

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**Opinion Number: 2009-NMSC-052**

**Filing Date: November 30, 2009**

**IN THE MATTER OF DEATH PENALTY SENTENCING  
JURY RULES**

**NO. 09-8300-042**

**IN THE MATTER OF THE AMENDMENTS OF  
RULES 5-605 AND 5-704 NMRA OF THE  
RULES OF CRIMINAL PROCEDURE FOR THE  
DISTRICT COURTS - DEATH PENALTY SENTENCING JURY RULES**

**ORDER**

WHEREAS, the Legislature repealed the death penalty in New Mexico for all crimes committed on or after July 1, 2009. *See* 2009 N.M. Laws, ch. 11, §§ 5-7;

WHEREAS, the death penalty remains a sentencing option for a limited number of cases alleging crimes committed before July 1, 2009;

WHEREAS, prior to the 2009 death penalty repeal, the Legislature previously established a procedure for sentencing a defendant convicted of a capital felony under the provisions of NMSA 1978, Section 31-20A-1(B) (1979), which provides that a separate sentencing proceeding shall be held to determine whether the defendant shall be sentenced to death or life imprisonment and that “the sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury”;

WHEREAS, this Court has acknowledged that the Legislature is not precluded from enacting statutes affecting pleading and practice in New Mexico state courts unless such a statute conflicts with an existing court rule, a constitutional provision, or otherwise impairs the essential functions of the Court. *See Albuquerque Rape Crisis Center v. Blackmer*, 2005-NMSC-032, ¶ 5, 138 N.M. 398, 120 P.3d 820;

WHEREAS, this Court previously deferred to the legislative policy considerations for choosing the sentencing procedure as aforementioned in *State v. Fry*, 2006-NMSC-001, ¶ 12, 138 N.M. 700, 126 P.3d 516;

WHEREAS, since *Fry*, the Governor signed legislation repealing the death penalty with both branches of government expressing their lack of trust in the procedural system they had previously developed for imposition of the death penalty, which includes the requirement of the original judge and jury conducting the sentencing proceeding;

WHEREAS, as the independent judicial branch of government charged with the

constitutional responsibility of furthering due process considerations, this Court has the authority to adopt procedural rules;

WHEREAS, this Court concludes that our opinion in *Fry* is not an impediment to revising the procedures for the use of juries in death penalty cases; and

WHEREAS, this Court concludes that providing the option of having two separate juries – one to determine innocence or guilt and one to determine sentencing – for the limited number of death penalty cases that remain pending in New Mexico may address some of the concerns expressed by the Governor, the Legislature, and others regarding the death penalty system in New Mexico;

WHEREAS, this Court, pursuant to its constitutional powers of superintending control, has approved procedural rule amendments effective prospectively or to pending cases and concludes that these amendments shall be effective for all pending cases; and the Court being sufficiently advised, Chief Justice Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 5-605 and 5-704 NMRA of the Rules of Criminal Procedure for the District Courts hereby are APPROVED;

IT IS FURTHER ORDERED that, pursuant to *State v. Pieri*, 2009-NMSC-019, 146 N.M. 155, 207 P.3d 1132, the amendments to Rules 5-605 and 5-704 NMRA of the Rules of Criminal Procedure for the District Courts shall be **effective November 30, 2009, for all new and pending cases in New Mexico district courts**; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of Rule 5-605 and 5-704 NMRA by publishing the same in the *New Mexico Reports*, the *Bar Bulletin*, and NMRA, and posting the same on the New Mexico Compilation Commission web site <[www.nmcompcomm.us/nmrules](http://www.nmcompcomm.us/nmrules)>.

IT IS SO ORDERED.

WITNESS, Honorable Chief Justice Edward L. Chávez  
of the Supreme Court of the State of New Mexico, and  
the seal of said Court this 30th day of November, 2009.

( S E A L )

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Kathleen Jo Gibson, Chief Clerk of the Supreme Court  
of the State of New Mexico