

PROPOSED REVISIONS TO THE METROPOLITAN COURT RULES

The Metropolitan Court Rules Committee is considering whether to recommended proposed amendments to the Metropolitan Court Rules for the Supreme Court's consideration.

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 23, 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.

7-504. Discovery; cases within metropolitan court trial jurisdiction.

A. **Disclosure by prosecution.** Unless a different period of time is ordered by the trial court, within thirty (30) days after arraignment or the date of filing of a waiver of arraignment, the prosecution shall disclose and make available to the defendant for inspection, copying and photographing any records, papers, documents and statements made by witnesses or other tangible evidence in its possession, custody and control that are material to the preparation of the defense or are intended for use by the prosecution at the trial or were obtained from or belong to the defendant. Such disclosure shall include a written list of the names and addresses of all witnesses whom the prosecution intends to call at the trial, together with any statement made by the witness and any record of any prior convictions of any such witness that is within the knowledge of the prosecution. In cases involving charges of domestic violence, the prosecution may use the district attorney's office as the address for the alleged victim.

B. **Disclosure by defendant.** Unless a different period of time is ordered by the trial court, within forty-five (45) days after arraignment or the date of filing of a waiver of arraignment, the defendant shall disclose and make available to the prosecution for inspection, copying and photographing any records, papers, documents and statements made by witnesses or other tangible evidence in possession, custody and control of defendant which are intended for use by the defendant at trial. Such disclosure shall include a written list of the names and addresses of all witnesses whom the defendant intends to call at the trial, together with any statement made by the witness and any record of any prior convictions of any such witness that is within the knowledge of the defendant.

C. **Pre-trial interviews by statement or deposition.**

(1) **Statements.** If requested by either party, any person, other than the defendant, with information that is subject to discovery, shall give a statement. A party may obtain the statement by serving a written notice of statement upon the person to be examined and upon the other party not less than fourteen (14) days before the date scheduled for the statement. The party requesting the statement must make reasonable efforts to confer in good faith with opposing counsel and the person to be examined regarding scheduling of a statement before serving a notice of statement. For any case in which the defendant faces potential incarceration upon conviction, [A]

a subpoena, signed by the judge assigned to the case, may also be served to secure the presence of the person to be examined or the materials to be examined during the statement. A party seeking a subpoena shall file a written motion requesting subpoena to the judge, which motion shall set forth good cause or a reasonable basis for the subpoena. Unless the judge denies the motion in writing within five (5) business days of filing of the motion, the request for subpoena shall be deemed approved and the requesting party shall sign the subpoena. If the judge denies the motion, the judge shall state the reason for the denial in writing, and the requesting party may file a motion for reconsideration and hearing on the merits. Such motion for reconsideration shall be set within five (5) business days of the filing of the motion. A subpoena will only be issued ~~[upon a showing that the party requesting the subpoena made good faith efforts to procure the appearance of the witness without the need for a subpoena]~~ after good faith efforts to secure the statement have been unsuccessful. Either party may record the statement.

(2) **Depositions.** A deposition may be taken pursuant to this rule upon:

(a) agreement of the parties; or

(b) order of the court, upon a showing that the deposition is necessary to

avoid injustice.

D. **Scope of discovery.** Unless otherwise limited by order of the court, the parties may obtain discovery regarding any matter, not privileged, that is relevant to the offense charged or the defense of the accused person, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

E. **Time and place of statement or deposition.** Unless agreed to by the parties, any statement or deposition allowed under this rule shall be conducted at such time and place as ordered by the court.

F. **Deadline for statement or deposition.** Absent the prior approval of the assigned trial judge, a statement or deposition may not be scheduled more than one hundred (100) days after arraignment or the filing of a waiver of arraignment. If a party needs an extension of time, the party must obtain court approval prior to the expiration of the one hundred (100) day period. Failure to comply with this rule shall be deemed a waiver of the right to take a statement or deposition.

G. **Continuing duty to disclose.** If a party discovers additional material or witnesses that the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

H. **Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials, grant a continuance, or prohibit the party from calling a witness, or prohibit the party from introducing in evidence the material, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney, party or witness in contempt of court.

I. **Statement defined.** As used in this rule, "statement" means:

(1) a written statement made by a person and signed or otherwise adopted or approved by such person;

(2) any mechanical, electrical or other recording, or a transcription thereof, which

is a recital of an oral statement; and

(3) stenographic or written statements or notes which are in substance recitals of an oral statement.

[As amended, effective January 1, 1994; October 1, 1996; September 15, 1997; as amended by Supreme Court Order 05-8300-21, effective January 1, 2006; by Supreme Court Order 07-8300-07, effective May 21, 2007; by Supreme Court Order 07-8300-32, effective November 15, 2007; as amended by Supreme Court Order _____, effective _____.]

Committee commentary. — Under Paragraphs A and B, the prosecution and defense are only required to disclose and permit inspection, copying or photographing of records, papers, documents and recorded statements of witnesses at the place where the records or statements are located. The expense of copying or photographing is to be paid by the party requesting a copy or photograph.
