

# Rules of the District Court of the Third Judicial District

## Table of Corresponding Rules

### Local Rules of the Third Judicial District Court

The table below lists the former rule number and corresponding new number, and the new rule number and the corresponding former rule number prior to recompilation by Supreme Court Order No. 16-8300-015.

Former Rule No.	Corresponding New Rule No.	New Rule No.	Corresponding Former Rule No.
LR3-101	Withdrawn	LR3-101	New
LR3-102	Withdrawn	LR3-102	New
LR3-103	Withdrawn	LR3-103	New
LR3-104	Withdrawn	LR3-104	New
LR3-105	Withdrawn	LR3-105	New
LR3-106	Withdrawn	LR3-106	New
LR3-107	Withdrawn	LR3-107	New
LR3-108	Withdrawn	LR3-108	New
LR3-109	Withdrawn	LR3-109	New
LR3-110	Withdrawn	LR3-110	New
LR3-111	Withdrawn	LR3-111	New
LR3-113	Withdrawn	LR3-112	New
LR3-201	Withdrawn	LR3-113	New
LR3-202	Withdrawn	LR3-114	New
LR3-203	Withdrawn	LR3-201	New
LR3-204	Withdrawn	LR3-202	New
LR3-205	Withdrawn	LR3-203	New
LR3-207	Withdrawn	LR3-204	New
LR3-208	Withdrawn	LR3-205	New
LR3-209	Withdrawn	LR3-206	New
LR3-210	Withdrawn	LR3-207	New
LR3-211	Withdrawn	LR3-208	New
LR3-212	Withdrawn	LR3-209	New
LR3-213	Withdrawn	LR3-301	New
LR3-214	Withdrawn	LR3-302	New
LR3-216	Withdrawn	LR3-401	New
LR3-217	Withdrawn	LR3-402	New

LR3-218	Withdrawn
LR3-301	Withdrawn
LR3-307	Withdrawn
LR3-402	Withdrawn
LR3-403	Withdrawn
LR3-404	Withdrawn
LR3-405	Withdrawn
LR3-406	Withdrawn
LR3-407	Withdrawn
LR3-408	Withdrawn
LR3-501	Withdrawn
LR3-502	Withdrawn
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LR3-701	Withdrawn
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LR3-703	Withdrawn
LR3-704	Withdrawn
LR3-705	Withdrawn
LR3-706	Withdrawn
LR3-707	Withdrawn
LR3-708	Withdrawn
LR3-709	Withdrawn
LR3-710	Withdrawn
LR3-901	Withdrawn
LR3-902	Withdrawn
LR3-Form 1.10	Withdrawn

LR3-403	New
LR3-404	New
LR3-601	New

LR3-Form 1.11	Withdrawn
LR3-Form 1.12	Withdrawn
LR3-Form 2.10	Withdrawn
LR3-Form 2.11	Withdrawn
LR3-Form 2.12	Withdrawn
LR3-Form 2.13	Withdrawn
LR3-Form 2.14	Withdrawn
LR3-Form 2.15	Withdrawn
LR3-Form 3.10	Withdrawn
LR3-Form 3.20	Withdrawn
LR3-Form 3.21	Withdrawn
LR3-Form 3.60	Withdrawn
LR3-Form 5.10	Withdrawn
LR3-Form 5.11	Withdrawn
LR3-Form 7.10	Withdrawn
LR3-Form 7.11	Withdrawn
LR3-Form 7.12	Withdrawn
LR3-Form 7.13	Withdrawn
LR3-Form 7.14	Withdrawn
LR3-Form 9.10	Withdrawn

## **I. Rules Applicable to All Cases**

### **LR3-101. Citation.**

The following rules shall be known and cited as the Local Rules of the Third Judicial District Court. Individual rules may be cited as “LR3-\_\_\_\_.”

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-102. Disciplinary action for failure to comply.**

[Related Statewide Rules 1-011, 5-112, and 5-206 NMRA]

Failure to comply with these rules may subject the attorney or non-complying party to any disciplinary action as the court deems appropriate, including civil or criminal contempt or other appropriate sanction.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-103. Court appointments and application for fees.**

A. **Appointments.** Each eligible attorney who practices in the Third Judicial District must accept court appointments. The only attorneys exempt from such appointments are those in the following categories:

(1) attorneys who are employees of any governmental agency that restricts the attorneys from the private practice of law; and

(2) attorneys who are in-house counsel for a business entity that restricts the attorneys from the private practice of law.

B. **Application for fees.** If the attorney applies for fees in an assigned matter, the application must include a justification for payment in the form as the court may require. The application for payment must have attached a copy of the order of appointment, the affidavit of indigency, where required, and an itemized statement of services provided. Applications that do not comply with this rule will be rejected.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-104. District court trust and litigant accounts.**

[Related Statewide Rule 1-102 NMRA and Statute NMSA 1978, § 34-6-36]

A. **Tendering money into court's registry.** The Court Executive Officer shall not disburse or accept any money except under court order or statute. Any tender of money to the court shall be in the form of a money order, cashier's check, certified check, or cash, or, at the sole discretion of the Court Executive Officer, by attorney's trust check.

#### **B. Disbursement of funds.**

(1) Proposed orders of disbursement shall specifically provide what disposition is to be made as to any accrued interest on the funds held as provided by Rule 1-102 NMRA.

(2) Disbursement of money held in the court account shall be on court order only. Disbursements shall be made forthwith on the order of the court after review by the court finance department.

(3) Before going to the judge for approval, all disbursement orders will be reviewed by the Court Executive Officer or the Court Executive Officer's designee. Orders of disbursement shall provide to whom disbursement is to be made and the specific amount to be disbursed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-105. Court security.**

[Related Statewide Rule 5-115 NMRA and Statute NMSA 1978, § 4-41-16]

A. **Weapons.** All deadly weapons, including knives and objects that could be used to inflict bodily harm, except those carried by authorized court security officers, are prohibited in the judicial complex and any other related judicial office. Weapons that are intended for use as trial or hearing exhibits are not subject to this rule. Law enforcement officers who are witnesses shall not carry weapons in the courtroom and shall comply with all applicable sections of the court's security manual.

#### **B. Prisoner procedures.**

(1) The law enforcement agency having custody of any prisoner appearing for a court proceeding shall be responsible for keeping the prisoner secure while the prisoner is at the judicial complex. That agency shall be responsible for searching the prisoner and keeping the prisoner handcuffed or manacled. Prisoners are to be taken to the holding facility in the judicial complex immediately on arrival, and shall be kept separate from court personnel and members of the public.

(2) No attorney shall have the authority to authorize a prisoner to be released from handcuffs or manacles. Law enforcement officers having custody of a prisoner may remove handcuffs or manacles so a prisoner may sign documents or perform other functions necessary for the court proceeding, and as otherwise ordered by the court.

(3) Prisoners shall not be allowed to mingle with family members or other persons, except at the discretion of the court after discussion with the law enforcement agency having custody of the prisoner.

#### **C. Other precautions.**

(1) Metal detectors and physical searches may be used in any case on court order.

(2) Any law enforcement officer, court employee, or attorney who believes that an altercation or violent situation may occur at a court proceeding shall promptly notify the court. The court may implement appropriate security measures on such occasions.

(3) During court proceedings where a party is in custody, security personnel shall remain in the courtroom near the prisoner during the entire proceeding.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-106. Pleadings and filed papers.**

[Related Statewide Rules 1-011, 1-089.1, 5-206, 5-108, 10-115, and 10-165 NMRA]

In addition to the contact information required by the applicable statewide rules of procedure, all pleadings and papers filed by counsel shall contain the State Bar number of the attorney who is filing the pleading or other paper, and shall identify the party who is being represented. Attorneys appearing pro hac vice shall state that they have complied with Rule 1-089.1 NMRA or Rule 5-108 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-107. Pro se filings (parties who wish to represent themselves without an attorney).**

[Related Statewide Rules 1-011, 5-206, 10-115, and 10-165 NMRA]

A. **Pro se appearances by individuals.** Any party who is an individual desiring to proceed pro se in any cause shall include with all pleadings filed the individual's full name, contact address, and contact telephone number, and any business address and telephone number, if available. Thereafter, it shall be the responsibility of the pro se party to apprise the court of any changes in the information. Failure to comply with this rule may result in sanctions including dismissal of the action or default.

B. **No pro se appearances by entities.** Entities such as partnerships, corporations, nonprofit agencies, trusts, or any other form of collective entity, must be represented by a licensed attorney, authorized to practice in the State of New Mexico in matters pending in the district court. Pro se appearances, pleadings, and other filings by those entities may be dismissed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-108. Appearances, withdrawals, and substitution of counsel.**

[Related Statewide Rules 1-089.1, 5-107, and 10-165 NMRA]

A. **Entry of appearance.** An attorney shall enter an appearance in an action as required by Rules 1-089, 5-107, and 10-165 NMRA.

**B. Withdrawal.** Counsel may withdraw in contested matters under Rule 1-089 NMRA only with the consent of the assigned judge.

(1) Any application for withdrawal of counsel under Rule 1-089 NMRA shall state the last known mailing address and telephone number(s) of the attorney's client, unless another attorney enters an appearance for the party prior to or simultaneously with the application for withdrawal.

(2) If no hearing on any pending issue is set, the court shall consent, without a hearing, to the withdrawal of the counsel if it is accompanied by an entry of appearance of substitute counsel or party pro se.

(3) If a hearing on pending issues has been set, the court shall consent, without a hearing, to the withdrawal of counsel if it is accompanied by an entry of appearance of substitute counsel or party pro se, and if the entry waives any right substitute counsel or party pro se may have to request vacation of the hearing that has been set on the grounds of the new entry and if the entry is approved by opposing counsel or party pro se.

(4) If the conditions set forth in Subparagraph (2) or (3) of this paragraph are not met, the court shall approve the withdrawal of counsel only under the following conditions:

(a) for good cause shown upon motion and hearing, with notice to opposing counsel or party pro se; if there is no entry of appearance of substitute counsel or of a party pro se, the withdrawing attorney shall provide the court with a certificate stating the party's last known address at which service of papers may be made in accordance with Rule 1-005 NMRA and the last known telephone numbers and employer of the party; or

(b) upon such terms as the court may deem just.

(5) All orders allowing withdrawal of counsel and substitution of a party pro se shall contain the name and the last known address of the party whose attorney is being allowed to withdraw. A copy of any order allowing withdrawal shall be served on all parties, under Rules 1-089, 5-107, and 10-165 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-109. Change of address or telephone number.**

Counsel and pro se litigants shall inform the court of any change of mailing address or telephone number by filing a notice thereof in each pending matter and serving it on all parties involved therein. Failure to comply with this rule may result in sanctions including dismissal of the action or default.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-110. Service of notices and the mailing of other pleadings.**

[Related Statewide Rules 1-005, 5-103, and 10-104 NMRA]

A. **Service of notices and pleadings.** All attorneys who maintain an office in Doña Ana County and who consent in writing, will have an appropriate box or other place designated in the Third Judicial District Court for service of court notices, orders, and other court documents. Counsel will apply using a form approved by the district court for that purpose. Except for court-initiated documents, the court will not mail notices or pleadings to counsel who do not consent or who do not maintain an office in Dona Ana County unless a pre-addressed and stamped envelope is provided. Pleadings will be mailed to pro se litigants only if pre-addressed and stamped envelopes are provided.

B. **Attorney boxes; service by court.** Attorneys' boxes are for the court's use only in serving notices, judgments, and other court documents. Placement of notices and pleadings in the attorney's box by court personnel constitutes service. The date when the court's document is placed in the box shall be stamped on the document.

C. **Attorney boxes; non-court use generally prohibited.** No one other than the Court Executive Officer and court staff may place documents in attorney boxes, unless written permission of the Court Executive Officer or chief judge is first obtained.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-111. Hearings and scheduling conflicts.**

A. **Requests for hearing.** All requests for hearing shall be filed with the clerk and submitted to the assigned judge using Form 4-110 NMRA. Counsel and pro se litigants requesting a hearing shall provide pre-addressed, stamped envelopes for any party entitled to notice who does not have a box at the courthouse. Attorneys who have a box at the courthouse will receive notices of hearing in their assigned court boxes.

B. **Vacating hearings.** Hearings will not be vacated ex parte or by agreement of counsel and parties, but only by the court.

C. **Motions to continue or vacate hearings due to scheduling conflicts.** Motions to vacate hearings due to conflicts with other courts shall be governed by the rule that the case first scheduled for that date will have priority, unless otherwise directed by the court. Any party or counsel filing a request to vacate a hearing due to a scheduling conflict will attach to the request a copy of the other court's prior notice of hearing and serve a copy of the request on opposing pro se parties or counsel.



D. **Re-setting.** If the court grants a continuance, the parties shall file another request for hearing within five (5) business days and advise the court of their non-availability dates.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-112. Telephone conferences and hearings.**

Telephonic appearances must be arranged in advance through a telephone conference provider approved by the court, unless otherwise authorized by the judge assigned to the case. On motion and good cause shown the court may permit an alternative method of telephonic appearance. Any costs associated with the telephone conference must be borne by the party making the telephonic appearance.

A. **Civil cases.** Telephonic appearances by parties and attorneys are permitted in civil cases, with prior approval of the Court. In addition, when a party seeks to take telephonic testimony, that party must request leave of the court for such telephonic testimony.

B. **Criminal cases.** Telephonic appearances in criminal cases are permitted only if all parties of record agree and only if the hearing is one where the presence of the defendant is not required and no testimony is required for the hearing.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-113. Orders and judgments.**

[Related Statewide Rules 1-058 and 5-121 NMRA]

A. **Stipulation regarding no action prohibited.** No stipulated order requiring the case to remain open without action shall be permitted.

B. **Signing orders or judgments.** A district judge may sign an order or judgment when the judge who presided is unavailable, if satisfied that the order or judgment complies with the assigned judge's decision. Any order or other matter once presented to a judge for approval or signature and refused shall not be presented to any judge except the assigned judge.

C. **Orders and judgments filed separately.** Orders and judgments shall be separately filed, and shall not be included as part of any motion or other filed paper.

D. **Filing with court clerk required.** Every order, judgment, or other instrument that has been signed by the court shall be immediately delivered to the court clerk for filing.

Orders and judgments shall not be dated. The date of entry shall be that shown by the court's stamp, unless filed in open court.

**E. Requirements prior to signing by judge.** Orders and judgments shall not be signed by the court unless legibly signed or otherwise approved by all counsel of record and all pro se parties, or until after a hearing on the form of the order or judgment.

**F. Deadlines; preparation; procedure on submittal.** Subject to Rule 1-058(B) NMRA, all orders, judgments, and decrees shall be submitted to the assigned judge within ten (10) business days of the decision unless otherwise directed by the court. In matters decided by the court after a hearing or trial, the prevailing party or the party designated by the court shall prepare orders or judgments and shall submit them to opposing counsel and pro se parties within five (5) business days from the date the order or judgment was rendered by the court. If the proposed order or judgment is approved by all counsel and pro se parties, the order or judgment shall so indicate and may be signed by the court immediately, if appropriate. Orders may be approved telephonically, via facsimile, or electronically, and shall so indicate. Any proposed order or judgment to which the parties have agreed shall be approved without reservation by counsel or pro se parties, and not "approved as to form" or in any other way limiting approval. If the approval of opposing counsel or pro se parties cannot be obtained by the tenth (10th) day or by the deadline directed by the court, such counsel or pro se party designated by the court shall follow these rules below.

(1) If opposing counsel or pro se party does not agree as to the form of the proposed order or judgment, such counsel or pro se party shall send objections in writing to opposing counsel or pro se party within five (5) business days from the receipt of the proposed order or judgment.

(2) If, after conferring, opposing counsel or pro se party cannot agree on the proposed form of order or judgment, each shall submit a separate proposed order or judgment and any written objections to the court and to opposing counsel or pro se party. Either shall request a presentment hearing or shall notify the court that a hearing is not requested. The court may either set a presentment hearing or determine the form of the order without a hearing.

(3) The court will inform all counsel and pro se parties of its ruling on the objections, and the prevailing or designated party shall prepare a proper order or judgment, if different from the one initially submitted, in accordance with the court's decision on the objections, or the court may prepare its own judgment or order.

**G. Judgments based on written instrument; requirements.** A final judgment based on a written instrument shall be accompanied by the instrument, which shall be filed as an exhibit in the case at the time the judgment is entered unless the instrument is already part of the court's official record.

H. **Show cause orders.** Orders to show cause shall be submitted to the judge assigned to hear the case. If, however, the assigned judge is unavailable, then the proposed order may be signed by any judge, but only after the date for hearing has been obtained from the trial court administrative assistant of the judge who will hear the matter.

I. **Failure to comply.** The court may award attorney fees and costs required by failure to comply with this rule.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-114. Depositing of wills.**

[Related Statute NMSA 1978, § 45-2-515]

Anyone wishing to deposit a will with the district court under the New Mexico Uniform Probate Code shall place the will in a sealed, legal-sized envelope, with the testator's name written on the outside of the envelope and shall furnish the Court Executive Officer or designee with a signed statement of the testator requesting such depositing, using a form approved by the district court for that purpose. If this statement is not furnished, the Court Executive Officer or designee will not accept the will.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **II. Rules Applicable to Civil Cases**

### **LR3-201. Default judgments.**

[Related Statewide Rule 1-055 NMRA]

A. **Certificate as to the state of the record.** A certificate as to the state of the record is to be submitted with the court concurrent with filing a motion for default judgment using a form approved by the district court for that purpose.

B. **Servicemembers civil relief affidavit.** A servicemembers civil relief affidavit is to be filed with the court concurrent with filing a motion for default judgment using a form approved by the district court for that purpose.

#### **C. Proof of damages for default judgments.**

(1) In suits on written agreements, it will not be necessary to submit evidence other than the original written agreement. Judgment will be entered for the principal amount claimed in the complaint provided that amount does not exceed the face

amount of the written agreement, less any credits, plus interest and attorney fees if provided for in the written agreement or by statute.

(2) In actions on insurance subrogation claims, proof of damages may consist of repair estimates, copies of medical bills and copies of checks paying the same, or other evidence showing that the insurance company has in fact paid for its insured's property damages and reimbursed the insured's medical expenses. Damages will not be awarded on default for any pain and suffering in the absence of actual evidence submitted under oath in open court.

(3) In all other types of claims, proof must be submitted to substantiate the amount of damages to be awarded.

**D. Setting aside a default judgment.** Any judge may sign a default judgment, but only the judge to whom the case is assigned shall hear a motion to set aside the default judgment.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-202. Disposition of civil exhibits.**

[Related Statewide Regulation NMAC 1.17.230.303]

**A. Retention by court clerk after trial.** Evidence introduced as exhibits at trial shall be retained by the clerk for one (1) year following the expiration of the appeal period or final disposition of the case, after which time counsel may retrieve the exhibits from the clerk's office.

**B. Retention by party after motion hearing.** Evidence introduced at motion hearings may be retained by the party introducing the evidence and returned to the court if the court deems necessary for further action.

**C. Release before end of retention period; destruction.** Release of exhibits in advance of the one (1) year retention period may be obtained by court order. After sixty (60) days' notice, exhibits not timely retrieved shall be destroyed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-203. Civil case control.**

[Related Statewide Rule 1-016 NMRA]

A. **Case management scope.** This case management system is to guide and control the progress of cases from filing of the complaint to the time of trial. These case control rules shall apply to all civil cases, with the exception of the following:

- (1) commitments;
- (2) conservator and guardian proceedings;
- (3) probate proceedings;
- (4) writ actions; and
- (5) domestic relations proceedings.

B. **Scheduling.**

(1) ***Order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings.*** Upon the filing of the initial pleading in civil cases to which these rules apply, the court will enter an order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings. The court will issue this order with the summons, to be served on the defendant(s) with the summons and complaint. A party other than the party filing the initial pleading who asserts a claim against another party who has not been served with a copy of this order shall serve a copy of this order on each person against whom a claim is asserted and shall file a certificate of such service.

(2) ***Requirements of scheduling reports.*** As further detailed in the order requiring scheduling reports, the parties shall confer with the goal of agreeing on the track to which each case should be assigned, based on the criteria laid out below. Scheduling reports will provide information to allow the court to schedule trial and certain pretrial hearings early in the case and to allow the court to allocate the necessary judicial resources to fairly and promptly resolve the dispute. To accomplish this, the order shall

(a) require the filing of scheduling reports by all parties sixty (60) calendar days after the filing of the initial pleading or ten (10) business days after entry of appearance;

(b) require the parties to either

- (i) stipulate to a discovery plan; or
- (ii) timely request a hearing at which the court will formulate a discovery plan;

(c) inform the parties that, in the absence of a discovery order filed under either Subparagraphs (2)(b)(i) or (2)(b)(ii) of this paragraph, the parties shall comply with the discovery plan set forth in the scheduling order;

(d) provide limits on the power of parties to stipulate to an extension of time to file responsive pleadings; and

(e) direct the parties to inform the court and the alternative dispute resolution coordinator when the case is at issue.

(3) ***Scheduling reports.***

(a) *Scheduling reports required.* Within sixty (60) calendar days after the initial pleading in a civil action is filed, parties of record shall file a scheduling report. A copy of the scheduling report shall be served on each party of record and a copy delivered to the assigned judge.

(i) If all parties can agree that the matter is likely to be ready for trial within four (4) to six (6) months, they shall confer and submit a joint scheduling report stipulating to Track A, using a form approved by the district court for that purpose.

(ii) If all parties cannot agree that the matter is likely to be ready for trial within four (4) to six (6) months, the parties shall confer and each party shall submit a scheduling report in a form approved by the district court for that purpose with a caption that describes the party, e.g. "Plaintiff's Scheduling Report," "Defendant's Scheduling Report."

(iii) If the parties agree on a track other than Track A, they may submit a joint scheduling report in a form approved by the district court for that purpose.

(iv) The assigned judge will set the case on a docket and set other pretrial hearings without a hearing, based upon the information in the scheduling reports, as provided in Paragraph C of this rule.

(b) *Cases not at issue within sixty (60) days.*

(i) If all parties are not of record within sixty (60) calendar days after the filing date of the initial pleading, each party making a claim against one or more absent parties (plaintiff for defendant, third-party plaintiff for third-party defendant, etc.) shall, within five (5) business days after the sixtieth (60th) day, file with the court, serve parties of record, and deliver a copy to the assigned judge, a written explanation in a form approved by the district court for that purpose.

(ii) Any party who enters an appearance in the case more than sixty (60) calendar days after the filing of the initial pleading shall file a scheduling report within ten (10) business days and deliver a copy to the assigned judge.

**C. Assigning Case Track.** Each case will fall into Track A, B, or C, depending on the complexity and time requirements. Cases will be designated considering the criteria below, either by stipulation of the parties or by determination of the court.

(1) **Track A.**

(a) Cases ready for trial within four (4) to six (6) months of filing of the initial pleading;

(b) No more than two (2) trial days required;

(c) Legal issues are few and clear;

(d) No multiple claims or third-party complaints;

(e) Defendants served quickly; responsive pleadings filed promptly;

(f) Required discovery limited;

(g) Witnesses: five (5) or fewer witnesses, with expert witnesses allowed if testimony is concise and brief; and

(h) Damages are in a fixed amount or capable of determination with limited evidence.

(2) **Track B.**

(a) Cases ready for trial within six (6) to twelve (12) months of filing the initial pleading;

(b) No more than five (5) trial days required;

(c) Required discovery is not extensive;

(d) Expert witnesses are limited to two (2) per party; and

(e) Damage issues are not complex.

(3) **Track C.**

(a) Trial preparation likely to require more than twelve (12) months;

(b) Trial likely to require more than five (5) days;

(c) Legal issues are numerous, complicated, novel, or unique;

- (d) Numerous claims;
- (e) Numerous parties represented by different counsel;
- (f) Required discovery is extensive;
- (g) Large number of fact and expert witnesses; and
- (h) Damage issues are complex or require extensive evidence.

**D. Scheduling Order.** The court will consider the scheduling report(s) submitted by the parties and will enter a scheduling order that will govern discovery and trial dates unless amended. The parties may request a scheduling conference under Rule 1-016 NMRA if the case presents unique or complex issues that require the court's attention.

**E. Sanctions.** If a party fails to timely comply with the provisions of this rule, the party will be subject to appropriate sanctions, which may include dismissal or default.

**F. Pre-trial conferences; scheduling orders; management.**

(1) **Scheduling conference.** Any party may request a scheduling conference before the court files a scheduling order. The face of the request shall state the date that a scheduling order must be filed in order to comply with Rule 1-016(B) NMRA, and counsel shall be prepared to advise the court on those matters contained in Rule 1-016(B) NMRA.

(2) **Pretrial conference.**

(a) Unless excused by the court, counsel who will handle the case at trial shall participate at any pretrial or scheduling conference set by the court.

(b) Counsel shall be prepared to advise the court of those matters provided for in Rule 1-016(C) NMRA.

(c) The parties shall exchange pretrial statements five (5) business days before the pretrial conference. After the conference plaintiff shall incorporate each portion submitted into a pretrial order to be submitted to the parties five (5) business days after the pretrial conference and to the court ten (10) business days after the pretrial conference.

(d) The pretrial order shall contain the following:

(i) **Jurisdiction.** State whether there is a question of jurisdiction over the parties or subject matter and, if so, each party shall provide citation of authority for that party's position.



(ii) Propriety of parties. State if there is a need for a guardian, personal representative, etc.; whether parties are correctly stated as an individual, partnership, corporation, etc.; and whether there is a question of misjoinder of parties or need for realignment of parties.

(iii) Outline of events. Statement by each counsel outlining the events or transactions out of which the claim, counter-claim, or cross-claim arose, or upon which the defense is founded.

(iv) Factual allegations; plaintiff. The plaintiff shall state the factual contentions as to the liability of each defendant, specifically including the injuries and damages claimed by each plaintiff. Special damages, general damages, and punitive damages, as well as the specific factual and legal basis for punitive damages, shall be separately stated.

(v) Factual allegations; defendant. The defendant shall state the factual contentions as to non-liability and as to each affirmative defense, and shall specifically respond to plaintiff's claims and state the basis for each affirmative defense.

(vi) Factual allegations; others. Where counter-claims, cross-claims, or third-party claims exist, a statement of that party's factual contentions as to liability, non-liability, and affirmative defenses shall be stated in the manner described in Subparagraphs (G)(2)(d)(iv) and (G)(2)(d)(v) of this rule.

(vii) Admissions or stipulations. Counsel or pro se litigants shall make an effort to stipulate to all matters not at issue, including, but not limited to, the following:

- a. date(s);
- b. place;
- c. time;
- d. vehicles;
- e. ownership;
- f. passengers;
- g. traffic control devices;
- h. weather;
- i. foundation matters; and
- j. other.

Only matters actually agreed upon shall be included. It is the responsibility of each party to introduce stipulations at the appropriate time. A party may read any stipulation to the jury or request the court, out of the presence of the jury, to do so.

(viii) Discovery. State what discovery has been completed and, if the deadlines for discovery set in the scheduling conferences have not been met, state why, in detail, and when discovery is expected to be completed. Discovery includes the exchange of names of witnesses along with a brief summary of the subject matter of each witness's testimony.

(ix) Laws involved. State as follows:

a. Source of law.

1. United States of America (constitution or statute);
2. State (constitution or statute);
3. Ordinances (attach copies);
4. Regulations (attach copies);
5. Decisions (attach copies if not published).

b. Issues of law; evidentiary problems.

c. Memoranda of law. State whether necessary, due date, and the issues to be included in the memorandum.

(x) Amendments to pleadings. State whether amendments addressed in the scheduling order have been completed and, if not, state why not. If additional amendments are requested, state, in detail, why they were not included in the scheduling order. State requested amendments.

(xi) Briefs. The parties shall state the need and schedule for filing and exchanging pretrial briefs.

(xii) Masters. The parties shall state the advisability of referring the matter to a master, settlement facilitator, or a mediator, and shall state the possibilities of settlement.

(xiii) Other matters. Other matters as the court may require, with or without a party's request, which shall include any deviations from the scheduling order.

## **G. Exhibits.**

(1) A pre-numbered exhibit list describing each exhibit shall be submitted to all other parties at least twenty-one (21) calendar days prior to trial and to the court five (5) business days before the scheduled trial or such other time as may be set by the court.

(2) Actual exhibits shall be made available to all counsel for examination no less than fifteen (15) calendar days prior to trial.

(3) Each exhibit shall be numbered separately. The exhibits shall be numbered Plaintiff's No. 1, 2, 3, etc.; Defendant's No. A, B, C, etc.

(4) Drawings by experts and non-experts shall be prepared prior to trial and made available to all counsel along with exhibits.

(5) The parties shall notify each other, in writing, of objections to each other's exhibits ten (10) business days prior to trial. A copy of the objections shall be given to the court five (5) business days prior to trial, and objections will be considered by the court at such time as may be set by the court. Any exhibit not objected to may be admitted into evidence the morning of trial and may be referred to and shown to the jury during opening statements.

#### H. **Witnesses.**

(1) It is the responsibility of each party to subpoena that party's witnesses.

(2) A separate witness list shall be exchanged by all parties twenty-one (21) calendar days prior to trial and a copy delivered to the court five (5) business days before trial or at such other time as may be directed by the court. No witnesses, including expert witnesses, may be permitted to testify if the witness has not been disclosed as required by the scheduling order except rebuttal witnesses or when good cause has been shown.

(3) Objections to witnesses shall be made known to each party ten (10) business days prior to trial and to the court five (5) business days prior to trial.

(4) Each party is responsible to have witnesses available as needed and to obtain interpreters as may be required.

#### I. **Jury instructions.**

(1) **Plaintiff to defendant.** Plaintiff shall submit instructions to other parties fifteen (15) business days prior to trial and shall include all applicable mandatory instructions.

(2) **Defendant to plaintiff.** Defendant and all other parties shall submit instructions to all parties ten (10) business days prior to trial. The parties shall not offer

any alternate for an instruction requested by the plaintiff unless the requested alternate is accompanied by objections to the plaintiff's requested instruction.

(3) **All parties to court.** All parties shall submit instructions to the court five (5) business days prior to trial.

(4) Each party shall submit verdict forms with their instructions. Verdict forms shall include the caption of the case.

(5) Additional instructions may be submitted as the court permits.

J. **Findings of fact and conclusions of law.** The parties shall comply with LR3-205 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-204. Consolidation of cases.**

[Related Statewide Rule 1-042 NMRA]

A. **Motions; where filed; assigned judge upon consolidation.** Motions for consolidation will be filed in the proceeding with the lowest case number (the oldest case). If consolidation is ordered, the judge assigned to the lowest numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties.

B. **Motions and orders; copies.** The motion to consolidate and the court's order to consolidate shall be filed in the case bearing the lowest case number. Copies of the motion and order shall be filed in the remaining cases.

C. **Post-consolidation pleadings.** All pleadings filed after consolidation will be docketed and placed only in the file with the lowest case number. No copies shall be filed in the remaining cases. A copy of the final judgment, however, will be placed in each of the consolidated files.

D. **Case caption.** Pleadings filed after consolidation shall contain in the caption the case numbers of each case consolidated.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-205. Findings of fact and conclusions of law.**

[Related Statewide Rule 1-052 NMRA]

When counsel desire that the court enter findings of fact and conclusions of law, or when findings of fact and conclusions of law are required by the Rules of Civil Procedure, they shall be submitted to the court by the plaintiff fifteen (15) business days prior to trial and by all other parties ten (10) business days prior to trial. Counsel are to request only ultimate findings of fact as are necessary to determine the issues.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-206. Jury matters.**

[Related Statewide Rules 1-038, 1-047, and 1-051 NMRA]

A. **Jury fees.** When a jury trial continues for more than one (1) day, the party demanding the jury shall pay to the court administrator jury fees for each subsequent day when court commences on each subsequent day.

#### **B. Jury panel and questionnaires.**

(1) If requested in writing at least forty-eight (48) hours prior to trial, attorneys and pro se parties may obtain the randomized list of the venire for a pending jury trial no later than twenty-four (24) hours prior to trial.

(2) Supplemental jury questionnaires requested by parties shall be submitted only upon order of the court after a showing of good cause or as otherwise provided by rule. The parties requesting such questionnaires shall be responsible for the costs associated with

(a) preparing and submitting the questionnaires;

(b) providing sufficient copies and properly stamped envelopes to the jury clerks for mailing to the venire;

(c) providing stamped, pre-addressed envelopes for the return of the questionnaires to the Third Judicial District Court Clerk's office; and

(d) making copies of the returned questionnaires.

C. **Jury instructions.** In addition to requirements of Rule 1-051 NMRA, at the bottom of the court's copy of each jury instruction, counsel shall identify the Uniform Jury Instruction number or other supporting citations, along with the following:

Given \_\_\_\_\_

Denied \_\_\_\_\_

Modified \_\_\_\_\_

Withdrawn \_\_\_\_\_

**D. Introduction of certain evidence before a jury.** Any evidence sought to be introduced in a jury trial under Rules 11-404, -608, or -609 NMRA must be brought to the attention of the Court and ruled on prior to it being presented to the jury.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-207. Reopening cases.**

[Related Statewide Rules 1-004 and 1-005 NMRA]

**A. Closed files.** After a final judgment, decree, or order of dismissal has been entered, the Court Executive Officer or designee shall close the court file.

**B. Certificate to reopen.** To reopen a closed case, the attorney or pro se party shall file a certificate of reopen status with the new pleading in a form approved by the district court for that purpose.

#### **C. Service of pleadings on reopening case.**

(1) If ninety (90) or more calendar days have passed since the final disposition of the case, service on the opposing party must be accomplished under Rule 1-004 NMRA for personal service.

(2) If fewer than ninety (90) calendar days have passed since the final disposition of the case, service on the opposing party or opposing party's attorney, if the opposing party is represented, may be accomplished under Rule 1-005 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-208. Attorney fees.**

In all proceedings in which a party is entitled to recover attorney fees, whether by reason of a statutory right or by contract, the following guidelines will be applicable:

**A. Fees up to \$1,000.00.** A party may recover one-third of the first three thousand dollars (\$3,000.00) for which a judgment is entered.

**B. Fees between \$1,000.00 and \$2,500.00.** Where the fee requested is between one thousand dollars (\$1,000.00) and two thousand five hundred dollars (\$2,500.00), it shall be sufficient for the applying attorney to accompany the request with a letter not

exceeding one (1) page explaining why the amount requested is reasonable under the circumstances.

**C. Fees in excess of \$2,500.00.** Where a request is made for a fee of more than two thousand five hundred dollars (\$2,500.00), the request shall be supported by a written statement signed by the attorney, containing, at a minimum, the following:

- (1) the time expended by the attorney;
- (2) the extent to which the issues were contested;
- (3) the novelty and complexity of the issues involved;
- (4) the experience, in years of practice, that the attorney has;
- (5) the amount involved, expressed monetarily or by a general description if the issues involve matters other than a money demand;
- (6) in debt collection cases, the type of security held and the estimated amount of the judgment that can be collected from the foreclosure sale or, if the debt is unsecured, so state;
- (7) unless the judgment will be collected from a foreclosure sale, an estimate of the approximate time anticipated to be involved in collection of the judgment; and
- (8) the amount that the attorney believes would be a reasonable attorney fee.

**D. Factors considered by court.** The court will consider the relative success of the party requesting the attorney fees; the ability, experience, skill, and reputation of the attorney; and the fees generally charged in this locality for similar legal services.

**E. Reasonableness.** In all events, the fee awarded, whether based on percentage or on consideration of the foregoing factors and whether resulting from a contested or a default proceeding, may be increased or decreased so that the fees will be reasonable.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-209. Electronic filing authorized.**

[Related Statewide Rule 1-005.2 NMRA]

In accordance with Rule 1-005.2 NMRA, electronic filing is implemented for all civil and probate actions in the Third Judicial District Court. The electronic filing of documents is mandatory for parties represented by attorneys in accordance with Rule 1-005.2 NMRA, which includes attorneys who represent themselves. Guidelines for

using the electronic filing system are set forth in the court's user guide that is available in the clerk's office and on the court's website.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **III. Rules Applicable to Criminal Cases**

#### **LR3-301. Transport of persons in custody.**

[Related Statewide Rule 5-502 NMRA]

**A. Motion for transport; when filed.** A motion for transport shall be filed no later than ten (10) business days before the hearing for which transport is needed unless a shorter time is ordered by the court.

**B. Motion for transport; contents.** The motion and order for transport shall contain the following information:

- (1) the name and any known aliases, date of birth, and social security number of the person to be transported;
- (2) the name of the agency responsible for the transport;
- (3) the place where the person is incarcerated or in custody;
- (4) the time, date, location of the proceeding, and the estimated length of the proceeding;
- (5) the nature of the proceeding for which transport is sought; and
- (6) the time and date the person is to be returned to the original place of incarceration or custody.

**C. Transport order; service.** A certified copy of the transport order shall be served on the transporting agency and on the custodian of the institution having custody of the person no later than five (5) business days before the proceeding for which transport is sought unless a shorter time is ordered by the court after counsel filing the motion has confirmed with the transporting agency that it is possible to do so in a shorter period of time.

**D. Persons in custody of the Doña Ana County Detention Center or the J. Paul Taylor Center; transport orders not required.** Transport orders to the Third Judicial District Court are not needed for persons in custody of the Doña Ana County Detention Center or the J. Paul Taylor Center.



[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-302. Bond procedures.**

[Related Statewide Rules 5-401, 5-401A, and 5-401B NMRA]

A. **Bond form.** All bonds shall be in the form approved by the New Mexico Supreme Court.

B. **Magistrate court bonds.**

(1) When a defendant is arraigned in district court under an indictment or a bind-over order from magistrate court, and the bond requirements set by the district court are met by the bond posted in magistrate court, the magistrate court bond must be filed in district court at or before the district court arraignment. If the magistrate court bond is not filed in district court by the time of the arraignment, the defendant may be taken into custody until the magistrate court bond is filed with the district court.

(2) All bonds posted in magistrate court must be presented at arraignment in district court in proper form and in the amount set by the assigned judge. Real property bonds must comply with requirements for real property bonds.

C. **Failure to comply; custody.** If bond requirements are not complied with at arraignment, the defendant may be taken into custody pending compliance.

D. **Forms of payment accepted.** Any tender of money to the court shall be in the form of a money order, certified check, or cash, or, at the sole discretion of the Court Executive Officer, by attorney's trust check. Personal checks will not be accepted.

E. **Real property bonds.** Where real property is to be posted as bond, the following requirements apply.

(1) In posting a real property bond, sureties and defendant must

(a) execute an appearance bond;

(b) provide proof of ownership;

(c) provide a recent assessment of the real property from the county assessor's office; and

(d) provide a list of the real property, encumbrances, and the number and amount of other bonds and undertakings for bail entered into and remaining undischarged.

(2) In providing proof of ownership, an original or certified copy of a warranty deed is required. Quitclaim deeds or real estate contracts will not be accepted.

(3) If the real property being posted is mortgaged, an affidavit is required from the person or firm holding the mortgage showing the amount of any encumbrances on the real property.

(4) If the real property is clear of any and all encumbrances, proof of clear title is necessary.

(5) All persons listed as owners of the real property must have their signatures witnessed by a court clerk or by a person authorized to administer oaths.

(6) Sureties posting real property shall be responsible for the appearance of defendants at all court proceedings. If a defendant fails to appear as required, the real property posted is subject to forfeiture by the court.

**F. Release of bond monies; conditions.** No order authorizing the release and return of bond monies will be presented to the court for signature without first being approved by the district attorney's office, counsel for defendant, and the Court Executive Officer or designee, except when the order is prepared by the Court Executive Officer or designee under the Uniform Disposition of Unclaimed Property Act. The Court Executive Officer or designee will not release any monies without a proper court order.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **IV. Rules Applicable to Domestic Relations Cases**

### **LR3-401. Domestic relations mediation and safe exchange and supervised visitation programs.**

[Related Statewide Rule 1-125 NMRA and related Statutes NMSA 1978, §§ 40-12-1 to -6]

**A. Mediation evaluation.** All domestic relations actions, whether new or reopened, that involve a dispute over custody, periods of parental responsibility, or visitation of minor children shall be subject to mediation or evaluation of the contested custody, parental responsibility, and visitation issues and will be governed by the procedures of the domestic relations mediation program.

**B. Programs established.** In accordance with the Domestic Relations Mediation Act, the Third Judicial District Court has established a domestic relations mediation program, as well as a safe exchange and supervised visitation program, to assist the

court, parents, and other interested parties in determining the best interests of children involved in domestic relations cases.

**C. Domestic relations mediation fund; deposit and disbursement of fees.** The court maintains a domestic relations mediation fund for the deposit of all fees collected under the Domestic Relations Mediation Act, which are used to offset the costs of operating the court's domestic relations mediation program and safe exchange and supervised visitation program. Deposits into the domestic relations mediation fund shall include the following:

(1) ***The surcharge authorized under Section 40-12-6 NMSA 1978 on all new and reopened domestic relations cases.***

(a) The statutory mandated surcharge must be paid when the petition or motion is filed, together with the filing fee. A separate check is not required.

(b) If a required filing fee or surcharge is not paid, the case will be closed without disposition of the pending matter until payment is made.

(2) ***Fees paid by the parties for mediation services and safe exchange and supervised visitation services provided under the Domestic Relations Mediation Act.*** Fees incurred for the services listed above shall be paid by the parties to the court clerk as directed by court order, under a sliding fee scale approved by the Supreme Court in accordance with the requirements of Rule 1-125(I) NMRA. The current sliding fee scales approved by the Supreme Court shall be posted on this court's website and inside the courthouse.

**D. Immunity.** Attorneys and other persons appointed by the court to serve as mediators, or in other such roles under the rules governing this district's programs under the Domestic Relations Mediation Act, are arms of the court and are immune from liability for conduct within the scope of their duties as provided by law.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-006, effective for all cases pending or filed on or after September 1, 2018.]

## **ANNOTATIONS**

**The 2018 amendment**, approved by Supreme Court Order No. 18-8300-006, effective September 1, 2018, expanded the scope of the domestic relations mediation program, established a safe exchange and supervised visitation program for the Third Judicial District Court, provided for the deposit and disbursement of funds collected for the domestic relations mediation fund, and provided immunity from liability for attorneys and other persons appointed by the court to serve as mediators for conduct within the scope of the Domestic Relations Mediation Act; in the heading, deleted "program" and added "and safe exchange and supervised visitation programs"; in Paragraph A, after the first

occurrence of “custody”, added “periods of parental responsibility”, and after the second occurrence of “custody”, added “parental responsibility”; in Paragraph B, in the heading, changed “Establishment of program” to “Programs established”, deleted “Under” and added “In accordance with”, after “Domestic Relations Mediation Act”, added “the Third Judicial District Court has established”, after “domestic relations mediation program”, deleted “has been established” and added “as well as a safe exchange and supervised visitation program”; in Paragraph C, in the heading, deleted “Mediation surcharge” and added “Domestic relations mediation fund; deposit and disbursement of fees”, added the introductory paragraph, in Subparagraph C(1), deleted “The Court Executive Officer or designee shall collect the statutory mandated surcharge for all new and reopened domestic relations cases in addition to the filing fee, which shall be deposited in the domestic relations mediation fund” and added the subparagraph heading, redesignated former Subparagraphs C(2) and C(3) as Subparagraphs C(1)(a) and C(1)(b), respectively, deleted Subparagraphs C(4) and C(5), and added a new Subparagraph C(2); and added Paragraph D.

### **LR3-402. Safe exchange and supervised visitation program.**

[Statewide Rule 1-125 NMRA and related Statute NMSA 1978, § 40-12-5.1]

**A. Establishment of program.** Under the Domestic Relations Mediation Act, the Third Judicial District Court has elected to establish a safe exchange and supervised visitation program to assist the court, parents, their children, and other interested parties in determining the best interests of children involved in domestic relations and domestic violence cases referred by the district court. The district court, in conjunction with the Administrative Office of the Courts, has procured one or more providers by means of a request for proposals and entered into one or more contracts to deliver the services within the district.

**B. Sliding fee scale.** In accordance with the Domestic Relations Mediation Act, the costs of the safe exchange and supervised visitation program shall be paid by parents receiving services through the program under a sliding fee scale approved by the New Mexico Supreme Court. All safe exchange and supervised visitation fees shall be paid by parents to the district court’s contractor who shall serve as fiscal agent of the district court for the receipt of the sliding scale fees. These funds are to be used as part of the contractor’s court-approved program budget, with quarterly accounting reports submitted to the district court. Any funds in excess of the program budget as approved by the district court are to be remitted by contractor’s check, cash, money order, or certified check to the Court Executive Officer or designee to be credited to the domestic relations mediation fund at the end of the fiscal year.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

### **LR3-403. Child support payments.**

In all cases involving child support payments, the payments shall be paid through the State of New Mexico Child Support Enforcement Department.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

#### **LR3-404. Parenting classes.**

In all cases involving custody and visitation of minor children parented by the parties, the court will issue an order requiring the parenting parties to enroll in the court-approved parenting classes within forty-five (45) days of the filing of the order, unless otherwise ordered by the court. Verification of attendance at the ordered parenting classes shall be required before the court will enter a final order in the case.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **V. Rules Applicable to Children's Court Cases [Reserved]**

## **VI. Rules Applicable to Court Alternative Dispute Resolution Programs**

#### **LR3-601. Settlement facilitation program.**

A. **Mandatory settlement facilitation.** The court shall require the parties and their representatives to attend settlement conferences conducted by a court-appointed settlement facilitator or a facilitator stipulated to by the parties. If a party refuses to attend a settlement conference conducted by a court-appointed settlement facilitator, the court may impose reasonable sanctions against the party or the party's attorney.

(1) **Parties' responsibilities.** The parties are responsible for scheduling and holding a settlement conference no less than thirty (30) calendar days prior to the pretrial conference and are required to do so as soon as the parties have sufficient information to evaluate their claims or defenses. The court may modify this time limit by order for good cause shown.

(2) **Attendance.** All parties will be required to attend settlement conferences with their representatives and insurer unless good cause is shown. Parties or insurers who attend shall have plenary settlement authority. Parties who do not attend are subject to sanctions.

(3) **Settlement.** If the case settles during the settlement facilitation, then the party designated by the settlement facilitator or by mutual agreement of the parties shall

prepare the appropriate pleadings for submission to the court within ten (10) business days so the appropriate order or judgment may be entered.

#### **B. Settlement facilitator.**

(1) **Selection of facilitator.** A settlement facilitator will be chosen by mutual agreement of the parties, and a notice of facilitator selection will be filed in the form as the court may require at the time. A copy of the notice of facilitator selection shall be sent to the Alternative Dispute Resolution (ADR) office. In the event the parties do not choose a mutually agreeable facilitator within the deadline set in the scheduling order, one will be appointed by the court. If the parties agree to a different facilitator after one has been appointed by the court, the parties shall be obligated to pay the court-selected facilitator for any time and expense the facilitator may have incurred under the court's appointment.

(2) **Payment to facilitator.** If the parties agree to a facilitator, they are presumed to agree to pay that facilitator's fees. In the event that the facilitator is appointed by the court, the parties are expected to inquire about what that facilitator charges. If the facilitator's fees are deemed unreasonable, either party may motion the court for a determination of an appropriate fee or for another facilitator assignment. Each party shall pay directly to the settlement facilitator the fee due from the party within thirty (30) calendar days from the date of the settlement conference.

(3) **Good faith participation.** Parties shall participate in good faith in settlement conferences. The parties must communicate with the facilitator on scheduling a settlement conference. Good faith participation includes, but is not limited to, providing appropriate documentary evidence of liability and damages or lack thereof to opposing parties and the facilitator during the conference. Upon motion of any party, or upon the court's own motion, the court may award sanctions for failure to participate in good faith.

(4) **Settlement conference information sheet.** Prior to the settlement conference, each party to the settlement conference shall complete a settlement conference information sheet in substantially the format requested by the facilitator. The completed form shall set forth all of the information necessary for an informed evaluation of the case. Unless otherwise directed by the settlement facilitator, the settlement conference information sheet shall be provided to the settlement facilitator at least seven (7) business days before the settlement conference. The settlement conference information sheet may be sent to the facilitator without providing a copy to the opposing party. It shall not be filed with the court nor in any way be made a part of the court record.

(5) **Facilitator's outcome report and certification of facilitation compliance.** Within five (5) business days after completion of the settlement conference, the settlement facilitator shall file with the clerk of the court a certificate of facilitation compliance. The settlement facilitator shall also complete and return to the

ADR coordinator for the Third Judicial District Court a facilitator's outcome report using the form as the court may require at the time.

(6) ***Motion to be excused from settlement facilitation.*** The court may excuse any party from participation in settlement facilitation upon motion and good cause shown.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **VII. Forms**

### **[Reserved]**