan court after appeal.

[For use in district court]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Plaintiff

v. _____ No. _____

_____, Defendant

**MANDATE TO MAGISTRATE COURT OR METROPOLITAN COURT
AFTER APPEAL**

This matter came before the district court on appeal. The matter now being resolved, IT IS HEREBY

ORDERED, ADJUDGED, AND DECREED that this case is remanded to _____
(*enter name of court*), in Case No. _____ (*enter court case number*), with
instructions that the court take the following actions (*district court to check all appropriate
instructions*):

- Vacate its dismissal and enter judgment as stated in the attached order.¹
- Vacate its judgment and dismiss the case as stated in the attached order.²
- Enter a judgment on mandate affirming its prior judgment as stated in the attached order.³
- Enter an amended judgment as stated in the attached order.⁴
- Proceed with its case because the appeal has been dismissed.⁵
- Collect the supersedeas bond.⁶
- Release a bond (supersedeas or other) to _____ (*enter name of party
entitled to receive the bond*).⁷
- Issue any writ necessary to carry out the judgment.⁸
- Other: _____

USE NOTES

The district court must ensure that this order is provided to the magistrate court or metropolitan court, whichever is applicable, either electronically or by hard copy.

1. This instruction is to be used when the magistrate court or metropolitan court originally dismissed the case but the district court reversed dismissal and found in favor of a party. The magistrate court or metropolitan court must enter judgment consistent with the district court's decision in the event enforcement actions are needed.

2. This instruction is to be used when the magistrate court or metropolitan court judgment is reversed and the case is dismissed.

3. This instruction is to be used when the magistrate court or metropolitan court judgment is affirmed. This closing document is needed so that the case may be closed with an enforceable judgment.

4. This instruction is to be used when it is necessary to update the amount of the judgment, such as interest or ongoing rent that is due.

5. This instruction is to be used when there is some type of interlocutory appeal in a case that is otherwise within the jurisdiction of the magistrate court or metropolitan court.

6. Under Rules 2-705(G) and 3-706(G) NMRA, the supersedeas bond is enforceable on dismissal of the appeal or affirmance of the judgment.

7. This instruction is to be used, probably in addition to one of the other instructions above, where a bond has been posted and is to be released. An example is a landlord/tenant case where a bond has been posted to stay the eviction.

8. This instruction is to be used if a writ is needed, such as in a landlord/tenant case where eviction is ordered.

[Adopted by Supreme Court Order No. _____, effective _____.]



Chambers of
Judge Sandra Engel
Chief Judge
Metropolitan Court
Division XI

State of New Mexico
Bernalillo County
Metropolitan Court

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April 3, 2019

SUPREME COURT OF NEW MEXICO
FILED

APR - 3 2019

Via email

Joey D. Moya
Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

Re: Proposal 2019-008 [Rule 1-073 (Appeal from metropolitan court on the record)];
and Proposal 2019-010 [Rule 7-304 (Motions)].

Dear Mr. Moya:

On behalf of the Bernalillo County Metropolitan Court ("Metro Court"), I am submitting the Court's response to Proposals 2019-008 and 2019-010 to amend the rules of civil procedure for District Courts and rules of criminal procedure for Metro Court.

Proposal 2019-008 - Rule 1-073 (Appeal from metropolitan court on the record)

If HB 279 is signed into law,¹ (making Metro Court a court of *non-record* for cases related to the Uniform Owner-Resident Relations Act ["UORRA"], NMSA 1978, §§ 47-8-1 to -52), the proposed amendment to Rule 1-073 would be rendered unnecessary. This is because HB 279 would make cases under UORRA, subject to an appeal *de novo* in District Court. If there is a trial *de novo* in the District Court, the need for a mandate or any other type of remand to Metro Court would be duplicative and a waste of judicial resources. After a trial *de novo*, the District Court would be in the best position to carry out its own Judgment without the need for any Metro Court involvement. *Compare* Rule 2-705 (de novo appeal of non-record civil cases from magistrate courts); and *State v. Trujillo*, 1999-NMCA-003 (restating that non-record criminal cases appealed from Metro Court to the District Court are reviewed as appeals *de novo*, requiring a new trial).

Since under HB 279 the District Court would have complete jurisdiction over *de novo* appeals under UORRA, there would be no need to issue mandates to Metro Court for enforcement of restitution and the proposed extra fifteen (15) days would be unnecessary. If amendments related to additional time are granted, it should be noted that when evictions are warranted, the

¹ If the Governor does not sign or veto HB 279 into law then it will be "pocket vetoed" on April 5, 2019, since the bill does not have an emergency clause.

additional time becomes problematic due to statutory language in UORRA requiring writs to be issued within three to seven days from the date of the judgment.

In addition, the enactment of HB 279 will presumably create an increased workload for the District Court. It is very likely that plaintiffs who operate large residential complexes will elect to file at Metro Court at all, since District Court would have complete jurisdiction to issue writs, etc. This is currently the common practice of landlords in other magistrate jurisdictions.

Proposal 2019-010 - Rule 7-304 (Motions)

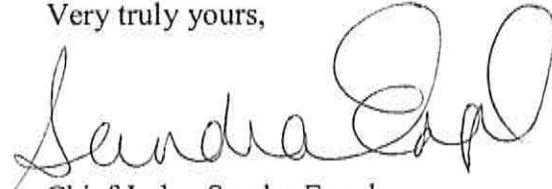
While Metro Court understands that this proposed Rule change is a largely a codification of a common practice in misdemeanor criminal cases, the language of the proposed change should be amended to more clearly state the intention of the proposal. Specifically, the proposed language does not explicitly state that it is the *Metro Court* Judge who will be entering the order on any motion to reconsider under proposed Rule 1-073. Since the language is not explicit in this regard, there is a concern that parties may file "Rule 1-073(G)" motions with the District Court, which would create confusion and raise unnecessary and time-consuming questions about jurisdiction, and waste judicial resources with needless hearings and other proceedings. To address these concerns, Metro Court respectfully proposes the following amendments to Proposal 2019-010:

A party may file at the Metropolitan court a motion to reconsider any ruling made by ~~the~~ a Metropolitan court judge at any time before entry of the judgment and sentence. A motion to reconsider the judgment and sentence or an appealable order entered by a Metropolitan court judge before or after the judgment and sentence will toll the time to appeal only if the motion is filed at the Metropolitan court within the permissible time for initiating the appeal. The Metropolitan court judge may rule on a motion to reconsider with or without a hearing.

It is the view of Metro Court that the above amendments would clarify the ambiguities in the current Proposal 2019-010, and stem and confusion or abuse such ambiguities may produce.

We appreciate the opportunity to share our input and concerns regarding these proposed changes. As always, please feel free to contact us if you wish to discuss these matters further.

Very truly yours,



Chief Judge Sandra Engel

cc: Judges of the Metropolitan Court
Robert Padilla, Court Executive Officer
Arthur W. Pepin, Director, Administrative Office of the Court