

# Rules of the District Court of the Second Judicial District

## I. General

### LR2-101. Applicability; title.

A. **Applicability.** The rules of the Second Judicial District Court of New Mexico promulgated prior to the effective date of these rules are hereby rescinded and these rules substituted therefor. These rules shall apply to all cases filed and administrative matters arising in the second judicial district.

B. **Title.** These rules shall be cited as the "Second Judicial District Local Rules".

### LR2-102. Chief judge.

Pursuant to Rule 23-109 NMRA, the chief judge shall be elected during March of the year in which the current chief judge's term expires. The term of the chief judge shall begin July 1 of the year of his or her election.

### LR2-103. Children's, civil, criminal and domestic relations courts; judge assignments; partner judges; presiding judges.

A. **Second judicial district courts.** The second judicial district judges and clerks are divided into four courts: children's court, civil court, criminal court and domestic relations court. Cases are assigned to the four courts as follows.

(1) Children's court cases include all delinquency, youthful offender and families in need of court ordered services cases; neglect and abuse cases; termination of parental rights cases, child and adult adoption cases; cases under the Interstate Compacts on Juveniles and the Placement of Children; authorizations of marriages of minors; and emancipation of minors. Delinquency cases shall be designated with a "JR" number; youthful offender cases shall be designated with a "YR" number; families in need of court ordered services, abuse and neglect and termination of parental rights cases brought by the department shall be designated with a "JQ" number and child and adult adoption cases brought by private parties shall be designated with an "SA" number.

(2) Civil court cases include all civil cases not assigned to the other courts; and shall be designated by a "CV", "SQ", "PB", "MS" or "TX" number.

(3) Criminal court cases include all criminal cases, including metropolitan court criminal appeals, except those cases involving domestic violence which do not result in the death of the victim; and shall be designated by a "CR" number.

(4) Domestic relations court cases include all cases of a domestic relations nature, except cases seeking money damages for spousal torts, including but not limited to all divorces, annulments, legal separations, allocation of property and debt, parentage actions, child custody and child support cases, and disputes arising from a cohabitation relationship between non-married persons, which shall be designated by a "DM" number; and domestic violence protection order cases brought pursuant to the Family Violence Protection Act, which shall be designated by a "DM/DV" number.

**B. Incorrect case assignment.** If a case has been incorrectly assigned to a court, upon a party's motion or the court's own motion, the assigned judge shall order the proper reassignment. No refund or increase in filing fees shall be required by such reassignment.

**C. Judge assignments.** The chief judge shall assign each judge to hear cases in one of the four courts.

**D. Alternate judges.** The chief judge may designate an alternate judge or judges for each court. The alternate judge shall be assigned cases in the court in which he or she acts as an alternate when all other judges in that court have been excused, challenged or recused.

**E. Partner judges.** The chief judge shall assign each judge a partner judge who shall sign orders and hear emergency matters in the other's absence.

**F. Presiding judges.** The chief judge shall appoint a presiding judge for each of the four courts. All administrative matters which cannot be resolved by the judge assigned to the case shall be referred to the presiding judge of the court to which the case is assigned.

**G. Monthly meetings.** Unless otherwise directed by the chief judge, all of the judges shall meet at noon on the second Thursday of each month. The judges of each court shall meet at least quarterly at a time and place set by the presiding judge.

[As amended, effective November 21, 1996; December 19, 2000.]

## ANNOTATIONS

**The 1996 amendment**, effective November 21, 1996, added "and domestic violence" in the rule heading; in Paragraph A, deleted "and" preceding "domestic relations court", added "and domestic violence court", and substituted "five" for "four" twice; in Subparagraph A(3), added "except those cases involving domestic violence which do not result in the death of the victim"; in Subparagraph A(4), added "or petitions for domestic violence protection orders pursuant to the Family Violence Protection Act" and deleted "domestic violence cases" following "non-support cases"; added Subparagraph A(5); and substituted "five" for "four" in Paragraph C.

**The 2000 amendment**, effective December 19, 2000, deleted "and domestic violence" from the section catchline; in Paragraph A, substituted "four" for "five" for the number of courts that the second judicial district judges and clerks are divided and deleted the reference to the domestic violence court; in Paragraph A(1), substituted "youthful offender and families in need of court ordered services cases" for "need of supervision cases" near the beginning, deleted "guardianships arising under the Children's Code; and", substituted "and emancipation of minors" for "and shall be designated by a 'CH'" in the first sentence and added the second sentence, relating to how different cases would be designated; in Paragraph A(4), deleted "or petitions for domestic violence protection orders pursuant to the Family Violence Protection Act" following "spousal torts", substituted "separations, allocation of property and debt, parentage actions, child custody and child support" for "separation, property division, parentage, child custody and non-support", substituted "DM" for "DR" and added the language beginning "and domestic violence protection" at the end; deleted Paragraph A(5) pertaining to domestic violence court cases; and in Paragraph C, substituted "four" for "five" for the number of courts.

## **LR2-104. Assignment of cases.**

A. **General.** All cases will be assigned at random exclusively to the judges of the court in which the cases are filed, except motor vehicle division appeals which are filed in the civil court will be assigned at random to the judges of the criminal court.

B. **Criminal cases.** If a criminal case involving multiple defendants is reassigned, all defendants in that case shall be reassigned to the replacement judge.

C. **Stipulation.** If the parties in any case timely file a stipulation to district judge pursuant to Rule 1-088 or Rule 5-105 NMRA, the case will be assigned to the stipulated judge provided such judge's written approval has been filed with the clerk.

D. **Random reassignment.** If no stipulation is timely filed, the case will be randomly reassigned to a judge in the court in which the case is filed. If no judges remain in that particular court, the case shall be randomly reassigned to that court's alternate judge(s), if any. In exigent circumstances, a party may request that the chief judge, or in his or her absence, the alternate chief judge or a presiding judge, direct the clerk to make an immediate judge reassignment.

[As amended, effective January 23, 1998.]

## **ANNOTATIONS**

**The 1998 amendment**, rewrote Paragraph B.

**Compiler's notes.** — The order approving the amendment of this rule was filed January 23, 1998. Although the order has a November 13, 1997 effective date, Rule 5-

102 provides that no local rule becomes effective prior to its being filed with the Supreme Court and published in the same manner as Supreme Court rules.

## **LR2-105. Consolidating cases.**

A. **Judge.** Motions to consolidate and consolidated cases shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged, or recused.

B. **Filings.** The motion to consolidate and the court's order to consolidate shall be filed in the oldest case (the case bearing the lowest case number); copies of the motion and order shall be filed in all the consolidated cases. Following consolidation, all pleadings, motions, and other papers shall be filed only in the oldest case; no papers including copies shall be filed in the remaining cases, except in criminal court cases copies shall be filed in all the remaining cases.

C. **Captions; titles.** The case number of each case consolidated shall appear in the caption of all pleadings, motions, and other papers filed after consolidation. In addition, if the pleading, motion or other paper does not apply to all the consolidated cases, its title shall include the case number(s) to which it pertains, e.g., "Motion for Summary Judgment on Count II of CV-88-08888."

## **LR2-106. Priorities for resolving scheduling conflicts.**

A. **Scheduling priorities.** Scheduling conflicts between or within the various courts (i.e., children's court, civil court, criminal court, and domestic relations court) shall be resolved using the following order of priorities:

- (1) all matters given preference by statute or Supreme Court rule;
- (2) trials and hearings on the merits, with jury trials taking precedence over non-jury trials;
- (3) children's court cases, with the oldest case generally taking precedence;
- (4) criminal court cases, with the following factors all being considered to determine priority:
  - (a) date of indictment or date of information;
  - (b) date of arraignment;
  - (c) whether the defendant is or is not in custody;
  - (d) expiration of the Rule 5-604 NMRA (six-month) time period;

(5) domestic relations court cases, with the oldest case generally taking precedence but child related issues taking precedence over all other issues;

(6) civil court cases;

(7) all other matters.

**B. Court-appointed hearing officers.** Trials, hearings or conferences scheduled by a court-appointed hearing officer (arbitrator, settlement facilitator, special master, etc.) shall be given the same priority as those set by a judge.

**C. Scheduling conflicts.** Scheduling conflicts which are not resolved pursuant to Subsection A above or by the assigned judges, shall be resolved by the presiding judge(s). If the presiding judge(s) cannot resolve the conflict, the matter may be referred to the chief judge.

[As amended, effective January 23, 1998.]

## ANNOTATIONS

**The 1998 amendment** added the factors to be considered to determine criminal court case priority in Subparagraph A(4).

**Compiler's notes.** — The order approving the amendment of this rule was filed January 23, 1998. Although the order has a November 13, 1997 effective date, Rule 5-102 provides that no local rule becomes effective prior to its being filed with the Supreme Court and published in the same manner as Supreme Court rules.

### **LR2-107. Court hours; holidays; weather delays and closings.**

**A. Working hours; holidays.** The usual working hours for second judicial 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. District court offices will observe those legal holidays published annually by the administrative office of the courts and any others designated as legal holidays by the Supreme Court.

**B. Weather delays and closings.** As provided by Supreme Court order filed March 7, 1990, the second judicial district court shall observe the same schedule as the Albuquerque Public Schools with respect to court closing and delayed opening due to weather conditions.

### **LR2-108. Court security.**

**A. Potentially violent situations; duty of party.** In any type of case where a party believes that a potentially violent situation might arise, that party, through counsel or pro

se, should notify the assigned judge and court administrator sufficiently in advance so that appropriate security measures can be taken.

**B. Entry.** All persons entering and all packages, briefcases, bags and containers brought into the Bernalillo County Courthouse or the John E. Brown Juvenile Justice Center shall be subject to search by x-ray or other screening method.

**C. Deadly weapons.** No deadly weapon of any type will be allowed either in the Bernalillo County Courthouse or the John E. Brown Juvenile Justice Center. All weapons must be turned in to security personnel at the security barrier. Legal weapons will be returned to the possessor upon departure from the building. A "deadly weapon" includes any deadly weapon as defined by Section 30-1-12 NMSA 1978, any knife, mace, pepper spray and other caustic chemicals. Persons found entering the building with a "deadly weapon" may be turned away until they have secured the weapon off the premises. Deadly weapons are subject to confiscation by security personnel in the course and performance of their duties. A "deadly weapon" includes any deadly weapon as defined by Section 30-1-12 NMSA 1978, any knife, mace, pepper spray or other caustic chemicals. Persons found entering the building with a "deadly weapon" may be turned away until they have secured the weapon off the premises.

**D. Exemptions.** The following individuals are exempt from Subsections B and C of this rule:

- (1) on-duty Bernalillo County sheriff's department security personnel assigned to the courthouse or the juvenile justice center;
- (2) law enforcement officers transporting prisoners from any detention facility;  
and
- (3) law enforcement officers appearing for court on official business who secure their weapons in the provided gun lockers.

[As amended, effective August 7, 2001.]

#### **ANNOTATIONS**

**The 2001 amendment**, effective August 7, 2001, in Subsection C, inserted "Deadly" in the subsection heading, substituted "deadly weapon" for "weapons" at the beginning of the subsection and added the fourth and fifth sentences pertaining to deadly weapons and substituted "Deadly" for "Illegal" at the beginning of the sixth sentence; and added Paragraph D(3).

#### **LR2-109. Decorum.**

Individuals appearing in court or in a judge's office or chambers shall conduct themselves in a manner befitting the dignity of the court. Portable telephones, pagers

and beepers shall be turned off. Attorneys, their employees, law clerks, runners, law students and court employees appearing in court or in a judge's office or chambers shall dress in a manner befitting the dignity of the court.

### **LR2-110. Official record of court proceedings.**

In proceedings before second judicial district judges, hearing officers and special commissioners, official court reporters and monitors are responsible for taking the official record. When parties in such proceedings need stenographic services which the official court reporter cannot provide and the managing court reporter so certifies, non-official reporters may be used. No one may record any such proceeding without the prior approval of the assigned judge.

### **LR2-111. Sealing of court records.**

The court's policy is to allow public access to official court files and other records. Accordingly, no court file or other record shall be sealed from public inspection, with the exception of records containing matters made confidential by law and court clinic records. In extraordinary cases the court may seal a file or other record upon a party's written motion or the court's own motion, and showing of good cause. The sealed records shall remain part of the court file or other record.

## **ANNOTATIONS**

**Burden on party who wishes to seal record.** — The trial court erred in granting the husband's motion to seal the record in a divorce proceeding where he failed to establish that it was an "extraordinary case". *Thomas v. Thomas*, 1999-NMCA-135, 128 N.M. 177, 991 P.2d 7, cert. denied, 128 N.M. 150, 990 P.2d 824 (1999).

### **LR2-112. Interpreters.**

A. **Scheduling.** A Spanish language interpreter will automatically be scheduled to appear at all criminal court arraignments and grand jury panels. When an interpreter is needed for any other proceeding or any other language, including sign, the party needing the interpreter shall notify the court administrator of such need at least one week prior to the proceeding. Requests may not be made for a specific interpreter.

B. **Cancellations; reimbursing court.** The party requesting the interpreter shall be responsible for notifying the court administrator of any cancellations, continuances, or resettings. If that party fails to notify the court administrator, that party shall reimburse the court for the fees and mileage expenses of the interpreter as provided by the Supreme Court Interpreter Fee Payment Guidelines.

### **LR2-113. Transportation of incarcerated and in-custody persons for hearings and trial; dress.**

**A. Submission of transportation orders.** A court order is required for the transportation for trial, hearing or other proceeding, of any person under the jurisdiction of the second judicial district and incarcerated or in custody at the New Mexico State Penitentiary, state hospital, or other such institution except the Bernalillo County Detention Center. In criminal cases, the prosecutor shall submit a proposed transportation order for all proceedings set at the state's request and for all trials, and the defendant, through counsel or pro se, shall submit a proposed transportation order for proceedings set at his or her request. In all cases the submitting party shall serve an endorsed copy of the transportation order on the institution in such a manner that the copy is received at least five (5) days prior to the date of the requested transport.

Upon court order, incarcerated/in-custody persons should be transported to allow sufficient time for consultation with counsel, if any.

**B. Contents of proposed order.** Proposed transportation orders shall include the following:

- (1) The full name and any aliases of the person to be transported and that person's date of birth and social security number;
- (2) The applicable case number and caption;
- (3) The designated transporting agency (usually the sheriff of the appropriate county);
- (4) The place where the person is incarcerated or in custody;
- (5) The place(s) where the person is to be transported;
- (6) The reason for the transport;
- (7) The place, date and time of the proceeding and, if known, the length of such proceeding;
- (8) The date the person is to be returned, if applicable;
- (9) The requirement, if any, for civilian clothing.

**C. Notice to Bernalillo County Detention Center.** The criminal clerk shall notify the Bernalillo County Detention Center ("BCDC") of criminal trials and other hearings for defendants in custody or incarcerated at BCDC. BCDC personnel shall transport such defendants to such hearings.

**D. Prisoners' dress.** The incarcerating or custodial institution shall insure that prisoners appearing for jury trials be clean and in civilian clothing.



## **LR2-114. Tendering money to and disbursing money from the court; insufficient funds checks; refunds; daily jury receipt.**

A. **Court order or statute required.** The clerk shall not accept or disburse money except pursuant to court order or rule, or statute.

B. **Disbursements.** Except for routine orders submitted by court staff, all proposed orders for disbursement of funds from a court account shall be approved by the court accountant prior to presentment to any judge, such approval to signify that funds necessary to execute the order are available.

C. **Form of tender.** Any tender of any type of bond, litigant funds or eminent domain funds shall be in the form of cash, money order, cashier's check, certified check, or government agency warrant. Any tender for fees and other payments may be in the form of cash, money order, cashier's check, certified check, government agency warrant, attorney trust or operating account check or law firm check. Personal checks shall not be accepted.

D. **Insufficient funds checks.** The court shall refuse checks from attorneys, law firms or agencies who have previously presented insufficient funds checks. Upon written request, the chief judge may waive this requirement. The clerk shall assess a twenty-five dollar (\$25.00) fee on checks which are returned for any reason. This requirement shall not be waived.

E. **Fee refunds.** Filing fees and jury fees will not be refunded. Court clinic assessment fees in domestic relations court cases will not be refunded except upon court order for good cause shown.

F. **Daily jury fee receipt.** The party or parties requesting a jury trial must present their receipt for payment of the daily jury fee to the assigned judge before the trial will continue as a jury trial each day.

[As amended, effective December 27, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective December 27, 1999, deleted the last sentence of Paragraph B, relating to the availability of disbursements.

## **LR2-115. Free process.**

A. **Procedure.** A party seeking free process shall present to the court a motion for free process with an attached affidavit of indigency and, if represented by counsel, an attached affidavit of counsel supporting the party's motion for free process, and a proposed order for free process. The motion, affidavits and proposed order shall be in the form set forth in forms LR2-Form A, LR2-Form B, LR2-Form C and LR2-Form D.

The motion and order shall be presented directly to the presiding judge of the court to which the case will be assigned if available, or to the chief judge. The court may decide a motion for free process ex parte and without hearing.

Upon the award of any judgment to a party allowed free process or for good cause otherwise, the court may order the party to pay court fees and costs. If a pro se party becomes represented subsequent to being allowed free process, the party shall submit another motion for free process along with affidavit(s) and proposed order. If a case is closed and reinstatement or reopening sought, the party shall submit another motion, affidavit(s) and proposed order.

**B. Application.** This rule shall not apply to criminal cases.

## **LR2-116. Pro se appearance and filings; corporations as parties.**

**A. Entry of appearance by parties pro se.** Parties who represent themselves shall enter an appearance and shall do so by filing an initial pleading, responsive motion or other paper that includes their name, address and telephone number. Parties pro se shall promptly file notice of any change of address or telephone number, and serve such on all other parties.

**B. Filings by parties pro se.** The clerk shall accept for filing a pro se party's pleadings, motions, and other papers without regard to such pro se party's failure to comply with the requirements of Rule 1-100 NMRA, or any second judicial district local rule, provided the papers are legible and sufficient information is provided for the clerk to identify the case to which the papers apply.

**C. Corporations as parties.** Corporations must be represented by counsel. The court may strike, by court order on its own motion, any papers filed by an unrepresented corporation.

## **LR2-117. Counsel of record; appearance; withdrawal.**

**A. Entry of appearance required.** All counsel for a party, including state prosecutors and public defenders and counsel in appeals from metropolitan court, shall enter an appearance and shall do so either (1) by filing the party's initial pleading, criminal information or indictment, or delinquency petition, or (2) by filing an entry of appearance. Counsel shall promptly file notice of any change of address or telephone number and serve such notice on all other parties.

**B. Additional appearance requirements for criminal cases.** In all criminal cases, at arraignment or within seven (7) days thereafter, the prosecutor and the public defender or other defense counsel who will actually try the case shall file an entry of appearance as trial counsel. Within seven (7) days after discovery of any conflict affecting public defender representation, the public defender shall file a notice of conflict, and provide a copy of such notice to the assigned judge.

**C. Withdrawal of counsel.** All withdrawals in all cases shall be by court order upon motion and shall not be granted ex parte. In addition to the grounds for withdrawal, motions to withdraw shall set forth the dates and times of any hearings set, and the dates of any relevant Supreme Court deadlines (e.g., in criminal cases, the date the six-month rule expires). In addition, unless the court otherwise orders for good cause, motions to withdraw shall:

(1) be accompanied by an entry of appearance by substitute counsel or the client as a party pro se in which such substitute counsel or party pro se certifies that he or she is ready and able to proceed without delay; or,

(2) set forth in the motion the client's last known address and telephone numbers including work number, and acknowledge that the client has twenty (20) days in which to obtain counsel or be deemed appearing pro se.

Motions to withdraw shall be in the form set forth in LR2-Form E; entries of appearance by substitute counsel or party pro se shall be in the form set forth in LR2-Form F. A copy of the motion to withdraw shall be served on the client as well as all other parties. An endorsed copy of the order allowing withdrawal shall be served on the client as well as all other parties.

## **LR2-118. Form of papers.**

**A. Requirements.** All pleadings, motions, affidavits, briefs and other papers presented to the clerk for filing shall conform to the following:

- (1) The paper shall be white, opaque, unglazed and of good quality;
- (2) The size of the paper shall be 8 and 1/2 inches in width by 11 inches in length;
- (3) The left margin shall be at least 1 and 1/2 inches, the right margin shall be at least 1/2 inch, the top margin shall be at least 1 and 1/2 inches, and the bottom margin shall be at least 1 inch;
- (4) All text shall be typewritten or printed;
- (5) All typewritten text shall be in 10 or 12 pitch and type shall be of letter quality;
- (6) Captions, titles, citations in lists of authorities, footnotes, and blocked quotations may be single spaced; otherwise, the main body of the text shall be double spaced;
- (7) All papers requiring signature(s) shall be signed in black ink, and the signature shall be followed by the name, law firm if any, capacity (e.g., Plaintiff Pro Se;

Attorney for Defendant Sally Smith; etc.), address and telephone number, typewritten or printed.

**B. Acceptance for filing.** The clerk shall accept for filing a party's papers without regard to such party's failure to comply with the requirements of Rule 1-100 NMRA, or this rule, provided the papers are legible and sufficient information is provided for the clerk to identify the case to which the papers apply.

## **ANNOTATIONS**

**Cross references.** — For the form of papers to be filed in the district court, see Rules 1-100 and 5-118 NMRA.

### **LR2-119. Attachments.**

**A. Non-duplication.** Exhibits, appendices and other attachments (hereinafter "attachments") to pleadings, motions, and other papers, shall be filed with the court only once; subsequent use of such attachments shall be by reference to the document name and filing date.

**B. Size and page limit.** The size of any attachment shall not exceed 8 and 1/2 inches in width by 14 inches in length, and the total number of pages of attachments shall not exceed twenty-five (25), except by leave of the court.

**C. Legal authority.** Copies of cited cases, treatises, annotations, law review articles, and other such legal authority, shall not be filed with the clerk but shall be given to the assigned judge if requested.

**D. Court clinic records.** Copies of court clinic records, including psychological and psychiatric reports, shall not be attached to any pleading, motion, or other paper.

**E. Violations.** Attachments filed in violation of this rule may be stricken by court order on the court's own motion.

### **LR2-120. Briefs and statements of supporting points and authorities; approval; page limit.**

**A. Approval required.** Except for briefs regarding opposed motions, prior court approval is required for the filing of all briefs and statements of supporting points and authorities.

**B. Page limit.** Except by leave of the court, briefs and statements shall not exceed ten (10) pages.

### **LR2-121. Exhibits at hearings and trial.**

A. **Size limitations.** Exhibits presented at trial or other hearing which exceed 15 inches by 17 inches or which cannot be folded to fit within that size envelope may be admitted, provided the proponent of such exhibit provides the court a copy of the exhibit reduced to 15 inches by 17 inches. After the hearing or trial at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the permanent court record. The court will allow the proponent to withdraw a large exhibit from the court in order to obtain a reduced copy. This rule is not intended to limit the introduction of objects at issue in any case, e.g., the alleged faulty product, clothing, etc.

B. **Marking, filing and copying.** The court reporter will mark, log and file all exhibits used during court proceedings. Photocopies of exhibits in the form of paper may be requested from the special services division. A fee will be charged for all photocopies. Exhibits sealed by the court may not be photocopied without court order.

## **LR2-122. Interrogatories; limitation; counting.**

A. **Limitation on interrogatories.** No party shall serve on any other party more than fifty (50) interrogatories, counting all sub-parts, except with leave of the court.

B. **Counting interrogatories.** The following interrogatories shall each be counted as one:

(1) The first interrogatory requesting biographical information of the person, corporation, or other entity that is a party to the lawsuit, which may request names, addresses, places of doing business, social security number, age, marriage, children, occupation, and other such pertinent biographical data;

(2) An interrogatory on expert witnesses, which may request names, addresses, job titles, qualifications, and matters set forth in Rule 1-026(B)(5) NMRA;

(3) An interrogatory on lay witnesses, which may request names, addresses, job titles, relationship to any party, subject matter, and a summary of the anticipated testimony; and

(4) An interrogatory on exhibits, which may request titles, descriptions of contents, identification of any limited purpose for which the exhibit will be offered, and the names, addresses and job titles of authenticating witnesses and current custodians.

## **ANNOTATIONS**

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

## **LR2-123. Opposed motions and other opposed matters; filing; hearings.**

A. **Presentment for filing.** As a condition of filing, all opposed motions, objections and other opposed matters requiring a hearing (hereinafter "motions") shall be presented to the clerk with the following:

(1) A copy of the motion, along with any required and other attachments to the motion, for the assigned judge;

(2) An original request for hearing in the form set forth in LR2-Form G, along with a copy of the request for the assigned judge;

(3) An original notice of hearing in the form set forth in LR2-Form H and sufficient copies for all parties entitled to notice; and,

(4) Stamped, addressed, plain (without return address) envelopes for all parties entitled to notice.

B. **Service of request.** The movant shall serve copies of the request for hearing on all parties entitled to notice.

C. **Filing; forwarding to judge.** The clerk will file the motion and request for hearing, and endorse a copy of each for the assigned judge. The clerk shall forward the endorsed copies, the original notice of hearing and copies, and the envelopes, to the assigned judge.

D. **Notice of hearing.** The assigned judge's staff will complete and file the notice of hearing, and mail or deliver copies to all parties entitled to notice, adding to the envelopes the court address as the return address, or the judge may direct the movant to complete this process.

E. **General exceptions.** The clerk also shall file opposed motions presented without a request for hearing, notice of hearing or stamped, addressed envelopes, in the following circumstances:

(1) Prior to presentment to the clerk, the movant has delivered a copy of the motion and the request, the original and copies of the notice of hearing, and envelopes, to the assigned judge's office, and receipt is indicated on the original motion by initials of the judge's staff.

(2) The motion has been approved for filing by the assigned judge's staff in circumstances other than those set forth in Subsection E(1) above;

(3) The motion is presented with a signed order disposing of the matter; or,

(4) The motion is presented with a proposed order in which the date and time of the hearing will be entered, such as an order to show cause or temporary restraining order.

**F. Exception for motions requiring fifteen minutes or less in criminal, delinquency and need-of-supervision cases.** All motions in criminal, delinquency and need-of-supervision cases, requiring fifteen minutes or less for hearing, shall be presented only with sufficient copies of the motion for all parties entitled to notice. The clerk, at the time of filing, will stamp a hearing date and time on the original and copies of the motion. The movant shall serve a copy of the motion with the hearing date and time indicated, on all parties entitled to notice. With criminal cases, motions for Monday hearings must be filed by the preceding Monday; motions for Friday hearings must be filed by the preceding Friday. Any motions filed after these deadlines will be scheduled on the next regular calendar, unless otherwise ordered by the court.

**G. Required attachments.** With all motions requiring an evidentiary hearing, a list of witnesses shall be attached to the motion. With motions filed in domestic relations cases, a Rule 1-099 NMRA, certificate shall be attached as required by Second Judicial District Local Rules, Rule LR2-132.

**H. Requests alone.** A request for hearing may be filed without a motion provided the request is presented with a notice of hearing, copies and envelopes. A copy of the request shall be served on all parties entitled to notice.

## **LR2-124. Unopposed motions and other unopposed matters; filing.**

**A. Presentment for filing.** As a condition of filing, all unopposed motions and other unopposed matters (hereinafter "motions") shall be presented to the clerk with the following:

(1) A copy of the motion, along with any required and other attachments to the motion, for the assigned judge; and

(2) An original proposed order disposing of the motion approved by all parties entitled to notice; approval of counsel may be indicated as telephonic approval; approval of a party pro se must be indicated by the party's signature on the proposed order.

**B. Filing; forwarding to judge.** The clerk will file the motion and endorse a copy for the assigned judge. The clerk shall forward the endorsed copy of the motion and the original proposed order to the assigned judge for consideration.

**C. Signed orders; filing; copies.** The movant shall retrieve and file the order promptly after it is signed, and shall mail or deliver endorsed copies to all parties entitled to notice. The court takes no responsibility for the filing of orders.

**D. Required attachments.** With motions filed in domestic relations cases, a Rule 1-099 NMRA, certificate shall be attached as required by Second Judicial District Local Rules, Rule LR2-132.

## **LR2-125. Trial and merits hearings.**

A. **Permissive and mandatory requests for trial.** In any case, except where a trial or merits hearing (hereinafter "trial") has already been set by pretrial scheduling order, trailing calendar or other written notice, any party may request a trial by filing a request for hearing with the clerk. Where trial has not been set within fourteen (14) months after the complaint is filed, the plaintiff shall file either a request for hearing or a motion for extension of the Rule 1-016 NMRA, deadlines for commencement of trial.

B. **Requests for hearing; presentment.** As a condition of filing, all requests for hearing shall be in the form set forth in LR2-Form G and shall be presented to the clerk with the following:

- (1) a copy of the request for hearing for the assigned judge;
- (2) an original notice of hearing in the form set forth in LR2-Form H and sufficient copies for all parties entitled to notice; and
- (3) stamped, addressed, plain (without return address) envelopes for all parties entitled to notice.

C. **Service of request.** The party requesting trial shall serve copies of the request for hearing on all parties entitled to notice.

D. **Filing; forwarding to judge.** The clerk will file the request for hearing and endorse the copy for the assigned judge. The clerk shall forward the endorsed copy of the request, the original notice of hearing and copies, and the envelopes, to the assigned judge.

E. **Notice of hearing.** The assigned judge's staff will complete and file the notice of hearing, and mail or deliver copies to all parties entitled to notice, adding to the envelopes the court address as the return address, or the judge may direct the party requesting trial to complete this process.

F. **Pretrials and status conferences.** Any party may request a pretrial or status conference by filing, without accompanying motion, a request for hearing in the manner set forth above. The court on its own motion may set pretrials and status conferences, and will mail or deliver notice to all parties entitled to notice.

### **G. Exceptions.**

(1) **Civil court jury cases.** The court will set all civil court jury cases by trailing calendar mailed or delivered to all parties entitled to notice. Cases generally shall be set on the calendar in chronological order by filing date with oldest cases being tried first. For good cause upon motion, the court may provide a definite setting for a jury case.



(2) **Delinquency and need of supervision cases.** The clerk, under the direction of the assigned judge, will set all delinquency and need-of-supervision trials, and mail or deliver notice to all parties entitled to notice.

(3) **Criminal cases.** The clerk, under the direction of the assigned judge, will set all metropolitan court criminal appeals, and mail or deliver notice to all parties entitled to notice. The assigned judge's secretary will set all other criminal trials, and mail or deliver notice to all parties entitled to notice.

## **LR2-126. Vacating settings; notice to court of resolution.**

A. **Vacated only by court.** Settings will be vacated only with the assigned judge's approval.

B. **Procedure.** With trial and merits settings, if all parties entitled to notice agree to vacate a setting, a proposed stipulated order stating the grounds for vacating must be presented to the assigned judge. The order shall be signed by all counsel and parties pro se.

With other settings, if all parties entitled to notice agree to vacate, a proposed stipulated order may be presented to the assigned judge, or all parties may request the assigned judge's approval by telephone followed by a proposed stipulated order.

Even if all parties entitled to notice agree to vacate, the court may refuse to vacate.

If all parties entitled to notice do not agree to vacate, the party desiring to vacate the setting shall file a motion on the issue. When vacation is granted and a hearing is still necessary, a new request for hearing shall be filed along with the order granting the vacation, except in civil court jury cases. The request for hearing shall be presented with a notice of hearing and envelopes in the manner set forth in Second Judicial District Local Rules, Rules LR2-123 and LR2-125.

C. **Notice of resolution.** Upon dismissal, consent judgment, bankruptcy, or other resolution reached which makes a setting unnecessary, all parties shall promptly notify the assigned judge.

## **LR2-127. Default judgments.**

A. **Notice of default judgment.** Plaintiff shall promptly mail or deliver endorsed copies of default judgments to defaulting parties at their last known address.

B. **Proof of damages.** Where default judgment entitles a party to unliquidated damages, that party must establish the amount of damages by evidence satisfactory to the Court.

C. **Setting aside default; suspending execution.** Only the assigned judge shall hear a motion to set aside a default judgment. In exigent circumstances, if the assigned judge is unavailable, any judge may suspend execution on a default judgment.

## **LR2-128. Jury instructions.**

Unless otherwise ordered by the court, requested jury instructions shall be presented to the assigned judge as follows:

A. Requested instructions shall include a cover sheet bearing the case number, caption, title, e.g., "Plaintiff's Requested Instructions," signature and a Praecipe in the form set forth in LR2-Form I.

B. Each requested instruction shall be identified by party and consecutive number, e.g., "Plaintiff John Smith's Requested Instruction No. 1," "Plaintiff John Smith's Requested Instruction No. 2," and so forth.

C. Citations supporting the requested instruction as a correct statement of the applicable law shall be listed on the bottom of each requested instruction.

D. A copy of each instruction with the heading "Instruction No. \_\_\_\_\_," with no numbers inserted and no citations listed, also shall be provided to the court.

## **LR2-129. Findings of fact and conclusions of law.**

A. **Deadline.** Unless otherwise ordered by the court, within ten (10) days after the court's decision in any non-jury case the parties shall deliver a copy of any requested findings of fact and conclusions of law to the assigned judge.

B. **Filing; service.** As a condition of filing, requested findings and conclusions shall be presented to the clerk with a copy for the assigned judge. The clerk shall endorse and forward the copy to the assigned judge. Copies of requested findings and conclusions shall be served upon all other parties.

## **LR2-130. Orders, judgments and decrees.**

A. **Judge shopping prohibited.** Any order, judgment, decree, or other matter (hereinafter "order") once presented to a judge for signature and refused shall not be presented to any other judge. Proposed orders shall be presented to the assigned judge unless unavailable. The assigned judge's name shall be typed or printed on all proposed orders, directly below the judge's signature line.

B. **Date of filing and entry.** The date of entry of any order shall be the same as the date of filing and shall be shown by the clerk's stamp unless the order is filed in open court.

**C. Parties' signatures required.** Orders shall not be signed by the court unless signed by all parties entitled to notice except upon presentment hearing or consideration by the court pursuant to Subsection D below, or as otherwise provided by Supreme Court rule, second judicial district local rule, or statute.

**D. Deadline for presentment; presentment hearing.** Unless otherwise ordered by the court, all proposed orders shall be presented to the court within fourteen (14) days after the court's decision. The prevailing party shall be responsible for such presentment, except in domestic relations court cases unless the court orders otherwise both parties shall bear the responsibility.

If the signatures of all parties entitled to notice cannot be obtained by the fourteenth day, the prevailing party shall, no later than the fourteenth day, request a hearing on the issue in the manner set forth in second judicial district local rule LR2-123. Before the hearing, all parties shall submit proposed forms of order. The court may review the proposed forms of order and rule on the form without hearing.

**E. Filing; notice.** The submitting party shall promptly file the order after it is signed and mail or deliver endorsed copies to all parties entitled to notice. The court takes no responsibility for the filing of such orders.

**F. Service of orders filed by the court.** The court will mail or deliver endorsed copies of all orders filed by the court, to all parties entitled to notice.

### **LR2-131. Cases closed for lack of prosecution; reinstatement.**

Cases and parts of cases closed for lack of prosecution shall be reinstated only by court order to reinstate upon agreement of the parties or good cause shown. If an order to reinstate is not entered, no judicial action will be taken in the case or part thereof. See also Second Judicial District Local Rules, Rule LR2-301.

### **LR2-132. Rule 1-099 NMRA filing fee and certificate.**

**A. Filing fee.** For every pleading, motion or other paper (hereinafter "paper") filed in a civil court, domestic relations court, or children's court civil case, the submitting party shall determine whether Rule 1-099 NMRA requires payment of a filing fee and shall pay the fee at the time the paper is presented for filing.

**B. Required certificate.** In domestic relations court cases, the submitting party shall attach a Rule 1-099 NMRA certificate in the form set forth in LR2-Form J to every motion, application and petition, except applications for writs of garnishment and the first filed petition, unless that paper is accompanied by a Rule 1-099 NMRA filing fee.

**C. Required fee not paid.** If a required Rule 1-099 NMRA fee is not paid, no judicial action will be taken in the case.

## **LR2-133. Judgments on mandate.**

Within thirty (30) days after an appellate court has sent its mandate to this district court, the prevailing party on appeal shall either (1) present to this court a proposed judgment on the mandate containing the specific directions of the appellate court, or (2) request a hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123.

## **LR2-134. Orders to show cause.**

The court may issue an ex parte order to show cause why a party should not be held in contempt only if the motion therefor is verified or accompanied by an affidavit specifically describing the factual basis for the claim of contempt and identifying verbatim that portion of the prior order of the court on which the contempt charge is based. The order to show cause shall include the date, time and place of the hearing.

## **II. Children's Court**

### **LR2-201. Adoption; new birth certificate.**

To apply for a birth certificate in the new name of the adoptee, the petitioner(s), through counsel or pro se, shall present a completed certificate of adoption to the children's court clerk for certification within five (5) days after the final decree of adoption is filed. Petitioner(s) then shall mail the certified certificate of adoption to the New Mexico vital statistics bureau along with the appropriate fee. Certificate of adoption forms shall be available from the children's court clerk.

### **LR2-202. Exemption from Rule 1-016 NMRA.**

All children's court civil cases shall be exempt from the pretrial scheduling order requirements of NMRA, Rule 1-016(B).

## **III. Civil Court**

### **LR2-301. Rule 1-016 NMRA, pretrial scheduling orders and final pretrial orders.**

A. **Forms.** Proposed pretrial scheduling orders and final pretrial orders submitted pursuant to Rule 1-016 NMRA shall be in the form set forth in LR2-Form K and LR2-Form L.

B. **Reinstated cases.** A party seeking to reinstate a case pursuant to Rule 1-041(E)(2) NMRA, shall attach a copy of a proposed pretrial scheduling order to the motion to reinstate.

C. **Exemptions.** The following categories of cases are exempted from the pretrial scheduling order requirements of Rule 1-016(B) NMRA:

Commitment

Conservatorship

Guardianship

Probate.

### **LR2-302. Rule 1-054 NMRA, costs and attorney fees.**

A. **Cost bill.** Unless costs are awarded in the final judgment, a party seeking to recover costs pursuant to Rule 1-054 NMRA, shall file a cost bill within ten (10) days after the final judgment is filed and serve copies on all other parties. Failure to file a timely cost bill shall be deemed a waiver of the right to recover costs. The cost bill shall include an itemization of all costs and an affirmation that the costs claimed are correctly stated and necessary. A separate affidavit is not necessary if the cost bill is signed by counsel for the movant.

B. **Objections.** Within fifteen (15) days after service of the cost bill, other parties may file objections to the cost bill. Unless otherwise ordered by the court, if no objections are filed within fifteen (15) days, the costs shall be deemed reasonable and necessary and the party requesting costs shall submit a proposed order approving the costs, to the assigned judge. Objecting parties shall request a hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123.

C. **Recoverable costs.** Costs shall be recoverable only as allowed by statute, Supreme Court rule, case law and this rule. The following costs may be recoverable:

- (1) Filing fees;
- (2) Fees for service of summonses, subpoenae, writs and other service of process;
- (3) Jury fees;
- (4) Transcript fees including those for daily transcripts and transcripts of hearings prior or subsequent to trial, when requested or approved by the court;
- (5) Deposition fees and expenses, as limited by Sections 39-2-7 and 39-2-8 NMSA 1978;

(6) Witness mileage or travel fare, and per diem expenses, when the witness testifies at trial or at a deposition which is deemed reasonable and necessary, and as limited by Sections 38-6-4(A), 39-2-8, 39-2-9 and 39-2-10 NMSA 1978;

(7) Expert witness fees for services as limited by Section 38-6-4(B) NMSA 1978;

(8) Interpreter fees when such fees are not payable by the court pursuant to the Deaf Interpreter Act, Sections 38-9-1 NMSA 1978 et seq., or the Court Interpreters Act, Sections 38-10-1 NMSA 1978 et seq., and in accordance with the Supreme Court Interpreter Fee Payment Guidelines;

(9) Translator fees, when the translated document is admitted into evidence;

(10) Photography expenses, when the photograph is admitted into evidence and is not greater than 8 by 10 inches in size;

(11) Map and chart expenses;

(12) Official certification fees;

(13) Fees for recording lis pendens.

**D. Non-recoverable costs.** The following costs generally shall not be recoverable:

(1) Photocopying and other reproduction expenses, unless specifically authorized by statute or rule;

(2) Expenses for models;

(3) Expenses for compiling summaries, computations and statistical comparisons;

(4) Telephone expenses;

(5) Facsimile expenses;

(6) Courier service expenses;

(7) Attorney mileage, travel fare, and per diem expenses;

(8) Paralegal and other support staff expenses.

**E. Attorney fees.**

(1) **Recoverable fees.** Attorney fees shall be recoverable only as allowed by statute, rule or contract.

(2) **Procedure.** Unless attorney fees are awarded in the final judgment, attorney fees shall be requested by written motion filed within ten (10) days after the final judgment is filed. The motion shall include an itemization of time expended and an affirmation that the fees claimed are correctly stated and necessary. A separate affidavit is not necessary provided the motion is signed by counsel for the movant. Parties objecting to the motion shall file objections within fifteen (15) days after service of the motion, or such objections shall be deemed waived. Objecting parties shall request a hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123.

(3) **Default judgment.** Attorney fees in default judgments shall be based on the attorney's actual time spent in obtaining the default judgment and anticipated time in executing thereon, and shall not be presumed to be twenty percent (20%) of the default judgment amount. Such fees shall not exceed twenty percent (20%) except for good cause.

## ANNOTATIONS

**Costs not authorized.** — Expenses for photocopies, telephone, facsimile, courier, mileage, travel, per diem, and expenses paid to obtain plaintiff's own medical records, were not properly recoverable as costs. *Gillingham v. Reliable Chevrolet*, 1998-NMCA-143, 126 N.M. 30, 966 P.2d 197.

## IV. Criminal Court

### LR2-401. Grand jury proceedings.

A. **Recording.** All grand jury proceedings with the exception of deliberations shall be taped. Those grand jury proceedings to be taped include, but are not limited to, impaneling, charge, oath, any orientation of the grand jury and testimony. Only parties, through counsel or pro se, shall have access to grand jury tapes without an order of the court.

B. **Orientation.** Every district attorney and attorney general's orientation of the grand jury shall be made on the record in the presence of a district judge.

C. **Impaneling of grand jury.** Grand jurors and alternate grand jurors shall be selected and impaneled at random.

D. **Printed information.** The district attorney and attorney general shall obtain the grand jury judge's approval of any manuals, literature, and other printed information prior to distribution to the grand jury.

E. **Indictments.** Grand jury indictments shall be available to counsel, parties pro se and the general public only after such indictments have been filed.

## **LR2-402. Bond procedures.**

A. **Order and bond form required.** An order setting conditions of release or a bench warrant setting bond shall be filed before any bond is posted. For each bond to be posted, the defendant, through counsel or pro se, shall file an appearance/appeal bond form. Form orders setting conditions of release and appearance/appeal bond forms shall be available from the criminal clerk.

B. **Bench warrants.** After conditions of release have been set, a bench warrant will be issued for the defendant unless the district court file reflects the conditions of release have been met.

C. **Type of tender in lieu of cash.** Only cashier's checks, certified checks, money orders, and government agency warrants made payable to the clerk of the district court shall be accepted in lieu of cash.

D. **Return of bond monies.** Prior to presentment, all proposed orders authorizing the release and return of bond monies must be approved by the prosecutor, the defendant, through counsel or pro se, the clerk, and the court accountant, except when the order is prepared by the clerk pursuant to the Uniform Disposition of Unclaimed Property Act, Sections 7-8-1 NMSA 1978 et seq.

E. **Property bonds.** After the appropriate documents necessary for the posting of a property bond are presented to the criminal clerk pursuant to Rule 5-401 and Rule 5-401A NMRA, the criminal clerk shall present such documents to the assigned judge to review and determine whether proof is required of any matters set forth by affidavit.

## **ANNOTATIONS**

**Compiler's notes.** — The Uniform Disposition of Unclaimed Property Act, Sections 7-8-1 NMSA 1978 et seq., referred to in Paragraph D, was repealed in 1997. Comparable sections are compiled as Chapter 7, Article 8A NMSA 1978.

## **LR2-403. Waivers of arraignment.**

A. **Policy; approval; form.** The court's policy is to encourage defendants to waive arraignment in appropriate circumstances. Waivers of arraignment shall be signed by the defendant and his or her counsel, if any, and approved by the assigned judge. Notice to the prosecutor shall be indicated by the prosecutor's signature on the waiver of arraignment. Waivers of arraignment shall be in the form set forth in LR2-Form M; form waivers shall be available from the criminal clerk.



**B. Conditions of release.** If no conditions of release have been set, the defendant shall submit to the assigned judge a proposed stipulated order setting conditions of release along with the waiver of arraignment or arrange a hearing to set conditions. Form orders setting conditions of release shall be available from the criminal clerk.

**C. Presentment to law enforcement agency.** Before a waiver of arraignment is submitted to the assigned judge for approval, or immediately thereafter, the defendant must present himself or herself at the appropriate law enforcement agency for formal booking and processing on the warrant, if any has been issued.

### **LR2-404. Disclosure.**

Upon agreement of the parties or for good cause shown, the court may order additional time for disclosure required by Rules 5-501 and 5-502 NMRA. Such order shall be written and filed with the clerk.

### **LR2-405. Furloughs.**

The court's policy is to refuse furloughs for incarcerated and in custody defendants under the jurisdiction of the second judicial district. In exigent circumstances, upon agreement of the parties or for good cause shown, the assigned judge may order that a furlough be granted.

### **LR2-406. Crime victim and witness notification.**

It shall be the responsibility of the prosecutor to notify victims and witnesses of the date and time of, and their right to attend and be heard at, sentencing proceedings and all other court proceedings for which the Crime Victims' and Witnesses' Bill of Rights, Sections 31-24-1 NMSA 1978 et seq., mandates notification.

### **LR2-407. Designation of proceedings for transcript conference.**

In all criminal cases where an appeal has been filed and any portion of the proceedings before the district court was taken stenographically, within seven (7) days after having been served with the notice that the case is placed on the appellate court's general calendar, the prosecuting attorney and the defense attorney shall attend a conference with the managing court reporter or the managing court reporter's designee for the purpose of insuring that the appellant's designation of proceedings to be included in the transcript (hereinafter called "designation") is complete and accurate. The managing court reporter's office shall set the date, time and place of the conference. Each attorney shall bring to the conference the following information: the dates of all proceedings and the specific portions of these proceedings that should be included in the transcript, e.g., pretrial hearing, voir dire, opening, testimony, closing, verdict, post-trial hearing. The managing court reporter or a designee of the managing court reporter may, but is not required to, assist the appellant with the typing and filing of the

designation. This rule shall not be construed to relieve the appellant of the burden of filing the designation as required by Rules 12-210(B) and 12-211(C)(1) NMRA. The district court, on its own motion or a party's motion, may impose an appropriate sanction for failure to comply with this rule.

## ANNOTATIONS

**Compiler's notes.** — This rule was filed in the Second Judicial District Court on April 18, 1995, following review by the Supreme Court Rules of Civil Procedure for the District Courts Committee and the Rules of Criminal Procedure for the District Courts Committee.

### **LR2-409. Appeals from driver's license revocation hearings.**

A. **Applicability.** This rule governs appeals to the district court from driver's license revocation proceedings and proceedings conducted pursuant to the Implied Consent Act, Sections 66-8-105 through 66-8-112 NMSA 1978.

B. **Pleadings.** The first page of all pleadings shall include the civil division docket number of the case followed by the capital letters "LRA" (License Revocation Appeal).

C. **Extensions.** All requests for extension of time to file pleadings shall be by written motion filed in the civil clerk's office, which will direct such motions to the on-record appeals division. The division will refer such motions to the appropriate judge. Motions for extension of time will be granted only for good cause. Motions shall contain specific grounds. Requests for extensions of time due to press of business, whether or not that press of business is explained with reference to specific cases will not ordinarily be seen as good cause. In most cases, the time requested should not exceed fourteen (14) calendar days. Motions requesting subsequent extensions on the same pleading will rarely be granted. A motion requesting an extension that is filed on the day that the appellant's statement of appellate issues or the appellee's response is due or later will not be favored and may be denied.

D. **Failure to comply with Rule 1-074.** Pleadings which fail to comply with Rule 1-074 NMRA, particularly Paragraphs K through N, may be stricken or other sanctions may be imposed. If the re-filing of such noncomplying pleadings is permitted by the express order of the court, the revised pleadings shall be re-filed within fourteen (14) calendar days of the filing of that order.

E. **Stays.** Motions filed to stay the revocation of driving privileges pending the appeal to district court pursuant to Rule 1-074 NMRA, and their corresponding orders, may be presented directly to the judge of the criminal division assigned to the appeal for signature of the order. Prior concurrence by the motor vehicle division with the stay will expedite the court's decision regarding the stay while also complying with Rule 1-007.1 NMRA.

[Approved, effective November 3, 1999.]

## **V. Domestic Relations Court**

### **LR2-501. 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.

### **LR2-502. 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.

### **LR2-503. 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.

### **LR2-504. Court clinic mediation program and other services for child-related disputes.**

A. **Mediation program established.** Pursuant to Sections 40-12-1 NMSA 1978 et seq., the second judicial district elected to establish and will continue to maintain a domestic relations mediation program to assist the court, parents and other interested parties to determine the best interests of children involved in domestic relations cases. The program shall be administered and services provided by the second judicial district court clinic.

**B. Mandatory referral.** Unless otherwise ordered by the court upon stipulation of the parties or for good cause shown, in every case involving a dispute over any child-related issue except child support the court shall enter an order referring the parties to the court clinic for non-confidential mediation. In the alternative or in addition to an order for mediation, the court may order that the parties submit to other court clinic services including but not limited to advisory consultation, priority consultation, evaluation and decision-making. Except for initial mediations and advisory consultations the court will not order court clinic services simply upon stipulation of the parties, and shall require a showing of good cause.

**C. Submission of order.** Within thirty (30) days after service of the petition or promptly after learning of any dispute over any child-related issue, the petitioner shall present to the assigned judge a proposed order referring the parties to the court clinic. The order shall be in the form set forth in LR2-Form T. If the signatures of all parties entitled to notice cannot be obtained, the petitioner shall request a hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123. After the hearing, both parties shall be responsible for providing an endorsed copy of the order to the court clinic.

**D. Required information sheet.** Prior to filing the court clinic referral order, the parties shall complete a court clinic information sheet in the form set forth in LR2-Form U, and attach such sheet to the order. Referral orders shall not be filed unless the sheet is attached, and no mediations or other court clinic services shall begin until the order is filed.

**E. Fees.** The parties shall pay all court clinic fees before any services are provided.

**F. Scheduling services.** After the court clinic referral order is filed, the clinic will contact the parties to schedule all services except priority consultations. With respect to priority consultations, the actual parties along with their counsel, if any, shall contact the clinic in person immediately after the order is filed.

**G. Clinic requested hearings.** In any case in which a court clinic referral order has been filed, the clinic may request a hearing or status conference by filing a request for hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123. The clinic shall mail or deliver a copy of such request to all parties entitled to notice.

**H. Modification.** Any party may file a motion to modify or supplement the order of referral. The order shall continue in effect while such motion is pending.

**I. Policies and procedures.** All court clinic written policies and procedures, including those regarding scheduling, shall be available for review by parties and the general public upon request.

**J. Referral to other providers.** Upon agreement of the parties or for good cause shown, the court may order that the parties be referred for mediation and other services

to a qualified service provider other than the court clinic. The order shall be in a form similar to the form set forth in LR2-Form T.

**K. Providers as witnesses.** Court clinic staff and other persons who have provided services pursuant to this rule may be called as witnesses pursuant to NMRA, New Mexico Rules of Evidence.

**L. Out-of-district referrals.** Parties in out-of-district cases may receive services from the court clinic provided the referral order is signed by both the assigned out-of-district judge and the second judicial district presiding domestic relations court judge. As a condition of filing the order, the parties shall pay a thirty dollar (\$30.00) fee to the clerk. This filing fee shall be in addition to any assessment fees.

## **LR2-505. 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.

## **LR2-506. Exemption from Rule 1-016 NMRA.**

All domestic relations court cases shall be exempt from the pretrial scheduling order requirements of Rule 1-016(B) NMRA.

## **VI. Court Alternatives**

### **LR2-601. 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. Nothing in the rules governing these programs shall be construed to discourage or prohibit parties from stipulating to private alternative dispute resolution.

**B. Administration.** These programs shall be administered by a court alternatives director appointed by 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. **Limitation.** The number of cases referred to these programs shall necessarily be limited by the number of attorneys and other professionals available to provide alternative dispute resolution services under court-appointment, and the sufficiency of court resources to administer the programs.

E. **Immunity.** Attorneys and other persons appointed by the court to serve as settlement facilitators, arbitrators, mediators or in other such roles pursuant to the rules governing this district's court-annexed alternative dispute resolution programs, are appointed to serve as arms of the court and as such are immune from liability for conduct within the scope of their appointment.

F. **Forms.** When available, applicable court forms shall be used. Forms shall be available through the court alternatives director.

## 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.

### **LR2-602. Settlement facilitation program.**

A. **Scope.** The court may, pursuant to Rule 1-016 NMRA, refer cases to settlement conferences conducted by court-appointed settlement facilitators on an ad hoc basis throughout the year and during periodic "settlement weeks" scheduled by the court. The court will generally hold a "settlement week" during September every year.

B. **Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

Appeals

Extraordinary writs

Court-annexed arbitration program, pending cases

Adoption

Commitment

Conservatorship

Guardianship

Student Loan

Election

Tax

This rule does not apply to disputes where a law suit has not yet been filed.

**C. Referral upon request.** Any party at any time may request referral to a settlement conference by motion or letter directed to the assigned judge. The letter may be ex parte. The letter should include the following:

- (1) Case number and caption;
- (2) Estimated time required for conference;
- (3) Whether other parties know request is being made;
- (4) Whether other parties agree conference is appropriate;
- (5) Brief list of pending issues;
- (6) Type of facilitator or facilitator team preferred, e.g., judge, attorney, psychologist or other professional, judge/attorney, judge/psychologist, attorney/psychologist, attorney/attorney; and
- (7) Names of all parties entitled to notice and any other persons who should be present at the conference, along with law firm, address, telephone number and capacity, e.g., attorney for petitioner, witness for respondent.

The assigned judge will determine whether to grant the request for referral. The assigned judge may refuse to grant a request even if all parties agree to a settlement conference.

**D. Referral upon judge's own motion.** The assigned judge at any time and without agreement of the parties may refer a case to a settlement conference.

**E. Referral order.** In all cases to be referred, whether upon party's request or judge's motion, the court will complete and file an order requiring a settlement conference, appointing a settlement facilitator or facilitators, and setting a deadline for the conference, and will mail or deliver endorsed copies to the facilitator(s) and all parties entitled to notice. The order shall not indicate whether the referral was made upon a party's request or the judge's motion. The order may be modified only by subsequent written court order.

**F. Time, place and deadline for settlement conference.** Unless set by the referral order, the time(s) and place(s) of the settlement conference shall be set by the

settlement facilitator(s) within a deadline set by the court. Any party or facilitator may request an extension of the deadline by motion directed to the assigned judge.

**G. Attendance.** The following shall attend and be present in person during the entire conference: each party of record including parties represented by counsel; each counsel of record who will be trying the case; and, for each party, the person or persons with complete authority to settle the case including but not limited to insurance company representatives and guardians ad litem. This provision may be waived only by written order of the assigned judge. The court may refuse to grant a motion to waive attendance even if all parties agree to the motion. Upon motion of any party or its own motion, the court shall impose sanctions for failure to attend the settlement conference or have present all necessary parties or their representatives with settlement authority, except upon a showing of good cause.

**H. Settlement conference information.** At least five (5) days prior to the conference, all parties shall provide the facilitator(s) with the information listed below. This information shall not be filed with the court nor in any way be made part of the court record, and at the providing party's discretion, need not be produced to other parties. Upon motion of any party or its own motion, the court may impose sanctions for failure to provide the information to the facilitator(s).

- (1) Case number and caption;
- (2) Brief description of the case; in domestic relations cases include date of marriage, separation and divorce, names, ages, occupations and current annual incomes of parties, and names and ages of children;
- (3) Description of the relief sought;
- (4) List of pending factual issues;
- (5) List of pending legal issues;
- (6) List of all remaining discovery;
- (7) List of any pending dispositive motions;
- (8) Estimate of costs and attorney fees through trial;
- (9) The last offer made to other parties; and
- (10) Copies of case law, statutes, pleadings, exhibits, orders and any other information which would be helpful to the facilitator(s).

**I. Good faith participation.** Parties shall participate in good faith in settlement conferences. Good faith participation includes but is not limited to sufficiently preparing



for the conference and engaging in meaningful negotiations during the conference. Upon motion of any party or its own motion, the court may award attorney fees and costs for failure to participate in good faith.

**J. Cancelling conferences.** Settlement conferences may be cancelled only by written court order. By motion, any party may request that a settlement conference be cancelled. By letter to the assigned judge, the facilitator may request that a conference be cancelled.

**K. Choice of settlement facilitator.** The court will choose the settlement facilitator from a list of facilitators maintained by the court. The court will consider any recommendations made by the parties. The parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person as facilitator. Judges shall not act as facilitators in their own cases.

**L. Replacement of settlement facilitator.** By letter to the assigned judge with a copy to all parties and facilitators, any party or facilitator may request that the facilitator be replaced. The party or the facilitator requesting replacement need not provide an explanation. Upon approval of the assigned judge, the facilitator will be replaced; the court will choose the replacement facilitator from the court's list and will complete and file an amended referral order and mail or deliver endorsed copies to all parties entitled to notice; or, the parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person.

**M. Compensation to settlement facilitator.** Compensation shall not be required for any settlement facilitator for a settlement conference conducted as part of a settlement week. The court may order the parties to pay reasonable compensation to the facilitator for a settlement conference not conducted as part of a settlement week. Judges shall not receive compensation for serving as settlement facilitators.

## **LR2-603. Court-annexed arbitration.**

### **SECTION I: GENERAL PROVISIONS**

**A. Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

Appeals

Uniform Arbitration Act

Extraordinary writs

Adoption

Commitment

Conservatorship

Guardianship

Probate

Children's Code

Domestic relations

Workers' compensation

Student loan

Driver's license

Election

Tax

**B. Court hearings.** If a court hearing is required regarding any aspect of arbitration prior to referral or any matter during referral, the court shall set and hear the matter promptly after the matter is brought to the attention of the assigned judge by request for hearing or by the court alternatives director.

**C. "At issue" required.** All cases referred to arbitration must be "at issue" prior to referral. For purposes of this rule, a case is "at issue" when at least one answer to the complaint has been filed. Answers to cross-claims, counterclaims and third-party complaints need not have been filed. Service on all parties need not have been made.

## **SECTION II: MANDATORY REFERRAL**

**A. Types of cases for mandatory referral.** All cases, jury and non-jury, shall be referred to arbitration where no party seeks relief other than a money judgment and no party seeks an amount in excess of twenty-five thousand dollars (\$25,000.00) from any party or combination of parties, exclusive of punitive damages, interest, costs and attorney 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, in which affirmative relief is requested, shall file 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 (\$25,000.00) exclusive of punitive damages, interest, costs and attorney fees. The certification shall be a good

faith attempt to state the type and amount of relief to be sought at trial and shall not act as a limitation on relief.

**C. Review of certification; referral order.** Within thirty (30) days after a case is at issue, the court will review the court file, including the certifications filed, to determine whether referral to arbitration is mandated by Section II(A) of this rule. If so mandated, the court will prepare and 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. If referral is not mandated, no order will be entered.

**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 complaint without prejudice. The court in its discretion may impose such sanction 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, the court may enter an order referring the case to arbitration provided the court finds that the requirements of Section II(A) 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 Section II(A) 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.

### **SECTION III: PERMISSIVE REFERRAL**

Any case may be referred to arbitration where the parties stipulate to arbitration. The court may require the parties to stipulate to an arbitrator as set forth in Subsection IV(C)(3) of this rule.

### **SECTION IV: ARBITRATORS**

**A. Arbitrator pool.** The court will maintain a pool from which arbitrators will be appointed. The pool shall include all active members of the State Bar of New Mexico who have been licensed to practice law for five (5) or more years and who are residents of or have an office in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys, out-of-Bernalillo County attorneys and out-of-state attorneys, may be included in the pool upon written request to the court alternatives director. The chief judge for good cause may remove an attorney from the arbitrator pool either temporarily or permanently. Such removal may be upon the court's own motion and without notice to the attorney, or upon written request to the court alternatives director. 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 arbitrator training.

**C. Appointment to case.** After a case is referred to arbitration, an attorney shall be appointed as arbitrator by the filing of a court order upon either random selection, court selection or stipulation. With appointments upon random or court selection, the court will file an order appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled to notice. With stipulations, the parties shall file the order of appointment.

(1) **Random selection.**

(a) **Notice of choices.** Within ten (10) days after a case is referred to arbitration, the court alternatives director will mail to all parties a notice listing three (3) attorneys as 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 alternatives director. 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.

(2) **Court selection.** For good cause, the court 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, whether or not part of the pool and with any length of experience, by stipulated order filed within seven (7) days after the notice of choices is mailed, or within seven 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. The court or the proposed arbitrator may require the parties to pay compensation at the arbitrator's usual hourly fee.

(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 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 Subsection IV(C)(3).

D. **Compensation.** The court shall compensate arbitrators in the amount of one hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is excused from appointment. The arbitrator shall submit a written request for compensation to the court alternatives director within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a waiver of compensation. Arbitrators compensated by the parties pursuant to Subsection IV(C)(3) shall not be compensated by the court.

## **SECTION V: 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 may hear the following:

Motions to excuse the arbitrator

Motions to withdraw referral to arbitration

Motions for sanctions pursuant to Subsection V(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 and execution matters

Requests for settlement conference pursuant to Second Judicial District Local Rules, Rule LR2-602.

After a case is referred to arbitration and before an arbitrator is appointed, the court in its discretion may vacate any pending hearings on matters 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 ten (10) 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 decisions and in all aspects of 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, 1-030 and 1-037 NMRA, or any other Supreme Court rule, sanctions for failure to comply with any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's decisions. Upon agreement of the parties, the arbitrator may serve as a mediator or settlement facilitator. The arbitrator's jurisdiction, powers and duties may not be delegated. The arbitrator must personally conduct the hearings and trial, and must personally sign decisions and the award.

(3) **Supreme Court and local rules.** All Supreme Court rules including rules of civil procedure (including Rule 1-006(D) NMRA) and rules of evidence, and all second judicial district local rules, apply during referral to arbitration unless specifically waived by written court order or the arbitrator. The arbitrator may waive rules of evidence only upon agreement of the parties.

(4) **Good faith participation.** All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter an award of default or of dismissal against any party failing to participate in good faith or 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. Upon a party's, the arbitrator's or the court's own motion, the court for good cause may extend the one hundred twenty (120) day period. The court in its discretion may enter such an order without hearing. If the arbitrator or a party 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 second judicial district arbitration fund.

(6) **Filing papers.** Any motion or other paper to be heard or otherwise considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any decisions except for the award. Upon a party's or the court's own motion, the court may order that an inappropriately filed paper 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 paper 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 the arbitrator a copy of the file or portions of the file at no cost upon request; requests shall be made to the court alternatives director.

(8) **Summonses; subpoenae.** The clerk shall issue summonses and subpoenae in cases referred to arbitration in the same manner as with other civil cases. Such summonses and subpoenae 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 engage a certified court reporter to make a record of testimony given at an arbitration proceeding for use as allowed by the New Mexico Rules of Evidence. 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 of it shall not 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 be returned to the court's docket. The court in its discretion may enter such an order without hearing.

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

(1) **Place, date and 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) **Requests 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:

(a) Estimates and bills for services and products, if dated and itemized.

(b) Reports of experts, if dated and signed.

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

D. **Award.**

(1) **Final decision; scope.** The arbitrator's final decision shall be called an "award". The award shall clearly set forth the amount 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.

(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.

(3) **Filing.** Unless the parties agree otherwise, within ten (10) days after the last hearing, the arbitrator shall file an award with the clerk and serve copies on all parties entitled to notice. 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 second judicial district's arbitration fund.

(4) **Amended award.** Within ten (10) days after an award is filed, the arbitrator may file an amended award. Copies shall be served on all parties entitled to notice.



(5) **Binding award.** At any time before the award is filed, 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 that part of the award not appealed 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.

## **SECTION VI: APPEAL**

A. **Right to appeal.** Any party of record at the time the arbitrator's award is filed may appeal the award, except that a party may not appeal an award of default, including an award of default entered pursuant to Section V(A)(4) of this rule. An award of default shall only be set aside pursuant to Rules 1-055 and 1-060 NMRA.

### **B. Procedures 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 fifteen (15) days after the award or an amended 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 the 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.

(2) **De novo proceedings.** 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 court alternatives director shall be permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed and until disposition of the appeal, the court shall seal the award.

(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.** 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 other 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; the court shall state the basis for its good cause finding on the record.

[As amended, effective May 1, 1997.]

## ANNOTATIONS

**The 1997 amendment**, effective May 1, 1997, rewrote this rule.

**District courts retain jurisdiction over arbitration awards** even though a party's notice of appeal from arbitration was untimely. The arbitration award is merely a nonenforceable order until the district court adopts the award as the court's final judgment following the time to file an appeal. After the district court has adopted the award as its final judgment, Rule 1-060B NMRA applies to set aside the judgment just as Rule 1-060B NMRA would apply to set aside any final judgment of the district court. *Aragon v. Westside Jeep/Eagle*, 117 N.M. 720, 876 P.2d 235 (1994).

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

## VII. Forms

### LR2-Form A. Motion for free process.

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

### MOTION FOR FREE PROCESS

COMES NOW \_\_\_\_\_, and  
moves this court for its order allowing free process in this  
case. As grounds for this motion, movant states that because of  
indigency, he or she cannot afford to pay court fees and costs  
in this case. \_\_\_\_\_, has attached the



Social security	\$
State income tax	\$
Union dues	\$
Insurance payments	\$
Retirement	\$
Other	\$
Other	\$

My take-home pay is \$ \_\_\_\_\_.

**OTHER INCOME**

In addition to wages and salary, I receive the following income:

Social security	\$
Welfare	\$
Unemployment	\$
Food stamps	\$
AFDC	\$
Child support	\$
Alimony	\$
Investments	\$
Other	\$
Other	\$
Total other income	\$

**BANK ACCOUNTS AND CASH ON HAND**

I have a checking account at \_\_\_\_\_, and the present balance is \$\_\_\_\_\_.

I have a savings account at \_\_\_\_\_, and the present balance is \$\_\_\_\_\_.

I have \$\_\_\_\_\_ cash on hand.

**REAL PROPERTY AND OTHER TANGIBLE ASSETS**

I own houses, buildings, land or other real property at \_\_\_\_\_, with a present value of \$\_\_\_\_\_.

I own stocks, bonds, certificates of deposit, etc., valued at \$\_\_\_\_\_.

**MONTHLY EXPENSES**

My monthly expenses are as follows:

House payment/rent	\$
Utilities	\$
Telephone	\$

Groceries (after food stamps)	\$
Car payments	\$
Gasoline	\$
Insurance	\$
Child Care	\$
Other	\$
Other	\$

**HOUSEHOLD**

I live at \_\_\_\_\_, and \_\_\_\_\_ is the head of the household.

Other than myself, members of the household are:

Name	Age	Employment	I support
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>

*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*

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

My commission expires:

Notary public

**LR2-Form C. Attorney's affidavit supporting indigency.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**ATTORNEY'S AFFIDAVIT SUPPORTING INDIGENCY**

STATE OF NEW MEXICO       )  
  )        ss.  
COUNTY OF BERNALILLO     )

I hereby certify that to the best of my knowledge and belief the statements and information contained in \_\_\_\_\_'s affidavit of indigency are true and correct. I further certify that I have not received any attorney fee from \_\_\_\_\_, and that if any attorney fee is paid to me, court fees and costs shall be paid to the clerk from such fee.

*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*

*(certificate of service)*

**LR2-Form D. Order for free process.**

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

*(case number)*

*(caption)*

**ORDER FOR FREE PROCESS**

THIS MATTER having come before the court on \_\_\_\_\_'s motion for free process, and showing of indigency by affidavit(s), and the court being otherwise advised in the premises, the court orders that the movant:

[ ]     be allowed free process in this case.

[ ] be allowed to pay the filing fee on \_\_\_\_\_, \_\_\_\_\_.

[ ] be allowed free process for filing fees but not for service of process by the sheriff's department.

[ ] not be allowed free process.

*(name of assigned Judge, see Second  
Judicial District Local Rules, Rule  
LR2-130)*

*(signature blocks, see Second Judicial District Local Rules, Rules LR2-118 and LR2-130)*

## **LR2-Form E. Motion to withdraw.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

### **MOTION TO WITHDRAW**

COMES NOW \_\_\_\_\_, and moves this court for its order allowing movant to withdraw as counsel of record for \_\_\_\_\_.

As grounds for this motion, movant states:

*(Set out grounds)*

Hearings in this case are set as follows:

*(Specify date, time and matters to be heard)*

Supreme Court deadlines relevant to this case are as follows: *(Specify rule and date deadline expires)*

[ ] This motion is being filed along with an entry of appearance by \_\_\_\_\_ as a party pro se.

[ ] I acknowledge that \_\_\_\_\_ has twenty (20) days to obtain counsel or be deemed appearing pro se. The last known address and telephone numbers for \_\_\_\_\_ are as follows:

*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*

*(certificate of service)*

**LR2-Form F. Entry of appearance by substitute counsel or party *pro se*.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**ENTRY OF APPEARANCE BY SUBSTITUTE COUNSEL OR PARTY *PRO SE***

COMES NOW \_\_\_\_\_, and enters an appearance as counsel of record or *pro se*, as his or her own attorney, in substitution for \_\_\_\_\_. Further \_\_\_\_\_ states that he or she is ready to proceed without delay, that he or she is aware of pending hearings listed on the motion for withdrawal and indicated in the court file, and that he or she waives any right to request that any hearing be vacated on the basis of this entry of appearance.

*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*

*(certificate or affidavit of service)*



**LR2-Form G. Request for hearing.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**REQUEST FOR HEARING**

1. Assigned Judge:
2. Type of Case:
3. Jury: \_\_\_\_\_ Non-jury:
4. Dates of hearings presently set:
5. Specific matter(s) to be heard upon this request:
6. Estimated total time required:
7. Attach separate sheet(s) listing name, firm, capacity, address, and telephone number of all parties entitled to notice.

*(signature block, see Second Judicial  
District Local Rules, Rule LR2-118)*

*(certificate or affidavit of service)*

**LR2-Form H. Notice of hearing.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**NOTICE OF HEARING**

*(submitting party shall complete all but date and time)*

A hearing in this case is set before the Honorable

\_\_\_\_\_ as follows:

Date of hearing:

Time of hearing:

Length of hearing:

Place of hearing:

Matter(s) to be heard:

THE HONORABLE

by \_\_\_\_\_ yn \_\_\_\_\_

*(or, if completed and filed by party, add signature block; see Second Judicial District Local Rules, Rule LR2-118)*

Notice mailed or delivered on date of filing to parties listed on attached sheet.

*(submitting party shall attach a separate sheet listing the name, firm, capacity, address, and telephone number of all parties entitled to notice)*

*(or, if completed and filed by party, party shall add certificate or affidavit of service)*

**LR2-Form I. Praecipe.**

SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

(case number)

(caption)

**PRAECIPE**

COMES NOW \_\_\_\_\_, and hereby submits the following Instructions:

Instruction

U.J.I.

No.	No.	Title	Given	Refused	Modified	Withdrawn
1.	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____	_____

*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*

*(certificate or affidavit of service)*

**LR2-Form J. Rule 1-099 NMRA, certificate.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**RULE 1-099 NMRA, CERTIFICATE**

COMES NOW \_\_\_\_\_, and hereby certifies pursuant to Rule 1-099 NMRA, and Second Judicial District Local Rules, Rule LR2-132, that no Rule 1-099 NMRA fee is required because:

this case is pending.

the attached pleading, motion or other paper is filed within sixty (60) days after the last disposition; the last action taken this case was \_\_\_\_\_; a judgment or decree was filed \_\_\_\_\_.

the attached pleading, motion or other paper is requesting action which may be performed by the clerk pursuant to these rules -or- seeking to correct a mistake in the judgment, decree or record, filed on \_\_\_\_\_ -or- a motion accompanied by signed stipulated order disposing of the issue(s) raised by the motion.

the attached pleading, motion or other paper is seeking only enforcement of a child support order filed on \_\_\_\_\_.

(signature block, see Second  
Judicial District Local Rules,  
Rule LR2-118)

(certificate or affidavit of service)

**LR2-Form K. Rule 1-016 NMRA, pretrial scheduling order.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**RULE 1-016 NMRA, PRETRIAL SCHEDULING ORDER**

The court, being fully advised in the premises, pursuant to Rule 1-016 NMRA, hereby orders:

1. All parties shall be ready for trial on \_\_\_\_\_, \_\_\_\_\_. If this case is a jury case, it will be set by the court on a trailing calendar. If this case is a non-jury case, plaintiff shall submit a request for trial in accordance with Second Judicial District Local Rules, Rule LR2-125.
2. Any motions made pursuant to Rule 1-012(B) or Rule 1-012(C) NMRA, shall be filed by \_\_\_\_\_, \_\_\_\_\_.
3. Plaintiff(s) shall disclose expert witnesses plaintiff(s) anticipates will be called at trial by \_\_\_\_\_, \_\_\_\_\_; Defendant(s) shall disclose its trial expert witnesses by \_\_\_\_\_, \_\_\_\_\_; all other parties shall disclose their trial expert witnesses by \_\_\_\_\_, \_\_\_\_\_. Disclosure shall include the expert's name, address, job title and qualifications, and a brief summary of the expert's anticipated testimony. All other witnesses shall be disclosed by \_\_\_\_\_, \_\_\_\_\_.
4. All pretrial discovery shall be completed by \_\_\_\_\_, \_\_\_\_\_. Interrogatories and requests for production shall be considered timely only if the responses are due prior to this deadline; a notice to take deposition is timely only if the deposition takes place prior to the deadline. Requests for admissions shall be served at least \_\_\_\_\_ days prior to the trial setting. Discovery shall not be reopened except by court order upon a showing of good cause.
5. Any motions made pursuant to Rules 1-014 or 1-015 NMRA, shall be filed by \_\_\_\_\_, \_\_\_\_\_.
6. Any summary judgment motions shall be filed by \_\_\_\_\_, \_\_\_\_\_.

7. Plaintiff(s) shall submit a completed proposed final pretrial order with all parties' insertions not less than thirty (30) days prior to the scheduled trial date.

*(#7 optional, in the court's discretion)*

8. The parties may request a settlement conference in accordance with Second Judicial District Local Rules, Rule LR2-602.

9. Other:

*(Set out any additional provisions stipulated by the parties or required by the court.)*

10. The provisions of this order may be modified only by court order upon a showing of good cause.

11. IF THIS CASE IS SETTLED, THE PARTIES SHALL IMMEDIATELY SO ADVISE THE COURT AND SHALL ADVISE THE COURT OF HEARING DATES AFFECTED.

*(name of assigned Judge, see Second  
Judicial District Local Rules, Rule  
LR2-130)*

*(signature blocks, see Second Judicial District Local Rules, Rules LR2-118 and LR2-130)*

## **LR2-Form L. Final pretrial order.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

### **FINAL PRETRIAL ORDER**

This matter having come before the court pursuant to Rule 1-016 NMRA, and the court being fully advised in the premises, the court hereby orders:

1. **GENERAL NATURE OF PARTIES' CLAIMS.** The parties' claims are as follows:

*(Set out brief summary without detail for each party.)*

2. **UNCONTROVERTED FACTS.** The following facts are established

by admissions or stipulations:

*(Set out uncontroverted facts, including admitted jurisdictional facts and all other significant facts.)*

3. **CONTESTED ISSUES OF FACT.** The contested issues of fact are:  
*(Set out.)*

4. **CONTESTED ISSUES OF LAW.** The contested issues of law in addition to those implicit in the foregoing issues of fact are:  
*(Set out.)*

5. **EXHIBITS.** Each party shall provide all other parties copies of all exhibits and shall make all demonstrative exhibits available for inspection no later than \_\_\_\_\_,

\_\_\_\_\_.  
The parties intend to offer the following exhibits in evidence at trial:

*(Set out list for each party.)*

6. **WITNESSES.** Each party shall provide all other parties a list of witnesses who will or may be testifying at trial with a brief summary of their anticipated testimony no later than \_\_\_\_\_, \_\_\_\_\_. Additional witnesses will not be allowed without a showing of good cause why their disclosure did not take place in conformance with this order. The parties will call or have available at trial:

*(Set out list for each party.)*

The parties may call:

*(Set out list for each party.)*

The parties will present the following testimony by deposition:  
*(Set out list for each party.)*

7. **DISCOVERY.** Discovery shall be completed by and is limited to: *(Set out limitations made upon agreement of the parties or by the court.)*

8. **JURY INSTRUCTIONS.** Each party shall submit proposed jury instructions by \_\_\_\_\_, \_\_\_\_\_.

9. **LENGTH OF TRIAL.** The following number of days will be set for trial: \_\_\_\_\_.
10. **SETTLEMENT.** The possibility of settlement of this case is considered: *(Specify good, fair or poor.)* \_\_\_\_\_
11. **MODIFICATION; INTERPRETATION.** This order shall control the course of the trial and may not be modified except by court order upon agreement of the parties or to prevent manifest injustice. The pleadings will be deemed merged herein. In the event of ambiguity in any provision of this order, reference may be made to the pleadings.

*(name of assigned Judge, see Second  
Judicial District Local Rules, Rule  
LR2-130)*

*(signature blocks, see Second Judicial District Local Rules, Rules LR2-118 and LR2-130)*

## **LR2-Form M. Waiver of arraignment; entry of plea of not guilty.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

### **WAIVER OF ARRAIGNMENT ENTRY OF PLEA OF NOT GUILTY**

I understand that I am charged with the following criminal offense or offenses under the law(s) of the State of New Mexico:

I understand that I am entitled to personally appear for arraignment before the district court and enter my plea to the offense(s) charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the offense(s) charged and the penalty provided by law for the offense(s) charged.

I further understand that: I have a right to a trial by jury; I have a right to the assistance

of an attorney at all stages of the proceeding and to an appointed attorney to be provided free of charge if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the State compel witnesses of my choosing to appear and testify; I have a right to remain silent and any statement made by me may be used against me; I have a right to trial by jury and all jurors must agree on my guilt of the offense(s) charged beyond a reasonable doubt for me to be found guilty.

After reading and understanding the above, I hereby give up my right to personally appear before the district court for arraignment and I hereby enter a plea of NOT GUILTY to all criminal offenses charged in this case.

DATE

DEFENDANT

I have explained to the defendant his/her right to personally appear for arraignment before the district court to enter a plea of not guilty and to have his/her rights explained to him/her by the district judge, and I am satisfied that he/she understands the waiver of these rights.

I hereby certify that:

I have had conditions of release approved by the appropriate prosecutor. If conditions of release are other than ROR, bond will be filed within ten (10) days after this waiver is filed. If the defendant has not been booked, he/she will be booked within ten (10) days after this waiver is filed.

No conditions of release have been agreed upon. A hearing is set on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

*(signature block, see Second  
Judicial District Local Rules,  
Rule LR2-118)*

**APPROVED:**

\_\_\_\_\_  
*(name of assigned judge, see Second  
Judicial District Local Rules,  
Rule LR2-130)*

**ACKNOWLEDGED:**

\_\_\_\_\_  
*(signature block for prosecutor, see  
Second Judicial District Local Rules,  
Rule LR2-118)*



## **LR2-Form N. 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.

## **LR2-Form O. 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.

## **LR2-Form P. 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.

## **LR2-Form Q. 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.

## **LR2-Form R. 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.

## **LR2-Form S. 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.

## **LR2-Form T. Court clinic referral order.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

### **COURT CLINIC REFERRAL ORDER**

THIS MATTER coming before the court:

- upon stipulation of the parties;
- for hearing upon motion of a party;

and the court having been sufficiently advised, FINDS:

A. The parties are parents of:

Name

Age

B. Concerns exist regarding:

- Form of custody;
- Child(ren)'s primary residence;
- Time-sharing or visitation;
- Other issues:

C. The parties should submit to the following court clinic services:

- Priority consultation, pursuant to the Domestic Relations Mediation Act, 40-12-1 NMSA 1978 et seq.;
- Mediation and, if necessary, an advisory consultation, pursuant to the Act;
- Mediation only, pursuant to the Act;
- Advisory consultation only, pursuant to the Act;
- "Other services":

D. The good cause required for any priority consultation or "other services", or for return to the court clinic for modification of any pre-existing agreement or court order, is as follows (*state facts*):

**IT IS THEREFORE ORDERED:**

1. The parties and their child(ren) shall submit to the court clinic services indicated in the court's Finding C. The court clinic will contact the parties to schedule all services except priority consultations. With respect to priority consultations, the actual parties

along with their counsel, if any, shall contact the court clinic in person immediately after this order is filed.

2. The parties shall pay any fees for the court clinic services ordered herein, including fees for any advisory consultation or evaluation, before any services are provided. The court may reallocate the fees between the parties as appropriate.

3. Court clinic services ordered herein are not confidential and any court clinic staff member who provides such services may be called as a witness pursuant to the New Mexico Rules of Evidence; provided, however, that court clinic records shall be sealed from public inspection.

4. The court clinic may request and shall receive from the New Mexico Department of Human Services any information and records related to the parents and their children, and any other parties, and the New Mexico Department of Human Services may request and shall receive the same information from the court clinic.

5. The court clinic shall notify the parties, through counsel or pro se, in writing of the outcome of mediation and any other services, including any agreements and any recommendations from the court clinic, as such agreements are reached and recommendations made. The clinic shall file a certificate indicating the date such notice is mailed or delivered. Agreements and court clinic recommendations shall not be filed in the court file nor shall the court clinic otherwise inform the court of the terms of any agreements and recommendations. Copies of letters and other correspondence from the clinic to the parties also shall not be provided to the court.

6. Upon completion of its services, the court clinic shall file a notice of completion, and mail or deliver a copy of such notice to the parties.

7. The court clinic may request a hearing or status conference on any child-related issue by filing a request for hearing.

8. By court order, upon stipulation of the parties or for good cause shown, the court clinic services ordered herein may be terminated and alternative services may be provided by another qualified provider.

9. Upon completion of the court clinic services ordered herein, the parties may not return to the clinic for additional services except: the parties may return to the clinic for a continuation of services within ninety (90) days after the notice of completion is filed; this continuation of services shall be limited to clarifying agreements and/or recommendations or to resolving unanticipated problems; unless otherwise ordered by the court, this continuation of services shall not be to reconsider agreements or recommendations.

10. If modification of an existing custody or time-sharing order is the subject of the court clinic services, then all issues regarding a change in circumstances are preserved.

**WITH RESPECT TO PRIORITY CONSULTATIONS, IT IS FURTHER ORDERED:**

11. If the parties are able to reach a temporary agreement during any priority consultation, then the parties shall submit a stipulated temporary order to the court within ten (10) days after notice from the court clinic of the agreement.

12. If the parties are not able to reach a temporary agreement during any priority consultation, then the court clinic shall make recommendations to the parties; and

a. If the parties are willing to comply with the recommendations on a temporary basis, pending mediation or further order of the court, the parties shall comply with the

recommendations pending mediation or further order of the court and shall submit a stipulated temporary order to the court within ten (10) days after notice from the court clinic of the recommendations; or

b. If one or both of the parties are not willing to comply with the recommendations, even on a temporary basis, the parties shall comply with the recommendations until a hearing on objections to the recommendations or until further order of the court; either or both parties may file a notice of objection to the recommendations and a request for hearing on the objections; the notice shall identify which recommendations are being objected to and the basis for the objections; the court shall schedule a hearing on the objections within ten (10) days after delivery to the court of endorsed copy of the notice and request for hearing.

**WITH RESPECT TO MEDIATIONS, IT IS FURTHER ORDERED:**

13. If the parties are able to reach a full or partial mediated agreement, then the parties shall submit a stipulated order to the court within ten (10) days after notice from the court clinic of the agreement.

14. If the parties are not able to reach a full mediated agreement, then, if so ordered pursuant to Finding C, the court clinic shall proceed with an advisory consultation; otherwise, a new court order for further services must be entered before further services are provided by the clinic.

15. If mediation by a court clinic staff member fails to resolve all issues, and if other court clinic services are ordered, then upon completion of mediation either party may request or the court clinic may require that another court clinic staff member provide the other services. The second staff member however shall consult with the first staff member.

**WITH RESPECT TO ADVISORY CONSULTATIONS, IT IS FURTHER ORDERED:**

16. If the parties are able to reach a full or partial agreement during any advisory consultation, then the parties shall submit a stipulated order to the court within ten (10) days after notice from the court clinic of the agreement.

17. If the parties are not able to reach a full or partial agreement during any advisory consultation but are willing to follow the court clinic's recommendations, then the parties shall submit a stipulated order to the court within ten (10) days after notice from the court clinic of the recommendations.

18. If the parties are not able to reach a full agreement and are not willing to follow the court clinic's recommendations, and:

a. If there is a pre-existing order regarding custody or time-sharing, then the parents shall comply with such order until otherwise ordered by the court; or

b. If there is no pre-existing order regarding custody or time-sharing, then either or both parties may file a notice of objection to the recommendations and a request for hearing on the objections within ten (10) days after notice from the court clinic of the recommendations; the notice of objections shall identify which recommendations are being objected to and the basis for the objections; the court shall schedule a hearing on the objections within sixty (60) days after delivery to the court of an endorsed copy of the notice and request for hearing; and, pending the hearing on the objections:

- i. The parties shall follow the recommendations of the court clinic regarding time-sharing;
- ii. Neither party may otherwise change the status quo of the child(ren), without the written approval of the other party or order of the court, regarding major factors in the child(ren)'s life, including residence, religion and religious activities, school and educational activities, health care and providers and public activities, as defined in Section 40-4-9.1(J)(4) NMSA 1978;
- iii. Either parent may file a motion with the court for relief pursuant to NMRA, Rule 1-066.

c. If there is not a pre-existing order regarding custody or time-sharing, and if neither party timely files a notice in accordance with sub-paragraph b, then the court clinic recommendations shall be deemed adopted by the court as its order and the parties shall comply with the recommendations until further order of the court;

**FURTHER THE COURT ORDERS:**

19. The parties shall provide to the court clinic an endorsed copy of the following:

- a. This court clinic referral order with the required information sheet attached;
- b. All subsequent orders which affect this order;
- c. Any order which disposes of the pending matter which gave rise to this order.

---

*(name of assigned Judge, see Second Judicial District Local Rules, Rule LR2-130)*

*(signature blocks, see Second Judicial District Local Rules, Rule LR2-118 and Rule LR2-130)*

**LR2-Form U. Court clinic information sheet.**

**COURT CLINIC INFORMATION SHEET**

PETITIONER'S NAME

RESPONDENT'S NAME

ADDRESS

ADDRESS

CITY - ZIP CODE

CITY - ZIP CODE

HOME PHONE WORK PHONE

HOME PHONE WORK PHONE

ATTORNEY

ATTORNEY

ADDRESS

ADDRESS

CITY - ZIP CODE

CITY - ZIP CODE

PHONE NUMBER

PHONE NUMBER

INCOME

EST GROSS ANNUAL

EST GROSS MONTHLY

PETITIONER

\$ \_\_\_\_\_

\$ \_\_\_\_\_

RESPONDENT

\$ \_\_\_\_\_

\$ \_\_\_\_\_

COMBINED ANNUAL  
INCOME

\$ \_\_\_\_\_

\$ \_\_\_\_\_

NUMBER OF CHILDREN IN THIS CASE \_\_\_\_\_

I state that the above information is true and correct. I agree to pay the Second Judicial District Court my share of any fees for court clinic services. I understand that false statements or failure to pay fees may be grounds for contempt proceedings. I also understand that any advisory consultation report will not be released until payment for it is made.

PETITIONER'S SIGNATURE

DATE

RESPONDENT'S SIGNATURE

DATE

### **Court Orders**

SECOND JUDICIAL DISTRICT COURT  
BERNALILLO COUNTY  
STATE OF NEW MEXICO

IN THE MATTER OF THE RULES OF THE  
SECOND JUDICIAL DISTRICT COURT

The Court hereby orders that the attached rules are adopted as this Court's rules, to be effective July 1, 1992.

Michael E. Martinez  
District Judge, Division I  
Presiding Children's Court Judge

James Blackmer  
District Judge, Division II

Robert L. Thompson  
District Judge, Division XVI

Frank H. Allen  
District Judge, Division IV  
Presiding Criminal Court Judge

Gerard W. Thomson  
District Judge, Division V

W. C. Woody Smith  
District Judge, Division VI

Philip R. Ashby  
District Judge, Division VII

Burt Cosgrove  
District Judge, Division IX

Diane Dal Santo  
District Judge, Division XI

Robert H. Scott  
District Judge, Division XIII

H. Richard Blackhurst  
District Judge, Division XV

Anne Kass  
District Judge, Division XVII  
Presiding Domestic Relations Court Judge

Ross Sanchez  
District Judge, Division VIII

Rozier E. Sanchez  
District Judge, Division IX

W. John Brennan  
District Judge, Division XIV  
Chief Judge

Tommy Jewell  
District Judge, Division III

Susan M. Conway  
District Judge, Division XVIII  
Presiding Civil Court Judge

Albert S. "Pat" Murdoch  
District Judge, Division XIX

## ANNOTATIONS

**Compiler's notes.** — The preceding order was filed in the Second Judicial District on March 9, 1992. The approved rule amendments were then submitted to the Supreme Court Rules of Civil Procedure for the District Courts Committee and the Rules of Criminal Procedure for the District Courts Committee for review in accordance with Rule 1-083 of the Rules of Civil Procedure for the District Courts and Rule 5-102 of the Rules of Criminal Procedure for the District Courts.

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SECOND JUDICIAL DISTRICT COURT  
BERNALILLO COUNTY  
STATE OF NEW MEXICO

MS A-1211

IN THE MATTER OF THE RULES OF THE  
SECOND JUDICIAL DISTRICT COURT

ORDER

This matter having come before the Court on its own motion after consultation between the Chief Judge and the New Mexico Supreme Court civil and criminal rules committees, the Chief Judge having determined that the proposed local rules adopted by the Court on March 9, 1992, should be amended, the Court orders that the rules be amended as indicated on the attached sheets, and further orders that these amended rules be and hereby are adopted as this Court's rules and that such rules shall take effect September 1, 1992.



/s/ W. JOHN BRENNAN  
District Judge, Division XIV  
Chief Judge  
/s/ ROBERT H. SCOTT  
District Judge, Division XIII  
/s/ H. RICHARD BLACKHURST  
District Judge, Division XV  
/s/ TOMMY JEWELL  
District Judge, Division 3  
/s/ ANNE KASS  
District Judge, Division XVII  
Presiding Domestic Relations Court Judge  
/s/ SUSAN M. CONWAY  
District Judge, Division XVIII  
Presiding Civil Court Judge  
/s/ ALBERT S. "PAT" MURDOCH  
District Judge, Division XIX

### ANNOTATIONS

**Compiler's notes.** — The preceding order was filed in the Second Judicial District Court on July 23, 1992, following review by the Supreme Court Rules of Civil Procedure for the District Courts Committee and the Rules of Criminal Procedure for the District Courts Committee.

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SECOND JUDICIAL DISTRICT COURT  
BERNALILLO COUNTY  
STATE OF NEW MEXICO

Misc. No. A-1211

IN THE MATTER OF AMENDING THE LOCAL RULES  
OF THE SECOND JUDICIAL DISTRICT COURT

ORDER ADOPTING LR2-407

THIS MATTER coming before the judges of the Second Judicial District Court at the Second Judicial District Court Judge's Conference on August 11, 1994, and the judges being sufficiently advised and concurring, hereby amend the local rules for the Second Judicial District to create Local Rule LR2-407 Designation of Proceedings for Transcript

NOW, THEREFORE, IT IS ORDERED that the local rules for the Second Judicial District are hereby amended to include Local Rule LR2-407.

/s/ HON. W. JOHN BRENNAN  
Chief Judge  
Second Judicial District Court

### ANNOTATIONS

**Compiler's notes.** — The preceding order was filed in the Second Judicial District Court on April 18, 1995, following review by the Supreme Court Rules of Civil Procedure for the District Courts Committee and the Rules of Criminal Procedure for the District Courts Committee.

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SECOND JUDICIAL DISTRICT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT  
OF LR2-603 - COURT ANNEXED ARBITRATION  
OF THE SECOND JUDICIAL DISTRICT

#### ORDER

THIS MATTER coming before the Court on its own motion after having submitted local rule LR2-603 to the Supreme Court District Court Rules of Civil Procedure Committee and the Court having met with and clarified concerns raised by the District Court Rules of Civil Procedure Committee;

The Court orders that the amendments to local rule LR2-603 be and the same are hereby adopted;

It is further ordered that the above amended local rule be effective for cases filed in the Second Judicial District Court on and after May 1, 1997;

NOW, THEREFORE, it is ordered that the amended local rule be transmitted to the Clerk of the Supreme Court for filing and to the New Mexico Compilation Commission for publication in accordance with Supreme Court rules.

Done by the court this 26th day of February, 1997.

/s/ W. John Brennan  
Chief Judge

---

SECOND JUDICIAL DISTRICT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

A-1211

Miscellaneous Number

IN THE MATTER OF AMENDING LOCAL  
RULE LR2-103: CHILDREN'S, CRIMINAL,  
DOMESTIC RELATIONS AND DOMESTIC  
VIOLENCE COURTS, RULE OF GENERAL  
PROCEDURE OF THE SECOND JUDICIAL  
DISTRICT COURT

This matter coming before the Judges Meeting of the Second Judicial District Court on November 21, 1996, and the Judges being sufficiently advised and concurring with the Chief Judge, hereby amend Local Rule LR2-103 to include Domestic Violence.

Now, therefore, **IT IS ORDERED** that Local Rule LR2-103; is hereby amended as of November 21, 1996.

It is further Ordered that the Clerk of the Court of the Second Judicial District Court is authorized and directed to file with the Supreme Court, of the State of New Mexico, Notice of Amendment and publish same.

/s/ The Honorable W. John Brennan  
Chief Judge  
Division XIV

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

A-1211

Miscellaneous Number

IN THE MATTER OF AMENDING LOCAL  
RULE LR2-104, ASSIGNMENT OF CASES  
AND LR2-106, PRIORITIES RESOLVING  
SCHEDULING CONFLICTS, RULES OF GENERAL  
PROCEDURE OF THE SECOND JUDICIAL  
DISTRICT COURT

This matter coming before the judges meeting of the Second Judicial District Court on November 13, 1997, and the Judges being sufficiently advised and concurring with the Chief Judge, hereby amend Local Rule LR2-104 and LR2-106.

Now, therefore, **IT IS ORDERED** that Local Rule 2-104 and LR2-106 is hereby amended as of November 13, 1997.

It is further ordered that the Clerk of the Court of the Second Judicial District Court is authorized and directed to file with the Supreme Court of the State of New Mexico, notice of amendment and publish the same.

/s/ The Honorable W. John Brennan  
Chief Judge  
Division XIV

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8200  
IN THE MATTER OF THE APPROVAL  
OF LOCAL RULE 2-409 FOR THE SECOND  
JUDICIAL DISTRICT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee to adopt LR2-409 concerning appeals from driver's license revocation hearings, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is approved and local rule 2-409 for the Second Judicial District hereby is APPROVED; and

DONE at Santa Fe, New Mexico this 3rd day of November, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PATRICIO M. SERNA

Justice  
/s/ PETRA JIMENEZ MAES  
Justice

---

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8200  
IN THE MATTER OF THE APPROVAL  
OF LOCAL RULE 2-114 FOR THE  
SECOND JUDICIAL DISTRICT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is approved and the local rule 2-114 of the Second Judicial District hereby is approved.

DONE at Santa Fe, New Mexico, this 27th day of December, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PATRICIO M. SERNA  
Justice  
/s/ PETRA JIMENEZ MAES  
Justice

---

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8310  
IN THE MATTER OF THE APPROVAL  
OF LOCAL RULE LR2-103 FOR THE  
SECOND JUDICIAL DISTRICT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is adopted and local rule LR2-103 of the Second Judicial District hereby is APPROVED.

WITNESS, The Hon. Pamela B. Minzner, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 19th day of December, 2000.

(SEAL)       /s/ Kathleen Jo Gibson  
Chief Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 01-8310  
IN THE MATTER OF THE APPROVAL  
OF LOCAL RULE LR2-108 FOR THE  
SECOND JUDICIAL DISTRICT

ORDER

WHEREAS, this matter came on for consideration by the Court upon request by the Second Judicial District Court to approve its local rule concerning court security, and the Court having considered said request and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the request hereby is granted and local rule LR2-108 of the Second Judicial District hereby is APPROVED.

WITNESS, The Hon. Patricio M. Serna, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 7th day of August, 2001.

(SEAL)       /s/ Kathleen Jo Gibson  
Chief Clerk of the Supreme Court  
of the State of New Mexico