

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE
FOR THE DISTRICT COURTS AND UNIFORM JURY INSTRUCTIONS - CRIMINAL**

The Supreme Court is considering whether to adopt proposed amendments to the Rules of Criminal Procedure for the District Courts and Uniform Jury Instructions - Criminal.

If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received on or before November 16, 2009, 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.

5-605. Jury trial.

A. **Trial by jury; waiver.** Criminal cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the state.

B. **Alternate jurors.** In any criminal case, the district court may direct that not more than six jurors, in addition to the regular jury, be called and impanelled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to a like examination and challenges for cause, take the same oath, and have the same functions, powers, facilities and privileges as the regular jurors.

C. **Discharge; general rule.** Except in felony cases in which the death penalty may be imposed and a single jury is used for trial and sentencing, an alternate juror who does not replace a regular juror shall be discharged before the jury retires to consider its verdict.

D. **Findings and conclusions; when required.** In a case tried without a jury, the court shall make a general finding and shall, in addition, make specific findings of fact and conclusions of law on all ultimate facts and conclusions of law upon which written requested findings and conclusions have been filed within ten (10) days after the making of the general finding by the court, or within such time as the court may designate.

Committee commentary. — Although titled "Jury trial", this rule does not deal exclusively with the right to a jury trial but with procedure for both jury and nonjury cases. For comments on the right to a jury trial, see the commentary to Rule 5-301. For the procedure governing the selection of jurors, *see* Rule 5-606 and 38-5-13 and 38-5-14 NMSA 1978.

Under prior law, the defendant could waive a jury trial for a "high court" misdemeanor by proceeding to trial before the court without a jury and without making any objections. *State v. Marrujo*, 79 N.M. 363, 443 P.2d 856 (1968). Under Paragraph A of this rule, all trials in the district court, except for petty misdemeanors, are by jury unless the defendant waives the jury. The state may refuse to consent to a waiver by the defendant and thereby require the matter to be tried by a jury. *See State ex rel. Gutierrez v. First Judicial Dist. Ct.*, 52 N.M. 28, 191 P.2d 334 (1948).

Paragraph B of this rule was added in 1979. The contents of this paragraph were formerly found in Paragraph E of Rule 5-606. This paragraph is derived from Paragraph B of Rule 1-047 and is consistent with American Bar Association Standards Relating to Trial by Jury, Section 2.7 (Approved Draft 1968).

Paragraph C of this rule was added in 1979 to clarify when alternate jurors are to be discharged.

Paragraph D of this rule covers the procedure for judgment in a nonjury case. The court must make a finding of guilty or not guilty. If the finding is guilty, requested findings of fact and conclusions of law may be submitted by the parties within ten (10) days or such time as the court designates. The court is then required to file a decision containing findings of fact and conclusions of law, presumably before announcing the judgment and sentence. *Cf.* Paragraph C of Rule 5-614 and Paragraph A of Rule 5-701. *Compare*, Rule 1-052.
