

# **Rules of the District Court of the Third Judicial District**

## **I. General Matters — General Powers & Duties of the Court**

### **LR3-101. Authority, title, scope, application and effective date.**

A. **Authority.** The following rules are hereby adopted and promulgated by the judges of the third judicial district of the State of New Mexico, comprised of the county of Dona Ana, pursuant to the authority vested in the court by Rule 1-083 and Rule 5-102 NMRA.

B. **Title.** The following rules shall be known and cited as the Local Rules, Third Judicial District Court. Individual rules may be cited as "LR3-\_\_\_\_, Third Judicial District Court".

C. **Scope and application.** These rules apply to cases brought in the third judicial district court, and shall apply to all cases filed after the effective date hereof.

D. **Effective date.** These rules shall become effective on September 1, 1993.

### **LR3-102. Supreme Court rules control.**

If any of these rules are inconsistent with the rules of civil or criminal procedure adopted by the Supreme Court of New Mexico, the latter shall control.

### **LR3-103. Severability.**

If any of these rules are invalidated either by court action or otherwise, the remainder of these rules shall continue in force unless otherwise modified or changed by further order of the court.

### **LR3-104. Disciplinary action for failure to comply.**

Any willful violation of these rules shall, in addition to other appropriate remedies, subject the attorney or non-complying party to such disciplinary or other action as the judges of the third judicial district court shall deem appropriate, including civil contempt.

### **LR3-105. Court hours and holidays.**

A. The usual working hours for the district court offices shall be from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday.

B. District court offices will observe the same legal holidays as published annually by the administrative office of the courts and any others designated as legal holidays by the chief justice of the Supreme Court.

### **LR3-106. Assignment of cases.**

A. Subject to Rule 1-088 and Rule 1-088.1 NMRA, the chief judge of the district, in consultation with the other judges, shall determine the manner of assignment and re-assignment of cases.

B. Cases assigned to one judge shall not be heard by another judge except by consent of the judge to whom the case is assigned and the parties involved, except in those circumstances described in Paragraph C hereof.

C. Any judge of the district, or any judge from another district who is present in the county by designation, may hear any default matter, emergency matter, guilty plea to the original charges in the indictment or information, or ex parte matter which may arise whenever the assigned judge is not available.

### **LR3-107. Court schedules, itinerary and settings.**

A. The judge of each division shall determine their general itinerary and schedule.

B. The court administrator or the judge's secretary shall give reasonable notice, in writing, of the time and place of settings to counsel of record or to parties. All settings so made shall be binding upon all parties and attorneys properly notified. No setting shall be vacated except upon good cause shown. See LR3-501 for details relating to settings.

C. Attorneys shall timely advise the judge's office when a matter is to be taken off the calendar so that other matters may be set.

### **LR3-108. Process; issuance and free process.**

A. **Issuance.** Process of the district court shall be issued under seal of the court with the name of the district judge assigned to hear the case appearing on the first page.

B. **Free process.**

(1) An application for free process must be accompanied by an affidavit by the party stating that the party is unable by reason of poverty to pay the amount of money required for court costs. (Appendix A, LR3-Form 1.10 and LR3-Form 1.11).

(2) An attorney representing a party allowed free process must also file an affidavit stating that no fee has been received, and promising that in case any fee is paid for legal services, the attorney shall first deduct the costs and pay them to the court

administrator. The affidavit should further provide that the attorney is satisfied as to the truth of the matters contained in the client's affidavit of poverty. (Appendix A, LR3-Form 1.10).

(3) The court may conduct a hearing prior to the allowance of the free process.

### **LR3-109. Control of court files; withdrawal.**

Files of cases docketed in the court shall not be released by the court administrator for removal from the judicial complex except by court order upon a showing of exceptional circumstances.

### **LR3-110. District court trust and litigant accounts.**

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

#### **B. Interest bearing accounts.**

(1) The court administrator is authorized pursuant to Rule 1-102 NMRA of the Rules of Civil Procedure for the District Courts to set up and open separate interest-bearing accounts to be known as the district "court administrator's trust account" and the "litigant account", with any authorized bank or savings and loan association in Dona Ana County, New Mexico, for the purpose of depositing litigants' funds and producing the best authorized interest thereon.

(2) In setting up the trust account, pursuant to Subparagraph (1) of Paragraph C of Rule 1-102 NMRA of the Rules of Civil Procedure for the District Courts, the court administrator shall obtain an agreement from the bank or savings and loan association that it will issue one passbook for the account but keep subsidiary ledgers for each litigant by name and amount, both principal and interest, to ensure the proper interest is attributed to each litigant. There further shall be no fees payable to the bank or savings and loan association for the handling of this account. Multiple withdrawals within a certain period of time shall not be penalized. Funds will be insured to the maximum amount permitted by federal law.

C. **Uninsured funds.** Any funds deposited in a court administrator's trust account or a litigant account in excess of federally insured amounts must be fully secured by securities which are guaranteed by the United States or the State of New Mexico, according to the provision of Section 6-10-16 NMSA 1978. All funds shall be subject to immediate withdrawal not more than twenty-four (24) hours after demand, without penalty.

#### **D. Disbursement of funds.**

(1) 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 of the Rules of Civil Procedure for the District Courts.

(2) Disbursement of money held in the court account shall be upon court order only. Disbursements shall be made forthwith upon the order of the court.

(3) All disbursement orders will be reviewed and verified by the court administrator before going to the judge for approval.

(4) If a party is entitled to interest on the deposit pursuant to Rule 1-102 NMRA of the Rules of Civil Procedure for the District Courts, no disbursement shall be made prior to the party furnishing the court administrator with the name, mailing address, and social security number or employer identification number of the party to whom payment is to be made.

[As amended, effective August 6, 2004.]

#### **ANNOTATIONS**

**The 2004 amendment**, effective August 6, 2004, substituted “money” for “monies” in the first sentence in Subparagraph (2) of Paragraph D.

#### **LR3-111. Court appointments and application for fees.**

A. Each practicing attorney residing in the third judicial district is charged with the responsibility of accepting court appointments.

B. In any case where application for attorney's fees is made, the attorney shall be required to submit to the court a justification for the payment of said fees in such form as the court may require. The application for payment must have attached a copy of the order of appointment and the affidavit of indigency. An itemized statement must be attached to the application for payment.

C. Applications that do not comply with this rule will be returned for correction.

#### **LR3-112. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — The New Mexico Supreme Court entered an order effective August 6, 2004, withdrawing this rule.

#### **LR3-113. Court security.**

A. **Weapons.** All deadly weapons, including knives and objects which could be used to inflict bodily harm, except those carried by court personnel and authorized court security officers, are prohibited in the judicial complex and any other related judicial office. Weapons which 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 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 upon 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 or law enforcement agency having custody of the prisoner.

**C. Other precautions.**

(1) Metal detectors and physical searches may be used in any case upon 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 should 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 must remain in the courtroom near the prisoner during the entire proceeding.

[As amended, effective August 6, 2004.]

**ANNOTATIONS**

**The 2004 amendment**, effective August 6, 2004, substituted “authorized court security” for “law enforcement” in the first sentence of Paragraph A, and deleted “in jury trials” following “witnesses” and added “and shall comply with all applicable sections of the security manual” in the last sentence of that paragraph.

## II. Civil Matters — Pleading & Procedure

### LR3-201. Appearances, withdrawals and substitution of counsel.

A. **Entry of appearance.** An attorney shall enter an appearance in an action by filing the initial pleading filed on behalf of a party in the action or by filing a written entry of appearance showing name, address and telephone number.

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

(1) Any application for withdrawal of counsel pursuant to Rule 1-089 shall state the last known mailing address and telephone number(s) of such attorney's client, unless another attorney enters their appearance for such 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 Paragraph B(2) or B(3) are not met, the court shall approve the withdrawal of counsel only:

(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. The certificate shall also include the last known telephone numbers and employer of the party; or

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

(5) Withdrawal of counsel shall be effective only upon consent by the court. All orders allowing withdrawal and substitution of 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 upon all parties, pursuant to Rule 1-089 NMRA. The order shall state that 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*.

C. **Change of address or telephone number.** Counsel 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 upon all parties involved therein.

### **LR3-202. *Pro se* filings (parties who wish to represent themselves without an attorney).**

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

B. **No *pro se* appearances by entities.** *Pro se* appearances, pleadings and other filings by entities such as partnerships and corporations may be dismissed. All such entities must be represented by a licensed attorney at law, authorized to practice in the State of New Mexico in matters pending in the district court.

[As amended, effective August 6, 2004.]

### **ANNOTATIONS**

**Cross references.** — For signing of pleadings, motions, and other papers, see Rule 1-011 NMRA.

For entry of appearance by attorney, see Rule 1-089 NMRA.

For public employee limited license, see Rule 15-301.1 NMRA.

For unauthorized practice of law, see Rule 16-505 NMRA.

**The 2004 amendment**, effective August 6, 2004, added “(parties who wish to represent themselves without an attorney)” in the rule heading and substituted “may be dismissed” for “will not be accepted by the district court administrator’s office” in the first sentence of Paragraph B.

### **LR3-203. Pleadings.**

A. **Identification.** All pleadings shall contain the name, address and telephone number of the attorney filing the pleading, and shall identify the party or person who is being represented.

**B. Rule 1-012(B) defenses.** When an answer or other pleading raises or contains any of the defenses contained in Rule 1-012(B) NMRA, the party filing such pleading shall, at the time of filing, bring to the attention of the clerk, orally or in writing, the fact that such a matter is contained in the pleadings. A matter so raised shall be heard and disposed of in the same manner as if it had been raised by motion. At the time of filing such pleadings, a request for setting for the hearing of such defenses shall be submitted.

**C. Demand for jury.** When a demand for trial by jury is endorsed upon a pleading instead of being separately filed, the fact of such endorsement shall be brought to the attention of the clerk, in writing, at the time of the filing of the pleading.

### **LR3-204. Form and content of documents to be filed.**

Rule 1-100 NMRA, sets forth certain requirements for papers to be filed in the district court. Section 14-1-5 NMSA 1978 provides for public officers, including the district court administrator, to cause all records to be archived by way of being microfilmed. All documents filed with the court shall meet these requirements.

### **LR3-205. Motion practice.**

#### **A. Motions and hearings.**

(1) All motions shall contain a concise statement of specific point or points relied upon and the applicable rule or statute, if any.

(2) As to all matters which require notice to opposing counsel, movant shall determine whether the proposed motion will be opposed and comply with Rule 1-007.1 NMRA. If counsel for movant shall fail to make inquiry concerning whether the proposed motion is opposed or shall fail to state adequate reasons as to why such request for concurrence was not made, then the court may summarily deny such motion. If counsel for movant shall fail to make inquiry concerning whether or not the proposed order is opposed, the court may impose sanctions, including, but not limited to, the assessment of costs against the movant or refusal by the court to hear and act on the motion.

(3) Movant on opposed motions shall submit a request for hearing with the motion. Oral argument upon any pending motion may be waived by written stipulation of counsel of record.

(4) When a case is reopened upon the filing of a motion or an order to show cause or a motion to modify a final decree or judgment, counsel must subsequently file a final order in all such cases, whether it be an order vacating the order to show cause, an order on the court's determination after hearing, or an order on modification of a final decree or judgment.

#### **B. Motion settings.** Motions shall be set as is provided in LR3-511 NMRA.



[As amended, effective August 6, 2004.]

### **ANNOTATIONS**

**The 2004 amendment**, effective August 6, 2004, substituted “Rule 1-007.1 NMRA” for “SCRA 1968, Rule 1-007.1” in the first sentence in Subparagraph (2) of Paragraph A and “LR3-511 NMRA” for “LR3-501” in Paragraph B.

### **LR3-206. Withdrawn.**

### **ANNOTATIONS**

**Withdrawals.** — The New Mexico Supreme Court entered an order effective August 6, 2004, withdrawing this rule.

**Cross references.** — For telephone conferences, see LR3-512 NMRA.

For pretrial conferences, see LR3-513 NMRA.

### **LR3-207. Notice of bankruptcy proceedings.**

A. Counsel for debtors are charged with the responsibility of filing written notice of any stay resulting from any action in the federal bankruptcy court immediately upon being made aware thereof, and of providing notice of the same to the court and to opposing counsel.

B. If a notice of bankruptcy relating to a party defendant shall be filed, the plaintiff shall file a pleading within thirty (30) days showing cause, if any they shall have, why the case should not be placed on inactive status. Failure to file such a responsive pleading shall result in the court placing the case on inactive status.

C. Counsel for debtors are charged with the responsibility of filing written notice of the release or conclusion, for any reason, of any stay resulting from any action in the federal bankruptcy court immediately upon being made aware thereof, and of providing notice thereof to the court and to opposing counsel.

### **LR3-208. Service of notices and the mailing of other pleadings.**

A. All attorneys maintaining an office in Las Cruces, New Mexico, and who so consent in writing, will have an appropriate box or other place designated in the district court administrator's office where copies of notices and other pleadings will be placed by the district court administrator. (See LR3-Form 2.10, Appendix A, for consent form.) For those attorneys who do not so consent, the court administrator's office will not mail notices or other pleadings to counsel residing in Las Cruces unless such attorney makes specific arrangements to reimburse the court administrator's office for the cost of such mailing. Notices and other pleadings will be mailed to counsel who do not reside in

Las Cruces. In those instances, however, where attorneys request that pleadings be mailed to them, their request shall be accompanied by a self-addressed and stamped envelope.

B. The purpose of providing attorneys' boxes in the district court administrator's office is for the court's use in serving notices, judgments and other pleadings on those attorneys who so consent. The placing of such pleadings in the attorney's box by the court personnel shall constitute service in accordance with the consent thereto. The date of such service will be stamped on the pleading. It will be the obligation of all local attorneys to arrange to have such documents picked up from their box in the court administrator's office on a daily or other regular basis.

### **LR3-209. Discovery.**

A. Parties submitting interrogatories in accordance with Rule 1-033 NMRA shall serve two (2) copies thereof on each party. Each interrogatory shall be numbered consecutively, allowing adequate space under each numbered interrogatory for the answer to be written. Interrogatories and the answers thereto shall be served upon other counsel or parties, but shall not be routinely filed with the Court. Both counsel propounding interrogatories and counsel answering interrogatories, however, shall file a certificate with the Court indicating the date of their service.

B. Interrogatories shall not exceed fifty (50), including sub-parts, without approval of the judge handling the particular case or by agreement of the parties. Supplementation of responses in accordance with Rule 1-026(E) NMRA, is a standing order in this judicial district.

C. Parties upon whom interrogatories are served shall, in response, state the complete interrogatory, followed by the complete answer thereto. Any party submitting interrogatories shall leave adequate space immediately following the interrogatory upon which the responding party can insert an answer. Parties upon whom interrogatories are served shall answer each interrogatory in the space so provided. In the event inadequate space remains for a complete and full response to the interrogatory, the responding party may attach a supplemental page, properly numbered, containing the balance of the answer to an interrogatory.

### **ANNOTATIONS**

**Cross references.** — For statewide rule governing interrogatories, see Rule 1-033 NMRA.

### **LR3-210. Consolidation of cases.**

A. 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. 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. 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. Pleadings filed after consolidation shall contain in the caption the case numbers of each case consolidated.

### **LR3-211. Findings of fact and conclusions of law.**

A. The procedure for making and filing findings of fact and conclusions of law are set forth in the pre-trial order provisions of these rules. Counsel are to request findings of fact as are necessary to determine the issues. (See Paragraph B of LR3-513 NMRA, Local Rules, Third Judicial District Court and Rule 1-052 NMRA.)

B. In all nonjury trials, when counsel desire that the court enter findings of fact and conclusions of law, they shall be submitted to the court by the plaintiff fifteen (15) days prior to trial and by all other parties ten (10) days prior to trial. Counsel are to request only ultimate findings of fact as are necessary to determine the issues.

[As amended, effective August 6, 2004.]

### **ANNOTATIONS**

**The 2004 amendment**, effective August 6, 2004, designated the formerly undesignated provisions of this rule as Paragraph A, added Paragraph B, and, in Paragraph A, deleted "only ultimate" preceding "findings" in the second sentence and substituted "Paragraph B of LR 3-513 NMRA" for "LR3-503 (B)" and "Rule 1-052 NMRA" for "SCRA 1986, Rule 1-052" in the third sentence.

### **LR3-212. Orders and judgments.**

A. 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 other judge except the assigned judge.

B. Orders and judgments shall be separately filed, and shall not be included as part of any pleading.

C. Every order, judgment or other instrument which 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 filing and of entry shall be the same in all cases and shall be shown by the court administrator's stamp, unless filed in open court.

D. Orders and judgments shall not be signed by the court unless legibly signed or telephonically approved by all counsel of record, or until after a hearing on the form of the order or judgment.

E. Names or addresses of attorneys shall not appear on any judgment or order except to reflect their approval.

F. Subject to Rule 1-058(B) NMRA, all orders, judgments and decrees shall be submitted to the assigned judge within ten (10) days of the decision. The prevailing party shall be responsible for such submission and, if the approval of opposing counsel cannot be obtained by the tenth (10th) day, prevailing counsel shall, no later than the tenth (10th) day, request a setting for a hearing before the assigned judge. At the hearing, counsel shall submit their proposed order or judgment to the court.

(1) 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 within five (5) days from the date the order or judgment was made by the court.

(2) If the proposed order or judgment is approved by all counsel as to form or otherwise, the order or judgment shall so indicate and may be signed by the court immediately, if appropriate. Orders may be approved telephonically and so indicated.

(3) Any order which the parties have agreed and stipulated to shall be approved without reservation by counsel, and not "Approved as to Form" or in any other way limiting approval.

(4) If opposing counsel does not agree as to the form of order or judgment, such counsel shall send written objection, if any, by letter, to the court and counsel within five (5) days from the receipt of the order or judgment and shall not submit a separate order or judgment, unless requested by the court to do so.

(5) The court will inform all counsel 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.

G. A final judgment based upon a written instrument shall be accompanied by said instrument, which shall be filed as an exhibit in the case at the time the judgment is entered, and may be returned to the party filing the same only as in the case of other exhibits, and shall be appropriately marked as having been merged into the judgment and show the docket number of the action.

H. Orders to show cause shall be submitted to the judge assigned to hear the case. If, however, such 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 secretary of the judge who will hear the matter.

I. The court may award attorney fees and costs required for a judicial inquiry made necessary by failure to comply with this rule.

### **LR3-213. Default judgments.**

A. **Certificates as to the state of the record.** Certificates as to the state of the record are to be used without modification. (Appendix A, LR3-Form 2.11).

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

(1) In suits on promissory notes, it will not be necessary to submit evidence other than the original written note. Judgment will be entered for the principal amount claimed in the complaint provided such does not exceed the face amount of the note, less any credits thereon, plus interest and attorney's fees (if provided for in the promissory note).

(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 payment of the medical expenses. Damages will not be entered on a 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 on a default judgment.

C. **Setting aside.** 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.

### **LR3-214. Attorney fees.**

A. 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.

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

C. 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.

D. Where a request is made for a fee of more than two thousand five hundred dollars (\$2,500.00), such 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, which 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) the type of security held and the estimated amount of the judgment which can be collected from the foreclosure sale. If the debt is unsecured, so state;
- (7) unless the judgment will be collected from a foreclosure sale, an estimate of the approximate time which is anticipated to be involved in collection of the judgment;
- (8) the amount that they believe would be a reasonable attorney fee.

E. The court will consider the relative success of the party which is 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.

F. In all events, the fee awarded, whether based upon percentage or upon consideration of the foregoing factors and whether resulting from a contested or a default proceeding, may be increased or decreased so that such will be reasonable.

#### **ANNOTATIONS**

**Compiler's notes.** — Insofar as it applies to domestic relations actions it has been superseded by Rule 1-127 NMRA governing attorney fees in domestic relations cases. See *also* Rule 1-054 NMRA.

#### **LR3-215. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — The New Mexico Supreme Court entered an order effective August 6, 2004, withdrawing this rule.

**Cross references.** — See Rule 1-085 NMRA for judgments or orders on mandate.

### **LR3-216. Disposition of civil exhibits.**

A. Evidence introduced as exhibits shall be retained by the clerk for sixty (60) days following the expiration of the appeal period or final disposition of the case, after which time counsel may retrieve such exhibits from the clerk's office.

B. Release of exhibits in advance or in lieu of the sixty (60) day retention period may be obtained by court order.

[As amended, effective August 6, 2004.]

### **ANNOTATIONS**

**The 2004 amendment**, effective August 6, 2004, in Paragraph A, substituted "shall" for "will", "clerk" for "court administrator's office", "after" for "during" and "clerk's" for "court administrator's" and substituted "sixty (60) day" for "above-stated" in Paragraph B.

### **LR3-217. Cost bills.**

The prevailing party in any action who has been awarded costs, shall give notice of the taxing of said costs pursuant to Rule 1-054 (E) NMRA, within thirty (30) days of entry of the judgment, final decree or order awarding costs or in which the party prevails. The party recovering costs shall file with the court administrator an itemized and verified cost bill, with proof of service of a copy on opposing counsel. Any party failing to file a cost bill within the said thirty (30) days shall be deemed to have waived costs. If no objections are filed within five (5) days after service of the cost bill, the court administrator shall tax the claimed costs which are allowable by law. The assigned judge shall settle any objections filed. Judgments where costs are awarded, but the amount is not stated, will require the filing of a cost bill before execution can be issued.

## **III. Domestic Relations Matters**

### **LR3-301. Domestic relations mediation program.**

A. **Mediation; evaluation.** Effective May 1, 1991, all domestic relations actions filed in the third judicial district court, whether new or reopened, which involve a dispute over custody or visitation of minor children, shall be subject to mediation/evaluation of the contested custody and visitation issues and shall be governed by the procedures of the domestic relations mediation program.

B. **Establishment of program.** Pursuant to Section 40-12-1 et seq. NMSA 1978, the third judicial district has elected to establish a domestic relations mediation program to assist the court, parents and other interested parties in determining the best interests of children involved in domestic relations cases. A Domestic Relations Mediation Fund is hereby established in accordance with Section 40-12-6 NMSA 1978.

### **C. Mediation surcharge.**

(1) Pursuant to Section 40-12-6 NMSA 1978, effective May 1, 1991, a thirty dollar (\$30.00) surcharge will be collected by the court administrator for all new and reopened domestic relations cases. This surcharge will be in addition to the filing fee required by Section 34-6-40 NMSA 1978 and Rule 1-099 NMRA, for new and reopened cases. See Rule 1-099 NMRA, for the definition of reopened cases. All such surcharges shall be deposited by the court administrator in the Domestic Relations Mediation Fund.

(2) To determine whether the surcharge is required, counsel shall complete and file with all motions the "attorney's certificate - domestic relations". (Appendix A, LR3-Form 3.10).

(3) The thirty dollar (\$30.00) surcharge must be paid when the petition or motion is filed. The surcharge may be included with the filing fee. A separate check is not required.

(4) Parties who request post decree relief and seek only to enforce a prior court order concerning child support will not be assessed a surcharge.

(5) Any party who pursues post-decree relief in addition to or other than enforcement of a prior child support order more than sixty (60) days after final disposition of the case, will be required to pay the surcharge unless the motion is within one of the exceptions identified in Rule 1-099 NMRA.

(6) Failure to pay required fee or surcharge. If a required filing fee or surcharge is not paid, the case will be closed without disposition of pending matters, until payment is made.

**D. Sliding scale fee.** In accordance with Section 40-12-5 (C) NMSA 1978, costs of the domestic relations mediation program shall be paid by the parties to the action on a sliding fee scale approved by the Supreme Court of New Mexico. (See Appendix B for child custody mediation sliding fee scale). All fees shall be paid to the court administrator to be credited to the Domestic Relations Mediation Fund. The court administrator shall forward a notice of assessment of costs to the parties upon payment of the mediator from the fund. Mediation assessments are to be paid to the court administrator by attorney firm check, cash, money order or certified check. No personal checks are to be accepted.

**E. Reallocation of surcharge and mediation fees.** The court reserves jurisdiction to reallocate the surcharge and the mediation fees between the parties at the time the matter is resolved by the court.

### **F. Mediation procedure.**



(1) Domestic relations mediation shall be initiated in each case in which child custody or visitation is an issue. At such time, either party shall file a certificate of child custody and visitation issues. (Appendix A, LR3-Form 3.20).

(2) The court may not hear a case involving child custody unless the matter has been submitted to mediation or the court has made a determination that mediation is not warranted.

(3) Upon the filing of the certificate, or upon direction of the court, the court administrator will enter a notice of mediation to the parties to view certain video tapes at a designated location. This viewing must be completed within ten (10) days of the notice. The notice will also set forth the further mediation procedures for the parties, including the assigned mediator, provided the parties have not previously settled the issue after viewing the video tapes.

(4) Mediation shall be completed within thirty (30) days of the first meeting with the mediator. The mediator shall inform the court on a court-approved form of the outcome of the mediation. (Appendix A, LR3-Form 3.21). A person shall not be called as a witness in a case in which that person acted as mediator.

### **LR3-302. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-303. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-304. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms.

That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-305. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-306. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-307. Agreement regarding application of certain local rules.**

In any case where the parties agree that the local rules shall not apply regarding issuance of the temporary domestic order, the requirement of exchanging TDO affidavits, the time deadlines for exchanging the statement of financial condition, or the interim division of income, the parties will file a stipulation with the court stating the rules or portions of the rules that have been waived by agreement.

## **IV. Criminal Matters**

### **LR3-401. Grand jury indictments.**

A. Grand jury indictments may be sealed upon court order, but otherwise shall be made available to the public and attorneys upon request.

B. The identity of grand jurors shall remain secret unless otherwise ordered by the court.

### **LR3-402. Bond procedures.**

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

B. **Magistrate court bonds.**

(1) When a defendant is arraigned in district court pursuant to a bind-over order from magistrate court, and when a defendant is arraigned in district court pursuant to an indictment under which the bond requirements set by the district court are met by the bond posted in the magistrate court, the magistrate court bonds must be filed in district court at or before the district court arraignment. If the magistrate court bonds are not filed in district court by the time of the district court arraignment, the defendant will 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 district judge. Property bonds must comply with requirements for property bonds.

C. If bond requirements are not complied with at arraignment, the defendant will be taken into custody pending compliance.

D. Personal checks will not be accepted for bail bonds. Attorney trust account checks, cashier's checks and money orders payable to the district court will be accepted for bail bonds.

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

(1) Real property located in New Mexico having an unpledged and unencumbered net value equal to the amount of the bond set may be posted by persons who are residents of the State of New Mexico;

(2) In posting a property bond, sureties and defendant must:

(a) execute an appearance bond;

(b) provide proof of ownership;

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

(d) execute an affidavit describing the property, encumbrances, and the number and amount of other bonds and undertakings for bail entered into and remaining undischarged;

(3) In providing proof of ownership, an original or certified warranty deed is required. Quit-claim deeds or real estate contracts will not be accepted;

(4) If the 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 property;

(5) If the property is clear of any and all encumbrances, proof of clear title is necessary;

(6) The net value of the property or the net value of the equity, must be equal to or greater than the amount of bond set. All persons listed as owners of the property must have their signatures witnessed by the court administrator's office or notarized by a notary public;

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

F. 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 administrator, except when the order is prepared by the court administrator pursuant to the Uniform Disposition of Unclaimed Property Act, Sections 7-8-1 et seq. NMSA 1978. The court administrator's office will not release any monies without a proper court order.

### **LR3-403. Plea bargaining.**

Plea agreements must be made and the court notified at least five (5) days before trial, unless otherwise authorized by the court.

### **LR3-404. Transportation of prisoners.**

Defendants under the jurisdiction of the third judicial district and incarcerated at the New Mexico correctional facility, the state hospital or other government institution shall be transported to the Dona Ana county jail at least one (1) day prior to the scheduled court proceeding. The district attorney's office shall prepare transportation orders, which must be approved by the court. Transportation orders prepared by defense counsel shall not be presented to the court without approval from the district attorney's office.

### **LR3-405. Notification to victims and witnesses of court proceedings.**

Pursuant to the Crime Victims' and Witnesses' Bill of Rights Act, Section 31-24-1 et seq. NMSA 1978, hereinafter referred to as the act, it shall be the responsibility of the prosecuting agency in a criminal case to notify victims and witnesses as defined in the act of the pendency of a sentencing proceeding or of any other court proceeding for which the act mandates notification. In accordance with the act, the prosecuting agency

shall notify such individuals of their right to be heard at such proceedings. Waivers of appearance or notification may be utilized in lieu of notification. The prosecuting agency shall notify the court if arrangements are inadequate for separation of parties as required by the act, and shall be responsible for making restitution requests as provided by the act.

### **LR3-406. Habeas corpus petitions and requested injunctive relief by inmates in custody.**

A. A petitioner for a writ of habeas corpus shall exhaust other remedies available to him administratively, by court rule, or by statute, prior to seeking relief in the district court.

B. All petitions for a writ of habeas corpus shall be submitted on the form approved by the court and available from the court administrator, with appropriate exhibits called for in the form attached as applicable. (Rule 9-701 NMRA.)

C. A petitioner for a writ of habeas corpus who wishes to proceed in forma pauperis shall include with their petition the appropriate motion, proposed order and an affidavit of indigency in the form approved by the Supreme Court. (Rule 9-403 NMRA.) The petitioner shall attach to the affidavit as an exhibit a current copy of their account ledger maintained by the correctional facility, dated and certified as true and correct copy by the deputy warden-administration.

D. A petitioner for a writ of habeas corpus who wishes to have the court appoint counsel to represent him shall include with their petition the appropriate motion, a proposed order and a copy of the petition, which the court will furnish to the attorney appointed to represent the petitioner upon granting their motion.

E. Petitions requesting relief from inmate disciplinary proceedings shall be decided upon the written exhibits received unless it appears from such records that the inmate's limited due process rights were violated or the records do not show that there was substantial evidence to support the administrative decision. In that event, a hearing will be held to allow the department of corrections or the inmate an opportunity to present evidence. It is contemplated that the initial review of proceedings of this type shall be in the nature of a certiorari proceeding.

F. In any petition for a writ of habeas corpus where the same claim has been previously submitted to the original court under the provisions of Rule 1-093 or Rule 5-802 NMRA, then a new evidentiary hearing will not be held unless such petition is supported by an affidavit showing what evidence was not submitted in the prior proceeding, and the names and addresses of the proposed witnesses who will testify to such new evidence.

G. Petitions claiming relief for ineffective trial counsel will not be considered where such relief was previously requested and denied by the court which heard the

proceeding and which was in a more favorable position to determine whether the inmate was represented by competent counsel.

H. Failure to comply with this rule, with Rules 1-065 or 1-093 NMRA, or with Rule 5-082 NMRA, or with the statutes governing writs of habeas corpus, shall be grounds for sua sponte dismissal of the petition by the court, without prejudice to the petitioner's right to refile.

### **LR3-407. Municipal court and magistrate court criminal appeals.**

Unless good cause is shown, motions in municipal court and magistrate court criminal appeals must be filed at least ten (10) days before trial. Unless otherwise ordered by the court, motions in municipal court and magistrate court criminal appeals shall be heard at the time of trial. Any notice of appeal filed in district court must have attached to it a copy of the file stamped final judgment or order of the municipal or magistrate court.

[As amended, effective August 6, 2004.]

#### **ANNOTATIONS**

**Cross references.** — For appeals from the municipal and magistrate courts to the district court, see Rules 6-703 and 8-703 NMRA.

For the Supreme Court approved notice of appeal form for appeals from the magistrate and municipal court, see Criminal Form 9-607 NMRA.

**The 2004 amendment**, effective August 6, 2004, added “unless good cause is shown” at the beginning of the first sentence and inserted “file stamped” in the last sentence.

### **LR3-408. Orders and judgments in criminal matters.**

The following rules apply to all orders and judgments presented or filed in any criminal case:

A. Any order or other matter once presented to a judge for approval or signature and refused shall not be presented to any other judge.

B. Orders and judgments shall be separately filed, and shall not be included as part of any other filing.

C. Orders and judgments shall not be dated by the parties. The date of filing and of entry shall be the same in all cases and shall be shown by the court administrator's stamp, unless filed in open court or nunc pro tunc.

D. Orders and judgments shall not be signed by the court unless legibly signed by all counsel of record and pro se parties, or until after a hearing on the form of the order or judgment.

E. All orders and judgments which affect in any manner the custody or release of a defendant shall be filed within five (5) days of the court's decision or jury verdict. The prosecuting attorney shall be responsible for timely filing of judgments, and the prevailing party shall be responsible for timely filing of such orders. The provisions of local rule LR3-212 shall apply to the preparation and filing of orders in criminal cases, except as modified by this rule.

F. All orders and judgments signed by a judge shall be filed immediately with the court administrator.

## V. Case Control

### LR3-501. Case management.

A. **Intent of system.** This case management system is to guide and control the progress of cases from filing of the complaint to the time of trial. Except as provided in this paragraph or the Rules of Civil Procedure for the District Courts, this rule shall apply to all civil (CV) cases filed in the Third Judicial District. The following actions are exempted from the pretrial scheduling requirements of Paragraph B of Rule 1-016 NMRA, the provisions of this rule, Rule LR3-502 NMRA and Rule LR3-503 NMRA:

- (1) commitment proceedings;
- (2) conservatorship proceedings;
- (3) guardianship proceedings;
- (4) probate proceedings;
- (5) domestic relations proceedings; and
- (6) petitions for writs.

B. **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 a civil case that is subject to the provisions of this rule, the court will enter an order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings. This order will be delivered with the summons to the party filing the initial pleading and shall be served 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.

**C. Requirements of scheduling reports.** The 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:

- (1) require the filing of scheduling reports by all parties sixty (60) days after the filing of the initial pleading or ten (10) days after entering of record;
- (2) require the parties to either:
  - (a) stipulate to a discovery plan; or
  - (b) timely request a hearing at which the court will formulate a discovery plan;
- (3) inform the parties that, in the absence of a discovery order filed pursuant to either Subparagraphs (2)(a) and (2)(b) of this paragraph, the parties shall comply with the discovery plan set forth in the scheduling order;
- (4) provide limits on the power of parties to stipulate to an extension of time to file responsive pleadings; and
- (5) direct the parties to inform the court and the alternative dispute resolution coordinator when the case is at issue.

[Effective October 24, 2000 until October 24, 2004; approved, as amended, effective August 6, 2004.]

## **ANNOTATIONS**

**Recompilations.** — Former LR3-501 pertaining to "settings" was renumbered as LR3-511 effective October 24, 2000.

**Effective dates.** — Pursuant to a court order dated October 24, 2000, this rule is approved for three years, effective October 24, 2000 until October 24, 2003. The Supreme Court extended the expiration date of this rule on October 23, 2003 from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court approved the amendment of this rule and removed the termination date.

**The 2004 amendment,** effective August 6, 2004, in Paragraph C, deleted "and order requiring reports" following "reports" in the paragraph heading, "required by the order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings" following "reports" in the first sentence of the introductory language, and "requiring scheduling reports and a discovery plan and limiting



stipulations to enlarge time for responsive pleadings” following “order” in the second sentence of that language.

## **LR3-502. Scheduling reports.**

**A. Scheduling reports required.** Within sixty (60) 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.

(1) 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 LR3-Form 2.12 NMRA, "Joint Scheduling Report Stipulating to Track A".

(2) 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 substantially in the form as LR3-Form 2.13 NMRA with a caption that describes the party, **e.g.** "Plaintiff's Scheduling Report", "Defendant's Scheduling Report".

(3) If the parties agree on a track other than Track A, they may submit a joint scheduling report, substantially in the form of LR3-Form 2.13 NMRA.

(4) 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.**

(1) If all parties are not of record within sixty (60) days after the filing date of the initial pleading, each party making a claim against one or more absent parties (Plaintiff for Defendants, Third-Party Plaintiffs for Third-Party Defendants, etc.) shall, within five (5) business days after the 60th day, file with the court, serve parties of record and deliver a copy to the assigned judge, a written explanation substantially in the form of LR3-Form 2.14 NMRA, "Delay in Putting the Case at Issue".

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

**C. Determination of trial date.** The court has prepared a guideline which divides the continuum of cases from simple to complex into three "tracks". The court will use the track designation to organize its calendar. The parties should consider the following criteria when completing the scheduling reports and determining trial preparation time and days needed for trial. These criteria are guidelines only. A case need not meet every criterion to be considered as falling within a particular track. (*Note: American Bar*

*Association guidelines state that ninety percent of cases should be concluded within one (1) year of the filing of the complaint; ninety-eight percent within eighteen (18) months; and one hundred percent within twenty-four (24) months.)*

(1) **Track A.** Ready for trial within four (4) to six (6) months of filing of the initial pleading; no more than two (2) trial days required. Criteria:

(a) Legal issues: few and clear;

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

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

(d) Required discovery limited;

(e) Witnesses: five or fewer witnesses (expert witnesses are permitted when their testimony is concise and limited in time);

(f) Damage claims: fixed amount, or capable of determination with limited evidence.

(2) **Track B.** Ready for trial within six (6) to twelve (12) months of filing the initial pleading; no more than five (5) trial days required. Criteria:

(a) Required discovery: not extensive;

(b) Expert witnesses: limited to three per party;

(c) Damage issues: not complex.

(3) **Track C.** Trial preparation likely to require more than twelve (12) months; trial likely to require more than five (5) days. Criteria:

(a) Legal issues: numerous, complicated, novel or unique;

(b) Numerous claims;

(c) Numerous parties represented by different counsel;

(d) Required discovery: extensive;

(e) Large number of fact and expert witnesses;

(f) Damage claim: complex or large number of witnesses required.

D. **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.

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

### ANNOTATIONS

**Recompilations.** — Former LR3-502, pertaining to "telephone conferences and hearings" was renumbered as LR3-512 effective October 24, 2000.

**Effective dates.** — Pursuant to a court order dated October 24, 2000, this rule is approved for three years, effective October 24, 2000 until October 24, 2003. The Supreme Court extended the expiration date of this rule on October 23, 2003 from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this rule.

### LR3-503. Scheduling order.

When the assigned judge has received the required scheduling reports or so many of them as is necessary to adequately inform the judge, the judge will file and serve on each party of record a Rule 1-016 NMRA scheduling order, which will set the matter on a trial docket and set other appropriate deadlines for pretrial proceedings. A party who objects to the trial docket setting or other deadlines may, within fourteen (14) days of the service of the scheduling order, file objections with a request for a scheduling conference pursuant to Rule 1-016 NMRA. Parties shall be deemed to have waived objections to the trial docket date and other dates scheduled if this request for scheduling conference is not timely delivered to the assigned judge.

The scheduling order shall control the progress of the case unless modified for good cause shown on motion.

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

### ANNOTATIONS

**Recompilations.** — Former LR3-503, pertaining to "pre-trial conferences" was renumbered as LR3-513 effective October 24, 2000.

**Effective dates.** — Pursuant to a Supreme Court order dated October 24, 2000, this rule is effective for three years, effective October 24, 2000 until October 24, 2003. By a Supreme Court order dated October 23, 2003, the expiration date of this rule was extended from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this rule.

**Compiler's notes.** — By a court order dated October 23, 2003, the expiration date of this form was extended from October 24, 2003 to October 24, 2004.

The Supreme Court extended the expiration date of this rule on October 23, 2003 from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this rule.

## **LR3-504 to LR3-507. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — LR3-504 to LR3-507 were recompiled as LR3-514 to LR3-517 effective October 24, 2000.

## **LR3-511. Settings for all matters.**

A. **Request for settings.** All requests for setting shall be in the approved form and completed except for the date and time for the setting. (Appendix A, LR3-Form 5.10). Counsel requesting a setting shall provide pre-addressed, stamped envelopes for any counsel or party entitled to notice who does not have a box at the courthouse. The assigned judge's administrative assistant will file the original of the request for setting form. Attorneys maintaining offices in Dona Ana County will have their notices placed in their respective boxes at the courthouse.

### **B. Vacating settings.**

(1) Settings will not be vacated *ex parte* or by agreement of counsel, but only by the court.

(2) Before counsel contacts the assigned judge to vacate a setting, counsel shall contact all parties or attorneys entitled to notice in order to inform the court of each party's position as regards the vacation. The court shall either vacate the case, refuse to vacate or schedule a hearing on the request.

(3) An order entered pursuant to this rule shall contain the reason(s) for the vacation.

### **C. Conflicts in settings.** LR3-514 NMRA shall govern any conflicts in settings.

[LR3-501; recompiled, effective October 24, 2000; as amended, effective August 6, 2004.]

### **ANNOTATIONS**

**Recompilations.** — Former LR3-504 relating to continuances and conflicts was recompiled as LR3-514 effective October 24, 2000.

**The 2004 amendment**, added to the rule heading "for all matters", changed "secretary" to "administrative assistant" in Paragraph A and changed the reference to LR3-504 to LR3-514 NMRA in Paragraph C.

## **LR3-512. Telephone conferences and hearings; for all matters.**

A. **Telephone appearances permitted.** The court may hear any matter by telephone conference when to do so would legitimately serve justice, the economic needs of the parties and attorneys or the logistics of travel.

B. **Responsibility and cost.** If all counsel or parties of record agree, any party or attorney on behalf of a party may appear telephonically for hearings not requiring testimony. When testimony will be taken at a hearing, the parties may request leave of court for telephonic testimony. Telephonic appearances shall be arranged through a telephone conference provider authorized by the court. Upon request and good cause shown, the court may permit an alternate method of telephonic appearance. The costs of such telephone conferences shall be borne by the party making the telephonic appearance. The court reserves the right to require the parties to reimburse the court for telephone expenses incurred by the court for participating in a conference or hearing by telephone.

[LR3-512; as recompiled, effective October 24, 2000; as amended, August 6, 2004.]

### **ANNOTATIONS**

**Recompilations.** — Former LR3-502 relating to telephone conferences and hearings was recompiled as LR3-512 effective October 24, 2000.

**The 2004 amendment**, effective August 6, 2004, added "for all matters" in the rule heading, substituted the present first four sentences for the former first sentence and rewrote the last two sentences in Paragraph B, and deleted Paragraph C, which concerned the record on any telephone conference.

## **LR3-513. Pre-trial conferences; scheduling orders; management.**

A. **Scheduling conference.** A scheduling order shall be entered by the court after receipt of the scheduling report as required by LR3-502 NMRA. 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.

### **B. Pretrial conference.**

(1) 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.

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

(3) Unless otherwise ordered by the court, the pretrial order shall contain the following:

(a) 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 their position.

(b) 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.

(c) 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.

(d) Factual allegations; plaintiff(s). The plaintiff(s) 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.

(e) Factual allegations; defendant(s). The defendant(s) 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.

(f) 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 same manner as (d) and (e) *supra*.

(g) 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:

- (i) date(s);
- (ii) place;
- (iii) time;
- (iv) vehicles;
- (v) ownership;

- (vi) passengers;
- (vii) traffic control devices;
- (viii) weather;
- (ix) foundation matters;
- (x) 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.

(h) Exhibits.

(i) A pre-numbered exhibit list, describing each exhibit shall be submitted to all other parties at least fifteen (15) days prior to trial and to the court five (5) days before the scheduled trial or such other time as may be set by the court.

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

(iii) Each exhibit shall be numbered separately. The exhibits shall be numbered Plaintiff's No.1, etc.; Defendant's No.1, etc.

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

(v) The parties shall notify each other, in writing, of objections to each other's exhibits ten (10) days prior to trial. A copy of the objections shall be given to the court five (5) 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.

(i) Discovery.

(i) 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.

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

(iii) A separate witness list shall be exchanged by all parties fifteen (15) days prior to trial and a copy thereof delivered to the court five (5) days before the scheduled trial or at such other time as may be directed by the court. No witnesses, including expert witnesses, shall be permitted to testify if the witness has not been disclosed as required by the scheduling order except when good cause has been shown.

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

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

(j) Witnesses.

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

(ii) A separate witness list shall be exchanged by all parties fifteen (15) days prior to trial and a copy delivered to the court five (5) 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.

(k) Laws involved. State as follows:

(i) Source of law.

- a. United States of America (constitution or statute);
- b. State (constitution or statute);
- c. Ordinances;
- d. Regulations (attach copies);
- e. Decisions (attach copies if not available in the district court law library).

(ii) Issues of law; evidentiary problems.

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

(l) 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.

(m) Jury instructions.

(i) Plaintiff shall submit instructions to the court and other parties five (5) days prior to trial and shall include all applicable mandatory instructions.

(ii) Defendant and all other parties shall submit instructions to the court and all parties two (2) 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.

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

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

(n) Findings of fact and conclusions of law. The parties shall comply with LR3-211 NMRA.

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

(p) 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.

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

**C. Preparation of pretrial orders.** The parties shall exchange pretrial statements five (5) 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) days after the pretrial conference and to the court ten (10) days after the pretrial conference.

[LR3-503, as amended, effective February 1, 1994; recompiled, effective October 24, 2000; as amended, effective August 6, 2004.]

## ANNOTATIONS

**Recompilations.** — Former LR3-503 relating to pre-trial conferences was recompiled as LR3-513 effective October 24, 2000.

**The 1994 amendment**, effective February 1, 1994, substituted "fifteen (15) days" for "five (5) days" in Paragraph B(3)(l)(i).

**The 2004 amendment**, effective August 6, 2004, added "scheduling orders; management" in the rule heading, substituted "scheduling order" for "pretrial scheduling conference" and "entered by the court after receipt of the scheduling report as required by LR3-502 NMRA" for "requested by the attorney(s) for plaintiff(s), in all civil (CV) actions, as soon as practicable, but in no event more than ninety (90) days after the filing of the complaint" in the first sentence and inserted the second sentence in Paragraph A, added "unless excused by the court" and substituted "participate " for "be in attendance, in person," and "any pretrial or scheduling conference set by the court" for "the conference unless excused by the court" in Subparagraph (1) of Paragraph B, and in Subparagraph (3) of that paragraph, inserted present Subparagraph (3) (j) and redesignated former Subparagraphs (3) (j) through (3) (p) as present Subparagraphs (3) (k) through (3)(q). The amendment also, in Subparagraph (3) of Paragraph B, substituted "five (5) days before the scheduled trial" for "on the day of the trial at 8:00 a.m.," in Subparagraph (3) (h) (i) and deleted "at least" following "exhibits" in the first sentence and following "court" in the second sentence of Subparagraph (3) (h) (v), substituted "five (5) days before the scheduled" for "at 8:00 a.m. on the morning of" in the first sentence of Subparagraph (3) (i)(iii), substituted "five (5)" for "fifteen (15)" in Subparagraph (3) (m) (i) and "two (2)" for "five (5)" in the first sentence in Subparagraph (3)(m)(ii), deleted "including special verdict forms" following "forms" in the first sentence and added the second sentence in Subparagraph (3)(m)(iii), and substituted the present second sentence for the former second sentence in Subparagraph (3)(n), and rewrote Paragraph C.

### **LR3-514. Continuances and conflicts.**

A. Continuances requested because counsel have conflicts in settings with other district courts shall be governed by the rule that the first case scheduled will control, unless otherwise directed by the court. Any party filing a motion for continuance based upon a conflict will attach to such motion a copy of the other court's notice of setting. In the event of a conflict with this rule, by reason of the rule of any other court, the matter is to be called to the attention of the judge designated to hear the case. The judge shall make the final decision as to whether to grant a continuance under the circumstances.

B. Counsel requesting continuance shall serve a copy of such motion on the party they are representing or shall show concurrence in such request by having their client also sign the motion. Unless the client concurs in such motion by signing the same, then counsel shall include a certificate of service.

[LR3-504; as recompiled, effective October 24, 2000; as amended, effective August 6, 2004.]

### **ANNOTATIONS**

**Recompilations.** — Former LR3-504 relating to continuances and conflicts was recompiled as LR3-514 effective October 24, 2000.

**The 2004 amendment,** effective August 6, 2004, inserted “district” in the first sentence of Paragraph A.

### **LR3-515. Conference between attorneys required prior to hearings.**

A. In all civil and domestic cases, except defaults, informal probates and similar matters, in which at least one attorney has entered an appearance, counsel must be prepared on motions and trials on the merits, to state to the court, at the beginning of the hearing thereon, the contested issues of fact and law and stipulated issues of fact and law, determined after conference between the attorneys, at least one (1) day prior to hearing, or parties pro se, if they do not have counsel.

B. Failure to comply with this rule will subject counsel to sanctions pursuant to Rule 1-011 NMRA.

[LR3-505; as recompiled, effective October 24, 2000.]

#### **ANNOTATIONS**

**Recompilations.** — Former LR3-505 relating to conferences between attorneys required prior to hearings was recompiled as LR3-515 effective October 24, 2000.

### **LR3-516. Dismissal of action.**

#### **A. Voluntary or stipulated dismissal.**

(1) Upon voluntary or stipulated dismissal, counsel shall advise the judge's office if a hearing or trial is scheduled in the case in order that the same may be taken off the calendar.

(2) If an examination of the case file or the case status report reveals that:

(a) a cause is ready for default; or

(b) there remains no justifiable issue for the consideration of the court, the court may direct counsel to proceed to judgment forthwith. Upon failure of counsel to submit evidence, if required, or a judgment within the time designated, then the court may, on its own motion, dismiss the cause.

#### **B. Dismissal of action for lack of prosecution.**

(1) In any civil or domestic relations action, when the parties have failed to take any significant action within the previous one hundred eighty (180) day period to

bring such action or proceeding to its final determination, the court may, on its own motion, enter an order of dismissal without prejudice. (Rule 1-041(E)(2) NMRA) A copy of the order of dismissal shall be forthwith mailed or served pursuant to local rule on all parties of record.

(2) Any party may, within thirty (30) days after entry of the order of dismissal, file a motion for reinstatement. The motion shall set forth what action has taken place or why action has not been taken within the preceding one hundred eighty (180) day period, and what action the party proposes to take to bring such cause of action to a final determination. If the court finds from such motion justifiable grounds, then the proceeding may be reinstated without payment of an additional docket fee. The motion and order of reinstatement must be filed before the expiration of more than thirty (30) days from the entry of the order of dismissal.

[LR3-506; as recompiled, effective October 24, 2000.]

#### **ANNOTATIONS**

**Recompilations.** — Former LR3-506 relating to dismissal of action was recompiled as LR3-516 effective October 24, 2000.

#### **LR3-517. Reopening cases.**

A. After a final judgment, decree or order of dismissal has been entered, the court administrator shall close the court file.

B. All filings after final disposition that require a hearing or judicial determination shall be accompanied by an attorney's certificate of reopen status. (Appendix A, LR3-Form 5.11.)

[LR3-507; as recompiled, effective October 24, 2000.]

#### **ANNOTATIONS**

**Recompilations.** — Former LR3-507 relating to reopening cases was recompiled as LR3-517 effective October 24, 2000.

## **VI. Jury Matters**

#### **LR3-601. Evidentiary matters.**

Any matter sought to be introduced in a civil or criminal matter under Rules 11-404, 11-608 or 11-609 NMRA, must first be brought to the attention of the court outside the presence of the jury and allowed by the court before it may be mentioned to the jury.

### **LR3-602. Jury demand.**

When a demand for trial by jury is endorsed upon a pleading instead of being separately filed, the fact of such endorsement shall be brought to the attention of the court administrator, in writing, at the time of the filing of the pleading.

### **LR3-603. Jury fees.**

A. 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 upon commencement of court of each subsequent day.

B. A jury fee, once deposited, will not be refunded regardless of the disposition of the case. Jury fees will be considered in assessing costs.

### **LR3-604. Jury questionnaires.**

Parties to a jury trial are entitled to obtain questionnaires completed by jury panel members. Such questionnaires shall be made available pursuant to Subsection C of Section 38-5-11 NMSA 1978, for inspection and copying by any party to any pending proceeding or their attorney or to any person having good cause for access thereto and shall be confidential.

### **LR3-605. Jury instructions.**

A. Requested jury instructions, including a statement of the case, will be prepared by counsel for each of the parties in accordance with the following outline:

(1) The ribbon copy of each instruction shall be typed on a separate page, shall be entitled at the top thereof "Instruction No. \_\_\_\_\_" and shall contain no identification as to counsel or party, and shall be submitted to the judge for use as a court's instruction if given.

(2) Sufficient additional copies of each instruction shall be submitted, stapled together, to provide a working copy for the judge and for all counsel of record. On the copies, counsel shall list the UJI number or citations supporting the instruction as a correct statement of the applicable law.

(3) The bound copy shall be used to indicate the court's action in regard to such instruction and shall contain an appropriate space for the court to check one of the following: "Given", "Given as Amended", "Refused", "Withdrawn", followed by a line for the trial judge's signature.

B. Requested instructions, insofar as the circumstances of the case permit, shall be submitted to the court at least five (5) days prior to trial.

C. In settling instructions, the court, after marking each party's bound copy, shall return the same to counsel so that they may take such and, after giving them appropriate numbers, may thereafter file the same with the court administrator. The original ribbon copy of the instructions will be numbered by the court and placed in proper sequence and used as the court's instructions to the jury.

## **VII. Alternative Dispute Resolution**

### **LR3-701. Court-annexed alternative dispute resolution programs; generally.**

A. **Purpose.** The purpose of this district's court-annexed alternative dispute resolution programs is the early, fair, efficient, cost-effective and informal resolution of disputes using settlement facilitation, arbitration or mediation. Nothing in these rules governing these programs shall be construed to discourage or prohibit parties from stipulating to private alternative dispute resolution or to prohibit the right to a trial by jury.

B. **Administration.** These programs shall be administered by the alternative dispute resolution coordinator of the court. The court may appoint standing committees of judges, lawyers and others to provide guidance and assistance.

C. **Order required.** All referrals to these programs require the filing of a written court order.

D. **Forms.** Where available, applicable court forms shall be used. Forms shall be available through the alternative dispute resolution coordinator.

[Approved, effective September 22, 1999.]

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Alternative dispute resolution: sanctions for failure to participate in good faith in, or comply with agreement made in, mediation, 43 A.L.R.5th 545.

### **LR3-702. Definitions.**

When used in these rules, unless the context otherwise requires:

A. "ADR" means alternative dispute resolution by means of this district's court-annexed alternative dispute resolution programs including, arbitration, mediation and settlement facilitation;

B. "arbitration" means a process where a decision maker is selected by the parties or appointed by the court to act as arbitrator. The arbitration process shall be conducted in accordance with these rules, and the arbitrator's award shall be binding upon the parties, subject to a party's right to appeal as set forth in these rules;

C. "award" means the arbitrator's final decision;

D. "mediation" means a process where a neutral third party helps parties to resolve differences through negotiation and cooperative problem solving;

E. "settlement facilitation" means a process where a neutral third party meets with the parties and their attorneys in a settlement conference seeking a negotiated settlement agreement on all or some of the issues of the case. The facilitator of the settlement conference will be an attorney appointed by the court or stipulated to by the parties.

[Approved, effective September 22, 1999.]

## ANNOTATIONS

**Cross references.** — For mental health and developmental disabilities, see 43-1-1 to 43-1-25 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Alternative dispute resolution: sanctions for failure to participate in good faith in, or comply with agreement made in, mediation, 43 A.L.R.5th 545.

### LR3-703. Application.

A. **Referral by the court.** The court in its sole discretion, may refer any case to ADR at any time whether or not the parties agree.

B. **Cases generally not referred by court.** Cases in the following categories are generally not referred to ADR, but in special circumstances where no party seeks relief other than a money judgment not in excess of twenty-five thousand dollars (\$25,000), the court may refer the case to ADR:

student loan;

foreclosures without other issues;

replevin without other issues;

conservatorship;

guardianship;

adoption;

petitions pursuant to the Mental Health and Developmental Disabilities Code;

elections;

tax;

appeals, license suspension, revocation and restoration;

writ actions;

cases where an order of protection was filed pursuant to the Family Violence Protection Act.

[Approved, effective September 22, 1999.]

## ANNOTATIONS

**Cross references.** — For Family Violence Protection Act, see 40-13-1 to 40-13-7 NMSA 1978.

### **LR3-704. 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.

#### **B. Settlement conference procedures.**

(1) **Referral by the court.** The court may refer any case to settlement conference. If not previously referred, the court will refer cases to settlement facilitation approximately sixty (60) days before the pre-trial conference set in the Rule 1-016(B) NMRA scheduling order. For good cause shown, the court may delay or excuse participation in settlement conferences.

(2) **Submission by a party.** Any party, by and through the party's counsel, or any *pro se* party may at any time request referral of any case to a settlement conference. No special form shall be required to request referral of a case for settlement conference. The request for referral to settlement conference must be made in writing and must contain all information set forth in Appendix A, LR3-Form 7.10 NMRA. The request for settlement conference shall be directed to the Third Judicial District Court ADR coordinator and shall set forth and include the following:



- (a) case number and caption;
- (b) addresses and telephone numbers of all counsel and *pro se* parties;
- (c) whether or not other parties have agreed that a settlement conference is appropriate;
- (d) a brief list of the pending issues or brief description of the type of case sufficient to give the ADR coordinator some indication of the areas of expertise which might be helpful to a settlement facilitator.

Submissions for request for settlement conference may be unilateral and without notice to the other party.

(3) **Notification of settlement conference.** In all cases, whether referred by the court or submitted at the request of a party, the court will issue an order notifying the parties that a settlement conference is required and will do so in such a manner that the parties will not be able to determine whether the case was referred by the court or submitted by a party, (Appendix A, LR3-Form 7.12 NMRA). The court's order shall appoint a settlement facilitator and set a deadline for completion of the settlement conference. A copy of the court's order will be mailed or delivered to the facilitator and all parties entitled to notice. The order may be modified only by subsequent written court order.

(4) **Choice of settlement facilitator.** The parties by mutual agreement may request any licensed attorney or other qualified person to act as the settlement facilitator. No later than seventy-five (75) days before the pre-trial conference date set in the Rule 1-016(B) NMRA scheduling order, counsel shall notify the court's alternative dispute resolution coordinator if all parties have agreed upon a facilitator. If the parties do not timely notify the court's alternative dispute resolution coordinator of the selection of a facilitator, the coordinator shall select a facilitator from the court's list of attorneys who have agreed to participate. If the parties designate their own facilitator, the parties shall file with the clerk's office a Notice of Facilitator Selection (LR3-Form 7.11 NMRA). The parties shall notify the ADR coordinator immediately by an endorsed file copy of the Notice of Facilitator Selection. If the parties do not timely select a facilitator by mutual agreement the ADR coordinator, will choose the settlement facilitator for each case. If the parties have selected their own facilitator and have failed to timely notify the ADR coordinator of their selection of a facilitator and the court has appointed one from the court's list, the court may sanction the parties, including compensation to the court appointed facilitator, unless good cause is shown. The court will confirm the designation of the facilitator by the filing of a written order (LR3-Form 7-12 NMRA).

(5) **Payment to settlement facilitator.** Subject to approval by the New Mexico Supreme Court, the chief judge and the ADR coordinator may formulate a fee schedule for conducting the settlement conference. The fees shall be equally assessed to the parties and paid to the settlement facilitator as compensation for conducting the

settlement conference. Persons who are presently serving as district judges shall not receive any payment or compensation for acting as a settlement facilitator. In the event of undue hardship to a party, that party may petition the court for relief from the obligation for payment of settlement facilitation fees. Each party shall pay directly to the settlement facilitator the fee due from the party within thirty (30) days from the date of the settlement conference.

(6) **Time and place for settlement conference.** The parties and settlement facilitator shall agree on the time and place for the settlement conference, which may include weekends and evenings. Scheduling conflicts shall be resolved by the assigned judge.

(7) **Scheduling delays.** If the settlement facilitation cannot be scheduled within the time set by the court, the facilitator shall notify the court in writing of the reasons why a settlement facilitation cannot be scheduled and shall provide a copy of the notification to each party and to the ADR coordinator.

(8) **Attendance.** The attorneys who will be trying the case and each party or the party's representative having actual and realistic authority to compromise or settle the issues (including but not limited to insurance company representatives and guardians ad litem) shall attend the settlement conference in person and shall be present during the entire conference. Failure to attend the settlement conference or have present all necessary parties or their representatives with settlement authority will constitute grounds for the court to impose sanctions against the party who has failed to attend or participate in accordance with these rules.

(9) **Good faith participation.** Parties shall participate in good faith in settlement conferences. 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 and engaging in meaningful negotiations 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.

(10) **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 form set forth in the appendices to these rules (LR3-Form 7.13 NMRA). The completed form shall set forth all of the information necessary for an informed evaluation of the case. The settlement conference information sheets may be *ex parte* and shall be sent or delivered to the settlement facilitator in such a manner that the facilitator will have received the settlement conference information sheet at least seven (7) days before the settlement conference. The settlement conference information sheet shall not be filed with the court nor in any way be made a part of the court record.

(11) **Compromise negotiations.** In order to promote discussions during settlement facilitation, settlement conferences shall be considered to be "compromise

negotiations" under Rule 11-408 NMRA. This rule does not require the exclusion of any evidence otherwise discoverable merely because it was presented in the course of settlement negotiations.

(12) **Facilitator's outcome report and certification of facilitation compliance.** Within five (5) days after completion of the settlement conference, the settlement facilitator shall file with the clerk of the court a "certificate of facilitation compliance" substantially in the form set forth in the appendix to these rules (LR3-Form 7.14 NMRA). The settlement facilitator shall also complete and return to the ADR coordinator for the Third Judicial District Court a "facilitator's outcome report" using substantially the form set forth in the appendix to these rules (LR3-Form 7.15 NMRA). If the parties have been able to conclude a settlement during the settlement facilitation, then the party so designated by the settlement facilitator or by mutual agreement of the parties, shall prepare the appropriate pleadings necessary to effect and complete the settlement for approval by the other parties to the settlement and for submission to the court so that the appropriate order or judgment may be entered.

[Approved, effective September 22, 1999; as amended, effective August 6, 2004.]

## ANNOTATIONS

**The 2004 amendment**, effective August 6, 2004, in Paragraph B, deleted "in its sole discretion" following "court" in the first sentence and substituted "approximately sixty (60) days before the pretrial conference set in the" for "within thirty (30) days after the filing of the" in the second sentence of Subparagraph (1), substituted "LR3-Form 7.12 NMRA" for "LR3-Form 7.11" in the first sentence, "a" for "one or more" preceding "settlement" in the second sentence, and "the" for "each" in the third sentence of Subparagraph (3), rewrote Subparagraph (4), substituted "LR3-Form 7.13 NMRA" for "Appendix A, LR3-Form 7.12" in the first sentence of Subparagraph (10), and substituted "LR3-Form 7.14 NMRA" for "Appendix A, LR3-Form 7.13" in the first sentence and "LR3-Form 7.15 NMRA" for "Appendix A, LR3-Form 7.14" in the second sentence of Subparagraph (12).

### **LR3-705. Court-annexed arbitration; general provisions.**

A. **Application.** These rules apply to civil cases, whether jury or non-jury, except for cases set out in LR3-703. These rules do not apply to disputes where a law suit has not yet been filed and the parties stipulate and agree to submit the matter to arbitration or the parties are contractually bound to submit a matter to arbitration.

B. **Court hearings.** If a court hearing is required regarding any aspect of arbitration prior to referral or any matter during referral, the parties shall request an expedited hearing and notify the court ADR coordinator.

[Approved, effective September 22, 1999.]

## ANNOTATIONS

**Law reviews.** — For article, "Problems with Court-Annexed Mandatory Arbitration: Illustrations from the New Mexico Experience," see 32 N.M.L. Rev. 181 (2002).

### **LR3-706. Court-annexed arbitration; referral.**

**A. Types of cases for referral.** All cases, jury and non-jury, may be referred to arbitration in the discretion of the assigned judge where no party seeks relief other than a money judgment and no party seeks an amount in excess of twenty-five thousand dollars (\$25,000) from any party or combination of parties, exclusive of punitive damages interest, costs and attorneys' fees.

**B. Mandatory certification.** In all cases filed on or after the effective date of this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint or any other pleading, including any amended pleading, in which affirmative relief is requested, shall file with the clerk of the court as a pleading in that case and serve concurrently with the pleading for affirmative relief a separate certification indicating whether the party is or is not seeking relief other than a money judgment and whether the amount sought exceeds or does not exceed twenty-five thousand dollars (\$25,000), exclusive of punitive damages, interest, costs and attorney fees.

**C. Certification; referral order.** Any party desiring arbitration may request the court to refer the matter to arbitration or, alternatively, the court may on its own motion refer the matter to arbitration. If so determined by the assigned judge, the court will file an order referring the case to arbitration and mail or deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion may postpone filing a referral order if it appears from the court file that the case may be resolved upon a pending motion for judgment on the pleadings or other pending dispositive motion.

**D. Failure to file certification.** If a party fails to file a certification, the court after written notice may impose an appropriate sanction including, but not limited to dismissing the party's pleading without prejudice. The court in its discretion may enter such an order without hearing.

**E. Referral upon motion.** At any time after a case is at issue and notwithstanding any certifications filed, upon a party's motion or the court's own motion, after settlement facilitation, the court may enter an order referring the case to arbitration provided the court finds that the requirements of Paragraph A of this rule are met. The court in its discretion may enter such an order without hearing.

**F. Denial of referral.** Notwithstanding a finding that the requirements of Paragraph A of this rule have been met, at any time prior to referral, upon a party's or the court's own motion, the court for good cause may deny referral to arbitration. The court in its discretion may enter such an order without hearing.

[Approved, effective September 22, 1999; as amended, August 6, 2004.]

## ANNOTATIONS

**Bracketed material.** — The bracketed date in Paragraph B was inserted by the compiler.

**The 2004 amendment**, effective August 6, 2004, deleted the last two sentences in Paragraph B, and, in Paragraph C, deleted “review of” preceding “certification” in the paragraph heading, substituted the present first sentence for the former first sentence, and deleted the last sentence.

### **LR3-707. Court-annexed arbitration; permissive referral.**

Any case may be referred to arbitration where the parties stipulate to arbitration. If the parties do not agree to appointment of an arbitrator, the court may designate an arbitrator.

[Approved, effective September 22, 1999; as amended, effective October 13, 1999.]

### **LR3-708. Court-annexed arbitration; arbitrators.**

A. **Arbitrator pool.** The court will maintain a pool from which arbitrators will be appointed. The pool shall include active members of the State Bar of New Mexico who have been licensed to practice law for four (4) or more years and who are residents of or have an office in Dona Ana County and licensed attorneys who have practiced for less than four (4) years and who have completed a course in ADR approved by the court. Other attorneys licensed for four (4) or more years, including inactive attorneys, out-of-Dona Ana County attorneys and out-of-state attorneys, may be included in the pool upon their written request to the ADR coordinator. The chief judge of the judicial district for good cause may remove or excuse an attorney from the arbitrator pool either temporarily or permanently. Such removal or excusal may be upon the court's own motion or upon written request of the ADR coordinator. The attorney shall be provided an opportunity to respond after receiving notice of the intent to remove the attorney and the reasons for considering removal. The court will periodically review the pool of arbitrators for completeness and accuracy, and may require any member of the State Bar of New Mexico to submit information necessary for this purpose. The court will provide written notice to attorneys as they are added to the pool either by letter or notice published in the *Bar Bulletin*.

B. **Training.** The court may require any attorney who is part of the arbitrator pool to attend arbitration training as a condition of remaining in the pool.

C. **Appointment to case.** After a case is referred to arbitration, an attorney shall be appointed as arbitrator by the entry of an order of appointment. The arbitrator may be selected by random selection, court selection based upon experience or expertise or

stipulation of the parties. If the court makes the appointment either upon random selection or court selection, the court will prepare and enter an order appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled to notice. If the parties have stipulated to the appointment of an arbitrator the parties shall submit the proposed order of appointment to the court and shall provide a copy to the ADR coordinator.

(1) **Random selection.**

(a) **Notice of choices.** Within ten (10) days after a case is referred to arbitration, the court mediation or ADR coordinator will mail to all parties a notice listing three attorneys as possible choices for arbitrator. The three attorneys shall be selected at random from the arbitrator pool except that none of the three may be employed by the same law firm as any of the other three or as any counsel in the case. The notice of choices shall not be filed with the clerk.

(b) **Peremptory strikes.** Within seven (7) days after the notice of choices is mailed, each party may peremptorily strike one attorney by written notice to the court mediation or ADR coordinator. A maximum of two strikes will be counted altogether; a maximum of one strike will be counted for each side, *e.g.*, all plaintiffs or defendants or third-party defendants; strikes will be counted in the order received. The first attorney remaining after strikes are counted shall be appointed. The period for making strikes shall not be extended. The notice of strikes shall not be filed with the clerk. Parties shall serve copies of the notice on all other parties.

(2) **Court selection.** The court in its sole discretion may select an arbitrator rather than provide the parties with a notice of choices.

(3) **Stipulation.** The parties may stipulate to the appointment of any licensed attorney and to the compensation to be paid, whether or not part of the pool and with any length of experience, by stipulated order submitted to the court within seven (7) days after the notice of choices is mailed, or within seven (7) days after a vacancy is created by order of excusal or otherwise. The stipulated order must be approved by all parties and by the proposed arbitrator. Approval of counsel and the proposed arbitrator may be telephonic; approval of parties *pro se* must be by signature.

(4) **Excusal; conflicts check.** Promptly upon appointment, the arbitrator shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties thereof. Upon discovery of a conflict of interest in hearing a case, an arbitrator shall file a motion for excusal. Upon a party's, the arbitrator's or the court's own motion, the court for good cause shown may order that the arbitrator be excused from appointment to the case. The court in its discretion may enter such an order without hearing.

(5) **Vacancy.** Vacancies caused by excusal or otherwise shall be filled by appointment of the first of the remaining three choices or, if none remains, by

appointment of an attorney selected by the court, or the parties may stipulate to a replacement as provided in Paragraph (C)(3) of this rule.

#### **D. Compensation.**

(1) **Assessment of fees.** The parties may be assessed a fee according to a schedule formulated by the ADR coordinator and the chief judge of the judicial district, which fee shall be paid to the arbitrator. Any compensation due to an arbitrator may be paid when the arbitrator files an award or the arbitration proceedings are otherwise concluded. An arbitrator who feels the fee is inadequate, given the complexity of the case and the time spent on the case, may apply to the court for additional compensation which the court may assess against the parties. A hearing on the request for additional compensation shall be open to the parties participating in the arbitration proceeding. Any arbitrator, appointed by reason of stipulation of the parties, who is receiving compensation at the arbitrator's usual hourly fee or an agreed upon fee shall not be entitled to any additional fee under this rule.

(2) **Inability to pay.** In the event of undue hardship to a party, that party may petition the court for relief.

(3) **Request for compensation.** The arbitrator shall submit a written request for compensation to the ADR coordinator within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a waiver of compensation.

(4) **Collection of arbitration fees.** The initial fee assessed according to the schedule formulated pursuant to Paragraph (D)(1) of this rule shall be paid to the arbitrator. If any additional fees are ordered by the court, they shall be due and payable within seven (7) days after entry of the court's order establishing the amount of the fee.

[Approved, effective September 22, 1999.]

### **LR3-709. Court-annexed arbitration; procedures during referral.**

#### **A. General.**

(1) **Court jurisdiction.** The assigned judge continues to have jurisdiction over a case during referral to arbitration. In general, however, the assigned judge should not hear any matters after an arbitrator is appointed except the judge shall hear the following:

motions to excuse the arbitrator;

motions to withdraw referral to arbitration;

motions for sanctions pursuant to LR3-709(A)(5);

motions for free process;

motions regarding attorney representation;

motions to add new parties;

motions to set aside default or any other judgment;

motions to compel settlement;

any post-judgment enforcement matter;

requests for settlement conference pursuant to Rule LR3-704.

After a case is referred to arbitration and an arbitrator is appointed, the court in its discretion may vacate any pending hearing which may be heard by the arbitrator, and may set hearings on matters needing immediate consideration.

(2) **Arbitrator jurisdiction powers, duties.** The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is excused or until fourteen (14) days after an award is filed or until the arbitration proceedings are otherwise concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator's decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider the efficient, cost-effective and informal resolution of the case as a factor in all the arbitrator's management of the case. The arbitrator may limit discovery whenever appropriate. The arbitrator may administer oaths. With the exception of contempt, the arbitrator may enter appropriate sanctions, including sanctions pursuant to Rules 1-016 and 1-030 NMRA and sanctions for failure to comply with any of Rule 1-037 or any other Supreme Court approved rule, the provisions of this rule or with any of the arbitrator's decisions. The arbitrator's jurisdiction, power and duties may not be delegated. The arbitrator must conduct the hearings and trial and sign the decisions and the award.

(3) **Supreme Court and local rules.** All Supreme Court approved rules including rules of civil procedure and rules of evidence and all local rules apply during referral to arbitration. The arbitrator may waive rules of evidence only upon agreement of the parties.

(4) **Good faith participation required; award.** All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter an award of default or dismissal against any party failing to participate when that fact is made to appear by affidavit or otherwise. Alternatively, the arbitrator may reflect the failure in the award. In any such award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider such certification when deciding



attorney fees, costs and interest on appeal or when considering whether to set aside the default.

(5) **120-day deadline; sanction.** Within one hundred twenty (120) days after the arbitrator is appointed, the arbitrator shall file an award unless the arbitration proceedings have otherwise been concluded. The parties shall ensure that such conclusion of the proceedings is documented in the court file by, for example, filing a dismissal, stipulated order or judgment. Upon motion by a party, on or the court's own motion, the court for good cause may extend the one hundred and twenty (120) day waiting period. The court in its discretion may enter such an order without hearing. If the party or the arbitrator fails to comply with this provision, the court after written notice may impose an appropriate sanction, including but not limited to requiring the arbitrator or party to pay a penalty into the third judicial district arbitration fund.

(6) **Filing papers.** Any motion or other pleading to be heard or otherwise considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any documents except for the certificate of service of the award. Upon motion by a party or on the court's own motion, the court may order that an inappropriately filed pleading be stricken. The court in its discretion may enter such an order without hearing. Failure to submit a motion to strike shall be deemed waiver of any prejudice caused by a pleading inappropriately filed.

(7) **Court file; review; copy.** The arbitrator may review the court file at any time during regular court hours. The court shall provide access for the arbitrator to make a copy of the file or portions of the file at no cost, provided the arbitrator presents to the clerk's office the order of appointment.

(8) **Summonses; subpoenas.** The clerk shall issue summonses and subpoenas in cases referred to arbitration in the same manner as with other civil cases. Such summonses and subpoenas shall be served and enforceable as provided by law.

(9) **Record of proceeding.** Any party to an arbitration proceeding, at the party's own expense, may make a record of testimony given at an arbitration proceeding in the manner provided by Rule 1-030 NMRA for use as allowed by the New Mexico Rules of Evidence. If a party elects to make a record of a witness's testimony, that party must have a record made of the witness's entire testimony given in the proceeding. A copy of the record may be obtained by any other party to the arbitration proceeding in the same manner that deposition copies are obtained. Costs associated with making the record or obtaining a copy may be recoverable.

(10) **Withdrawal of referral.** At any time after a case is referred to arbitration, upon a party's, the arbitrator's or the court's own motion, the court for good cause may order that the referral to arbitration be withdrawn and the case returned to the court's docket. The court in its discretion may enter such an order without hearing.

## **B. Hearings; trial.**

(1) **Place; date; time.** The arbitrator shall set an appropriate place, date and time for all hearings and trial. Hearings shall be set during regular business hours except upon agreement of the parties. The arbitrator may conduct hearings by telephone.

(2) **Notice.** The arbitrator shall provide twenty (20) days' written notice of trial. The arbitrator shall provide five (5) days' notice, in writing or by telephone, of all other hearings. Notice of trial or hearings may be waived by the parties.

(3) **Request for hearing.** Unless otherwise directed by the arbitrator, parties may request hearings informally, by letter or telephone, provided the requesting party notifies all other parties as well as the arbitrator. The arbitrator may decide motions and other preliminary matters on written submissions.

(4) **Statement of witnesses, exhibits.** No later than ten (10) days prior to trial, each party shall serve upon all other parties a statement listing all the exhibits and witnesses the party may use and briefly describing the matters about which each witness will be called to testify. The arbitrator may waive this provision.

(5) **Return of exhibits and depositions.** After an award is filed or the arbitration proceedings are otherwise concluded, the arbitrator shall return all exhibits and depositions to the submitting party.

C. **Evidentiary exceptions.** The following exceptions apply during referral to arbitration:

(1) **Depositions.** The arbitrator may hear testimony by deposition;

(2) **Documentary evidence.** The following documents, if relevant, shall be admitted in evidence without further proof provided a copy of said documents is served upon all parties no later than ten (10) days prior to the hearing or trial, unless written objection is served upon all parties within five (5) days after service of said copy:

(a) estimates and bills for services and products, if dated and itemized;

(b) reports of experts, if dated and signed;

(c) records and reports Rule 11-803 NMRA, Paragraphs F, H, I, K, L and N through R.

D. **Award.**

(1) **Final decision; scope.** The arbitrator's final decision shall be called an "award". The award shall clearly set forth the amount, if any, awarded to each party and address all pending claims, attorney fees, costs and interest as allowed by law, including any required award of costs pursuant to Rule 1-068 NMRA. The award may

be an award of default, dismissal, summary judgment or money damages and shall address all pending claims unless otherwise ordered by the court.

(2) **Amount.** The amount of the award shall be limited only by the evidence and shall not be limited by the circumstances under which the case was referred to arbitration, *e.g.*, a case referred pursuant to LR3-706 shall not be limited to an award of twenty-five thousand dollars (\$25,000). At any time before the award is filed, the parties may stipulate that the award be limited.

(3) **Filing.** Unless the parties agree otherwise, within ten (10) days after the last hearing, the arbitrator shall send a copy of the award to all parties entitled to notice, file a certificate of service of award with the court, and deliver the original award to the ADR coordinator. If an arbitrator fails to comply with this provision, the court after written notice may impose an appropriate sanction, including but not limited to requiring the arbitrator to pay a penalty into the third judicial district's arbitration fund.

(4) **Amended award.** Within ten (10) days after the certificate of service of award is filed, the arbitrator may submit an amended award. Copies shall be served on all parties entitled to notice, the original delivered to the ADR coordinator and a certificate of service of amended award shall be filed.

(5) **Binding award.** At any time before the award is served on the parties, the parties may file with the clerk a stipulation that the award will be binding and that the right to appeal the award is waived.

(6) **Judgment on award.** If no appeal is taken and the time for appeal has expired or the right to appeal has been waived or the appeal has been voluntarily dismissed, the court shall prepare and file a judgment or final order adopting the award as a judgment or final order of the court, and mail or deliver endorsed copies to all parties entitled to notice. Such judgment or final order shall be enforceable and binding as any other judgment or final order.

[Approved, effective September 22, 1999.]

### **LR3-710. Court-annexed arbitration; appeal.**

A. **Right to appeal.** Any party of record at the time the arbitrator's certificate of service of award is filed may appeal the award. A party may appeal an award of default, including an award of default entered pursuant to Rule LR3-709 (A) (4) of these rules by showing good cause for setting aside the default pursuant to Rule 1-055(C) NMRA. If no appeal is taken and a judgment by default is entered, the judgment may be set aside in accordance with Rule 1-060 NMRA.

B. **Procedure to appeal.**

(1) **Notice of appeal.** To exercise the right to appeal, a party must file a "notice of appeal from arbitration" with the clerk within twenty-one (21) days after the certificate of award is filed. The period for filing the notice shall not be extended. A copy of the notice of appeal shall be served on all parties entitled to notice. Cross-appeals are not required.

(2) **Voluntary dismissal.** At any time after filing a notice of appeal and before trial before an assigned judge, a party may withdraw the appeal by filing a notice of voluntary appeal dismissal. A copy of the notice shall be served on all parties.

### C. Procedures on appeal.

(1) **Docket status.** After a notice of appeal is filed, the case shall be returned to the same status on the assigned judge's docket that it had prior to referral to arbitration. Requests for trial must be submitted as required by local rule. If a demand for jury trial has been filed the appeal shall be tried *de novo* by a jury.

(2) **De novo proceeding.** All appeals shall be in the form of de novo proceedings before the assigned judge. No reference shall be made to any of the arbitrator's decisions, including the award. Neither the arbitrator nor the ADR coordinator shall be permitted to testify about the arbitration proceedings.

(3) **Discovery.** Any discovery obtained while the case was referred to arbitration may be used in the *de novo* proceedings.

D. **Award of fees, costs and interest against appellant.** The office of the ADR coordinator shall file the arbitration award after court makes a decision on the merits. If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator's award, the court shall order that the appellant pay all opposing parties' expenses incurred during the appeal, including but not limited to reasonable attorney fees, costs and pre-judgment interest dating from the arbitration award. The court for good cause shown may waive this provision. If the court waives the provisions of this paragraph, the court shall state the basis for its good cause finding on the record. In its determination of an award pursuant to this paragraph, the court shall consider the arbitrator's certification, if any is included as part of the award pursuant to LR3-709(A)(4) of these rules, that a party or parties failed to participate in the arbitration proceedings in good faith.

[Approved, effective September 22, 1999.]

## VIII. Law Library

### LR3-801. Withdrawn.

### ANNOTATIONS

**Cross references.** — For rule governing library hours in absence of local district court rule, see Rule 23-108 NMRA.

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to library hours, is withdrawn effective August 6, 2004.

### **LR3-802. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to library use, is withdrawn effective August 6, 2004.

### **LR3-803. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to library access, is withdrawn effective August 6, 2004.

### **LR3-804. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to removal of library books, is withdrawn effective August 6, 2004.

### **LR3-805. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to reshelving books and general maintenance of library, is withdrawn effective August 6, 2004.

### **LR3-806. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a Supreme Court order dated August 6, 2004, this rule, relating to photocopiers, is withdrawn effective August 6, 2004.

## **IX. Miscellaneous**

## **LR3-901. Depositing of wills with district court administrator.**

Anyone wishing to deposit a will with the district court administrator pursuant to Section 45-2-901 NMSA 1978, shall furnish the court administrator with a signed statement of the testator(ix) requesting such depositing, which statement shall include the testator's(ix's) telephone number and address, and the name and address of a close relative, and shall set forth the names and addresses of persons who have the right to receive the will. (Appendix A, LR3-Form 9.10). If a statement including all of such information is not furnished, the court administrator will not accept such will.

## **LR3-902. Approval and publication of local rules.**

A. These rules shall be promulgated and published so as to comply with the requirements of Rules 1-083 and 5-102 NMRA.

B. Copies of proposed local rules and amendments thereto, shall, prior to promulgation, be submitted to the Supreme Court of New Mexico and to the chair of the Supreme Court's rules of civil and criminal procedure committees for review.

C. All local rules shall be filed with the clerk of the Supreme Court of New Mexico and published in the same manner as rules approved by the Supreme Court.

D. All forms used in this district shall be substantially in the form approved by the Supreme Court of New Mexico.

E. In order to allow for inclusion of these local rules in the New Mexico Statutes, a hard copy and an electronic copy of these rules and any amendments thereto shall be furnished to the Supreme Court in an acceptable format.

## **Appendix A — Forms**

### **I. General Matters — General Powers and Duties of Court**

#### **LR3-Form 1.10. Application for free process.**

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA  
STATE OF NEW MEXICO

)  
)

Petitioner, )  
) No.  
vs. )  
) Judge  
) Respondent. )

**APPLICATION FOR FREE PROCESS**

COMES NOW, the Petitioner, by and through (his)(her) attorney(s), and respectfully moves the court for an order granting said petitioner free process in the above-captioned cause. In support of said application, petitioner annexes an Affidavit of (his)(her) financial status to this motion. Furthermore, the attorney for the petitioner hereby certifies and states as set forth hereinafter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Law Firm's Name)  
By  
(Attorney involved)  
(Address)  
(Telephone number)  
Attorneys for petitioner

**ATTORNEY ' S AFFIDAVIT**

STATE OF NEW MEXICO )  
) ss  
COUNTY OF DONA ANA )

(Attorney's Name), attorney at law, being first duly sworn, deposes upon (his)(her) oath and states as follows:

1. I am counsel for the petitioner in regard to the petition for dissolution of marriage that has been filed in connection with petitioner's affidavit in forma pauperis.
2. I have not received any fee from the petitioner, nor do I expect that (s)he will be able to pay any fee to me based upon the representations that are made under oath by (him)(her) in (his)(her) affidavit. The undersigned further states that (s)he is satisfied as to the truth of the allegations contained in the petitioner's affidavit.
3. I represent to the court that in the event that any money is paid to me by the petitioner or on (his)(her) account for my services rendered on (his)(her) behalf, I shall

first deduct the costs which have been waived on behalf of the petitioner and pay them to the clerk of (the)(this) court.

4. I am satisfied that my client has truthfully represented to the court (his)(her) present financial status, and that (s)he is unable to afford the costs of filing this cause of action and should be awarded free process by the court.

5. If necessary, my client and I will appear before the court for a hearing to inquire into these matters prior to the allowance of free process.

FURTHER AFFIANT SAYETH NAUGHT.

(Attorney's Name)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

Notary Public

My Commission Expires:

\_\_\_\_\_

**LR3-Form 1.11. Financial affidavit application to proceed in forma pauperis.**

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA  
STATE OF NEW MEXICO

	)	
	)	
Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
Respondent.	)	

**FINANCIAL AFFIDAVIT APPLICATION TO PROCEED  
IN FORMA PAUPERIS**



I, \_\_\_\_\_, make under oath the following statement regarding my financial, marital and employment status, and since I am unable to prepay fees and costs in the above-captioned case, make application to proceed in accordance with Local Rule \_\_\_\_\_, Third Judicial District Local Court Rules.

**A. Background and Residence**

1. Full name:
2. Age: \_\_\_\_\_ Sex:
3. Present address:
4. How long at this address?  
  
Phone No.
5. Married \_\_\_\_\_ Single  
Divorced \_\_\_\_\_ Separated
6. Number of dependents:
7. Ages of children living with you:
8. List name and relationship of other dependents living with you:
  
9. List any dependents in items 7 and 8 depending on you for your support:

**B. Employment and Income**

1. Are you employed? \_\_\_\_\_ Are you self-employed? \_\_\_\_\_
2. Name and address of employer:

3. Position:

\_\_\_\_\_ Salary per month:

4. If self-employed, nature of business:

5. Income previous month from self-employment: \$\_\_\_\_\_

6. If unemployed, how long since last job or self-employment?

7. Any other income such as disability pay, workman's compensation, social security, pension, interest, note and loan repayments, dividends, trust funds and/or unemployment compensation?

8. If so, indicate the source and amount per month:

9. Total monthly net income:

### **C. Assets**

1. Do you own any real estate? Yes [ ] No [ ]

a. Description

b. Location

c. Estimated present value

d. Estimate outstanding mortgages or contracts on property

e. Payments per month

2. Do you own any automobiles? Yes [ ] No [ ]
- a. Make \_\_\_\_\_ Model \_\_\_\_\_
- Year \_\_\_\_\_
- b. Present Value \_\_\_\_\_ Total amount owed \_\_\_\_\_
- c. Monthly payments \_\_\_\_\_
3. Do you have any stocks or bonds? Yes [ ] No [ ]
- a. Describe \_\_\_\_\_
- b. Present Value \_\_\_\_\_
4. Do you have any cash in the bank? Yes [ ] No [ ]
- a. If so, indicate amount \_\_\_\_\_
5. Do you have any cash in a savings and loan association? Yes [ ] No [ ]
6. Do you have any other assets not listed above excluding household furnishings and clothing?
- Yes [ ] No [ ]
- a. If so, describe and give value \_\_\_\_\_

**D. Debts and Other Obligations**

1. Rent \_\_\_\_\_ per month.
2. Utilities \_\_\_\_\_ per month.
3. Creditors:

List	Total Due	Monthly Payment
_____	_____	
_____	_____	
_____	_____	
_____	_____	

4. Total monthly payments: \$

E. I have no information regarding my spouse's income and/or my spouse lives out of state.

OR

I have the following information regarding my spouse:

1. Address

2. Employer's address

3. Income \_\_\_\_\_ monthly/weekly/biweekly

4. Resource:

Cash (savings, etc.)

Social Security

Unemployment compensation

Other income

Describe

5. Debts:

Mortgage/rent

Utilities

Other creditors

I do/do not have access to my spouses resources or income.

\_\_\_\_\_  
Petitioner

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

**LR3-Form 1.12. Order for free process.**

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA  
STATE OF NEW MEXICO

	)	
	)	
Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
	)	
	)	
Respondent.	)	

**ORDER FOR FREE PROCESS**

THIS MATTER coming on before the court upon petitioner's application for free process, said application being supported by affidavit(s), and the court being well advised in the premises:

IT IS HEREBY ORDERED that petitioner have any and all process of this court free of cost in the above-captioned proceeding.

District Judge

Prepared and Submitted:

(Law Firm's Name)

By \_\_\_\_\_

(Attorney Involved)

(Address)

(Telephone number)

Attorneys for petitioner

## II. Civil Matters — Pleading and Procedure

### LR3-Form 2.10. Local rule LR3-208 consent to service.

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA  
STATE OF NEW MEXICO

#### LOCAL RULE 3-208 CONSENT TO SERVICE

I, the undersigned, an attorney maintaining an office in Las Cruces, New Mexico, understand that in accordance with LR3-208, Third Judicial District Court, I may have an appropriate box or other place designated in the district court administrator's office of such district where copies of notices and other pleadings will be placed by the court personnel, thus obviating the necessity of making arrangements to reimburse the court administrator's office for the cost of mailing.

In accordance with said local rule, I do hereby consent to service by court personnel of notices and other pleadings by placement of such in said box or other appropriate place designated in the district court administrator's office for such purpose in connection with any case or proceeding in which I may be a counsel of record.

Any such service shall be considered effective as of the date stamped thereon, which shall be the date that such is placed in said box or other place designated in the district court administrator's office for such purpose.

This consent shall be effective until specifically revoked in writing delivered to the District Court Administrator, Third Judicial District Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Attorney's Name)

### LR3-Form 2.11. Certificate as to state of the record and non-appearance.

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DONA ANA  
STATE OF NEW MEXICO

)  
)

Plaintiff/Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
Respondent.	)	

**CERTIFICATE AS TO THE STATE OF THE RECORD AND NON-APPEARANCE**

I, the undersigned, Clerk of the District Court of the Third Judicial District of the State of New Mexico, within and for the County of Dona Ana, do hereby certify that a complaint in the above-entitled cause was filed in my office on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; that process was issued on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; that it appears from the return made by \_\_\_\_\_ of \_\_\_\_\_ County, that the process was served on said defendant(s) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

(type of service)

I further certify that no appearance for the said defendant(s) has been filed in my office or of record.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

M.C. TRIVIZ  
Clerk of the District Court

[Seal]

By  
Deputy

**LR3-Form 2.12. Joint scheduling report stipulating to Track A.**

STATE OF NEW MEXICO

COUNTY OF DONA ANA

THIRD JUDICIAL DISTRICT COURT

\_\_\_\_\_, Plaintiff,  
No. CV-

v.

\_\_\_\_\_, Judge:  
\_\_\_\_\_, Defendant

**JOINT SCHEDULING REPORT STIPULATING TO TRACK A**

Come now all the parties to this case, (by their counsel of record) and stipulate as follows:

1. The court has subject matter and personal jurisdiction, and venue is proper.
2. This case is appropriate for assignment to Track A.
3. The parties do not intend to amend the pleadings or file dispositive motions.
4. All parties will be ready for trial by \_\_\_\_\_ (*no more than six (6) months from filing of complaint*).
5. Witness lists will be exchanged and filed forty-five (45) days before trial.
6. Discovery limited to interrogatories, requests for production and admission and no more than two depositions per party.
7. All parties and counsel will either: (a) select a facilitator by agreement of the parties or (b) request the court's ADR coordinator to select a facilitator and will engage in a settlement conference within ninety (90) days from the date of the filing of the complaint. The parties may move for enlargement of time for the settlement conference for good cause shown. The parties shall share the facilitator's fee, if any, equally.
8. Exhibits: exchanged at least fifteen (15) days before the trial.

This (jury \_\_\_\_\_ 6 \_\_\_\_\_ 12 nonjury \_\_\_\_\_) matter will take \_\_\_\_\_ hours to try.

9. Conflicting court hearings (or other conflicts which show good cause for not setting trial) for two (2) months following the date the matter is ready for trial:

10. Other

SUBMITTED BY:

Name of party:

Attorney:

Address:



Telephone No.  
Name of party:  
Attorney:  
Address:

Telephone No.

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a Supreme Court order dated October 24, 2000, this form is approved for three years, effective October 24, 2000 until October 24, 2003. By a Spreme Court order dated October 23, 2003, the expiration date of this form was extended from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this form.

**LR3-Form 2.13. ( \_\_\_\_\_ 's) (joint) scheduling report.**

STATE OF NEW MEXICO

COUNTY OF DONA ANA

THIRD JUDICIAL DISTRICT COURT

No. CV-

Judge:

\_\_\_\_\_, Plaintiff,

v.

\_\_\_\_\_, Defendant

( \_\_\_\_\_ 'S) (JOINT) SCHEDULING REPORT

1. This case should be assigned to Track \_\_\_\_\_.

2. Jurisdiction and Venue: \_\_\_\_\_ Stipulated;

\_\_\_\_\_ Disputed; why:

\_\_\_\_\_.

3. \_\_\_\_\_ Nonjury; \_\_\_\_\_ 6-person jury; \_\_\_\_\_ 12-person jury.

4. Significant legal issues, if any:

5. Trial witnesses presently known (defendant's, plaintiff's, etc.): .

State expert type: .

6. Settlement:

\_\_\_\_\_ [I] [We] have sufficient information to evaluate the case.

\_\_\_\_\_ [I] [We] have provided sufficient information for opposing parties to evaluate the case.

\_\_\_\_\_ [I] [We] need the following information from \_\_\_\_\_ to evaluate the case:

\_\_\_\_\_ [I] [We] need the following discovery to obtain information sufficient to evaluate the case: \_\_\_\_\_.  
Explain why such information cannot be obtained informally without formal discovery:

\_\_\_\_\_ [I] [We] have scheduled a settlement conference on \_\_\_\_\_, 20\_\_\_\_ with \_\_\_\_\_, (*facilitator*) or have requested the court's ADR coordinator to refer to facilitation.

**Or**

\_\_\_\_\_ [I] [We] request that this not be referred to facilitation because: .

The possibility of settlement is \_\_\_\_\_ good, \_\_\_\_\_ fair, \_\_\_\_\_ poor.

7. Discovery:

[I] [We] estimate it will take \_\_\_\_\_ months to complete discovery. (*Attach discovery plan if stipulated, or request for setting a discovery conference if wanted.*) If any party requests a discovery conference, answer the following:

The party submitting this scheduling report intends to do the following discovery: \_\_\_\_\_ . (*If this is a joint scheduling report, each party shall answer this question.*)

[Plaintiff] [Defendant] intends to do the following discovery:

8. [I] [We] estimate that trial will take \_\_\_\_\_ court days to try.

9. Dates counsel will not be available for trial due to the following conflicting court settings (*beginning with the date immediately following the time you estimate discovery will be completed*): .

10. Stipulations: .

11. Other: .

SUBMITTED BY:

Name of party:

Attorney:

Address:

Telephone No.

Name of party:

Attorney:

Address:

Telephone No.

#### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a Supreme Court order dated October 24, 2000, this form is approved for three years, effective October 24, 2000 until October 24, 2003. By a Supreme Court order dated October 23, 2003, the expiration date of this form was extended from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this form.

**LR3-Form 2.14. Delay in putting the case at issue.**

STATE OF NEW MEXICO

COUNTY OF DONA ANA

THIRD JUDICIAL DISTRICT COURT

No. CV-

Judge:

\_\_\_\_\_, Plaintiff,

v.

\_\_\_\_\_, Defendant

**DELAY IN PUTTING THE CASE AT ISSUE**

COMES NOW \_\_\_\_\_, and advises the court that the following parties against whom this party is seeking relief have not filed a responsive pleading in this case:

The reasons are as follows:

1. Failed to serve because:

\_\_\_\_\_ cannot locate, despite making the following diligent efforts:

\_\_\_\_\_ have located but cannot serve for the following reasons:

\_\_\_\_\_ other \_\_\_\_\_  
(specify problem and efforts to solve).

Service will be completed by \_\_\_\_\_ (date).

2. (*Defendant, Third-party defendant, etc.*) served on \_\_\_\_\_, 20\_\_\_\_, but no responsive pleading filed because:

[I] [We] expect a responsive pleading to be filed by \_\_\_\_\_ (*date*).

SUBMITTED BY:

Name of party:

Attorney:

Address:

Telephone No.

Name of party:

Attorney:

Address:

Telephone No.

#### CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

#### ANNOTATIONS

**Effective dates.** — Pursuant to a Supreme Court order dated October 24, 2000, this form is approved for three years, effective October 24, 2000 until October 24, 2003. By a Supreme Court order dated October 23, 2003, the expiration date of this form was extended from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this form.

**LR3-Form 2.15. Order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT COURT

No. CV-

\_\_\_\_\_, Plaintiff,

v.

\_\_\_\_\_, Defendant

**ORDER REQUIRING SCHEDULING REPORTS AND  
A DISCOVERY PLAN AND LIMITING STIPULATIONS  
TO ENLARGE TIME FOR RESPONSIVE PLEADINGS**

IT IS ORDERED:

A. Plaintiff shall serve a copy of this order on each defendant with the summons and complaint and file a certificate of such service. Parties other than plaintiffs who assert claims against others who have not been served with this order shall serve a copy of this order on those against whom they assert claims with the pleading asserting such claims and shall file a certificate of such service.

B. Sixty (60) days after the complaint is filed, parties of record shall file a scheduling report with copies to opposing parties and the assigned judge. Parties shall confer and are encouraged to file a Joint Scheduling Report, LR3-Form 2.12 NMRA for Track A or LR3-Form 2.13 for Tracks B and C, (*See Appendix to these local rules for all forms*) or, if they cannot agree, file an individual Scheduling Report, LR3-Form 2.13 NMRA.

C. Any party who enters the case more than sixty (60) days after the filing of the complaint shall file a scheduling report within ten (10) days.

D. If all parties are not of record within sixty (60) days of filing the initial pleading, the party making claims against the absent parties (*Plaintiff for Defendants, Third-Party Plaintiffs for Third-Party Defendants, etc.*) shall, within five (5) business days after the 60th day, file and serve parties of record and deliver to the assigned judge, a written explanation following LR3-Form 2.14 NMRA, "Delay in Putting the Matter at Issue".

E. Counsel or parties who do not have attorneys may not stipulate to an enlargement of time greater than fourteen (14) days for the filing of a responsive pleading without a motion and order. The motion shall state with particularity the reason an enlargement is in the best interests of the parties. A copy of the motion and stipulation shall be delivered to all parties as well as counsel. The enlargement requested shall be for a specified time.

F. When all parties have been joined and the case is at issue, the parties shall immediately notify in writing the assigned judge and the alternative dispute resolution coordinator.

G. If appropriate, the court will refer this matter to settlement facilitation under Part VII of the Local Rules of the Third Judicial District Court.

H. For cases subject to arbitration under Local Rule LR3-706 NMRA, the parties may file a written stipulation to waive facilitation with a copy to the ADR coordinator and the assigned judge within sixty (60) days after the complaint has been filed or ten (10) days after all parties are joined if LR3-Form 2.14 NMRA has been filed. If the parties cannot stipulate, the party seeking waiver of facilitation may file a motion for relief from facilitation.

I. Within seventy-five (75) days from the date the Complaint was filed, or fifteen (15) days after the case is at issue if LR3-Form 2.14 NMRA has been filed, the parties shall either:

- (1) stipulate to a discovery plan and file the stipulation with the court, or
- (2) request a hearing to establish a discovery plan pursuant to Paragraph F of Rule 1-016 NMRA.
- (3) In the absence of a stipulated discovery plan or a timely request from a party for a hearing to establish a discovery plan, the following discovery plan shall go into effect:

Within one hundred (100) days after the complaint was filed or fifteen (15) days after a party has entered the suit, whichever is the later date, each party shall provide to all other parties:

- a. The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues raised by the pleadings, identifying the subjects of the information;
- b. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues raised by the pleadings;
- c. A computation of any category of damages claimed by the disclosing party, providing copies or making available for inspection and copying the documents or other evidentiary materials and medical records and opinions, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;

d. For inspection and copying, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

e. If the medical condition of a party is at issue, such party shall give a medical release authorization to opposing parties. The parties shall confer regarding the nature and extent of the release and stipulate if possible. If the parties cannot agree, each party shall file a memorandum with a proposed medical release authorization advocating that party's proposed form to the court. A copy of the memorandum and proposed form shall be delivered to the assigned judge. Rule 1-007.1 NMRA shall apply.

J. Pursuant to Rule 1-026(E) NMRA, parties shall seasonably supplement discovery required in Subparagraphs (3)(a) through (e) of Paragraph I of this order.

District Judge

**USE NOTE**

*This form may be modified by the court, as appropriate, in an individual case.*

[Effective October 24, 2000 until October 24, 2004; approved, effective August 6, 2004.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a Supreme Court order dated October 24, 2000, this form is approved for three years, effective October 24, 2000 until October 24, 2003. By a Supreme Court order dated October 23, 2003, the expiration date of this form was extended from October 24, 2003 to October 24, 2004. On August 6, 2004, the Supreme Court removed the termination date of this form.

### **III. Domestic Relations Matters**

Mediation

#### **LR3-Form 3.10. Attorney's certificate - domestic relations.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO



	)	
	)	
Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
	)	
	)	
Respondent.	)	

**ATTORNEY'S CERTIFICATE – DOMESTIC RELATIONS**

I, \_\_\_\_\_, attorney for \_\_\_\_\_, certify that pursuant to Rules 1-011 and 1-099 NMRA, that this action is:

**No fee required if:**

- 1.  Pending or filed within 60 [90] days of the disposition.
- 2.  Requesting action which may be performed by the clerk of the court or seeking to correct a mistake in the Judgment or record filed; or a motion accompanied by a signed stipulated order disposing of issue(s).
- 3.  Seeking only enforcement of a child support order.

**One Hundred Two Dollars (\$102.00) Fee required if:**

- 1.  Seeking post-decree relief in addition to or other than enforcement of a prior child support order.
- 2.  Requesting judicial action 60 days or more after final disposition of the case and not within the categories described in Rule 1-099 NMRA.

Attorney's Signature

Attorney's Name

Address

Telephone Number:

**IF THE REQUIRED FEE IS NOT PAID, THE CASE WILL BE CLOSED WITHOUT DISPOSITION OF PENDING MATTERS UNTIL PAYMENT IS MADE.**

FOR CLERK'S USE ONLY

Fees Paid:  Yes  No

Check  Cash

Clerk: \_\_\_\_\_

**ANNOTATIONS**

**Compiler's notes.** — See Rule 1-099 NMRA which provides that no fee is required if paper is filed within 90 days after disposition.

**LR3-Form 3.20. Certificate of child custody/visitation issues.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO

	)	
	)	
Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
	)	
Respondent.	)	

**CERTIFICATE OF CHILD CUSTODY/VISITATION ISSUES**

The undersigned hereby certifies that child custody/visitation issues

are

are not

involved in this matter.

If such issues are involved, complete the following:

Minor Children Involved:

Names	Date of Birth
_____	
_____	
_____	
_____	

Issues Involved: (State type of issues involved (e.g., custody, visitation, etc.), and briefly describe position of each party in regard thereto.)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attorney's or Party Pro Se Signature

Name

Address

Telephone Number:

**LR3-Form 3.21. Final mediation report.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO

Petitioner,

vs.

)  
)  
)  
)  
)  
)  
)

No. \_\_\_\_\_

Judge \_\_\_\_\_

Respondent.

)  
)  
)  
)

**FINAL MEDIATION REPORT**

The above-referenced case has been seen for mediation by the court clinic, with the following result regarding the issues of custody and/or visitation:

- Case Closed.
  - Case Closed - Referred to DHS.
  - Case Closed - Reconciled/Reached agreement.
  - Case Closed - Referred for private mediation/custody evaluation.
  - Inappropriate for Mediation - Referred for advisory consultation.
  - Full Agreement: Counsel should submit a stipulated order reflecting agreements within ten (10) working days.
  - Temporary Agreement: Clients are to return on \_\_\_\_\_, \_\_\_\_\_.
  - No Agreement: Clients will be scheduled for an advisory consultation appointment with the court clinic, once the following fees are paid, for the limited purpose of obtaining information for and providing recommendations to the court and the attorneys involved. If you wish to seek a private evaluation, please notify the court and the court clinic within ten (10) business days of the date of this report.
  - Partial Agreement: Clients will be scheduled for an advisory consultation appointment with the court clinic, once the following fees are paid, and such consultation will be limited to areas of non-agreement. Points of agreement may be submitted as a stipulated order.
  - Advisory Consultation Fees due from:  
Petitioner - \$\_\_\_\_\_ Respondent - \$\_\_\_\_\_
  - Status Report: A status report has been submitted.
- Date: \_\_\_\_\_, \_\_\_\_\_.

Court Clinic/Mediator

Judge:

Attorney for Petitioner:

Attorney for Respondent:

Financial Forms

**LR3-Form 3.30. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

**LR3-Form 3.31. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

**LR3-Form 3.40. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

**LR3-Form 3.50. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-Form 3.51. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-Form 3.52. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-Form 3.53. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR3-Form 3.54. Deleted.**

#### **ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

**LR3-Form 3.55. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

**LR3-Form 3.56. Deleted.**

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

Parenting Plan

**LR3-Form 3.60. Parenting plan requirements.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO

	)	
	)	
Petitioner,	)	
	)	No. _____
vs.	)	
	)	Judge _____
	)	
	)	
Respondent.	)	

**PARENTING PLAN DEVELOPED AND AGREED TO BY**

\_\_\_\_\_ and  
\_\_\_\_\_

**FOR THEIR CHILDREN**

1. **Child(ren) Involved:** Our Child(ren)'s name(s) and date(s) of birth is/are as follows:

Name	Date of Birth
_____	
_____	
_____	
_____	

2. **Primary Physical Custody:** We have agreed that the child(ren) shall be in the primary physical custody of the [mother] [father] (hereinafter sometimes referred to as the custodial parent) with the [father] [mother] (hereinafter sometimes referred to as the non-custodial parent) having periods of responsibility as set forth herein.

3. **Legal Custody:** The parties shall have joint custody of the child(ren), with significant periods of responsibility allocated to each parent in accordance with the terms of this Parenting Plan and with authority and responsibility for making major decisions in the child(ren)'s best interests as set out herein. We agree to share joint legal custody of our child(ren); that is, neither of us will unilaterally make a major change affecting our child(ren) in the areas of religion, residence, non-emergency medical or dental care, education or major recreational activities. Before such a decision is made, we will discuss the matter, and both of us must agree. If we cannot agree, our disagreement will be resolved by the methods chosen in Paragraph 17, below. Until agreement or resolution, no change will be made. This agreement shall set forth the authority and responsibility for making major decisions in the child(ren)'s best interest as set out herein. Except as otherwise specified herein, we shall have joint responsibility and authority for the major decisions affecting the child(ren)'s health, medical and dental treatment, education, religious activities, recreational activities and residence. Neither of us shall implement a decision which constitutes a major change in any of the child(ren)'s lives with respect to these designated areas without consultation with the other parent.

4. **Contact With Non-Custodial Parent:** The custodial parent shall encourage and support frequent contact between the non-custodial parent and the child(ren). When a parent does not have the child(ren) in their care, such parent is entitled to keep in touch with the child(ren). Both parents have the right to contact the child(ren) by mail as frequently as they desire without interference or supervision of correspondence by the other parent. Both parents shall also be entitled to telephone the child(ren) at any and all reasonable times, at their own expense, from 8:00 a.m. until 8:00 p.m. or the time of the child(ren)'s regularly scheduled bedtime hour. Such telephone conversations shall not be monitored or supervised by the other parent.

5. **The Child(ren)'s Wishes:** We agree that our child(ren)'s wishes should and must be considered when we make decisions about the child(ren). How much weight



we will give a child's wishes will depend on the age of the child and the nature of the decision. We will not ask a child to choose between us, and we will not burden a child with any decision that is inappropriate for his/her age and development.

**6. General Care:**

a. The child(ren) shall generally be in [mother]'s [father]'s care. (S)He will ensure the child(ren) have adequate food, clothing, shelter, medical care and attend school regularly. The non-custodial parent shall ensure that the child(ren) have adequate food, clothing, shelter, medical care and attend school during visitation periods.

b. Each parent shall be responsible for the day-to-day care and control of the child(ren) during those periods in which the child(ren) are physically within such parent's household.

c. The custodial parent shall arrange for day care for the child(ren) during her/his working hours with a private caretaker or licensed day care center. No relative shall supervise the child(ren)'s care on a regular day-to-day basis.

**7. Time Sharing:** We will share time with the child(ren) as we agree from time to time. In the event we cannot agree, the schedule will be as follows: (Note: It is often preferable to have a flexible arrangement, as you agree on a day-by-day basis. You must, however, have a specific plan which is to be followed if or when a disagreement occurs.)

a. **Weekdays:**

b. **Weekends:**

Weekends begin at \_\_\_\_\_ (a.m.) (p.m.) (Friday) (Saturday) and end at \_\_\_\_\_ (a.m.) (p.m.) (Sunday)(Monday), unless Monday is a legal holiday, in which case the weekend ends at \_\_\_\_\_ (a.m.) (p.m.) (Monday) (Tuesday).

(Optional): We have attached a calendar for the year \_\_\_\_\_, to this plan, and have marked in red the days the child(ren) will spend with mother and blue the days the

child(ren) will spend with father. "Days" begin at \_\_\_\_\_ (a.m.)(p.m.) and end at \_\_\_\_\_ .m.

c. **Vacations/Summer:** Each parent will have uninterrupted time with the child(ren) for \_\_\_\_\_ weeks each (year) (summer), if that parent gives the other at least \_\_\_\_\_ days notice.

(Option for young children): Until the (youngest) child reaches age \_\_\_\_\_, uninterrupted vacation/summer time with each parent is limited to \_\_\_\_\_ week(s). Between the ages of \_\_\_\_\_ and \_\_\_\_\_, that time shall be \_\_\_\_\_ weeks; after reaching age \_\_\_\_\_, summer/vacation time will be \_\_\_\_\_ weeks.

d. **Holidays:** Regardless of the day of the week, the child(ren) will spend:

(1) Mother's Day and mother's birthday with mother;

(2) Father's Day and father's birthday with father;

(3) Child(ren)'s birthday with \_\_\_\_\_ in even-numbered years and with \_\_\_\_\_ in odd-numbered years.

(4) The child(ren) will spend Thanksgiving from \_\_\_\_\_ until \_\_\_\_\_ with \_\_\_\_\_ in even-numbered years and with \_\_\_\_\_ in odd-numbered years.

(5) The child(ren) will spend the school-scheduled Spring Break with \_\_\_\_\_ in even-numbered years and with \_\_\_\_\_ in odd-numbered years.

(6) The child(ren) will spend the first half of the Christmas school holiday with \_\_\_\_\_ in even-numbered years and with \_\_\_\_\_ in odd-numbered years while the last half of the Christmas school holiday will be spent the reverse of the first

e. **Telephone and Mail:** We agree that the child(ren) have the right to place phone calls to and receive phone calls from the absent parent, and to send and receive letters and packages, without interference from the other parent.

f. **Changes:** Each of us may ask the other for exceptions to this schedule from time to time, but we understand that the other parent has the right to say "no", and we will not argue about it nor criticize the other parent's decision to the child(ren).

g. **Missed Visits:** If any of the child(ren) are unable to visit due to illness, special school events or the custodial parent's special family events, the custodial parent shall inform the non-custodial parent as soon as possible, generally one (1) week in advance of planned events. For each weekend missed outside of the non-custodial parent's control, (s)he shall be able to substitute another weekend for the missed one as soon as possible.

h. **Scheduled Activities:** If any of the child(ren) have school or recreational activities planned on weekends when visitation is scheduled with the non-custodial parent, (s)he shall take the child involved, or make arrangements for said child to attend or participate in such activities during the visit. The non-custodial parent should be notified in advance of such weekend activities whenever possible.

i. **Transportation:** We will divide the responsibility for getting the child(ren) to and from each other's house, day care, school, etc., as follows:

The parent receiving the child(ren) shall make arrangements for transportation to such parent's location during reasonable hours. Transportation arrangements shall be communicated to the other parent within a reasonable time prior to the visit, generally, one week in advance if possible.

**8. Trial Period or Permanent Plan: (Check One)**

We have not yet tried this time sharing schedule, so we agree that we will review this plan in \_\_\_\_\_ days, and at that time we will make any changes we agree on. If we cannot agree on changes, we will resolve our dispute by using the method set forth in Paragraph 17, below. If we litigate, a "material change in circumstances" will not have to be proved in order to change this schedule.

[or]

We have already tried this time sharing schedule, and we intend it to be fairly permanent. We recognize, however, that as our child(ren) grow(s) and our own lives change, it may be necessary to change the schedule from time to time. This would be a major change that we have to discuss and agree on, and, if necessary, we will follow the dispute resolution procedures set forth in Paragraph 17, below.

**9. The Status Quo — What We Now Have:**

a. Residence:

(City and State Only)

b. Religion:

c. Doctor:

Name:

Address:

Phone:

d. Dentist

Name:

Address:

- |   |          |  |
|---|----------|--|
| e. School   | Phone:   |  |
|   | Name:    |  |
|   | Address: |  |
|   | Phone:   |  |
| f. Child Care:  | Name:    |  |
|   | Address: |  |
|   | Phone:   |  |
| g. Major Recreational Activities (Activities and Schedule): |          |  |
|   |          |  |
| h. Other:   |          |  |

**10. Grandparents and other relatives:** We agree that the child(ren)'s relationship(s) with grandparents and other extended family members are important, and that it is beneficial for the child(ren) to spend time with our extended families as long as the members of those families do not try to alienate the child(ren) from one of us. In order to encourage the continuation of good relationships between our extended families and the child(ren), we agree to the following extended family visitation and communication:

The child(ren)'s grandparents shall have reasonable rights of visitation. Normally, the paternal grandparent's visitation shall be expected to occur during the father's period of responsibility and the maternal grandparent's visitation shall be expected to occur during the mother's period of responsibility. If additional visitation with the grandparents is requested, the parties shall mutually agree to any additional visitation.

**11. Step-Parents, step-children, step-siblings, etc.:** We agree that deep and important relationships between step-relatives can develop, and that it would not be in our child(ren)'s best interests to cut off those relationships. We therefore agree on the following visitation and communication for step-relatives:

## **12. Medical decisions:**

a. We agree that in case of a medical emergency the parent with that period of responsibility will contact the other parent concerning treatment of the child, if possible. If the absent parent cannot be reached, any decision for emergency medical treatment will be made in the best interest of the child by the available parent.

b. Elective medical and dental treatment, other than routine medical and dental treatment, such as regularly required vaccinations and checkups, shall require the consent of both parents.

c. The parties agree that medical treatment shall be by a licensed physician, osteopath, chiropractor or other recognized health care provider. Any dental work including orthodontia or periodontal work shall be done by a licensed dentist.

d. Both parents shall have full access to all medical and dental records and to health care providers.

## **13. Change of residence:**

a. Both parents presently intend to continue to live in the same city.

b. We agree that neither of us will remove, cause to be removed, or permit removal of the child(ren) from the State of New Mexico, except for temporary visits which do not interfere with the time sharing schedule, without the written consent of the other parent, or resolution of the dispute by the method set forth in Paragraph 17, below.

c. If either parent plans to change their current home city or state of residence such parent shall provide to the other parent thirty (30) days notice in writing stating the date and destination of move. As soon as possible thereafter, the moving parent shall provide an address and phone number where the child(ren) may send correspondence or call.

(Option) — It is understood by the parties that the parents shall not be living in the same city and so frequent, personal contact between the Non-Custodial parent and the child(ren) shall not be possible and shall probably be limited to the visitation periods specified herein. In addition to the specified visitation, the non-custodial parent shall be entitled to visit with the child(ren) whenever (s)he is in the same town where the custodial parent and child(ren) are living as long as (s)he gives at least seventy-two (72) hours' advance notice of the visit and said visit does not interfere with previously arranged school plans. In addition, whenever the custodial parent and the child(ren) visit or are in the same town in which the non-custodial parent is living, the custodial parent shall notify the non-custodial parent at least seventy-two (72) hours in advance and the non-custodial parent shall be entitled to visit with the child(ren) while they are in the area.

#### **14. Educational decisions:**

a. Changes in educational environments or programs shall require the consent of both parents. Each parent shall have complete access to the child(ren)'s school records and shall be entitled to participate in conferences with the child(ren)'s teachers and supervisors.

b. The child(ren) shall continue to attend the school or schools in which they are currently enrolled. The child(ren) shall be placed in programs appropriate for their needs based upon recommendations by the school counselors, teachers, advisors and agreement by both parents.

c. School districts shall not be changed unless necessitated by a move or agreement of both the parents.

d. Both parents shall have complete access to the child(ren)'s school records and shall be entitled to participate in conferences with the child(ren)'s teachers and supervisors. The custodial parent shall forward to the non-custodial parent copies of the child(ren)'s report cards and any matters regarding the child(ren)'s educational progress.

#### **15. Religious decisions:**

a. Each parent shall be entitled to attend religious services with the child(ren) during the parent's period of responsibility, provided that the other parent must be consulted and agree to any denominational changes.

[or]

b. Each parent shall be entitled to take the child(ren) to the religious services they attend. No denominational changes shall be made without mutual consent or otherwise resolved.

c. Both parents shall notify the other of any significant ceremonial event of the child(ren) and both parents shall be entitled to attend.

#### **16. Recreational activities, school activities and public activities:**

a. Major changes in the child(ren)'s recreational activities, such as enrolling a child in a series of recreational lessons, shall require the consent of both parents, and the parents shall not withhold consent arbitrarily or capriciously.

b. The child(ren) shall continue in the recreational activities in which they are currently participating. They shall be entitled to participate in any recreational activities sponsored by the school which they are attending. Recreational activities shall expand as the child(ren)'s interest develop. The parents shall take into account the child(ren)'s

expressed preferences for recreational activities. Unless the activity is dangerous or unusual (any sports or recreational activities sponsored by the child(ren)'s school shall not be considered to fall within this category), the custodial parent may enroll the child(ren) without the other parent's consent, but shall inform the other parent of the activity. It is understood that the child(ren) may participate in programs such as soccer, baseball, gymnastics, softball, volleyball, tennis, swimming and diving, etc.

c. Each parent shall have the right to attend and/or participate in the child(ren)'s school and other recreational activities, and each parent shall advise the other of such events that come to his or her attention.

### **17. Dispute resolution:**

a. Disputes concerning interpretation or application of this Parenting Plan and/or failure of the parents to reach agreement when required under the provisions hereof shall be resolved in accordance with this section. While a dispute is being resolved, neither parent shall alter the status quo.

b. In the event that a problem arises in which an immediate agreement cannot be reached, the parents shall set aside a portion of time in which to discuss the matter, either in person or by telephone without distractions and without the child(ren) being present. Issues other than the specific problem at hand shall not be discussed at that time. The parents shall attempt in good faith to resolve their differences and reach an agreement. Each parent agrees to keep in mind what is in the best interests of the child(ren) and to take the child(ren)'s wishes and desires into account.

c. Written proposals: [ ] (Optional — Please initial if desired.) We agree that if either of us wishes to permanently change the time-sharing plan (Section 7) or one or more aspects of the status quo (Section 9), the one who wishes the change will give to the other a written change proposal which will include what (s)he wants to change and why, and which will provide enough information so the other will be able to investigate. For example, the change proposal will include necessary names, addresses and phone numbers, and a reasonable time limit for responding.

We agree that the parent who receives the change proposal will investigate the proposed change and will respond in a reasonable time, in writing. If one of us does not agree to the proposed change, (s)he must say why and, when appropriate, make a counter proposal, also in writing.

[and/or]

d. **Oral discussion:** [ ] We will discuss all major changes in the child(ren)'s life/lives in order to try to reach agreement.

e. If we cannot agree to the proposed change, we agree that no change will be made until we:

participate in couple and/or family counseling to try to reach agreement (Optional: with \_\_\_\_\_ - \_\_\_\_\_ as counselor);

[and/or]

participate in conciliation or mediation to try to reach agreement (Optional: with \_\_\_\_\_ as mediator);

[and/or]

submit the matter to \_\_\_\_\_ for arbitration (Note: parents must obtain the consent of the proposed arbitrator in order to choose this option). We agree that the arbitrator's decision  will be binding, or  is not permanently binding, but will be followed by us until and unless the Court orders otherwise.

[and/or]

allocate ultimate responsibility to (state mother or father):

\_\_\_\_\_ for religious decisions

\_\_\_\_\_ for residence decisions

\_\_\_\_\_ for medical decisions

\_\_\_\_\_ for education decisions

\_\_\_\_\_ for recreation decisions; or

[and/or]

submit the matter to the District Court, which may refer the matter to a special master, or which may terminate joint custody, among other resolutions.

We will pay any cost involved in our method of dispute resolution (except litigation) as follows: \_\_\_\_\_% paid by mother; \_\_\_\_\_% paid by father. We agree that we will use the above methods of dispute resolution and neither parent will withhold financial support or access to the child(ren) before, during or after dispute resolution.

NOTE TO PARENTS: If more than one method of dispute resolution is desired, number the choices in order (#1 for first method to be used, #2 for second method, etc.)

### 18. General:



a. We both agree to be actively involved in the major decisions and legal responsibilities of our child(ren).

b. We agree to communicate and be flexible about the needs of the child(ren), especially as those needs change due to a child's growth and development.

c. We agree to each be supportive of the child(ren)'s relationship with the other parent and positive about that relationship. Each of us will give permission to the child(ren) to enjoy the relationship with the other parent and neither of us will interfere with the parent-child relationship with the other.

d. We agree that neither of us will align the child(ren) with him or her against the other parent or the other parent's family.

e. The parents shall foster a positive relationship between the other parent and the child(ren). Both parents agree to refrain from making negative or derogatory comments about the absent parent. Neither parent shall discuss disputes regarding property matters, support payments or other issues with the child(ren) or in their presence. The parents shall not use the child(ren) as intermediaries in transmitting money, documents or messages.

f. We agree that each of us is responsible to learn for him(her)self the child(ren)'s school functions, parent/teacher meetings and recreational activities. In other words, neither of us is responsible to inform the other of such matters.

g. We agree that this Parenting Plan shall continue in force and effect until modified by order of a court of competent jurisdiction or until modified by written agreement.

\_\_\_\_\_  
Mother

\_\_\_\_\_  
Father

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF DONA ANA            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, Mother.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF DONA ANA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, Father.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

*NOTE: This form may include provisions that the parents may not want. This is just a suggested plan. The only provision that is legally required is time-sharing (See Section 7). That is, the parents must specify when the child(ren) are to be with each parent, in the event a disagreement arises.*

*If the parents do not wish a particular provision, just cross it out and initial where you crossed it out.*

*This parenting plan has not been approved by any New Mexico appellate court. There have been no appellate cases involving such parenting plans as yet and there may not be for many years. It is possible that some provisions may, in the future, be found invalid, but we decided it was important to help parents and lawyers by providing a suggested plan now. Suggestions for improvement are welcome. Mail to Domestic Relations Clerk, 151 North Church Street, Las Cruces, N.M. 88001.*

## **IV. Criminal Matters**

**[None]**

## **V. Case Control**

### **LR3-Form 5.10. Request for setting.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO

Plaintiff/Petitioner,	)	
	)	No. _____
vs.	)	
	)	
	)	Judge _____
	)	
Defendant/Respondent.	)	

**REQUEST FOR SETTING**

Jury —  6  12  Non-Jury

*SPECIFIC MATTERS TO BE HEARD*

\_\_\_\_\_ Time Required

*ATTORNEY REQUESTING SETTING CERTIFIES THAT THE*

*CASE IS READY FOR TRIAL*

*[Applicable when request is for trial]*

Requested by \_\_\_\_\_

Attorney for \_\_\_\_\_

(Law Firm's Name)

(Telephone Number)

(Address)

By

(Attorney Involved)

**LR3-Form 5.11. Attorney's certificate of reopen status.**

THIRD JUDICIAL DISTRICT COURT

COUNTY OF DONA ANA

STATE OF NEW MEXICO

	)	
Plaintiff	)	
	)	No. _____
vs.	)	
	)	Judge _____
	)	
Defendant.	)	
	)	

**ATTORNEY'S CERTIFICATE OF REOPEN STATUS**

Any pleading or document filed after final disposition that requires a hearing or judicial determination reopens the case.

1. Is this case currently closed?  Yes  No
2. Is this matter reopening the case?  Yes  No

If so, on what issue?

(Law Firm's Name)  
 (Telephone Number)  
 (Address)  
 By  
 (Attorney Involved)  
 Attorney for (Plaintiff/Defendant)

[Certificate of Service, if appropriate]

**VI. Jury Matters**  
**[None]**

**VII. Alternative Dispute  
 Resolution**

## **LR3-Form 7.10. Request for settlement conference.**

### **REQUEST FOR SETTLEMENT CONFERENCE**

Note: Requests should be made by completing the following form and sending it to:

ADR Coordinator

Third Judicial District Court

201 W. Picacho, Suite A

Las Cruces, New Mexico 88005

Please do not send requests directly to the assigned judge, the chief judge or the clerk's office.

### **REQUIRED INFORMATION**

Your name:

Case number:

Case caption:

Assigned judge:

Estimated time required for settlement conference:

Whether the opposing party knows that you are requesting a Settlement Conference.  
*[Note: Disclosure is not required.]*

Whether the opposing party agrees that a settlement conference is appropriate:

The names of all counsel and *pro se* parties entitled to notice, and the names of any other persons that you think should be present at the Settlement Conference. List name, law firm, address, city, state, zip code, telephone number and role (e.g., attorney for Petitioner, witness for Respondent):

For domestic relations cases, also include the following information:

Estimated value of community property:

Number & ages of children involved:

Indicate all applicable settlement issues:

- |  |  |
|--|--|
| <input type="checkbox"/> Property characterization | <input type="checkbox"/> Property valuation                |
| <input type="checkbox"/> Property division         | <input type="checkbox"/> Debts                             |
| <input type="checkbox"/> Alimony                   | <input type="checkbox"/> Child support                     |
| <input type="checkbox"/> Custody/timesharing       | <input type="checkbox"/> Other ( <i>Please describe.</i> ) |

Type of facilitator or facilitator team that would be most beneficial:

- Judge       Judge - trained mediator       Lawyer - Lawyer  
 Lawyer - psychologist       Other (*Please describe.*)

[As amended, effective September 22, 1999.]

### ANNOTATIONS

**The 1999 amendment**, effective September 22, 1999, made changes to the address used to send the settlement conference request to the ADR coordinator; in the second paragraph, substituted "clerk's office" for "District Court Clerk" and made minor stylistic changes.

### LR3-Form 7.11. Order of referral to settlement facilitation.

STATE OF NEW MEXICO

COUNTY OF DONA ANA

THIRD JUDICIAL DISTRICT COURT

---

Plaintiff,      No.

v.

Judge

\_\_\_\_\_  
Defendant.

ORDER OF REFERRAL TO SETTLEMENT FACILITATION

The court hereby orders that this case be referred to settlement facilitation pursuant to LR3-702(D) and appoints the following attorney as the settlement facilitator:

The above-named attorney shall serve as an arm of the court for the purposes of scheduling and conducting the settlement facilitation conference. The settlement conference shall be concluded within thirty (30) days from the date of this order.

IT IS FURTHER ORDERED that the facilitator shall be paid a reasonable fee to be assessed equally to the parties. Payment is due within thirty (30) days of the date of the settlement facilitation.

IT IS FURTHER ORDERED that no later than ten (10) days before the scheduled conference date, each attorney and pro se party shall mail or deliver to the settlement facilitator all of the information that is listed on the attached Settlement Conference Information Sheet. The information provided by the attorneys and the parties to the settlement facilitator shall not be filed with the court, nor in any way made a part of the court record. Such information may be provided to opposing counsel or *pro se* parties.

IT IS FURTHER ORDERED that each party of record, each attorney of record representing that party who will be trying the case and each party's representative having actual and realistic authority to compromise or settle the issues, including, but not limited to, insurance company representatives and guardians ad litem, shall be present in person during the conference and participate in good faith.

Failure by any party or participant to abide by this order in any material manner will result in sanctions from the court, including but not limited to assessment of costs and attorneys' fees.

District Judge

[As amended, effective September 22, 1999.]

**ANNOTATIONS**

**The 1999 amendment**, effective September 22, 1999, rewrote the form.

## LR3-Form 7.12. Settlement conference information sheet.

### SETTLEMENT CONFERENCE INFORMATION SHEET

Settlement Facilitator:

Name of Case:

Cause No.:

Assigned Judge:

Attorney:

Name:

Telephone No.:

Address:

Party Represented:

Name:

Party Designation:  Plaintiff(s)  Defendant(s)

Other (*state designation*)

#### *Information to Be Provided to Settlement Facilitator*

On or before the date set forth in the Order of Referral to Settlement Facilitation, the following information should be provided to the assigned settlement facilitator:

1. Short description of the case.
2. Description of the relief that you are seeking.
3. Statement of the factual issues that need to be resolved.



4. List of any pending motions.
  
5. Statement as to whether discovery has been completed or not and, if not, what discovery remains to be completed.
  
6. An estimate of costs and attorneys' fees through trial.
  
7. Last offer that has been made to opposing counsel.
  
8. Any other suggestion or information which you feel would be helpful to the settlement facilitator.

The Judges of the Third Judicial District Court have directed that the following persons shall attend and be present in person during the entire settlement conference:

1. Each party of record and each attorney of record who will be trying the case.
2. For each party, the person or persons who have actual or realistic authority to compromise and settle the issues (these shall include, but are not limited to insurance company representatives and guardians *ad litem*).

#### **ANNOTATIONS**

**The 1999 amendment**, effective September 22, 1999, made stylistic changes throughout the form.

#### **LR3-Form 7.13. Certification of facilitation compliance.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT COURT

---

Plaintiff,      No.  
v.

\_\_\_\_\_ Judge  
Defendant.

**CERTIFICATION OF FACILITATION COMPLIANCE**

The above referenced case was the subject of a settlement facilitation conference held on \_\_\_\_\_  
(date).

Settlement facilitator

[Approved, effective September 22, 1999.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated September 22, 1999, this form is adopted.

**LR3-Form 7.14. Facilitator's outcome report.**

**THIRD JUDICIAL DISTRICT**

**ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

**FACILITATOR'S OUTCOME REPORT**

Please return your completed Facilitator's Outcome Report as well as the Certification of Facilitation Compliance no later than thirty (30) days following the date of the Order of Referral to Settlement Facilitation. The form should be mailed or delivered to the Alternative Dispute Resolution Program, Third Judicial District Court, 201 W. Picacho, Suite A, Las Cruces, New Mexico 88005.

Case name:

Docket No.: \_\_\_\_\_ Judge:

Facilitator's name:

OUTCOME OF SETTLEMENT CONFERENCE: *(Please check one.)*

- Case settled fully before settlement conference.
- Case settled fully during conference.

- Case settled in part during the conference.
- Progress toward settlement was made during conference.
- No progress was made during the conference, but negotiations to continue.
- Conference not held yet; scheduled for \_\_\_\_\_
- Conference canceled by the court.
- Conference not held or scheduled yet because of lack of cooperation by a party or attorney. In this case, please notify the judge hearing the case and the ADR office.
- Conference not held or scheduled for other reasons (*describe*)

In your opinion, did the parties participate in good faith? If no, please explain.

Other comments on reverse side.

Signature

[Approved, effective September 22, 1999.]

## **VIII. Library**

**[None]**

## **IX. Miscellaneous**

### **LR3-Form 9.10. Statement for deposit of will.**

#### *STATEMENT FOR DEPOSIT OF WILL*

The undersigned hereby requests that the Court Administrator of the Third Judicial District Court, Dona Ana County, New Mexico, accept for deposit the will accompanying this statement in accordance with Section 45-2-901 NMSA 1978.

My address and telephone number are as follows:

Address —

Telephone Number —

The name and address of a close relative who will always know my whereabouts is as follows:

Name —

Address —

The names and addresses of people who have the right to receive the accompanying will, other than myself, are as follows:

Name —

Address —

Name —

Address —

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Testator's(ix's) Signature

\_\_\_\_\_  
Testator's(ix's) Name

STATE OF NEW  
MEXICO

)

)

ss

COUNTY OF DONA ANA

)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## Appendix B — Child Custody Mediation Sliding Fee Scale

APPENDIX B — CHILD CUSTODY MEDIATION SLIDING FEE SCALE*					
	Number of Children				
Gross Income	1	2	3	4	4+
\$10,000	\$10	\$10	\$10	\$10	\$10
\$12,500	\$15	\$15	\$15	\$10	\$10
\$15,000	\$15	\$15	\$15	\$15	\$15
\$17,500	\$20	\$20	\$20	\$15	\$15
\$20,000	\$20	\$20	\$20	\$20	\$20
\$22,500	\$25	\$25	\$25	\$20	\$20
\$25,000	\$25	\$25	\$25	\$25	\$25
\$27,500	\$30	\$30	\$30	\$25	\$25
\$30,000	\$30	\$30	\$30	\$30	\$30
\$32,500	\$35	\$35	\$35	\$30	\$30
\$35,000	\$35	\$35	\$35	\$35	\$35
\$37,500	\$40	\$40	\$40	\$35	\$35
\$40,000	\$40	\$40	\$40	\$40	\$40
\$42,500	\$45	\$45	\$45	\$40	\$40
\$45,000	\$45	\$45	\$45	\$45	\$45
\$47,500	\$50	\$50	\$50	\$45	\$45
\$50,000	\$50	\$50	\$50	\$50	\$50

Procedure:

1. The mediator completes the “Child Custody Mediation Income Statement” with the parties if they desire a reduced fee. If a statement is not filed then the full fee of \$50.00 per hour is charged.

2. Mediation proceeds and upon conclusion the scale fee is assessed. If the petitioner paid a filing fee they are given a credit of \$30.00 towards their half of the total invoice.

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*\* Hourly fee based on gross parental income and number of children.*

### **ANNOTATIONS**

**Cross references.** — For domestic relations mediation program, see 40-12-5 NMSA 1978.