

Rules of the District Court of the Sixth Judicial District

I. General Matters — Powers and Duties of the Court

LR6-101. Authority; title; scope; application.

A. **Authority.** The following rules are hereby adopted and promulgated by the judges of the Sixth Judicial District of the State of New Mexico, comprised of the counties of Grant, Luna and Hidalgo, pursuant to the authority vested in the court by Rule 1-083 NMRA and Rule 5-102 NMRA.

B. **Title.** These rules shall be known and cited as the Local Rules, Sixth Judicial District Court.

C. **Scope and application.** These rules govern all civil and criminal proceedings in the district court of the Sixth Judicial District.

[Approved, effective October 2, 2000.]

LR6-102. 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.

[Approved, effective October 2, 2000.]

LR6-103. 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.

[Approved, effective October 2, 2000.]

LR6-104. Disciplinary action for failure to comply.

Any violation of these rules may, in addition to other appropriate remedies, subject the attorney or non-complying party to such sanctions as may be deemed appropriate, including civil contempt.

[Approved, effective October 2, 2000.]

LR6-105. Control of court files.

The district court clerk's case files are maintained for the judges; however, these files may be reviewed by certain persons. Sequestered files and sealed files may be viewed only by persons who are permitted by statute, rule or as authorized by the assigned judge. The district court clerk shall receive a signed receipt for all files checked out. The court's files shall not be removed from the courthouse. Court files may be viewed in the district court clerk's office and must be returned to the district court clerk when the person has finished with the file. The person viewing the file shall neither open the grippers on the file nor remove any documents from the file, but may mark documents the person wants copied with a paper clip or post-it. The district court clerk will on request make copies of documents from the court file and charge the copy fee required by Paragraph C of Rule 1-099 NMRA. The assigned judge may authorize a person to check out a file other than as authorized by this rule.

[Approved by Supreme Court Order 07-8300-39, effective December 28, 2007.]

LR6-106. Assignment of cases.

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

C. Whenever the assigned judge is not available, 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 original charges in the indictment or information, or ex parte matter which may arise. A judge pro tem may hear any case or matter assigned to the judge, as though the judge were assigned the case when it was filed.

[Approved, effective October 2, 2000.]

LR6-107. Court schedules; itinerary; settings.

A. The judge of each division shall determine the general itinerary and schedule for that division.

B. The district court clerk or the judge's administrative assistant 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.

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.

[Approved, effective October 2, 2000.]

LR6-108. Civil process; issuance; 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:

(a) 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; and

(b) a proposed order. (See forms LR6-Form 1.01, LR6-Form 1.01A and LR6-Form 1.02.)

(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 district court clerk. 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. (See LR6-Form 1.03.)

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

[Approved, effective October 2, 2000.]

LR6-109. District court clerk's trust and litigant accounts.

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

B. **Interest bearing accounts.** The district court clerk is authorized pursuant to Rule 1-102 NMRA to set up and open separate interest-bearing accounts to be known as the "district court clerk's trust account" and the "litigant account", with any authorized bank or savings and loan association in Grant County, New Mexico, for Grant County cases, in Luna County, New Mexico, for Luna County cases, and in Hidalgo County, New Mexico, for Hidalgo County cases, for the purpose of depositing litigants' funds and producing the best authorized interest thereon. In setting up the trust account, pursuant to Subparagraph (1) of Paragraph C of Rule 1-102 NMRA, the district court clerk 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.

C. 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 NMRA.

(2) Disbursement of monies held in the district court clerk's litigants' account shall be upon court order only. Disbursements shall be made forthwith upon the order of the court unless the order otherwise states.

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

(4) If a party is entitled to interest on the deposit pursuant to Rule 1-102 NMRA, no disbursement shall be made prior to the party furnishing the district court clerk with the name, mailing address and social security number or employer identification number of the party to whom payment is to be made utilizing IRS Form W-9 (Request for Taxpayer Identification Number and Certification). The IRS Form W-9 may be downloaded from the government's web site at: http://www.irs.gov/forms_pubs/forms.html.

[Approved, effective October 2, 2000.]

LR6-110. Court appointments.

Each attorney appearing in a civil case in the Sixth Judicial District shall be responsible for accepting court appointments.

[Approved, effective October 2, 2000.]

LR6-111. 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 law enforcement officers and those intended for use at a trial or hearing, are prohibited in the courtroom of each county court building and any other related judicial office. Law enforcement officers who are witnesses in trials or not part of court security shall not carry weapons in the courtroom.

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 taken to court shall at all times be kept separate from court personnel, members of the public and the jury. A defendant in custody should not be brought in front of the jury either in prison clothing or visibly restrained.

(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.

[Approved, effective October 2, 2000.]

LR6-112. Attorney's attire.

All attorneys, their employees, law clerks and law students appearing in court shall be properly attired in a manner befitting the dignity of the court. Men shall wear full length trousers, coat and tie; women shall wear suitable dresses or pantsuits.

[Approved, effective October 2, 2000.]

LR6-113. Library.

A. **Use of facility.** No books shall be removed from the court library in any county without first being checked out with the clerk of the district court. Members of the bar, after properly checking out books with the clerk, may remove them from the library. Books shall be returned to the clerk and the return noted on the checkout card. Books checked out shall be returned within five (5) days. No computer, computer software or computer discs (e.g. New Mexico Law on Disc) shall be removed from the library. Members of both the public and the bar may utilize the computer research facilities for specific, limited legal and case research. When another person is waiting for the

computer, research shall be limited to one (1) hour from the time the waiting person arrives.

B. **Copy fees.** Any person who either makes photocopies on the clerk's copy machine or prints material on the computer printer shall pay the clerk thirty-five cents (\$.35) for each page copied or printed. Payment to the clerk shall be either by attorney check or in cash.

[Approved, effective October 2, 2000.]

ANNOTATIONS

Cross references. — For rule governing library use, see Rule 23-108 NMRA.

II. Civil Matters — Pleading & Procedure

LR6-201. Appearances, withdrawals and substitution of counsel.

A. **Entry of appearance.** An attorney may 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 NMRA shall state the last known mailing address and telephone numbers of such attorney's client, unless another attorney enters an 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 may 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 may consent, without a hearing, to the withdrawal of counsel if it is accompanied by an entry of appearance of substitute counsel or party *pro se*, and if the entry waives any right substitute counsel or party *pro se* may have to request vacation of the hearing that has been set on the grounds of the new entry and if the entry is approved by opposing counsel or party *pro se*.

(4) If the conditions set forth in Subparagraph (2) or (3) of this paragraph are not met, the court shall approve the withdrawal of counsel only 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 telephone number and address at which service of papers may be made in accordance with Rule 1-005 NMRA.

(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 telephone number and 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. If a *pro se* party has not secured counsel within twenty (20) days of the date the order of withdrawal is entered, the party shall be deemed to have entered an appearance *pro se*.

C. Change of address or telephone number. Pro se parties and 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.

[Approved, effective October 2, 2000.]

LR6-204. Motion practice; package procedure.

A. Concurrence; when required. Unless a motion is accompanied by an order initialed by opposing counsel or is otherwise a motion that does not require concurrence of opposing counsel under Rule 1-007.1 NMRA, the motion shall state, with particularity, the efforts made to confer in good faith with opposing counsel.

B. Citation of authority. Every opposed motion, response or reply brief shall cite authority for the positions advanced, or alternatively, shall be accompanied by a separate brief or memorandum served contemporaneous with the motion, response or reply brief.

C. No cross-motions permitted. The practice of filing cross-motions to operate as both a motion and as a response to the original motion is prohibited.

D. Exhibits to motion, response or reply brief. Only relevant excerpts from depositions or other papers may be attached to a motion, response or reply brief. Pertinent portions of exhibits shall be highlighted, underlined or otherwise emphasized for the court's attention. Exhibits shall not be duplicated but shall be made part of the record once and later use or reference to the exhibits shall be to the title of the pleading or paper, the date the pleading or paper was filed and the exhibit number.

E. Service of motion, response and reply brief. Every motion, response and reply brief shall include a certificate of service setting forth the name and address of the person served and the date and manner of service. For all motions, in which the court

orders the parties to utilize the package procedures of Rule LR6-204 NMRA, the movant shall only serve a copy of its motion on the respondent and shall file a "Notice of Service of Motion for _____". If the respondent prepares a response to the motion, the respondent shall only serve the original and a copy of its response on the movant and file a "Notice of Service of Response to the Movant's Motion for _____". If the movant prepares a reply, the movant shall serve a copy of the reply on the respondent.

F. **Filing.** At the expiration of all responsive times under Rule 1-007.1 NMRA, the movant shall file the original of the motion, response, any reply brief and any exhibits as a "package" with the district court clerk. No "courtesy" copy of a motion, response, reply brief or exhibit shall be provided to the judge. The judge will review the original papers in the court's file.

G. **Hearing.** At the time the "package" is filed, the movant shall request a hearing by filing a request for hearing (see Appendix, LR6-Form 2.01) with the judge's administrative assistant. The submission of the request for hearing alerts the judge that the "package" has been filed and the motion is ripe for decision. The court may grant or deny a request for oral hearing, and if the request is denied, the court shall make a decision based on the papers filed.

H. **Expedited matters.** If any motion, whether it is subject to the package rule or not, requests a decision before the expiration of the time limits set forth in Rule 1-007.1 NMRA, the movant shall:

- (1) so indicate in the title of the motion;
- (2) state in the motion the reason for requesting an expedited decision;
- (3) file the motion with the district court clerk;
- (4) provide a "courtesy copy" of the motion to the judge along with a request for an expedited hearing.

[As amended, approved by Supreme Court Order 05-8300-19 effective October 11, 2005.]

LR6-205. Notice of bankruptcy proceedings.

A. Counsel for a party shall file a written notice of any stay resulting from any action in the federal bankruptcy court immediately upon being made aware thereof, and shall provide notice of the same to the court and to opposing counsel.

B. Counsel for the parties shall file 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 shall provide notice thereof to the court and to opposing counsel.

[Approved, effective October 2, 2000.]

LR6-206. Service of notices and mailing of other papers.

A. All attorneys maintaining an office in Silver City, New Mexico, and who so consent in writing, will have an appropriate box or other place designated in the district judge's office in Silver City where copies of notices and other papers will be placed. All attorneys maintaining an office in Deming, New Mexico, and who so consent in writing, will have an appropriate box or other place designated in the district judge's office in Deming where copies of notices and other papers will be placed. All attorneys maintaining offices in Lordsburg, New Mexico, and who consent in writing, will have an appropriate box or other place designated in the district court clerk's office in Lordsburg where copies of notices and other papers will be placed. (See Appendix, LR6-Form 2.02 for consent form.) For attorneys who do not maintain an office in the municipality where the district court clerk's office is located or those attorneys who do not so consent, the district court clerk's office will not mail notices or other papers to counsel unless such attorney provides a stamped, self-addressed envelope. Notices and other papers will be mailed to counsel who do not maintain an office in the municipality where the district court clerk's office is located. An attorney may request that a conformed copy of a paper be mailed to the attorney. The request shall be accompanied by a stamped, self-addressed envelope.

B. The purpose of providing attorneys' boxes in the district court clerk's or judge's office is for the court's use in serving notices, judgments and other papers on those attorneys who consent to service in this manner. The placing of such papers in the attorney's box by the court personnel shall constitute service in accordance with the attorney's consent. The date of service will be stamped on the pleading. Service of papers by counsel shall be accomplished in accordance with the rules of procedure promulgated by the Supreme Court and placement in boxes at the courthouse by counsel or their staff does not constitute service, unless so provided by the New Mexico Rules of Procedure. It will be the obligation of all local attorneys to arrange to have such documents picked up from their box in the district court clerk's or judge's office on a daily or other regular basis.

C. When notices and papers are placed in the box at the courthouse as provided by this rule, the three (3) days additional time provided in Rule 1-006(D) NMRA shall be added to any prescribed period. If a notice, order, writ, pleading or paper is transmitted by facsimile to counsel pursuant to Rule 1-005.1 NMRA, the additional three (3) days provided in Rule 1-006(D) NMRA shall not be added to any prescribed period.

[Approved, effective October 2, 2000.]

LR6-207. Consolidation of cases.

A. **Motion to consolidate.** A motion to consolidate shall be determined by the judge assigned to the case first filed.

B. **Order.** If consolidation is ordered, in all cases except domestic violence (DV) cases:

(1) the case shall be assigned to the judge in the case first filed; and

(2) a copy of the order shall be served on each party in the proceedings with a notice of reassignment in accordance with Rule 1-088.1 NMRA.

C. **Filing of pleadings and papers.** All pleadings and papers filed subsequent to service of the order consolidating the cases and notice of reassignment shall be filed in the consolidated case.

[Approved, effective October 2, 2000; as amended, effective December 12, 2001; as amended by Supreme Court Order 06-8300-03, effective January 20, 2006; Supreme Court Order 07-8300-17, effective June 27, 2007.]

ANNOTATIONS

The 2001 amendment, effective December 12, 2001, inserted "unless the first case filed is a domestic violence (DV) case" in Paragraph A; inserted "in all cases except domestic violence (DV) cases" in Paragraph B; added Paragraph C and redesignated former Paragraph C as Paragraph D and, in Paragraph D, substituted "consolidated cases" for "case first filed" in two places.

LR6-208. 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 or paper.

C. Every order, judgment or other paper which has been signed by the court shall be immediately delivered to the district 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 district court clerk's stamp, unless filed in open court. Documents filed in open court will not be date-stamped with a different date when the document is filed with the clerk.

D. Orders, judgments and decrees may not be signed by the court unless legibly signed or telephonically approved by all counsel of record.

E. Names or addresses of attorneys shall not appear on any judgment or order except to reflect their approval. Any judgment or 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. If the proposed order, decree or judgment is approved by all counsel as to form or otherwise, the order, decree or judgment shall so indicate and may be signed by the court immediately, if appropriate. Orders, decrees and judgments may be approved telephonically and so indicated.

F. Subject to Paragraph B of Rule 1-058 NMRA, in matters decided by the court after a hearing or trial, a proposed order or judgment shall be submitted to the assigned judge within ten (10) days of the decision.

(1) The prevailing party or the person designated by the court shall submit the proposed order or judgment to opposing counsel for approval as to form within five (5) days from the court's ruling. If the preparer is unable to obtain approval as to form, the form of order shall be sent to the judge with a letter of transmittal so indicating. If opposing counsel does not comply with Subparagraph (2) below, the court may either enter the order as presented or modify it to fit the court's ruling.

(2) If opposing counsel does not agree as to the form of order or judgment, such counsel shall file a written objection thereto, if any, with copies to the judge and all counsel within five (5) days from the receipt of the form of order or judgment. A copy of the form of order or judgment to which such objection is made shall be attached to the filed objection. The objection shall set forth the specific language to which objection is made and each reason for the objection. The objecting party shall submit a separate form of order or judgment.

(3) The court will inform all counsel of its ruling on the objections, or may order a hearing thereon. 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. The court may award attorney fees and costs required because of a failure to comply with this rule.

[Approved, effective October 2, 2000.]

LR6-209. Orders to show cause.

Orders to show cause shall be submitted to the judge assigned to hear the case. Such orders must be based upon a proper motion and supporting affidavit specifying in particularity the necessity for the relief requested. If, however, the assigned judge is unavailable, the proposed order may be signed by any judge, but only after the date for hearing has been obtained from the administrative assistant of the judge who will hear the matter.

[Approved, effective October 2, 2000.]

LR6-210. 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. (See Appendix, LR6-Form 2.03 for form of certificate.)

B. **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.

[Approved, effective October 2, 2000.]

LR6-211. Attorney fees.

A. **Attorney statement required.** In all proceedings in which a party is entitled to recover attorney fees, a written statement signed by the attorney, shall be attached to the motion. The attorney's statement shall contain, at a minimum, the following:

- (1) the time and effort expended by the attorney;
- (2) the extent to which the issues were contested;
- (3) the novelty and complexity of the issues involved;
- (4) fees normally charged in the locality for similar legal services;
- (5) the experience (in years of practice), ability, experience, skill and reputation of the attorney and the fees generally charged in this locality for similar legal services;
- (6) the relative success in the court proceedings;
- (7) the amount involved, expressed monetarily or by a general description if the issues involve matters other than a money demand;
- (8) the rate of inflation;
- (9) 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; and
- (10) 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.

B. The court will consider the above factors in awarding fees in accordance with Rule 1-054 NMRA.

[Approved, effective October 2, 2000.]

LR6-212. Settings.

A. **Request for settings.** All requests for settings shall be in the approved form and completed except for the date and time for the setting. (See Appendix A, LR6-Form 2.01.) 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 judge's administrative assistant will file the original of the request for setting form. Attorneys who have consented in accordance with LR6-206 NMRA 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) Upon receipt of the motion to vacate a setting, the court may 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 for vacating the setting.

(4) If a hearing is vacated, the party who requested that the hearing be vacated shall timely request a new setting of the matter which was vacated.

C. **Conflicts in settings.** LR6-216 NMRA shall govern any conflicts in settings.

[Approved, effective October 2, 2000.]

LR6-213. Telephone conferences and hearings.

A. **Telephone appearances permitted.** The court may hear any matter by telephone conference.

B. **Responsibility and cost.** When a telephone conference is conducted, it will be set up by either the movant or the attorney seeking a telephone conference, at their expense, and not at the expense of the court. If the court places the call, the court may require the parties to reimburse the court for telephone charges.

C. **Record.** The record, if any, on any telephone conference will be by electronic recording device or such other method approved by the court.

[Approved, effective October 2, 2000.]

LR6-214. Scheduling conferences; pretrial conferences.

A. **Scheduling conference.** A pretrial scheduling conference shall be requested by the attorney for the plaintiff or *pro se* plaintiff, in all civil (CV) actions. The face of the request shall state the date that a scheduling order must be filed in order to comply with Paragraph B of Rule 1-016 NMRA, and counsel shall be prepared to advise the court on those matters contained in Paragraph B of Rule 1-016 NMRA.

B. Pretrial conference.

(1) At any pretrial conference, counsel who will handle the case at trial shall be in attendance, in person, at the conference, unless excused by the court.

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

(3) The pretrial order shall be substantially in the form as LR6-Form 2.04. Only matters actually agreed upon shall be included.

C. **Preparation of pretrial orders.** The plaintiff shall prepare plaintiff's portion of the working pretrial order and submit it to all other counsel thirty (30) days prior to the pretrial conference. All other parties shall return their portion of the pretrial order to the plaintiff no later than fifteen (15) days prior to the pretrial conference. Plaintiff shall incorporate each portion submitted into a working pretrial order to be submitted to the court five (5) days prior to the pretrial conference. The final pretrial order shall be prepared, after the pretrial conference, or as the court may direct.

[Approved, effective October 2, 2000.]

LR6-215. Continuances and conflicts.

A. Continuances requested because counsel have conflicts in settings with other courts shall be governed by the rule that the first case scheduled will control, unless otherwise directed by the court.

B. Continuances will only be granted upon the showing of good cause.

[Approved, effective October 2, 2000.]

LR6-216. Disqualification of judges.

A party exercising the election to excuse a judge pursuant to Rule 1-088.1 NMRA shall submit two (2) copies of the peremptory election to excuse to the clerk of the court. The clerk shall file one (1) copy and shall immediately send the other copy to the district judge being disqualified. The party shall serve all other parties with a copy of the peremptory election.

[Approved, effective October 2, 2000.]

III. Domestic Relations Matters

LR6-301. Domestic relations mediation and supervised visitation programs; fees.

A. **Mediation; evaluation.** A domestic relations action filed in the Sixth Judicial District Court may be subject to mediation or evaluation as required by Rule 1-125 NMRA.

B. **Supervised visitation.** A domestic relations action involving minor children filed in the Sixth Judicial District Court may be subject to court ordered, supervised visitation pursuant to Section 40-12-5.1 NMSA 1978.

C. **Establishment of program.** Pursuant to Section 40-12-1 NMSA 1978 et seq., the Sixth Judicial District has elected to establish a domestic relations mediation program and a domestic relations supervised visitation 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.

D. **Mediation surcharge.**

(1) Pursuant to Section 40-12-6 NMSA 1978, in addition to the filing fee required by Section 34-6-40 NMSA 1978, a thirty dollar (\$30.00) surcharge will be collected by the district court clerk for all new and reopened domestic relations cases. All such surcharges shall be deposited by the district court clerk in the Domestic Relations Mediation Fund.

(2) No docket fee or surcharge will be charged in a domestic relations action for the filing of:

(a) a stipulated order or other request for action by the court that may be performed by the clerk of the court pursuant to Rule 1-099 NMRA even if further action may be required by the judge;

(b) a motion to correct a mistake in the judgment, order or record; or

(c) a motion to enforce a child support order.

(3) Unless payment has been waived, if a required filing fee or surcharge is not paid, the case will be closed without disposition of pending matters, until payment is made.

E. **Sliding scale fee.** In accordance with Subsection C of Section 40-12-5 NMSA 1978 and Subsection C of Section 40-12-5.1 NMSA 1978, costs of the domestic

relations mediation program and supervised visitation 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, LR6-Form 3.02 NMRA for child custody mediation sliding fee scale.) (See LR6-304 NMRA for the supervised visitation sliding fee scale.) All domestic relations mediation and supervised visitation fees shall be paid to the district court clerk to be credited to the Domestic Relations Mediation Fund. The district court clerk shall forward a notice of assessment of costs to the parties upon payment of either the mediator or a neutral site from the fund. Mediation and supervised visitation assessments will be paid to the district court clerk by attorney firm check, cash, money order or certified check. No personal checks are to be accepted.

[Approved, effective October 2, 2000; as amended, effective September 28, 2001.]

ANNOTATIONS

The 2001 amendment, effective September 28, 2001, substituted "and supervised visitation programs" for "program" in the rule heading; in Paragraph A, substituted "A domestic relations action" for "All domestic relations actions" and "may" for "shall"; added Paragraph B and renumbered the remaining paragraphs accordingly; inserted "and a domestic relations supervised visitation program" near the middle of the first sentence in Paragraph C; and, in Paragraph E, inserted "and Subsection C of Section 40-12-5.1 NMSA 1978" and "and supervised visitation program" in the first sentence, inserted "(See LR6-304 NMRA for the supervised visitation sliding fee scale)" in the second sentence, inserted "and supervised visitation" in the third and fifth sentences, and inserted "either" and "or a neutral site" in the fourth sentence.

LR6-302. Parent education workshop.

Except by a motion showing good cause for waiver, in all domestic relations cases with children, whether contested or uncontested, the parents shall separately attend a parenting education workshop in a program approved by the district court for the purpose of educating the parents on making appropriate decisions regarding the welfare of their children. The parents shall pay the cost of the workshop in cash, attorney trust check or money order (not by personal check) at the time of attendance at the workshop. Verification of attendance, signed by the workshop coordinator, must be submitted to the court before a final decree may be entered.

[Approved, effective October 2, 2000.]

LR6-303. Parenting plans.

All parenting plans required pursuant to Section 40-4-9.1 NMSA 1978 shall include those topics set forth in Appendix, LR6-Form 3.03.

[Approved, effective November 21, 2002.]

ANNOTATIONS

Compiler's notes. — LR6-Form 3.03 was approved provisionally by the Supreme Court until statewide domestic relations rules and forms have been approved. Subsequently, by a Supreme Court order dated November 21, 2002, LR6-Form 3.03 was permanently approved in its final form.

LR6-304. Supervised visitation sliding fee scale.

A. The following fees shall be imposed for the supervised visitation program:

(1) twenty dollars (\$20.00) to be paid ten dollars (\$10.00) by each parent for the initial orientation at a neutral site;

(2) ten dollars (\$10.00) to be paid five dollars (\$5.00) by each parent for each exchange at a neutral site;

(3) twenty-five dollars (\$25.00) per hour for supervised visitation at the neutral site to be paid by the parent who attends the supervised visit at a neutral site, unless otherwise ordered by the court;

(4) ten dollars (\$10.00) to transport, plus twenty-five cents (\$.25) per mile to be paid by the parent who requests the transportation; and

(5) ten dollars (\$10.00) per telephone visit to be paid by the parent making the telephone call who must also provide a calling card for the expense of the call.

B. The above fees shall be paid based on each parent's ability to pay using the following sliding scale and procedure:

| Gross income | Percent of fees in Paragraph A |
|----------------------|--------------------------------|
| \$0 to \$12,499 | 40% |
| \$12,500 to \$17,499 | 60% |
| \$17,500 to \$22,499 | 80% |
| \$22,500 and over | 100% |

C. Procedure.

(1) For purposes of Paragraph B, "gross income" means the gross income of a party reported for purposes of the child support worksheet. Upon motion of a party, the court may reduce the party's fees from the rate set forth in Paragraph A to the applicable percentage of the fees set forth in Paragraph B of this rule. If a party has not requested reduced fees for supervised visitation, the full rates set forth in Paragraph A shall be charged.

(2) If the petitioner paid a filing fee and the petitioner has not utilized the petitioner's credit towards fees for mediation, the parties shall be given a credit of up to thirty dollars (\$30.00).

[Approved, effective September 28, 2001.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated September 28, 2001, this rule is effective immediately.

IV. Criminal Matters

LR6-402. 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 district court clerk's stamp, unless filed in open court or nunc pro tunc.

D. All orders and judgments signed by a judge shall be filed immediately with the district court clerk.

[Approved, effective October 2, 2000.]

LR6-403. Arrest warrants and affidavits.

Any person obtaining an arrest warrant shall cause a copy of the arrest warrant and the affidavit or order for the arrest warrant to be immediately filed with the district court clerk to be placed in the defendant's file for information purposes.

[Approved, effective October 2, 2000.]

LR6-404. Docket call.

A. Each judge within the district has an annual criminal trial schedule, and an integral part of which is the scheduling of a docket call pretrial conference (docket call) in advance of each trial period.

B. The counsel for the State of New Mexico and trial counsel for the defendant (or child, in juvenile cases) are required to appear at the ordered time for docket call to address the status of pending cases. At each docket call, the attorneys will certify to the court that they have, sufficiently in advance of the docket call, "met and conferred" in good faith with their client and opposing counsel regarding the resolution of the case and its status. Out of town counsel may make arrangements in advance to appear by telephone. The attorney who appears at docket call: must be prepared to discuss the status of the case, must have the same authority to make decisions in the case as the attorney of record, must have the calendar of the attorney of record available so matters can be set, and must have conferred with both opposing counsel and the attorney's client, or sanctions may be imposed on the attorney of record.

C. Lack of familiarity with a case at the docket call, or failure to have met and conferred in advance of the docket call, or failure to attend a docket call may result in sanctions.

D. A judge may require the client to also appear at the docket call.

[Approved, effective October 2, 2000.]

LR6-405. Pretrial conference.

Unless defendant (or child, in juvenile cases) is in custody, a pretrial conference may be held on the day preceding any jury trial at a time to be designated in the pretrial order, in order to avoid having jurors appear unnecessarily. Both the defendant and counsel must be present.

[Approved, effective October 2, 2000.]

. Appendix: Forms

LR6-Form 1.01. Application for free process.

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

_____, Petitioner

No.

v.

Judge:

_____, Respondent

APPLICATION FOR FREE PROCESS

COMES NOW, the petitioner and respectfully moves the court for an order granting said petitioner free process in the above-captioned cause. In support of this application, petitioner has attached to this motion an affidavit of the petitioner's financial status.

Dated this _____ day of _____, _____.

Signature of petitioner

Petitioner's street address

City, state and zip code

Petitioner's telephone number

[Approved, effective October 2, 2000.]

LR6-Form 1.01A. Order on free process.

IN THE SIXTH JUDICIAL DISTRICT COURT

_____ COUNTY

STATE OF NEW MEXICO

_____, Petitioner

No.

v.

Judge:

_____, Respondent

ORDER ON FREE PROCESS

The court has reviewed the application for free process and the supporting financial affidavit application to proceed *in forma pauperis* and FINDS:

_____ that the petitioner is unable to pay the court costs of this proceeding, and IT IS THEREFORE ORDERED that the petitioner be allowed to proceed without paying court costs and that petitioner be given free service of process by the county Sheriff's Department.

_____ that the petitioner is able to pay the costs of this proceeding. The respondent's income was not considered in making this finding IT IS THEREFORE ORDERED that petitioner's request is denied.

_____ The court reserves the right to allocate the costs of this proceeding, including the filing fee and costs of service of process, to either or both parties after hearing.

District Judge

[Approved, effective October 2, 2000.]

LR6-Form 1.02. Financial affidavit application to proceed *in forma pauperis*.

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No.

_____, Respondent

FINANCIAL AFFIDAVIT APPLICATION TO PROCEED

IN FORMA PAUPERIS

Pursuant to LR6-108 NMRA, I _____ (*name of party*), request that the court enter an order permitting me to file this case without prepayment of fees and costs and state upon my oath or affirmation the following statement regarding my financial, marital and employment status:

A. Background and Residence

1. Full name:

2. Age:

3. Sex:
4. Present address:
5. How long at this address?
6. Phone number:
7. Married _____ Single _____ Divorced _____
Separated _____
8. Number of dependents:
9. Ages of children living with you:
10. List name and relationship of other dependents living with you:
11. 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 including, but not limited to, disability pay, workman's compensation, social security, pension, interest, note and loan repayments, dividends, trust funds and unemployment compensation? Yes No

8. If the answer to 7 is yes, list each source and amount per month from each source:

_____ \$
_____ \$

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 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 or rent: \$

Utilities: \$

Other creditors: \$

I [do] [do not] have access to my spouse's resources or income.

Petitioner

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

Notary Public

My Commission Expires:

[Approved, effective October 2, 2000.]

LR6-Form 1.03. Attorney's affidavit.

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO)

COUNTY OF _____)

ATTORNEY'S AFFIDAVIT

_____, attorney at law, upon oath or
affirmation 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 petitioner will be able to pay any fee to me based upon the representations made in petitioner's affidavit. I am 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 petitioner's account for my services rendered on petitioner's behalf, I shall first deduct the costs which have been waived on behalf of the petitioner and pay them to the clerk of this court.
4. I am satisfied that my client has truthfully represented to the court my client's present financial status, and that my client is unable to afford the costs of filing this cause of action and should be awarded free process by the court.

Attorney's name

Attorney's address

Attorney's telephone number

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

Notary Public

My Commission Expires:

[Approved, effective October 2, 2000.]

LR6-Form 2.01. Request for setting.

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

_____,

[Plaintiff] [Petitioner],

No. _____

v.

_____,

[Defendant] [Respondent].

REQUEST FOR SETTING

Type of case: _____ Non-jury _____ Jury _____

Judge assigned to case:

Any hearing presently set in this matter:

Specific matters to be heard:

Time requested for hearing:

By requesting trial on the merits, the undersigned attorney or pro se party certifies the cases is ready for trial. A party who disagrees that the case is ready for trial on the merits shall, within ten (10) days from service of this request for setting, file a response setting forth why it is not ready for trial on the merits and when it will be. Rule 1-040 NMRA.)

(Provide names and addresses of pro se parties who need to be notified - attach a list if necessary.)

I hereby certify that I have caused a copy of the foregoing to be [mailed] [delivered] [faxed] to opposing [counsel] [parties pro se] this _____ day of _____, 2_____.

Requested by:

NOTICE OF HEARING

The Honorable _____ will hear the above matter in the _____ County courthouse on _____ the _____ day of _____, _____ at _____] (a.m.) (p.m.). _____ time is allotted for the hearing.

Notice [mailed] [delivered] [faxed] on _____ day of _____, _____.

Administrative assistant to the judge

The District Court complies with the Americans with Disabilities Act. Counsel or pro se persons must notify the clerk of the court of the nature of any disability at least five (5) days before any hearing, so appropriate accommodations can be made. The same requirements apply if an interpreter is required.

[Approved, effective October 2, 2000; as amended, effective May 7, 2001.]

ANNOTATIONS

The 2001 amendment, effective May 7, 2001, added the "Plaintiff" and "Defendant" alternatives in the form heading, substituted "Time requested for hearing" for "Total time required for hearing" and added the certification paragraph in the Request for Setting, added the "[delivered]" and "[faxed]" alternatives in the Notice of Hearing, and added the last paragraph.

LR6-Form 2.02. Local Rule 6-206 consent to service.

LOCAL RULE 6-206 CONSENT TO SERVICE

I, the undersigned, an attorney maintaining an office in (Silver City) (Deming) (Lordsburg), New Mexico, understand that in accordance with LR6-206 NMRA, I may have an appropriate box or other place designated in the district court clerk's or judge's office of such district where copies of notices and other papers will be placed by the court personnel, thus obviating the necessity of making arrangements to reimburse the court clerk's or judge's office for the cost of mailing.

In accordance with LR6-206 NMRA, I hereby consent to service by court personnel of notices and other papers by placement of such in said box or other appropriate place designated in the district court clerk's or judge'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 clerk's or judge's office for such purpose.

This consent shall be effective until specifically revoked in writing delivered to the appropriate district court judge, Sixth Judicial District Court.

DATED this _____ day of _____, _____.

Attorney's name

[Approved, effective October 2, 2000.]

LR6-Form 2.03. Certificate as to the state of the record and nonappearance.

[LR6-210]

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

(Plaintiff) (Petitioner)

No.

v.

Judge:

(Defendant) (Respondent)

CERTIFICATE AS TO THE STATE OF THE RECORD AND NONAPPEARANCE

I, the undersigned, district court clerk of the Sixth Judicial District of the State of New Mexico, within and for the County of _____ 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 same day, and that it appears from the return made by _____ of _____ County that the process was served on _____ (*name of each defendant or respondent who has not appeared*) on the _____ day of _____, _____, by _____ (*type of service*).

I further certify that no appearance for the above named defendant or respondent has been filed in my office.

IN WITNESS HEREOF, I set my hand and the seal of said court on this _____ day of _____, _____.

District Court Clerk

By:

Deputy

[Approved, effective October 2, 2000.]

LR6-Form 2.04. Pretrial order.

[LR6-214]

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

(Plaintiff) (Petitioner)

No.

v.

Judge:

(Defendant) (Respondent)

PRETRIAL ORDER

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

(1) 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.)

(2) 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.)

(3) 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.)

(4) Factual allegations; plaintiff.

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

(5) Factual allegations; defendants.

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

(6) 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 (4) and (5) supra.)

(7) Admissions or stipulations.

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

- A. dates;
- B. places;
- C. times;
- D. vehicles;
- E. ownership;
- F. passengers;
- G. traffic control devices;
- H. weather;
- I. foundation matters;
- J. other.

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

(8) Exhibits. *(Each party shall acknowledge that the party is aware of the following requirements concerning exhibits and, in addition, each party shall state the current status of its compliance with the following requirements. Unless stated differently in a Rule 1-016(B) NMRA scheduling order:*

A. *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 on the day of trial at 8:30 a.m. or such other time as may be set by the court.*

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

C. *Each exhibit shall be numbered separately. The exhibits shall be numbered by plaintiffs and lettered by defendants.*

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

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

(9) Discovery. *(Each party shall acknowledge that it is aware of the following requirements concerning discovery and, in addition, each party shall state the current status of its compliance with the following requirements.*

A. *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.*

B. *It is the responsibility of each party to subpoena that party's witnesses.*

C. *A separate witness list shall be exchanged by all parties fifteen (15) days prior to trial and a copy thereof delivered to the court at 8:30 a.m. on the morning of 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.*

D. *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.*

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

(10) Laws involved. *(State as follows:*

A. *Source of law.*

(1) United States of America (constitution or statute)

(2) State (constitution or statute)

(3) Ordinances

(4) Regulations (attach copies)

(5) Decisions (attach copies if not available in the district court law library)

B. *Issues of law; evidentiary problems.*

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

(11) 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.)

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

(13) 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.)*

(14) 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.)*

DATED this _____ day of _____, _____.

District Judge

Sixth Judicial District

SUBMITTED BY AND AGREED TO
IN SUBSTANCE AND FORM

(Plaintiff) (Petitioner)

(Defendant) (Respondent)

[Approved, effective October 2, 2000.]

LR6-Form 3.01. Attorney's certificate - Domestic relations.

[LR6-301]

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

_____, Petitioner

No.

v.

Judge:

_____, Respondent

ATTORNEY'S CERTIFICATE — DOMESTIC RELATIONS

I, _____, attorney for _____, certify pursuant to Rule 1-011 NMRA that no fee is required by Rule 1-099 NMRA because the attached motion is:

1. being filed within sixty (60) 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;
3. requesting entry of a stipulated order; or
4. seeking only enforcement of a child support order.

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:

[Approved, effective October 2, 2000.]

LR6-Form 3.02. Child custody mediation sliding fee scale.

LR-FORM 3.02 — CHILD CUSTODY MEDIATION SLIDING FEE SCALE*

| Gross Income | Number of Children | | | | |
|--------------|--------------------|------|------|------|------|
| | 1 | 2 | 3 | 4 | 4+ |
| \$10,000 | \$10 | \$10 | \$10 | \$10 | \$10 |
| \$12,500 | \$15 | \$15 | \$15 | \$15 | \$15 |
| \$15,000 | \$15 | \$15 | \$15 | \$15 | \$15 |
| \$17,500 | \$20 | \$20 | \$20 | \$20 | \$20 |
| \$20,000 | \$20 | \$20 | \$20 | \$20 | \$20 |
| \$22,500 | \$25 | \$25 | \$25 | \$25 | \$25 |
| \$25,000 | \$25 | \$25 | \$25 | \$25 | \$25 |
| \$27,500 | \$30 | \$30 | \$30 | \$30 | \$30 |
| \$30,000 | \$30 | \$30 | \$30 | \$30 | \$30 |
| \$32,500 | \$35 | \$35 | \$35 | \$35 | \$35 |
| \$35,000 | \$35 | \$35 | \$35 | \$35 | \$35 |
| \$37,500 | \$40 | \$40 | \$40 | \$40 | \$40 |
| \$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

* Hourly fee based on gross parental income and number of children.

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.

[Approved, effective October 2, 2000.]

LR6-Form 3.03. Ordered parenting plan for children of separated parents.

STATE OF NEW MEXICO

COUNTY OF _____

SIXTH JUDICIAL DISTRICT COURT

_____, Petitioner

No.

v.

Judge:

_____, Respondent

ORDERED PARENTING PLAN

FOR THE CHILDREN OF

_____ and

1. **Children involved:** The children's names and dates of birth are as follows:

Name

Date of birth

2. **Primary physical custody:** The children 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 in this order.

PROPER CONDUCT OF SEPARATED PARENTS

To father and mother:

You are involved in a divorce suit and are the parents of minor children. As you know, your children are usually the losers when their parents separate. They are deprived of the full-time, proper guidance that two parents can give -- guidance and direction essential to their moral and spiritual growth.

Although there is probably some bitterness between you, it should not be inflicted upon your children. In every child's mind there must and should be an image of two good parents. Your future conduct with your children will be helpful if you will follow these suggestions:

A. Do not poison your children's minds against either their mother or father in discussing their shortcomings. Do not attempt to buy your children's favor by presents or special treatment.

B. Do not expose your children to any member of the opposite sex with whom you may be emotionally involved.

C. Do not use your visitation as an excuse to continue arguments with the other parent.

D. Do not visit your children if you have been drinking. Do not visit your children at unreasonable hours.

E. Be prompt in paying child support as ordered. You will not be credited with presents, clothes, etc., as part of the child support ordered.

F. Do not fail to notify the other parent as soon as possible if you are unable to keep your visitation. It's unfair to your children to keep them waiting -- and worse to disappoint them by not coming at all.

G. Make your visitation as pleasant as possible for your children by not questioning them regarding the activities of the other parent and by not making extravagant promises which you know you cannot or will not keep.

H. The parent with whom the children live must prepare them both physically and mentally for the visitation. The children should be available at the time mutually agreed upon.

I. If one parent has plans for the children that conflict with the visitation and these plans are in the best interests of the children, be adults and work out the problem together.

J. Always work for the spiritual well-being, health, happiness and safety of your children.

3. **Legal custody:**

The parties shall have joint legal custody of the children, 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 children's best interests as set out herein. Joint legal custody means that neither of you will unilaterally make a major change affecting your children in the areas of religion, residence, non-emergency medical or dental care, education or major recreational activities. Before such a decision is made, you will discuss the matter, and both of you must agree. If you cannot agree, your disagreement will be resolved by the methods chosen in Paragraph 14 of this plan. Until agreement or resolution, no change will be made. This agreement shall set forth the authority and responsibility for making major decisions in the children's best interest as set out in this order. Except as otherwise specified in this order, you shall have joint responsibility and authority for the major decisions affecting the children's health, medical and dental treatment, education, religious activities, recreational activities and residence. Neither of you shall implement a decision which constitutes a major change in either of the children'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 children. When a parent does not have the children in their care, such parent is entitled to keep in touch with the children. Both parents have the right to contact the children by mail as frequently as they desire without interference or supervision of correspondence by the other parent. During any time that the children are out of the custody of one parent or the other for more than a weekend, the children shall not only be allowed, but required by the parent who has them in their custody, to call the other parent twice each week and once per weekend; that is, if the children are with one parent for an entire week, they will call the other parent twice during that week period; and if they are in the custody of one parent for a weekend they will call the other parent one time during the

weekend. Such telephone conversations shall not be monitored or supervised by the parent in whose custody the children are in at the time.

5. **The children's wishes:** The children's wishes should and must be considered when decisions are made about them. How much weight you give a child's wishes will depend on the age of the child and the nature of the decision. You will not ask a child to choose between you, and you will not burden a child with any decision that is inappropriate for the child's age and development.

6. **General care:**

A. The children shall generally be in the custodial parent's care. The custodial parent will ensure the children have adequate food, clothing, shelter, medical care and attend school regularly. The non-custodial parent shall ensure that the children have adequate food, clothing, shelter, medical care, and attend school during the non-custodial parent's periods of responsibility, if appropriate.

B. Each parent shall be responsible for the day-to-day care and control of the children during those periods in which the children are physically with such parent's household.

C. Each parent shall arrange for day care for the children with a private caretaker or licensed day care center during the parent's work hours during the parent's period of responsibility. If the children's caretaker that the custodial parent normally uses is not available, the custodial parent shall contact the non-custodial parent to determine if the non-custodial parent is available to care for the children.

7. **Visitation:**

A. All visitation, other than the non-custodial parent's weekend visitations, shall be confirmed by the non-custodial parent and custodial parent arranging the upcoming visitation at least twenty-four (24) hours prior to the time the visitation commences. That is, the custodial parent shall give the non-custodial parent at least twenty-four (24) hours notice prior to dropping the children off at the non-custodial parent's home and the non-custodial parent shall give the custodial parent at least twenty-four (24) hours notice prior to picking up the children at the custodial parent's home. If a party fails to provide the other with confirmation of the upcoming visitation at least twenty-four (24) hours prior to the scheduled visitation, the visitation is forfeited.

B. Non-custodial parent shall have visitation with the children every other weekend. The weekend of _____, _____ (date), shall be the first alternating weekend visitation of the children with the non-custodial parent. The exchange of the children shall occur at 6:00 p.m. on Friday evenings and at 6:00 p.m. on Sunday evenings at _____.

C. Holidays. The children will spend holidays as follows:

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

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

(3) Thanksgiving holiday with father in even-numbered years from Wednesday when school recesses for the holiday to 6:00 p.m. Sunday following the holiday, and with mother in odd-numbered years;

(4) For purposes of the Christmas holiday exchange, the parties will each have the children for a one (1) week period. During the first Christmas holiday after this parenting plan is entered by the court, the first week is with mother. During the second Christmas holiday after this parenting plan is entered by the court, the first week is with father. The parties will thereafter alternate that arrangement. In addition to alternating the weeks, the parties shall also alternate the children spending Christmas Day and Christmas Eve with each parent. During the first Christmas holiday after this parenting plan is entered by the court, the children shall spend Christmas Eve and Christmas Day with mother. During the second Christmas holiday after this parenting plan is entered by the court, the children shall spend Christmas eve and Christmas day with father. During the third Christmas holiday after this parenting plan is entered by the court, the children will spend Christmas Eve with mother and Christmas Day with father. During the fourth Christmas holiday after this parenting plan is entered by the court, the children will spend Christmas Eve with father and Christmas Day with mother, and they will alternate that arrangement from that time forward;

(5) Spring break will be alternated with mother having the children during the first Spring break that occurs after this parenting plan is entered by the court. Fall Break will be alternated with father having the children during the first Fall break that occurs after this parenting plan is entered by the court;

(6) Easter day will be with whichever parent has custody of the children during that weekend.

D. Telephone and mail: Both parents will keep the other informed of current phone numbers and addresses on an ongoing basis, and will not disrupt phone or mail service (*i.e.*, unplug phone, have mail held other than during absence from home).

E. Changes: You may each ask the other for exceptions to this schedule from time to time, but the other parent has the right to say "no", and you will not argue about it nor criticize the other parent's decisions in front of the children.

F. Scheduled activities: If either of the children have school or recreational activities planned on weekends during the non-custodial parent's period of responsibility, the non-custodial parent shall take the child involved or make arrangements for the 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.

As your children grow, it may be necessary to change the schedule from time to time. This would be a major change that you will have to discuss and agree on. If you cannot agree, you must follow the dispute resolutions in Paragraph 14.

8. **Grandparents and other relatives:** The children's relationships with grandparents and other extended family members are important, and it is beneficial for the children to spend time with your extended families, as long as the members of those families do not try to alienate the children from either of you. You will communicate about visitation with the grandparents.

9. **Step-parents, step-children, step-siblings:** Deep and important relationships between step-relatives can develop. It is not in the children's best interest to cut off those relationships.

10. **Medical decisions:**

A. [Father] [Mother] agrees to keep the minor children covered by health and dental insurance under the policy of insurance available to that parent from either that parent's employer or other group health care insurance plan.

B. 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.

C. 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.

D. Medical treatment shall be by a licensed physician, osteopath, chiropractor or other recognized health care provider. Any dental work, including orthodontal or periodontal work, shall be done by a licensed dentist.

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

11. **Change of residence:**

A. Both parents presently intend to continue to live in the city of their residence.

B. Neither parent will remove, cause to be removed, or permit removal of the children from the State of New Mexico, except as agreed to in this plan or 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 14 of this plan.

C. If either parent plans to change their current home city or state of residence, that parent shall provide to the other parent thirty (30) days notice, in writing, stating the date and destination of the move. As soon as possible thereafter, the moving parent shall provide an address and phone number where the children may send correspondence or call. Absent agreement of the other parent or order of the court, no change of home city or state of residence will be made.

12. Educational decisions:

A. Changes in educational environments or programs shall require the consent of both parents.

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

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

D. Both parents shall have complete access to the children's school records and shall be entitled to participate in conferences with the children's teachers and supervisors. The custodial parent shall ensure that the non-custodial parent receives, and will forward to the non-custodial parent, copies of the children's report cards, progress reports and special testing results. In addition, the custodial parent will ensure that the non-custodial parent receives copies of order forms for the children's school pictures, notices of their parent-teacher meetings and any recreational activities that the children may be involved in.

13. Recreational activities, school activities and public activities:

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

C. Each parent shall have the right to attend and participate in the children's school and other recreational activities, and each parent shall advise the other of such events that come to the parent's attention.

14. Dispute resolution:

A. Disputes concerning interpretation or application of this parenting plan and failure of the parents to reach agreement when required under the provisions of this plan 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 children 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 children and to take the children's wishes and desires into account.

C. Written proposals:

If either parent wishes to permanently change the time-sharing plan or one or more aspects of the status quo, the one who wishes the change will give to the other a written change proposal which will include what the other party 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.

The parent who receives the change proposal will investigate the proposed change and will respond in a reasonable time, in writing. If the parent disagrees with the proposed change, the parent must explain why the parent disagrees, and when appropriate, the parent who disagrees shall make a written counter proposal.

D. Oral Discussion:

You will discuss all major changes in the children's lives in order to try to reach an agreement.

E. If you cannot agree to the proposed change, no change will be made until you submit the issue to, and participate in, mediation to try and reach an agreement.

F. Only after you have attempted all these avenues to resolve the issue and they fail, will the matter then be submitted to the district court. The district court may refer the matter to a special master or may terminate joint custody among other resolutions.

G. The cost involved in the dispute resolution will be paid fifty percent (50%) by each parent. You will use the above methods of dispute resolution and neither parent will withhold financial support or access to the children before, during or after dispute resolution.

15. **General:**

A. You will both be actively involved in the major decisions and legal responsibilities for your children.

B. You will communicate and be flexible about the needs of the children, especially as those needs change due to a child's growth and development.

C. You will be supportive of the children's relationship with the other parent and positive about that relationship. You will give permission to the children to enjoy the relationship with the other parent and will not interfere with the parent-child relationship of the other.

D. Neither of you will align the children against the other parent, or the other parent's family.

E. You shall foster a positive relationship between the other parent and the children. You will refrain from making negative or derogatory comments about the absent parent. Neither of you shall discuss disputes regarding property matters, support payments or other issues with the children or in their presence. You will not use the children as intermediaries in transmitting money, documents or messages.

F. 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.

Dated this _____ day of _____, _____.

District Judge
Sixth Judicial District

I certify that I have mailed delivered a copy of the foregoing to the petitioner at _____ and to the respondent at _____ on this _____ day of _____, _____.

Administrative assistant to the judge

SUBMITTED BY AND AGREED TO

IN SUBSTANCE AND FORM:

Petitioner

Respondent

[Approved, effective November 21, 2002; as amended by Supreme Court Order 06-8300-06, effective February 16, 2006.]

ANNOTATIONS

Compiler's notes. — Pursuant to a court order dated June 29, 2000, this form is provisionally approved until approval by the Supreme Court of a statewide parenting plan. Subsequently, by a court order dated November 21, 2002, this form was permanently approved in its final form.