



STATE OF NEW MEXICO  
SECOND JUDICIAL DISTRICT

**NAN G. NASH**  
CHIEF JUDGE

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22 September 2017

Rep. Patricia Lundstrom, Chair  
New Mexico Legislative Finance Committee

Re: Summary of Analysis of Case Management Order

Dear Chair Lundstrom and Legislative Finance Committee Members;

Attached please find the draft Summary of Analysis of the Second Judicial District Case Management Order ("CMO"). A draft of the full Analysis, which exceeds 150 pages, will be posted to the website next Tuesday, September 26, 2017. The CMO is one of the items on the Agenda for the September 29, 2017 meeting.

The Second Judicial District criminal justice partners, through the Criminal Justice Coordinating Council ("CJCC"), have been discussing proposed revisions to the CMO. The Analysis of the CMO was prepared as part of that discussion and will be submitted to the CJCC in October and thereafter to the New Mexico Supreme Court. We are unable to provide a final version because we are waiting to hear from the District Attorney's Office regarding some proposed compromise CMO language. Nevertheless we believe the Summary of Analysis and draft full Analysis contain useful information about the history and function of the CMO.

I look forward to meeting with you next week. Thank you for your attention to this letter and the attached Summary.

Respectfully,

A handwritten signature in blue ink, appearing to read "Nan G. Nash". The signature is written over the typed name and title.

Nan G. Nash, Chief Judge  
Second Judicial District Court

# The Second Judicial District Court Case Management Order: A 2016 and 2017 Functional Assessment

## SUMMARY OF ANALYSIS

On June 15, 2017, the Second Judicial District DA’s Office (“DA’s Office”) published its *Report on the Impact of the Case Management Order on the Bernalillo County Criminal Justice System and Proposed Rule Amendments* (“2017 Report”). In his 2017 Report DA Torrez claims numerous problems with CMO compliance and suggests revisions to the corresponding local rule, LR2-308. These suggested revisions would both extend most deadlines and eliminate or weaken sanctions that currently result from failure to adhere to CMO deadlines.

In response to the 2017 Report, the Court has reviewed the cases cited by the DA’s Office, as well as the other dismissals from 2016 and 2017. The Court has conducted a detailed analysis of the cases dismissed in those years and the reasons for dismissal. The full report follows this summary.

In 2016, 2787 cases were dismissed, 977 by the Court and 1810 by the DA’s Office. In 2017, of the 916 dismissals, the Court dismissed 302 and the DA’s Office dismissed 614. In 2016, therefore, the Court initiated 35% of dismissals and 33% in 2017. The DA’s Office initiated 65% of dismissals in 2016 and 67% thus far in 2017.

Comparing the data from 2016 and the partial data from 2017, in most categories, CMO-related dismissals and CMO-related *nolle prosequi* rates have remained fairly consistent.<sup>1</sup>

	DC 2016 (977 total)	NP 2016 (1810 total)	Total 2016 (2787 total)	DC 2017 (302 total)	NP 2017 (614 total)	Total 2017 916 (dismissals)
<b>Arraignment</b>	21	0	21 (< 1%)	6	0	6 (< 1%)
<b>Transport</b>	34	7	41 (1 %)	23	2	25 (3%)
<b>PTI</b>	46	53	99 (4%)	23	34	57 (6%)
<b>Disclosure</b>	109	7	116 (4%)	20	0	20 (2%)
<b>Multiple</b>	13	25	38 (1%)	22	9	31 (3%)

<sup>1</sup> This chart does not represent all dismissal reasons, only those reasons that were highlighted by the 2017 Report.

Based on its review, the Court has determined that no revisions to the CMO are necessary to ensure that the criminal justice system in the Second Judicial District continues to process cases effectively and efficiently, protecting the rights of all parties. Most *nolles* result from the age of the case or uncooperative witnesses and victims. Most Court dismissals relate to conditional discharge and deferred sentences. None of these categories is related to the CMO.

Focusing on the CMO, the greatest number of dismissals result from failure to disclose evidence or to provide pretrial interviews. Eliminating the mandatory sanctions provisions from the CMO will not improve either of these problems. The Court's pre-CMO experience indicates that discovery and interview problems only increase without a mechanism for the Court to force the parties to comply with deadlines. Further, the Court's review of the cases indicates that despite the sanctions provision of the CMO, the Court has granted numerous extensions of discovery deadlines in 2016 and 2017. The reasonable conclusion to be drawn from the continued failures to disclose evidence and locate and make available witnesses is not that the deadlines should be extended or that sanctions should be loosened, but rather that stricter deadlines and stricter Court adherence to those deadlines is warranted.

The DA's Office maintains that the CMO has resulted in criminal defendants "winning by default" and defense attorneys take no action and instead wait for the prosecutors to miss an arbitrary deadline, leading to a dismissal. The Court's analysis does not support this view.

Dismissed cases do not demonstrate inaction by defense attorneys. Instead, the cases show prosecutorial difficulties with the disclosure of evidence that supports the charges, with ensuring that the defendant is present at hearings, with moving the case efficiently forward toward trial, and with securing interviews with necessary witnesses. These dismissals are not a "win" for any party—and neither is a conviction a "win" for the DA's Office because "[t]he primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict." American Bar Association, *Criminal Justice Standards for the Prosecution Function*, §3-1.2, at p. 2 (4th Ed.); see also *Connick v. Thompson*, 563 U.S. 51, 65-66 (2011) (quoting La. State Bar Ass'n, Articles of Incorporation, Art. 14, § 7 (1985)).

The DA's Office acknowledges that reformation of policies and procedures within its office is necessary, and many of the problems identified in the *2017 Report* appear to be largely related to how the DA's Office chooses to allocate resources and identify priorities. The Court has noted a reduction in the use of many prosecution tools, including the Early Plea Program, specialty courts, and the criminal information/preliminary hearing process. Discussions at the "CMO workshops" revealed that discovery problems primarily center around the DA's office obtaining evidence from the Albuquerque Police Department. Further, a review of defendants placed on pretrial services at felony first appearance indicates that only approximately 10% of defendants on pretrial services have their case indicted or bound over within the sixty-day time limit. Thus, many cases are

dismissed before coming under the purview of the CMO. These problems clearly cannot be addressed by changes to the CMO, but rather they require changes in the DA's internal procedures.

Additionally, the Court has observed the DA's Office recent focus on preventive detention motions. While the Court strongly supports the effort to ensure public safety, many of the motions have been in cases in which the defendant is already subject to conditions of release that could either be modified or revoked or who are already detained in other cases. Preventive detention motions have also been withdrawn in some cases and in other cases, the matter is pled to a misdemeanor, the prosecutor dismisses the case, or no indictment is brought within ten days. This again raises a question of allocation of resources.

The CMO revisions suggested by the DA's Office do not solve communication problems between departments, do not cure the underlying discovery issues or the allocation of resources issues, and overlook the benefit to the State of dismissal without prejudice, which gives the State another chance to proceed—as opposed to exclusion, which would require the State to move forward without potentially necessary witnesses. In addition, some of the proposed revisions limit the Court's discretion in a manner that the New Mexico Supreme Court has already rejected in *State v. Le Mier*. The proposed revisions further disregard the documented delays that existed prior to the CMO and disavow responsibility for charging responsibly, conducting pre-charging investigation, preparing the cases, and bringing these cases to trial. Deadlines and consequences hold all participants, including the Court, responsible for rising to the expectations and rigors imposed by our criminal justice system.

The Court is satisfied with the progress that has been made under the CMO and does not support changes to its provisions at this time. Nevertheless, the DA's Office has stated its desire to improve its performance and to reach compliance with the goals of the new case management process. The Court endorses such initiative and will not oppose certain proposed changes to the CMO.<sup>2</sup> If the CMO is amended, the Court also proposes one change to ensure those cases subject to Rule 5-409 NMRA detention are heard in an expedited manner.

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<sup>2</sup> The Court is currently awaiting the DA's final proposed CMO changes. It has tentatively agreed not to oppose certain changes but cannot take any official stance until the DA's Office has circulated its final proposal. The Court's analysis will be updated upon receipt of the DA's final proposal.