

**PROPOSED REVISIONS TO THE CIVIL AND CRIMINAL FORMS
PROPOSAL 2019-005**

March 4, 2019

The Committee for Improvement of Jury Service in New Mexico has recommended amendments to Forms 4-602C and 9-513C 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.

4-602C. Juror questionnaire.

[For use with Rules 1-047, 2-603, 3-603 NMRA]

JUROR QUESTIONNAIRE FORM

Juror Badge Number: _____

Please answer all questions, [~~1-35~~] 1-19, and **SIGN**. The Juror Questionnaire will be provided to the attorneys, parties, and judges in all cases you may be selected to hear as a juror. The answers you provide will aid in the process of selecting a jury. If you do not understand a question, please place a question mark (?) next to the question. **If you do not have enough room to answer the question, please use the space [~~in question 35~~] provided after question 19 or a separate sheet of paper.** If there is a question you would rather discuss with the judge and attorneys in private, please indicate with an asterisk (*). Thank you for your cooperation.

[~~Date of jury service:~~ day _____ month _____]

1. Legal name and former names: _____

2. Gender: [Male _____ Female _____] _____
3. ~~[Date of birth]~~ Birth year: _____
~~[Birth place (city and state, country if outside the United States):~~ _____

4. ~~How long have you lived in New Mexico?~~ _____
5. ~~In which New Mexico county do you live?~~ _____
~~How long?~~ _____]
4. What is your race or ethnic background? _____
- ~~[6:]5. [Which town or city]~~ In which neighborhood and/or area do you live~~[-in]~~?

~~[Neighborhood?~~ _____
~~What major intersection is closest to your home?~~ _____

- 7.] Where else have you lived (city, state, country)? _____
- ~~[8:]6.~~ What is your marital status? single _____ married _____
domestic partner _____ separated _____ divorced _____ widowed _____
7. If you are married or in a domestic partnership, please provide spouse's/partner's full name and occupation. _____
- ~~[9.]~~ What is your ethnic background? _____
10. ~~Do you own or rent your home? own _____ rent _____]~~
8. Do you have any children or step children? Yes _____ No _____
How many? _____ ages _____ occupations _____
- ~~[11.]~~ Your occupation: _____
~~(If retired or unemployed please state, and also state your previous occupation.)~~ _____
12. ~~If employed please state:]~~
9. Name of current or most recent employer and place of work: _____
Occupation/~~[Job]~~job title and duties: _____
Dates of employment: _____
~~[Time worked there:~~ _____
_____ Normal working hours: _____
_____ How many hours per week do you work? _____

13. Do you have a second job? Yes _____ No _____

14. What other jobs have you had as an adult? _____

[15.]10. How many years of schooling have you completed? _____

Highest level completed/degree[? high school or GED _____ associate _____
trade or vocational school _____ bachelor _____ master _____ Ph.D. _____ M.D. _____
J.D. _____]

Major areas of study: _____

[16. Have you served in the military? Yes _____ No _____

Highest rank: _____]

[17.]11. Do you belong to or participate in any religious, civic, social, union, professional, fraternal, political, or recreational organizations? [Yes _____ No _____

Organization: _____ Office held: _____] Please list all:

[18.]12. Current [voter registration: Democrat _____ Republican _____

Not registered _____ No party selected _____

Other, please specify: political party affiliation: _____

[19. If you are married or in a domestic partnership, please provide spouse's/partner's full name and occupation: _____

20. Do you have any children or stepchildren? Yes _____ No _____

How many? _____ ages _____ occupations _____]

[21. Have you ever been a witness in a court proceeding? Yes _____ No _____

If yes, what type of case was it? civil _____ criminal _____

What were the circumstances? _____]

13. Have you or any member of your immediate family been the victim of a crime?

Yes _____ No _____ If yes, who was the victim? _____ What crime?

When? _____ Was an arrest made? Yes _____ No _____

[22.]14. Have you ever served as a juror? Yes _____ No _____

[If yes, year: _____ court or location: _____ case type: _____

If yes, year: _____ court or location: _____ case type: _____

Were you ever the foreperson? Yes _____ No _____

If yes, courts: _____ years: _____]

(If yes please check) Grand jury _____ Civil _____ Criminal _____

[23. Have you ever had an injury that required hospitalization or extended medical care?

Yes _____ No _____

If yes, what was the injury? _____

____ Did the injury cause you to lose time from work? Yes ____ No ____
____ If yes, how long? _____

24. ____ Have you or [any member of your family ever filed a civil suit against someone?]
____ Yes ____ No ____
____ If yes, please explain: _____]

[25:]15. Have you or [any member of your family] anyone close to you ever sued anyone or
been sued? Yes ____ No ____
If yes, please explain: _____

[26:]16. Have you or an immediate family member ever been an agent, employee, or
representative of an insurance company? Yes ____ No ____
[If yes, who and relationship to you: _____]

27. ____ Have you or any member of your immediate family been the victim of a crime? ____
____ Yes ____ No ____
____ If yes, who was the victim? _____
____ What crime? _____ When? _____
____ Was an arrest made? Yes ____ No ____]

[28:]17. Have you or an immediate family member been a defendant in a criminal case?
Yes ____ No ____
If yes, [who and relationship to you?] please explain: _____
[Crime accused of committing? _____]
____ Was there a conviction? Yes ____ No ____]

[29:]18. Have you[;] or any family member[; or close friend] ever been employed by[; or volunteered
for, any federal, state, or local] a court, law enforcement agency[; a], jail[;] or prison[or
detention center;], or [a district attorney or other prosecuting] any attorney's office?
Yes ____ No ____

If yes, [who?] name of employer: _____
[Relationship to you: _____]
____ Position held: _____
____ Dates of employment: _____
____ Name of agency, or attorney and office: _____

30. ____ Have you or any family member ever worked for any other attorney? Yes ____ No ____
____ If yes, who? _____
____ Relationship to you: _____
____ Position held: _____
____ Dates of employment: _____
____ Name of attorney and office: _____

31. ____ Have you or any family member ever been represented by an attorney or law office?

____ Yes ____ No ____

____ If yes, name of attorney and office: _____]

[32:]19. Do you have a physical or mental disability of which we need to be aware?

Yes ____ No ____

Are you presently taking any medication that may affect your ability to serve as a juror? Yes
____ No ____

If yes, are there any special accommodations, services, or assistance we can provide during your jury service? [Yes ____ No ____

____ Please explain:] _____

[33. ____ Are you presently taking any medication that may affect your ability to serve as a juror? Yes
____ No ____

____ If yes, please explain: _____

34. ____ Is there any reason you could not serve as a juror? Yes ____ No ____ (If you are requesting an excusal or postponement for this reason, you must complete and submit the Request for Postponement, Excusal, or Exemption Form)

____ If yes, please explain: _____

35:]Use this space for any additional comments: _____

I SWEAR OR AFFIRM THAT THE [ABOVE] INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of prospective juror, or preparer
(if different than prospective juror)

Date

Signature of preparer, if different than
prospective juror

Date

Please return completed Juror Qualification and Juror Questionnaire forms to the court listed on the summons you received.]

[Approved by Supreme Court Order No. 17-8300-016, effective December 31, 2017; as amended by Supreme Court Order No. _____, effective _____.]

9-513C. Juror questionnaire.

[For use with Rules 5-606, 6-605, 7-605 NMRA]

JUROR QUESTIONNAIRE FORM

Juror Badge Number: _____

Please answer all questions, ~~[1-35]~~ 1-19, and **SIGN**. The Juror Questionnaire will be provided to the attorneys, parties, and judges in all cases you may be selected to hear as a juror. The answers you provide will aid in the process of selecting a jury. If you do not understand a question, please place a question mark (?) next to the question. **If you do not have enough room to answer the question, please use the space ~~[in question 35]~~ provided after question 19 or a separate sheet of paper.** If there is a question you would rather discuss with the judge and attorneys in private, please indicate with an asterisk (*). Thank you for your cooperation.

[Date of jury service: day _____ month _____]

1. Legal name and former names: _____

2. Gender: [Male _____ Female _____] _____

3. ~~[Date of birth]~~ Birth year: _____
~~[Birth place (city and state; country if outside the United States):~~ _____

4. ~~How long have you lived in New Mexico?~~ _____

5. ~~In which New Mexico county do you live?~~ _____
~~How long?~~ _____]

4. What is your race or ethnic background? _____

~~[6:]~~5. ~~[Which town or city]~~ In which neighborhood and/or area do you live~~[in]~~? _____

~~[Neighborhood?~~ _____
~~What major intersection is closest to your home?~~ _____

7.] Where else have you lived (city, state, country)? _____

~~[8:]~~6. What is your marital status? single _____ married _____
 domestic partner _____ separated _____ divorced _____ widowed _____

7. If you are married or in a domestic partnership, please provide spouse's/partner's full name and occupation. _____

~~[9.]~~ What is your ethnic background? _____

10. ~~Do you own or rent your home? own _____ rent _____]~~

8. Do you have any children or step children? Yes _____ No _____
How many? _____ ages _____ occupations _____

~~[11. Your occupation: _____
(If retired or unemployed please state, and also state your previous occupation.)~~

~~12. If employed please state:]~~

~~9. Name of current or most recent employer and place of work: _____
Occupation/[Job]job title and duties: _____
Dates of employment: _____
[Time worked there: _____
Normal working hours: _____
How many hours per week do you work? _____~~

~~13. Do you have a second job? Yes _____ No _____~~

~~14. What other jobs have you had as an adult? _____]~~

~~[15:]10. How many years of schooling have you completed? _____
Highest level completed/degree[? high school or GED _____ associate _____
trade or vocational school _____ bachelor _____ master _____ Ph.D. _____ M.D. _____
J.D. _____]
Major areas of study: _____~~

~~[16. Have you served in the military? Yes _____ No _____
Highest rank: _____]~~

~~[17:]11. Do you belong to or participate in any religious, civic, social, union, professional, fraternal,
political, or recreational organizations? [Yes _____ No _____
Organization: _____ Office held: _____] Please list all:
_____~~

~~[18:]12. Current [voter registration: Democrat _____ Republican _____
Not registered _____ No party selected _____
Other, please specify:] political party affiliation: _____~~

~~[19. If you are married or in a domestic partnership, please provide spouse's/partner's full name
and occupation: _____~~

~~20. Do you have any children or stepchildren? Yes _____ No _____
How many? _____ ages _____ occupations _____]~~

~~[21. Have you ever been a witness in a court proceeding? Yes _____ No _____
If yes, what type of case was it? civil _____ criminal _____
What were the circumstances? _____]~~

13. Have you or any member of your immediate family been the victim of a crime?

Yes _____ No _____ If yes, who was the victim? _____ What crime? _____
 _____ When? _____ Was an arrest made? Yes _____ No _____
 [22:]14. Have you ever served as a juror? Yes _____ No _____
 [If yes, year: _____ court or location: _____ case type: _____]
 _____ If yes, year: _____ court or location: _____ case type: _____
 _____ Were you ever the foreperson? Yes _____ No _____
 _____ If yes, courts: _____ years: _____]
 (If yes please check) Grand jury _____ Civil _____ Criminal _____
 [23.] _____ Have you ever had an injury that required hospitalization or extended medical care?
 _____ Yes _____ No _____
 _____ If yes, what was the injury? _____
 _____ Did the injury cause you to lose time from work? Yes _____ No _____
 _____ If yes, how long? _____

 24. _____ Have you or [any member of your family ever filed a civil suit against someone?]
 _____ Yes _____ No _____
 _____ If yes, please explain: _____]
 [25:]15. Have you or [any member of your family] anyone close to you ever sued anyone or
 been sued? Yes _____ No _____
 If yes, please explain: _____
 [26:]16. Have you or an immediate family member ever been an agent, employee, or
 representative of an insurance company? Yes _____ No _____
 [If yes, who and relationship to you: _____]
 27. _____ Have you or any member of your immediate family been the victim of a crime?
 _____ Yes _____ No _____
 _____ If yes, who was the victim? _____
 _____ What crime? _____ When? _____
 _____ Was an arrest made? Yes _____ No _____]
 [28:]17. Have you or an immediate family member been a defendant in a criminal case?
 Yes _____ No _____
 If yes, [who and relationship to you?] please explain: _____
 [Crime accused of committing? _____]
 _____ Was there a conviction? Yes _____ No _____]
 [29:]18. Have you[, or any family member[, or close friend] ever been employed by[, or volunteered
 for, any federal, state, or local] a court, law enforcement agency[, a], jail[, or prison[, or
 detention center;], or [a district attorney or other prosecuting] any attorney's office?
 Yes _____ No _____
 If yes, [who?] name of employer: _____

- [Relationship to you: _____
 Position held: _____
 Dates of employment: _____
 Name of agency, or attorney and office: _____
30. Have you or any family member ever worked for any other attorney? Yes _____ No _____
 If yes, who? _____
 Relationship to you: _____
 Position held: _____
 Dates of employment: _____
 Name of attorney and office: _____
31. Have you or any family member ever been represented by an attorney or law office?
 Yes _____ No _____
 If yes, name of attorney and office: _____
- [32:]19. Do you have a physical or mental disability of which we need to be aware?
 Yes _____ No _____
 Are you presently taking any medication that may affect your ability to serve as a juror? Yes _____ No _____
 If yes, are there any special accommodations, services, or assistance we can provide during your jury service? [Yes _____ No _____
 Please explain:] _____
- [33. Are you presently taking any medication that may affect your ability to serve as a juror? Yes _____ No _____
 If yes, please explain: _____
34. Is there any reason you could not serve as a juror? Yes _____ No _____ (If you are requesting an excusal or postponement for this reason, you must complete and submit the Request for Postponement, Excusal, or Exemption Form)
 If yes, please explain: _____
- 35.]Use this space for any additional comments: _____

I SWEAR OR AFFIRM THAT THE [ABOVE] INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of prospective juror, or preparer _____ Date _____
 (if different than prospective juror)

 Signature of preparer, if different than _____ Date _____
 prospective juror

Please return completed Juror Qualification and Juror Questionnaire forms to the court listed

~~on the summons you received.]~~

[Approved by Supreme Court Order No. 17-8300-016, effective December 31, 2017; as amended
by Supreme Court Order No. _____, effective _____.]

Google Groups

Fwd: Comment on proposed rule change - Jury questionnaires

Mia Correo <miacorre@mail.com>

Mar 6, 2019 9:46 AM

Posted in group: nmsupremecourtclerk

Speaking of needing a little more time! Mr. Moya, my last sentence should read "Jurors should always be given the opportunity to speak privately to the lawyers and the Judge on the case whether or not they place an "*" on their questionnaires."

Thank you,
Pilar

SUPREME COURT OF NEW MEXICO
FILED

Sent from my iPad

MAR 6 - 2019

Begin forwarded message:

**From:** Mia Correo <miacorre@mail.com>**Date:** March 6, 2019 at 9:02:04 AM MST**To:** nmsupremecourtclerk@nmcourts.gov**Cc:** Pilar Tirado Murray <jurisprudence@writeme.com>**Subject:** Comment on proposed rule change - Jury questionnaires

Dear Mr. Moya,

Thank you for the opportunity to comment on the proposed changes to the jury questionnaire. The proposed amendments appear to streamline the process and include a signed affirmation of truth. That's very helpful but the removal of four relevant questions causes me concern: questions #16 (military service), #19 (spouse/occupation), #20 (children, ages, occupation) and #21 (witness in a court proceeding). All four are critical questions for exploring areas of potential bias and connection that jurors may have "forgotten" or overlooked. Individuals who serve in the reserves, have spouses/children in school or employed in small town banks as tellers, teachers, counselors, gas stations/convenience store attendants, hospital employees, ambulance EMT's, etc. or who serve as professional witnesses may have crossed paths with one or more of the parties without, at first, realizing it. Keeping these relevant questions in the juror questionnaire provides all sides with the opportunity to explore juror's answers and requires those answers to be honest.

My last comment is that reliance on an asterisk "*" to advise attorneys that jurors would like to provide or explain their response in private should not be exclusive. Oftentimes, jurors, as they start talking and listening to their peers, recall experiences and events that they want to share privately, but not in public. This is also a function of aging and our increasingly busy/distracting lives. Our minds need time to focus, listen, hear. Jurors should always be given the opportunity to speak to the lawyers whether or not they place an "*" on their questionnaires.

Thank you.

Pilar Tirado Murray
Murray Law Firm

3/6/2019

Fwd: Comment on proposed rule change - Jury questionnaires - Google Groups

P.O. Box 26085
Albuquerque, NM. 87125
(575) 779-7054/jurisprudence@write-me.com

Sent from my iPad



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Tue, Mar 19, 2019 at 1:49 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name
Jasmine Solomon

Phone Number
5056995681

Email
name@host.com

Proposal Number
138307

Comment
To Whom It May Concern,

SUPREME COURT OF NEW MEXICO
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MAR 19 2019

A handwritten signature in black ink, appearing to be "JPM" followed by a horizontal line.

I am concerned that the proposed (proposal 2019-005) may cause attorneys to spend time questioning potential jurors on the topics addressed in #16, #19, #20, #21 rather than allowing that information to be provided in advance in a questionnaire format. Questionnaires traditionally save the Court and the parties a considerable amount of time. Lawyers on both sides are typically given a very limited amount of time to conduct voir dire. Depending on the facts of the case, whether one has served in the military, what type of occupation one's spouse or one's child has, and whether one has ever served as a witness at trial may involve answers that may have a significant bearing on the facts of the case and on a juror's potential bias, based on experience or emotional connection to a family member's experience.

Sincerely,
Jasmine Solomon, Assist' Public Defender.

Upload

New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Wed, Apr 3, 2019 at 12:48 PM

Your Name
Charlotte ItohPhone Number
5052434541Email
charlotte@thefinelawfirm.comProposal Number
2019-005**Comment**

As a civil litigator, I am concerned that the proposed new juror questionnaire could deprive attorneys of information that is very valuable to the jury selection process. While attorneys are able to question potential jurors during voir dire, increasingly judges are limiting the time that is allocated to voir dire. Thus, gathering as much information as possible from a potential juror's questionnaire is critical. For example, knowing if a potential juror has worked for or been represented by an attorney (and which attorney), has performed military service, or has a spouse who is employed by someone in the opposing party's field, can all be valuable information to build a picture of the potential juror's bias or possible bias. The goal of the parties, the judge, and the attorneys is to select as impartial a jury as possible who are suited to hear that particular case. Limiting the questions that potential jurors must answer in writing prior to voir dire will not serve this goal.

Upload

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APR - 3 2019

A handwritten signature in black ink, appearing to be "C. Itoh", written over the date stamp.

Google Groups

SUPREME COURT OF NEW MEXICO
FILED**Proposed changes to 9-513C. Juror questionnaire**

APR - 3 2019

Megan Mitsunaga <mitsunagalaw@gmail.com>

Posted in group: nmsupremecourtclerk

Apr 3, 2019 1:07 PM



Hello Mr. Moya,

I am writing to express my concerns over the proposed removal and revision of several questions on the jury questionnaire which I believe are imperative to the right to a fair trial and which contribute to a fair and orderly jury selection process. Anecdotally, I must report that because there is no specific guidance on how long a Court must give the parties for voir dire, judges have become quite restrictive (as little as 30 minutes per party), leaving attorneys more reliant than ever on the information provided in these questionnaires.

As to new proposed question 5, it is conceivable for example that a potential juror would indicate only that they live in the northwest area of Albuquerque, an area stretching many miles and encompassing over a dozen neighborhoods. Instructing a juror to list their closest major cross streets allows the attorneys to have a better idea of whether the potential juror is familiar with the specific area of the alleged crime, for example.

As to removed question 14, a change in occupations is commonplace, and many times an individual may have had experience germane to a case or issue (former law enforcement, worked as a social worker, or worked in retail and is familiar with store which was robbed, for example), and which the attorneys would be unlikely to discover during voir dire if not prompted to explore this job history with the potential juror. Removing question 16 also presents the same issue, as a military background could mean anything from work as a cook all the way to firearms specialist, information which may be vital to explore depending on the type of criminal case.

As to removed questions 19 and 20, close familial relationships to individuals who are involved in law enforcement or related fields is an area which almost universally must be explored in a criminal jury voir dire, as these cases rely heavily and sometimes exclusively on the testimony of law enforcement officers. I have had cases where the question was asked during voir dire whether a juror or their spouse/child was in law enforcement, and having learned the name of the spouse on the questionnaire I was able to determine that the potential juror did not answer the question during the voir dire process and thus there was a challenge for cause. Oftentimes a juror and their spouse or child will not have the same surname, making it doubly difficult to determine if they are in fact related to a law enforcement officer, for example.

As to proposed amended question 18, I am troubled by the removal of the language concerning volunteer activity linked to law enforcement or a prosecutor's offices. Our local DA has a large collection of volunteer victim advocates who are intimately involved in cases handled by that office and who are emotionally invested in the success of those prosecutions and their prosecutors. Removing language encompassing this type of connection to the criminal justice system would potentially allow a juror who is predisposed to believe the State to move past voir dire and onto a jury.

Finally, as to the proposed removal of question 34, I have many times had a potential juror express themselves quite candidly at this question, expressing a religious belief that they cannot sit in judgment of another person, or that because of their history as an abuse victim they hold the belief that all child molesters should be executed. When the Court and the attorneys are aware of such a belief before voir dire, they can steer questions essentially around this individual, knowing that individual will be struck for cause based on that written answer. This is especially important if they have expressed in writing an opinion so inflammatory that if shared in the open portion of voir dire it might taint the entire venire.

I certainly understand the desire to streamline the questionnaire, and some of the redactions and recombined questions are logical and appropriate, but as expressed above, I do not wish to see the written questionnaire so reduced that it negatively impacts the parties' ability to conduct a productive and well informed voir dire process.

Thank you for your consideration of these concerns.

4/3/2019

Proposed changes to 9-513C. Juror questionnaire - Google Groups

Megan K. Mitsunaga
Law Office of Megan Mitsunaga PC
518 Slate Ave NW
Albuquerque, NM 87102
505-280-9548
mitsunagalaw@gmail.com

FROM: SECOND JUDICIAL DISTRICT COURT, CRIMINAL DIVISION

SUBJECT: Comments on Proposed Changes to Rules of Criminal Procedure and
UJI

TO: Supreme Court Rules of Criminal Procedure Committee; Supreme Court
Committee for the Improvement of Jury Service in New Mexico

DATE: April 3, 2019

Pursuant to the New Mexico Supreme Court's request for comments on a variety of recently-proposed Rule changes, the Criminal Judges in the Second Judicial District Court ("the Second") thank the Supreme Court for the opportunity to provide comments and offer suggestions as to: (1) Rule 5-705 NMRA (adding procedures for when the state asks for life imprisonment without possibility of release or parole (LWOP)), and; (2) Form 5-913C NMRA (mandatory juror questionnaire for criminal cases).

Rule 5-705:

1. The State's deadline to give notice that it intends to ask for LWOP should be no later than when the mandatory case status conference, see LR2-308(F)(2), is conducted, rather than within 90 days of arraignment as proposed. Having the deadline for notice match the status conference deadline allows for any issues raised by the intent to ask for LWOP to be addressed in the scheduling order, see LR2-308(F)(5), which is issued at the status conference. These matching deadlines will help ensure that the scheduling order in the case is reasonable for both parties, and will help reduce any adverse impact that LWOP notice could have on the defendant's investigation, for example, the ability to conduct thorough interviews, as well as the defendant's case strategy and ability to obtain experts.

a. As LR2-308 is a local pilot rule, the Second understands that outside of Bernalillo County the 90-day deadline may be sufficient. On the other hand, the Second is concerned that the 90-day deadline currently in the Rule would necessitate numerous continuances—something which LR2-308 was specifically designed to limit. The Second supports the goals of LR2-308—including the timely disposition of cases—and supports the limitation on continuances contained therein. We therefore suggest that the new Rule could alternatively provide that the deadlines set forth therein can be modified as part of any scheduling order after input from the parties. That would ensure it is clear that judges in the Second are permitted to modify the deadlines as necessary to comply with LR2-308; it would also allow judges throughout the rest of the state to modify the deadlines to address issues specific to their local jurisdiction. The current draft of the Rule allows judges to expand the time limit for good cause; it does not specifically allow a judge to shorten the deadline imposed in the Rule.

SUPREME COURT OF NEW MEXICO
FILED

APR - 3 2019



2. The deadlines for (a) a hearing on whether probable cause exists to believe aggravated circumstances exist that justify a request for LWOP, and (b) filing and deciding a motion for a bifurcated trial, should be earlier than the proposed deadlines of no later than 90 days prior to trial and no less than 10 days prior to trial to decide a motion to bifurcate. Moving these deadlines to earlier points in a case's timeline will help reduce any impact on jury selection from the State's intent to ask for LWOP. Many LWOP cases will be high profile and the attendant press coverage, if LWOP itself becomes an issue in the press, could lead to more prospective jurors being struck due to their exposure to the coverage.

- a. As above, an alternative would be to specify within the Rule that a judge may shorten deadlines, after a hearing, as part of the case scheduling order.

Form 9-315C (Jury Questionnaire):

The Second is concerned that the proposed changes could increase the amount of time parties spend in-person during voir dire asking general questions instead of making focused inquiries based upon the general information gleaned through the questionnaire. For example, the parties may inquire generally about military service or where else a prospective juror has lived (city, state, or country) besides the juror's current address, both of which the current questionnaire inquires, and are omitted from the proposed questionnaire. Several of the questions omitted in the new jury questionnaire are questions that the parties are likely to inquire about regardless of whether they are on the questionnaire itself.

New Mexico
CRIMINAL DEFENSE LAWYERS ASSOCIATION

PO Box 8324
Santa Fe, NM 87504
505.992.0050
www.nmcdla.org

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New Mexico Supreme Court
P O Box 848
Santa Fe, New Mexico 87504-0848

April 3, 2019

Dear Mr. Moya,

SUPREME COURT OF NEW MEXICO
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APR - 3 2019



As the President of the New Mexico Criminal Defense Lawyers Association (NMCDLA), I am submitting the following comments on proposed rule changes 2019-003, 005, 009, and 011.

Proposal 2019-003 - Mandatory joinder of delinquent acts in delinquency proceedings [Rule 10-212 NMRA]

NMCDLA strongly supports mandatory joinder in delinquency proceedings. Piecemeal prosecutions of juveniles should be clearly prohibited in the rules of procedure.

Proposal 2019-005 - Juror questionnaires [Forms 4-602C and 9-513C NMRA]

Jury selection is the most important part of trial. Parties must be allowed to gather as much information as needed from potential jurors to determine potential bias and to use preemptory strikes.

NMCDLA does not support removing any information gathering from juror questionnaires. NMCDLA is especially concerned with the proposal to eliminate the following questions, which will impede the parties' ability to get relevant information from jurors and slows down the jury selections process:

14) What other jobs have you had?

This information is frequently relevant to jury selection especially when a potential juror's former job involved social work, medical care, therapy, and/or working with drug/alcohol addiction.

19 & 20) Questions about spouses and children.

Information about a person's spouse and children helps parties uncover potential connections the juror might have with a witness or someone else connected to the case.

27) Have you or any member of your immediately family been the victim of a crime?

If a close family member has been a victim of a crime, that is information both sides need. Frequently potential jurors with those experiences have bias either against the defendant or the prosecution. This information frequently leads to follow up questions in jury selection that reveals bias.

34) Is there any reason you could not serve as a juror?

This is the only open question on the form that freely calls for jurors to express any bias. It frequently leads to successful cause excusals. It is very important to allow jurors to express bias on a form, rather than requiring they do so in a public jury selection.

Proposal 2019-009 - Preference for summons [Rule 5-208 NMRA]

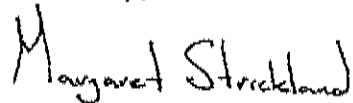
NMCDLA supports a preference for summons when practicable, especially for lower level offenses where there has been no probable cause determination, like there is in felony cases.

Proposal 2019-011 - Life without the possibility of release or parole procedures [New Rule 5-705 NMRA]

NMCDLA supports these procedural protections for defendants facing life without the possibility of parole, the highest penalty one can face in New Mexico Courts.

Please feel free to contact me with any questions.

Sincerely,



Margaret Strickland, President
575-523-4321
margaret@lawfirmnm.com

APR - 3 2019

Mr. Moya,



Please accept this as my comment on the Jury Questionnaire in Proposal 2019-005.

I understand, of course, that there are good reasons to seek a shorter questionnaire. I likewise understand that we have a longer questionnaire than most (all?) other states. Thus, I support some reconfiguring and culling.

That said, I can't think of a circumstance in which attorneys want *less* information about potential jurors. With the limited amount of voir dire given by many judges throughout the state, it is natural and reasonable for attorneys to want as much information up front, to make for a more efficient and useful jury selection process. Thus, my request to put back in a few of the questions that have been removed. Having been a judge, prosecutor, and defense attorney gives me a broad perspective on such an important issue.

First, I believe the full birthdate should be put back (question 3). Regularly, we have jurors with common names. In such cases, when trying to determine criminal history of such people, there are often people born in the same year, which makes it impossible to know if the current potential juror is someone that would be appropriate for a case. A full birthdate makes it much less likely for there to be any confusion. And, frankly, the thing that gets least honestly answered on the juror questionnaire (in my experience) is criminal history. A full birthdate is the best way to catch such dishonesty.

Next, former question 14 should be put back. A person could have had a long career in one field before going to a completely different job. But their experience in the former job might very easily be relevant to a case. Putting in former jobs as an adult seems to me to be one of the least intrusive questions we ask, while giving us a great deal of information. I know other comments have specifically mentioned the military service question. I also find that information helpful, but it should (ideally) be contained in the answer to the former jobs question.

Former question 31 has often been useful in getting people to admit things that should have been answered in criminal history. And I would think that in civil cases that would be information that attorneys would be very interested in knowing.

Question 34 is extraordinarily important, and I'm surprised it is proposed to be cut. This is the question that people who are absolutely not going to be good jurors will often answer as to why they wouldn't be good jurors. For instance, they will comment there about their religious convictions, or their distrust of the judicial system, or what have you. Frankly, when I'm in a hurry looking at juror questionnaires, that is the very first place I typically look, because that often controls whether I need to look at the rest of the questionnaire. I strongly urge the court to leave this question in.

Overall, I think a good job was done with the questionnaire, but I believe that these changes will better assist attorneys to do a good, efficient voir dire. Thank you for your consideration.

Jonathan L. Ibarra