

**PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2020-001**

March 3, 2020

The Appellate Rules Committee has recommended the adoption of new Rule 12-207.1 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 2, 2020, 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.

[NEW MATERIAL]

Rule 12-207.1. Expedited appeals from orders regarding assisted outpatient treatment.

A. **Scope.** This rule governs appeals from orders regarding assisted outpatient treatment under Section 43-1B-9 NMSA 1978. The provisions of Rules 12-201, 12-208, 12-210, and 12-404 NMRA shall not apply to appeals under this rule.

B. **Computation of Time.** All time periods set forth in this rule shall be construed as calendar days, and the manner of computing time set forth in Rule 12-308 NMRA for periods of less than eleven (11) days shall not apply. If the last day of a time period prescribed by this rule falls on a weekend, court holiday, or other day that the appellate court is closed or unavailable for filing, the required action shall be deemed timely if taken on the next day that the appellate court is open and available for filing. The additional three (3) day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time periods set forth in this rule. The appellate court shall not extend the time periods set forth in this rule.

C. **Initiating the appeal.**

(1) **Motion.** An appeal under this rule shall be initiated by filing a motion with the Clerk of the Court of Appeals within ten (10) days after the decision of the district court is filed. The motion shall specify the decision appealed from and shall include any materials deemed necessary for consideration of the matter by the appellate court, including any available audio

recording or stenographic transcript of the hearing in district court. The appellant shall pay the appropriate docket fee at the time of filing, subject to Rule 12-304 NMRA.

(2) **Notice.** The appellant shall give notice of the filing of the motion to the district court, trial judge, trial counsel for the appellee, the qualified professional whose affidavit accompanied the petition, and the court monitor who took the record.

(3) **No stay of proceedings.** An appeal under this rule does not stay the proceedings in the district court.

(4) **Title.** The motion shall bear the title, “motion for expedited appeal regarding assisted outpatient treatment.”

(5) **Sealing.** All court records related to these proceedings shall be automatically sealed as provided in Rule 12-314(C)(14) NMRA.

D. Appellate court review.

(1) **Initial evaluation.** Upon receipt of the motion, the appellate court clerk shall docket the appeal and present it to the court. The appeal may be submitted to a panel of three (3) judges for decision. Within five (5) days of the filing of the motion, the appellate court shall do one of the following:

(a) if the written order of the district court does not contain findings in accordance with Sections 43-1B-3 and -8 NMSA 1978 of the Assisted Outpatient Treatment Act, issue an order of limited remand to the district court for the entry of an order containing those findings;

(b) if it appears that the appeal is without merit, affirm the decision of the district court in accordance with Subparagraph (D)(3) of this rule; or

(c) order the appellee to file a response within five (5) days of the date the order requesting the response is filed.

(2) **Remand.** If the appellate court remands the case to the district court for the entry of an order containing the findings required by Sections 43-1B-3 and -8 NMSA 1978 of the Assisted Outpatient Treatment Act, once the district court order is entered or the time designated in the remand order has expired, the appellant shall be responsible for filing a notice with the Court of Appeals within twenty-four (24) hours of the order being entered or the time having expired. The notice shall inform the Court of Appeals of the status of proceedings in the district court. The notice shall bear the title, “notice regarding remand in expedited appeal from assisted outpatient treatment.”

(3) **Disposition.**

(a) **Time.** The Court of Appeals shall review the appeal in an expedited manner.

(i) If the Court of Appeals has ordered the appellee to file a response, the court shall dispose of the appeal within seven (7) days after the response is filed. If the appellee fails to file a timely response, the court shall dispose of the appeal within five (5) days after the response was due.

(ii) If the Court of Appeals has issued an order of remand, the court shall proceed under either Subparagraph (D)(1)(b) or (D)(1)(c) of this rule within five (5) days of the appellant’s filing of the notice regarding remand in expedited appeal from assisted

outpatient treatment. If the district court has failed to act within the time provided in the appellate court's order of limited remand, reversal may be appropriate.

(b) *Effect.* The appellate court's final disposition shall be effective in accordance with the following provisions:

(i) A final disposition in the Court of Appeals shall not be subject to a motion for rehearing and shall not be effective until eleven (11) days after filing the disposition with the appellate court clerk. If a petition for writ of certiorari is filed under Paragraph E of this rule, the Court of Appeals' disposition shall be automatically stayed pending the outcome of the proceeding on certiorari. If a petition for writ of certiorari is not filed within the time deadline in Paragraph E of this rule, the Court of Appeals shall immediately issue its mandate after the time deadline has expired.

(ii) A final disposition in the Supreme Court shall not be subject to a motion for rehearing, and its mandate shall issue immediately.

E. Further review by certiorari.

(1) A party may seek review of a final disposition of the Court of Appeals by filing a petition for writ of certiorari under Rule 12-502 NMRA no later than ten (10) days after the disposition is filed in the Court of Appeals. The time provisions in Rule 12-502(B) NMRA do not apply.

(2) The cover page of the petition shall be labeled "expedited petition for writ of certiorari." In all other respects, the form and content of a petition shall be governed by the provisions of Rule 12-502 NMRA.

(3) The petition may be submitted to a panel of three (3) justices for decision. The Supreme Court shall review the petition in an expedited manner. No response to the petition shall be filed except as directed by order of the Supreme Court.

(4) The final disposition of a petition shall be effective upon filing with the Supreme Court clerk and shall not be subject to a motion for rehearing. If the petition is denied, a copy of the Supreme Court order shall be immediately delivered to the Court of Appeals, which shall thereafter immediately issue its mandate in accordance with Rule 12-402(C) NMRA. If the petition is granted, the final decision disposing of the certiorari proceeding shall also constitute the mandate of the Supreme Court.

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