

9-414. Order dismissing criminal complaint.

[For use with Magistrate Court Rule 6-506 NMRA, Metropolitan Court Rule 7-506 NMRA and Municipal Court Rule 8-506 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]

v. _____ No. _____
_____, Defendant.

ORDER DISMISSING CRIMINAL COMPLAINT

This matter has come before the Court

- upon the motion of the defendant that the above-styled cause be dismissed [with prejudice] for failure of the [(state) (city)] [state] [city] to prosecute, and the Court [finding] finds that the defendant was not responsible for the failure to complete the disposition of the criminal proceeding.
- 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.
- upon _____.

The complaint charges Defendant with _____.

It is hereby ordered that all the charges in the complaint 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.

Judge

APPROVED:

Defendant or counsel

Prosecutor

(This form must be signed by the prosecutor if the case is dismissed upon oral motion of the prosecution.)

USE NOTES

1. This form is to be used only when all charges against Defendant are being dismissed. If some are dismissed and others are adjudicated, the court should use a judgment and sentence.

2. If the prosecution files a notice of dismissal, such as Form 9-415 NMRA, the court need not file an order of dismissal. The court may use this form if the prosecution orally moves for dismissal.

3. If the court has granted a motion to suppress, it is “an improper act” to also dismiss the case even when the court anticipates that the prosecution cannot prove its case. *State v. Montoya*, 2008-NMSC-043, ¶ 18, 144 N.M. 458, 188 P.3d 1209. This is “because once some evidence is suppressed, the [prosecution] is entitled to determine, for example, whether to pursue its case with its remaining evidence, dismiss its case with prejudice, or dismiss its case and refile it in district court.” *Id.* [As amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]