

# Legal Guide for Journalists



STATE BAR  
of NEW MEXICO

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## Overview

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This guide was created by the Bench/Bar Media Committee as a reference guide for journalists who cover the legal beat. It contains a glossary of terms that should assist the media in accurately reporting on legal proceedings.

While the guide's focus is on state courts, notes on federal court and a few general tips are also provided. The clerk's office of each court will be the best source for information as the clerk of court is the custodian of records in every case. Court documents become public information when they are docketed, and many court records are available online. Check with individual courts for availability. While attorneys involved in the cases may be contacted, judges are bound by a code of conduct that prohibits them from speaking about anything more than the procedural aspects of cases. Jurors are also off limits while a case is active. Further, speaking about a case in the presence of a juror constitutes the crime of jury tampering.

A few notes about federal courts (U.S. district courts): Although trials and courtroom proceedings are generally open to the public, photographing and broadcasting proceedings are prohibited. In addition, cell phones, pagers, tape recorders or other electronic devices are not allowed in the courtroom. Contact the court clerk before entering the court to learn what devices are permitted. Federal courts have exclusive jurisdiction over bankruptcy cases and bankruptcy courts are units of the U.S. district courts. Bankruptcy court proceedings are open to the public and news media unless extraordinary circumstances exist; e.g., matters under seal.

The chart on the following page describes the types of cases handled by each court. The courts are listed by hierarchy.

All courts offer resources to parties representing themselves (self-represented litigants). These resources may also be beneficial in providing informed coverage of the courts. Visit the court's Web site or contact the court clerk to obtain this information.

## What Lawyers Are Allowed to Say

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Following are excerpts of the N.M. Rules of Professional Conduct that govern what lawyers can tell divulge about a pending case. The rules are part of the *New Mexico Rules Annotated* (NMRA). Violations of these rules can be grounds for discipline.

### NMRA 16-306. Trial publicity.

**A. Extrajudicial statements.** A lawyer shall not make any extrajudicial or out-of-forum statement in a criminal proceeding that may be tried to a jury that the lawyer knows or reasonably should know:

- (1) is false; or
- (2) creates a clear and present danger of prejudicing the proceeding.

**B. Attorney's obligations with respect to other persons.** A lawyer shall make reasonable efforts to assure compliance with this rule by associated attorneys, employees and members of law enforcement and investigative agencies.

### NMRA 16-308. Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

...

E. Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 16-306.

## What Judges Are Allowed to Say

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Judges, like lawyers, are limited by disciplinary rules as to what they may say about a case. A judge may be suspended or removed from the bench for violating these rules.

### NMRA 21-300. A judge shall perform the duties of office impartially and diligently.

...

B. Adjudicative responsibilities.

...

- (10) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial hearing. The judge shall require similar abstention on the part or court personnel subject to the judge's direc-

tion and control. This subparagraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This subparagraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

C. Administrative responsibilities.

...

- (2) A judge shall inform and require the judge's staff, court officials and others subject to the judge's direction and control to observe the standards of confidentiality, fidelity and diligence that apply to the judge and to refrain from manifesting bias and prejudice in the performance of their official duties.

# Court Hierarchy

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**Federal Court**

*This court will hear these types of cases: cases that deal with the constitutionality of a law, cases involving the laws and treaties of the U.S., ambassadors and public ministers, disputes between two or more states, admiralty law, and bankruptcy.*

**New Mexico Supreme Court**

*This court has mandatory appellate jurisdiction over: criminal matters in which the sentence imposed is life in prison or the death penalty, appeals from the Public Regulation Commission, appeals from the granting of writs of habeas corpus, appeals in actions challenging nominations, and removal of public officials. Discretionary jurisdiction: denials of petitions for writ of habeas corpus, petitions for writ of certiorari to the Court of Appeals, other extraordinary writ matters, and certified questions either from the Court of Appeals or federal courts.*

**Court of Appeals**

*This court has mandatory jurisdiction in: civil, non-capital criminal, juvenile cases; discretionary jurisdiction in interlocutory decision cases and administrative agency appeals.*

**District Court**

*This court will hear these types of cases: tort, contract, real property rights, estate; exclusive domestic relations, mental health, appeals for administrative agencies and lower courts, miscellaneous civil jurisdiction; misdemeanor; exclusive criminal appeals jurisdiction; exclusive juvenile jurisdiction.*

**Bernalillo County Metropolitan Court**

*This court will hear these types of cases: tort, contract, landlord/tenant rights (\$0-10,000); felony first appearances; misdemeanor, DWI/DUI, domestic violence and other traffic violations.*

**Magistrate Court**

*This court will hear these types of cases: tort, contract, landlord/tenant rights (\$0-10,000); felony preliminary hearings; misdemeanor, DWI/DUI and other traffic violations.*

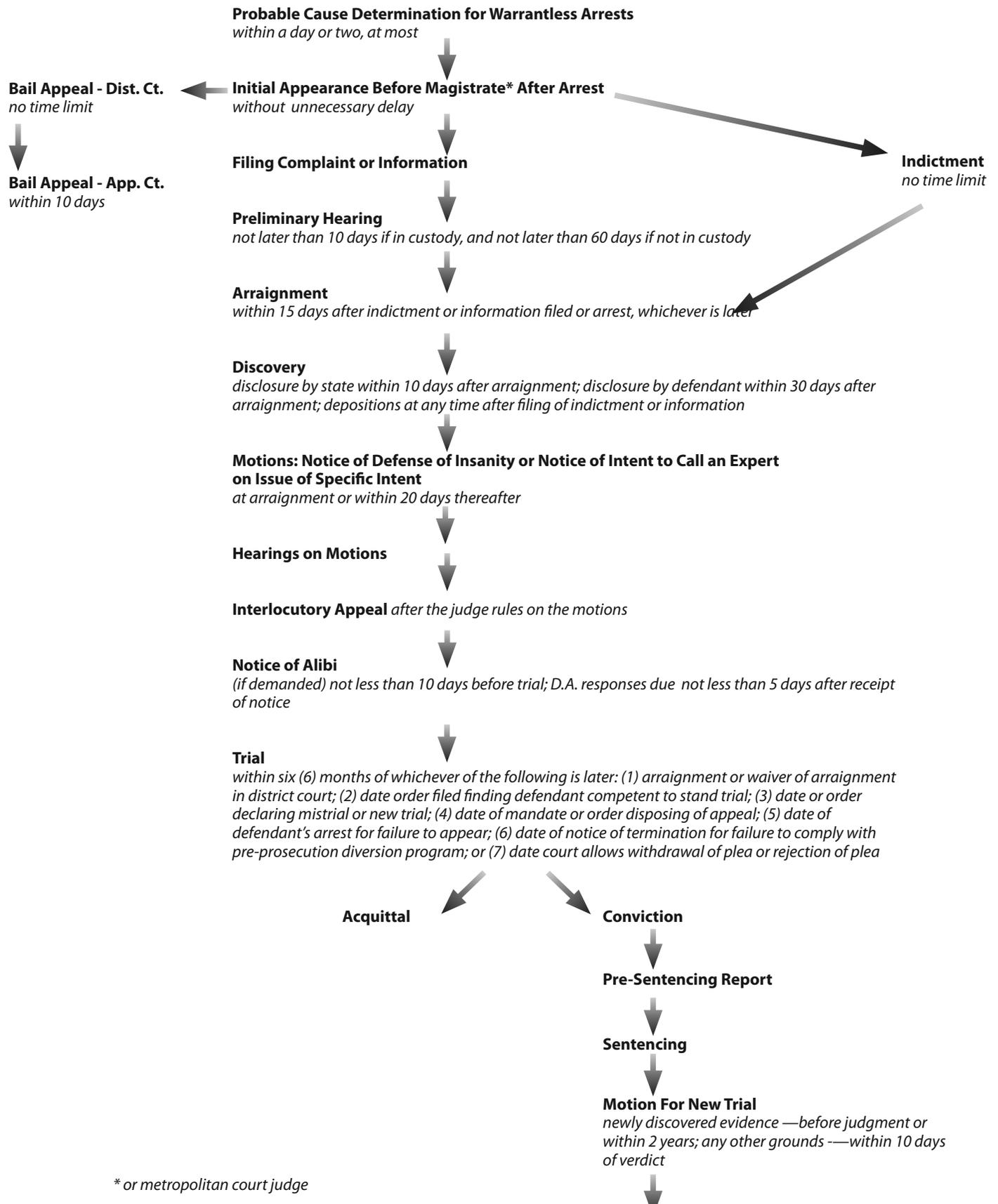
**Municipal Court**

*This court will hear these types of cases: petty misdemeanors, DWI/DUI, traffic violations and other municipal ordinance violations.*

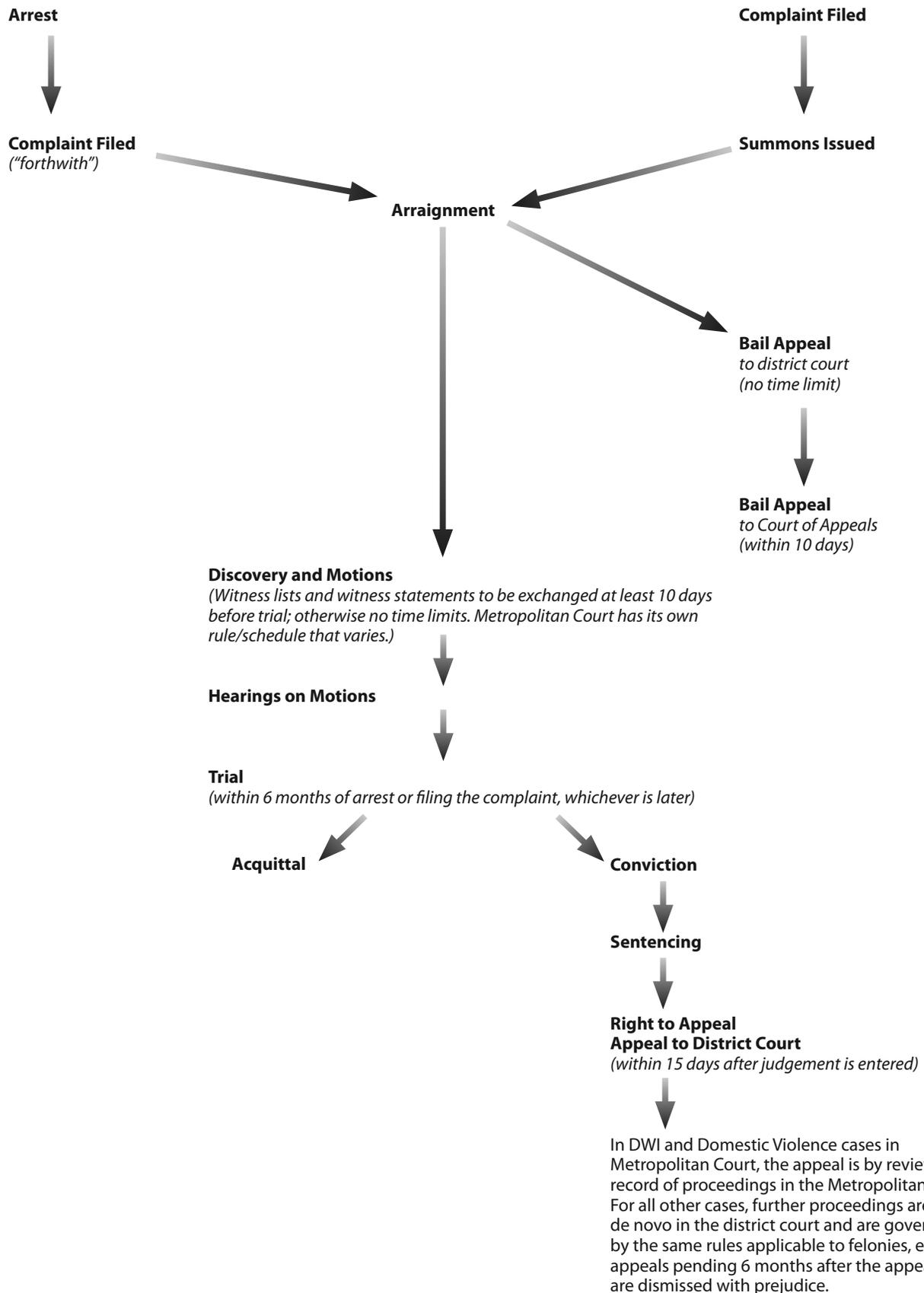
**Probate Court**

*This court will hear these types of cases: informal probate, estate, uncontested cases. (Contested cases go to district court.)*

# Time Sequence for Typical Felony Case



# Time Sequence for Typical Misdemeanor Case \_\_\_\_\_



# Time Sequence for Typical Civil Case

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**Plaintiff Files Complaint**

*within 20-30 days*



**Defendant Files Answer or Motion to Dismiss**

*legal issues only; approximately 30 days*



**Initial Pretrial Conference**

*federal court; usually must be requested in state court*



**Discovery Period**

*(lasting 90-180 days in federal; indeterminate duration in state court)*

- Interrogatories
- Requests for Production
- Depositions



**Motions for Summary Judgment**

*(legal determination)*



**Pretrial Conference – Mediation**



**Trial**

first setting approximately 9 months  
1 year in federal court  
approximately 1 year in state court



**Post Trial motions**



**Appeal (Court of Appeals)**

*(2 years on average in state court)*



**Certiorari (Supreme Court)**

*(Discretionary)*

# Glossary

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**Note:** The best guide as to explanations and rules are the Rules of Criminal/Civil Procedure located at the University of New Mexico Law Library, most courthouses, and the Supreme Court library. The Rules of Civil Procedure and the Rules of Evidence may also be found online at [www.conwaygreene.com/NewMexico.htm](http://www.conwaygreene.com/NewMexico.htm)

**Accessory:** Someone who helps or encourages another person to commit a crime; considered guilty of the same crime as the person he/she helps or encourages.

**Acquittal:** A decision that the defendant is not guilty beyond a reasonable doubt.

**Administrative Search Warrant:** A warrant directing an administrative agency to search records or premises of a business the agency oversees.

**Admissible:** A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

**Advisement:** A judgment, used mainly in the metropolitan, magistrate, and municipal courts, by which after conviction no sentence is imposed and often no judgment of conviction is entered, sometimes on condition of probation. The only mention of it in the statutes occurs in a few instances where advisement is specifically forbidden.

**Affidavit:** A written or printed statement made under oath.

**“Alford” Plea:** See “Plea.”

**Alibi:** See “Defenses: (1) Alibi.”

**Allocution:** The right of a convicted defendant to address the judge before being sentenced or the jury in the sentencing phase of a capital case.

**Alternative Charge:** A charge that the defendant committed one offense or another, or that he/she committed an offense in any of several ways.

**Alternative Dispute Resolution (ADR):** A procedure for settling a dispute outside the courtroom. Most forms

of ADR are not binding on the parties and involve referral of the case to a neutral party such as an arbitrator or mediator.

**Amicus Curiae:** Advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

**Answer:** States defendant’s defenses to plaintiff’s claims.

**Appeal:** A procedure by which a case is transferred from one court to another court (the appellate court) either to review the legality of a ruling made by the original court or for a new trial (trial de novo). Appeals from district court are to the New Mexico Supreme Court if a life sentence was or may be imposed. Other appeals from district court are to the New Mexico Court of Appeals. Appeals to the New Mexico Supreme Court are for reviews of the legality of rulings only. Appeals from municipal, magistrate, or metropolitan courts are to the district court, and in criminal cases are for trial de novo except for DWI and domestic violence cases from metropolitan court.

**Appellant:** The party who appeals a district court’s decision, usually seeking reversal of that decision.

**Appellee:** The party who opposes an appellant’s appeal and who seeks to persuade the appeals court to affirm the district court’s decision.

**Argument:** An effort to persuade the judge or jury by discourse. See “Legal Argument,” “Jury Argument.”

**Arraignment:** A hearing at which the defendant is told the charges and enters an initial plea to the charges; usually the first appearance in the court with jurisdiction over the charges; generally, conditions of release are reviewed or set at the time. See “Bond Arraignment.”

**Arrest Warrant:** A warrant directing a law enforcement officer to arrest someone and bring him/her before the court to answer for charges; issued by a judge or magistrate judge only after being presented either with an indictment or an affidavit showing probable cause to believe that the person committed a crime; may also be issued when a person fails to appear in court as directed. See “Bench Warrant.”

**Arrest:** The formal act of taking someone into custody on criminal charges by commissioned law enforcement personnel, usually municipal police, county sheriff's deputies, or state police.

**Attorney General:** A person elected statewide to be a law enforcement officer and, with assistants, to help prosecute crimes within the state courts and to represent the state, counties, and cities in criminal appeals.

**Bail:** The release of a person accused of a crime, prior to trial and under specified conditions designed to ensure his/her appearance in court when required. It may also refer to the amount of bond money posted as a financial condition of pretrial release.

**Bailiff:** A court official in charge of keeping order and custody and care of the jury.

**Bench Trial:** A trial in which the judge hears the evidence without a petit jury and decides the verdict. In felony trials or misdemeanor trials in which the sentence might be more than six months in jail, both the prosecutor and the defendant must agree to bench trial if one is to be held. *Compare to "Jury Waiver."* In misdemeanor trials in which the sentence might be between 90 days and six months, the defendant may demand a jury trial. *Compare to "Jury Demand."* If the sentence cannot be more than six months and no jury demand is made, a bench trial is held.

**Bench Warrant:** A warrant to arrest someone for failing to follow a previous court order, often for failure to appear in court as directed.

**Bill of Particulars:** *See "Statements of Facts/Bill of Particulars."*

**Bind Over:** The process by which a district court judge imposes conditions of release to appear for trial on felony charges or by which a magistrate or metropolitan court transfers felony charges to district court for trial.

**Bond Arraignment:** *See "First Appearance."*

**Booking:** The jail record of someone being taken into custody for holding at a jail. Where the court orders a person released on conditions, booking involves taking a photograph and fingerprints so as to create a record of the charges.

**"Brady" Material:** Information the prosecutor possesses that would help the defendant to defend against charges; information which may tend to reduce the sentence. The prosecutor has to supply this information to the defendant.

**Brief:** A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.

**Burden of Proof:** In a criminal case the state must prove each element of the offense to the fact finder (judge or jury) beyond a reasonable doubt. In civil cases, the jury standard is the preponderance of evidence.

**Capital Felony:** A felony for which capital punishment is authorized.

**Capital Punishment:** A death sentence.

**Cash Bond:** *See "Conditions of Release."*

**Cease and Desist Order:** An order of an administrative agency or court prohibiting a person or business from continuing a course of conduct.

**Certiorari:** The title of a writ directing a lower court to transfer the records of a case for review; used by the New Mexico Supreme Court when it agrees to review a decision of the New Mexico Court of Appeals or when the New Mexico Supreme Court accepts review of a district court decision in a habeas corpus case.

**Citation:** An order to appear before a magistrate or judge at a later date to answer minor criminal charges, usually violating traffic or municipal ordinances; issued by law enforcement officers.

**Class Action:** A lawsuit in which one or more members of a large group or class of individuals or other entities sue on behalf of the entire class. The district court must find that the claims of the class members contain questions of law or fact in common before the lawsuit can proceed as a class action.

**Closing Arguments:** *See "Jury Arguments."*

**Co-Defendants:** People accused of crimes in the same case.

**Compensatory Damages:** Intended to compensate the injured party for his/her loss.

**Complaint:** Plaintiff's claims against the defendant.

**Commitment:** A court order directing officials to confine someone in a penal or mental health facility.

**Competency:**

- (1) Mental capacity of a defendant to understand the nature and object of the prosecution, consult with a lawyer, and assist in preparing a defense. A defendant who is incompetent cannot be tried. This is not the same as insanity. See "*Defenses. (1) Incapacity to Form Specific Intent;*" "*Pleas: Guilty But Mentally Ill.*"
- (2) The qualification of a person to be a witness.

**Complaint:** A document, usually signed by a law enforcement officer, charging the defendant with a crime; consists of a sworn written statement of the facts, the common name of the offense, and the section number of the statutes defining the offense. Compare to "*Information;*" "*Indictment;*" "*Citation.*"

**Concurrent Sentence:** Prison terms for two or more offenses to be served at the same time rather than one after the other; e.g., two five-year sentences and one three-year sentence, if served concurrently, result in a maximum of five years behind bars.

**Consecutive Sentence:** Prison terms for two or more offenses to be served one after the other; e.g., two five-year sentences and one three-year sentence, if served consecutively, result in a maximum of 13 years behind bars.

**Conditions of Release:** The conditions under which someone charged with a crime may be released from custody pending resolution of the charges. The normal types are:

- (1) **Release on Own Recognizance (ROR):** Release on a promise to return to court when necessary and to comply with any other conditions set.
- (2) **Third Party Custody:** Release on the promise of someone other than the defendant to return the defendant to court when necessary and to assure compliance with any other conditions set.
- (3) **Unsecured Appearance Bond:** A promise to return to court when necessary and to comply with any other conditions set or be liable for money judgment in the amount of the bond.

(4) **Cash Bond:** A promise to return to court when necessary and to comply with any other conditions set or forfeit a sum of money which has to be deposited with the court clerk before release. If the defendant always appears and complies, the money is returned.

(5) **Percent Bond:** A promise to return to court when necessary and to comply with any other conditions set or be liable for a money judgment in the amount of the bond, a specific percent of which (usually 10 percent) has to be deposited with the court clerk before release. If the defendant always appears and complies, the money is returned.

(6) **Property Bond:** A promise to return to court when necessary and comply with any other conditions set or be liable for a money judgment in the amount of the bond secured by a lien on a specific property granted to the court. If the defendant always appears and complies, the lien is dissolved.

(7) **Surety Bond:** A promise of a paid professional bondsman to return the defendant to court when necessary and assure compliance with any other conditions set or be liable for a money judgment in the amount of the bond.

**Confidential Informant (CI):** A person who has furnished information on a possible crime to a law enforcement officer but whose identity the government wishes to keep secret. Special rules determine when the identity of a confidential informant must be given to the defendant.

**Constitution:** The supreme written law of the federal government or of a state.

**Contempt:** Misbehavior which hinders the court from administering justice; disobedience to a court order.

**Conviction:** A decision that the defendant is guilty beyond a reasonable doubt.

**Count:** A portion of a complaint, information, or indictment which charges a separate offense.

**Counterclaim:** Sets forth claim(s) defendant may have against plaintiff; may be included in defendant's answer. **Compulsory Counterclaim:** Defendant's counterclaim(s) arises out of same transaction to occurrence that is the subject matter of plaintiff's claim(s). **Permissive Counterclaim:** Defendant's counterclaim(s)

does not arise out of same transaction or occurrence, but is against the same plaintiff.

**Court Clerk:** A person employed by the court to keep and index the records of the court and to issue process from the court at appropriate times.

**Court of Record:** A court in which an official transcript of verbal proceedings is made.

**Court Reporter/Monitor:** A person certified to make an official transcript of the proceedings (reporter) or to make an official tape-recording of the proceedings (monitor).

**Crossclaim:** In cases where there are multiple plaintiffs and/or multiple defendants, a Plaintiff can file a crossclaim against another plaintiff and a defendant can file a crossclaim against another defendant.

**Cross-Examination:** The initial examination of a witness by a party which did not call the witness to the stand.

**Custody:** A “deprivation of liberty” by law enforcement agents; not necessarily a full arrest.

**Declaratory Judgment:** A judge’s statement about someone’s rights; e.g., a plaintiff may seek a declaratory judgment that a particular statute, as written, violates some constitutional right.

**Default Judgment:** If a party fails to plead or defend a claim, the judge can give default judgment against that party; can be set aside for reasons stated in Rule 1-055.

**Defendant:** In a criminal case, a person formally accused by the government of a crime. In a civil case, a person who is being sued.

**Defense Continuance:** An agreement whereby the defendant requests a postponement which will be attributed to him/her for speedy trial purposes, with an agreement that if he/she fulfills certain conditions within the time specified, the case will be dismissed.

**Defenses:**

- (1) **Alibi:** A claim that the defendant was in a place at a time when he/she could not have committed the crime. If the prosecutor files a written demand for it, before the trial the defendant must file a written notice that he/she will claim alibi.

- (2) **Insanity:** A condition which renders the defendant not criminally responsible for otherwise criminal acts because he/she has a mental disease or defect which caused him/her to (a) not know what he/she was doing or understand the consequences of his/her act, (b) not know that his/her act was wrong, or (c) not be able to refrain from committing the act. A notice that the defendant is claiming insanity at the time of the offense must normally be given before trial.

- (3) **Incapacity to Inform Specific Intent:** A claim that, under the circumstances, the defendant was not capable of forming the particular intentions required for the his/her acts to be a crime. Notice that the defendant is claiming incapacity to form specific intent must normally be given before the trial.

*Compare to “Competency;” “Plea Guilty But Mentally Ill.”*

**Deposition:** Testimony responding to questions; taken under oath and recorded in preparation for a hearing or trial; not usually filed in court unless introduced into evidence as exhibits.

**Detainer:** A request, filed by a criminal justice or immigration agency with the institution in which the prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent; generally based on outstanding criminal charges, outstanding parole or probation-violation charges, additional sentences already imposed against the prisoner, or immigration actions such as deportation. Under the Interstate Agreement on Detainers, a prisoner on whom an out-of-state detainer has been filed based on outstanding criminal charges may demand transportation and trial on the out-of-state charges within 180 days after the demand, subject to extension if there is good reason for one.

**Direct Examination:** The initial examination of a witness by a party which called the witness to the stand.

**Discovery:** The process by which the prosecutor and defendant exchange information they have about the case before trial.

**Dismissal With Prejudice:** A dismissal of charges with an order that they may not be re-filed.

**Dismissal Without Prejudice:** A dismissal of charges without ordering that they may not be re-filed.

**District Attorney:** A lawyer elected in a judicial district to be a law enforcement officer and, with assistants, to be in charge of prosecuting crimes against state or local laws in state courts within the district on behalf of the state and the counties within the district.

**Docket:** A list of the cases to be heard by a judge or by the court; an index of all the events in a particular case.

**Domestic Violence (DV):** An assault or battery against a spouse, former spouse, other relative, child, co-parent, or person with whom the defendant has had a continuing personal relationship. Cohabitation is not necessary for the violence to be domestic for this purpose.

**Evidence:** Testimony, documents, or objects presented to the judge or jury to prove the facts of a case.

**Examination of a Witness:** Asking the witness questions. *See* “*Direct Examination;*” “*Cross-Examination;*” “*Redirecting Examination;*” “*Re-Cross-Examination.*”

**Exclusionary Rule:** Doctrine that says evidence obtained in violation of criminal defendant’s constitutional or statutory rights is not admissible at trial.

**Exculpatory Evidence:** Evidence indicating that a defendant did not commit the crime.

**Excusal of a Judge:** A one-time process by which a defendant or prosecutor, without giving any reason, may require the replacement of a judge by filing a proper document called an “election to excuse” or “provisional election to excuse” within a short time after the judge enters the case. A new judge is then appointed for the case. *See* “*Recusal.*”

**Exhibit:** A document or object introduced or offered into evidence.

**Ex Parte:** A communication between the judge and either the prosecutor or the defense lawyer at which the other lawyer is not present or informed at the same time; permitted only in limited circumstances.

**Expert Witness:** One who is allowed to give his/her opinion on certain matters because specialized training or experience makes his/her opinion potentially helpful.

Normally, witnesses are allowed to testify only to what they themselves have seen, heard, or observed, but are not allowed to give their personal opinions on what it means.

**Extradition:** The process by which a person is arrested and transferred to another state or country where he/she faces criminal charges.

**Felony:** A crime for which the sentence can be imprisonment for a year or more; a crime for which the sentence can be death; a crime which the statutes call a felony.

**First Appearance:** The first hearing at which the defendant appears in a court. For misdemeanors, the arraignment will normally occur at the first hearing. For felonies, a “bond arraignment” will be held (which is not really an arraignment), at which the defendant will be told the charges and at which the conditions of release will be reviewed or set.

**Foundation:** Preliminary evidence establishing that further evidence is admissible.

**Fugitive:** For extradition purposes, someone who is charged with a crime in one of the states and has left the state. For probation or parole purposes, someone on probation or parole on whom a bench warrant cannot be served.

**“Gag” Order:** An order of the court directing attorneys and witnesses not to discuss the case with the news media or others in order to ensure a fair trial.

**Good Time Credit:** An allowance of credit toward a sentence for good behavior and active participation in rehabilitative or work programs in prison. A person convicted of a non-violent offense can earn up to 30 days per month of time served; other prisoners can earn up to four days per month of time served. Persons serving sentences following a parole revocation can earn four, eight, or 30 days per month of time served, depending on the circumstances. Certain achievements, such as completing an educational program or saving a life, may also result in additional awards of good time. *See N.M.S.A. § 33-2-34 for details.*

**Habeas Corpus:** A writ directing an official holding someone in custody to bring the person before the judge and explain why he/she is being held.

**Habitual Offender:** The status of someone found to have been convicted of a felony committed after previous convictions for felonies. The sentence of such a person is increased, and service of the increased part is mandatory.

**Hearsay:** Generally, a statement made by someone else or by the witness at another time, offered into evidence to prove the truth of a statement. A few things which the witness previously said or which the defendant said are not hearsay. As a rule, hearsay is not admissible into evidence; however, there are specified exceptions to this rule.

**Immunity:** A guarantee that someone will not be prosecuted for a crime; a guarantee that someone's testimony, or evidence which results from his/her testimony, will not be used in a prosecution against him/her. *See "Use Immunity;" "Transactional Immunity."*

**Impeachment of a Witness:** The process of trying to produce evidence that a witness is unreliable or that the witness's testimony is unreliable.

**In Camera:** Outside the presence of a jury and the public; in private and often in a judge's chambers.

**Incapacity to Form Specific Intent:** *See "Defenses: (3) Incapacity To Form Specific Intent."*

**Inculpatory Evidence:** Evidence indicating that a defendant did commit the crime.

**Indictment:** A written statement, returned by a grand jury and signed by the foreman, containing the essential facts constituting the offense, common name of the offense, and the section number of the statutes defining the offense; sometimes also contains the names of the witness(es) on whose testimony the information is based. *Compare to "Complaint;" "Indictment;" "Citation."*

**Information:** A document charging the defendant with a crime; consists of a written statement signed by the district attorney; contains the essential facts, common name of the offense, the section number of the statutes defending the offense, and the names of the witness(es) on whose testimony the information is based. *See "Complaint;" "Indictment;" "Citation."*

**Injunction:** A court order requiring notice be given to the other side; a court order restraining a party from

certain acts or permitting certain acts. An injunction is for a longer period of time than a temporary restraining order.

**Insanity:** *See "Defenses: (2) Insanity."*

**Instruction:** A judge's statement to the jury telling them the law they must apply to the case in reaching a verdict.

**Interlocutory Appeal:** An appeal taken immediately from an order entered before the final judgment in the case; must be approved by both a district judge and the appeals court; not available from metropolitan, magistrate, or municipal courts.

**Interrogatories:** A form of discovery consisting of written questions to be answered in writing and under oath.

**Joinder:**

- (1) Of offenses: The combining of two or more charges against someone into one prosecution or trial.
- (2) Of defendants: The combining of charges against two or more people into one prosecution or trial.

*Compare to "Severance."*

**Judgment:** The final and formal decision of the court on the issue of acquittal or conviction.

**Judgment on the Pleadings:** After the pleadings are closed, a judge may give a judgment based on the pleadings. The pleadings are written allegations of the parties such as the complaint, answer, etc. The judge assumes all facts pled by the party opposing judgment are true and determines if the facts state a valid legal claim. If not, judgment on the pleadings is granted (Rule 1-012).

**Jurisdiction:** The legal right by which judges exercise their authority over a particular person or case.

**Juror, Alternate:** An extra petit juror who hears the evidence with the other jurors but does not help decide the verdict with them unless one of the others has to be excused. The alternate jurors are not told which ones they are until the jury is sent to decide the verdict.

**Jury:** A group of people selected from among the citizens of a district to decide questions of fact in court; usually refers to a petit jury.

**Jury Arguments:** Arguments addressed to the jury on what their verdict should be, following the presentation of evidence by the parties and instructions by the judge. Generally the prosecutor is allowed to make the first opening statement, followed by the defendant's argument, followed by the prosecutor's rebuttal argument; also called "**Closing Arguments.**"

**Jury Demand:** An official request for a jury trial.

**Jury Foreman:** A juror selected by the jury to preside over their deliberations and speak for them in court.

**Jury, Grand:** A group of twelve citizens appointed by the court to hear evidence and (1) inquire and report on the condition of the jails and prisons within the county and of the people imprisoned in them; (2) decide whether to accuse a local elected official of being subject to removal from office; and (3) decide whether a crime was committed within the county and whether there is probable cause to accuse someone of the crime by returning an indictment. It is called "grand" because the petit jury, that hears trials, previously had fewer members. Grand jury proceedings are required to be private. Both the grand jurors and the people assisting the grand jury are sworn to keep the proceedings secret until ordered otherwise by a court. On the other hand, witnesses are not required to keep their own testimony secret. *Compare to "No Bill;" "True Bill."*

**Jury, Hung:** A petit jury which cannot reach a unanimous verdict; results in a mistrial.

**Jury Instructions:** A judge's instructions to the jury concerning the law of the case. Each party submits proposed instructions to the judge who then decides which ones he/she will give to the jury, or the judge writes his/her own instructions. Denial of a requested instruction is a common reason for appeal.

**Jury Panel:** A group of potential jurors, drawn at random from the jury wheel of the district, who will be questioned by the judge and/or, for petit juries, by the lawyers, and from which the final grand jurors or petit jurors will be chosen.

**Jury, Petit:** A group of six citizens (for misdemeanors) or 12 citizens (for felonies) who hear the evidence and decide the verdict.

**Jury Poll:** The act of asking the petit jury, either individ-

ually or collectively, whether their verdict is unanimous. Either the prosecutor or the defendant may ask to have the jury polled by the judge.

**Jury Trial:** A trial in which the petit jury hears the evidence and decides the verdict.

**Jury Waiver:** A written agreement that a bench trial may be held.

**Jury Wheel:** A group of names of citizens of the district from which the jury panels or the grand or petit jury will be chosen.

**Leading Question:** A question which suggests the answer desired. Usually a party is not allowed to lead the party's own witnesses.

**Legal Argument:** An argument, addressed to the judge, on how a legal question should be decided.

**Lineup:** A police identification procedure in which a group of mostly innocent people are shown to witnesses to see if they think the criminals are among them.

**Magistrate Court:** A court with jurisdiction to hold initial appearances and preliminary examinations in felony cases, hear misdemeanor cases (except for violations of city ordinances), and hear civil cases when small amounts of money are in dispute; a court of record for preliminary examinations in civil proceedings, not usually for other criminal proceedings. The judges, called "magistrate judges," are not required to be lawyers. *Compare to "Municipal Court," "Metropolitan Court."*

**Mandamus:** The title of a writ directing another official to do something.

**Mandate:** An order from an appellate court directing the court whose decision it is reviewing to follow its written legal opinion.

**Metropolitan Court:** A court combining the functions of a magistrate court, a small claims court, and a municipal court; judges are required to be lawyers; a court of record in civil proceeding and in DWI and domestic violence cases but not in other criminal cases. Only counties with more than 200,000 people are allowed to have one. At the time of this guide's publication, Bernalillo County was the only county in New Mexico with a metropolitan court.

**“Miranda” Rights:** The right of a person being questioned by law enforcement officers while in custody to be warned (1) that he/she has the right to remain silent; (2) that any statement he/she makes may be used as evidence against him/her; (3) that he/she has the right to the presence of an attorney before making any statement; and (4) that if he/she cannot afford an attorney and wants one, one will be appointed before questioning.

**Misdemeanor:** A crime for which the maximum sentence is less than one year in prison and which is not called a felony by the statutes.

**Mistrial:** A trial which had to be ended without reaching a verdict or other final decision on the case.

**Motion:** A formal request, either in writing or verbally in court, asking the judge to do something in particular.

**Motion for Directed Verdict:** A request to direct a verdict for that party and not to allow the jury to decide the issue; commonly used in jury trials when all evidence and testimony is finished and prior to jury deliberations; usually requested because one party believes that the other party has not proven its claim or defense. (Rule 1-050).

**Motion for Judgment Notwithstanding the Verdict (Judgment N.O.V.):** A request for a favorable verdict setting aside an unfavorable judgment or jury verdict already rendered; can be made only if the party has first requested a directed verdict (Rule 1-505).

**Motion for New Trial:** In a criminal case: a request, after a verdict of guilty, to set the verdict aside and hold a new trial. In a civil case: a request for a new trial based upon some error in the original trial or that the judge erred in not granting a judgment N.O.V.

**Motion for Reconsideration of Sentence:** A request to set aside a sentence previously entered and to impose a different one. For felonies, such motions may be made only within 30 days after the sentence is filed or after an appellate mandate is received by the district court.

**Motion in Limine:** In a criminal case: a request, made before trial, for a ruling on the admissibility of evidence or other matters expected to arise at trial. In a civil case: a request, either prior to trial or outside the hearing of a jury, to determine in advance whether certain evidence will be admitted or not allowed at trial in front of the jury.

**Motion to Dismiss:** A request to end prosecution without further trial.

**Motion to Suppress:** A request not to allow testimony, documents, or objects into evidence before the evidence is offered.

**Mug Shot:** The picture taken of someone’s face when he/she is booked at a jail or received for incarceration at a prison.

**Municipal Court:** A court with jurisdiction to hear cases involving violation of city ordinances and, sometimes, college campus traffic violations; not a court of record; judges are not required to be lawyers.

**National Crime Information Center (NCIC):** A federal agency monitored by the FBI that acts as a computer-based archive of information on criminals or suspected criminals. The archive is available to law enforcement agencies.

**“No Bill”:** A document filed by the grand jury stating that the evidence before it regarding a possible crime did not justify filing an indictment. *Compare to “True Bill.”*

**No Contest:** *See “Plea.”*

**Nolle Prosequi:** A dismissal without prejudice filed by the prosecutor before trial.

**Nolo Contendere:** *See “Plea.”*

**Oath:** A solemn promise to tell the truth or be subject to penalties for perjury.

**Objection:** A statement to the judge that something being or about to be done is legally improper and should not be allowed.

**Objection Overruled:** A ruling by the judge that the matter to which objection was made will be allowed.

**Objection Sustained:** A ruling by the judge that the matter to which objection was made will not be allowed.

**Offer of Proof:** A statement on the record of evidence that has been excluded. The record is made so that an appellate court may review the correctness of the exclusion.

**Opening Statement:** A description by each party, presented to the jury at the beginning of the trial, of what the party expects the evidence to show. The prosecutor generally makes the first opening statement, followed by each defendant.

**Ordinance:** A law enacted by the county or local government.

**Parole:** The conditions on which the corrections department will allow an inmate to serve the last year or so of his/her sentence outside the prison. Parole is one year for fourth-degree felonies, two years for first- through third-degree felonies, and at least five years for capital felonies; served after the sentence of imprisonment imposed is completed. Parole is imposed only if the defendant is sentenced to prison; it is not imposed on sentences to the local jail or on misdemeanor sentences.

**Party:** Either a person bringing a suit (“plaintiff”), a person against whom the suit is brought (“defendant”), or someone whom the suit affects and who is allowed the same rights in court as the plaintiff or defendant. In a criminal case, the plaintiff is always either the state government or a county or city government; the only parties are the plaintiff and the defendant.

**Pass the Witness:** To tell the judge that a party has finished examining the witness and that another party may begin his/her examination.

**Per Curiam:** Refers to an unsigned opinion in appellate courts.

**Peremptory Challenge:** A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or without giving a reason.

**Percent Bond:** See “*Conditions of Release.*”

**Perjury:** A felony consisting of making a false statement under oath, material to an issue involved in an official proceeding, knowing the statement is false.

**Petitioner:** Someone filing a petition in court; a litigant who files an appeal from an administrative agency. In delinquency petitions against children, the petitioner is the state government represented by the district attorney.

**Photographic Array:** A set of mostly innocent people shown to witnesses to a crime to see if they think the criminal or criminals are among them.

**Plaintiff:** Person who files a lawsuit.

**Plea:** The defendant’s response to a criminal charge. Three pleas are generally allowed: (1) **a plea of guilty**, admitting the charge; (2) **a plea of not guilty**, denying the charge and putting upon the state the burden of proving each element of the alleged offense beyond a reasonable doubt; and (3) **a plea of no contest**, also called **nolo contendere**, not admitting or denying the charge but agreeing to be subject to a judgment of conviction and sentencing. In addition, (4) **“Alford” pleas** are sometimes allowed in appropriate cases by which the defendant admits that the charge might be proven but does not admit culpability; and (5) **a plea of guilty but mentally ill** in which the defendant admits to being mentally ill but not insane when the offense was committed. If the plea is accepted and the defendant is sentenced to prison, the corrections department must consider a treatment for the mental illness.

**Plea and Disposition Agreement:** An agreement between the prosecutor and the defendant, subject to approval by the judge, about the outcome of the case. Usually the agreement is that the defendant will be convicted of some charges, but that other charges will be dismissed or not filed, or that less than the maximum sentence will be imposed. Also sometimes called a **“plea bargain.”**

**Plea Bargain:** See “*Plea and Disposition Agreement.*”

**Pleading:** A formal written statement by the prosecutor of his/her charges or by the defendant of his/her defenses; usually consists of a citation complaint, information, or indictment; sometimes also refers to other written motions filed in the case.

**Preliminary Examination/Hearing:** A hearing held shortly after the defendant’s initial appearance on felony charges at which the court hears witnesses and receives other evidence to decide whether there is probable cause to believe that the defendant has committed an offense. If no probable cause is found, the defendant is discharged. If probable cause is found, the defendant is bound over for trial in district court and information is filed. Preliminary examinations are not usually held in Bernalillo County. Instead, the defendant is either indicted by a

grand jury or released from custody within 10 days after the initial appearance.

**Presentence Credit:** An allowance of credit towards a sentence for time spent in custody prior to sentencing as a result of the charges on which the sentence was imposed.

**Pretrial Hearing/Conference:** Usually an informal hearing held before the trial in which the judge and the lawyers try to agree on scheduling and simplifying the trial of the case.

**Privilege:** A right not to testify or not to have someone else testify about a matter.

**Probation:** The conditions on which a sentence is deferred or suspended; the conditions of the sentence imposed by a court for a defendant's conduct. *See "Sentence, Deferred;" "Sentence, Suspended."*

**Prohibition:** A writ directing another official not to do something.

**Property Bond:** *See "Conditions or Release."*

**Public Defenders:** Lawyers who are salaried members of a public agency whose mission is to represent defendants who cannot afford to hire a private lawyer.

**Punitive Damages:** Awarded to punish a defendant; serves as a warning to others who would consider undertaking similar conduct.

**ROR:** *See "Conditions of Release."*

**Re-Cross-Examination:** Examination of a witness by a party that did not call the witness to the stand after a redirect examination.

**Rebuttal Argument:** The jury argument by the prosecutor following and responding to the defendant's jury argument; occurs after all evidence is completed.

**Record:** The documents in a court file, any exhibits filed in court, and an official transcript of proceedings.

**Recusal:** The process by which a judge removes himself/herself from a case because his/her impartiality may reasonably be questioned or because he/she is disqualified by the *New Mexico Constitution*.

**Redirect Examination:** Examination of a witness by the party that called the witness to the stand; occurs after a cross-examination.

**Regulation:** A law enacted by an administrative agency.

**Rehabilitation of a Witness:** The process of trying to produce evidence that the testimony of a witness who has been impeached is reliable.

**Release on Own Recognizance (ROR):** *See "Conditions of Release."*

**Remand:** Send back.

**Reparation:** A payment from the Crime Victims Reparation Commission to someone injured, or to a surviving dependent of someone killed, or to someone who paid the funeral or medical expenses of someone injured or killed, by an act or omission of another person. Payment is limited in amount to actual losses and is not available to accomplices, close relatives of the criminal, to people confined in jails or prisons, or to people who failed to cooperate with police.

**Respondent:** Someone against whom a petition has been filed; may also be an administrative agency in an appeal that prevailed in trial court. In delinquency petitions against children, the child is the respondent.

**Rest:** Counsel rests by indicating that he/she has produced all intended evidence at that stage of the trial.

**Restitution:** Full or partial payment by the defendant to the victim of the crime as part of the sentence for the crime; includes actual damages, not including pain, suffering, mental anguish, loss of consortium, or punitive damages.

**Rule on Exclusion of Witnesses/"The Rule:"** The judge or any party may have prospective witnesses excluded from the courtroom except when testifying so that they cannot hear other witnesses. The rule does not exclude the defendant or any person whose presence is shown to be essential to the presentation of the party's case.

**Sealing or Sealed Record:** An order that some court records may not be examined except by order of the court or by designated officials.

**Search Warrant:** A court order authorizing the search of a specified place for described items or people to be seized or arrested; issued by a judge or magistrate only after being presented an affidavit showing probable cause to believe that the items are connected with a crime or that the people should be arrested, and that the items or people will be in the place to be searched.

**Self-Represented Litigant:** The description of a person who proceeds in court without a lawyer.

**Sentence, Concurrent:** A sentence that is served at the same time as another sentence.

**Sentence, Consecutive:** A sentence that follows another sentence.

**Sentence, Deferred:** A judgment of conviction in which no sentence is imposed, but in which conditions of probation may be imposed for a period of time. If the defendant complies with the conditions, the defendant is entitled to dismissal of the charges (except for habitual offender and a few other purposes). If the defendant does not comply and the probation is revoked, then a sentence is imposed with credit for the time the defendant has been on probation, unless the defendant has been fugitive.

**Sentence, Suspended:** A judgment of conviction in which a sentence is imposed, but in which all or part of the sentence is ordered not to be served, often on conditions of probation. If the defendant complies with conditions, the defendant is entitled to a certificate of satisfactory discharge from the probation. If the defendant does not comply and the probation is revoked, then all or part of the remainder of the sentence may be required to be served, with credit for the time the defendant has been on probation, unless the defendant has been a fugitive.

**Service (also called Service of Process):** The delivery, in a specified manner, of official documents to other people.

**Severance:** An order that charges or defendants previously joined will be tried separately. *See "Joinder."*

**Six-Month Rule:** A court rule providing that charges should be dismissed with prejudice if the trial of the defendant is not started within six months of his/her arraignment or certain other events.

**Sixty-Day Evaluation:** A commitment by the corrections department to prepare a 60-day psychological report on a convicted defendant to be used by the court for sentencing purposes; not to exceed 60 days.

**Special Master:** Someone appointed by the judge to hear evidence and make findings or recommendations to the court.

**Statement of Facts/Bill of Particulars:** A document filed by the prosecutor giving the defendant information about the charges in addition to what is in the complaint, information, or indictment.

**Statute:** A law enacted by the legislature and signed by the governor.

**Stipulation:** A voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate the need for proof or to narrow the range of litigable issues.

**Striking Evidence:** A statement by the judge in a bench trial that the court will not consider evidence; an order by the judge to the jury not to consider evidence.

**Sua Sponte:** "On its own motion." The description of a ruling made by a judge without being asked to do so.

**Subpoena:** A court order to appear at a hearing to give testimony or to bring documents or objects.

**Subpoena Duces Tecum:** A subpoena to bring documents or objects.

**Summary judgment:** If there are no genuine issues of material fact (i.e., crucial facts are undisputed), the judge can give judgment based upon the law. If crucial or material facts are at issue, summary judgment will be denied. (Rule 1-056).

**Summons:** A court order to appear in court to answer criminal charges.

**Superintending Control:** A writ directing a lower court to do or not to do something.

**Surety Bond:** *See "Conditions of Release."*

**Temporary Restraining Order (TRO):** An order temporarily restraining a party. If obtained without notice

to the party being restrained (i.e., an ex parte TRO), the order expires in 10 days unless the judge extends for good cause. See Rule 1-066 for requirements to obtain a TRO without giving notice to the other party. Security or bond may be required.

**Third Party Custody Release:** See “*Conditions of Release.*”

**Tort:** A civil wrong; a negligent or intentional injury against a person or property with the exception of breach of contract.

**Transactional Immunity:** The immunity of a witness from being prosecuted for a crime about which he/she testifies; rarely granted. Compare to “*Use Immunity.*”

**Trial de Novo:** An appeal in which a new trial is held.

**Trial:** A hearing in which the judge or jury hears evidence to decide the verdict.

**True Bill:** An indictment. See “*No Bill.*”

**Unsecured Appearance Bond:** See “*Conditions of Release.*”

**Use Immunity:** The immunity of a witness from using his/her testimony for evidence in a prosecution against him/her. See “*Transactional Immunity.*”

**Venue:** The judicial district in which a case is heard.

**Verdict:** The decision of a petit jury, or the judge in a bench trial, that the defendant is either acquitted or convicted of a charge. In a criminal trial, a jury verdict is required to be unanimous. Compare to “*Hung Jury.*”

**Victim:** For purposes of restitution, a person who has suffered actual damages as a result of criminal activity.

**Voir Dire:** (1) Questioning of the jury panel by the lawyer or the judge about whether they can be fair and competent jurors, as a guide to picking a petit jury. (2) Questioning of a witness by one of the parties in the middle of another party’s examination to test whether he/she is competent to testify or whether the proper foundation has been laid for his/her testimony.

**Warrant:** An order from a judge or magistrate judge to a law enforcement officer. See “*Administrative Search Warrant,*” “*Arrest Warrant,*” “*Bench Warrant,*” “*Search Warrant.*”

**Witness:** A person who testifies to what he/she has seen, heard, or otherwise observed.

**Writ:** A court order commanding another official to do something.

## Domestic Relations (Family Law) Glossary

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**Alimony a/k/a Spousal Support:** A reasonable sum of money to be paid by one spouse to the other as “alimony” or spousal support to help the supported party meet day-to-day needs.

**Alimony Guidelines:** An informal analysis of each party’s projected finances after divorce which may be used as a guideline to determine what “alimony” or spousal support is due from one spouse to the other, if any. These guidelines are for settlement purposes and are not binding on the court.

**Child Support:** The amount of monthly support which each parent pays for the support of the child.

**Child Support Guidelines:** A set of guidelines based on the parties’ gross monthly incomes which are defined by statute and are used to determine what child support is owed.

**Collaborative Divorce:** An out-of-court process wherein the parties agree to hire lawyers for divorce settlement purposes only. If the case proceeds to litigation, the parties must retain new attorneys for court representation. Because collaborative divorce makes going to court difficult, the parties stay at the negotiation table, even during the difficult conversations, and focus on long-term goals such as co-parenting. This process allows parties to keep decision making in their own hands and, with the absence of court filings, affords a broad degree of privacy.

**Community Debt:** Any debt incurred during the marriage regardless of which spouse incurs the debt.

**Community Property:** All property acquired during marriage except separate property.

**Deposition:** Testimony responding to questions, taken under oath and recorded in preparation for a hearing or trial; usually not filed with the court unless introduced into evidence as exhibits.

**Dissolution of Marriage:** The legal process by which a marriage is dissolved and each party’s rights and obligations are established as to property and debt division, custody, and support.

**Domestic Relations Court Cases:** All cases of a domes-

tic relations nature including divorces, annulments, legal separations, allocation of property and debt, parentage actions, child custody, and child support cases.

**Final Decree of Dissolution of Marriage:** Issued by the court which dissolves the marriage of the parties. The parties are divorced upon the filing of the final decree.

**Guardian Ad Litem:** An attorney, appointed by the court in any contested custody proceeding, who serves as an arm of the court and assists the court in discharging its duty to adjudicate the child’s best interests.

**Interim Division of Income and Allocation of Expenses:** During the pendency of a dissolution of marriage proceeding, the community income and expenses are equally divided between the parties and are set forth in an order of the court.

**Joint Legal Custody:** The legal determination that both parents will make major decisions in the child’s life.

**Legal Custody:** A legal determination as to which parent will make the major decisions in the child’s life after divorce.

**Legal Separation:** A legal status between marriage and divorce where each party’s rights and obligations are established as to property and debt division, custody, and support. Neither party is free to remarry until the marriage is dissolved.

**Marital Settlement Agreement:** An agreement entered into by the parties defining the parties’ rights and obligations after divorce.

**Mediation:** A program designed to help parents work out decision making, custody, and timesharing arrangements.

**Motion for Order to Show Cause:** A pleading in the form of a motion filed by one party asking the other party to “show cause” as to why that party did not comply with a previous court order and seeking sanctions for that party’s failure to comply with the court order.

**Motion to Enforce:** A pleading in the form of a motion filed by a party asking the court to enforce a previous court order.

**Motion to Modify:** A pleading in the form of a motion filed by a party asking for change or modification of an obligation or right defined or determined by a previous court order; generally requires a showing of material and substantial change of circumstances.

**Order to Withhold:** An order requiring an employer to withhold income from the party ordered to pay child support and to forward the withholdings to the supported party.

**Paternity Action:** The establishment of the parents of a child as well as the parents' obligations as to custody, timesharing, and child support when the parents are not married at the time of the child's birth.

**Periods of Responsibility:** A significant, well-defined period of responsibility that each parent will have with the child during which each parent will be allowed and expected to carry out responsibility for the child's financial, physical, emotional and developmental needs.

**Petitioner:** Someone filing a petition in court.

**Petition for Dissolution of Marriage:** A pleading in the form of a petition filed by either party which asks the court to dissolve the marriage.

**Pre-Marital Agreement:** An agreement entered into prior to marriage which sets out the parties' rights and obligations upon divorce.

**Principal Place of Residence or Physical Custody:** The parent with whom a child lives the majority of the time.

**Rehabilitative Alimony:** "Alimony" or spousal support paid for a minimal period of time to allow one spouse to get trained in order to support himself/herself.

**Respondent:** Someone against whom a petition has been filed.

**Rule 11-706 Expert:** An expert witness appointed by the court to give independent findings on issues as directed by the court.

**Separate Debt:** A debt incurred prior to marriage or during marriage for separate property or a debt designated as a separate debt.

**Separate Property:** Property acquired prior to marriage or during marriage from inheritance, gift, or devise.

**Service (also called Service of Process):** The delivery, in a specified manner, of official documents to other people.

**Settlement Facilitation:** A conference attended by all parties, their counsel, and a skilled facilitator who takes an active role in helping the parties resolve some or all of the disputed issues in the pending legal action before the court.

**Sole Legal Custody:** One parent will make major decisions in the child's life and will inform the other parent.

**Special Master:** Someone appointed by the judge to hear evidence and make findings and recommendations to the judge.

**Sua Sponte:** "On its own motion." The description of a ruling made by a judge without being asked to do so.

**Subpoena:** A court order to appear at the hearing to give testimony or to bring documents or objects.

**Subpoena Duces Tecum:** A subpoena to bring documents or objects.

**Summons:** A court order to appear in court to answer a petition.

**Timesharing and Visitation:** The period of undivided time awarded each parent to spend with their children.

**Wage Withholding:** A court order withholding wages from a party's earnings for the purpose of ensuring payment of child support or spousal support awarded to the other party.

## Juvenile Court Glossary

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**Adjudicatory Hearing:** A hearing in which the children's court decides whether the child is a delinquent or an abused and neglected child pursuant to the Children's Code.

**Child:** A person who is less than 18 years old.

**Children's Court:** A division of the district court which has jurisdiction over many matters relating to children, including allegations that a child is a delinquent child, youthful offender, or an abused or neglected child.

**Consent Decree:** A children's court order which suspends the delinquency proceedings for six months, under supervision in the child's own home and under terms and conditions negotiated between the state, probation services, and all parties affected. An admission of some or all of the allegations stated in the petition shall not be required for a consent decree order.

**"D" Hearing or Detention Hearing:** A hearing in a delinquency prosecution in which the children's court decides on conditions of release for the child accused of being delinquent.

**Delinquent Child:** A child who has committed a delinquent act.

**Delinquent Offender:** A delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender.

**Petition:** A charging document, filed by the state, initiating proceedings pursuant to the Children's Code.

**Petitioner:** A person filing a petition in court. In delinquency petitions against children, the petitioner is the state government represented by the district attorney.

**Probable Cause Hearing:** A hearing in Children's Court for a judicial determination to determine whether there is probable cause to believe a child has committed an offense; made of a child in detention within 48 hours of arrest.

**Respondent:** The person against whom a petition has been filed. In delinquency petitions against children, the child is the respondent.

**Serious Youthful Offender:** A child fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder in adult court. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of the Children's Code.

**Youthful Offender:** A delinquent child subject to adult or juvenile sanctions who is fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses pursuant to the Criminal Code: second degree murder; assault with intent to commit a violent felony; kidnapping; aggravated battery against a household member; aggravated battery upon a peace officer; shooting at a dwelling or occupied building or shooting at or from a motor vehicle; dangerous use of explosives; criminal sexual penetration; robbery; aggravated battery; abuse of a child that results in great bodily harm or death to a child. A youthful offender also includes a child fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense; and a child fourteen years of age and adjudicated for first degree murder.

## Bankruptcy Court Glossary

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**341 Meeting:** A meeting of creditors at which the debtor is questioned under oath by creditors, a trustee, examiner, or the United States trustee about his/her financial affairs.

**Automatic Stay:** Prohibits the creditor from taking any action to enforce a pre-petition debt against a debtor in bankruptcy or against property of the bankruptcy estate or against property of the debtor.

**Chapter 7:** Liquidation of a debtor's assets, if there are any available, to raise cash for creditors. When a Chapter 7 case is filed, a trustee is appointed by the United States trustee to take over the debtor's property for the benefit of creditors. A debtor who is an individual is allowed to keep a limited amount of "exempt" property specified by law.

**Chapter 11:** Reorganization of liabilities of corporations or other business entities that must be voted on by creditors and approved by a bankruptcy judge.

**Chapter 13:** Reorganization of liabilities of individuals that requires approval by a judge of the plan for repayment over time of all or a percentage of the debts owed to creditors.

**Trustee:** The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the United States trustee or bankruptcy administrator.

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