

Administrative Office of the Courts

Supreme Court of New Mexico

Karl Reifsteck, Director



202 East Marcy St.
Santa Fe, NM 87501
(505) 827-4800

Administrative Office of the Courts

Criminal Complaint on Arrests Without Warrant Not Filed Within 201 Time Requirements Standard Operating Procedure

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- **Criminal Complaint Not Filed Within 201 Time Requirements**

COURT / DEPARTMENT / DIVISION

Magistrate Courts

USER

Magistrate Judges

Magistrate Court Clerks

PURPOSE

To provide clarification and process related to amendments to Rule 6-201.

INTRODUCTION

The 2024 amendments to the above Rules provide time limits in which to file a criminal complaint after arrest. If defendant is in custody, the original complaint should be filed immediately if the court is open or the next business day if the court is closed. If defendant is not in custody, the original complaint should be filed within 72 hours. **The defendant should not be arraigned from a copy of the criminal complaint. If the complaint is not filed timely then the case shall be dismissed without prejudice.**

STEPS

I. Determination of probable cause

If probable cause has not already been determined on an arrest without a warrant, a judge should review the case charging documents to determine probable cause within 48 hours of arrest. If probable cause is not determined, the court should order the immediate personal recognizance release of the defendant from custody pending further proceedings.

II. Courts Utilizing Pretrial Services:

A. Case opened by Pretrial staff

Pretrial staff opens a case in Odyssey from the copy of the criminal complaint.

B. Dismissal of complaint

1. Change the opening event from OPN: Criminal Complaint Filed to 9832: Criminal Complaint (Non-Opening).
2. Prepare the order to dismiss the case.
 - a. If the defendant is in custody
 - i. mark the release defendant option on the release order. Refer to the attached Order Dismissing Criminal Complaint for the recommended language.
 - ii. Send the dismissal with the release language to the detention facility immediately.
3. Docket event 6051 ORD: Dismissing Criminal Complaint and attach a copy to the event.

4. Enter the disposition as Dismissed – Complaint/Citation Not Filed Timely for all charges in the case.
5. Close the case using event 3028 CLS: Dismissed Without Prejudice.
 - a. On the disposition tab, click the case close box. The date will default to the current date. Click the “add events” box and then the plus sign for events. Enter 3028 into the type and then click continue, then save.

C. Original complaint filed after dismissal

If a complaint is filed that references an arrest without a warrant, staff should follow verify whether a case was previously opened and dismissed. If the original complaint is filed after a dismissal has been issued, the complaint should be filed in the original case.

1. Search for an existing case in Odyssey with the same charges and offense date as the complaint filed.
2. If a case already exists in Odyssey, docket 1001 OPN: Criminal Complaint Filed.
3. Change the case status to pending on the detail tab
 - a. plus sign on the case status section and select pending.
4. Issue a summons for arraignment/first appearance.
5. Verify that the appropriate time standards are created.
6. Process the case as usual.

III. Courts Without Pretrial Staff:

A. Dismissal of complaint

No copy of the complaint

1. If the court does not have a copy of the complaint, the court opens the case as a criminal miscellaneous case and enters all of the information the court received.
2. Prepare the order to dismiss the case.
 - a. If the defendant is in custody
 - i. mark the release defendant option on the release order. Refer to the attached Order Dismissing Criminal Complaint for the recommended language.
 - ii. send the dismissal with the release language to the detention facility immediately.
3. Docket event 6051 ORD: Dismissing Criminal Complaint and attach a copy to the event.
4. Enter the disposition as Dismissed – Complaint/Citation Not Filed Timely for all charges in the case.
5. Close the case using event 3028 CLS: Dismissed Without Prejudice.
 - a. On the disposition tab, click the case close box. The date will default to the current date.
 - b. Click the “add events” box and then the plus sign for events.
 - c. Enter 3028 into the type and then click continue, then save.

Or

Copy of complaint received, original not filed by Prosecutor

1. If the court receives a copy of the criminal complaint, then the court may proceed with opening the case as the appropriate case type.
2. Change the opening event from OPN: Criminal Complaint Filed to 9832: Criminal Complaint (Non-Opening).
3. Prepare the order to dismiss the case.
 - a. If the defendant is in custody
 - i. mark the release defendant option on the release order. Refer to the attached Order Dismissing Criminal Complaint for the recommended language.
 - ii. send the dismissal with the release language to the detention facility immediately.
4. Docket event 6051 ORD: Dismissing Criminal Complaint and attach a copy to the event.
5. Enter the disposition as Dismissed – Complaint/Citation Not Filed Timely for all charges in the case.
6. Close the case using event 3028 CLS: Dismissed Without Prejudice.
 - a. On the disposition tab, click the case close box. The date will default to the current date.
 - b. Click the “add events” box and then the plus sign for events.
 - c. Enter 3028 into the type and then click continue, then save.

B. Original complaint filed after dismissal

If the original complaint is filed after a dismissal has been issued, and the dismissed case was opened as a criminal miscellaneous case type then the complaint should be opened as a new case in the appropriate case type as charged.

1. Refer to the case initiation SOP.
2. Relate the miscellaneous case type to the new case.
 - a. Go to the detail tab and click the plus sign on the “related cases” section.
 - b. Enter the case number and the reason “companion case.”
3. Issue a summons for arraignment/first appearance.
4. Verify that the appropriate time standards are created.
5. Process the case as usual.

OR

If the original complaint is filed after a dismissal has been issued and the case was opened with a copy in the appropriate case type, the dismissed case should proceed and the complaint will open the case.

1. Search for an existing case in Odyssey with the same charges and charge date as complaint filed.
2. Once you find the appropriate case, docket 1001 OPN: Criminal Complaint Filed.

3. Change the case status to pending on the detail tab
 - a. plus sign on the case status section and select pending.
4. Issue a summons for arraignment/first appearance.
5. Verify that the appropriate time standards are created.
6. Process the case as usual.

STATE OF NEW MEXICO, Plaintiff,

v.

_____, Defendant

No. _____

DOB: _____

ORDER DISMISSING CRIMINAL COMPLAINT

THIS MATTER having come before the Court:

- A hearing having been held with the defendant having appeared in person or remotely or defendant's appearance having been waived and defendant being represented by counsel.
- Upon oral motion of defense counsel for dismissal of the Complaint/Citation.
- For Trial, the Defendant having appeared, the Officer-Prosecutor failing to appear.
- Upon the defendant's fulfillment of requirements specified in statute or by Court order.
- Upon oral motion of the prosecution for dismissal of the Complaint/Citation.
 - The Witness failed to appear and the state is unable to proceed without the Witness.
 - The State has determined it is not in the interest of justice to proceed.
- The Court has determined the case should be dismissed,
 - the complaint and/or citation is unsigned or insufficient
 - the complaint and/or citation(s) have been filed untimely under Rule 7-201 NMRA
 - as a sanction for the State's failure to provide discovery
 - as a sanction for the state's failure to be ready to proceed to trial as scheduled.
 - the defendant has submitted proof of compliance
 - the defendant having failed to submit proof of compliance with the deferred sentence, and the Court's jurisdiction having lapsed
 - no original charging document was filed
 - the six-month rule has expired
- Other

IT IS HEREBY ORDERED that all the charges in the Complaint/Citation filed in the above-styled cause be dismissed:

- With prejudice. The complaint may not be refiled.
- Without prejudice. The complaint may be refiled. If the complaint is refiled, Defendant shall promptly respond to any further communications from the Court concerning the refiled charges.

IT IS FURTHER ORDERED

- The Bond shall be released.
- Release Defendant from custody and Hold Removed **on this case only**
- The Bench Warrant is **served**;

- The Bench Warrant is **cancelled**;
- The Bench Warrant is **quashed** as it was **issued in error**;

IT IS FURTHER ORDERED

*[For Bench Warrants issued prior to July 1, 2024, where the Administrative Bench Warrant Fee was assessed.] The **Administrative Bench Warrant Fee** previously assessed **is waived** as Section 34-8A-12 NMSA 1978 has been repealed, effective July 1, 2024.*

Judge