

RULES OF CIVIL PROCEDURE FOR THE METROPOLITAN COURTS

1986 Recompile

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
IN THE MATTER OF THE ADOPTION :
OF RULES OF PROCEDURE FOR
THE : 8000 Misc.
METROPOLITAN COURTS :

This matter coming on for consideration by the court, and the court being sufficiently advised, Mr. Chief Justice Sosa, Mr. Justice Easley, Mr. Justice Payne, Mr. Justice Federici and Mr. Justice Felter concurring;

NOW, THEREFORE, IT IS ORDERED that the Rules of Procedure for the Metropolitan Courts which are attached hereto and made a part hereof shall be effective July 1, 1980, for cases filed on or after said date in the metropolitan court. Any case filed prior to July 1, 1980, in any municipal, magistrate or small claims court consolidated as a metropolitan court on July 1, 1980, shall be governed by the rules of procedure in effect in such court on the date such case was filed.

IT IS FURTHER ORDERED that the following civil forms, as amended, be approved for use in the metropolitan court: 1.00 to 8.05, 9.00 and 10.00 to 10.13.

IT IS FURTHER ORDERED that the following criminal forms, as amended, be approved for use in the metropolitan court: 1.00, 1.01, 2.00, 2.20, 2.22, 2.30, 2.32, 2.40, 2.45, 2.50, 2.55, 3.00, 3.10, 3.20, 3.25, 4.00, 4.10, 4.21, 5.00, 5.10, 5.20, 5.30, 5.40, 5.45, 5.50, 6.00, 6.02, 6.09, 6.10, 6.20, 6.30, 6.40, 7.10, 8.10, 8.15, 9.00, 9.10 and 10.00.

IT IS FURTHER ORDERED that the clerk of the court be and she hereby is authorized and directed to give notice of the adoption of these Rules of Procedure for the Metropolitan Courts by publishing the same in the NMSA 1978.

DATED this 26th day of March, 1980.

/s/ DAN SOSA, JR.

Chief Justice

/s/ MACK EASLEY

Justice

/s/ H. VERN PAYNE

Justice
/s/ WILLIAM R. FEDERICI
Justice
/s/ EDWIN L. FELTER
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
IN THE MATTER OF ADDITIONS TO AND :
AMENDMENTS OF THE RULES OF
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court, and the court being sufficiently advised, Mr. Chief Justice Easley, Mr. Senior Justice Sosa, Mr. Justice Payne, Mr. Justice Federici and Mr. Justice Riordan concurring;

NOW, THEREFORE, IT IS ORDERED that Rules 37.1 and 37.2 of the Rules of Procedure for the Metropolitan Courts be and the same are hereby adopted;

IT IS FURTHER ORDERED that Rules 3, 9, 11, 13, 14, 17, 19, 20, 21, 24, 25, 26, 29, 31, 33, 36, 44, 49, 50, 52, 55, 64, 66 and 72 of the Rules of Procedure for the Metropolitan Courts be and the same are hereby amended;

IT IS FURTHER ORDERED that the adoption of Rules 37.1 and 37.2 and the amendments to Rules 3, 9, 11, 13, 14, 17, 19, 20, 21, 24, 25, 26, 29, 31, 33, 36, 44, 49, 50, 52, 55, 64, 66 and 72 of the Rules of Procedure for the Metropolitan Courts shall be effective for all cases filed on or after September 1, 1981;

IT IS FURTHER ORDERED that the clerk of the court be and she hereby is authorized and directed to give notice of the additions to and the amendments of the Rules of Procedure for the Metropolitan Courts by publishing the same in the NMSA 1978.

DONE this 7th day of May, 1981.

/s/ MACK EASLEY
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ H. VERN PAYNE
Justice
/s/ WILLIAM R. FEDERICI
Justice
/s/ WILLIAM F. RIORDAN
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF ADDITIONS TO AND :
AMENDMENT OF THE RULES OF
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court, and the court being sufficiently advised, Mr. Chief Justice Easley, Mr. Senior Justice Sosa, Mr. Justice Payne, Mr. Justice Federici and Mr. Justice Riordan concurring;

NOW, THEREFORE, IT IS ORDERED that Rules 3, 11, 13, 27, 56, 68, 71 and 72 of the Rules of Procedure for the Metropolitan Courts be and the same are hereby amended.

IT IS FURTHER ORDERED that the foregoing amendments of the Rules of Procedure for the Metropolitan Courts shall be effective for all cases filed on or after July 1, 1982.

IT IS FURTHER ORDERED that the clerk of the court be and she hereby is authorized and directed to give notice of the foregoing amendments of the Rules of Procedure for the Metropolitan Courts by publishing the same in the NMSA 1978.

DONE this 20th day of April, 1982.

/s/ MACK EASLEY

Chief Justice

/s/ DAN SOSA, JR.

Senior Justice

/s/ H. VERN PAYNE

Justice

/s/ WILLIAM R. FEDERICI

Justice

/s/ WILLIAM F. RIORDAN

Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION AND :
AMENDMENT OF RULES OF
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the

court being sufficiently advised, Chief Justice Federici, Senior Justice Sosa, Justice Riordan, Justice Stowers, and Justice Walters concurring:

NOW, THEREFORE, IT IS ORDERED that Rule [Rules] 21, 27, 70, 72, 73 and 74 are hereby amended;

IT IS FURTHER ORDERED that Rule 70.1 is hereby adopted.

IT IS FURTHER ORDERED that the amendment of Rules 21, 27, 70[,] 72, 73 and 74 and the adoption of 70.1 shall be effective on or after October 1, 1984.

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of these amendments and adoptions by publishing the same in the NMSA 1978.

DONE at Santa Fe, New Mexico this 4th day of April, 1984.

/s/ WILLIAM R. FEDERICI
Chief Justice

/s/ DAN SOSA, JR.
Senior Justice

/s/ WILLIAM RIORDAN
Justice

/s/ HARRY E. STOWERS, JR.
Justice

/s/ MARY C. WALTERS
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT, :
OF THE RULES OF CIVIL :
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 3-105 of the Rules of Civil Procedure for the Metropolitan Courts be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after May 1, 1987;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the

above Rules of Civil Procedure for the Metropolitan Courts by mailing a copy of the amendment to the Court Administrator of the Metropolitan Court and by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 9th day of April, 1987.

/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice
/s/ RICHARD E. RANSOM
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT, :
OF THE RULES OF CIVIL :
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 3-107 of the Rules of Civil Procedure for the Metropolitan Courts be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after July 1, 1987;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the above Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the News and Views and in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 9th day of April, 1987.

/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.

Justice
/s/ MARY C. WALTERS
Justice
/s/ RICHARD E. RANSOM
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :
RULES 3-105, 3-301, 3-702 AND 3- :
801 : 8000 Misc. :
OF THE RULES OF CIVIL PROCEDURE :
FOR THE METROPOLITAN COURTS :

The matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 3-105, 3-301, 3-702 and 3-801 of the Rules of Civil Procedure for the Metropolitan Courts be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after October 1, 1987;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the above Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the News and Views and in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 17th day of August, 1987.

/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice
/s/ RICHARD E. RANSOM
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF RULES 3-106 AND 3-107 OF
THE : 8000 Misc.
RULES OF CIVIL PROCEDURE FOR THE :
METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 3-106 and 3-107 of the Rules of Civil Procedure for the Metropolitan Courts be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after July 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the above Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 26th day of May, 1988.

/s/ TONY SCARBOROUGH
Chief Justice
/s/ DAN SOSA, JR.
Senior Justice
/s/ HARRY E. STOWERS, JR.
Justice
/s/ MARY C. WALTERS
Justice
/s/ RICHARD E. RANSOM
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES OF CIVIL
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the

court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 3-105, 3-106, 3-202, 3-603, 3-706 and 3-709 of the Rules of Civil Procedure for the Metropolitan Courts be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Rules 3-105, 3-106, 3-603, 3-706 and 3-709 of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after September 1, 1989;

IT IS FURTHER ORDERED that the above amendment of Rule 3-202 of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after January 1, 1990;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the above Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 24th day of April, 1989.

/s/ DAN SOSA, JR.

Chief Justice

/s/ HARRY E. STOWERS, JR.

Justice

/s/ TONY SCARBOROUGH

Justice

/s/ RICHARD E. RANSOM

Justice

/s/ JOSEPH F. BACA

Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES OF CIVIL :
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Wilson concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules

3-106, 3-107, 3-108, 3-202 and 3-704 of the Rules of Civil Procedure for the Metropolitan Courts be and the same are hereby approved;

IT IS FURTHER ORDERED that the above amendments of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after July 1, 1990;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendments of the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the SCRA 1986.

DONE at Santa Fe, New Mexico this 14th day of February, 1990.

/s/ DAN SOSA, JR.
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ KENNETH B. WILSON
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES OF CIVIL :
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 3-102, 3-202 and 3-711 of the Rules of Civil Procedure for the Metropolitan Courts be and the same are hereby amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after January 1, 1993;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendment of

the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the Bar Bulletin and in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 13th day of August, 1992.

/s/ RICHARD E. RANSOM

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ STANLEY F. FROST

Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES OF CIVIL

PROCEDURE : 8000 Misc.

FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 3-106, 3-107 and 3-301 of the Rules of Civil Procedure for the Metropolitan Courts be and the same are hereby amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after October 1, 1992;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendment of the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the Bar Bulletin and in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 13th day of August, 1992.

/s/ RICHARD E. RANSOM

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY

Justice

/s/ GENE E. FRANCHINI

Justice
/s/ STANLEY F. FROST
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES OF CIVIL
PROCEDURE : 8000 Misc.
FOR THE METROPOLITAN COURTS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 3-502 and 3-706 of the Rules of Civil Procedure for the Metropolitan Courts be and the same are hereby amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on or after January 1, 1994;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendment of the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 27th day of August, 1993.

/s/ RICHARD E. RANSOM
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

NO. 94-8300
IN THE MATTER OF THE AMENDMENT OF
THE RULES OF CIVIL PROCEDURE FOR
THE METROPOLITAN COURTS

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Rules 3-202, 3-502 and 3-708 of the Rules of Civil Procedure for the Metropolitan Courts be and the same hereby are amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on and after May 1, 1994;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the above amendment of the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 17th day of February, 1994.

/s/ RICHARD E. RANSOM
Chief Justice
/s/ JOSEPH F. BACA
Justice
/s/ SETH D. MONTGOMERY
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

NMRA

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO
NO. 94-8300
IN THE MATTER OF THE AMENDMENT
OF THE RULES OF CIVIL PROCEDURE
FOR THE METROPOLITAN COURTS

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Seth D. Montgomery, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Gene E. Franchini and Justice Stanley F. Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 3-701 of the Rules of Civil Procedure for the Metropolitan Courts be and the same hereby is amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on and after January 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the above amendment of the Rules of Civil Procedure for the Metropolitan Courts by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 30th day of September, 1994.

/s/ SETH D. MONTGOMERY
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ JOSEPH F. BACA
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 95-8300
IN THE MATTER OF THE AMENDMENT OF
THE RULES OF CIVIL PROCEDURE FOR
THE METROPOLITAN COURT

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Metropolitan Court Civil Rules 3-105, 3-106, and 3-305, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that Rules 3-105, 3-106, and 3-305 of the Rules of Civil Procedure for the Metropolitan Court be and the same hereby are amended;

IT IS FURTHER ORDERED that the above amendment of the Rules

of Civil Procedure for the Metropolitan Courts shall be effective for cases filed in the Metropolitan Courts on and after November 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the Rules of Civil Procedure for the Metropolitan Court by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 12th day of September, 1995.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice
/s/ PAMELA B. MINZNER
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
No. 95-8300
IN THE MATTER OF THE AMENDMENT OF
THE RULES OF CIVIL PROCEDURE FOR
THE METROPOLITAN COURT

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Metropolitan Court Civil Rules 3-801, 3-802, 3-803 and 3-804, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that Rules 3-801, 3-802, 3-803 and 3-804 of the Rules of Civil Procedure for the Metropolitan Court be and the same hereby are amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Court shall be effective for cases filed in the Metropolitan Court on and after January 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is

authorized and directed to give notice of the amendment of the Rules of Civil Procedure for the Metropolitan Court by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 6th day of November, 1995.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice
/s/ PAMELA B. MINZNER
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 95-8300

IN THE MATTER OF THE AMENDMENT OF
THE RULES OF CIVIL PROCEDURE FOR
METROPOLITAN COURT

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Metropolitan Court Civil Rule 3-110, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 3-110 of the Rules of Civil Procedure for the Metropolitan Court be and the same hereby is amended;

IT IS FURTHER ORDERED that the above amendment of the Rules of Civil Procedure for the Metropolitan Court shall be effective for cases filed in the Metropolitan Court on and after January 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the Rules of Civil Procedure for the Metropolitan Court by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 6th day of November, 1995.

/s/ JOSEPH F. BACA

Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ STANLEY F. FROST
Justice
/s/ PAMELA B. MINZNER
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 96-8300
IN THE MATTER OF THE AMENDMENTS OF RULES
2-705, 3-706, 3-708, AND FORM 4-708 AND
THE WITHDRAWAL OF RULES 3-707, 3-709, 3-710,
3-711, AND 3-712 OF THE MAGISTRATE COURT AND
METROPOLITAN COURT RULES GOVERNING APPEALS
IN CIVIL CASES TO THE DISTRICT COURT

ORDER

This matter coming on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Rules 2-705, 3-706, 3-708 and Form 4-708, and to withdraw Rules 3-707, 3-709, 3-710, 3-711, and 3-712, and the Court being sufficiently advised, Chief Justice Stanley F. Frost, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Gene E. Franchini, and Justice Pamela B. Minzner concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-705, 3-706, 3-708, and Form 4-708 of the Magistrate Court and Metropolitan Court rules governing appeals in civil cases to the District Court hereby are approved;

IT IS FURTHER ORDERED that the withdrawal of Rules 3-707, 3-709, 3-710, 3-711, and 3-712, hereby is approved and effective July 1, 1996;

IT IS FURTHER ORDERED that the amendments of Rules 2-705, 3-706, 3-708, and Form 4-708 shall be effective for appeals filed on and after July 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the adoption of the above-referenced rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 18th day of April, 1996.

/s/ STANLEY F. FROST

Chief Justice

/s/ RICHARD E. RANSOM

Justice

/s/ JOSEPH F. BACA

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ PAMELA B. MINZNER

Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300

IN THE MATTER OF THE AMENDMENT OF

THE RULES OF CIVIL PROCEDURE

FOR THE METROPOLITAN COURTS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt the amendment to Rule 3-602, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 3-602 of the Rules of Courts of Limited Jurisdiction be and the same hereby is amended;

IT IS FURTHER ORDERED that the above amendment of the rule shall be effective for cases filed in the Magistrate, Metropolitan, and Municipal Courts on and after October 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 26th day of August, 1996.

/s/ JOSEPH F. BACA

Chief Justice

/s/ RICHARD E. RANSOM

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ PAMELA B. MINZNER

Justice
/s/ DAN A. McKINNON, III
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 96-8300
IN THE MATTER OF THE AMENDMENT OF
THE RULES OF CIVIL PROCEDURE
FOR THE METROPOLITAN COURTS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt the amendment to Rule 3-107, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 3-107 of the Rules of Courts of Limited Jurisdiction be and the same hereby is amended;

IT IS FURTHER ORDERED that the above amendment of the rule shall be effective for cases filed in the Magistrate and Metropolitan Courts on and after October 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 26th day of August, 1996.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. McKINNON, III
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 96-8300
IN THE MATTER OF THE ADOPTION
OF NMRA, 3-204 OF THE
RULES OF CIVIL PROCEDURE
FOR THE METROPOLITAN COURT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the adoption of Rule 3-204 of the Rules of Civil Procedure for Metropolitan Court hereby is approved;

IT IS FURTHER ORDERED that the adoption of Rule 3-204 of the Rules of Civil Procedure for Metropolitan Court shall be effective on and after January 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 11th day of October, 1996.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. MCKINNON, III
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 96-8300
IN THE MATTER OF THE AMENDMENT
OF NMRA, 3-301 OF THE
RULES OF CIVIL PROCEDURE

FOR METROPOLITAN COURT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 3-301 of the Rules of Civil Procedure for Metropolitan Court hereby is approved;

IT IS FURTHER ORDERED that the amendment of Rule 3-301 of the Rules of Civil Procedure for Metropolitan Court shall be effective on and after January 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 11th day of October, 1996.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. MCKINNON, III
Justice

NMRA

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 96-8300
IN THE MATTER OF THE AMENDMENTS
OF RULES 2-703, 3-704, AND
FORM 9-507 OF THE MAGISTRATE COURTS
AND METROPOLITAN COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court

upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Rules 2-703, 3-704, and Form 9-507, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-703, 3-704, and Form 9-507 of the Magistrate Court and Metropolitan Court rules hereby are approved and shall be effective January 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 11th day of October, 1996.

/s/ JOSEPH F. BACA
Chief Justice
/s/ RICHARD E. RANSOM
Justice
/s/ GENE E. FRANCHINI
Justice
/s/ PAMELA B. MINZNER
Justice
/s/ DAN A. MCKINNON, III
Justice

ARTICLE 1 GENERAL PROVISIONS

3-101. Scope and title.

A. **Scope.** These rules shall govern the procedure in civil actions in all metropolitan courts.

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

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

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

[As amended, effective January 1, 1987.]

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 12, 35 et seq.

21 C.J.S. Courts §§ 124 to 134.

3-102. Conduct of court proceedings.

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

B. **Nonjudicial proceedings.** Proceedings, other than judicial proceedings, designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be photographed in, or broadcast from, the courtroom with the permission and under the supervision of the court.

[As amended, effective January 1, 1993.]

ANNOTATIONS

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

3-103. Rules and forms.

A. **Rules.** The metropolitan court may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules of the supreme court. Any rule promulgated by the metropolitan court shall not become effective until such rule is approved by the supreme court.

B. **Forms.** Forms used in the metropolitan courts shall be substantially in the form approved by the supreme court.

[As amended, effective January 1, 1987.]

3-104. Time.

A. **Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of metropolitan court, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to

run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

B. Enlargement. When by these rules or by a notice given thereunder or by order of court, an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done, but it may not extend the time for commencement of trial, or for taking an appeal.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereon shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

D. Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

3-105. Assignment and designation of judges.

A. Procedure for replacing a judge upon excusal or recusal. Upon receipt of a notice of excusal or upon recusal, the judge or clerk of the court shall give written notice to the parties to the action. Within ten (10) days after service of a notice of excusal or notice of recusal, the parties or their counsel may agree to another judge of the metropolitan court to try the case. If the parties fail to agree upon a new judge, the chief metropolitan court judge shall, by random selection, assign another metropolitan court judge to try the case. If all metropolitan court judges in the district have been excused or have recused themselves, within ten (10) days after service of the last notice of excusal or recusal, the chief judge of the metropolitan court shall certify that fact by letter to the district court of the county in which the action is pending and the district court shall designate another judge to conduct any further proceedings. The district court shall send notice of its designation to the parties or their counsel and to the metropolitan court.

B. Subsequent proceedings. All proceedings shall be conducted in the metropolitan court. The clerk of the metropolitan court shall continue to be responsible for the court

file and shall perform such further duties as may be required. Within five (5) days after assignment or designation of a new judge, the clerk shall make a copy of the court file for the designated judge.

[As amended, effective May 1, 1986; May 1, 1987; October 1, 1987; September 1, 1989; November 1, 1995.]

ANNOTATIONS

Cross-references. - For forms on disqualification or recusal, see Rule 4-101 NMRA 1997 et seq.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after September 1, 1989, rewrote this rule to the extent that a detailed comparison would be impracticable, to provide for one procedure upon the excusal or recusal of all metropolitan court judges.

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

3-106. Excusal; recusal; disability.

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

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

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

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

(a) the filing of the complaint; or

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

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

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

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

(3) by each party plaintiff and defendant in a restitution case, including an action in forcible entry or detainer, by filing a notice of excusal within five (5) days after service.

D. Notice of reassignment; service of excusal. After the filing of the complaint, if the case is reassigned to a different judge, the clerk shall give notice of the reassignment to all parties. Any party electing to excuse a judge shall serve notice of such election on all parties.

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

F. Failure to recuse. If a party believes that the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, the party may file a notice of excusal. The notice shall specifically set forth the grounds alleged. Upon receipt of the notice, the judge shall file a certificate of excusal or recusal in the action. If the judge fails or refuses to recognize the disqualification, any party may certify that fact by letter to the district court of the county in which the action is pending. The district court shall make such investigation as it deems warranted and enter an order in the action, either prohibiting the metropolitan court judge from proceeding further and designating another or striking the notice of excusal as ineffective or groundless.

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

[As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; July 1, 1990; October 1, 1992; November 1, 1995.]

ANNOTATIONS

Cross-references. - For forms on disqualification or recusal, see Rule 4-101 NMRA 1997 et seq.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after September 1, 1989, in Paragraph A, substituted "notice of excusal" for "statement of excusal" in the first sentence, in the second sentence, substituted "The notice of excusal" for "The statement" and deleted "in a civil action" from the end, and, in the third sentence, substituted "restitution case" for "petition for restitution" and "the notice" for "the statement"; in Paragraph C, substituted "notice of peremptory excusal" for "notice of election to excuse"; in Paragraph D, deleted the Subparagraph (1) designation, deleted the former third sentence, which read "If all metropolitan judges have been disqualified or have recused themselves, the case shall be transferred to the district court", and deleted former Subparagraph (2), relating to use of a judge pro tempore in certain cases where all metropolitan court judges are disqualified; in Paragraph E, substituted "a notice of excusal" for "a statement to that effect" and "shall thereupon proceed in accordance with Rule 3-105" for "shall thereupon recuse himself"; in Paragraph F, substituted "other cause" for "other disability"; and deleted former Paragraph G, relating to prohibition of costs or fees.

The 1990 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1990, rewrote Paragraph C; added present Paragraph D; and redesignated former Paragraphs D through F as present Paragraphs E through G.

The 1992 amendment, effective October 1, 1992, inserted "including an action in forcible entry or detainer," Subparagraph (3) of Paragraph C.

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

3-107. Pro se and attorney appearance.

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

- (1) if the party is an individual party, in person;
- (2) if the property is community property, one spouse may appear for both spouses.

B. Other authorized appearances. A party to any civil action may appear, prosecute and defend any proceeding:

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

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

(2) in an action brought pursuant to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act if the appearance is by:

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

(b) a "landlord", as defined in the Mobile Home Park Act;

(c) a licensed real estate agent authorized by the owner of the property; or

(d) the person authorized to manage the premises;

(3) if the party is a corporation whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business and the appearance is by an officer or general manager who has been authorized to appear on behalf of the corporation;

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

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

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

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

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

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

C. Attorney appearance. A party may appear, prosecute, defend and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address and telephone number. For the purpose of this rule, the filing of any pleading signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number.

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

[As amended, effective July 1, 1987; July 1, 1988; July 1, 1990; October 1, 1992; October 1, 1996.]

ANNOTATIONS

Cross-references. - For Owner-Resident Relations Act, see Chapter 47, Article 8 NMSA 1978.

For Mobile Home Park Act, see Chapter 47, Article 10 NMSA 1978.

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

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

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

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

3-108. Withdrawal or substitution of attorneys.

A. Consent and notice. No attorney or firm who has appeared in a cause may withdraw from it without written consent of the metropolitan court, filed with the clerk. Such consent may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon him, with proof of service thereof on all other parties, or otherwise. Notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the clerk.

B. Attorney failure to act. If an attorney ceases to act in a cause for a reason other than withdrawal or consent, upon motion of any party, the court may require the taking of such steps as it may be advised to insure that the cause will proceed with promptness and dispatch.

C. Service upon attorneys of record. Attorneys of record shall continue to be subject to service for ninety (90) days after entry of final judgment. This rule does not preclude the earlier withdrawal of counsel as provided above.

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

[As amended, effective July 1, 1990.]

ANNOTATIONS

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

3-109. Record.

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

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

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

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

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

The inclusion of stenographic notes which must be transcribed in the definition of "record" found in the Magistrate and Municipal Court Rules has been deleted from this

rule in order to eliminate the need for court reporters in the metropolitan court. The requirement that approval be given by the supreme court for mechanical, electrical or other recording, including a videotape recording, has been deleted since it is contemplated that this will be the means of making the record most often used. By adopting this rule, the supreme court has approved the means stated in the rule.

3-110. Contempt.

A. **Jurisdiction.** A metropolitan judge has jurisdiction to punish for contempt only for:

- (1) disorderly behavior in the presence of the court or close enough to the court that it obstructs the administration of justice;
- (2) misconduct of court officers in official transactions;
- (3) disobedience or resistance to any lawful order, rule or process of the court.

B. **Disposition upon notice and hearing.** A contempt, except as provided in Paragraph C of this rule, shall be punished only after notice and hearing. The notice shall state the essential facts constituting the contempt charged. The notice may be given:

- (1) orally by the judge in open court in the presence of the defendant;
- (2) by a summons;
- (3) by a bench warrant; or
- (4) by an order to show cause.

The defendant shall be entitled to bail as provided in the Rules of Criminal Procedure for the Metropolitan Courts. The defendant shall be given sufficient notice of hearing to permit the preparation of a defense. If the defendant is found guilty of contempt, the court shall enter judgment and sentence within the limits of its jurisdiction.

C. **Direct contempt.** A direct contempt may be punished summarily at the time of the contempt if the judge by written order certifies to having seen or heard the conduct constituting the contempt and that it was committed in the presence of the court. The written order of contempt shall recite the facts and shall be signed by the judge and entered of record.

D. **Appeal.** Any person found guilty of contempt may appeal to the district court pursuant to the rules of procedure governing appeals from the metropolitan court in criminal cases.

[As amended, effective January 1, 1996.]

Section 35-3-9 NMSA 1978 provides statutory authority to magistrates to punish for contempt. The statute limits the jurisdiction of the magistrate to punish for disorderly behavior or breach of the peace tending to interrupt or disturb a judicial proceeding in progress before the magistrate or for disobedience of any lawful order or process of the magistrate court. The statute requires a hearing in all instances and limits the punishment to \$25.00 or imprisonment for three days, or both. A right of appeal to the district court is provided in the same manner as in other criminal actions. It would thus appear that the legislature intended that the magistrate's power to punish for contempt would be limited to criminal contempt where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

There is no magistrate court rule or statute which is similar to Rule 5-114 of the Rules of Criminal Procedure for the District Courts granting the court authority to hold an attorney in contempt of court if he willfully fails to comply with the criminal rules. However, there is no indication that Section 35-3-9, *supra*, is not intended to include attorneys as well as others who may fail to observe the requirements of the statute.

Rule 6-111 of the Rules of Criminal Procedure for the Magistrate Courts adopts the general provisions of the statute regarding contempt proceedings and limits the magistrate's authority to punish for criminal contempt. However, the rule provides for a fine of \$250.00 and imprisonment not to exceed 30 days, or both such fine and imprisonment.

Rule 3-110 limits the jurisdiction of the metropolitan judge to punish for criminal contempt and follows the basic authority granted by Section 35-3-9, *supra*, and the present Rule 6-111 of the Rules of Criminal Procedure for the Magistrate Courts. However, the punishment is expanded to the limit of the court's jurisdiction. There being no prohibition in either the statute or magistrate rule against summary proceedings, the rule contemplates summary proceedings in those limited situations where the contemptuous conduct occurred in the actual presence of the court. Under such circumstances, if the contempt is of such a kind that it will necessitate immediate action in order to maintain the dignity and authority of the court, then the court can act summarily. *Ex parte Terry*, 128 U.S. 289, 9 S. Ct. 77, 32 L. Ed. 405 (1888). In *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976), the court upheld a trial judge having found a defense witness in contempt for failure to answer questions on cross examination and that such conduct in the presence of the court could be punished by the court's contempt power in a summary proceeding.

Notice and hearing. When the contempt takes place outside the presence of the court, the contemnor must be given notice before punishment may be imposed. *Cooke v. United States*, 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925); *In re Fullen*, 17 N.M. 394, 128 P. 64 (1913); *Wollen v. State*, 86 N.M. 1, 518 P.2d 960 (1974); *State v. Diamond*, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980).

If the contempt is not punished summarily, the alleged contemnor must be charged by a sworn affidavit, information or verified motion. *State v. Clark*, 56 N.M. 123, 241 P.2d 328 (1952); *Escobedo v. Agriculture Prods. Co.*, 86 N.M. 466, 525 P.2d 393 (1974).

Personal service on the alleged contemnor is required to be effective as notice in a criminal contempt proceeding. Service on the alleged contemnor's attorney is sufficient if the contempt is civil. *Lindsey v. Martinez*, 90 N.M. 737, 568 P.2d 263 (Ct. App. 1977); *Roybal v. Martinez*, 92 N.M. 630, 593 P.2d 71 (Ct. App. 1979). The rule as drafted provided for notice and hearing when the contempt is not punished summarily.

If the metropolitan court is a "magistrate court," the rule is within the authority granted by statute except for the punishment which may be imposed. If it is not a "magistrate court" and the provisions of 35-3-9, *supra*, are inapplicable, the common law duty and power of the courts to guard their proceedings from interference and to punish for contempts is authority for the rule. *State v. Kayser*, 25 N.M. 245, 181 P. 278 (1919); *State v. Magee Pub. Co.*, 29 N.M. 455, 224 P. 1028 (1924).

See Reporter's Addendum to Rules of Criminal Procedure for the District Courts on contempt of court.

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, made stylistic changes in Paragraph A; redesignated former Paragraphs B and C as Paragraphs C and B, respectively; in Paragraph B, rewrote the introductory language, added Subparagraph (4), and rewrote the last paragraph; in Paragraph C, rewrote the paragraph heading, inserted "direct" near the beginning and made stylistic changes; and added Paragraph D.

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

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

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

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

ARTICLE 2 COMMENCEMENT OF ACTION

3-201. Commencement of action.

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

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

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

ANNOTATIONS

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

For form on civil complaint, see Rule 4-201 NMRA 1997.

3-202. Summons.

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

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

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

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

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

(4) a notice that the defendant may request prior to any proceeding that the proceeding be recorded. The notice shall advise the defendant if a tape recording is not made of the

proceedings, it may effectively preclude the defendant from appealing to the district court.

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

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

E. Summons; service by mail. A summons and complaint may be served upon a defendant of any class referred to in Subparagraph (1) or (2) of Paragraph F of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and acknowledgement conforming with the form approved by the Supreme Court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service under this subdivision of this rule is received by the sender within twenty (20) days after the date of mailing plus three (3) days as provided by Rule 3-104, service of such summons and complaint shall be made by a person authorized by Paragraph D of this rule, in the manner prescribed by Paragraph F of this rule. Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return to the sender within twenty (20) days after mailing the notice and acknowledgement of receipt of summons.

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

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

(1) upon an individual other than a minor or an incapacitated person by delivering a copy of the summons and of the complaint to him personally; or if the defendant refuses to receive such, by leaving same at the location where he has been found; and if the defendant refuses to receive such copies or permit them to be left, such action shall constitute valid service. If the defendant is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years; and if there is no such person available or willing to accept delivery, then service may be made by posting such copies in the most public part of the defendant's premises, and by mailing to the defendant at his last known mailing address copies of the process;

(2) upon a domestic or foreign corporation by delivering a copy of the summons and of the complaint to an officer, a managing or a general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant; upon a partnership by delivering a copy of the summons and of the complaint to any general partner; and upon other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association. If the person refuses to receive such copies, such action shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge thereof;

(3) upon the State of New Mexico:

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

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

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

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

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

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

copy of the summons and of the complaint shall be delivered to such representative, in addition to serving the minor as herein provided;

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

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

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

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

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

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

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

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

[As amended, effective January 1, 1990; July 1, 1990; January 1, 1993; May 1, 1994.]

ANNOTATIONS

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

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

For forms on civil summons and return, see Rule 4-204 NMRA 1997.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after January 1, 1990, rewrote this rule to the extent that a detailed analysis would be impracticable, so as to make it consistent with Rule 1-004, the district court service of process rule.

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

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

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

3-203. Service and filing of papers.

A. When required. Unless the court otherwise orders, every pleading subsequent to the complaint, every order not entered in open court, every written motion unless it is one as to which a hearing ex parte is authorized, and every written notice, demand and similar paper shall be served on each party. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

B. How made. When service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address, or, if no address is known, by leaving it with the judge or clerk of the court who

shall place it in the court file. "Delivery of a copy" within this rule shall mean: handing it to the attorney or to the party; or leaving it at his office with his secretary or other person in charge; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his usual place of abode with some person of his family above fifteen (15) years of age and informing such person of the contents thereof; or leaving it in a mail depository authorized by the attorney to be served. Service by mail shall be deemed complete upon mailing. "Mailing" shall include deposit in an outgoing mail container which is maintained in the usual and ordinary course of business of the serving attorney.

C. Filing. All original papers, copies of which are required to be served upon parties, must be filed with the court either before service or immediately thereafter. The date of filing and the identity of the person receiving the papers shall be noted thereon and the papers placed in the court file.

D. Proof of service. Except as otherwise provided in these rules or by order of court, proof of service shall be made by the certificate of an attorney of record, or if made by any other person, by the affidavit of such person. The certificate or affidavit shall be filed with the clerk of the court or endorsed on the pleading, motion or other paper required to be served.

E. Notice. A party giving notice shall provide sufficient information to give actual notice of the event and shall communicate such notice to the attorney for the party to be given notice or to the party himself if he has no attorney. Except as otherwise ordered by the court, notice may be by any method accepted in the usual course of business.

F. Filing of motions. Whenever, by these rules, a motion is required to be "made" within a specified time, the motion shall be deemed to be made at the time it is filed or at the time it is served, whichever is earlier.

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

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

B. Facsimile transmission by court of notices, orders or writs. Facsimile transmission may be used by the court for issuance of any notice, order or writ. The

clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

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

D. Pleadings or paper faxed directly to the court. A pleading or paper may be faxed directly to the court if:

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

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

(3) the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

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

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

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

G. Transmission by facsimile. A notice, order, writ, pleading or paper may be faxed to a party or attorney who has:

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

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

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

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

H. **Proof of service by facsimile.** Proof of facsimile service must include:

- (1) a statement that the pleading or paper was transmitted by facsimile transmission and that the transmission was reported as complete and without error;
- (2) the time, date and sending and receiving facsimile machine telephone numbers; and
- (3) the name of the person who made the facsimile transmission.

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

[Adopted, effective January 1, 1997.]

ANNOTATIONS

Effective dates. - Pursuant to a court order dated October 11, 1996, this rule is effective on and after January 1, 1997.

ARTICLE 3 PLEADINGS AND MOTIONS

3-301. Pleadings allowed; form of motions.

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

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

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

D. Third-party practice. Any defending party may cause a summons and complaint to be served upon a person not a party to the action, who is or may be liable to him for all or part of the plaintiff's claim against him, by filing a third-party complaint. The third-party plaintiff need not obtain leave to make service if he files the third-party complaint not later than ten (10) days after he serves his original answer. The third-party defendant shall respond to the third-party complaint in the same manner as if it were an original proceeding. Notwithstanding the provisions of any other rule, failure to file a third-party complaint shall not constitute a waiver or forfeiture of any party's rights or claims, nor shall such failure preclude the joinder of separate causes of action, as may otherwise be provided for in these rules.

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

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

G. Motions. Written motions are not allowed except when permitted by these rules or required by the nature of the proceedings.

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

I. Signing of pleadings. The signature of a party or his attorney on a pleading constitutes a certificate by him that he has read it, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. If a pleading is signed with intent to defeat the purpose of this rule, it may be stricken as false and the action may proceed as though it had not been filed. A "signature" means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

[As amended, effective October 1, 1987; October 1, 1992; January 1, 1997.]

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New Mexico has enacted an Electronic Authentication Documentation Act which provides for the Secretary of State to register electronic signatures using the public key technology. See Section 14-15-4 NMSA 1978.

ANNOTATIONS

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

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

3-302. Defenses; answer.

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

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

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

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

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

ANNOTATIONS

Cross-references. - For form on answer to civil complaint, see Rule 4-301 NMRA 1997.

3-303. Judgment on the pleadings.

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

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

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

3-304. Amended and supplemental pleadings.

Upon request of either party, the judge may permit him to file an amended pleading, or to amend by interlineation, at any stage of the proceeding and upon such terms as may be just. Permission to amend a pleading shall be freely granted if trial of the action on its merits will be advanced. Continuances to meet new matter asserted by way of amended or supplemental pleadings shall be granted if necessary to avoid surprise or other prejudice to the opposing party.

ANNOTATIONS

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

3-305. Dismissal of actions.

A. Voluntary dismissal; effect thereof.

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

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

(b) by filing a stipulation of dismissal signed by all parties who have appeared generally in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed an action based on or including the same claim.

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

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

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

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

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

[As amended, effective November 1, 1995.]

ANNOTATIONS

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

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

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

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

3-306. Pretrial conference.

At any time after the filing of a complaint, with or without the filing of a motion, the judge may order the parties to appear before him to clarify the pleadings and to consider such other matters as may aid in the disposition of the case.

ANNOTATIONS

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

ARTICLE 4 PARTIES

3-401. Parties; capacity.

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

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

C. Minors or incompetent persons. When a minor or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a

minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

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

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

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

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

3-403. Substitution of parties.

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

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

ARTICLE 5 DISCOVERY AND PRETRIAL MATTERS

3-501. Discovery.

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

B. **Further discovery.** If both parties are represented by counsel, the judge may, for good cause shown, order further discovery as permitted by the Rules of Civil Procedure.

ANNOTATIONS

Cross-references. - For form on motion for production, see Rule 4-501 NMRA 1997.

For form on order for production, see Rule 4-502 NMRA 1997.

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

3-502. Subpoenas.

A. For attendance of witnesses. Every subpoena shall be issued by the metropolitan judge or clerk of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time, day and place therein specified.

The judge or clerk may issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

B. For production of documentary evidence. A subpoena may command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion upon the advancement by the defendant in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

C. Service. A subpoena may be served by any full-time, salaried law-enforcement officer of the metropolitan district or any other person who is not a party in the case and is over eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and

(1) if the witness is to be paid from funds appropriated by the legislature to the administrative office of the courts for payment of state witnesses or for the payment of witnesses in indigency cases, by processing for payment to such witness the fee and mileage prescribed by regulation of the administrative office of the courts;

(2) for all witnesses not described in Subparagraph (1) of this paragraph, by tendering to the witness the fee for per diem expenses provided by Subsection A of Section 10-8-4 NMSA 1978 for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The fee for per diem expenses shall not be prorated. In the event the per diem expense and mileage fees are not tendered as required, the subpoena shall be valid but the court shall impose such sanctions as are appropriate.

When the subpoena is issued on behalf of the state or a political subdivision or an officer or agent thereof, fees and mileage need not be tendered.

D. **Service by mail.** Service of a subpoena may be made by mail in the manner provided for serving the summons, complaint and form of answer.

E. **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the metropolitan court from which the subpoena was issued. The metropolitan judge shall not hold any person in contempt of the metropolitan court if service of the subpoena has been made by mail unless there has been presented to the court evidence, in addition to that contained in the return and certificate of the judge or clerk of the court, that the person received delivery of the subpoena or that a subpoena was personally served on the person in accordance with Paragraph D of this rule.

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

ANNOTATIONS

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

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

For forms on subpoena, return for completion by sheriff or deputy and return for completion by other person making service, see Rule 4-503 NMRA 1997.

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

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

ARTICLE 6 TRIAL

3-601. Conduct of trials.

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

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

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

3-602. Jury trial.

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

B. Demand. Either party to an action may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the defendant, and there shall be collected from the demanding party the non-refundable jury fee established by law and, an additional deposit of fifty dollars (\$50.00) to be used for payment of the actual costs of empaneling the jury, which fee shall be refundable all or in part.

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

[As amended, effective October 1, 1996.]

ANNOTATIONS

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

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

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

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

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

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

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

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

3-603. Jurors.

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

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

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

D. **Selection of jury.**

(1) The judge shall cause the name of each juror present to be placed on a separate slip of paper which shall be placed in a box. A list of the names of the jurors present shall be prepared by the judge or at his direction, and a copy of the list shall be provided each party or his attorney.

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

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

(4) One alternate juror may be selected, if the judge, at his discretion, so elects. The parties may exercise their peremptory challenges in the selection of the alternate juror, if their peremptory challenges have not been exhausted in the selection of the other jurors.

E. **Additional jurors.** If a jury cannot be completed by drawing additional slips, the sheriff or other responsible person shall summon a sufficient number of jurors to fill the deficiency.

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

[As amended, effective September 1, 1989.]

ANNOTATIONS

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

3-604. Trial by jury.

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

3-605. Instructions to juries.

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

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

C. Use. Whenever New Mexico Uniform Jury Instructions Civil contains an instruction applicable in the case and the court determines that the jury should be instructed on the subject, the UJI Civil shall be used unless under the facts or circumstances of the particular case the published UJI Civil is erroneous or otherwise improper, and the court so finds and states of record its reasons.

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

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

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

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

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

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

3-606. Nonjury trials.

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

[As amended, effective May 1, 1986.]

ARTICLE 7 JUDGMENT AND APPEAL

3-701. Judgments; costs.

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

B. Judgment upon multiple claims or involving multiple parties.

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

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

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

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

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

[As amended, effective January 1, 1995.]

ANNOTATIONS

Cross-references. - For form on judgment, see Rule 4-701 NMRA 1997.

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

3-702. Default.

A. Entry at time of appearance. If the defendant fails to appear within the time prescribed by Rule 3-202, and if the plaintiff proves by an appropriate return that proper service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs and other items allowed by law. The court may require evidence as to any fact before entering default judgment.

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

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

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

[Effective October 1, 1987.]

ANNOTATIONS

Cross-references. - For form on default judgment, see Rule 4-703 NMRA 1997.

For form on motion to set aside default judgment, see Rule 4-704 NMRA 1997.

For form on order setting aside default judgment and giving notice of trial date, see Rule 4-705 NMRA 1997.

3-703. Summary judgment.

A. For claimant. A party seeking to recover upon a claim, counterclaim or crossclaim may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

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

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

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

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

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

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

3-704. Relief from judgment or order.

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

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

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

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

(3) the judgment is void; or

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

3-705. Harmless error.

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

ANNOTATIONS

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

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

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

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

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

(2) promptly filing with the metropolitan court:

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

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

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

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

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

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

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

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

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

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

(4) any exhibits; and

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

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

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

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

G. Stay of proceedings to enforce a judgment.

(1) Except as provided in Subparagraph (2) of this paragraph, when an appeal is taken, the appellant may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the metropolitan court. The bond may be posted at any time after docketing the appeal. The stay is effective when the supersedeas bond is approved by the metropolitan court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified by an appellate court, together with costs, attorneys' fees and interest, if any. The bond shall be enforceable upon dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties or collateral securing such bond, and the terms thereof, must be approved by and the amount fixed by the metropolitan court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with

costs, attorneys' fees and interest, if any. In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral which is in, or may be placed in, the custody or control of the court and which has the effect of securing payment of and compliance with the judgment.

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

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

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

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

K. Return of record. After final determination of the appeal, the clerk of the district court shall return the record on appeal to the metropolitan court clerk.

[As amended, effective September 1, 1989; January 1, 1994; July 1, 1996.]

ANNOTATIONS

Cross-references. - For appeal from metropolitan court on the record, see Rule 1-073 NMRA 1997.

The 1989 amendment, effective for cases filed in the metropolitan courts on or after September 1, 1989, in Paragraph A, deleted "of the metropolitan court" following "final order" in the first sentence and inserted "The notice of appeal shall be filed with the district court" in the second sentence; in Paragraph B, added the Subparagraph (1) designation, therein substituting "district court" for "metropolitan court", added Subparagraph (2), and made related stylistic changes; rewrote Paragraph C; added Paragraph D and redesignated former Paragraphs D and E as present Paragraphs E and F; in Paragraph E, added the present Subparagraph (1) designation and

redesignated former Subparagraphs (1) and (2) as present Subparagraphs (2) and (3); and added Paragraph G.

The 1994 amendment, effective January 1, 1994, in Paragraph A, inserted "as permitted by law" and made stylistic changes in the first sentence, deleted "entry of" following "after" and added "appealed from is filed in the metropolitan court clerk's office" near the end of the second sentence, and added the third and fourth sentences; added Subparagraph D(4); and redesignated former Subparagraph D(4) as D(5) and rewrote that subparagraph, which read "the record of the hearing in the metropolitan court, if any".

The 1996 amendment, effective for appeals filed after July 1, 1996, rewrote the rule to the extent that a detailed analysis is impracticable.

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

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

3-707. Withdrawn.

ANNOTATIONS

Withdrawals. - Pursuant to a court order dated April 18, 1996, this rule, relating to record on appeal, is withdrawn effective July 1, 1996.

3-708. Tape recordings of proceedings.

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

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

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

ANNOTATIONS

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

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

3-709 to 3-712. Withdrawn.

ANNOTATIONS

Withdrawals. - Pursuant to a court order dated April 18, 1996, these rules, relating to appellate briefs, arguments and mandates, appellate review, appeals from district court and dismissal of appeal, are withdrawn effective July 1, 1996.

ARTICLE 8 SPECIAL PROCEEDINGS

3-801. Writs of execution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

For forms on garnishment and writs of execution, see Rules 4-801 to 4-816 NMRA 1997.

For writ of execution, see Rule 4-801 NMRA 1997.

For notice of right to claim exemptions, see Rule 4-808A NMRA 1997.

For claims of exemption, see Rule 4-803 NMRA 1997.

For order on claim of exemption, see Rule 4-804 NMRA 1997.

For notice of dispute and request for hearing, see Rule 4-810A NMRA 1997.

Effective dates. - Pursuant to a court order dated November 6, 1995, this rule is effective January 1, 1996.

Withdrawals. - Former Rule 3-801, relating to garnishment and writs of execution, was withdrawn effective January 1, 1996.

3-802. Garnishment.

A. Garnishment procedure. After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. Service of writ of garnishment. A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint.

C. Service of additional forms on garnishee. In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

D. Answer by garnishee. The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

E. Appearance by garnishee. A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

F. Service on judgment debtor by garnishee. On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

G. Exemption from garnishment. A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

H. Service of the claim of exemption. The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 3-203.

I. Failure to file claim of exemption other than wages. If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages.

J. Notice of dispute. Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

K. Notice of hearing on dispute. If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

L. Hearing. A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

M. Judgment on writ of garnishment. If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

N. Form of writs, notices and claim of exemptions. Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions,

notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996.]

ANNOTATIONS

Cross-references. - For application for writ of garnishment, see Rule 4-805 NMRA 1997.

For writ of garnishment, see Rule 4-806 NMRA 1997.

For answer by garnishee, see Rule 4-807 NMRA 1997.

For notice of right to claim exemptions, garnishment, see Rule 4-808 NMRA 1997.

For claims of exemption, see Rule 4-809 NMRA 1997.

For notice of dispute and request for hearing, see Rule 4-810A NMRA 1997.

For judgment on writ of garnishment and claim of exemption, see Rule 4-812 NMRA 1997.

Effective dates. - Pursuant to a court order dated November 6, 1995, this rule is effective January 1, 1996.

Compiler's note. - Former Rule 3-802 was recompiled as Rule 3-803 NMRA 1997 in 1996.

3-803. Pre-judgment writs of attachment; exemptions.

A. Application for issuance of writs. Pre-judgment writs of attachment may be issued by the court upon application of a party pursuant to Sections 35-9-1 to 35-9-8 NMSA 1978.

B. Exemptions; how claimed. Exemptions of personal property provided by Sections 42-10-1 to 42-10-7 NMSA 1978 also apply to attachment proceedings. If a party is a natural person, notice of a right to claim exemptions shall be given as provided by Rule 3-801. A claim of exemption may be filed and served in the same manner and time as required in execution proceedings. The petitioner may dispute the claimed exemption in the same manner and time provided for a dispute on a claim of exemption in an execution proceeding.

C. Hearing. If the petitioner disputes the claimed exemption, the court shall proceed in the manner provided for hearings on claims of exemptions in execution proceedings.

D. Appeal from judgment. If an order on the claim of exemption is rendered in an attachment proceeding after expiration of the time for appeal on the main issue in the action, either party aggrieved by the order on the claim of exemption may appeal from that judgment to the district court in the same manner as other appeals from final judgments of the metropolitan court are taken. If an order on the claim of exemption is rendered before judgment on the main issue in the cause, the order on the claim of exemption may be appealed to the district court within fifteen (15) days after entry of the judgment on the merits as provided by these rules.

[As amended, effective May 1, 1986; July 1, 1992; as amended and recompiled, effective January 1, 1996.]

ANNOTATIONS

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

For claim of exemptions, see Rule 4-803 NMRA 1997.

For order of exemption, see Rule 4-804 NMRA 1997.

The 1992 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1992, rewrote this rule to the extent that a detailed comparison would be impracticable.

The 1996 amendment, effective January 1, 1996, recompiled this rule, which was formerly Rule 3-802, rewrote the rule heading, added Paragraph A and redesignated the remaining paragraphs accordingly, rewrote paragraphs B and C, and substituted the language following "claim of exemption" for "issue shall be decided by the district court" at the end of Paragraph D.

Compiler's note. - Former Rule 3-803 was recompiled as Rule 3-804 NMRA 1997 effective January 1, 1996.

3-804. Judgment; supplementary proceedings.

A. Examinations in aid of judgment or execution. After the filing of a judgment for the payment of money, upon request of the judgment creditor or the judgment creditor's successor in interest, the clerk may issue a subpoena directing any person with knowledge that will aid in enforcement of or execution on the judgment, including the judgment debtor, to appear before the court to respond to questions concerning that knowledge. The subpoena shall be served in the same manner as other subpoenas except that it shall be served not less than three (3) days prior to the date the examination is to be conducted.

B. Statements. Any person with information which is subject to discovery shall give a statement relating to the assets of a judgment debtor. If the statement is to be obtained

from the judgment debtor or from a person who refuses to voluntarily give a statement, the judgment creditor may obtain a statement by serving a written "notice of statement" upon the person to be examined and upon the judgment debtor not less than five (5) days before the date scheduled for the statement. The notice will state the time and place for taking of the statement. A subpoena may also be served to secure the presence of the person to be examined or the materials to be examined during the statement.

C. Depositions; interrogatories. The judgment creditor may serve interrogatories upon or take the deposition of the person whom the judgment creditor desires to examine in the manner provided by the Rules of Civil Procedure for the District Courts.

D. Notice of and service pleadings. A party desiring to take the deposition or statement of any person shall give notice to every other party to the action. Notice of the taking of depositions, issuance of a subpoena or the taking of a statement pursuant to this rule is not required if the judgment debtor failed to appear and a default judgment was entered.

E. Issuance of transcript. After the filing of the judgment, the clerk shall issue a transcript of judgment upon the request of the prevailing party.

[As amended, effective July 1, 1992; as amended and recompiled effective January 1, 1996.]

ANNOTATIONS

Cross-references. - For appeal from judgment of metropolitan court, see Rule 3-706 NMRA 1997.

For exemptions in civil actions, see 35-4-2 NMSA 1978.

For claim of exemptions, see Rule 4-803 NMRA 1997.

For order of exemption, see Rule 4-804 NMRA 1997.

The 1992 amendment, effective for cases filed in the metropolitan courts on or after July 1, 1992, made gender neutral substitutions throughout the rule; in Paragraph B, substituted "to examine in the manner provided" for "to examine, and such deposition may be taken in the manner now or hereafter provided"; and added Paragraph E.

The 1996 amendment, effective January 1, 1996, recompiled this rule, which was formerly Rule 3-803, and rewrote the rule to the extent that a detailed comparison would be impracticable.

TABLE OF CORRESPONDING RULES

[DOUBLE CLICK TO VIEW TABLE](#)

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Year	Value
2010	100
2011	105
2012	110
2013	115
2014	120
2015	125
2016	130
2017	135
2018	140
2019	145
2020	150