

**MANUAL FOR
DISTRICT ATTORNEYS**

**HOW TO TAKE
AN APPEAL**

Prepared by

OFFICE OF THE ATTORNEY GENERAL

**HECTOR H. BALDERAS
ATTORNEY GENERAL**

Elizabeth Blaisdell
Assistant Attorney General

May 2001

Steven Johnston
Assistant Attorney General

Updated February 2016

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NOTICE OF APPEAL FROM SUPPRESSION OF EVIDENCE

Requirements:

1. You must have a written order suppressing evidence from district court.
2. You must file the notice of appeal with the district court clerk.
3. You must file the notice of appeal within **10** days of the written order.
4. You must include the following language in your notice of appeal: "I certify that this appeal is not taken for the purpose of delay, and the evidence is a substantial proof of a fact material to the proceeding."
5. You must attach a copy of the order from which you are appealing to the notice of appeal.
6. You must serve the notice of appeal on:
 - appellate court
 - appellate division of the Attorney General
 - appellate division of the Public Defender
 - trial judge
 - trial counsel for defendant(s)
 - tape monitor or court reporter

Statutes and Rules Governing Notice of Appeal from Suppression of Evidence:
NMSA 1978, §39-3-3-(B)(2) - governs 10-day time limit and certification language
Rule 12-201 NMRA (2013) and Rule 12-202 NMRA (2009)

***SAMPLE NOTICE OF APPEAL FROM SUPPRESSION
OF EVIDENCE ON NEXT PAGE ⇒***

Sample Notice of Appeal from Suppression of Evidence

FOURTH JUDICIAL DISTRICT
SAN MIGUEL COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff-Appellant,

v. No. 97-87-CR

JOE DRUGDEALER,
Defendant-Appellee.

NOTICE OF APPEAL

The State of New Mexico, plaintiff-appellant, appeals to the New Mexico Court of Appeals from the Order Suppressing Evidence filed on February 23, 2016, in this case.

I certify that this appeal is not taken for the purpose of delay, and the evidence is a substantial proof of a fact material in the proceeding.

Respectfully submitted,

Adam Smith
District Attorney

Adam Smith
Assistant District Attorney
P.O. Box 2025
Las Vegas, NM 87701
(505) 325-7555

I certify that a copy of this Notice of Appeal
was mailed to:

Mark H. Reynolds, Clerk
New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, NM 87504-2008

New Mexico Attorney General's Office
Appellate Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Office of the Public Defender
Appellate Division
301 N. Guadalupe
Santa Fe, NM 87501

Honorable Eugenio S. Mathis
Fourth Judicial District
P.O. Box 1540
Las Vegas, NM 87701

Bill Jones
Jones & Jones, P.C.
P.O. Box 1000
Las Vegas, NM 87701

Carol King
Tape Monitor
P.O. Box 1540
Las Vegas, NM 87701,

on February 23, 2016.

Assistant District Attorney

FOURTH JUDICIAL DISTRICT
SAN MIGUEL COUNTY
STATE OF NEW MEXICO

**ATTACH TO NOTICE OF
APPEAL**

STATE OF NEW MEXICO,
Plaintiff,

v.

No. 97-87-CR

JOE DRUGDEALER,
Defendant.

ORDER SUPPRESSING EVIDENCE

This matter having come on to be heard upon Defendant's Motion to Suppress Evidence, the Court having considered he arguments and memoranda of counsel, and being otherwise fully advised:

The Court finds that there were insufficient exigent circumstances to justify the warrantless search of Defendant's home on February 15, 2016.

It is therefore ordered that Defendant's Motion to Suppress Evidence is well-taken, and all evidence seized from the defendant's home on February 15, 2016, is suppressed.

District Judge

Date: February 23, 2016
Submitted:

Attorney for Defendant

Assistant District Attorney

NOTICE OF APPEAL FROM ORDERS OTHER THAN SUPPRESSION OF
EVIDENCE

Requirements:

1. You must have a written order from district court from which to appeal.
2. You must file the notice of appeal with the district court clerk.
3. you must file the notice of appeal within **30** days of the written order.
4. You must attach a copy of the order from which you are appealing to the notice of appeal.
5. You must serve the notice of appeal on:
 - appellate court
 - appellate division of the Attorney General
 - appellate division of the Public Defender
 - trial judge
 - trial counsel for the defendant(s)
 - tape monitor or court reporter

Statutes and Rules Governing State's Appeals From Everything But Suppression:
NMSA 1978, §39-3-3(B)(1)
Rule 12-201 NMRA (2013) and Rule 12-202 NMRA (2009)

SAMPLE NOTICE OF APPEAL ON NEXT PAGE ⇒

Sample Notice of Appeal from Orders Other Than Suppression of Evidence

FOURTH JUDICIAL DISTRICT
SAN MIGUEL COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

No. 97-87-CR

JOE BLOW,

Defendant-Appellee.

NOTICE OF APPEAL

The State of New Mexico, plaintiff-appellant, appeals to the New Mexico Court of Appeals from the Order to Dismiss With Prejudice filed on January 2, 2016, in this case.

Respectfully submitted,

Adam Smith
District Attorney

Adam Smith
Assistant District Attorney
P.O. Box 2025
Las Vegas, NM 87701
(505) 325-7555

I certify that a copy of this Notice of Appeal
was mailed to:

Mark H. Reynolds, Clerk

New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, Nm 87504-2008

New Mexico Attorney General's Office
Appellate Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Office of the Public Defender
Appellate Division
301 N. Guadalupe
Santa Fe, NM 87501

Honorable Eugenio S. Mathis
Fourth Judicial District
P.O. Box 1540
Las Vegas, Nm 87701

Bill Jones
Jones & Jones, P.C.
P.O. Box 1000
Las Vegas, NM 87701

Carol King
Tape Monitor
P.O. Box 1540
Las Vegas, NM 87701,

on February 1, 2016.

Assistant District Attorney

FOURTH JUDICIAL DISTRICT
SAN MIGUEL COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff.

**ATTACH TO NOTICE OF
APPEAL**

v.

No. 97-87-CR

JOE BLOW,
Defendant.

ORDER TO DISMISS WITH PREJUDICE

This matter having come on to be heard upon Defendant's Motion to Dismiss With Prejudice all charges contained herein, the Court having considered the arguments and memoranda of counsel, and being otherwise fully advised:

It is therefore ordered that Defendant's Motion to Dismiss With Prejudice is granted, and the indictment filed against the defendant in this case is dismissed with prejudice.

District Judge

Date: January 2, 2016

Submitted:

Attorney for Defendant

Assistant District Attorney

DOCKETING STATEMENT

Requirements:

1. You must file the docketing statement within **30** days from your notice of appeal.
2. You must file the docketing statement with the appellate court clerk to which you are appealing.
3. Contents of the Docketing Statement:

1. A statement of the nature of the proceeding (say what kind of case and give a brief procedural history.);
 2. The date of the judgment or order sought to be reviewed, and a statement showing that the appeal was timely filed (this would serve as a conclusion to the information set out in 1);
 3. A concise, accurate statement of the case summarizing all facts material to a consideration of the issues raised;
 4. A list of issues presented, including a statement of how each issue arose and how it was preserved in the trial court;
 5. For each issue, a list of authorities which support your position and any contrary authorities known by you, and also, if known, the standard of review for the issue;
 6. A statement specifying whether the entire proceedings were tape-recorded, and if not, identifying which portions were not tape-recorded;
 7. A reference to any related or prior appeals, with citations;
 8. Where applicable, a copy of the order appointing appellate counsel.
4. You must number the pages of the docketing statement.
5. You must serve the docketing statement on:
- district court clerk**
 - appellate division of the Attorney General
 - appellate division of the Public Defender
 - trial judge
 - trial counsel for defendant(s)
 - tape monitor or court reporter

The following rule governs docketing statements:
Rule 12-208, NMRA (2013)

SAMPLE DOCKETING STATEMENT ON NEXT PAGE ⇒

Sample Docketing Statement

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO
STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

No. 18,238
Taos Cty. No 95-41-CR

VERN SWAN,
Defendant-Appellee.

DOCKETING STATEMENT

JEFF ROMERO
District Attorney

Pam Greene
Assistant District Attorney
Attorneys for Plaintiff-Appellant
P.O. Drawer E
Taos, NM 87571
(505) 758-8683

Sample Docketing Statement

DOCKETING STATEMENT

Statement of Proceedings

This is an appeal by the state from the Amended Judgment and Sentence entered February 14, 2016, by the Honorable Peggy J. Nelson. Defendant was found guilty but mentally ill of two felony offenses and was sentenced to concurrent terms of imprisonment. Essentially, the amended judgment orders the Correction Department to transfer Defendant to the Forensic Treatment Unit of the Las Vegas Medical Center to serve his sentences.

This appeal is taken pursuant to N.M. Const. art. VI, §2. A timely notice of appeal was filed in the district court on February 19, 2016. Rule 12-201, NMRA 2013. This docketing statement is timely filed by March 21, 2016. Rule 12-208, NMRA 2013.

Statement of the Case

Defendant was convicted of Aggravated Burglary and Attempted Criminal Sexual Penetration by verdicts of guilty but mentally ill. There was substantial evidence of Defendant's mental illness at trial and it is not is disputed for purposes of this appeal. Defendant was first sentenced "provisionally" to the Corrections Department for two concurrent terms of imprisonment of nine and four years and two years parole provided that he was confined in the Forensic Treatment Unit at the Las Vegas Medical Center for such sentences. Other findings and conditions attended these sentences. The state

objected to this disposition on grounds that the court could not order the form or location of the defendant's incarceration as such order exceeded the court's statutory authority.

This initial judgment was filed January 16, 2016.

Subsequent proceedings to show cause to the Corrections and Health Departments resulted in amendments to the initial judgment. The sentences of imprisonment remained the same and were not reduced, suspended or deferred. The amended judgment deleted the provisional language of the initial judgment, ordered the defendant remanded to the Corrections Department for intake processing and prompt transfer to the Forensic Treatment Unit to serve the terms of imprisonment. The findings and other conditions as the initial judgment remained essentially the same. The state renewed its objection that such a sentence was contrary to statute and illegal to the extent of directing how and where the defendant was to be imprisoned. The amended judgment was filed February 14, 2016. A notice of appeal was timely filed on February 19, 2016.

Statement of Issues

1. The trial court erred in ordering the Corrections Department to confine the defendant, sentenced to full imprisonment terms, at the Forensic Treatment Unit of the Las Vegas Medical Center.

This issue was preserved by the state's objections to the form of sentence noted in the Statement of Proceedings.

List of Authorities

Supporting Authority:

N.M. Const. art. III, §1;

NMSA 1978, §31-20-1(A) through (E) (Place of imprisonment; commitments);

State of New Mexico ex rel. Clark, et al. v. Johnson, 120 N.M. 562, 570, 573, 904 P.2d 11, 19, 22 (1995)(570 - state constitutions are limitations, not grants, of power to respective branches; 573 - discussing separation of powers and some overlap as necessary);

State v. Neely, 117 N.M. 706, 710-711, 876 P.2d 222, 226-227 (1994)(where sentence is not reduced, suspended or deferred, Corrections Department is the responsible statutory entity to determine treatment for mentally ill offender; court may not sentence such offender to mental hospital);

Carter v. Montoya, 75 N.M. 730, 733, 410 P.2d 951 (1966)(availability of space solely question for administrators, not court; order to accept juvenile in excess of jurisdiction and a nullity);

State v. Ruiz, 109 N.M. 437, 438, 786 P.2d 51, 52 (Ct.App. 1989)(court lacks authority to order defendant confined in county jail on felony sentence).

Contrary Authorities:

None. No statute authorizes trial court to order placement of offender sentenced to nine-year imprisonment in any facility other than in accordance with NMSA 1978, 31-20-1(A).

Standard of Review:

This issue involves a question of law which is reviewed *de novo*.

Record of Proceedings

All proceedings were recorded by stenography.

Prior or Related Appeals

The defendant is appealing the amended judgment and sentence in this same numbered appeal. There are no prior appeals.

Respectfully submitted,

JEFF ROMERO
District Attorney

Pam Greene
Assistant District Attorney
Attorneys for Plaintiff-Appellant
P.O. Drawer E
Taos, NM 87571
(505) 758-8683

I certify that a copy of this docketing statement was mailed to the following:

Janett Martinez
Court Administrator
Taos County Courthouse
105 Albright St.
Taos, NM 87571

Mary Macfarlane, Monitor
105 Albright, Suite H
Taos, NM 87571

Honorable Peggy Nelson
105 Albright, Suite H
Taos, NM 87571

Attorney General's Office
Criminal Appeals Division
P.O. Drawer 1508

Santa Fe, NM 87504-1508

Office of the Public Defender
Appellate Division
301 N. Guadalupe
Santa Fe, NM 87501

Judith Bova, Esq.
P.O Box 291
Santa Fe, NM 87504

DESIGNATION OF APPELLATE RECORD

TRANSCRIPT:

Taped transcript:

1. You don't have to file anything. However, you must check with the district court clerk after 15 days to make sure the clerk sent the tapes to the appellate court. (The appellate courts have made it clear that they expect the appellant to make sure the transcript gets sent up, which includes reminding the clerk's office).

Written transcripts:

1. You must file a designation of all necessary parts of the transcript **15** days after the General Calendar notice.
2. You must file the designation of transcript with the district court clerk.
3. You must include a list of all parts of the case that need to be included in the appellate record (hearings, trial, sentencing, etc.).
4. You must serve the designation of transcript on the following:
 - trial counsel for defendant(s) (and appellate counsel, if known)
 - appellate court clerk
 - appellate division of the AG's office
5. You have the right to review and object to the written transcript within **15** days after you are served with notice that the transcript has been filed in district court.

Rules Governing Designation of Transcript:
Rule 12-211, NMRA 2013.
Second Judicial District Local Rule LR2-407

Sample Designation of Transcript

SECOND JUDICIAL DISTRICT

BERNALILLO COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff-Appellant,

v.

No. CR-97-1351

SAM DULUTH,
Defendant-Appellee.

DESIGNATION OF TRANSCRIPT

The State of New Mexico, plaintiff-appellant, designates the following portions of the transcript as a necessary part of the appellate record in this case:

1. Hearing on Motion to Suppress dated May 3, 2015.

Respectfully submitted,

JEFF ROMERO
District Attorney

Pam Greene
Assistant District Attorney
111 Union Square S.E.
Albuquerque, NM 87102
(505) 841-7100

I certify that a copy of this designation of transcript was mailed to:

Larry Slate
Assistant Public Defender
505 Central N.W.
Albuquerque, NM 87102

Office of the Public Defender
Appellate Division
301 N. Guadalupe
Santa Fe, NM 87501

Pat Wallace, Clerk
New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, NM 87504-2008

New Mexico Attorney General's Office
Appellate Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508,

on March 4, 2015.

Assistant District Attorney

EXHIBITS (Documentary)

Documentary Exhibits:

1. You must file the designation of any necessary documentary exhibits **15** days after the General Calendar notice.
2. You must file the designation of documentary exhibits with the district court clerk.
3. You must list each documentary exhibit that is necessary to the appeal.
4. You must serve the designation of documentary exhibits on:
 - trial counsel for defendant(s) (appellate counsel, if known)
 - appellate court
 - appellate division of the AG
 - Exhibits (Nondocumentary)

Nondocumentary Exhibits:

1. You must file the designation of any necessary nondocumentary exhibits **15** days after the General Calendar notice.
2. You must file the designation of nondocumentary exhibits with the appellate court clerk.
3. You must list each nondocumentary exhibit that is necessary to the appeal, plus the reason why each is necessary to the appeal.
4. You must serve the designation of nondocumentary exhibits on:
 - trial counsel for defendant(s) (appellate counsel, if known)
 - district court clerk
 - appellate division of the AG

Rule Governing Designation of Exhibits:
Rule 12-212, NMRA 2012.

SAMPLE DESIGNATIONS OF DOCUMENTARY AND

NONDOCUMENTARY EXHIBITS ON NEXT PAGES ⇒

Sample Designation of Documentary Exhibits

SECOND JUDICIAL DISTRICT
BERNALILLO COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

No. CR-97-1351

SAM DULUTH,

Defendant-Appellee.

DESIGNATION OF DOCUMENTARY EXHIBITS

The State of New Mexico, plaintiff-appellant, designates the following documentary exhibits as part of the appellate record in this case:

State's Exhibit 1 - Affidavit for Search Warrant
State's Exhibit 2 - Search Warrant
State's Exhibit 4 - Photo
State's Exhibit 5 - Photo
Defendant's Exhibit B - Chart.

Respectfully submitted,

JEFF ROMERO
District Attorney

Pam Greene
Assistant District Attorney
111 Union Square S.E.
Albuquerque, NM 87102
(505) 841-7100

I certify that a copy of this designation of exhibits was mailed to:

Larry Slate
Assistant Public Defender
505 Central N.W.
Albuquerque, NM 87102

Office of the Public Defender
Appellate Division
301 N. Guadalupe
Santa Fe, NM 87501

Patricia Wallace, Clerk
New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, NM 87504-2008

New Mexico Attorney General's Office
Appellate Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Assistant District Attorney

Sample Designation of Nondocumentary Exhibits

IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff-Appellant,

v.

No. 19,000
(Bernalillo Cty. No. CR-97-1345)

SAM DULUTH,
Defendant-Appellee.

DESIGNATION OF NONDOCUMENTARY EXHIBITS

The State of New Mexico, plaintiff-appellant, designates the following
nondocumentary exhibits as a necessary part of the appellate record in this case:

1. State's Exhibit 7 - knife.

This exhibit is essential to a determination of Issue 1 on appeal, because
the trial court ruled that it was not a deadly weapon.

2. State's Exhibit 8 - victim's shirt with cut and blood.

This exhibit is essential to a determination of Issue 2 on appeal, in which
the state is challenging the trial court's ruling that no stabbing occurred.

Respectfully submitted,

JEFF ROMERO
District Attorney

Pam Greene
Assistant District Attorney
111 Union Square
Albuquerque, NM 87102
(505) 841-7100

I certify that a copy of this designation
of nondocumentary exhibits was mailed
to:

Lefty Orlando
Orlando, Hoke & Gamble, P.C.
1700 Indian School Rd. N.E.
Albuquerque, NM 87109

New Mexico Attorney General's Office
Appellate Division

P.O. Drawer 1508
Santa Fe, NM 87504-1508

Thomas J. Ruiz, Clerk
Second Judicial District Court
P.O. Box 488
Albuquerque, NM 87103

Assistant District Attorney