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Nolle Prosequi in New Mexico Criminal Cases: A Dismissal but Not Necessarily an End to the Case

A Nolle Prosequi or simply Nolle is considered a good outcome in a criminal case. However, this must be qualified since the Nolle is not necessarily the end of the case.

A Nolle is usually entered without prejudice. This means that the district attorney or prosecutor can re-file the charges at a later date. The Nolle will not generally toll the speedy trial rule which at the metropolitan and magistrate court levels is construed to be six months. As such, the prosecutor must re-file within the six month period.

Nolle's are typically entered when the prosecutor has been unable to make the state's witnesses available for pre-trial interview by the defense. Likewise, the prosecutor may be unable to get the state's witnesses to trial. This situation is not uncommon. It may occur in DWI cases when the officers are not available for interview and or trial. The incidence of dismissal in DWI cases has gone down significantly since the Albuquerque Police Department discontinued the DWI team concept. In the past, there would typically be two officers involved, one that made the traffic stop and another DWI unit officer who conducted the DWI investigation. The team concept required both officers presence for pre-trial interviews and for trial. If either was unavailable, the case would be dismissed.

On other occasions, critical evidence may be missing or otherwise unavailable such as police reports, witness statements, lab or test results and so on. This last situation is fairly rare but does occur on occasion. A missing police report is hard for the prosecutor to overcome. Missing witness statements may provide grounds for a dismissal or at least suppression of certain evidence. Missing lab or test results in some cases may be insurmountable for the prosecution. However, in DWI cases, missing breath or blood alcohol scores are a mere nuisance to the prosecution due to the impaired to the slightest degree standard. The breath score is simply unnecessary for a conviction if there is any admission of alcohol.

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**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>

Though the Nolle is never a bad thing, it likewise is not a permanent thing until the six month speedy trial run has run. Often, upon entering a Nolle, the prosecutor will be able to collect missing evidence and locate missing witnesses. If done in a timely manner, the prosecutor can then re-file. There are those instances where the case is re-filed at the last minute just before the speedy trial rule runs. There are some judges that will not allow this practice due to the severely prejudicial effect it has on defendants. There are others that will let it slide. Unfortunately, short of appeal, the outcome may rest entirely on pure luck of the draw.

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