

**THE SUPREME COURT OF NEW MEXICO ANNOUNCES
2018 YEAR-END RULE AMENDMENTS**

Under Rule 23-106.1 NMRA, the Supreme Court adopts most rule changes once per year in the fall. Because of the large number of year-end rule amendments for 2018, the actual text of the rule amendments will not be published in the Bar Bulletin due to space constraints. Instead, what follows is a summary of the new rule amendments that the Court recently approved, which go into effect on December 31, 2018, unless otherwise noted in the history note at the end of each approved rule. Please note that the summary below does not include amendments approved by the Court out-of-cycle this year before November 1. The full text of the new rule amendments can be viewed on the New Mexico Compilation Commission's website at <http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx>.

Children's Court Rules and Forms

Identification of Parties When Service by Publication is Permitted

[Rule 10-103 NMRA and Form 10-515 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules and Forms Committee to amend Rule 10-103 NMRA and Form 10-515 NMRA. The amendments protect confidential identification information when service by publication is permitted in an abuse and neglect proceeding. The amended rule and form clarify that, except for the respondent being served by publication, all parties must be identified only by the initials of their first and last names.

Probation Order and Agreement Form for Delinquency Proceedings

[Rule 10-261 NMRA and New Form 10-719 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules and Forms Committee to amend Rule 10-261 NMRA and to approve new Form 10-719 NMRA. The amended rule and new form provide a uniform probation order and agreement that must be used in delinquency proceedings throughout the state.

Tribal Representative Access to Abuse and Neglect Proceedings

[Rule 10-324 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules and Forms Committee to amend Rule 10-324 NMRA. The amended rule clarifies that a representative from an Indian Child's tribe shall be permitted to attend all hearings in an abuse and neglect proceeding in which the Indian Child Welfare Act may apply. The amended committee commentary further explains that a tribe should not be required to formally intervene in the proceeding unless the tribe seeks affirmative relief from the court.

Tribal Court Order Form for Involuntary Commitment

[New Form 10-605 NMRA]

The Supreme Court has approved the recommendation of the Ad Hoc Committee on Rules for Mental Health Proceedings to approve new Form 10-605 NMRA. The new form provides a model order that may be used by tribal courts to order involuntary placement for treatment or habilitation of a child not to exceed sixty (60) days under NMSA 1978, Sections 32A-6A-22 and 32A-6A-29.

Civil Forms

Tribal Court Order Form for Involuntary Commitments to State Facilities
[New Form 4-950 NMRA]

The Supreme Court has approved the recommendation of the Ad Hoc Committee on Rules for Mental Health Proceedings to approve new Form 4-950 NMRA. The new form provides a model order that may be used by tribal courts to order involuntary commitment of an adult for mental health evaluation and treatment not to exceed thirty (30) days under NMSA 1978, Section 43-1-11.

Probate Court Rules and Forms

Rules and Forms to Govern Procedures in Probate Courts
[New Rule Set 1B, Rules 1B-101 to 1B-701 NMRA; New and Amended and Recompiled Rule Set 4B, Forms 4B-101 to 4B-1001 NMRA; and Withdrawn Forms 4B-302, 4B-503, and 4B-504 NMRA]

The Supreme Court has approved a recommendation from the Probate Court Rules Committee to adopt a comprehensive set of new rules to govern proceedings in probate courts, and to adopt new forms and recompile and amend existing forms for use in the probate courts. The new rules and the new, amended, and recompiled forms provide guidance and uniformity for judges and practitioners in New Mexico's probate courts regarding how to take a probate matter from beginning to end in a probate court, including circumstances to consider and steps to take when a probate court no longer has jurisdiction over a probate matter that must be transferred to the district court.

Rules and Forms Related to the Privacy of Juror Questionnaires

[Rules 1-047, 2-603, 3-603, 5-606, 6-605, and 7-605 NMRA; and New Forms 4-602D and 9-513D NMRA]

The Supreme Court has approved amendments to Rules 1-047, 2-603, 3-603, 5-606, 6-605, and 7-605 NMRA, and new Forms 4-602D and 9-513D, to promote the protection of juror privacy through rule and form amendments that provide for the confidentiality of juror qualification and questionnaire forms and that set deadlines for their destruction. The amended rules and new forms require all attorneys and parties in possession of juror qualification and questionnaire forms to certify under oath, on or before the destruction deadline, that they have complied with the

confidentiality provisions and destruction deadlines set forth in the rules. The rules also provide deadlines and procedures for the destruction of juror qualification and questionnaire forms in the possession of the courts.

Rules for Minimum Continuing Legal Education

Minimum Continuing Legal Education Board [Rule 18-102 NMRA]

The Supreme Court has approved amendments to Rule 18-102 NMRA to codify the transfer of minimum continuing legal education board functions to the Board of Bar Commissioners that took place earlier this year. The Board of Bar Commissioners may carry out the functions of the MCLE Board itself or may appoint active attorneys licensed in New Mexico from among its membership to serve in that capacity.

Rules Governing Admission to the Bar

Public Access to Bar Admission Proceedings Filed in Supreme Court [Rule 15-401 NMRA]

The Supreme Court has approved a recommendation from the Board of Bar Examiners to amend Rule 15-401(D) NMRA to provide that bar admission proceedings filed in the Supreme Court are a matter of public record and may only be sealed by order of the Supreme Court on motion of a party to the proceeding or the Court's own motion in accordance with applicable procedures and standards in Rule 12-314 NMRA. The amendments apply to appeals from decisions of the Board of Bar Examiners, motions for conditional admission, and proceedings filed in the Supreme Court to suspend or revoke an admission previously granted by the Court. The amendments do not change existing provisions in the rule that provide for the confidentiality of records maintained by the Board of Bar Examiners regarding applications for admission and reinstatement to the bar.

Rules Governing Discipline

Reinstatement Procedure for Attorney Suspended for Delinquent Child Support Payments [Rule 17-203 NMRA]

The Supreme Court has approved a recommendation from the Disciplinary Board to amend Rule 17-203 NMRA to address reinstatement procedures for attorneys who are suspended from the practice of law because of delinquent child support payments. The amendments are intended to ensure that attorneys suspended for six (6) months or longer demonstrate fitness to return to the practice of law, in addition to compliance with child support obligations, as conditions to reinstatement.

Formal Diversion Program for Minor Ethics Violations

[Rule 17-206 NMRA]

The Supreme Court has approved a recommendation from the Disciplinary Board to amend Rule 17-206 NMRA to create a formal diversion program for minor violations of the Rules of Professional Conduct. The diversion program focuses on “education to compliance” initiatives that allow an attorney to improve the attorney’s practice through meaningful remedial measures designed and monitored by the Office of Disciplinary Counsel.

Reinstatement Following Reciprocal Discipline

[Rule 17-210 NMRA]

The Supreme Court has approved a recommendation from the Disciplinary Board to amend Rule 17-210 NMRA to clarify the procedure that an attorney must follow when seeking reinstatement after the imposition of reciprocal discipline.

Reinstatement to Non-Probationary Status

[Rule 17-214 NMRA]

The Supreme Court has approved a recommendation from the Disciplinary Board to amend Rule 17-214 NMRA to clarify the procedure that an attorney who is placed on deferred suspension or probation must follow when seeking reinstatement to non-probationary status.

Deadline for Disciplinary Decisions

[Rules 17-313 and 17-315 NMRA]

The Supreme Court has approved a recommendation from the Disciplinary Board to amend Rules 17-313 and 17-315 NMRA to confirm that the deadline for the hearing committee to submit findings of fact and conclusions of law, and the deadline for the Disciplinary Board or board panel to render a decision following a hearing, are non-jurisdictional deadlines.

Rules of Appellate Procedure

Calculating Notice of Appeal Filing Deadlines

[Rules 12-201 and 12-601 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rules 12-201 and 12-601 NMRA to clarify that the three (3)-day period set forth in Rule 12-308(B) NMRA applies to certain kinds of service other than mailing and is not added in calculating the time to file a notice of appeal under Rules 12-201 and 12-601.

Consolidated Briefing

[Rule 12-318 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-318 NMRA to clarify that consolidated answer briefs and consolidated reply briefs are permitted and encouraged when responding to multiple briefs in chief or multiple answer

briefs filed by multiple parties. In addition to the amendments recommended by the committee, the Court also added a new Paragraph J to Rule 12-318, which states that briefs that fail to comply with the rule may be returned for correction or rejected by the appellate court, in addition to other sanctions provided in Rule 12-312(D) NMRA.

Attachments to Rule 12-505 NMRA Petitions for Writs of Certiorari
[Rule 12-505 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-505 NMRA to encourage the attachment of documentary matters of record, in addition to the attachments already required under the rule, to assist the Court of Appeals in exercising its discretion under the rule.

Rules of Legal Specialization

Withdrawal of Rules Governing Legal Specialization
[Rules 19-101 to 19-312 NMRA]

The Supreme Court has approved the withdrawal of the Rules of Legal Specialization to implement the Court's decision to discontinue the legal specialization program that was operated by the Board of Legal Specialization, which will be dissolved. The Court has approved a related amendment to the Rules of Professional Conduct (see below) to permit the State Bar of New Mexico to develop its own legal specialization program and to assume the oversight of New Mexico attorneys currently holding legal specialization certifications issued under the now withdrawn Rules of Legal Specialization until those certifications expire or a new certification program is offered by the State Bar.

Rules of Professional Conduct

Intervention Requirements When Lawyer is Severely Impaired
[Rule 16-501 NMRA]

The Supreme Court has approved a recommendation from the Code of Professional Conduct Committee to amend Rule 16-501 NMRA to require lawyers with managerial or direct supervisory authority to take action when there is a concern that a lawyer under their managerial or supervisory authority is exhibiting signs of severe impairment of the lawyer's cognitive function. Intervention measures could include speaking directly with the lawyer to encourage him or her to seek assistance or making confidential reports to the New Mexico Judges and Lawyers Assistance Program or Office of Disciplinary Counsel.

Legal Specialization Programs Operated by the State Bar of New Mexico
[Rule 16-704 NMRA]

The Supreme Court has approved an amendment to Rule 16-704 NMRA that permits attorneys to hold themselves out as legal specialists when certified as a specialist by the State Bar of New Mexico. The amendment recognizes the authority of the State Bar, in its discretion, to develop a new legal specialization program for attorneys licensed in New Mexico now that the Rules of Legal Specialization (see above) will be withdrawn. The Supreme Court order approving the rule changes regarding legal specialization in New Mexico also permits the State Bar to assume the oversight of attorneys currently holding legal specialization certifications until such time that those certifications expire by their own terms or the State Bar offers a new legal specialization program for such attorneys, whichever comes first, provided that such attorneys meet all requirements established by the State Bar for continued certification as a legal specialist in their chosen area of law.

Statewide Alimony Guidelines

Changes to Alimony Guidelines in light of Federal Tax Law Changes
[Alimony Guideline Worksheet]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee and its Statewide Alimony Guidelines Subcommittee to revise the current Alimony Guideline Worksheet in light of changes to the federal tax law treatment of alimony under the Tax Cut and Jobs Act of 2017. The revised worksheet and report of the subcommittee will be published and distributed for use in New Mexico and is available for viewing on the New Mexico Judiciary website. The revised worksheet takes effect on January 1, 2019.

Uniform Jury Instructions - Civil

Contracts and UCC Sales
[Chapter 8 Introduction and UJIs 13-807, 13-808, 13-812, 13-817, 13-824, 13-826, 13-827, 13-828, 13-831, 13-832, 13-840, 13-843, 13-843A, and 13-860 NMRA; and Withdrawn UJIs 13-809, 13-844, 13-845, 13-846, 13-847, 13-848, and 13-849 NMRA]

The Supreme Court has approved a recommendation from the UJI-Civil Committee to amend the Chapter 8 Introduction, and UJIs 13-807, -808, -812, -817, -824, -826, -827, -828, -831, -832, -840, -843, -843A, and -860 NMRA; and to withdraw UJI 13-809, -844, -845, -846, -847, -848, and -849 NMRA.

The Supreme Court approved the recommendation of the UJI-Civil Committee to amend Chapter 8 of the Civil Uniform Jury Instructions, which currently encompasses common law contracts cases and UCC sales cases. To address inconsistencies, inaccuracies, and confusing omissions relating to contracts for the sale of goods under the Uniform Commercial Code, all provisions in Chapter 8 related to UCC sales have been eliminated. Many of the provisions in Chapter 8 also are in need of revision to correct inconsistencies, inaccuracies, and omissions related to common law contracts actions. At this time, however, the amendments to Chapter 8 have been limited to removing all provisions in Chapter 8 intended for use in UCC sales cases. As the

committee completes its work on Chapter 8 as it relates to common law contract actions, the committee anticipates submitting additional recommendations to the Supreme Court to publish for public comment.

Uniform Jury Instructions - Criminal

References to “The Lazy Lawyer’s Guide” [UJIs 14-141 and 14-301 NMRA]

The Supreme Court has approved the UJI-Criminal Committee’s recommendation to update to the committee commentary to UJIs 14-141 NMRA and 14-301 NMRA. The amendments remove outdated references to “The Lazy Lawyer’s Guide to Criminal Intent in New Mexico,” which is no longer part of the New Mexico Rules Annotated.

Mens Rea for Second-Degree Murder [UJIs 14-210 and 14-211 NMRA]

The Supreme Court has approved the UJI-Criminal Committee’s recommendation to update to the committee commentary to UJIs 14-210 NMRA and 14-211 NMRA. The amendments discuss *State v. Suazo*, 2017-NMSC-011, ¶¶ 22-25, 390 P.3d 674, which clarified that an objective “should have known” *mens rea* is inadequate to support a second-degree murder conviction.

Essential Elements for Child Abandonment [UJIs 14-606, 14-607, and 14-623 NMRA; and New UJI 14-626 NMRA]

The Supreme Court has approved the UJI-Criminal Committee’s recommendation to amend UJIs 14-606 and 14-607 NMRA. The amendments respond to *State v. Stephenson*, 2017-NMSC-002, ¶ 16, 389 P.3d 272, which held that NMSA 1978, Section 30-6-1 (2009), criminalizes the intentional leaving or abandoning of a child under circumstances where the child was exposed to a risk of harm. The Court also approved the Committee’s recommendation to adopt a new UJI 14-626 NMRA to capture the definition of “intentionally” adopted by the Court of Appeals in *State v. Granillo*, 2016-NMCA-094, ¶ 17, 384 P.3d 1121, which held “that the *mens rea* for intentional child abuse by endangerment requires a conscious objective to achieve a result—endanger the child.” Finally, the Court approved amendments to Use Note 3 in UJI 14-623 NMRA, which require use of the new definition in UJI 14-626 instead of the general intent instruction in UJI 14-141 NMRA.

Essential Elements for Criminal Sexual Contact [UJIs 14-902 to 14-915 NMRA and UJIs 14-921 to 14-936 NMRA]

The Supreme Court has approved the UJI-Criminal Committee’s recommendation to amend to UJIs 14-902 to -915 NMRA and UJIs 14-921 to -936 NMRA to avoid conflating criminal sexual contact offenses with criminal sexual penetration offenses as cautioned in *State v. Tapia*, 2015-NMCA-048, ¶¶ 21, 25, 347 P.3d 738. To ensure that there is a clear distinction between criminal sexual contact and the greater offense of criminal sexual penetration, the word “vagina”

has been removed from the list of body parts provided for criminal sexual contact offenses. *See id.* ¶ 27.

Position of Authority Element for CSCM or CSPM Offenses
[UJIs 14-926 and 14-945 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJIs 14-926 and 14-945 NMRA to clarify the burden for proving a position of authority for criminal sexual contact of a minor and criminal sexual penetration of minor offenses in light of *State v. Erwin*, 2016-NMCA-032, 367 P.3d 905.

Avoiding Improper Comment on the Evidence
[UJIs 14-1673, 14-5022, 14-5028, 14-5034, 14-5035, 14-5132, 14-5160, 14-5161, 14-5180, 14-5183, 14-5184, 14-5185, and 14-5186 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJIs 14-1673, 14-5022, 14-5028, 14-5034, 14-5035, 14-5132, 14-5160, 14-5161, 14-5180, 14-5183, 14-5184, 14-5185, and 14-5186 NMRA. The amendments remove the language "evidence has been presented" from the instructions to avoid any improper comment on the evidence by the court. In some of these instructions, the Court has also approved the Committee's recommendation to update to the Use Notes and Committee Commentary.

Multiple Conspiracies
[UJI 14-2810 NMRA and New UJIs 14-2810A, 14-2810B, and 14-6019B NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJI 14-2810 NMRA and to adopt new UJIs 14-2810A, 14-2810B, and 14-6019B NMRA, which provide comprehensive instructions for the crime of conspiracy. The amendments and new instructions respond to *State v. Gallegos*, 2011-NMSC-027, ¶ 55, 149 N.M. 704, 254 P.3d 655, which held that "the Legislature established . . . a rebuttable presumption that multiple crimes are the object of only one, overarching, conspiratorial agreement subject to one, severe punishment set at the highest crime conspired to be committed." The instructions address single conspiracies with single or multiple objectives, as well as cases involving multiple distinct conspiracies. In particular, UJI 14-2810B provides guidance to the jury in deciding whether separately charged conspiracies constitute separate agreements or only one overarching conspiracy.

Essential Elements for Possession of Drug Paraphernalia
[New UJI 14-3107 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to adopt a new UJI 14-3107 NMRA to offer courts and practitioners a uniform instruction for possession of drug paraphernalia, a misdemeanor offense that is frequently instructed alongside trafficking offenses or as a lesser-included offense of drug possession. The new instruction tracks the statutory language in NMSA 1978, Section 30-31-25.1, and also relies on the existing definitional instruction for possession itself in UJI 14-130 NMRA. New committee commentary seeks to address common issues arising in drug paraphernalia cases.

Defense of Self or Another Using Nondeadly Force Resulting in Death
[UJIs 14-5181 and 14-5182 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJIs 14-5181 and 14-5182 NMRA, consistent with the holding in *State v. Romero*, 2005-NMCA-060, ¶ 13, 137 N.M. 456, 112 P.3d 1113. *Romero* recognizes that a nondeadly self-defense or defense of another instruction would be appropriate in a homicide case where the force used by the defendant ordinarily would not create a substantial risk of death or great bodily harm but where death nevertheless results. Additionally, the language "evidence has been presented" has been removed from these instructions to avoid any improper comment on the evidence by the court.

Self Defense; Duty to Retreat
[UJI 14-5190 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJI 14-5190 NMRA in response to *State v. Anderson*, 2016-NMCA-007, ¶ 13, 364 P.3d 30, which held that the instruction was critical to a jury's ability to understand the objective "reasonable person" prong of self defense and akin to an elements instruction. Accordingly, a proposed new use note recognizes that use of the instruction is mandatory in cases where it is in issue. The proposed amendments to UJI 14-5190 also facilitate its use in cases involving defense of another or defense of property.

**The full text of the new rule amendments summarized above can be viewed on
the New Mexico Compilation Commission's website at
<http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx>**