Rules of Civil Procedure for the Metropolitan Courts

ARTICLE 1
General Provisions

3-101. Scope and title.

A. **Scope.** These rules shall govern the procedure in civil actions in all metropolitan courts. These rules shall be subject to the provisions of Rule 23-114 NMRA, the rule governing free process for civil cases.

B. **Construction.** These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every metropolitan court civil action. They shall not be construed to extend or limit the jurisdiction of any court, or to abridge, enlarge or modify the substantive rights of any litigant.

C. **Title.** These rules shall be known as the Rules of Civil Procedure for the Metropolitan Courts.

D. **Citation form.** These rules shall be cited by set and rule numbers, as in NMRA, Rule 3-___.

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 07-8300-038, effective February 25, 2008.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-038, effective February 25, 2008, provided that Rule 3-101 NMRA shall be subject to the provisions of Rule 23-114 NMRA, the rule governing free process for civil cases.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 Am. Jur. 2d Courts § 96.

21 C.J.S. Courts §§ 124 to 134.

3-102. Conduct of court proceedings.

A. **Judicial proceedings.** Judicial proceedings should be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the people and to the litigants, and in an atmosphere that bespeaks the responsibilities of those who are charged with the administration of justice.

B. **Nonjudicial proceedings.** Proceedings designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be

photographed in, or broadcast from, the courtroom with the permission and under the supervision of the court like all other court proceedings in accordance with Rule 23-107 NMRA.

[As amended, effective January 1, 1993; as amended by Supreme Court Order No. 18-8300-020, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-020, effective December 31, 2018, clarified that any photographing or broadcasting of certain court proceedings is subject to Rule 23-107 NMRA; and in Paragraph B, after “Proceedings”, deleted “other than judici,al proceedings”, and after “supervision of the court”, added “like all other court proceedings in accordance with Rule 23-107 NMRA”.

The 1993 amendment, effective January 1, 1993, deleted the former second sentence in Paragraph A, which limited photography in the courtroom and the transmission or sound recording of proceedings for radio or television except upon approval by the court.

3-103. Local rules and forms.

A. **Local rules; approval procedure.** A metropolitan court may from time to time make and amend local rules governing its practice not inconsistent with these rules or other rules of the Supreme Court. Copies of proposed local rules and amendments shall be submitted to the Supreme Court and to the chair of the Supreme Court's Rules for Courts of Limited Jurisdiction Committee for review. The Rules for Courts of Limited Jurisdiction Committee shall review any proposed local rule for content, appropriateness, style and consistency with the other local rules, statewide rules and forms and the laws of New Mexico, and it shall advise the Supreme Court and the chief judge of the metropolitan court of its opinion regarding the proposed rules. Any local rule or local rule amendment promulgated by a metropolitan court shall not become effective until such rule is approved by order of the Supreme Court, filed with the clerk of the Supreme Court and published in the Bar Bulletin or in the New Mexico Rules Annotated.

B. **Forms.** Forms used in the metropolitan courts shall be substantially in the form approved by the Supreme Court.

C. **Local rules committee.** The chief judge of a metropolitan court may form a local rules committee to implement the provisions of this rule. The local rules committee shall include at least one member from the Rules for Courts of Limited Jurisdiction Committee.

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 05-8300-022, effective December 15, 2005.]

ANNOTATIONS

The 2005 amendment, effective December 15, 2005, added the second and third sentences of Paragraph A and a new Paragraph C of this rule providing authority for the metropolitan court local rules, the appointment of a local rules committee and the procedure for approval of local rules by the Supreme Court.

3-104. Time.

A. **Computing time.** This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less.***

(a) When the period is stated in days but the number of days is ten (10) days or less,

(i) exclude the day of the event that triggers the period;

(ii) exclude intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) This subparagraph shall not apply to any statutory notice that is required to be given prior to the filing of an action.

(3) ***Period stated in hours.*** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) ***Unavailability of the court for filing.*** If the court is closed or is unavailable for filing at any time that the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) ***"Last day" defined.*** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) ***"Next day" defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) ***"Legal holiday" defined.*** "Legal holiday" means the day that the following are observed by the judiciary:

(a) New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day (traditionally observed on the day after Thanksgiving), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

B. **Extending time.**

(1) ***In General.*** When an act may or must be done within a specified time, the court may, for cause shown, extend the time:

(a) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) ***Exceptions.*** A court shall not extend the time for commencement of trial under Rule 3-305 NMRA or for taking an appeal under Rule 3-705 NMRA, except to the extent and under the conditions stated in those rules.

C. **Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, electronic transmission, or by deposit at a location designated for an attorney at a court facility under Rule 3-203(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. **Public posting of regular court hours.** The court shall publicly post the hours that it is regularly open.

[As amended, effective August 1, 2004; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Committee commentary. — In 2014, the Joint Committee on Rules of Procedure amended the time computation rules, including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and restyled the rules to more closely resemble the federal rules of procedure. *See* Fed. R. Civ. Pro. 6; Fed. R. Crim. Pro. 45.

The method for computing time periods of ten days or less set forth in Subparagraph (A)(2) of this rule does not apply to any statutory notice that must be given prior to the filing of an action. For example, several provisions of the Uniform Owner-Resident Relations Act require such notice. *See, e.g.*, NMSA 1978, § 47-8-33(D) (requiring the landlord to give the tenant three days notice prior to terminating a rental agreement for failure to pay rent).

Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable for filing due to weather, technological problems, or other circumstances. A person relying on Subparagraph (A)(4) to extend the time for filing a paper should be prepared to demonstrate or affirm that the court was closed or unavailable for filing at the time that the paper was due to be filed under Subparagraph (A)(1), (A)(2), or (A)(3).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-016, effective December 31, 2014, completely rewrote the rule; deleted former Paragraph A which provided rules for computation of time by excluding the day of the event from which the period of time began to run, including the last day of the period of time, excluding Saturdays, Sundays, legal holidays and days of severe inclement weather, and defined legal holidays; deleted former Paragraph B which provided for the enlargement of the period of time by the court; deleted former Paragraph C which provided for the service of motions for the enlargement of the period of time and for ex parte applications; deleted former Paragraph D, which provided for a three day enlargement of the period of time when a party was served by mail; deleted former Paragraph F which provided that the rule did not apply to any statutory notice the was required to be given prior to the filing of an action; and added current Paragraphs A through D.

The 2004 amendment, effective August 1, 2004, amended Paragraph A to delete "by local rule of the metropolitan court", to add after "legal holiday" in the second sentence "or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible" and to add the last sentence of the Paragraph relating to how time is computed and defining "legal holiday"; amended Subparagraph (2) of Paragraph B to add "where the failure to act was the result of excusable neglect"; and to add the exception at the end of the Subparagraph; amended Paragraph C to delete the last sentence; and added Paragraph E.

Cross references. — For examples of statutory notices that are required to be given prior to the filing of an action, *see* Sections 47-8-33, 47-8-27.1, 47-8-33 and 47-8-37 NMSA 1978. *See also* Civil Forms 4-901 (three-day notice of nonpayment of rent); 4-901A (three-day notice of substantial violation of rental agreement); Civil Forms 4-902 (seven-day notice of noncompliance with rental agreement); and Civil Forms 4-902A (resident's seven-day notice of abatement of rent or termination of agreement) NMRA.

3-105. Assignment and designation of judges.

A. **Procedure for replacing a judge upon excusal or recusal.** Upon receipt of a notice of excusal or upon recusal, the chief metropolitan court judge shall, by random selection, assign another metropolitan court judge to try the case. If all metropolitan court judges in the district have been excused or have recused themselves, the chief judge of the metropolitan court shall certify that fact by letter to the district court of the county in which the action is pending and the district court shall designate another judge to conduct any further proceedings. The district court shall send notice of its designation to the parties or their counsel and to the metropolitan court.

B. **Subsequent proceedings.** All proceedings shall be conducted in the metropolitan court. The clerk of the metropolitan court shall continue to be responsible for the court file and shall perform such further duties as may be required. Within five (5) days after assignment or designation of a new judge, the clerk shall make a copy of the court file for the designated judge.

C. **Parties agreement on trial judge.** At any time during the pendency of the proceedings if the assigned judge is unavailable, the parties may agree on another judge to hear any matter, including the merits of the case. The agreement is subject to the approval of the assigned judge and the judge agreed upon by the parties.

[As amended, effective May 1, 1986; May 1, 1987; October 1, 1987; September 1, 1989; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 11-8300-021, effective May 27, 2011; as amended by Supreme Court Order No. 13-8300-026, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-026, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017, removed the ten-day time limit within which the chief judge of the metropolitan court shall notify the district court of the county in which an action is pending in which all metropolitan court judges in the district have been excused or have recused themselves; and in Paragraph A, after "have recused themselves", deleted "within ten (10) days after service of the last notice of excusal or recusal".

The 2013 amendment, approved by Supreme Court Order No. 13-8300-026, effective December 31, 2013, eliminated the requirement that the judge or clerk of the court give notice of the excusal or recusal of a judge; deleted the requirement that the chief metropolitan court judge appoint a new judge when the parties fail to agree upon a new judge; and in the first sentence, deleted "the judge or clerk of the court shall give written notice to the parties to the action. If the parties fail to agree upon a new judge".

The 2011 amendment, approved by Supreme Court Order No. 11-8300-021, effective May 27, 2011, in Paragraph A, removed the requirement that counsel agree on another judge to try the case within ten days after service of notice of excusal or recusal.

The 2002 amendment, effective May 1, 2002, added Paragraph C.

The 1995 amendment, effective November 1, 1995, rewrote the rule heading, rewrote Paragraph A, deleted former Paragraph B relating to procedure for replacing a recused judge, and redesignated former Paragraph C as Paragraph B and rewrote that paragraph.

Cross references. — For forms on excusal or recusal, *see* Rule 4-101 NMRA et seq.

3-106. Excusal; recusal; disability.

A. **Excusal.** Whenever a party to any civil action or proceeding of any kind files a notice of excusal, the judge's jurisdiction over the cause terminates immediately.

B. **Limitation on excusals.** No party shall excuse more than one judge. A party may not excuse a judge after the party has requested that judge to perform any discretionary act other than an order for free process or a determination of indigency.

C. **Excusal procedure.** A party may exercise the statutory right to excuse the judge before whom the case is pending by filing with the clerk of the court a notice of excusal. The notice of excusal must be:

(1) signed by a party plaintiff or that party's attorney and filed within ten (10) days after the later of:

(a) the filing of the complaint; or

(b) service by the court of notice of assignment or reassignment of the case to a judge;

(2) signed by any other party or any other party's attorney and filed within ten (10) days after the later of:

(a) the filing of the answer pursuant to Rule 3-302 NMRA by that party; or

(b) service by the court of notice of assignment or reassignment of the case to a judge; or

(3) by each party plaintiff and defendant in a restitution case, including an action in forcible entry or detainer, by filing a notice of excusal within three (3) days after service.

D. **Notice of reassignment.** Except as provided in Paragraph E of this rule, after the filing of the complaint, if the case is reassigned to a different judge, the clerk shall give notice of the reassignment to all parties.

E. **Service of excusal.** Any party electing to excuse a judge shall serve notice of such election and reassignment on all parties.

F. **Recusal; procedure.** No judge shall sit in any action in which the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action and the clerk of the court shall give written notice of the recusal to the parties to the action. Upon recusal, another metropolitan court judge shall be assigned or designated to conduct any further proceedings in the action in the manner provided by Rule 3-105 NMRA.

G. **Failure to recuse.** If a party believes that the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, the party may file a notice of facts requiring recusal. The notice shall

specifically set forth the grounds alleged. Upon receipt of the notice, the judge may file a certificate of recusal in the action or enter an order finding that there are not reasonable grounds for recusal. If within ten (10) days after the filing of notice of facts requiring recusal, the judge fails to file a certificate of recusal in the action, any party may certify that fact by letter to the district court of the county in which the action is pending with a copy of the notice of recusal. No filing fee shall be required for the filing of a letter certifying grounds for recusal described in Paragraph F of this rule. The party's certification to the district court shall be filed in the district court not less than five (5) days after the expiration of time for the metropolitan court judge to file a certificate of recusal or not less than five (5) days after the filing of an order in the metropolitan court finding the grounds alleged in the notice of recusal do not constitute reasonable grounds for recusal, whichever date is earlier. A copy of the letter shall also be filed with the metropolitan court. The district court shall make such investigation as the court deems warranted and enter an order in the action, either prohibiting the metropolitan court judge from proceeding further or finding that there are insufficient grounds to reasonably question the metropolitan court judge's impartiality under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct.

H. **Stay.** If a letter is filed with the district court and metropolitan court certifying the issue of recusal to the district court pursuant to Paragraph G of this rule, the metropolitan court judge may enter a stay of the proceedings pending action by the district court. If the metropolitan court judge fails to stay the proceedings, the party filing the letter in the district court may petition the district court for a stay of metropolitan court proceedings. The district court may grant a stay of the proceedings for not more than fifteen (15) days after the filing of a letter certifying a recusal issue to the district court. Unless a stay is granted, the metropolitan court judge shall proceed with the adjudication of the merits of the proceedings.

I. **Inability of a judge to proceed.** If a trial or hearing has been commenced and the judge is unable to proceed, any other judge of the district may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. The successor judge may recall any witness. If no other judge is available, either party may certify that fact by letter to the district court of the county in which the action is pending. The district court may make such investigation as the court deems warranted. If the court finds that the judge is in fact disabled or unavailable, the court shall designate another judge to preside over the case.

[As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; July 1, 1990; October 1, 1992; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 13-8300-026, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-026, effective December 31, 2013, required the clerk of the court to give notice to all parties when a case has been reassigned to a new judge except where the reassignment of the case is due to the excusal of the assigned judge; required the clerk of the court to give notice of the reassignment of a case when a judge has recused; in Paragraph D, in the title, after "reassignment", deleted "service of excusal", at the beginning of the sentence, deleted "After" and added "Except as provided in Paragraph E of this rule, after", and deleted the former second sentence, which required a party who excuses a judge to serve notice of the excusal and reassignment of the case on all parties; added Paragraph E; in Paragraph F, in the first sentence, after "recusal in any such action", added the remainder of the sentence.

The 2002 amendment, effective May 1, 2002, in Paragraph C(3), substituted "three (3) days" for "five (5) days"; in Paragraph E, inserted "certificate of" preceding "recusal" near the end of the first sentence; in Paragraph F, substituted "facts requiring recusal" for "excusal" at the end of the first sentence, inserted "or enter an order finding that there are not reasonable grounds for recusal" at the end of the fourth sentence, added the fifth, sixth and seventh sentences and in the eighth sentence, substituted "or finding that there are insufficient grounds to reasonably question the magistrate court judge's impartiality under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct" for "and designating another or striking the notice of excusal as ineffective or groundless"; and redesignated former Paragraph G as present Paragraph H and added present Paragraph G.

The 1995 amendment, effective November 1, 1995, deleted "procedure" from the paragraph heading in Paragraph A, rewrote the paragraph heading and added the last sentence in Paragraph B, and rewrote Paragraphs C, E, F, and G.

Cross references. — For forms on excusal or recusal, *see* Rule 4-101 NMRA et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of successor or substituted judge, in civil case, to render decision or enter judgment on testimony heard by predecessor, 84 A.L.R.5th 399.

3-107. Pro se and attorney appearance.

A. **Pro se appearance by an individual.** A party to any civil action may appear, prosecute, defend, and appeal any proceeding:

(1) if the party is an individual party, in person;

(2) if the property is community property, one spouse may appear for both spouses.

B. **Other authorized non-attorney appearances.** A party to any civil action may appear, prosecute, and defend any proceeding

(1) on a writ of garnishment or attachment

(a) by a general partner if the partnership is brought into the suit by a writ of garnishment or attachment;

(b) by an officer, director, or general manager of a corporation or limited liability company upon the filing of a notarized certificate to so act on behalf of the corporation or limited liability company, if the corporation or limited liability company is brought into the suit by writ of garnishment or attachment;

(2) in an action brought under the provisions of the Uniform Owner-Resident Relations Act, Sections 47-8-1 to -52 NMSA 1978, or the Mobile Home Park Act, Sections 48-10-1 to -23 NMSA 1978, if the appearance is by

(a) the “owner,” as defined in the Uniform Owner-Resident Relations Act;

(b) a “landlord,” as defined in the Mobile Home Park Act; or

(c) the person authorized to manage the premises;

(3) if the party is a corporation or limited liability company, whose voting shares or memberships are held by a single shareholder or member or closely knit group of shareholders or members, all of whom are natural persons active in the conduct of the business, and the appearance is by one such shareholder or member who has been authorized to appear on behalf of the corporation or limited liability company;

(4) if the party is a general partnership that meets all of the following qualifications:

(a) the partnership has less than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose;

(b) all partners, whether limited or general, are natural persons; and

(c) the appearance is by a general partner who has been authorized to appear by the general partners;

(5) if the party is a governmental entity and the appearance is by an employee of the governmental entity authorized by the entity to institute or cause to be instituted an action on behalf of the governmental entity; or

(6) if the party is a wage claimant, the director of the labor and industrial division of the Labor Department, as assignee, may appear on behalf of the claimant under Sections 50-4-11 and 50-4-12 NMSA 1978.

C. **Attorney appearance.** A party may appear, prosecute, defend, and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address, and telephone number. Counsel not admitted to practice law in New Mexico, but who are licensed to practice law and in good standing in another state or territory, shall comply with Rule 24-106 NMRA. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited under Paragraph C of Rule 16-102 NMRA, the attorney shall:

(1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;

(2) note the limitation in the signature block of any paper the attorney files; and

(3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

D. **Collection agencies.** Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law.

E. **Fees for non-attorneys prohibited.** Any person who appears, prosecutes, or defends a proceeding under Paragraph B of this rule shall not receive a fee for providing that service.

[As amended, effective November 1, 1987; July 1, 1990; October 1, 1992; October 1, 1996; November 1, 2000; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005; by Supreme Court Order No. 08-8300-015, effective June 20, 2008; as amended by Supreme Court Order No. 13-8300-040, effective December 31, 2013.]

Committee commentary. — A friend or family member may not represent a party, nor a parent represent a minor child, unless the friend, family member, or parent is a licensed attorney and enters an appearance in the case. This rule does not prevent a minor or incompetent person from suing or defending through a representative or guardian ad litem as provided in Rule 3-401(C) NMRA, but the representative or guardian ad litem acts as the litigant, not as an attorney.

Paragraph B of this rule allows certain non-attorneys to appear, prosecute, and defend a civil action in metropolitan court under specific, limited circumstances. *See State v. Rivera*, 2012-NMSC-003, ¶ 1, 268 P.3d 40. Paragraph E was added to this rule in 2013

to clarify that non-attorneys are not permitted to collect a fee for rendering legal services, such as appearing in court or drafting legal documents, because doing so would constitute the unauthorized practice of law. *See State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, ¶ 26, 85 N.M. 521, 514 P.2d 40 (concluding that a collection agency was engaged in the unauthorized practice of law when it solicited claims for collection and charged a fee for legal services).

Paragraph E of this rule does not preclude a non-attorney from receiving a salary or wages for performing work within the ordinary scope of the non-attorney's employment, even if such duties include appearing in court under the provisions of Paragraph B. For example, a non-attorney manager of real estate may receive wages for the performance of managerial duties, which may include appearing in court under Subsection (B)(2) of this rule. But such a real estate manager is not permitted to collect an additional fee for appearing in court or providing legal services.

Corporations, limited liability corporations, and partnerships appearing under Paragraph B of this rule are required to submit an entry of appearance form approved by the Supreme Court, if available.

[Adopted by Supreme Court Order No. 13-8300-040, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-040, effective December 31, 2013, provided for the appearance of non-attorneys; eliminated the right of a licensed real estate agent to appear for the owner of the property; authorized shareholders and members of corporations and limited liability companies to appear; required non-admitted attorneys to comply with the rules governing the state bar; prohibited non-attorneys from collecting fees; in Paragraph B, in the title, after "authorized", added "non-attorney"; deleted former Subparagraph (2)(c), which authorized a licensed real estate agent authorized by the owner of the property to appear; in Subparagraph (3), after "and the appearance is by", deleted "an officer or general manager" and added "one such shareholder or member"; in Paragraph C, added the third sentence; and added Paragraph E.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-015, effective June 20, 2008, added the last sentence in Subsection C to provide for a limited appearance by an attorney.

The 2005 amendment, effective March 21, 2005, added "or paper" after "pleading" and before "signed by counsel" in Paragraph C.

The 2000 amendment, effective November 1, 2000, inserted "or limited liability company" in Paragraphs B(1)(b) and B(3); and inserted "or memberships", "or member" and "or members" in Paragraph B(3).

The 1996 amendment, effective October 1, 1996, added "on a writ of garnishment or attachment" in Subparagraph B(1), designated the existing language of Subparagraph B(1) as Subparagraph B(1)(a) and rewrote that subparagraph, designated former Subparagraph B(2) as B(1)(b) and rewrote that subparagraph, designated former Subparagraphs B(3) to B(6) as Subparagraphs B(2) to B(5), substituted "in an action brought" for "if the action is brought" and "or the Mobile Home Park Act if the" for "and the" in Subparagraph B(2), substituted "in the" for "by the provisions of the" in Subparagraph B(2)(a), added Subparagraph B(2)(b) and redesignated the remaining subparagraphs accordingly, substituted "by the owner of the property" for "such owner" in Subparagraph B(2)(c), and added Subparagraph B(6) and made minor stylistic changes in Subparagraph B(4) and Paragraph D.

The 1992 amendment, effective October 1, 1992, rewrote Paragraph D.

The 1990 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1990, added the last three sentences of Paragraph C.

Cross references. — For Owner-Resident Relations Act, *see* Section 47-8-1 NMSA 1978 et seq.

For Mobile Home Park Act, *see* Section 47-10-1 NMSA 1978 et seq.

For wage claim actions, costs, jurisdiction, and representation by district attorney, *see* Section 50-4-12 NMSA 1978.

For general provision for changing attorney, *see* Section 36-2-14 NMSA 1978.

For comparable District Court Civil rule, *see* Rule 1-089 NMRA .

For service and filing of pleadings and other papers, *see* Rule 3-203 NMRA.

For the definition of a "pleading", *see* Paragraph A of Rule 3-301 NMRA.

3-108. Withdrawal or substitution of attorneys.

A. **Consent and notice.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 3-107 NMRA need not obtain consent of the court before

withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

B. **Withdrawal without consent.** If an attorney who has appeared without limitation ceases to act in a cause for a reason other than withdrawal or consent, upon motion of any party, the court may require the taking of such steps as may be advised to insure that the cause will proceed with promptness and dispatch.

C. **Representation after final judgment.** Attorneys of record shall continue to be subject to service for ninety (90) days after entry of final judgment. After expiration of the ninety (90) day period, unless an attorney enters an appearance, the party shall be deemed to have entered an appearance pro se. This rule does not preclude the earlier withdrawal of counsel as provided above.

D. **Service upon responding party.** In the event of further legal proceedings between the parties after the ninety (90) days have elapsed, the moving party shall effect service of process upon the responding party in the manner prescribed by Rule 3-202 NMRA.

[As amended, effective July 1, 1990; September 15, 2000; February 16, 2004; as amended by Supreme Court Order No. 08-8300-015, effective June 20, 2008.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-015, effective June 20, 2008, added the last sentence in Subsection A to provide for the withdrawal of an attorney who has filed a limited appearance and limited the application of the remainder of the provisions of Subsection A and the provisions of Subsection B to the withdrawal of attorneys who have appeared without limitation.

The 2003 amendment, effective February 16, 2004, in Paragraph A substituted “upon motion and approval of the court” for “without written consent of the court, filed with the clerk” in the first sentence, inserted the second sentence, substituted “approval” for “consent” in the third sentence, deleted “subject to the provisions of Rule 3-107 NMRA” at the end of the fourth sentence, and substituted the present last sentence for the former last sentence, which read “notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the clerk”, deleted “subject to the provisions of Rule 3-107 NMRA” at the end of the second sentence of Paragraph C, and substituted “3-202” for “2-202" in Paragraph D.

The 2000 amendment, effective September 15, 2000, in Subsection A, deleted "magistrate" preceding "court" in the first sentence, substituted "Consent of the court" for "Such consent may" in the second sentence, and added the third sentence; in Subsection B, rewrote the bold catchline; in Subsection C, rewrote the bold catchline, and added the second sentence.

The 1990 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1990, substituted "Consent and notice" for "Withdrawal or substitution of counsel" as the heading of Paragraph A and added Paragraphs C and D.

3-109. Record.

A. **Definition; broadcast or reproduction.** Unless a specific meaning is indicated, as used in these rules "record" shall mean:

(1) a statement of facts and proceedings stipulated to by the parties or

(2) any audio recording. No broadcast or reproduction of any recording shall be made for any person other than an official of the court without the express written consent of the court. At his own expense, a party may cause a record to be made.

B. **Timing of request.** Unless a shorter period is permitted by the court, at any time not less than ten (10) days prior to the commencement of the hearing, a party may request a copy of the record of any hearing by filing with the court a written request for a copy of the record of the hearing.

C. **Costs.** The court may reproduce a copy of any tape of the proceedings for any party to the proceedings upon the payment of such amount as may be established by the administrative office of the courts, which shall reasonably represent the cost of the tape, for each duplicate tape requested.

Committee commentary. — The inclusion of stenographic notes which must be transcribed in the definition of "record" found in the Magistrate and Municipal Court Rules has been deleted from this rule in order to eliminate the need for court reporters in the metropolitan court. The requirement that approval be given by the supreme court for mechanical, electrical or other recording, including a videotape recording, has been deleted since it is contemplated that this will be the means of making the record most often used. By adopting this rule, the supreme court has approved the means stated in the rule.

3-110. Criminal contempt.

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal contempt of court. This rule shall not apply to the imposition of other sanctions specifically authorized by these rules, statute, or the common law, or to the imposition of remedial sanctions. This rule shall not apply to any person who is less than eighteen years old.

B. **Definitions.**

(1) “Contempt” or “contemptuous conduct” includes but is not limited to

(a) disorderly conduct, insolent behavior, or a breach of peace, noise, or other disturbance, if such behavior actually obstructs or hinders the administration of justice or tends to diminish the court's authority;

(b) misconduct of court officers in official transactions; or

(c) disobedience of any lawful order, rule, or process of the court.

(2) "Direct contempt" means contemptuous conduct committed in the immediate presence of the court that is personally observed by the judge.

(3) "Indirect contempt" means contemptuous conduct that occurs outside the presence of the court, or conduct that is not personally observed by the judge and requires further fact finding.

(4) "Punitive sanction" means a sentence imposed to punish a person for committing an act of criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct criminal contempt.** A direct criminal contempt may be punished summarily at the time of the contempt without further evidentiary proceedings. Except in cases of flagrant contemptuous conduct, before summarily punishing a person for direct criminal contempt the judge shall give the person a warning, either orally or in writing, to no longer engage in the contemptuous behavior and shall give the person an opportunity to explain the conduct. When the judge summarily punishes a contempt defendant for direct criminal contempt, the judge shall forthwith sign and file with the clerk a written order, which shall constitute a judgment and sentence, certifying

(1) the specific facts constituting the direct criminal contempt;

(2) that the judge personally observed the contemptuous conduct committed in the presence of the judge without the need for further fact finding;

(3) the punishment that was summarily imposed; and

(4) that the court has not imposed any term of imprisonment that exceeds six (6) months.

D. **Disposition of indirect criminal contempt on notice and hearing.** Indirect criminal contempt shall be punished only after notice and hearing in accordance with this paragraph.

(1) ***Criminal complaint*.** An indirect criminal contempt proceeding shall be initiated with a criminal complaint under Rule 7-201 NMRA, which shall be served with a summons as set forth in Rule 7-205 NMRA.

(2) ***Prosecution*.** An indirect criminal contempt may be prosecuted by the district attorney.

(3) ***Rules of Criminal Procedure*.** A charge of indirect criminal contempt shall be prosecuted in accordance with this rule and the Rules of Criminal Procedure for the Metropolitan Courts, to the extent that such rules are not inconsistent with this rule.

(4) ***Judgment and sentence*.** If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence. The court shall not impose any term of imprisonment that exceeds six (6) months.

E. **Docketing.** Any criminal contempt proceeding commenced under this rule shall be docketed as a separate criminal matter with a new case number.

F. **Appeal.** Any person found guilty of criminal contempt may appeal under Rule 7-703 NMRA of the Rules of Criminal Procedure for the Metropolitan Courts and Rule 5-827 NMRA of the Rules of Criminal Procedure for the District Courts.

[As amended, effective January 1, 1996; as amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — This rule applies to criminal contempt of court proceedings that arise from conduct occurring within a civil action in metropolitan court. This rule does not apply to civil contempt proceedings, nor does it address the extent to which the metropolitan court has the authority to impose sanctions for civil contempt of court. Because a criminal contempt proceeding also can arise from conduct occurring within a criminal action, a similar rule exists in the Rules of Criminal Procedure for the Metropolitan Courts. *See* Rule 7-111 NMRA.

New Mexico law classifies contempts of court as either civil or criminal. *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of a contempt as civil or criminal does not depend on whether the contempt proceeding arises out of an underlying criminal action or civil action. Instead, the focus should be on the reason why the court is invoking its contempt powers. *See id*. Civil contempt sanctions are remedial and may be imposed as coercive measures to compel a person to comply with an order of the court or to enforce the rights of a private party to a lawsuit. *See id*. ¶ 25; *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, ¶ 6, 63 N.M. 156, 315 P.2d 223. A person held in civil contempt "carries the keys to his prison" and can end continuing contempt sanctions by complying with the court's orders. *Concha*, 2011-NMSC-031, ¶ 25 (internal quotation marks and citation omitted). Criminal contempt sanctions are imposed to punish the contempt defendant for a completed act of contempt and to preserve the dignity and authority of the court. *See Concha*, 2011-NMSC-031, ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil will impact the procedures the court must follow. Because civil contempt sanctions are remedial and

not intended to punish, the court may impose civil contempt sanctions "by honoring the most basic due process protections—in most cases, fair notice and an opportunity to be heard." *Concha*, 2011-NMSC-031, ¶ 25. Criminal contempt, on the other hand, is a "crime in the ordinary sense; it is a violation of the law." *Id*. ¶ 26. "A criminal contempt defendant is therefore entitled to due process protections of the criminal law, the specific nature of which will depend on whether the criminal contempt is categorized as direct or indirect." *Id*. A contempt proceeding can result in both civil and criminal contempt sanctions, *see State v. Pothier*, 1986-NMSC-039, ¶¶ 4-6, 104 N.M. 363, 721 P.2d 1294 (recognizing that both civil and criminal sanctions can be imposed for contemptuous conduct), and this rule sets forth the procedures the court must follow if the court intends to pursue criminal contempt sanctions even if the court is also considering civil contempt sanctions.

The applicable procedures for a criminal contempt proceeding depend on whether the criminal contempt is direct or indirect. "Direct contempts are contemptuous acts committed in the presence of the court, while indirect contempts are such acts committed outside the presence of the court." *Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. If the contemptuous conduct has occurred in court and the judge has personal knowledge, based on perceiving the conduct, of the facts establishing all elements of the contempt, the court may follow the summary procedures for direct criminal contempt set forth in Paragraph C of this rule. However, before holding a person in direct criminal contempt, the judge in most cases still must give such person a warning to stop engaging in contemptuous behavior and an opportunity to explain the behavior. *See id*. ¶ 27 ("If feasible, even in summary proceedings for an act of direct contempt occurring in open court, an adequate opportunity to defend or explain one's conduct is a minimum requirement before imposition of punishment." (internal quotation marks and citation omitted)).

"When the judge has not personally witnessed the defendant's contemptuous behavior in the course of a court proceeding," the court must follow the Rules of Criminal Procedure for the Metropolitan Courts and the procedures set forth in Paragraph D of this rule for indirect criminal contempt. *See id*. ¶ 28. The indirect criminal contempt may be prosecuted by the district attorney.

The defendant may exercise a peremptory election to excuse the judge under Rule 7-106 NMRA. In addition, a judge may be required to recuse for cause in appropriate cases under Rule 7-106(F) NMRA. *See State v. Stout*, 1983-NMSC-094, ¶ 12, 100 N.M. 472, 672 P.2d 645 (providing that a judge is precluded from presiding over a contempt proceeding if the "judge has become so embroiled in the controversy that he cannot fairly and objectively hear the case, or when he or one of his staff will necessarily be a witness in the proceeding").

If incarcerated, the contempt defendant is entitled to bail as provided by Rule 7-401 NMRA. The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court contemplates the imposition of any sentence of imprisonment, the defendant is entitled to representation by an attorney at the state's expense. *See* NMSA

1978, § 31-15-10(C) ("The district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in any court within the district with any crime that carries a possible sentence of imprisonment.").

Under this rule, the maximum sentence that the metropolitan court may impose for a criminal contempt conviction is six months of imprisonment. Accordingly, the defendant does not have a constitutional right to a jury trial. *See Taylor v. Hayes*, 418 U.S. 488, 496 (1974) ("[A] State may choose to try any contempt without a jury if it determines not to impose a sentence longer than six months."); *see also Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826-27 (1994) (explaining that a criminal contempt defendant has a constitutional right to a jury trial if facing more than six months of imprisonment). The defendant may, however, have a statutory right to demand a jury trial if the potential penalty exceeds ninety days of imprisonment. *See* NMSA 1978, § 34-8A-5 (1981) (jury trial in metropolitan court).

If the defendant is found guilty of direct or indirect criminal contempt, the judge must enter a judgment and sentence. An adjudication of guilt on a charge of criminal contempt constitutes a criminal conviction, which may result in collateral consequences and may have other implications for the defendant. The court may defer or suspend a criminal contempt sentence as permitted by law. And, because criminal contempt is a crime in the ordinary sense, the court should assess and collect court costs on a criminal contempt conviction as set forth in NMSA 1978, Section 35-6-1.

Whether the defendant is found guilty of direct or indirect criminal contempt, the defendant has a right to appeal under the rules governing appeals from metropolitan court in criminal cases. *See* N.M. Const. art. VI, § 27; NMSA 1978, § 34-8A-6; NMSA 1978, § 35-3-9; Rules 5-827, 7-703 NMRA. Under NMSA 1978, § 39-3-15(A) (1966), "In any case of criminal contempt, the taking of an appeal operates to stay execution of the judgment without bond."

[As amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-016, effective December 31, 2016, rewrote the rule establishing procedures to implement the inherent and statutory powers of the metropolitan court to impose punitive sanctions for criminal contempt of court for conduct occurring within a civil action in metropolitan court, specified that the rule does not apply to individuals under the age of eighteen, and rewrote the committee commentary; in the heading, added "Criminal" prior to "contempt"; and deleted former Paragraphs A through D and added new Paragraphs A through F.

The 1996 amendment, effective January 1, 1996, made stylistic changes in Paragraph A; redesignated former Paragraphs B and C as Paragraphs C and B, respectively; in

Paragraph B, rewrote the introductory language, added Subparagraph (4), and rewrote the last paragraph; in Paragraph C, rewrote the paragraph heading, inserted "direct" near the beginning and made stylistic changes; and added Paragraph D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Contempt based on violation of court order where another court has issued contrary order, 36 A.L.R.4th 978.

Intoxication of witness or attorney as contempt of court, 46 A.L.R.4th 238.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order - anticipatory contempt, 81 A.L.R.4th 1008.

Lack of notice to contemnor at time of contemptuous conduct of possible criminal contempt sanctions as affecting prosecution for contempt in federal court, 76 A.L.R. Fed. 797.

3-111. Telephone conferences.

A. **When permitted.** The court may hear any matter by telephone conference call when to do so would legitimately serve justice considering, among other issues, the economic needs of the parties.

B. **Requirements.** No matter or setting will be heard by telephone and no witness will appear telephonically without the prior express approval of the judge.

C. **Cost.** When a telephone conference call is conducted, it will be arranged and paid for by the person seeking the telephone conference call.

[Approved, effective November 1, 2000.]

3-112. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “court record” means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the court or as required by Paragraph C of this rule.

C. **Protection of personal identifier information.**

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court’s judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person’s name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

D. **Motion to seal court records required.** Except as provided in Paragraph C of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 3-307 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been

filed or is to be filed. Any party or member of the public may file a response to the motion to seal within fifteen (15) days after the motion is filed. The movant shall lodge the court record with the court pursuant to Paragraph E when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph E. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

E. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph D of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rule 3-203.1 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a file-stamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

F. **Requirements for order to seal court records.**

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

(a) the existence of an overriding interest that overcomes the right of public access to the court record;

(b) the overriding interest supports sealing the court record;

(c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;

(d) the proposed sealing is narrowly tailored; and

(e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

G. **Sealed court records as part of record on appeal.** Court records sealed under the provisions of this rule that are filed as part of an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal such records or modify a sealing order entered in the metropolitan court shall be filed in the district court pursuant to Rule 1-079 NMRA if the case is pending on appeal.

H. **Motion to unseal court records.**

(1) A sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 3-307 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph F for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph F. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

I. **Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Adopted by Supreme Court Order No. 10-8300-006, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 10-8300-023 temporarily suspending Paragraph C for 90 days effective August 11, 2010; by Supreme Court Order No. 10-8300-037, extending the temporary suspension of Paragraph C for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 11-8300-008, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017.]

Committee commentary. — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., NMSA 1978, § 7-1-4.2(H) (providing for confidentiality of taxpayer information); NMSA 1978, § 14-6-1(A) (providing for confidentiality of patient health information); NMSA 1978, § 24-1-9.5 (limiting disclosure of test results for sexually transmitted diseases); NMSA 1978, § 29-10-4 (providing for confidentiality of certain arrest record information); NMSA 1978, § 29-12A-4 (limiting disclosure of local crime stoppers program information); NMSA 1978, § 29-16-8 (providing for confidentiality of DNA information); NMSA 1978, § 31-25-3 (providing for confidentiality of certain communications between victim and victim counselor); NMSA 1978, § 40-8-2 (providing for sealing of certain name change records); NMSA 1978, § 40-6A-312 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); NMSA 1978, § 40-10A-209 (providing for limitations on disclosure of certain information during

proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act); NMSA 1978, § 40-13-7.1 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); NMSA 1978, § 40-13-12 (providing for limits on internet disclosure of certain information in domestic violence cases); NMSA 1978, § 44-7A-18 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). If a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph D of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph F of this rule before deciding whether to seal any particular court record.

Paragraph C of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph C discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph C. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs D and E set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion,

the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled “conditionally under seal”. If necessary to prevent disclosure pending the court’s ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk’s docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court’s register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court’s docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph F. The order must state the facts supporting the court’s decision to seal the court record and must identify an overriding interest that overcomes the public’s right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there

must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph F also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph H of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 10-8300-006, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 11-8300-008, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-002 effective March 31, 2017, provided that any attorney or other person granted access to electronic records in metropolitan court cases that contain protected personal identifier information

must take reasonable precautions to protect that personal identifier information, and provided that any attorney or other person who unlawfully discloses such personal identifier information may be subject to sanctions or the initiation of disciplinary proceedings; and in Subparagraph C(1), added the last two sentences.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-008, effective February 7, 2011, in Paragraph C, eliminated the former prohibition against including personal identifier information in court records without a court order, the prohibition against disclosing personal identifier information that the court orders to be included in a court record, and the exceptions to the prohibitions against the inclusion and disclosure of personal identifier information; and required the court and the parties to avoid including personal identifier information in court records unless they deem the inclusion of personal identifier information to be necessary to the court's function, prohibited the publication of personal identifier information on court web sites and by posting in the courthouse, and required persons requesting access to court records to provide personal information and identification.

3-113. Court interpreters.

A. **Scope and definitions.** This rule applies to all civil proceedings filed in the metropolitan court. The following definitions apply to this rule:

(1) "case participant" means a party, witness, or other person required or permitted to participate in a proceeding governed by these rules;

(2) "interpretation" means the transmission of a spoken or signed message from one language to another;

(3) "transcription" means the interpretation of an audio, video, or audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice mail messages, that is memorialized in a written transcript for use in a court proceeding;

(4) "translation" means the transmission of a written message from one language to another;

(5) "court interpreter" means a person who provides interpretation or translation services for a case participant;

(6) "certified court interpreter" means a court interpreter who is certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts or who is acknowledged in writing by the Administrative Office of the Courts as a court interpreter certified by another jurisdiction that is a member of the Consortium for Language Access in the Courts;

(7) "justice system interpreter" means a court interpreter who is listed on the Registry of Justice System Interpreters maintained by the Administrative Office of the Courts;

(8) "language access specialist" means a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements;

(9) "non-certified court interpreter" means a justice system interpreter, language access specialist, or other court interpreter who is not certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts;

(10) "sight translation" means the spoken or signed translation of a written document; and

(11) "written translation" means the translation of a written document from one language into a written document in another language.

B. **Identifying a need for interpretation.**

(1) The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. The need for a court interpreter may be identified by the court or by a case participant. A court interpreter shall be appointed if one is requested.

(2) The court is responsible for making arrangements for a court interpreter for a juror who needs one.

(3) A party is responsible for notifying the court of the need for a court interpreter as follows:

(a) if a party needs a court interpreter, the party or the party’s attorney shall notify the court when the party files the complaint or petition or when the party files the answer or other responsive pleading; and

(b) if a court interpreter is needed for a party’s witness, the party shall notify the court in writing substantially in a form approved by the Supreme Court upon service of a notice of hearing and shall indicate whether the party anticipates the proceeding will last more than two (2) hours.

(4) If a party fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay.

(5) Notwithstanding any failure of a party, juror, or other case participant to notify the court of a need for a court interpreter, the court shall appoint a court interpreter for a case participant whenever it becomes apparent from the court's own observations or from disclosures by any other person that a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding.

C. **Appointment of court interpreters.**

(1) When a need for a court interpreter is identified under Paragraph B of this rule, the court shall appoint a certified court interpreter except as otherwise provided in this paragraph.

(2) Upon approval of the court, the parties may stipulate to the use of a non-certified court interpreter for non-evidentiary hearings without complying with the waiver requirements in Paragraph D of this rule.

(3) To avoid the appearance of collusion, favoritism, or the exclusion of English speakers from the process, the judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party’s attorney shall not act as a court interpreter for the proceeding, except that a party and the party’s attorney may engage in confidential attorney-client communications in a language other than English.

(4) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraphs (d) and (e) of this paragraph. If the court has made diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a language access specialist or less qualified non-certified court interpreter only after the following requirements are met:

(a) the court provides notice to the parties substantially in a form approved by the Supreme Court that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter but none is reasonably available and has concluded after evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding that an accurate and complete interpretation of the proceeding can be accomplished with a less qualified non-certified court interpreter;

(b) the court makes a written finding that the proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting to provide an accurate and complete interpretation for the proceeding;

(c) the court makes a written finding that the proposed court interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters Code of Professional Responsibility set forth in Rule 23-111 NMRA;

(d) with regard to a non-certified signed interpreter, in no event shall the court appoint a non-certified signed language interpreter who does not, at a minimum, possess both a community license from the New Mexico Regulations and Licensing Department and a generalist interpreting certification from the Registry of Interpreters for the Deaf; and

(e) a non-certified court interpreter shall not be used for a juror.

D. **Waiver of the right to a court interpreter.** Any case participant identified as needing a court interpreter under Paragraph B of this rule may at any point in the case waive the services of a court interpreter with approval of the court only if the court explains in open court through a court interpreter the nature and effect of the waiver and makes a written finding that the waiver is knowingly, voluntarily, and intelligently made. The waiver may be limited to particular proceedings in the case or for the entire case. With the approval of the court, the case participant may retract the waiver and request a court interpreter at any point in the proceedings.

E. **Procedures for using court interpreters.** The following procedures shall apply to the use of court interpreters:

(1) **Qualifying the court interpreter.** Before appointing a court interpreter to provide interpretation services to a case participant, the court shall qualify the court interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may use the questions in Form 4-114 NMRA to assess the qualifications of the proposed court interpreter. A certified court interpreter is presumed competent, but the presumption is rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified court interpreter, the court shall inquire into the following matters:

(a) whether the proposed court interpreter has assessed the language skills and needs of the case participant in need of interpretation services; and

(b) whether the proposed court interpreter has any potential conflicts of interest.

(2) **Instructions regarding the role of the court interpreter during trial.** Before the court interpreter begins interpreting for a party during trial, the court shall instruct the parties and others present in the courtroom regarding the role of the court

interpreter. If the court interpreter will provide interpretation services for a juror, the court also shall instruct the jury in accordance with UJI 13-110A NMRA.

(3) **Oath of the court interpreter.** Before a court interpreter begins interpreting, the court shall administer an oath to the court interpreter as required by Section 38-10-8 NMSA 1978. If a court interpreter will provide interpretation services for a juror, the court also shall administer an oath to the court interpreter in accordance with UJI 13-110B NMRA. All oaths required under this subparagraph shall be given in open court.

(4) **Objections to the qualifications or performance of a court interpreter.** A party shall raise any objections to the qualifications of a court interpreter when the court is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon as the party learns of any information calling into question the qualifications of the court interpreter. A party shall raise any objections to court interpreter error at the time of the alleged interpretation error or as soon as the party has reason to believe that an interpretation error occurred that affected the outcome of the proceeding.

(5) **Record of the court interpretation.** Upon the request of a party, the court may make and maintain an audio recording of all spoken language court interpretations or a video recording of all signed language interpretations. Unless the parties agree otherwise, the party requesting the recording shall pay for it. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. This subparagraph shall not apply to court interpretations during jury discussions and deliberations.

(6) **Court interpretation for multiple case participants.** When more than one case participant needs a court interpreter for the same spoken language, the court may appoint the same court interpreter to provide interpretation services for those case participants. When more than one case participant needs court interpretation for a signed language, separate court interpreters shall be appointed for each case participant. If a party needs a separate court interpreter for attorney-client communications during a court proceeding, prior to the commencement of the court proceeding, the party shall obtain a court interpreter of the party's own choosing and at the party's own expense.

(7) **Use of team court interpreters.** To avoid court interpreter fatigue and promote an accurate and complete court interpretation, when the court anticipates that a court proceeding requiring a court interpreter for a spoken language will last more than two (2) hours the court shall appoint a team of two (2) court interpreters to provide interpretation services for each spoken language. For court proceedings lasting less than two (2) hours, the court may appoint one (1) court interpreter but the court shall allow the court interpreter to take breaks approximately every thirty (30) minutes. The court shall appoint a team of two (2) court interpreters for each case participant who needs a signed language court interpreter when the court proceeding lasts more than one (1) hour. If a team of two (2) court interpreters are required under this

subparagraph, the court may nevertheless proceed with only one (1) court interpreter if the following conditions are met:

(a) two (2) qualified court interpreters could not be obtained by the court;

(b) the court states on the record or makes a written finding that it contacted the Administrative Office of the Courts for assistance in locating two (2) qualified court interpreters but two (2) could not be found; and

(c) the court allows the court interpreter to take a five (5)-minute break approximately every thirty (30) minutes.

(8) **Use of court interpreters for translations and transcriptions.** If a court interpreter is required to provide a sight translation, written translation, or transcription for use in a court proceeding, the court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription. Whenever possible, the court shall provide the court interpreter with advance notice of the need for a translation or transcription before the court proceeding begins and, if possible, the item to be translated or transcribed.

(9) **Modes of court interpretation.** The court shall consult with the court interpreter and case participants regarding the mode of interpretation to be used to ensure a complete and accurate interpretation.

(10) **Remote spoken language interpretation.** Court interpreters may be appointed to serve remotely by audio or audio-video means approved by the Administrative Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably available for in-person attendance in the courtroom. Electronic equipment used during the hearing shall ensure that all case participants hear all statements made by all case participants in the proceeding. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow for consecutive interpreting of each sentence. The electronic equipment that is used must permit attorney-client communications to be interpreted confidentially.

(11) **Court interpretation equipment.** The court shall consult and coordinate with the court interpreter regarding the use of any equipment needed to facilitate the interpretation.

(12) **Removal of the court interpreter.** The court may remove a court interpreter for any of the following reasons:

(a) inability to adequately interpret the proceedings;

(b) knowingly making a false interpretation;

(c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;

(d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;

(e) failing to appear as scheduled without good cause;

(f) misrepresenting the court interpreter's qualifications or credentials;

(g) acting as an advocate; or

(h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter's Code of Professional Responsibility.

(13) **Cancellation of request for a court interpreter.** A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party or a witness to be called by the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. **Payment of costs for the court interpreter.** Unless otherwise provided in this rule, and except for court interpretation services provided by an employee of the court as part of the employee's normal work duties, all costs for providing court interpretation services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts consistent with guidelines issued by the Administrative Office of the Courts.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

Committee commentary. — This rule governs the procedure for the use of court interpreters in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter Standards of Practice and Payment Policies issued by the Administrative Office of the Courts (the AOC Standards), also provide guidance to the courts on the certification, use, and payment of court interpreters. But in the event of any conflicts between the AOC Standards and this rule, the rule controls.

The rule requires the use of certified court interpreters whenever possible but permits the use of less qualified interpreters in some situations. For purposes of this rule, a certified court interpreter may not be reasonably available if one cannot be located or if funds are not available to pay for one. But in all instances, before a court may use a non-certified court interpreter, the court must contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may in fact be available to pay for a certified court interpreter.

The rule does not attempt to set forth the criteria for determining who should be a certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC. When a court interpreter is certified by the AOC, the certified court interpreter is placed on the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC and can be viewed on its web site. A certified court interpreter is also issued an identification card by the AOC, which can be used to demonstrate to the court that the cardholder is a certified court interpreter.

In collaboration with the New Mexico Center for Language Access (NMCLA), the AOC is also implementing a new program for approving individuals to act as justice system interpreters and language access specialists who are specially trained to provide many interpretation services in the courts that do not require a certified court interpreter. Individuals who successfully complete the Justice System Interpreting course of study offered by the NMCLA are approved by the AOC to serve as justice system interpreters and will be placed on the AOC Registry of Justice System Interpreters. Those who are approved as justice system interpreters will also be issued identification cards that may be presented in court as proof of their qualifications to act as a justice system interpreter. Under this rule, if a certified court interpreter is not reasonably available, the court should first attempt to appoint a justice system interpreter to provide court interpretation services. If a justice system interpreter is not reasonably available, the court must contact the AOC for assistance before appointing a non-certified court interpreter for a court proceeding.

In addition to setting forth the procedures and priorities for the appointment of court interpreters, this rule also provides procedures for the use of court interpreters within the courtroom. In general, the court is responsible for determining whether a juror needs a court interpreter, and the parties are responsible for notifying the court if they or their witnesses will need a court interpreter. But in most cases, the court will be responsible for paying for the cost of court interpretation services, regardless of who needs them. However, the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.

Although this rule generally applies to all court interpreters, the court should be aware that in some instances the procedures to follow will vary depending on whether a spoken or signed language court interpreter is used. Courts should also be aware that in some instances when court interpretation services are required for a deaf or hard-of-hearing individual, special care should be taken because severe hearing loss can present a complex combination of possible language and communication barriers that traditional American Sign Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-hearing individual is having trouble understanding a court interpreter and there is an indication that the person needs other kinds of support, the court should request assistance from the AOC for a language assessment to determine

what barriers to communication exist and to develop recommendations for solutions that will provide such individuals with meaningful access to the court system.

While this rule seeks to provide courts with comprehensive guidance for the appointment and use of court interpreters, the courts should also be aware that the AOC provides additional assistance through a full-time program director who oversees the New Mexico Judiciary's court interpreter program and who works in tandem with the Court Interpreter Advisory Committee appointed by the Supreme Court to develop policies and address problems associated with the provision of court interpreter services in the courts. Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure of the proper procedure for providing court interpretation services under this rule, the court is encouraged, and sometimes required under this rule, to seek assistance from the AOC to ensure that all case participants have full access to the New Mexico state court system.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

3-114. Courtroom closure.

A. **Courtroom proceedings open.** All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of an order for courtroom closure. Unless otherwise ordered by the court, the following persons may be present during a closed courtroom proceeding: the parties and their attorneys, witnesses while testifying, and court employees and security personnel. This rule does not affect the court's inherent authority to impose reasonable time, place, and manner limitations on public access to the courtroom, including reasonable limitations on broadcasting, televising, photographing, and recording of court proceedings as set forth in Rule 23-107 NMRA.

B. **Motion for courtroom closure.** A motion for courtroom closure must advance an interest that overrides the public's interest in attending the proceeding.

(1) ***Motion of the court.*** If the court determines on the court's own motion that a courtroom proceeding should be closed, the court shall file and serve on each party an order to show cause why the proceeding should not be closed.

(2) ***Motion of a party, or other interested person or entity.*** A party, or any person or entity with a sufficient interest, may move to exclude the public from any portion of a courtroom proceeding. A motion for courtroom closure shall be filed and served at least twenty (20) days prior to the commencement of the courtroom proceeding, unless upon good cause shown the court waives the time requirement.

(3) ***Response.*** A party opposing a motion for courtroom closure or responding to an order to show cause may file a written response within fifteen (15)

days after service of the motion or order to show cause, unless a different time period is ordered by the court. A reply is not permitted without leave of the court, which may be granted upon a showing of good cause.

(4) ***Response by non-party.*** Any member of the public may file a written response to a motion for courtroom closure at any time before the hearing required under Paragraph C of this rule.

(5) ***Continuance.*** In the court's discretion or at the request of the parties, the court may continue a courtroom proceeding to allow time to file written responses.

C. **Public hearing.** Unless the court denies a motion for courtroom closure on the pleadings, the court shall hold a public hearing on any proposed courtroom closure considered under Subparagraph (B)(1) or (B)(2) of this rule.

(1) ***Notice of hearing to the public.*** Media organizations, persons, and entities that have requested to receive notice of proposed courtroom closures shall be given timely notice of the date, time, and place of any hearing under this paragraph. Any member of the public shall be permitted a reasonable opportunity to be heard at the hearing.

(2) ***In camera review.*** Although the court is required to hold a public hearing on a motion for courtroom closure, this rule does not preclude the court from holding part of a hearing in camera for the limited purpose of reviewing sensitive or confidential information relevant to the motion. Any evidence or argument of record tendered to the court for an in camera review that is not ordered to be disclosed shall be placed under seal and preserved for appellate review. The record of the in camera hearing shall not be revealed without an order of the court.

D. **Order for courtroom closure.** An order for courtroom closure shall be in writing, shall articulate the overriding interest being protected, and shall specify the court's findings underlying the order. The court may order the exclusion of the public from all or part of a courtroom proceeding only if

(1) the court concludes that such order is necessary to preserve an overriding interest that is likely to be prejudiced if the courtroom is not closed;

(2) the order for courtroom closure is narrowly tailored to protect the overriding interest; and

(3) the court has considered reasonable alternatives to courtroom closure.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — New Mexico statute requires all courtroom proceedings to be open to the public unless otherwise provided by law. *See* NMSA 1978, § 34-1-1 (1851) ("Except as provided in the Children's Code [32A-1-1 NMSA 1978] and in other laws making specific provisions for exclusion of the public, all courts of this state shall be held openly and publicly, and all persons whatsoever shall be freely admitted to the courts and permitted to remain so long as they shall observe good order and decorum.").

Numerous statutes identify particular types of information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., committee commentary to Rule 3-112 NMRA (listing statutory confidentiality provisions). This rule does not authorize automatic courtroom closure for proceedings involving information designated by statute as confidential. Instead, if a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule. And statutory confidentiality provisions notwithstanding, the court must still engage in the balancing test set forth in Paragraph D of this rule before deciding whether to close any particular proceeding and must provide for public notice and hearing as set forth in Paragraph C of this rule prior to entering any order for courtroom closure.

The prerequisites to a courtroom closure order, as set forth in Paragraph D, are taken from *State v. Turrietta*, 2013-NMSC-036, ¶¶ 17, 19, 308 P.3d 964, which provides that the court cannot order a full or partial closure of the courtroom unless the closure is warranted under the four-factor "overriding interest" standard set forth in *Waller v. Georgia*, 467 U.S. 39 (1984). Under *Waller*,

[1] the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, [2] the closure must be no broader than necessary to protect that interest, [3] the [metropolitan] court must consider reasonable alternatives to closing the proceeding, and [4] it must make findings adequate to support the closure.

Turrietta, 2013-NMSC-036, ¶ 17 (quoting *Waller*, 467 U.S. at 48).

Courts are obligated to consider reasonable alternatives to courtroom closure. *See id*. ¶¶ 28, 30; *Presley v. Georgia*, 558 U.S. 209, 214-15 (2010). For example, if the alleged overriding interest is the potential for witness intimidation, reasonable alternatives to closure might include "screening observers, admonishing spectators of possible criminal sanctions, the wait-and-see method, or increased security in the courtroom." *Turrietta*, 2013-NMSC-036, ¶ 29 (internal citations omitted). Or, to protect sensitive information conveyed by potential jurors during jury selection, the court could consider alternatives to closure such as sealing "[t]hose parts of the transcript reasonably entitled to privacy" or disclosing "the substance of the sensitive answers while preserving the anonymity of the jurors involved." *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cnty*., 464 U.S. 501, 513 (1984). The range of reasonable alternatives available to the court will depend on the circumstances.

This rule permits public participation prior to the issuance of an order closing a courtroom proceeding. Under Subparagraph (B)(2), a non-party may file a motion for courtroom closure if such non-party has a sufficient interest in closing the proceeding, for example, if such non-party is the subject of testimony or evidence. Under Paragraph C, the public is entitled to notice and an opportunity to be heard before a courtroom proceeding is closed. The court shall follow the procedure developed by the Supreme Court for providing notice of public hearings to media organizations and other persons and entities who have requested to receive notice under Subparagraph (C)(1) of this rule.

This rule shall not diminish the court's inherent authority to exclude disruptive persons from the courtroom to ensure decorum, prevent distractions, and ensure the fair administration of justice.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016.]

ARTICLE 2
Commencement of Action

3-201. Commencement of action.

A. **How commenced.** A civil action is commenced by filing with the court a complaint consisting of a written statement of a claim or claims setting forth briefly the facts and circumstances giving rise to the action.

B. **Nature of claim.** Metropolitan judges have jurisdiction in all cases as may be provided by law.

C. **Verified accounts.** Accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing, not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for the account thereof.

ANNOTATIONS

Cross references. — For jurisdiction of metropolitan courts, *see* Section 34-8A-3 NMSA 1978.

For form on civil complaint, *see* Rule 4-201 NMRA.

For the exclusive original jurisdiction of the district court of claims under the Tort Claims Act, Section 41-4-1 NMSA 1978 et seq., *see* Section 41-4-18 NMSA 1978.

3-202. Summons.

A. **Summons; issuance.** Upon receipt of a complaint and payment of the docket fee, the clerk shall docket the action, issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon the request of the plaintiff, separate, additional or amended summons shall issue against any defendant. A defendant waives the service of summons by filing an answer in the proceedings.

B. **Summons; execution; form.** The summons shall be signed by the clerk, be directed to the defendant, be substantially in the form approved by the Supreme Court and must contain:

(1) the name of the court in which the action is brought, the name of the county in which the complaint is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed;

(2) a direction that the defendant serve a responsive pleading or motion within twenty (20) days after service of the summons, and file the same, all as provided by law, and a notice that unless the defendant so serves and files a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint;

(3) the name and address of the plaintiff's attorney, which, if any, shall be shown on every summons, otherwise the plaintiff's address; and

(4) a notice that the defendant may request prior to any proceeding that the proceeding be recorded. The notice shall advise the defendant if a tape recording is not made of the proceedings, it may effectively preclude the defendant from appealing to the district court.

C. **Summons; service of copy.** A copy of the summons with copy of complaint attached and a copy of the form for answer shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary.

D. **Summons; by whom served.** In civil actions any process may be served by the sheriff of the county where the defendant may be found or by any other person who is over the age of eighteen (18) years and not a party to the action, except for writs of attachment and writs of replevin, which shall be served by the sheriff or by any person not a party to the action over the age of eighteen (18) years who may be designated by the court to perform such service or by the sheriff of the county where the property or person may be found.

E. **Summons; service by mail.** A summons and complaint may be served upon a defendant of any class referred to in Subparagraph (1) or (2) of Paragraph F of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and acknowledgment conforming with the form approved by the Supreme Court and a return

envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within twenty (20) days after the date of mailing plus three (3) days as provided by Rule 3-104 NMRA, service of such summons and complaint shall be made by a person authorized by Paragraph D of this rule, in the manner prescribed by Paragraph F of this rule. Service of a summons by mail is only effective if an acknowledgment of service signed by the person being served is filed with the court. The court shall order the payment of the costs of personal service by the person served if such person does not complete and return to the sender within twenty-three (23) days after mailing the notice and acknowledgment of receipt of summons, unless good cause is shown for not signing, filing and serving a signed acknowledgment of service in the time required by this paragraph.

The form of the notice and acknowledgment of receipt of summons and complaint shall be substantially in the form approved by the Supreme Court.

F. **Summons; how served.** Personal service may be made as provided by law as follows:

(1) upon an individual other than a minor or an incapacitated person by delivering a copy of the summons and of the complaint to him personally; or if the defendant refuses to receive such, by leaving same at the location where he has been found; and if the defendant refuses to receive such copies or permit them to be left, such action shall constitute valid service. If the defendant is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years; and if there is no such person available or willing to accept delivery, then service may be made by posting such copies in the most public part of the defendant's premises, and by mailing to the defendant at his last known mailing address copies of the process. Service may also be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule, “signs” includes the electronic representation of a signature;

(2) upon a domestic or foreign corporation by delivering a copy of the summons and of the complaint to an officer, a managing or a general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant; upon a partnership by delivering a copy of the summons and of the complaint to any general partner; and upon other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if

the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association. If the person refuses to receive such copies, such action shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge thereof;

(3) upon the State of New Mexico:

(a) in garnishment actions, service of writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau, department, commission or institution;

(b) service of process on the governor, attorney general, agency, bureau, department, commission or institution or head thereof may be made either by delivering a copy of the summons and of the complaint to the head or to his receptionist. Where an executive secretary is employed, he shall be considered as the head;

(4) upon any county by delivering a copy of the summons and of the complaint to the county clerk, who shall forthwith notify the district attorney of the judicial district in which the county sued is situated;

(5) upon a municipal corporation by delivering a copy of the summons and of the complaint to the city clerk, town clerk or village clerk, who in turn shall forthwith notify the head of the commission or other form of governing body;

(6) upon the board of trustees of any land grant referred to in Sections 49-1-1 through 49-10-6 NMSA 1978, process shall be served upon the president or in his absence upon the secretary of such board;

(7) upon a minor, whenever there shall be a conservator of the estate or guardian of the person of such minor, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of process so made shall be considered as service upon the minor. In all other cases process shall be served by delivering a copy of the summons and of the complaint to the minor, and if the minor is living with an adult a copy of the summons and of the complaint shall also be delivered to the adult residing in the same household. In all cases where a guardian ad litem has been appointed, a copy of the summons and of the complaint shall be delivered to such representative, in addition to serving the minor as herein provided;

(8) upon an incapacitated person, whenever there shall be a conservator of the estate or guardian of the person of such incapacitated person, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of process so made shall be considered as service upon the ward. In all other cases process shall be served upon the ward in the same manner as upon competent persons; or

(9) upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner as provided in Subparagraph (1) or (2) of Paragraph F of this rule as may be appropriate.

Service shall be made with reasonable diligence, and the original summons with proof of service shall be returned to the clerk of the court from which it was issued.

G. **Return.** If service is made by mail pursuant to Paragraph E of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such paragraph. Where service within the state includes mailing, the return shall state the date and place of mailing. If service is made by mail pursuant to Paragraph F of this rule, proof of service by mail or commercial courier service shall be established by filing with the court a certificate of service which shall include the date of delivery by the post office or commercial courier service and a copy of the defendant's signature receipt. If service is by personal service pursuant to Paragraph F of this rule, the person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. When service is made by the sheriff (or deputy), proof thereof shall be by certificate; and when made by a person other than a sheriff (or deputy), proof thereof shall be made by affidavit. Where service within the state includes mailing, the return shall state the date and place of mailing. Failure to make proof of service shall not affect the validity of service.

H. **Service by publication.** Service by publication may not be made, except as provided by law in cases of attachment and replevin.

I. **Alias process.** When any process has not been returned, or has been returned without service, or has been improperly served, it shall be the duty of the clerk, upon the application of any party to the suit, to issue other process as the party applying may direct.

J. **Service; applicable statute.** Where no provision is made in these rules for service of process, process shall be served as provided for by any applicable statute.

K. **Construction of terms.** Wherever the terms "summons," "process," "service of process" or similar terms are used, such shall include the summons, complaint and any other papers required to be served.

[As amended, effective January 1, 1990; July 1, 1990; January 1, 1993; May 1, 1994; October 15, 2002; by Supreme Court Order No. 09-8300-035, effective November 16, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-035, effective November 16, 2009, in Subparagraph (1) of Paragraph F, added the last three sentences; and in Paragraph G, added the third sentence.

The 2002 amendment, effective October 15, 2002, deleted "entering an appearance or" following "of summons by" in the last sentence in Paragraph A; in Paragraph E, added the third sentence, and, in the fourth sentence, deleted "Unless good cause is shown for not doing so" from the beginning and inserted "unless good cause is shown for not signing, filing and serving a signed acknowledgment of service in the time required by this paragraph" at the end.

The 1994 amendment, effective May 1, 1994, amended Paragraph A by adding to the last sentence, relating to waiver of service of summons, "by entering an appearance or filing an answer in the proceedings"; amended Paragraph B by adding a new Subparagraph (4) and moving the prior Subparagraph (4) to the beginning of the Paragraph; and amended Paragraph D by deleting "the metropolitan court is located if".

The 1993 amendment, effective January 1, 1993, in Paragraph E, substituted "sender" for "court" throughout and deleted "in the manner provided by law" following "may be served" in the first sentence; deleted the last sentence in Paragraph F(3)(a), which read "A copy of the writ of garnishment shall be delivered or mailed by registered or certified mail to the defendant employee"; and, in Paragraph G, substituted "sender's filing with the court the acknowledgment received pursuant to such paragraph" for "defendant filing with the court the Notice and Receipt of Summons and Complaint", added the second sentence, and made gender neutral changes.

The 1990 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1990, substituted "in the manner provided by law" for "within the metropolitan court district" near the beginning of Paragraph E and also "as provided by law" for "within the metropolitan district" near the beginning of Paragraph F.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after January 1, 1990, rewrote this rule.

Cross references. — For jurisdiction of the metropolitan court, *see* Section 34-8A-3 NMSA 1978.

For territorial jurisdiction of the metropolitan court, *see* Section 35-3-6 NMSA 1978.

For forms on civil summons and return, *see* Rule 4-204 NMRA.

For the exclusive original jurisdiction of the district court of claims under the Tort Claims Act, Section 41-4-1 NMSA 1978 et seq., *see* Section 41-4-18 NMSA 1978.

3-203. Service and filing of pleadings and other papers.

A. **Service; when required.** Except as otherwise provided in these rules, every written order, every pleading subsequent to the original complaint, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. Service on a party is not required if:

(1) the party is in default for failure to appear except that pleadings asserting new or additional claims for relief against such party shall be served in the manner provided for service of summons in Rule 3-202 NMRA; or

(2) the party unconditionally admits to all of the allegations of the complaint prior to entry of a judgment on the pleadings.

B. **Service; how made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney's or party's last known address. Service by mail is complete upon mailing.

C. **Definitions.** As used in this rule:

(1) "Delivering a copy" means:

(a) handing it to the attorney or to the party;

(b) sending a copy by facsimile or electronic transmission when permitted by Rule 3-204 NMRA or Rule 3-205 NMRA;

(c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

(d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

(e) leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

(i) the court, in its discretion, chooses to provide such a location; and

(ii) service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

(2) “Mailing a copy” means sending a copy by first class mail with proper postage.

D. **Filing by a party; certificate of service.** All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

(1) summonses without completed returns;

(2) subpoenas without completed returns; and

(3) offers of settlement when made.

Except for the papers described in Subparagraph (1) of this paragraph, the attorney, or party, if the party is unrepresented, shall file a certificate of service with the court within a reasonable time after service, indicating the date and method of service of any paper not filed with the court.

E. **Filing with the court defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note on the papers the filing date and forthwith transmit them to the office of the clerk. “Filing” shall include filing a facsimile copy or filing an electronic copy as may be permitted under Rule 3-204 NMRA or Rule 3-205 NMRA. If a party has filed a paper using electronic or facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

F. **Filing and service by the court.** The court may file papers before serving them on the parties. For papers served by the court, the certificate of service need not indicate the method of service. For purposes of Rule 3-104(C) NMRA, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court’s certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in Subparagraph (C)(1)(e) of this rule.

G. **Filing and service by an inmate.** The following provisions apply to documents filed and served by an inmate confined to an institution:

(1) If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.

(2) The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(3) Whenever service of a document on a party is permitted by mail, the document is deemed mailed when deposited in the institution's internal mail system addressed to the parties on whom the document is served.

(4) The date of filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date when the document was deposited in the institution's internal mail system.

(5) A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

(6) Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

[As amended, March 1, 2000; November 1, 2004; as amended by Supreme Court Order No. 05-8300-05, effective March 21, 2005; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-016, effective December 31, 2014, authorized the court to designate a place of service on attorneys; provided for the filing and service of orders and notices by the court; provided for the filing and service of documents by an inmate; in Paragraph A, in the first sentence, after "these rules, every", added "written", after "written order", deleted "required by its terms to be served", and after "original complaint", deleted "every order not entered in open court"; in Paragraph B, in the second sentence, after "last known address", deleted "or, if no address is known, by leaving it with the clerk of the court", in Paragraph C (1), at the beginning of the sentence, changed "delivery of" to "Delivering"; in Paragraph C (1)(c), after "in a conspicuous place", deleted "therein" and added "in the office"; in Paragraph C (1)(d), at the beginning of the sentence, after "if the", deleted "party cannot be served at the office of the party's attorney or at the office of the party because the", added "attorney's or", after "has no office", deleted "the party may be served by"; added Paragraph C (1)(e); in Paragraph D, in the title, after "Filing", added "by a party"; in Paragraph E, in the first sentence, after "The filing of", deleted "pleadings and other" and after "shall note on the", changed "form" to "papers", deleted the former third sentence, which provided that a paper filed by electronic means constituted a written paper, added the current third sentence and at the end of the fourth sentence, added "or any local rules or practices"; and added Paragraphs F and G.

The 2005 amendment, effective March 21, 2005, revised this rule to make it consistent with Rule 1-005 NMRA as amended in 2004. The 2005 amendment revised Paragraph A, designated the definition of "delivery of a copy" as a new Subparagraph (1) of Paragraph C and added the definition of "mailing a copy" as a new Subparagraph (2) of Paragraph C, designated former Paragraph C and Paragraph D and inserted the exceptions for filing papers as Subparagraphs (1) to (3), redesignated former Paragraph D as Paragraph E and deleted all of Paragraphs E and F relating to "proof of service" and "motions".

The 2004 amendment, effective November 1, 2004, rewrote the former last sentence in Paragraph A so as to create the present last sentence and Subparagraph (1) of that paragraph and added Subparagraph (2) therein.

The 2000 amendment, effective March 1, 2000, inserted "pleadings and other" in the rule heading and amended this rule to conform it with Rule 1-005 NMRA provisions relating to service by fax or electronic mail.

Cross references. — For certificate of service, *see* Civil Form 4-221 NMRA.

For service of notice in proceedings prior to summons, *see* Section 38-1-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61B Am. Jur. 2d Pleading §§ 901, 902.

Appearance for purpose of making application for removal of cause to federal court as a general appearance, 81 A.L.R. 1219.

Affidavit of substantial defense to merits in an attachment or garnishment proceeding as general appearance, 116 A.L.R. 1215.

Attack by defendant upon attachment or garnishment as an appearance subjecting him personally to jurisdiction, 129 A.L.R. 1240.

Construction of phrase "usual place of abode," or similar terms referring to abode, residence or domicile, as used in statutes relating to service of process, 32 A.L.R.3d 112.

71 C.J.S. Pleading §§ 409, 411, 413.

3-203.1. Pleadings and papers; captions.

Pleadings and papers filed in the metropolitan court shall have a caption or heading which shall briefly include:

A. the name of the court as follows:

"State of New Mexico

County of _____

Metropolitan Court";

B. the names of the parties; and

C. a title that describes the cause of action or relief requested. The title of a pleading or paper shall have no legal effect in the action.

[Approved, effective December 17, 2001.]

ANNOTATIONS

Cross references. — For district courts, *see* Rule 1-008.1 NMRA.

3-204. Service and filing of pleadings and other papers by facsimile.

A. **Facsimile copies permitted to be filed.** Subject to the provisions of this rule, a party may file a facsimile copy of any pleading or paper by faxing a copy directly to the court or by faxing a copy to an intermediary agent who files it in person with the court. A facsimile copy of a pleading or paper has the same effect as any other filing for all procedural and statutory purposes. The filing of pleadings and other papers with the court by facsimile copy shall be made by faxing them to the clerk of the court at a number designated by the clerk, except if the paper or pleading is to be filed directly with the judge, the judge may permit the papers to be faxed to a number designated by the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Each magistrate district shall designate one or more telephone numbers to receive fax filings.

B. **Facsimile service by court of notices, orders or writs.** Facsimile service may be used by the court for issuance of any notice, order or writ. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

C. **Paper size and quality.** No facsimile copy shall be filed with the court unless it is: on plain paper eight and one-half by eleven (8 1/2 x 11) inches in size; legible; and typewritten or printed using a pica (10 pitch) type style or a twelve (12) point typeface. The right, left, top and bottom margins shall be at least one (1) inch. The pages shall be consecutively numbered at the bottom.

D. **Filing pleadings or paper by facsimile.** A pleading or paper may be filed with the court by facsimile transmission if

(1) a fee is not required to file the pleading or paper;

(2) only one copy of the pleading or paper is required to be filed;

(3) unless otherwise approved by the court, the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

(4) the pleading or paper to be filed is preceded by a cover sheet with the names of the sender and the intended recipient, any applicable instructions, the voice and facsimile telephone numbers of the sender, an identification of the case, the docket number and the number of pages transmitted.

E. **Facsimile copy filed by an intermediary agent.** Facsimile copies of pleadings or papers filed in person by an intermediary agent are not subject to the restrictions of Paragraph D of this rule.

F. **Time of filing.** If facsimile transmission of a pleading or paper is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the pleading or paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court's facsimile machine will be determinative.

G. **Service by facsimile.** Any document required to be served by Rule 3-203(A) NMRA may be served on a party or attorney by facsimile transmission if the party or attorney has

(1) listed a facsimile telephone number on a pleading or paper filed with the court in the action;

(2) a letterhead with a facsimile telephone number; or

(3) agreed to be served with a copy of the pleading or paper by facsimile transmission.

Service by facsimile is accomplished when the transmission of the pleading or paper is completed.

H. **Demand for original.** A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile transmission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

I. **Conformed copies.** On request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by facsimile transmission.

[Approved, effective January 1, 1997; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005; as amended by Supreme Court Order No. 16-8300-030, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-030, effective December 31, 2016, in Paragraph G, in the introductory sentence, after “to be served by”, deleted “Paragraph A of Rule 2-204” and added Rule 3-203(A)”; and in Paragraph I, after the heading, deleted “Upon” and added “On”.

The 2005 amendment, effective March 21, 2005, conformed this rule with Rule 1-005.1 NMRA as amended by the Supreme Court effective January 3, 2005. The 2005 amendment substituted "service" for "transmission" in Paragraph B, revised Paragraph D to substitute "filed with the court" for "faxed directly to the court by facsimile", revised Subparagraph (3) of Paragraph C to permit fax filing of pleadings and papers exceeding 10 pages when approved by the court, rewrote Paragraph G to change "transmission by facsimile" to "service by facsimile", deleted former Paragraph H, redesignated former Paragraph I as Paragraph H and added Paragraph I relating to conformed copies.

Cross references. — For general rule on service and filing of pleadings and papers, *see* Rule 2-203 NMRA.

3-205. Electronic service and filing of pleadings and other papers.

A. **Definitions.** As used in these rules

(1) “electronic transmission” means the transfer of data from computer to computer other than by facsimile transmission;

(2) “document” includes the electronic representation of pleadings and other papers; and

(3) “EFS” means the electronic filing system approved by the Supreme Court for use by the metropolitan courts to file and serve documents by electronic transmission in civil actions.

B. **Electronic filing authorized; registration by attorneys required.**

(1) A metropolitan court shall implement the mandatory filing of documents by electronic transmission in accordance with this rule through the EFS by parties represented by attorneys. Self-represented parties are prohibited from electronically filing documents and shall continue to file documents through traditional methods. Parties represented by attorneys shall file documents by electronic transmission even if another party to the action is self-represented or is exempt from electronic filing under Paragraph M of this rule. For purposes of this rule, “civil actions” does not include actions sealed under Rule 3-112 NMRA.

(2) Unless exempted under Paragraph M of this rule, attorneys required to file documents by electronic transmission shall register with the EFS through the New

Mexico Judiciary's web site. Every registered attorney shall provide a valid, working, and regularly checked email address for the EFS. The court shall not be responsible for inoperable email addresses or unread email sent from the EFS.

C. **Service by electronic transmission.** Any document required to be served by Rule 3-203(A) NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail or if the attorney for the party to be served has registered with the court's EFS. Documents filed by electronic transmission under Paragraph A of this rule may be served by an attorney through the court's EFS, or an attorney may elect to serve documents through other methods authorized by this rule, Rule 3-203 NMRA, or Rule 3-204 NMRA. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic transmission, a party served by electronic transmission notifies the sender of the electronic transmission that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 3-203 or 3-204 NMRA designated by the party to be served. The court may serve any document by electronic transmission to an attorney who has registered with the EFS under this rule and to any other person who has agreed to receive documents by electronic transmission.

D. **Format of documents; protected personal identifier information.** All documents filed by electronic transmission shall be formatted in accordance with the Rules of Civil Procedure for the Metropolitan Courts and shall comply with all procedures for protected personal identifier information under Rule 3-112 NMRA.

E. **Electronic services fee.**

(1) In addition to any other filing fees required by law, parties required to file electronically shall pay an electronic services fee of eight dollars ($8.00) per electronic transmission of one or more documents filed in any single case.

(2) Parties electing to serve a document previously filed through the EFS may do so without charge.

(3) Parties electing to both file and serve documents through the EFS shall pay an electronic services fee of twelve dollars ($12.00) per electronic transmission of one or more documents simultaneously filed and served on one or more persons or entities in any single case.

(4) The provisions of this paragraph shall not apply to actions brought by the New Mexico Department of Workforce Solutions on behalf of employees to collect unpaid or underpaid wages under Section 50-4-26 NMSA 1978.

F. **Single transmission.** Whenever a rule requires multiple copies of a document to be filed only a single electronic transmission of the document is necessary. If an attorney files or serves multiple documents in a case by a single electronic

transmission, the applicable electronic services fee under Paragraph E of this rule shall be charged only once regardless of the number of documents filed or parties served.

G. **Time of filing.** For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight on the day preceding the next business day of the court it will be considered filed on the immediately preceding business day of the court. For any questions of timeliness, the time and date registered by the court's computer will be determinative. For purposes of electronic filing only, the date and time that the filer submits the electronic filing envelope will serve as the filing date and time for purposes of meeting statute of limitations or any other filing deadlines, notwithstanding rejection of the attempted filing or its placement into an error queue for additional processing.

H. **Signatures.**

(1) All electronically filed documents shall be deemed to contain the filing attorney's signature under Rule 3-301(H) NMRA. Attorneys filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document.

(2) If a document filed by electronic transmission contains a signature block from an original paper document containing a signature, the signature in the electronic document may represent the original signature in the following ways:

(a) by scanning or other electronic reproduction of the signature; or

(b) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

(3) All electronically filed documents signed by the court shall be scanned or otherwise electronically produced so that the judge's original signature is shown.

I. **Demand for original; electronic conversion of paper documents.**

(1) Original paper documents filed or served electronically, including original signatures, shall be maintained by the attorney filing the document and shall be made available, upon reasonable notice, for inspection by other parties or the court. If an original paper document is filed by electronic transmission, the electronic version of the document shall conform to the original paper document. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

(2) For cases in which electronic filing is mandatory, if an attorney who is exempt under Paragraph M of this rule or a self-represented party files a paper document with the court, the clerk shall convert the paper document into electronic format for filing. The filing date shall be the date on which the paper document was filed

even if the document is electronically converted and filed at a later date. The clerk shall retain the paper documents as long as required by applicable statutes, rules, and regulations.

J. **Electronic file stamp and confirmation receipt; effect.** The clerk of the court's endorsement of an electronically filed document shall have the same force and effect as a manually affixed file stamp. When a document is filed through the EFS, it shall have the same force and effect as a paper document and a confirmation receipt shall be issued by the system that includes the following information:

(1) the case name and docket number;

(2) the date and time of filing as defined under Paragraph G of this rule;

(3) the document title;

(4) the name of the EFS service provider;

(5) the email address of the person or entity filing the document; and

(6) the page count of the filed document.

K. **Conformed copies.** Upon request of a party, the clerk shall stamp additional paper copies provided by the party of any pleading filed by electronic transmission. A file-stamped copy of a document filed by electronic transmission can be obtained through the court's EFS. Certified copies of a document may be obtained from the clerk's office.

L. **Proposed documents submitted to the court.** Unless a rule approved by the Supreme Court provides otherwise, this paragraph governs the submission of proposed documents to the court.

(1) Except for documents listed in Subparagraph (4) of this paragraph, a document that a party proposes for issuance by the court shall be transmitted by electronic mail to an email address designated by the court for that purpose. A judge may direct the party to submit a hard copy of the proposed document in addition to, or in lieu of, the electronic copy. Guidelines for submitting proposed documents to the court shall be posted on the court's web site, which will include the email addresses to be used for purposes of this paragraph. The information on the web site also may set forth the text to be included in the subject-line and body of the email.

(2) Except for documents listed in Subparagraph (4) of this paragraph, proposed documents shall not be electronically filed by the party's attorney in the EFS. Any party who submits proposed documents by email under this paragraph shall not engage in ex parte communications in the email and shall serve a copy of the email and attached proposed documents on all other parties to the action.

(3) Documents issued by the clerk under this rule shall be sent to the requesting party by email or through the EFS as appropriate, and the requesting party is responsible for electronically filing the document in the EFS if necessary and serving it on the parties as appropriate. Any document issued by a judge under this rule will be electronically filed by the court in the EFS and served on the parties as required by these rules.

(4) The following proposed documents that a party submits for issuance by the court, known as "issuance documents," shall be submitted through the court's EFS:

(a) certificate as to the state of the record;

(b) issuance of summons;

(c) issuance of summons and notice of trial in actions for forcible entry or unlawful detainer and cases brought under the Uniform Owner-Resident Relations Act and the Mobile Home Park Act;

(d) notice of pendency;

(e) notice of suit;

(f) subpoena;

(g) transcript of judgment;

(h) writ of replevin or assistance;

(i) writ of restitution;

(j) writ of execution; and

(k) writ of garnishment.

M. **Requests for exemptions from rules establishing mandatory electronic filing systems.**

(1) An attorney may file a petition with the Supreme Court requesting an exemption, for good cause shown, from any mandatory electronic filing system that may be established by this rule and any other metropolitan court rules pertaining to the electronic filing system. The petition shall set forth the specific facts offered to establish good cause for an exemption. No docket fee shall be charged for filing a petition with the Supreme Court under this subparagraph.

(2) Upon a showing of good cause, the Supreme Court may issue an order granting an exemption from the mandatory electronic filing requirements of this rule and

any other metropolitan court rules pertaining to the electronic filing system. An exemption granted under this subparagraph remains in effect statewide for one (1) year from the date of the order and may be renewed by filing another petition in accordance with Subparagraph (1) of this paragraph.

(3) An attorney granted an exemption from a mandatory electronic filing system under this paragraph may file documents in paper format with the metropolitan court and shall not be charged an electronic filing fee under this rule or local rule for doing so. When filing paper documents under an exemption granted under this paragraph, the attorney shall attach to the document a copy of the Supreme Court exemption order. The metropolitan court clerk shall scan the attorney's paper document into the electronic filing system including the attached Supreme Court exemption order. No fee shall be charged for scanning the document. The attorney remains responsible for serving the document in accordance with these rules and shall include a copy of the Supreme Court exemption order with the document that is served.

(4) An attorney who receives an exemption under this paragraph may nevertheless file documents electronically in any metropolitan court that accepts electronic filings without seeking leave of the Supreme Court provided that the attorney complies with all requirements under this rule, complies with all applicable rules for the metropolitan court's EFS, and pays any applicable electronic filing fees. By doing so, the attorney does not waive the right to exercise any exemption granted under this paragraph for future filings.

N. **Technical difficulties.** Substantive rights of the parties shall not be affected when the EFS is not operating through no fault of the filing attorney.

[As amended, effective March 21, 2005; as amended by Supreme Court Order No. 16-8300-030, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-002, effective October 15, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-002, effective October 15, 2020, required the metropolitan court to implement the mandatory filing of documents by electronic transmission in civil actions through the electronic filing system (EFS) approved by the New Mexico Supreme Court, prohibited self-represented parties from electronically filing documents, provided that documents required to be served by this rule may be served through the court's EFS and that documents required to be served by Rule 3-203(A) NMRA may be served through the court's EFS if the party to be served has registered with the court's EFS, provided the acceptable format, number of copies, and time of filing for documents filed by electronic transmission, provided fees for electronic filing and electronic service of documents, required attorneys to retain, for inspection by other parties or the court, original paper documents filed or served electronically until the conclusion of the case, provided that certified copies of electronically filed documents may be obtained from the metropolitan court clerk's

office, provided procedures for electronically filing documents that a party proposes for issuance by the court, and provided for requests for exemptions from the mandatory electronic filing requirements; in Paragraph A, added Subparagraph (3); added a new Paragraph B and redesignated former Paragraph B as Paragraph C; in Paragraph C, after “pleadings or papers by electronic mail”, added “or if the attorney for the party to be served has registered with the court’s EFS. Documents filed by electronic transmission under Paragraph A of this rule may be served by an attorney through the court’s EFS, or an attorney may elect to serve documents through other methods authorized by this rule, Rule 3-203 NMRA, or Rule 3-204 NMRA.”, changed each occurrence of “electronic mail” to “electronic transmission”, and added the last sentence of the paragraph; deleted former Paragraphs C and D, added new Paragraphs D and E, and redesignated former Paragraphs E and F as Paragraphs F and G, respectively; in Paragraph F, after “single”, added “electronic”, after the first occurrence of “transmission”, added “of the document”, and added the last sentence of the paragraph; in Paragraph G, added the last sentence of the paragraph; added a new Paragraph H and redesignated former Paragraph G as Paragraph I; in Paragraph I, in the heading, added “electronic conversion of paper documents”, deleted “A party shall have the right to inspect and copy any document that has been filed or served by electronic transmission if the document has a statement signed under oath or affirmation or penalty of perjury”, and added the remainder of the paragraph; added a new Paragraph J and redesignated former Paragraph H as Paragraph K; in Paragraph K, after “additional”, added “paper”, and added the last sentence of the paragraph; and added Paragraphs L through N.

The 2016 amendment, approved by Supreme Court Order No. 16-8300-030, effective December 31, 2016, in Paragraph B, after “to be served by”, deleted “Paragraph A of Rule 2-203” and added “Rule 3-203(A), and after “authorized by Rule”, deleted “2-203” and added “3-203”; and in Paragraph H, after the heading, deleted “Upon” and added “On”.

The 2005 amendment, effective March 21, 2005, conformed this rule with District Court Civil Rule 1-005.2 NMRA as amended by the Supreme Court, effective January 3, 2005.

Cross references. — For definition of "signature", *see* Rule 3-301 NMRA.

For general rule on service and filing of pleadings and papers, *see* Rule 3-203 NMRA.

For service and filing of pleadings and papers by fax, *see* Rule 3-204 NMRA.

ARTICLE 3
Pleadings and Motions

3-301. Pleadings allowed; signing of pleadings, motions, and other papers; sanctions.

A. **Pleadings.** There shall be a complaint and, if the defendant wishes to contest the plaintiff's claim in any way, an answer. The answer may assert a counterclaim or a setoff. If a counterclaim is filed, a reply shall be filed and served on each party within twenty (20) days. The complaint may interplead two (2) or more persons who have or may have a claim to funds owed by the plaintiff.

B. **Joinder of claims.** A party asserting a claim for relief may join either as independent or as alternate claims as many claims as the party may have against an opposing party.

C. **Permissive joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of related transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them, jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or related series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.

D. **Third-party practice.** Within ten (10) days after service of a defendant's answer on the plaintiff, a defendant may file a third-party complaint against any person who is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant. A third-party complaint shall be served on the third-party defendant in the manner provided by Rule 3-202 NMRA. A copy of the third-party complaint shall be served on all other parties under Rule 3-203 NMRA, Rule 3-204 NMRA, or Rule 3-205 NMRA. On motion and hearing the court may permit a defendant to file a third-party complaint at any time prior to trial.

E. **Interpleader.** Persons having claims for funds against the plaintiff may be named as defendants and required to adjudicate their claims for the funds when their claims are such that the plaintiff is or may be exposed to double or multiple liability. A defendant exposed to similar liability for funds may adjudicate the right to funds by third-party complaint, cross-claim, or counterclaim. Any person who is named as a defendant or third-party defendant under this paragraph shall file an answer within the time set forth in these rules, setting forth the facts and circumstances giving rise to the person's claim and why the person is entitled to the funds owed by the plaintiff. The disposition of the proceedings shall be binding on all parties to the action on whom service has been made.

F. **Separate trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of any other party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

G. **Exhibits.** An exhibit to a pleading is a part thereof for all purposes.

H. **Signing of pleadings.** Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of a party or attorney constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not filed to delay the proceedings. If a pleading, motion, or other paper is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false, and the action may proceed as though the pleading or other paper had not been served. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. For a willful violation of this rule an attorney or party may be subjected to appropriate disciplinary or other action. Similar action may be taken if scandalous or indecent matter is inserted. A "signature" means an original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

I. **Unsworn affirmations under penalty of perjury.** Any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a court proceeding as a notarized written statement, provided that the statement includes the following:

(1) the date that the statement was given;

(2) the signature of the person who gave the statement; and

(3) a written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct.

[As amended, effective October 1, 1987; October 1, 1992; January 1, 1997; December 17, 2001; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005; as amended by Supreme Court Order No. 15-8300-017, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 17-8300-024, effective for all cases pending or filed on or after December 31, 2017.]

Committee commentary. — A new Paragraph I was added in 2017 for consistency with the 2014 amendments to Rule 1-011 NMRA of the Rules of Civil Procedure for the District Courts and Rule 23-115 NMRA of the Supreme Court General Rules, which both provide that an unsworn, written affirmation has the same effect in a court proceeding as a notarized written statement as long as the affirmation satisfies the enumerated requirements.

[Adopted by Supreme Court Order No. 17-8300-024, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-024, effective December 31, 2017, provided for electronic service of certain pleadings, provided that certain unsworn, written affirmations in a pleading have the same effect in a court proceeding as notarized written statements, made certain technical revisions to the rule, and added the committee commentary; in Paragraph D, after “Rule 3-202 NMRA”, deleted “of these rules”, deleted “3-203.1 or”, after “3-204” added “NMRA, or Rule 3-205”, and deleted “of these rules”; and added Paragraph I.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, removed duplicate language in the rule and made stylistic changes; in Paragraph D, after “all other parties”, deleted “pursuant to” and added “under”; in Paragraph E, after “third-party defendant”, deleted “pursuant to” and added “under”; in Paragraph F, after “inclusion of”, deleted “a” and added “any other”, after “whom”, deleted “he” and added “the party”, and after “no claim against”, deleted “him” and added “the party”; and in Paragraph H, after “pleader or movant”, deleted “The signature of a party or attorney constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer’s knowledge, information and belief, there is good ground to support it; and that it is not filed to delay the proceedings. If a pleading, motion or other paper is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served. If a pleading motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.”

The 2005 amendment, effective March 21, 2005, revised Paragraph A to require a reply to be served on each party within 20 days if a counterclaim is filed, rewrote Paragraph D, substituted "claims for funds against the plaintiff" for "claims for funds against a third party" in the first sentence of Paragraph E, deleted Paragraph G, relating to motions, redesignated former Paragraphs H and I as Paragraphs G and H, added the first three sentences of redesignated Paragraph H.

The 2001 amendment, effective December 17, 2001, rewrote Paragrah I, expanding its scope to include pleadings, motions, and other papers and adding the third and fourth sentences.

The 1997 amendment, effective January 1, 1997, added the last sentence in Paragraph I defining "signature".

The 1992 amendment, effective October 1, 1992, added Paragraphs B and C, redesignated former Paragraphs B and C as Paragraphs D and E, added Paragraph F, and redesignated former Paragraphs D to F as Paragraphs G to I.

Cross references. — For motions rule, *see* Rule 3-307 NMRA.

For rule comparable to Paragraph H of this rule, *see* Rule 1-011 NMRA.

3-302. Defenses; answer.

A. **Answer; when filed.** The defendant shall file his answer on or before the appearance date stated in the summons.

B. **Defenses; how presented.** The answer shall describe in concise and simple language the reasons why the defendant denies the claim of the plaintiff, and any defenses he may have to the claim of the plaintiff. Defenses shall be raised in the answer. A party may file a motion to have the answer clarified or explained. On the filing of such motion, the judge may, in his discretion, require a more explicit answer or order a pretrial conference to clarify the issues.

C. **Permissive counterclaim or setoff.** If the defendant possesses a claim or claims against the plaintiff at the time the action is begun, they may be asserted in the answer as a counterclaim or setoff. The facts and circumstances giving rise to the claim or claims shall be briefly described.

D. **Nature of claim and amount claimed.** The nature of the defendant's claim or claims and the total sum claimed shall comply with applicable law. A claim which exceeds the jurisdiction of the metropolitan court shall be amended by the defendant prior to trial to conform to the court's jurisdiction or shall be dismissed without prejudice.

E. **Compulsory counterclaim.** There shall be no compulsory counterclaim.

ANNOTATIONS

Cross references. — For form on answer to civil complaint, *see* Rule 4-301 NMRA.

3-303. Judgment on the pleadings.

A. **For claimant.** A party seeking to recover upon a claim or counterclaim may, at any time after an answer or a reply by the adverse party, move for judgment on the pleadings in his favor upon all or any part thereof.

B. **For defending party.** A party against whom a claim or counterclaim is asserted may, at any time, move for a judgment on the pleadings in his favor as to all or any part thereof.

C. **Motion and proceedings thereon.** The motion shall be served by mail at least five (5) days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, on file, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A judgment on the pleadings may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

3-304. Amended and supplemental pleadings.

A. **Amendments before response.** At any time before a responsive pleading is served, a party may amend that party's initial pleading once without permission of the court. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

B. **Amendments after response to pleading.** At any time after the filing of an answer or response, upon request of a party, the court may, upon reasonable notice and upon such terms as may be just, permit a party to amend the party's pleading. Permission to amend the party's pleading shall be freely granted when justice so requires. The court may grant a continuance to permit an objecting party to respond to the amended pleading.

C. **Supplemental pleadings.** Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events that have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time for filing the response. The court may grant a continuance to permit an objecting party to respond to the supplemental pleading.

[As amended, effective December 17, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 17, 2001, substantially rewrote this rule to include some of the provisions of Rule 1-015 NMRA.

Granting of a continuance rests within the sound discretion of the trial court, and the denial of a continuance will be reversed only upon a showing of a clear abuse of discretion. *Bombach v. Battershell*, 1987-NMSC-031, 105 N.M. 625, 735 P.2d 1131.

3-305. Dismissal of actions.

A. **Voluntary dismissal; effect thereof.**

(1) An action may be dismissed by the plaintiff without order of the court:

(a) by filing a notice of dismissal at any time before service by the adverse party of an answer or other responsive pleading; or

(b) by filing a stipulation of dismissal signed by all parties who have appeared generally in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed an action based on or including the same claim.

(2) Except as provided in Subparagraph (1) of this paragraph, an action shall not be dismissed on motion of the plaintiff except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim, cross-claim or third-party claim has been filed by a party prior to the service upon such party of the plaintiff's motion to dismiss, the action shall not be dismissed against the party's objection unless the counterclaim, cross-claim or third-party claim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

B. **Involuntary dismissal; effect thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

C. **Dismissal of counterclaim, cross-claim or third-party claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim or third-party claim. A voluntary dismissal by the claimant alone pursuant to Subparagraph (1) of Paragraph A of this rule shall be made before a responsive pleading is served, or if there is none, before the introduction of evidence at the trial or hearing.

D. **Dismissal for failure to prosecute.** Any action pending for six (6) months from the date the complaint is filed, in which the plaintiff or defendant asserting a counterclaim has failed to take all available steps to bring the matter to trial, shall be dismissed without prejudice.

E. **Costs of previously dismissed action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

[As amended, effective November 1, 1995; November 1, 2000.]

ANNOTATIONS

The 2000 amendment, effective November 1, 2000, made stylistic changes in Paragraph A.

The 1995 amendment, effective November 1, 1995, rewrote Paragraph A, added Paragraphs B and C, redesignated former Paragraph B as Paragraph D and substituted "the complaint is filed" for "of the filing of the complaint" in that paragraph, and added Paragraph E.

Cross references. — For form on stipulation of dismissal, *see* Rule 4-304 NMRA.

For form on notice of dismissal of complaint, *see* Rule 4-305 NMRA.

For form on order dismissing action for failure to prosecute, *see* Rule 4-306 NMRA.

3-306. Pretrial conference; scheduling order.

A. **Pretrial conference.** With or without the filing of a motion, the judge may order the parties to appear before the court to expedite the disposition of the case. Witnesses may not be called or subpoenaed for a pretrial conference unless ordered by the court.

B. **Pretrial scheduling order.** The court may enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete any permitted discovery.

The scheduling order may also include:

(4) the dates for conferences or hearings before trial;

(5) a trial date; and

(6) any other matters deemed appropriate by the court.

[As amended, effective December 17, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 17, 2001, inserted "scheduling order" in the rule heading and amended this rule to prohibit the calling of witnesses for pretrial conferences unless ordered by the court and added Paragraph B.

Cross references. — For form on notice of pretrial conference, *see* Rule 4-307 NMRA.

3-307. Motions.

A. **Defenses and objections which may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion. All motions shall state with particularity the grounds and the relief sought.

B. **Requirement of written motion.** All motions, except motions made during a pretrial conference or trial, or as may be permitted by the court, shall be in writing. A copy of every written motion shall be served on each party or the party's attorney as provided by Rule 3-203 NMRA. A motion for relief filed more than ninety (90) days after entry of the judgment shall be served on the opposing party in the manner provided by Rule 3-202 NMRA for service of a summons.

C. **Unopposed motions.** If both parties are represented by attorneys, prior to filing a written motion, the moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order approved by opposing counsel shall accompany the motion.

D. **Opposed motions.** A motion filed by an attorney in a case in which the opposing party is represented by an attorney shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a:

(1) motion to dismiss;

(2) motion for new trial;

(3) motion for judgment on the pleadings.

E. **Notice and hearing.** No written motion shall be considered by the court unless served on each party or the party's attorney as required by these rules.

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

Cross references. — For the request for hearing form, *see* Civil Form 4-112 NMRA.

For the notice of hearing form, *see* Civil Form 4-113 NMRA.

For comparable district court rule, *see* Rule 1-007.1 NMRA.

ARTICLE 4
Parties

3-401. Parties; capacity.

A. **Real party in interest.** Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, personal representative, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. Where it appears that an action, by reason of honest mistake, is not prosecuted in the name of the real party in interest, the court may allow a reasonable time for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. **Capacity to sue or be sued.** The capacity of an individual, including those acting in a representative capacity, to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

C. **Minors or incompetent persons.** When a minor or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

3-402. Notice of trial; joint or separate trials.

A. **Notice of trial.** After the answer has been filed, the judge shall set a date for trial of the action. The judge or the clerk shall issue a written notice of trial announcing the time, day and place thereof, file the original and send copies to all parties not in default.

B. **Consolidation.** When actions involving a common question of law or fact are pending before the judge, he may make such orders providing for joint trials as may tend to avoid unnecessary costs or delay.

C. **Separate trials.** The judge in furtherance of convenience or to avoid prejudice may order a separate trial of any claim or issue.

3-403. Substitution of parties.

A. **Death or incompetency.** If a party dies or becomes incompetent and the claim is not extinguished or barred, the judge may, within ninety (90) days after notice of the death or incompetency of the party is made in the file of the pending case, order a substitution of the proper party or parties. If substitution is not so made, the action shall be dismissed as to the deceased or incompetent party, without prejudice.

B. **Transfer of interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the judge directs the person to whom the interest is transferred to be substituted in the action.

ARTICLE 5
Discovery and Pretrial Matters

3-501. Discovery.

A. **Disclosure by plaintiff.** Unless otherwise ordered by the court, not less than twenty (20) days before trial, the plaintiff or the plaintiff's attorney shall disclose and make available for inspection, copying and photographing any records, papers, documents or other tangible objects in the plaintiff's possession, custody and control which the plaintiff intends to introduce in evidence at the trial. The plaintiff shall also disclose to the defendant an itemized list of the damages that the plaintiff claims.

B. **Disclosure by defendant.** Unless otherwise ordered by the court, not less than fifteen (15) days before trial, the defendant shall disclose and make available to the plaintiff for inspection, copying and photographing any records, papers, documents or other tangible objects in the defendant's possession, custody or control which the defendant intends to introduce in evidence at the trial.

C. **Witness disclosure.** Unless otherwise ordered by the court, not less than twenty (20) days before trial, the plaintiff shall disclose to the defendant or the defendant's counsel a list of the names, addresses and telephone numbers of the witnesses that the plaintiff intends to call at the trial, along with a summary of their testimony. Not less than fifteen (15) days before trial, the defendant shall disclose to the plaintiff or the plaintiff's counsel a list of the names, addresses and telephone numbers of the witnesses that the defendant intends to call at the trial, along with a summary of their testimony.

D. **Continuing duty to disclose.** If a party discovers additional material or witnesses which the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the

party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

E. **Failure to comply.** If it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from calling a witness not disclosed, prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

F. **Production of documents.** At any time during the pendency of the action, for good cause shown, the judge may order either party to produce for inspection and copying any records, papers, documents or other tangible evidence in the possession of that party or available to that party.

G. **Further discovery.** The court may, for good cause shown, order further discovery as permitted by the Rules of Civil Procedure for the District Courts.

[As amended, effective May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, deleted former Paragraph A relating to production of documents and added Paragraph A to F; redesignated Paragraph B as Paragraph G, and in present Paragraph G, deleted "If both parties are represented by counsel" from the beginning.

Cross references. — For form on motion for production, *see* Rule 4-501 NMRA.

For form on order for production, *see* Rule 4-502 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Propriety and extent of state court protective order restricting party's right to disclose discovered information to others engaged in similar litigation, 83 A.L.R.4th 987.

3-501.1. Statements; protective orders.

A. **Statements.** Upon order of the court, any person, including a party, with information which is subject to discovery may be ordered to give a statement. At any time during a statement, on motion of a party, the witness or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the witness or the deponent, the court in which the action is pending, or the court in the county where the statement is being taken, may order the examination to cease or may limit the scope and manner of the taking of the statement. If the order made terminates the statement, it shall be resumed

thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party, the witness or the deponent, the taking of the statement shall be suspended for the time necessary to make a motion for an order.

B. **Protective orders.** Upon motion by a party or by the person from whom a statement is sought pursuant to this rule, and for good cause shown, the court in which the action is pending may make any order, which justice requires, to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court; and

(6) that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a designated way.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

[Approved, effective May 1, 2002.]

3-502. Subpoenas.

A. **Form; issuance.**

(1) Every subpoena shall:

(a) state the name of the court from which it is issued;

(b) state the title of the action and its civil action number;

(c) command each person to whom it is directed to attend a trial or hearing and give testimony or to produce for trial or hearing designated books, documents or tangible things in the possession, custody or control of that person;

(d) state the time and date of the hearing or trial, the name of the judge before whom the witness is to appear or produce documents; and

(e) be substantially in the form approved by the Supreme Court.

(2) All subpoenas shall issue from the court for the court in which the matter is pending.

(3) The judge or clerk shall issue a subpoena, other than a subpoena duces tecum, signed but otherwise in blank, to a party requesting it, who shall fill it in before service. The judge or clerk may issue a subpoena duces tecum to a party only if the subpoena duces tecum is completed by the party prior to issuance by the judge or clerk. An attorney authorized to practice law in New Mexico and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court in which the case is pending.

(4) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

B. **Service.**

(1) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if that person's attendance is commanded, by tendering to that person the full fee for one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The fee for per diem expenses shall not be prorated. If attendance is required for more than one (1) day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior to or at the same time as service of any subpoena commanding production of documents and things or inspection of premises before trial, notice shall be served on each party in the manner prescribed by Rule 3-203 NMRA.

(2) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

C. **Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an

appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(a) Unless specifically commanded to appear in person, a person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things need not appear in person at the hearing or trial.

(b) Subject to Subparagraph (2) of Paragraph D of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon all parties written objection to inspection or copying of any or all of the designated materials or inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court by which the subpoena was issued. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)

(a) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance,

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iii) subjects a person to undue burden.

(b) The court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena if a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information,

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

If the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. **Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

E. **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

[As amended, effective January 1, 1994; May 1, 1994; May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, rewrote Paragraph A, which formerly related to attendance of witnesses, deleted former Paragraphs B through D relating to production of documentary evidence, service and manner of service; added present Paragraphs B, C and D; in Subsection E, deleted "magistrate" preceding "court" and deleted the former second sentence relating to service by mail.

The second 1994 amendment, effective May 1, 1994, moved prior Paragraph C to the second paragraph of Paragraph A and redesignated the remaining paragraphs accordingly; and amended the former Paragraph C by deleting "within the metropolitan district".

The first 1994 amendment, effective January 1, 1994, deleted "by tendering to him fees for one (1) day's attendance and the mileage allowed by law, if payment of such fee and mileage is demanded at the time of service of the subpoena" following "and" at the end of the first paragraph in Paragraph D, and added Subparagraphs D(1) and D(2).

Cross references. — For jurisdiction of the magistrate court, *see* Section 34-8A-3 NMSA 1978.

For territorial jurisdiction of the metropolitan court, *see* Section 35-3-6 NMSA 1978.

For forms on subpoena, return for completion by sheriff or deputy and return for completion by other person making service, *see* Rule 4-503 NMRA.

ARTICLE 6
Trial

3-601. Conduct of trials.

A. **Continuances.** Continuances shall be granted for good cause shown at any stage of the proceedings.

B. **Evidence.** The New Mexico Rules of Evidence shall govern proceedings in the metropolitan court.

C. **Oath of witness.** The judge shall administer an oath or affirmation to each witness, substantially in the following form: "You do solemnly swear (or affirm) that the testimony you give is the truth, the whole truth and nothing but the truth under penalty of perjury."

3-602. Jury trial.

A. **Right preserved.** The right of trial by jury exists as provided by law.

B. **Demand.** Either party to an action may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the defendant, and there shall be collected from the demanding party the non-refundable jury fee established by law and, an additional deposit of seventy-five dollars ($75.00) to be used for payment of the actual costs of empaneling the jury, which fee shall be refundable all or in part.

C. **Waiver.** If demand is not made as provided in Paragraph B of this rule, or if the jury fee is not paid at the time demand is made, trial by jury is deemed waived.

[As amended, effective October 1, 1996; as amended by Supreme Court Order No. 08-8300-036, effective December 15, 2008.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-036, effective December 15, 2008, in Paragraph B, increased the amount of the jury fee from $50.00 to $75.00.

The 1996 amendment, effective October 1, 1996, in Paragraph B, deleted "forthwith" preceding "collected", inserted "non-refundable", and added the language beginning "and, an additional deposit" at the end of the paragraph.

Cross references. — For contributions to magistrate retirement fund from magistrate court fees, *see* Section 10-12C-11 NMSA 1978.

For demand for jury trial in metropolitan court, *see* Section 34-8A-5 NMSA 1978.

For collection of fines, fees or costs in metropolitan court, *see* Section 34-8A-13 NMSA 1978.

For jury and witness fee fund, *see* Section 34-9-11 NMSA 1978.

For magistrate court costs, schedule, and definition of "convicted", *see* Section 35-6-1 NMSA 1978.

For magistrate court costs, witness fees and reimbursement, *see* Section 35-6-4 NMSA 1978.

For magistrate court civil jury fees, *see* Section 35-8-7 NMSA 1978.

3-603. Jurors.

A. **Metropolitan jury.** A jury in the metropolitan court consists of six (6) jurors with the same qualifications as jurors in the district court. Whenever a jury is required, the judge shall select prospective jurors in the manner provided by law.

B. **Challenges for cause.** At the time of the trial, the parties, their attorneys, or the judge may examine the prospective jurors who have been summoned to determine whether they should be disqualified for cause. Prospective jurors shall be excused for cause if the examination discloses bias, relationship to a party, or other grounds of actual or probable partiality. If examination of any prospective juror discloses any basis for disqualification, that prospective juror shall be excused.

C. **Peremptory challenges.** Each party shall be entitled to one (1) peremptory challenge. If peremptory challenges are exercised, the judge shall excuse those prospective jurors challenged.

D. **Selection of jury.**

(1) The judge shall cause the name of each prospective juror present to be entered into the court’s jury management system. A list of the names of the prospective jurors present shall be prepared at the direction of the judge, and a copy of the list shall be provided to each party or the party’s attorney.

(2) The prospective jurors may be examined by the parties, their attorneys, or the judge by questioning all of the prospective jurors present, as a group or individually.

(3) When six (6) qualified jurors have been selected, they shall constitute the jury for the case to be tried.

(4) One (1) or more alternate jurors may be selected at the direction of the judge. The parties may exercise their peremptory challenges in the selection of the alternate juror or jurors, if their peremptory challenges have not been exhausted in the selection of the other jurors.

E. **Additional jurors.** If a jury cannot be completed by reading the names of those present, the sheriff or other responsible person shall summon a sufficient number of jurors to fill the deficiency.

F. **Oath to jurors.** The judge shall administer an oath or affirmation in substantially the following form to jurors: "You do solemnly swear (or affirm) that you will truly try the facts of this action and give a true verdict according to the law and evidence given in court."

G. **Juror qualification and questionnaire forms; retention schedule; certification of compliance with privacy requirements.** Prior to the examination of prospective jurors under this rule, the court shall require each prospective juror to complete a juror qualification and questionnaire forms as approved by the Supreme Court, which shall be subject to the following protections:

(1) All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity shall be kept confidential unless ordered unsealed under the provisions in Rule 3-112 NMRA;

(2) All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity shall be destroyed according to the following deadlines:

(a) All copies in the possession of the court shall be destroyed ninety (90) days after expiration of the term of service of the juror or prospective juror unless an order has been entered directing their retention for a longer period of time; and

(b) All copies in the possession of the attorneys, parties, and any other individual or entity shall be destroyed within one hundred twenty (120) days after final disposition of the proceeding for which the juror or prospective juror was called unless permitted by written order of the court to retain the copies for a longer period of time, in which case the court's order shall set the deadline for destruction of those copies; and

(3) On or before the destruction deadline required under this rule, all attorneys and parties shall file a certification under oath in a form approved by the Supreme Court that they have complied with the confidentiality and destruction requirements set forth in this paragraph.

H. **Supplemental questionnaires.** The court may order prospective jurors to complete supplemental questionnaires. Unless otherwise ordered by the court, the party requesting supplemental questionnaires shall be required to pay the actual costs of producing and mailing the supplemental questionnaires. The confidentiality and destruction protections in Subparagraphs (G)(1), (2), and (3) of this rule shall apply to any supplemental questionnaires ordered under this paragraph.

[As amended, effective September 1, 1989; as amended by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 18-8300-008, effective December 31, 2018.]

Committee commentary. — Paragraph G of this rule was added to clarify the procedure for using and retaining juror qualification and questionnaire forms. In cases where an issue may be raised on appeal concerning jury selection or a particular juror, the appellant may consider filing a motion in the district court within ninety (90) days of the jury verdict to request an order requiring the retention of the juror qualification and questionnaire forms for inclusion in the record proper filed in the appellate court. Paragraph G of this rule supersedes administrative regulations concerning the retention of juror qualification and questionnaire forms.

[Adopted by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 18-8300-008, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-008, effective December 31, 2018, provided additional privacy protections and destruction requirements for information contained in juror questionnaire forms, provided an exception to the confidentiality rules, made certain nonsubstantive changes, and revised the committee commentary; in Paragraph G, after the semicolon, added “certification of compliance with privacy requirements”, and after “Supreme Court”, added “which shall be subject to the following protections:”, added subparagraph designations “(1)” and “(2)”, in Subparagraph G(1), after “questionnaire forms,”, added “including any electronic copies”, after “possession of the court”, deleted “as well as in the possession of others, including”, and after “individual or entity”, added “shall be kept confidential unless ordered unsealed under the provisions in Rule 3-112 NMRA”, in Subparagraph G(2), added “All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity”, and after “shall be destroyed”, added “according to the following deadlines:”, added subparagraph designation “(a)”, in Subparagraph G(2)(a), added “All copies in the possession of the court shall be destroyed”, and after “retention”, deleted “of the form” and added “for a longer period of time; and”, and added Subparagraphs G(2)(b) and G(3); and in Paragraph H, added the last sentence of the paragraph relating to confidentiality and destruction protections.

The 2013 amendment, approved by Supreme Court Order No. 13-8300-042, effective December 31, 2013, required the names of prospective jurors to be entered into the court's juror management system; required prospective jurors to complete an approved juror qualification and questionnaire form and supplemental questionnaires, if ordered by the court; provided for the destruction of juror qualification and questionnaire forms; in Paragraph D, Subparagraph (1), deleted the former first sentence, which required the judge to place the names of prospective jurors on a slip of paper and place the slips of paper into a box, added the current first sentence, after "shall be prepared" deleted "by" and added "at the direction of", and after "direction of the judge", deleted "or at his direction"; in Subparagraph (4), in the first sentence, after "One", added "or more" and after "may be selected", added "at the direction of" and after "judge", deleted "at his discretion, so elects"; in Paragraph E, after "completed by", deleted "drawing additional slips" and added "reading the names of those present"; and added Paragraphs G and H.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after September 1, 1989, in Paragraph D, deleted the "(a)" designation at the beginning of Subparagraph (2) and deleted Item (b) in the first sentence, and the former second sentence of the subparagraph, relating to the drawing by the judge of the names of six jurors to be questioned as a group and individually, and the drawing of additional names of jurors to replace those excused for cause or by peremptory challenge, respectively.

3-604. Trial by jury.

Juries in the metropolitan court shall hear the evidence in the action which shall be delivered in public in its presence. After hearing the evidence, the members of the jury shall be kept together until five of them agree upon a verdict or are discharged by the judge. Whenever the judge is satisfied that five jurors cannot agree on a verdict after a reasonable time, he may discharge it and summon a new jury unless the parties agree that the judge may render judgment.

3-605. Instructions to juries.

A. **Duty to instruct.** The court shall instruct the jury regarding the law applicable to the facts in the cause unless such instructions be waived by the parties.

B. **Admonitions to jury on conduct.** After a jury has been sworn to try a case, but before opening statements or the presentation of any testimony, the court must read the applicable portions of UJI 13-106 to the jury. The instruction or appropriate portions thereof may be repeated to the jury before any recess of the trial if in the discretion of the judge it is desirable to do so. At the close of the case when the jury is instructed, UJI 13-106 shall not be reread to the jury but applicable portions thereof shall be included with other instructions sent to the jury room.

C. **Use.** Whenever New Mexico Uniform Jury Instructions Civil contains an instruction applicable in the case and the court determines that the jury should be

instructed on the subject, the UJI Civil shall be used unless under the facts or circumstances of the particular case the published UJI Civil is erroneous or otherwise improper, and the court so finds and states of record its reasons.

D. **Certain instructions not to be given.** When in UJI Civil it is stated that no instructions should be given on any particular subject matter, such direction shall be followed unless under the facts or circumstances of the particular case an instruction on the subject is necessary, and the court so finds and states of record its reason.

E. **Instruction when no applicable UJI Civil.** Whenever the court determines the jury should be instructed on a subject and no applicable instruction on the subject is found in UJI Civil, the instruction given on that subject shall be brief, impartial and free from hypothesized facts.

F. **Preparation and request for instructions.** Any party may move the court to give instructions on any point of law arising in the cause. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Such instructions as well as instructions tendered by the parties shall be in writing and shall consist of an original to be used by the court in instructing the jury, adequate copies for the parties and one copy for filing in the case on which the judge shall note "given" or "refused" as to each instruction requested. Copies of instructions tendered by the parties shall indicate who tendered them. All copies of instructions shall also contain a notation "UJI Civil No. . . . . ." or "Not in UJI Civil" as appropriate. (The instructions which go to the jury room shall contain no notations.)

G. **Instructions to be in writing; waiver; to be given before argument and to go to jury.** Unless waived, the instructions shall be in writing. Except where instructions, either written or oral, are waived, the judge in all cases shall charge the jury before the argument of counsel. Written instructions shall go to the jury room.

H. **Error in instructions; preservation.** For the preservation of any error in the charge, objection must be made to any instruction given, whether in UJI Civil or not; or, in case of a failure to instruct on any point of law, a correct instruction must be tendered, before retirement of the jury. Reasonable opportunity shall be afforded counsel so to object or tender instructions.

I. **Review.** All instructions given to the jury or refused, whether UJI Civil or otherwise, are subject to review by appeal or writ of error when the matter is properly preserved and presented.

3-606. Nonjury trials.

In all actions tried upon the facts without a jury the judge shall, at the conclusion of the case, orally announce his decision and enter the appropriate judgment or final order; provided, however, the judge may delay announcing his decision for a period not exceeding thirty (30) days if briefs or further research is required in the case.

[As amended, effective May 1, 1986.]

ARTICLE 7
Judgment and Appeal

3-701. Judgments; costs.

A. **Definition; form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not contain a recital of pleadings or the record of prior proceedings.

B. **Judgment upon multiple claims or involving multiple parties.**

(1) Except as provided in Subparagraph (2) of this paragraph, when more than one claim for relief is presented in an action, whether as a claim or counterclaim, the court may enter a final judgment as to one or more but fewer than all of the claims only upon an express determination that there is no just reason for delay. In the absence of such determination, any order or other form of decision, however designated, which adjudicates fewer than all of the claims shall not terminate the action as to any of the claims and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

(2) When multiple parties are involved, judgment may be entered adjudicating all issues as to one or more, but fewer than all parties. Such judgment shall be a final judgment unless the court, in its discretion, expressly provides otherwise in the judgment. If the judgment provides that it is not a final judgment, it shall not terminate the action as to such party or parties and shall be subject to revision at any time before the entry of judgment adjudicating all claims and the rights and liabilities of all the parties.

C. **Entry of judgment.** Following the trial the court shall enter a written judgment in accordance with the verdict of the jury or, if the trial was without a jury, in accordance with the court's decision. The court may direct counsel for any party to prepare the judgment. If any setoff or counterclaim is established by the defendant, the amount of the setoff or counterclaim shall be offset against any sum owed the plaintiff and judgment entered accordingly.

D. **Demand for judgment.** A judgment by default shall not be different in kind from or exceed in amount that claimed in the complaint. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

E. **Costs.** Any docket fee, jury fee or copying fee paid by the prevailing party to the court shall be awarded to the prevailing party against the losing party. The court may

award any fees actually paid by the prevailing party for service of the complaint, summons and subpoenas and for attendance of witnesses, including expert witnesses. No costs shall be taxed against the state, its officers and agencies. Expert witness fees for any case shall not exceed five hundred dollars ($500), plus the fee for per diem expenses provided by Subsection A of Section 10-8-4 NMSA 1978 for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The fee for per diem expenses shall not be prorated.

[As amended, effective January 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective January 1, 1995, rewrote Paragraphs C and E and made minor stylistic changes throughout the rule.

Cross references. — For form on judgment, *see* Rule 4-701 NMRA.

3-702. Default.

A. **Failure to respond to summons.** If the defendant fails to appear at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons, and if the plaintiff proves by an appropriate return that proper service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs, and other items allowed by law. The court may require evidence as to any fact before entering default judgment. At a minimum, before entering a default judgment, the court shall require the plaintiff to allege sufficient facts to demonstrate the following:

(1) the plaintiff is a proper party to bring the lawsuit;

(2) the defendant is a proper party;

(3) a legal relationship exists between the plaintiff and the defendant that forms the basis of the lawsuit; and

(4) the amount of the damages, debt, or other relief requested, including principal, interest, and all other charges or costs.

A copy of the default judgment shall forthwith be mailed by the clerk of the court to each party against whom judgment has been entered. The clerk shall endorse on the judgment the date of mailing.

B. **Failure to appear at trial.** Failure to appear at the time and date set for trial shall be grounds for entering a default judgment against the nonappearing party.

C. **Setting aside default.** For good cause shown, within thirty (30) days after entry of judgment and if no appeal has been timely taken, the court may set aside a default judgment.

[As amended, effective October 1, 1987; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — In 2016, this rule was amended to clarify what information the plaintiff must provide to obtain a default judgment. The plaintiff may provide the necessary information in the complaint or as attachments to the complaint, or in a motion for default judgment. If the plaintiff does not provide adequate information in the complaint or motion for default judgment, the court should hold a hearing before entering a default judgment. When determining whether to grant a default judgment, the court has discretion to rely on whatever documentation or evidence the court deems sufficient.

[Adopted by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-032, effective December 31, 2016, set forth the additional information that a plaintiff must provide before obtaining a default judgment, made certain stylistic changes, and added the committee commentary; in Paragraph A, in the heading, deleted “Entry at time of appearance” and added “Failure to respond to summons”, in the introductory paragraph, after “fails to appear”, deleted “within the time prescribed by Rule 3-202” and added “at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons”, after “default judgment”, added the last sentence of the introductory paragraph and Subparagraphs A(1) through A(4); and in Paragraph B, in the heading, deleted “At time of trial” and added “Failure to appear at trial”.

Cross references. — For form on default judgment, *see* Rule 4-703 NMRA.

For form on motion to set aside default judgment, *see* Rule 4-704 NMRA.

For form on order setting aside default judgment and giving notice of trial date, *see* Rule 4-705 NMRA.

3-703. Summary judgment.

A. **For claimant.** A party seeking to recover upon a claim, counterclaim or crossclaim may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the

adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

B. **For defending party.** A party against whom a claim, counterclaim or crossclaim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

C. **Motion and proceedings thereon.** The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. If the adverse party is not represented by counsel, said party may appear at the hearing, be sworn, and make such statements of fact as may be material to the motion. The judgment sought shall be rendered forthwith if the pleadings, together with the affidavits and testimony given by an adverse party not represented by counsel, if any, show that there is no genuine issue as to any material fact and that the moving parties are entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

D. **Case not fully adjudicated on motion.** If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall, if practical, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

E. **Form of affidavit; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated thereon. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by further affidavits or testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of this pleading, but as a response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

F. **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his position, the court may refuse the application for judgment or may order a continuance to allow affidavits to be obtained or discovery to be had or may make such other order as is just.

G. **Affidavits made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expense which the filing of the affidavit caused such other party to incur, including reasonable attorney's fees; and any offending party or attorney may be adjudged guilty of contempt.

3-704. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the district court, and thereafter while the appeal is pending may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

(3) the judgment is void; or

(4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated.

A motion filed pursuant to Subparagraph (1) or (2) of this paragraph shall be filed not more than one (1) year after the judgment, order or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation.

An order granting or denying relief from a final judgment under this rule may be appealed to the district court in the same manner as other appeals from final judgments of the metropolitan court are taken.

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released or discharged. The application shall be served upon the judgment creditor in the manner prescribed by Rule 3-202 for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing

shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at such hearing, a default satisfaction of judgment may be entered upon:

(1) the filing of the return of service or an affidavit that after "diligent search" the judgment creditor could not be located. For purposes of this subparagraph "diligent search" includes, but shall not be limited to an affidavit that:

(a) the judgment creditor no longer has a business or residence at the judgment creditor's last known address as shown in the court file; and

(b) the judgment creditor could not be located through a search of telephone and city directories in each county where the judgment creditor was known to have resided or maintained a place of business in this state; and

(2) proof of payment of the full amount of such judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs has not been paid in full, payment into the court registry of the balance owed in accordance with Section 39-1-6.2 NMSA 1978 plus any costs of court for receiving into and paying the money out of the registry of the court.

[As amended, effective July 1, 1990; January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, substituted "judgment creditor" for "defendant" near the end of Subparagraph C(1)(b).

The 1990 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1990, in Subsection B substituted the present second sentence for the former second sentence, which read "The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one (1) year after the judgment, order or proceeding was entered or taken.", and added the last paragraph; and added Paragraph C.

3-705. Harmless error.

Error in either the admission or the exclusion of evidence and error or defect in any ruling, order, act or omission by the court or by any of the parties is not grounds for granting a new trial or for setting aside a verdict, for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take any such action appears to the court inconsistent with substantial justice.

ANNOTATIONS

Technical deficiency in metropolitan court transcript may be harmless. — If trial court has sufficient information to proceed with the trial, a technical deficiency in transcript of metropolitan court, such as failure to include all pleadings or metropolitan court's final order, does not deprive trial court of power to proceed with the trial. *State v. Gallegos*, 1984-NMCA-069, 101 N.M. 526, 685 P.2d 381.

3-706. Appeal from metropolitan court on the record.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil action may appeal, as permitted by law, to the district court of the county within which the metropolitan court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the metropolitan court clerk's office. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The three (3) day mailing period set forth in Rule 3-104 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the metropolitan court clerk's office, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions in any such appeal.

B. **Notice of appeal.** An appeal from the metropolitan court is taken by:

(1) filing with the clerk of the district court a notice of appeal with proof of service; and

(2) promptly filing with the metropolitan court:

(a) a copy of the notice of appeal which has been endorsed by the clerk of the district court; and

(b) a copy of the receipt of payment of the docket fee.

C. **Content of the notice of appeal.** The notice of appeal shall be substantially in the form approved by the Supreme Court. A copy of the metropolitan court judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

D. **Service of notice of appeal.** At the time the notice of appeal is filed in the district court, the appellant shall:

(1) serve each party or such party's attorney in the proceedings in the metropolitan court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA of the Rules of Civil Procedure for the District Courts; and

(2) file proof of service with the clerk of the district court that a copy of the notice of appeal has been served in accordance with Rule 1-005 NMRA.

E. **Record on appeal.** Within fifteen (15) days after the appellant files a copy of the notice of appeal with the metropolitan court pursuant to Paragraph B of this rule, the metropolitan court shall file with the clerk of the district court a copy of the record on appeal taken in the action in the metropolitan court. For purposes of this rule, the record on appeal shall consist of:

(1) a title page containing the caption of the case in the metropolitan court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

(2) a copy of all papers and pleadings filed in the metropolitan court;

(3) a copy of the judgment or order sought to be reviewed with date of filing;

(4) any exhibits; and

(5) any transcript of the proceedings made by the metropolitan court, either stenographically recorded or tape recorded. If the transcript of the proceedings is a tape recording, the metropolitan court clerk shall prepare and file with the district court a duplicate of the tape and index log.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The metropolitan court may order cash or other security to be deposited with the metropolitan court to secure payment of the cost.

The metropolitan court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court.

F. **Correction or modification of the record.** If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the metropolitan court on motion, or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.

G. **Stay of proceedings to enforce a judgment.**

(1) Except as provided in Subparagraph (2) of this paragraph, when an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court. The bond may be posted at any time after docketing the appeal. The stay is effective when the supersedeas bond is approved by the metropolitan court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of

and compliance with the judgment in full, as may be modified by an appellate court, together with costs, attorneys' fees and interest, if any. The bond shall be enforceable upon dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties or collateral securing such bond, and the terms thereof, must be approved by and the amount fixed by the metropolitan court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees and interest, if any. In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral which is in, or may be placed in, the custody or control of the court and which has the effect of securing payment of and compliance with the judgment.

(2) When an appeal is taken by the state, by an officer or agency of the state, by direction of any department of the state, by any political subdivision or institution of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

H. **District court review.** At any time after appeal is filed pursuant to Paragraph B of this rule, the district court may, upon motion and notice, review any action of, or any failure or refusal to act by, the metropolitan court dealing with supersedeas or stay. If the district court modifies the terms, conditions or amount of a supersedeas bond, or if it determines that the metropolitan court should have allowed supersedeas and failed to do so on proper terms and conditions, it may grant additional time within which to file in the district court a supersedeas bond as provided by this rule. Any change ordered by the district court shall be certified by the clerk of the district court and filed with the metropolitan court clerk by the party seeking the review.

I. **Procedure on appeal.** The Rules of Civil Procedure for the District Courts shall govern the procedure on appeal from the metropolitan court.

J. **Remand.** Upon remand of the case by the district court to the metropolitan court, the metropolitan court shall enforce the mandate of the district court.

K. **Transmittal of mandate.** After final determination of the appeal, the clerk of the district court shall transmit a copy of the mandate to the metropolitan court clerk.

[As amended, effective September 1, 1989; January 1, 1994; July 1, 1996; as amended by Supreme Court Order No. 11-8300-021, effective May 27, 2011.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-021, effective May 27, 2011, in Paragraph E, required the metropolitan court to file a copy of the record with the district court and in Paragraph K, required the clerk of the district court to transmit a copy of the mandate to the metropolitan court.

The 1996 amendment, effective for appeals filed after July 1, 1996, rewrote the rule.

Cross references. — For appeal from metropolitan court on the record, *see* Rule 1-073 NMRA.

Late filing of appeal. — Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 1994-NMSC-024, 117 N.M. 273, 871 P.2d 369.

Judicial error may excuse late appeal. — One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 1994-NMSC-024, 117 N.M. 273, 871 P.2d 369.

3-707. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated April 18, 1996, this rule, relating to record on appeal, was withdrawn effective July 1, 1996. For provisions of former rule, *see* the 1995 NMRA on *NMOneSource.com*.

3-708. Tape recordings of proceedings.

A. **Taping of proceedings.** Every civil proceeding in the metropolitan court shall be tape recorded if requested by a party. The summons shall contain notice of the right to request a taped record of the proceedings.

B. **Preservation of taped record.** Tapes containing the record of proceedings shall be preserved for ninety (90) days after the entry of a final order in the proceedings. Any party desiring to preserve the tapes for a longer period of time may, within eighty (80) days after the filing of the final order, file a request to preserve the tapes containing the transcript of proceedings.

[As amended, effective May 1, 1994; July 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective for appeals filed after July 1, 1996, deleted the former last sentence of Paragraph A, which read "The tape recording shall be made a part of the record on appeal"; in Paragraph B, in the second sentence, substituted "tapes" for "record", "within" for "prior to the expiration of" and "transcript" for "record", and deleted the former last sentence relating to requests to preserve the tapes; and deleted former Paragraphs C through E, relating to arrangements for payment of costs of tape recordings, filing the tapes with the district court, and notice of the filing.

The 1994 amendment, effective May 1, 1994, deleted "no later than three (3) days prior to trial" following "party" in the first sentence and added the present second sentence of Paragraph A, added present Paragraph B and redesignated the remaining paragraphs accordingly, and deleted "for erasure and reuse" following "clerk" in the last sentence of Paragraph D.

3-709 to 3-712. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated April 18, 1996, 3-709 through 3-712 NMRA, relating to appellate briefs, arguments and mandates, appellate review, appeals from district court and dismissal of appeal, were withdrawn effective July 1, 1996. For provisions of former rules, *see* the 1995 NMRA on *NMOneSource.com*.

ARTICLE 8
Special Proceedings

3-801. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

(1) if the judgment debtor is not a natural person, at any time after the filing of the judgment;

(2) if the judgment debtor is a natural person:

(a) upon filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:

(i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and

(ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;

(b) upon entry of an order finding that the property to be seized and sold is not exempt from execution; or

(c) upon filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property which may be seized and sold to satisfy the debt.

B. **Service of notice of right to claim exemptions from execution.** If the judgment debtor is a natural person, unless a shorter time is ordered by the court, not later than ten (10) days prior to the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve upon each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 3-203;

(2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint; or

(3) if service cannot be made on the judgment debtor pursuant to Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. **Claim of exemptions from execution.** Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

D. **Service of claim of exemption.** At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor.

E. **Failure to file claim of exemption.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption.

F. **Dispute of claimed exemption.** Within ten (10) days after service of a claim of exemption on the judgment creditor pursuant to Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the

judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

G. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

H. **Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

I. **Issuance and executions of writ.** A writ of execution issued pursuant to Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued pursuant to this rule may be served in the manner provided by law.

J. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

K. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996.]

ANNOTATIONS

Compiler's notes. — Former Rule 3-801, relating to garnishment and writs of execution, was withdrawn effective January 1, 1996.

Cross references. — For exemptions in civil actions, *see* Section 35-4-2 NMSA 1978.

For docketing money judgments, *see* Section 39-1-6 NMSA 1978.

For right to execution, issuance, levy and sale, *see* Section 39-4-1 NMSA 1978.

For sales under execution and foreclosure, *see* Section 39-5-1 NMSA 1978.

For forms on garnishment and writs of execution, *see* Rules 4-801 to 4-815 NMRA.

For writ of execution, *see* Rule 4-801 NMRA.

For notice of right to claim exemptions, *see* Rule 4-808A NMRA.

For claims of exemption, *see* Rule 4-803 NMRA.

For order on claim of exemption, *see* Rule 4-804 NMRA.

For notice of dispute and request for hearing, *see* Rule 4-810A NMRA.

Case law. — The postjudgment execution statutes are unconstitutional as not providing adequate notice of allowable exemptions and the right to a hearing. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

By creating exemptions from execution, New Mexico has granted judgment debtors a property interest in retaining their exempt property. While the state need not grant such exemptions, once given, the property rights they create are entitled to due process protection. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

3-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. **Service of writ of garnishment.** A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint.

C. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

D. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

E. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

F. **Service on judgment debtor by garnishee.** On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

G. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

H. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 3-203 NMRA.

I. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages.

J. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

K. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

L. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

M. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt

from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

N. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996.]

ANNOTATIONS

Compiler's notes. — Former Rule 3-802 was recompiled as Rule 3-803 NMRA in 1996.

Cross references. — For application for writ of garnishment, *see* Rule 4-805 NMRA.

For writ of garnishment, *see* Rule 4-806 NMRA.

For answer by garnishee, *see* Rule 4-807 NMRA.

For notice of right to claim exemptions, garnishment, *see* Rule 4-808 NMRA.

For claims of exemption, *see* Rule 4-809 NMRA.

For notice of dispute and request for hearing, *see* Rule 4-810A NMRA.

For judgment on writ of garnishment and claim of exemption, *see* Rule 4-812 NMRA.

3-803. Prejudgment writs of attachment; exemptions.

A. **Application for issuance of writs.** Prejudgment writs of attachment may be issued by the court upon application of a party pursuant to Sections 35-9-1 to 35-9-8 NMSA 1978.

B. **Exemptions; how claimed.** Exemptions of personal property provided by Sections 42-10-1 to 42-10-7 NMSA 1978 also apply to attachment proceedings. If a party is a natural person, notice of a right to claim exemptions shall be given as provided by Rule 3-801 NMRA. A claim of exemption may be filed and served in the same manner and time as required in execution proceedings. The petitioner may dispute the claimed exemption in the same manner and time provided for a dispute on a claim of exemption in an execution proceeding.

C. **Hearing.** If the petitioner disputes the claimed exemption, the court shall proceed in the manner provided for hearings on claims of exemptions in execution proceedings.

D. **Appeal from judgment.** If an order on the claim of exemption is rendered in an attachment proceeding after expiration of the time for appeal on the main issue in the action, either party aggrieved by the order on the claim of exemption may appeal from that judgment to the district court in the same manner as other appeals from final judgments of the metropolitan court are taken. If an order on the claim of exemption is rendered before judgment on the main issue in the cause, the order on the claim of exemption may be appealed to the district court within fifteen (15) days after entry of the judgment on the merits as provided by these rules.

[As amended, effective May 1, 1986; July 1, 1992; as amended and recompiled, effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, recompiled this rule, which was formerly Rule 3-802, rewrote the rule heading, added Paragraph A and redesignated the remaining paragraphs accordingly, rewrote paragraphs B and C, and substituted the language following "claim of exemption" for "issue shall be decided by the district court" at the end of Paragraph D.

The 1992 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1992, rewrote this rule.

Compiler's notes. — Former Rule 3-803 was recompiled as Rule 3-804 NMRA effective January 1, 1996.

Cross references. — For exemptions in civil actions, *see* Section 35-4-2 NMSA 1978.

For claim of exemptions, *see* Rule 4-803 NMRA.

For order of exemption, *see* Rule 4-804 NMRA.

3-804. Judgment; supplementary proceedings.

A. **Examinations in aid of judgment or execution.** After the filing of a judgment for the payment of money, upon request of the judgment creditor or the judgment creditor's successor in interest, the clerk may issue a subpoena directing any person with knowledge that will aid in enforcement of or execution on the judgment, including the judgment debtor, to appear before the court to respond to questions concerning that knowledge. The subpoena shall be served in the same manner as other subpoenas except that it shall be served not less than three (3) days prior to the date the examination is to be conducted.

B. **Statements.** Any person with information which is subject to discovery shall give a statement relating to the assets of a judgment debtor. If the statement is to be obtained from the judgment debtor or from a person who refuses to voluntarily give a

statement, the judgment creditor may obtain a statement by serving a written "notice of statement" upon the person to be examined and upon the judgment debtor not less than five (5) days before the date scheduled for the statement. The notice will state the time and place for taking of the statement. A subpoena may also be served to secure the presence of the person to be examined or the materials to be examined during the statement.

C. **Depositions; interrogatories.** The judgment creditor may serve interrogatories upon or take the deposition of the person whom the judgment creditor desires to examine in the manner provided by the Rules of Civil Procedure for the District Courts.

D. **Notice of and service pleadings.** A party desiring to take the deposition or statement of any person shall give notice to every other party to the action. Notice of the taking of depositions, issuance of a subpoena or the taking of a statement pursuant to this rule is not required if the judgment debtor failed to appear and a default judgment was entered.

E. **Issuance of transcript.** After the filing of the judgment, the clerk shall issue a transcript of judgment upon the request of the prevailing party.

[As amended, effective July 1, 1992; as amended and recompiled effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, recompiled this rule, which was formerly Rule 3-803, and rewrote the rule.

Cross references. — For appeal from judgment of metropolitan court, *see* Rule 3-706 NMRA.

For exemptions in civil actions, *see* Section 35-4-2 NMSA 1978.

For claim of exemptions, *see* Rule 4-803 NMRA.

For order of exemption, *see* Rule 4-804 NMRA.

3-806. Enforcement of mediated settlement agreement.

A. **Scope.** This rule applies to any case in which the parties have entered into a mediated settlement agreement that, by its terms, requires performance over a period of time, and in which the parties have agreed to comply with the terms of the agreement without first asking the court to enter a stipulated judgment.

B. **Stipulation of dismissal.**

(1) If the parties have entered into a mediated settlement agreement and agree that the court should not enter a stipulated judgment, the parties shall file a stipulation of dismissal.

(2) The mediated settlement agreement shall be reduced to writing and signed by the parties.

(3) The mediated settlement agreement shall be filed, unless the parties agree in writing to waive the filing of the mediated settlement agreement in the pending case. If the parties waive filing, then each party shall be responsible for retaining a copy of the mediated settlement agreement, and in any action related to the mediated settlement agreement, the responsibility to produce a copy of the mediated settlement agreement belongs to the parties and not to the court.

(4) If the parties have entered into a mediated settlement agreement and have filed a stipulation of dismissal, the court shall close the case, provided that the court shall retain jurisdiction to later reopen the case to enter such orders and judgments as may be appropriate to enforce the mediated settlement agreement and to grant such other relief as the court deems just and proper.

C. **Motion for judgment and statement of noncompliance.**

(1) In the event of noncompliance with the terms of a mediated settlement agreement, the party alleging noncompliance may, within five (5) years of the filing of the stipulation of dismissal, move the court to reopen the case and to enter a judgment enforcing the terms of the agreement. A party seeking a judgment under this rule shall file with the court and serve on the opposing party a motion for judgment and statement of noncompliance, together with a copy of the mediated settlement agreement.

(2) If a party to a mediated settlement agreement files a motion for judgment and statement of noncompliance within five (5) years of the filing of the stipulation of dismissal, the court clerk shall reopen the case, and no additional filing fee shall be required.

(3) The party alleged to have breached the terms of a mediated settlement agreement may, within fifteen (15) days after service of the motion for judgment and statement of noncompliance, file with the court and serve on the opposing party a written response, and may request a hearing.

(4) If the party alleged to have breached the terms of a mediated settlement agreement timely files a response and requests a hearing under Subparagraph (C)(3) of this rule, the court shall hold a hearing and shall proceed under the Rules of Civil Procedure for the Magistrate Courts.

D. **Entry of judgment.** If a case has been reopened under Paragraph C of this rule, the court may enter a judgment for any remaining money due, and the court may order other relief that the court deems just and proper.

E. **Retention of case files.** The court shall retain a case file for any case in which the parties have reached a mediated settlement agreement for five (5) years after the filing of the stipulation of dismissal.

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]

Committee commentary. — This rule was adopted in 2014 to create a uniform, statewide procedure for managing mediation case files in the magistrate and metropolitan courts. This rule allows parties who have entered into a mediated settlement agreement to file a stipulation of dismissal of the pending case, while the court retains jurisdiction to later reopen the case and enter a judgment if a party fails to comply with the terms of the agreement. This rule does not preclude the parties to a mediated settlement agreement from asking the court to enter a stipulated judgment, rather than filing a stipulation of dismissal.

The court's authority under this rule to reopen a case that has been dismissed and to enter a judgment enforcing a mediated settlement agreement is limited to a five (5)-year period following the filing of the stipulation of dismissal. The time limitations in this rule do not limit the parties' right to file a breach of contract action or pursue other remedies in accordance with the law.

In addition to clarifying case management procedures, this rule is intended to promote mediation by providing incentives to both parties. For example, a debtor who pays under the terms of a mediated settlement agreement can obtain a dismissal of the lawsuit and avoid an adverse legal judgment. The creditor can secure payment of a debt under the terms of a mediated settlement agreement, while reserving the option to later seek a judgment–without having to file an additional lawsuit for breach of contract–if the debtor fails to pay.

Generally, the parties should file the mediated settlement agreement with the court, along with the stipulation of dismissal. But if the parties choose to keep the agreement confidential under Subparagraph (B)(3) of this rule, each party should retain a copy of the agreement.

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]