

# **RULES OF THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT**

**Revised Effective September 1, 1992**

## **I. General.**

**LR2-001 (1995 Repl.)**

—  
SECOND JUDICIAL DISTRICT COURT

BERNALILLO COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE RULES OF THE

SECOND JUDICIAL DISTRICT COURT

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

Michael E. Martinez

James Blackmer

District Judge, Division I

District Judge, Division

II

Presiding Children's Court

Judge

Robert L. Thompson

Frank H. Allen

District Judge, Division XVI

District Judge,

Division IV

Presiding Criminal Court Judge

Gerard W. Thomson

W. C. Woody Smith

District Judge, Division V

District Judge, Division

VI

Philip R. Ashby

Ross Sanchez

District Judge, Division VII

District Judge,

Division VIII

Burt Cosgrove

Rozier E. Sanchez

District Judge, Division IX

District Judge,

Division IX

Diane Dal Santo

W. John Brennan

District Judge, Division XI

District Judge,

Division XIV

Chief Judge

Robert H. Scott

Tommy Jewell

District Judge, Division XIII

District Judge,

Division III

H. Richard Blackhurst

Susan M. Conway

District Judge, Division XV

District Judge,

Division XVIII

Presiding Civil Court Judge

Anne Kass

Albert S. "Pat" Murdoch

District Judge, Division XVII

District Judge,

Division XIX

Presiding Domestic Relations

Court Judge

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

## **LR2-002 (1995 Repl.)**

SECOND JUDICIAL DISTRICT COURT

BERNALILLO COUNTY

STATE OF NEW MEXICO

MS A-1211

IN THE MATTER OF THE RULES OF THE

SECOND JUDICIAL DISTRICT COURT

### ORDER

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

/s/ W. JOHN BRENNAN

District Judge, Division XIV

Chief Judge

/s/ ROBERT H. SCOTT

District Judge, Division XIII

/s/ H. RICHARD BLACKHURST

District Judge, Division XV

/s/ TOMMY JEWELL

District Judge, Division 3

/s/ ANNE KASS

District Judge, Division XVII

Presiding Domestic Relations

Court Judge

/s/ SUSAN M. CONWAY

District Judge, Division XVIII

Presiding Civil Court Judge

/s/ ALBERT S. "PAT" MURDOCH

District Judge, Division XIX

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

## **LR2-003 (1995 Supp.)**

SECOND JUDICIAL DISTRICT COURT

BERNALILLO COUNTY

STATE OF NEW MEXICO

Misc. No. A-1211

In the Matter of Amending the Local Rules  
of the Second Judicial District Court

ORDER ADOPTING LR2-407

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

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

/s/ HON. W. JOHN BRENNAN

Chief Judge

Second Judicial District Court

## **ANNOTATIONS**

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

I.

**GENERAL**

**LR2-101. Applicability; title.**

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

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

**LR2-102. Chief judge.**

Pursuant to SCRA 1986, Rule 23-109, the chief judge shall be elected during March of the year in which the current chief judge's term expires. The term of the chief judge shall begin July 1 of the year of his or her election.

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

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

(1) Children's court cases include all delinquency and need of supervision cases; neglect and abuse cases; termination of parental rights cases, child and adult adoption cases; cases under the Interstate Compacts on Juveniles and the Placement of Children; guardianships arising under the Children's Code; and authorizations of marriages of minors; and shall be designated by a "CH" number.

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

(3) Criminal court cases include all criminal cases, including metropolitan court criminal appeals; and shall be designated by a "CR" number.

(4) Domestic relations court cases include all cases of a domestic relations nature, except cases seeking money damages for spousal torts, including but not limited to all divorces, annulments, legal separation, property division, parentage, child custody and non-support cases, domestic violence cases, and disputes arising from a cohabitation relationship between non-married persons; and shall be designated by a "DR" number.

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

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

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

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

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

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

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

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

**B. Criminal cases.** To ensure the equal distribution of particularly serious and difficult criminal cases, the presiding criminal court judge will assign those cases involving first degree murder or open charge of murder. If a criminal case involving multiple defendants is reassigned, all defendants in that case shall be reassigned to the replacement judge.

**C. Stipulation.** If the parties in any case timely file a stipulation to district judge pursuant to SCRA 1986, Rule 1-088 or Rule 5-105, the case will be assigned to the stipulated judge provided such judge's written approval has been filed with the clerk.

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

her absence, the alternate chief judge or a presiding judge, direct the clerk to make an immediate judge reassignment.

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

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

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

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

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

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

- (1) All matters given preference by statute or Supreme Court rule;
- (2) Trials and hearings on the merits, with jury trials taking precedence over non-jury trials;
- (3) Children's court cases, with the oldest case generally taking precedence;
- (4) Criminal court cases, with the case nearest expiration of the SCRA 1986, Rule 5-604, six-month rule taking precedence;
- (5) Domestic relations court cases, with the oldest case generally taking precedence but child related issues taking precedence over all other issues;
- (6) Civil court cases;
- (7) All other matters.

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

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

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

**A. Working hours; holidays.** The usual working hours for second judicial district court offices shall be from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m., Monday through Friday. District court offices will observe those legal holidays published annually by the administrative office of the courts and any others designated as legal holidays by the Supreme Court.

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

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

**A. Potentially violent situations; duty of party.** In any type of case where a party believes that a potentially violent situation might arise, that party, through counsel or pro se, should notify the assigned judge and court administrator sufficiently in advance so that appropriate security measures can be taken.

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

**C. Weapons.** No weapons of any type will be allowed either in the Bernalillo County Courthouse or the John E. Brown Juvenile Justice Center. All weapons must be turned in to security personnel at the security barrier. Legal weapons will be returned to the possessor upon departure from the building. Illegal weapons are subject to confiscation by security personnel in the course and performance of their duties.

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

1. On-duty Bernalillo County sheriff's department security personnel assigned to the courthouse or the juvenile justice center; and,
2. Law enforcement officers transporting prisoners from any detention facility.

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

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

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

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

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

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

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

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

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

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

A. **Submission of transportation orders.** A court order is required for the transportation for trial, hearing or other proceeding, of any person under the jurisdiction



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

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

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

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

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

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

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

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

B. **Disbursements.** Except for routine orders submitted by court staff, all proposed orders for disbursement of funds from a court account shall be approved by the court accountant prior to presentment to any judge, such approval to signify that funds necessary to execute the order are available. Disbursements will be available at 10:00 a.m. the business day after an endorsed copy of the order is received by the court accountant.

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

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

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

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

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

A. **Procedure.** A party seeking free process shall present to the court a motion for free process with an attached affidavit of indigency and, if represented by counsel, an attached affidavit of counsel supporting the party's motion for free process, and a proposed order for free process. The motion, affidavits and proposed order shall be in the form set forth in forms LR2-Form A, LR2-Form B, LR2-Form C and LR2-Form D. The motion and order shall be presented directly to the presiding judge of the court to which the case will be assigned if available, or to the chief judge. The court may decide a motion for free process ex parte and without hearing.

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

closed and reinstatement or reopening sought, the party shall submit another motion, affidavit(s) and proposed order.

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

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

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

**B. Filings by parties pro se.** The clerk shall accept for filing a pro se party's pleadings, motions, and other papers without regard to such pro se party's failure to comply with the requirements of SCRA 1986, Rule 1-100, or any second judicial district local rule, provided the papers are legible and sufficient information is provided for the clerk to identify the case to which the papers apply.

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

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

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

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

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

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

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

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

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

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

(1) The paper shall be white, opaque, unglazed and of good quality;

(2) The size of the paper shall be 8 and 1/2 inches in width by 11 inches in length;

(3) The left margin shall be at least 1 and 1/2 inches, the right margin shall be at least 1/2 inch, the top margin shall be at least 1 and 1/2 inches, and the bottom margin shall be at least 1 inch;

(4) All text shall be typewritten or printed;

(5) All typewritten text shall be in 10 or 12 pitch and type shall be of letter quality;

(6) Captions, titles, citations in lists of authorities, footnotes, and blocked quotations may be single spaced; otherwise, the main body of the text shall be double spaced;

(7) All papers requiring signature(s) shall be signed in black ink, and the signature shall be followed by the name, law firm if any, capacity (e.g., Plaintiff Pro Se; Attorney for Defendant Sally Smith; etc.), address and telephone number, typewritten or printed.

**B. Acceptance for filing.** The clerk shall accept for filing a party's papers without regard to such party's failure to comply with the requirements of SCRA 1986, Rule 1-100, or this rule, provided the papers are legible and sufficient information is provided for the clerk to identify the case to which the papers apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An interrogatory on expert witnesses, which may request names, addresses, job titles, qualifications, and matters set forth in SCRA 1986, Rule 1-026(B)(5);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**G. Required attachments.** With all motions requiring an evidentiary hearing, a list of witnesses shall be attached to the motion. With motions filed in domestic relations cases, a SCRA 1986, Rule 1-099, certificate shall be attached as required by Second Judicial District Local Rules, Rule LR2-132.

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

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

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

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

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

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

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

D. **Required attachments.** With motions filed in domestic relations cases, a SCRA 1986, Rule 1-099, certificate shall be attached as required by Second Judicial District Local Rules, Rule LR2-132.

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

A. **Permissive and mandatory requests for trial.** In any case, except where a trial or merits hearing (hereinafter "trial") has already been set by pretrial scheduling order, trailing calendar or other written notice, any party may request a trial by filing a request for hearing with the clerk. Where trial has not been set within fourteen (14) months after the complaint is filed, the plaintiff shall file either a request for hearing or a motion for extension of the SCRA 1986, Rule 1-016, deadlines for commencement of trial.

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

(1) a copy of the request for hearing for the assigned judge;

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

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



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

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

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

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

G. **Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **LR2-132. SCRA 1986, Rule 1-099, filing fee and certificate.**

**A. Filing fee.** For every pleading, motion or other paper (hereinafter "paper") filed in a civil court, domestic relations court, or children's court civil case, the submitting party shall determine whether SCRA 1986, Rule 1-099, requires payment of a filing fee and shall pay the fee at the time the paper is presented for filing.

**B. Required certificate.** In domestic relations court cases, the submitting party shall attach a SCRA 1986, Rule 1-099, certificate in the form set forth in LR2-Form J to every motion, application and petition, except applications for writs of garnishment and the first filed petition, unless that paper is accompanied by a SCRA 1986, Rule 1-099, filing fee.

**C. Required fee not paid.** If a required SCRA 1986, Rule 1-099, fee is not paid, no judicial action will be taken in the case.

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

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

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

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

## **II.**

### **CHILDREN'S COURT**

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

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

## **LR2-202. Exemption from SCRA 1986, Rule 1-016.**

All children's court civil cases shall be exempt from the pretrial scheduling order requirements of SCRA 1986, Rule 1-016(B).

### **III.**

#### **CIVIL COURT**

## **LR2-301. SCRA 1986, 1-016, pretrial scheduling orders and final pretrial orders.**

A. **Forms.** Proposed pretrial scheduling orders and final pretrial orders submitted pursuant to SCRA 1986, Rule 1-016, shall be in the form set forth in LR2-Form K and LR2-Form L.

B. **Reinstated cases.** A party seeking to reinstate a case pursuant to SCRA 1986, Rule 1-041(E)(2), shall attach a copy of a proposed pretrial scheduling order to the motion to reinstate.

C. **Exemptions.** The following categories of cases are exempted from the pretrial scheduling order requirements of SCRA 1986, Rule 1-016(B):

Commitment

Conservatorship

Guardianship

Probate.

## **LR2-302. SCRA 1986, Rule 1-054, costs and attorney fees.**

A. **Cost bill.** Unless costs are awarded in the final judgment, a party seeking to recover costs pursuant to SCRA 1986, Rule 1-054, shall file a cost bill within ten (10) days after the final judgment is filed and serve copies on all other parties. Failure to file a timely

cost bill shall be deemed a waiver of the right to recover costs. The cost bill shall include an itemization of all costs and an affirmation that the costs claimed are correctly stated and necessary. A separate affidavit is not necessary if the cost bill is signed by counsel for the movant.

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

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

- (1) Filing fees;
- (2) Fees for service of summonses, subpoenae, writs and other service of process;
- (3) Jury fees;
- (4) Transcript fees including those for daily transcripts and transcripts of hearings prior or subsequent to trial, when requested or approved by the court;
- (5) Deposition fees and expenses, as limited by Sections 39-2-7 and 39-2-8 NMSA 1978;
- (6) Witness mileage or travel fare, and per diem expenses, when the witness testifies at trial or at a deposition which is deemed reasonable and necessary, and as limited by Sections 38-6-4(A), 39-2-8, 39-2-9 and 39-2-10 NMSA 1978;
- (7) Expert witness fees for services as limited by Section 38-6-4(B) NMSA 1978;
- (8) Interpreter fees when such fees are not payable by the court pursuant to the Deaf Interpreter Act, Sections 38-9-1 NMSA 1978 et seq., or the Court Interpreters Act, Sections 38-10-1 NMSA 1978 et seq., and in accordance with the Supreme Court Interpreter Fee Payment Guidelines;
- (9) Translator fees, when the translated document is admitted into evidence;
- (10) Photography expenses, when the photograph is admitted into evidence and is not greater than 8 by 10 inches in size;
- (11) Map and chart expenses;
- (12) Official certification fees;

(13) Fees for recording lis pendens.

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

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

(2) Expenses for models;

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

(4) Telephone expenses;

(5) Facsimile expenses;

(6) Courier service expenses;

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

(8) Paralegal and other support staff expenses.

**E. Attorney fees.**

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

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

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

## IV.

### CRIMINAL COURT

**LR2-401. Grand jury proceedings.**

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

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

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

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

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

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

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

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

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

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

E. **Property bonds.** After the appropriate documents necessary for the posting of a property bond are presented to the criminal clerk pursuant to SCRA 1986, Rule 5-401 and Rule 5-401A, the criminal clerk shall present such documents to the assigned judge to review and determine whether proof is required of any matters set forth by affidavit.



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

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

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

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

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

Upon agreement of the parties or for good cause shown, the court may order additional time for disclosure required by SCRA 1986, Rules 5-501 and 5-502. Such order shall be written and filed with the clerk.

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

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

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

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

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

In all criminal cases where an appeal has been filed and any portion of the proceedings before the district court was taken stenographically, within seven (7) days after having been served with the notice that the case is placed on the appellate court's general calendar, the prosecuting attorney and the defense attorney shall attend a conference

with the managing court reporter or the managing court reporter's designee for the purpose of insuring that the appellant's designation of proceedings to be included in the transcript (hereinafter called "designation") is complete and accurate. The managing court reporter's office shall set the date, time and place of the conference. Each attorney shall bring to the conference the following information: the dates of all proceedings and the specific portions of these proceedings that should be included in the transcript, e.g., pretrial hearing, voir dire, opening, testimony, closing, verdict, post-trial hearing. The managing court reporter or a designee of the managing court reporter may, but is not required to, assist the appellant with the typing and filing of the designation. This rule shall not be construed to relieve the appellant of the burden of filing the designation as required by SCRA 1986, Rules 12-210(B) and 12-211(C)(1). The district court, on its own motion or a party's motion, may impose an appropriate sanction for failure to comply with this rule.

## **ANNOTATIONS**

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

## **V.**

### **DOMESTIC RELATIONS COURT**

#### **LR2-501. Temporary domestic orders.**

**A. Required temporary domestic order; filing; service.** Unless waived by the parties in writing or by court order, the court shall enter a temporary domestic order (hereinafter "TDO") in all domestic relations court cases where a summons has been issued except cases filed by the state for failure to pay child support. Coincident with the issuance of summons, the domestic relations clerk shall complete and file a TDO, and serve an endorsed copy of such order on the petitioner or his or her counsel, if any, by providing the copy to whomever takes the issuance of summons from the clerk on behalf of the petitioner or his or her counsel. The petitioner shall serve an endorsed copy of the TDO on all other parties along with the summons, and file an affidavit of service thereof. For cases for dissolution of marriage or relief pursuant to Section 40-4-3 NMSA 1978, the TDO shall be in the form set forth in LR2-Form N. Otherwise, the form shall be in the form set forth in LR2-Form O.

**B. Effective time and duration of order.** The TDO shall be in effect upon petitioner at the time of filing and upon all other parties upon service. The TDO shall continue in effect during the pendency of the case, unless modified or supplemented by subsequent court order.

C. **Permissive TDO.** In any case where a TDO is not required by Subsection A above, any party may file a motion for entry of a TDO.

D. **Modification.** Any party may file a motion to modify or supplement the TDO. The TDO shall continue in effect while such motion is pending.

E. **TDO affidavit.** The affidavit required by the TDO shall be in the form set forth in LR2-Form P.

## **LR2-502. Interim allocation of income and expenses.**

A. **Order required.** Upon motion or stipulation of the parties, the court may enter an interim order allocating income and expenses in any case for dissolution of marriage or for relief pursuant to Section 40-4-3 NMSA 1978. The order shall be in the form set forth in LR2-Form Q. An interim monthly income and expenses statement in the form set forth in LR2-Form R shall be completed in accordance with the instructions set forth in LR2-Form S, and attached to the proposed order.

B. **Standards for allocation.** During the pendency of the case, community income and expenses shall generally be equally divided between the parties. Separate income and expenses also shall be divided equally unless the community did not routinely use separate income or pay separate expenses.

C. **Modification.** Any party may file a motion to modify or supplement the interim order allocating income and expenses. The order shall continue in effect while such motion is pending.

## **LR2-503. Statement of financial condition for trial.**

Unless otherwise ordered by the court upon stipulation of the parties or for good cause shown, in every case to be tried on the merits that involves property, debt, child support, alimony, costs, attorney fees, or any other financial consideration, each party shall serve a verified statement of financial condition on all other parties and file a certificate of service thereof. The statement shall be in the form available from the domestic relations clerk. Unless the parties stipulate otherwise, the statement shall be served no later than five (5) days before the trial on the merits. A copy of the statement shall be delivered to the assigned judge at least one (1) day before trial. The statement shall not be filed with the clerk.

### **ANNOTATIONS**

**Cross-references.** - For child support guidelines, see 40-4-11.1 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

**J. Referral to other providers.** Upon agreement of the parties or for good cause shown, the court may order that the parties be referred for mediation and other services to a qualified service provider other than the court clinic. The order shall be in a form similar to the form set forth in LR2-Form T.

**K. Providers as witnesses.** Court clinic staff and other persons who have provided services pursuant to this rule may be called as witnesses pursuant to SCRA 1986, New Mexico Rules of Evidence.

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

## **LR2-505. Costs and attorney fees.**

**A. Costs.** See Second Judicial District Local Rules, Rule LR2-302.

**B. Attorney fees.** Attorney fees shall be requested by written motion. The motion shall include an itemization of time expended and an affirmation that the fees claimed are correctly stated and necessary. A separate affidavit is not necessary provided the motion is signed by counsel for the movant. Parties objecting to the motion shall file objections and request a hearing in the manner set forth in Second Judicial District Local Rules, Rule LR2-123, within fifteen (15) days after service of the motion, or such objections shall be deemed waived. In awarding fees, the court shall consider relevant factors presented by the parties and the following:

(1) Disparity of the parties' incomes;

(2) Offers of judgment directed to financial issues made after completion of discovery, pursuant to SCRA 1986, Rule 1-068;

(3) Prior settlement offers; and

(4) The total amount of fees and costs expended by each party, the amount paid from community property funds, any balances due, and any interim advance of funds ordered by the court.

## **LR2-506. Exemption from SCRA 1986, Rule 1-016.**

All domestic relations court cases shall be exempt from the pretrial scheduling order requirements of SCRA 1986, Rule 1-016(B).

## VI.

### COURT ALTERNATIVES

#### **LR2-601. Court-annexed alternative dispute resolution programs generally.**

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

B. **Administration.** These programs shall be administered by a court alternatives director appointed by the court. The court may appoint standing committees of judges, lawyers and others to provide guidance and assistance.

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

D. **Limitation.** The number of cases referred to these programs shall necessarily be limited by the number of attorneys and other professionals available to provide alternative dispute resolution services under court-appointment, and the sufficiency of court resources to administer the programs.

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

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

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

A. **Scope.** The court may, pursuant to SCRA 1986, Rule 1-016, refer cases to settlement conferences conducted by court-appointed settlement facilitators on an ad hoc basis throughout the year and during periodic "settlement weeks" scheduled by the court. The court will generally hold a "settlement week" during September every year.

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

Appeals

Extraordinary writs

Court-annexed arbitration program, pending cases

Adoption

Commitment

Conservatorship

Guardianship

Student Loan

Election

Tax

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

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

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

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

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

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

**F. Time, place and deadline for settlement conference.** Unless set by the referral order, the time(s) and place(s) of the settlement conference shall be set by the settlement facilitator(s) within a deadline set by the court. Any party or facilitator may request an extension of the deadline by motion directed to the assigned judge.

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

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

(1) Case number and caption;

(2) Brief description of the case; in domestic relations cases include date of marriage, separation and divorce, names, ages, occupations and current annual incomes of parties, and names and ages of children;

(3) Description of the relief sought;



- (4) List of pending factual issues;
- (5) List of pending legal issues;
- (6) List of all remaining discovery;
- (7) List of any pending dispositive motions;
- (8) Estimate of costs and attorney fees through trial;
- (9) The last offer made to other parties; and
- (10) Copies of case law, statutes, pleadings, exhibits, orders and any other information which would be helpful to the facilitator(s).

**I. Good faith participation.** Parties shall participate in good faith in settlement conferences. Good faith participation includes but is not limited to sufficiently preparing for the conference and engaging in meaningful negotiations during the conference. Upon motion of any party or its own motion, the court may award attorney fees and costs for failure to participate in good faith.

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

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

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

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

## LR2-603. Court-annexed arbitration.

### SECTION I: GENERAL PROVISIONS

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

Appeals

Uniform Arbitration Act

Extraordinary writs

Adoption

Commitment

Conservatorship

Guardianship

Probate

Children's Code

Domestic relations

Workers' compensation

Student loan

Driver's license

Election

Tax

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

B. **Court hearings.** If a court hearing is required regarding any aspect of arbitration prior to referral or any matter during referral, the court shall set and hear the matter within fifteen (15) days after the matter is brought to the attention of the assigned judge by request for hearing or by the court alternatives director.

C. **"At issue" required.** All cases referred to arbitration must be "at issue" prior to referral. For purposes of this rule, a case is "at issue" when at least one answer to the

complaint has been filed and the deadlines for all other answers to the complaint have expired. Answers to cross-claims, counterclaims and third-party complaints need not have been filed. Service on all parties need not have been made.

**D. Jury demand.** The court shall order a jury trial upon motion filed within ten (10) days after referral to arbitration is denied or a case is returned to the court's docket following referral to arbitration, unless to do so would cause undue delay or prejudice.

## **SECTION II: MANDATORY REFERRAL**

**A. Types of cases for mandatory referral.** All cases, jury and non-jury, shall be referred to arbitration where no party seeks relief other than a money judgment and no party seeks an amount in excess of fifteen thousand dollars (\$15,000.00) exclusive of punitive damages, interest, costs and attorney fees.

**B. Mandatory certification.** In all cases filed on or after the effective date of this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint or any other pleading, including any amended pleading, in which affirmative relief is requested, shall file and serve concurrently with the pleading for affirmative relief, a separate certification indicating whether the party is or is not seeking relief other than a money judgment and whether the amount sought exceeds or does not exceed fifteen thousand dollars (\$15,000.00) exclusive of punitive damages, interest, costs and attorney fees. The certification shall be a good faith attempt to state the type and amount of relief to be sought at trial and shall not act as a limitation on relief.

**C. Review of certification; referral order.** Within thirty (30) days after a case is at issue, the court will review the court file, including the certifications filed, to determine whether referral to arbitration is mandated by Section II(A) of this rule. If so mandated, the court will prepare and file an order referring the case to arbitration, and mail or deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion may postpone filing a referral order if it appears from the court file that the case may be resolved upon a pending motion for judgment on the pleadings or other pending dispositive motion. If referral is not mandated, no order will be entered.

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

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

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

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

Any case may be referred to arbitration where no party seeks relief other than a money judgment and the parties stipulate to arbitration. At any time after a case is at issue, the parties may present a proposed, stipulated order of referral. The court may deny the motion without hearing if the court finds from a review of the court file that a party seeks relief other than a money judgment or referral to arbitration is otherwise inappropriate. The court may require the parties to stipulate to an arbitrator as set forth in Subsection IV(C)(3) of this rule.

### **SECTION IV: ARBITRATORS**

A. **Arbitrator pool.** The court will maintain a pool from which arbitrators will be appointed. The pool shall include all active members of the State Bar of New Mexico who have been licensed to practice law for five (5) or more years and who are residents of or have an office in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys, out-of-Bernalillo County attorneys and out-of-state attorneys, may be included in the pool upon written request to the court alternatives director. The chief judge for good cause may remove an attorney from the arbitrator pool either temporarily or permanently. Such removal may be upon the court's own motion and without notice to the attorney, or upon written request to the court alternatives director. The court will periodically review the pool of arbitrators for completeness and accuracy, and may require any member of the State Bar of New Mexico to submit information necessary for this purpose. The court will provide written notice to attorneys as they are added to the pool, either by letter or notice published in the Bar Bulletin.

B. **Training.** The court may require any attorney who is part of the arbitrator pool to attend arbitrator training.

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

#### **(1) Random selection.**

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

choices for arbitrator. The three attorneys shall be selected at random from the arbitrator pool except that none of the three may be employed by the same law firm as any of the other three or as any counsel in the case. The three attorneys shall be numbered in the order selected. The notice of choices shall not be filed with the clerk.

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

(2) **Court selection.** For good cause, the court may select an arbitrator rather than provide the parties with a notice of choices.

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

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

(5) **Vacancy.** Vacancies caused by excusal or otherwise shall be filled by appointment of the first of the remaining three choices or if none remains, by appointment of an attorney selected by the court, or the parties may stipulate to a replacement as provided in Subsection IV(C)(3).

D. **Compensation.** The court shall compensate arbitrators in the amount of one hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is excused from appointment. The arbitrator shall submit a written request for compensation to the court alternatives director within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a

waiver of compensation. Arbitrators compensated by the parties pursuant to Subsection IV(C)(3) shall not be compensated by the court.

## **SECTION V: PROCEDURES DURING REFERRAL**

### **A. General.**

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

Motions to excuse the arbitrator

Motions to withdraw referral to arbitration

Motions for sanctions pursuant to Subsection V(A)(5)

Motions for free process

Motions regarding attorney representation

Motions to add new parties

Motions to set aside default or any other judgment

Motions to compel settlement

Any post-judgment enforcement and execution matters

Requests for settlement conference pursuant to

Second Judicial District Local Rules, Rule LR2-602.

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

(2) **Arbitrator jurisdiction, powers, duties.** The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is excused or until ten (10) days after an award is filed or until the arbitration proceedings are otherwise concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator's decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider the efficient, cost-effective and informal resolution of the case as a factor in all the arbitrator's decisions and in all aspects of the arbitrator's management of the case. The arbitrator may limit discovery whenever appropriate. The

arbitrator may administer oaths. With the exception of contempt, the arbitrator may enter appropriate sanctions including sanctions pursuant to SCRA 1986, Rules 1-016, 1-030 and 1-037, or any other Supreme Court rule, sanctions for failure to comply with any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's decisions. Upon agreement of the parties, the arbitrator may serve as a mediator or settlement facilitator. The arbitrator's jurisdiction, powers and duties may not be delegated. The arbitrator himself or herself must conduct the hearings and trial, and sign his or her decisions and the award.

(3) **Supreme Court and local rules.** All Supreme Court rules including rules of civil procedure (including SCRA 1986, Rule 1-006(D)) and rules of evidence, and all second judicial district local rules, apply during referral to arbitration unless specifically waived by this rule, written court order or the arbitrator. The arbitrator may waive rules of evidence only upon agreement of the parties.

(4) **Good faith participation.** All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter a default award against any party failing to participate in good faith. In any such default award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider such certification when deciding attorney fees, costs and interest on appeal.

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

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

(7) **Court file: review, copy.** The arbitrator may review the court file at any time during regular court hours. The court shall provide the arbitrator a copy of the file or portions of the file at no cost upon request; requests shall be made to the court alternatives director.

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

(9) **Record of proceeding.** The arbitrator shall not make nor permit to be made any record of any hearing, trial or other arbitration proceeding. This provision shall not be waived.

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

## **B. Hearings, trial.**

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

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

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

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

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

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

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

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



- (a) Estimates and bills for services and products, if dated and itemized.
- (b) Reports of experts, if dated and signed.
- (c) Records and reports as described in SCRA 1986, Rule 11-803, Paragraphs (F), (H), (I), (K), (L), and (N) through (R).

#### **D. Award.**

(1) **Final decision; scope.** The arbitrator's final decision shall be called an "award" and shall address all pending claims unless otherwise ordered by the court. The award may include among other things an assessment of comparative negligence and apportionment of damages, punitive damages, attorney fees, costs and interest as allowed by law. The award shall include any required award of costs pursuant to SCRA 1986, Rule 1-068; for purposes of this cost assessment, the award shall be considered a judgment. The award may be an award of default, dismissal, summary judgment, or money damages.

(2) **Amount.** The amount of the award shall be limited only by the evidence and shall not be limited by the circumstances under which the case was referred to arbitration, e.g., a case referred pursuant to Subsection II shall not be limited to an award of fifteen thousand dollars (\$15,000.00). At any time before the award is filed, the parties may stipulate that the award be limited.

(3) **Filing.** Unless the parties agree otherwise, within ten (10) days after the last hearing, the arbitrator shall file an award with the clerk and serve copies on all parties entitled to notice. If an arbitrator fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator to pay a penalty into the second judicial district's arbitration fund.

(4) **Amended award.** Within ten (10) days after an award is filed, the arbitrator may file an amended award. Copies shall be served on all parties entitled to notice. The period for amendment shall not be extended.

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

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

#### **SECTION VI: APPEAL**

A. **Right to appeal.** Any party of record at the time the arbitrator's award is filed may appeal the award.

**B. Procedures to appeal.**

(1) **Notice of appeal.** To exercise the right to appeal, a party must file a "notice of appeal from arbitration" with the clerk within fifteen (15) days after the award or an amended award, is filed. The period for filing the notice shall not be extended. A copy of the notice of appeal shall be served on all parties entitled to notice. Cross-appeals are not required.

(2) **Voluntary dismissal.** At any time after filing a notice of appeal and before trial before the assigned judge, a party may withdraw the appeal by filing a notice of voluntary appeal dismissal. A copy of the notice shall be served on all parties. Within fifteen (15) days after the notice of voluntary appeal dismissal is filed, any other party may file a notice of appeal.

**C. Procedures on appeal.**

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

(2) **De novo proceedings.** All appeals shall be in the form of de novo proceedings before the assigned judge. All decisions made by the arbitrator shall be moot. No reference shall be made to any of the arbitrator's decisions including the award. Neither the arbitrator nor the court alternatives director shall be permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed and until disposition of the appeal, the court shall seal the award and the notice of appeal.

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

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

**ANNOTATIONS**

**District courts retain jurisdiction over arbitration awards** even though a party's notice of appeal from arbitration was untimely. The arbitration award is merely a nonenforceable order until the district court adopts the award as the court's final judgment following the time to file an appeal. After the district court has adopted the award as its final judgment, Rule 1-060B SCRA 1986 applies to set aside the judgment just as Rule 1-060B SCRA 1986 would apply to set aside any final judgment of the district court. *Aragon v. Westside Jeep/Eagle*, 117 N.M. 720, 876 P.2d 235 (1994).

## VII.

### FORMS

#### LR2-Form A.

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

#### MOTION FOR FREE PROCESS

COMES NOW \_\_\_\_\_, and moves this court for its order allowing free process in this case. As grounds for this motion, movant states that because of indigency, he or she cannot afford to pay court fees and costs in this case. \_\_\_\_\_, has attached the affidavit(s) required by Second Judicial District Local Rules, Rule LR2-115.

---

*(signature block, see Second  
Judicial District Local Rules, Rule  
LR2-118)  
(certificate or affidavit of service)*

#### LR2-Form B.

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**AFFIDAVIT OF INDIGENCY**

(Complete all applicable sentences; strike all inapplicable sentences.)

STATE OF NEW MEXICO )

) ss.

COUNTY OF BERNALILLO )

I state, under penalty of perjury, that to the best of my knowledge and belief the following statements and information are true and correct.

I wish to file a complaint, petition or other paper, and otherwise prosecute a case or defend myself in a case, and cannot afford to pay any court fees or costs.

**EMPLOYMENT INCOME**

I am not employed.

I am employed as a

\_\_\_\_\_, at

\_\_\_\_\_, and earn

\_\_\_\_\_ per hour/week/month.

I am paid every \_\_\_\_\_ weeks. My next payday is

\_\_\_\_\_.

My gross pay is \$ \_\_\_\_\_.

The following amounts are deducted from my gross pay:

tax	Federal income	\$ _____
security	Social	\$ _____
tax	State income	\$ _____
dues	Union	\$ _____
payments	Insurance	\$ _____

Retirement  
\$ \_\_\_\_\_  
Other  
\$ \_\_\_\_\_  
Other  
\$ \_\_\_\_\_

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

**OTHER INCOME**

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

Social security \$ \_\_\_\_\_  
Welfare \$ \_\_\_\_\_  
Unemployment \$ \_\_\_\_\_  
Food stamps \$ \_\_\_\_\_  
AFDC \$ \_\_\_\_\_  
Child support \$ \_\_\_\_\_  
Alimony \$ \_\_\_\_\_  
Investments \$ \_\_\_\_\_  
Other \$ \_\_\_\_\_  
Other \$ \_\_\_\_\_

Total other income \$ \_\_\_\_\_

**BANK ACCOUNTS AND CASH ON HAND**

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

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

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

**REAL PROPERTY AND OTHER TANGIBLE ASSETS**

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



[ ]		
_____	_____	_____
[ ]		
_____	_____	_____
[ ]		
_____	_____	_____
[ ]		
_____	_____	_____
[ ]		
_____	_____	_____

\_\_\_\_\_

*Second Judicial* (signature block, see

*Rule LR2-118)* *District Local Rules,*

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_ this

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_ My

commission expires:

Notary public

\_\_\_\_\_

**LR2-Form C.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**ATTORNEY'S AFFIDAVIT SUPPORTING INDIGENCY**

STATE OF NEW MEXICO )

) ss.

COUNTY OF BERNALILLO )

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

\_\_\_\_\_  
*Second Judicial*

*Rule LR2-118)*

*(certificate of service)*

*(signature block, see*

*District Local Rules,*

**LR2-Form D.**

**SECOND JUDICIAL DISTRICT COURT**

**COUNTY OF BERNALILLO**

**STATE OF NEW MEXICO**

*(case number)*

*(caption)*

**ORDER FOR FREE PROCESS**

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

[ ] be allowed free process in this case.

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

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

[ ] not be allowed free process.

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



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

**LR2-Form E.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**MOTION TO WITHDRAW**

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

As grounds for this motion, movant states:

(Set out grounds)

\_\_\_\_\_  
\_\_\_\_\_

Hearings in this case are set as follows:

(Specify date, time and matters to be heard)

\_\_\_\_\_  
\_\_\_\_\_

Supreme Court deadlines relevant to this case are as follows:

(Specify rule and date deadline expires)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

[ ] I acknowledge that \_\_\_\_\_ has twenty (20) days to obtain counsel or be deemed appearing pro se. The

last known address and telephone numbers for  
\_\_\_\_\_ are as follows:

---

---

---

---

\_\_\_\_\_  
(signature block, see Second Judicial  
District Local Rules, Rule LR2-118)  
(certificate of service)

**LR2-Form F.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**ENTRY OF APPEARANCE BY**

**SUBSTITUTE COUNSEL OR PARTY PRO SE**

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

---

\_\_\_\_\_  
(signature block, see Second Judicial  
District Local Rules, Rule LR2-118)  
(certificate or affidavit of service)

**LR2-Form G.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**REQUEST FOR HEARING**

1. Assigned Judge:

\_\_\_\_\_

2. Type of Case:

\_\_\_\_\_

3. Jury: \_\_\_\_\_ Non-jury:

4. Dates of hearings presently set:

\_\_\_\_\_

5. Specific matter(s) to be heard upon this request:

\_\_\_\_\_

6. Estimated total time required:

7. Attach separate sheet(s) listing name, firm, capacity, address, and telephone number of all parties entitled to notice.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
*(signature block, see Second  
Judicial District Local Rules,  
Rule LR2-118)*  
*(certificate or affidavit of service)*

**LR2-Form H.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**NOTICE OF HEARING**

*(submitting party shall complete all but date and time)*  
A hearing in this case is set before the Honorable

\_\_\_\_\_ as follows:  
Date of hearing: \_\_\_\_\_  
Time of hearing: \_\_\_\_\_  
Length of hearing: \_\_\_\_\_  
Place of hearing: \_\_\_\_\_  
Matter(s) to be heard: \_\_\_\_\_

\_\_\_\_\_ THE HONORABLE

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

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

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

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

**LR2-Form I.**

SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

(case number)

(caption)

**PRAECIPE**

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

Instruction No.	U.J.I. No.	Title	Given	Refused	Modified
Withdrawn ----- -----	-----	-----	-----	-----	-----
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
_____					

---

\_\_\_\_\_  
*(signature block, see Second Judicial District Local Rules, Rule LR2-118)*  
*(certificate or affidavit of service)*

**LR2-Form J.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**SCRA 1986, RULE 1-099, CERTIFICATE**

COMES NOW \_\_\_\_\_, and hereby certifies pursuant to SCRA 1986, Rule 1-099, and Second Judicial District Local Rules, Rule LR2-132, that no SCRA 1986, Rule 1-099, fee is required because:

[ ] this case is pending.

[ ] the attached pleading, motion or other paper is filed within sixty (60) days after the last disposition; the last action taken this case was \_\_\_\_\_; a judgment or decree was filed \_\_\_\_\_, 19 \_\_\_\_.

[ ] the attached pleading, motion or other paper is requesting action which may be performed by the clerk pursuant to these rules -or- seeking to correct a mistake in the judgment, decree or record, filed on \_\_\_\_\_, 19 \_\_\_\_ -or- a motion accompanied by signed stipulated order disposing of the issue(s) raised by the motion.

[ ] the attached pleading, motion or other paper is seeking only enforcement of a child support order filed on \_\_\_\_\_, 19 \_\_\_\_.

---

(signature block, see Second  
Judicial District Local Rules,  
Rule LR2-118)  
(certificate or affidavit of service)

**LR2-Form K.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

(case number)

(caption)

**SCRA 1986, 1-016, PRETRIAL SCHEDULING ORDER**

The court, being fully advised in the premises, pursuant to SCRA 1986, Rule 1-016, hereby orders:

1. All parties shall be ready for trial on \_\_\_\_\_, 19 \_\_\_\_\_. If this case is a jury case, it will be set by the court on a trailing calendar. If this case is a non-jury case, plaintiff shall submit a request for trial in accordance with Second Judicial District Local Rules, Rule LR2-125.

2. Any motions made pursuant to SCRA 1986, Rule 1-012(B) or Rule 1-012(C), shall be filed by \_\_\_\_\_, 19 \_\_\_\_\_.

3. Plaintiff(s) shall disclose expert witnesses plaintiff(s) anticipates will be called at trial by \_\_\_\_\_, 19 \_\_\_\_\_. Defendant(s) shall disclose its trial expert witnesses by \_\_\_\_\_, 19 \_\_\_\_\_. all other parties shall disclose their trial expert witnesses by \_\_\_\_\_, 19 \_\_\_\_\_. Disclosure shall include the expert's name, address, job title and qualifications, and a brief summary of the expert's anticipated testimony. All other witnesses shall be disclosed by \_\_\_\_\_, 19 \_\_\_\_\_.

4. All pretrial discovery shall be completed by \_\_\_\_\_, 19 \_\_\_\_\_. Interrogatories and requests for production shall be considered timely only if the responses are due prior to this deadline; a notice to take deposition is timely only if the deposition takes place prior to the deadline. Requests for admissions shall be served at least \_\_\_\_\_ days prior to the trial setting. Discovery shall not be reopened except by court order upon a showing of good cause.

5. Any motions made pursuant to SCRA 1986, Rules 1-014 or 1-015, shall be filed by \_\_\_\_\_, 19 \_\_\_\_\_.

6. Any summary judgment motions shall be filed by \_\_\_\_\_, 19 \_\_\_\_\_.

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

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

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

9. Other:

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

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

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

---

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

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

**LR2-Form L.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**FINAL PRETRIAL ORDER**

This matter having come before the court pursuant to SCRA 1986, Rule 1-016, and the court being fully advised in the premises, the court hereby orders:

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

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

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2. **UNCONTROVERTED FACTS.** The following facts are established by admissions or stipulations:



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

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3. **CONTESTED ISSUES OF FACT.** The contested issues of fact are:

*(Set out.)*

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

*(Set out.)*

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5. **EXHIBITS.** Each party shall provide all other parties copies of all exhibits and shall make all demonstrative exhibits available for inspection no later than \_\_\_\_\_, 19

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

*(Set out list for each party.)*

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---

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6. **WITNESSES.** Each party shall provide all other parties a list of witnesses who will or may be testifying at trial with a brief summary of their anticipated testimony no later than \_\_\_\_\_, 19 \_\_\_\_\_. Additional witnesses will not be allowed without a showing of good cause why their disclosure did not take place in conformance with this order. The parties will call or have available at trial:

*(Set out list for each party.)*

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The parties may call:  
*(Set out list for each party.)*

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The parties will present the following testimony by deposition:

*(Set out list for each party.)*

---

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

8. **JURY INSTRUCTIONS.** Each party shall submit proposed jury instructions by \_\_\_\_\_, 19 \_\_\_\_.

9. **LENGTH OF TRIAL.** The following number of days will be set for trial: \_\_\_\_\_.

10. **SETTLEMENT.** The possibility of settlement of this case is considered: *(Specify good, fair or poor.)* \_\_\_\_\_

11. **MODIFICATION; INTERPRETATION.** This order shall control the course of the trial and may not be modified except by court order upon agreement of the parties or to prevent manifest injustice. The pleadings will be deemed merged herein. In the event of ambiguity in any provision of this order, reference may be made to the pleadings.

---

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

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

**LR2-Form M.**

**SECOND JUDICIAL DISTRICT COURT**

**COUNTY OF BERNALILLO**

**STATE OF NEW MEXICO**

*(case number)*

*(caption)*

**WAIVER OF ARRAIGNMENT**

**ENTRY OF PLEA OF NOT GUILTY**

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

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

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

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

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

---

DATE \_\_\_\_\_

DEFENDANT

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

I hereby certify that:

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

[ ] No conditions of release have been agreed upon. A hearing is set on \_\_\_\_\_, 19 \_\_\_\_, at \_\_\_\_\_ a.m./p.m.

---

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

**APPROVED:**

---

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

**ACKNOWLEDGED:**

---

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

**LR2-Form N.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**TEMPORARY DOMESTIC ORDER**

(Dissolution or Section 40-4-3)

THIS MATTER comes before the court upon the filing of a petition for dissolution of marriage or for relief pursuant to Section 40-4-3 NMSA 1978. The court finds it is in the best interests of the parties and the public to issue this order.

**IT IS THEREFORE ORDERED:**

1. Neither party shall molest, intimidate, threaten, harass, injure, or physically or mentally abuse the other party or any children of either party.

2. Neither party shall remove, cause to be removed or permit the removal of any minor children of the parties from the State of New Mexico without the written consent of the other party.

3. Neither party shall incur unreasonable or unnecessary debts hereafter. An unreasonable debt is one which is incurred during separation that does not contribute to the benefit of both spouses or their dependents. Any unreasonable or unnecessary debt incurred after the date of the filing of the petition shall presumptively be assessed against the party incurring any such debt. The court specifically reserves the right to allocate the expenses and fees of this case.

4. Neither party shall cause the other party or the children of the parties to be removed from any existing insurance coverage, including but not limited to medical, hospital, dental, automobile, and disability insurance; and each party shall maintain all such insurance coverage in full force and effect.

5. Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance policies in full force and effect.

6. Neither party shall conceal or damage any property, real or personal, community or separate. Neither party shall dissipate, sell, remove, assign, transfer, dispose of, lend, mortgage, or encumber any property, real or personal, community or separate, except in the ordinary course of business or for the necessities of life. In the case of transactions made in the ordinary course of business, an itemized written accounting shall be made at least quarterly to the other party. In the case of dispositions made for the necessities of life, an itemized written accounting shall be made to the other party within thirty (30) days after disposition.

7. If the parties are living in the same residence at the time this order is served, the parties shall attempt to decide between themselves which party shall move from the family residence. The party moving out of the residence is not prejudiced by reason of the move in any way with respect to custody of any minor children, with respect to a claim of any interest in the family residence or the personal property in or on the premises.

8. If the parties do not determine which party will move from the residence, the court will decide the issue at a hearing on a motion for interim relief, considering among others the following factors:

a. Minor children should continue to reside in the family residence during the pendency of this case;

b. The parent who is and has been primarily caring personally for the children's basic daily needs should remain in the family residence during the pendency of this case;

c. The spouse who maintains his or her principal place of business within the family residence should continue to reside in the family residence during the pendency of this case.

9. If there are minor children, the party moving from the family residence shall be allowed to have frequent contact and communication with the children in person and by telephone. If the parties cannot agree on a time-sharing arrangement during the pendency of this case, a court clinic referral order will be entered immediately. If time-sharing is not resolved by agreement through the court clinic, the court will establish a time-sharing arrangement at a hearing on a motion for interim relief.

10. The party moving from the family residence may return to pick up personal belongings and effects at a reasonable time to be agreed upon. Personal belongings and effects do not include furniture unless the parties agree or the court decides the issue at a hearing on a motion for interim relief.

11. Each party is entitled to inventory the contents of a marital or common residence and the dwelling of the other party and to gain access to all properties owned by either of the parties, for purposes of inspection, valuation, or appraisal. Each party shall cooperate in arranging reasonable times and places to inventory the contents of the other party's residence or dwelling and to provide access to inspect, value, or appraise the property. If requested by either party, access for these purposes shall be provided within fifteen (15) days after the date of the request, unless the court otherwise orders.

12. Neither party shall open personal mail or packages addressed only to the other party, but shall either forward to or arrange prompt delivery of same to the other party. The party receiving personal mail addressed to both parties, mail concerning the children and mail related to the parties' income, debts or property, may open same, and shall promptly send a copy to the other party.

13. Unless the parties otherwise agree in writing, neither party shall cancel any credit cards nor remove the other party from any credit card account during pendency of this case. All charges on credit cards are subject to the limitations of Paragraph 3 of this order.

14. All earned income is community property and income from all other sources acquired during marriage is typically community property. Likewise, all debt obligations, existing and recurring, are typically community obligations. Each party has a one-half interest in all community income and property and is obligated to pay one-half of all existing and recurring community debts. During the pendency of this case, income and debts are typically equally divided; provided, however, that the party who has the principal care of any children will be allocated a greater proportion of the income. If the parties agree upon the interim division of income and payment of debts, they shall submit a stipulated interim order allocating income and expenses to the court. If the parties cannot agree, the court will determine the division at a hearing on a motion for interim relief.

15. Within twenty (20) days after service of this order on respondent, both parties shall serve on the other party a TDO Affidavit.

16. Within twenty (20) days after service of this order on respondent, each party shall mail or deliver to the other party documents reflecting current income from all sources, including but not limited to wage statements for the last four (4) pay periods and interest, dividend or other income statements showing the current total gross income, deductions, and net income received by that party. Within the same period each party also shall mail or deliver to the other party copies of the most recent personal state and federal tax returns with all schedules and attachments.

17. Within twenty (20) days after service of this order on respondent, each party shall deliver or mail to the other party copies of all current unpaid bills, statements, and due notices from all creditors.

18. This order is effective on the petitioner as of the time of filing and is effective on the respondent upon service.

19. This order shall continue in effect during the pendency of this case except as modified by court order.

20. Neither party shall molest, intimidate, threaten, harass, injure, or physically or mentally abuse any guardian ad litem, arbitrator, court appointed experts, court employee or counsel for the other party.

21. DISOBEDIENCE OF THIS ORDER CAN CONSTITUTE CONTEMPT OF COURT, AND SUBJECT THE VIOLATOR(S) TO FINE, IMPRISONMENT AND/OR

OTHER SANCTION, PLUS PAYMENT OF ATTORNEY FEES AND COSTS TO THE OTHER PARTY.

---

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

Endorsed copy of order provided by the court to petitioner at the time of filing.

**LR2-Form O.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**TEMPORARY DOMESTIC ORDER**

(Non-dissolution, Non-Section 40-4-3)

THIS MATTER comes before the court upon the filing of a case to establish parentage or concerning child-related issues not incident to dissolution of marriage nor to Section 40-4-3 NMSA 1978. The court finds it in the best interests of the parties and the public to issue this order.

**IT IS THEREFORE ORDERED:**

1. Neither party shall molest, intimidate, threaten, harass, injure, or physically or mentally abuse the other party or any children of either party.
2. Neither party shall remove, cause to be removed or permit the removal of any minor children of the parties from the State of New Mexico without the written consent of the other party.
3. If the parties are living in the same residence at the time of service of this order, the parties shall attempt to decide between themselves which party shall move from the family residence. The party moving out of the residence is not prejudiced by reason of the move in any way with respect to



custody of any minor children with respect to a claim of any interest in the family residence or the personal property in or on the premises.

4. If the parties do not determine which party will move from the residence, the court will decide the issue at a hearing on a motion for interim relief, considering among others the following factors:

a. Minor children should continue to reside in the family residence during the pendency of this case;

b. The parent who is and has been primarily caring personally for the children's basic daily needs should remain in the family residence during the pendency of this case;

c. The spouse who maintains his or her principal place of business within the family residence should continue to reside in the family residence during the pendency of this case.

5. If there are minor children, the party moving from the family residence shall continue to have frequent contact and communication with the children in person and by telephone. If the parties cannot agree on a time-sharing arrangement during the pendency of this case, a court clinic referral order will be entered immediately. If time-sharing is not resolved by agreement through the court clinic, the court will establish a time-sharing arrangement at a hearing on a motion for interim relief.

6. The party moving from the family residence may return to pick up personal belongings and effects at a reasonable time to be agreed upon. Personal belongings and effects do not include furniture unless the parties agree or the court decides the issue at a hearing on a motion for interim relief.

7. Each party is entitled to inventory the contents of a marital or common residence and the dwelling of the other party and to gain access to all properties owned by either of the parties, for purposes of inspection, valuation, or appraisal. Each party will cooperate in arranging reasonable times and places to inventory the contents of the other party's residence or dwelling and to provide access to inspect, value, or appraise the property. If requested by either party, access for these purposes shall be provided within fifteen (15) days after the date of the request, unless the court otherwise orders.

8. Neither party shall open personal mail or packages addressed only to the other party, but shall either forward to or arrange prompt delivery of same to the other party. The party receiving personal mail addressed to both parties, mail





Other	\$
Other	\$
4. NET MONTHLY INCOME:	\$

**Statement of Fixed Debts of Both Parties**

*(list by who is paying at the time of the affidavit)*

5. House, apartment, or other residence monthly payment:		\$	
\$ _____			
6. Total Vehicle Payment:		\$	
\$ _____			
Vehicle #1	\$	_____	
Vehicle #2	\$	_____	
Vehicle #3	\$	_____	
7. Total minimum monthly payments on credit cards:		\$	
\$ _____			
<b>Card</b>		<b>Minimum</b>	
_____		\$ _____	
_____		\$ _____	
_____		\$ _____	
_____		\$ _____	
_____		\$ _____	
8. Total monthly payments on other loans:		\$	
\$ _____			
<b>Loan</b>		<b>Minimum</b>	
_____		\$ _____	
_____		\$ _____	
_____		\$ _____	
9. Vehicle insurance on monthly basis:		\$	
\$ _____			



(case number)

(caption)

**INTERIM ORDER ALLOCATING INCOME AND EXPENSES**

THIS MATTER coming before the court:

[ ] upon stipulation of the parties;  
[ ] for hearing upon motion of a party;  
and the court having been sufficiently advised,  
FINDS AND ORDERS:

1. The court has jurisdiction over the subject matter and the parties.
2. The parties shall receive the income and pay the expenses as listed on the Interim Monthly Income and Expenses Statement.
3. Each party shall presumptively be responsible for any debts he/she incurs during the pendency of this case.
4. Any assets obtained by either party after the entry of this order from that party's share of divided income are presumptively the separate property of the obtaining party.
5. Each party shall use his/her share of the income provided by this order to pay his/her respective expenses for food, clothing, telephone, utilities, gasoline, car maintenance, entertainment, meals out, haircuts, attorney fees, ordinary medical and dental expenses, and other personal expenses.
6. The parent with whom the child(ren) primarily resides shall receive the following percentage from the other parent's share of divided income:

One child	-	10%	Four children	-	22%
Two children	-	15%	Five children	-	25%
Three children	-	19%	Six children	-	28%

Add three percent (3%) of income for each child after six children.

7. \_\_\_\_\_ shall pay to \_\_\_\_\_ a total of \$ \_\_\_\_\_ per month, each month which consists of \$ \_\_\_\_\_ to equalize the income (plus) (less) \$ \_\_\_\_\_ as child support, by check or money order, delivered or postmarked on or before the \_\_\_\_\_ of each month during the pendency of this case.

8. The medical and dental expenses of the child(ren) not covered by insurance shall be paid one-half by each party.

9. Notwithstanding entry of this order, all claims and defenses are preserved.

10. This order shall remain in effect during the pendency of this case except as modified by court order.

11. DISOBEDIENCE OF THIS ORDER CAN CONSTITUTE CONTEMPT OF COURT, AND SUBJECT THE VIOLATOR(S) TO FINE, IMPRISONMENT AND/OR OTHER SANCTION, PLUS PAYMENT OF ATTORNEY FEES AND COSTS TO THE OTHER PARTY.

---

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

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

## LR2-Form R.

### INTERIM MONTHLY INCOME AND EXPENSES STATEMENT

	COMBINED -----	HUSBAND -----	WIFE -----
1. Average Gross Monthly Income			
Wages	\$ _____	\$ _____	\$ _____
Rental income	\$ _____	\$ _____	\$ _____
Self-employment	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
2. Deductions			
Fed W/H	\$ _____	\$ _____	\$ _____
State W/H	\$ _____	\$ _____	\$ _____
FICA	\$ _____	\$ _____	\$ _____
Health insurance	\$ _____	\$ _____	\$ _____
Union dues	\$ _____	\$ _____	\$ _____
Estimated tax payments	\$ _____	\$ _____	\$ _____

Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
3. Total Deductions	\$ _____	\$ _____	\$ _____
<i>(add items in Line 2)</i>			
4. Net Monthly Income	\$ _____	\$ _____	\$ _____
<i>(subtract Line 1 from Line 3)</i>			
5. Monthly Fixed Expenses			
Residence	\$ _____	\$ _____	\$ _____
Car payment	\$ _____	\$ _____	\$ _____
Insurance premiums			
Car	\$ _____	\$ _____	\$ _____
Life	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
Day care	\$ _____	\$ _____	\$ _____
Attorney fees	\$ _____	\$ _____	\$ _____
Credit cards	\$ _____	\$ _____	\$ _____
Loans	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____
6. Total fixed expenses	\$ _____	\$ _____	\$ _____
<i>(add items in Line 5)</i>			
7. Net spendable income	\$ _____	\$ _____	\$ _____
<i>(subtract Line 4 from Line 6)</i>			
8. 1/2 of Combined Column, Line 7	\$ _____	\$ _____	\$ _____



9. Amount Transferred/Received      \$ \_\_\_\_\_      \$ \_\_\_\_\_      \$ \_\_\_\_\_  
\_\_\_\_\_ (subtract Line 8 from Line 7)

*(Person with positive amount pays that amount to other person. See instructions if combined amount in Line 7 is negative.)*

**LR2-Form S.**

**Instructions for Completing**

**Interim Monthly Income and Expenses Statement**

A. "Gross monthly income" is income from all sources except child support received from a prior spouse. For self-employed individuals, gross monthly income means gross receipts less reasonable and ordinary business expenses. Self-employed individuals should attach a separate sheet to Interim Monthly Income and Expenses Statement itemizing the business income and expenses.

B. "Deductions" are payroll deductions for taxes, social security, health insurance, union dues, retirement, and other employer-related deductions. Regular and customary savings deductions may be included.

C. "Fixed Expense" includes periodic, generally invariable expenses even though paid quarterly, semi-annually or yearly, e.g., car payments, insurance, and loan payments:

1. Residence fixed expense is mortgage or rent actually paid. If a party receives free rent, e.g., by living with parents, that party's rent is deemed zero;

2. Credit card fixed expense is listed as a fixed expense and includes only the minimum monthly payment at the time of entry of the interim order;

3. Health insurance includes medical and dental insurance which if not deducted by a payroll deduction, may be included as a fixed expense;

4. Any regular monthly payment ordered by a prior order of child support or alimony which is actually paid is a fixed expense;

5. Day care fixed expense is work-related day care and does

not include baby-sitting or occasional child care;

6. An equal sum will generally be allocated each month to pay towards the attorney fees of each party;

7. Utilities are generally not fixed expenses. Telephone and cable TV are never fixed expenses. However, if the utility costs are greatly disproportionate, they may be considered fixed expenses by agreement or court order.

D. How to Figure Which Party Makes Payments to the Other Party:

1. **If the combined amount in Line 7 is a positive number**  
: To complete Lines 8 and 9, compute one-half of the value shown on the "Combined Column" on Line 7, "Net Spendable Income", and enter the result for each party on Line 8. To compute the amount transferred/received, subtract Line 8 from Line 7 for each party. The party who has a positive value on Line 9 pays that amount to the other party, and the same amount is entered in Paragraph 10 of the Interim Order Allocating Income And Expenses.

2. If the combined amount in Line 7 is a negative number: To complete Line 7, adjust the allocations of income or expenses, or transfer an amount from one party to another so that the amounts under "Husband" and "Wife" in Line 7 are equal. Enter any transferred amount in Paragraph 10 of the Interim Order Allocating Income And Expenses. Do not complete Lines 8 and 9.

**LR2-Form T.**

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

*(case number)*

*(caption)*

**COURT CLINIC REFERRAL ORDER**

THIS MATTER coming before the court:

upon stipulation of the parties;

for hearing upon motion of a party;  
and the court having been sufficiently advised, FINDS:

A. The parties are parents of:

Name

Age

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. Concerns exist regarding:

Form of custody;

Child(ren)'s primary residence;

Time-sharing or visitation;

Other issues:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Priority consultation, pursuant to the Domestic Relations Mediation Act, 40-12-1 NMSA 1978 et seq.;

Mediation and, if necessary, an advisory consultation, pursuant to the Act;

Mediation only, pursuant to the Act;



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

5. The court clinic shall notify the parties, through counsel or pro se, in writing of the outcome of mediation and any other services, including any agreements and any recommendations from the court clinic, as such agreements are reached and recommendations made. The clinic shall file a certificate indicating the date such notice is mailed or delivered.

Agreements and court clinic recommendations shall not be filed in the court file nor shall the court clinic otherwise inform the court of the terms of any agreements and recommendations. Copies of letters and other correspondence from the clinic to the parties also shall not be provided to the court.

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

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

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

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

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

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

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

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

a. If the parties are willing to comply with the

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

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

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

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

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

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

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

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

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

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

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

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

i. The parties shall follow the recommendations of the court clinic regarding time-sharing;

ii. Neither party may otherwise change the status quo of the child(ren), without the written approval of the other party or order of the court, regarding major factors in the child(ren)'s life, including residence, religion and religious activities, school and educational activities, health care and providers and public activities, as defined in Section 40-4-9.1(J) (4) NMSA 1978;

iii. Either parent may file a motion with the court for relief pursuant to SCRA 1986, Rule 1-066.

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

**FURTHER THE COURT ORDERS:**

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

a. This court clinic referral order with the required information sheet attached;

b. All subsequent orders which affect this order;

c. Any order which disposes of the pending matter which gave rise to this order.

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

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

**LR2-Form U.**

**COURT CLINIC INFORMATION SHEET**

_____ PETITIONER'S NAME	_____ RESPONDENT'S NAME
_____ ADDRESS	_____ ADDRESS
_____ CITY - ZIP CODE	_____ CITY - ZIP CODE
_____ HOME PHONE      WORK PHONE PHONE	_____ HOME PHONE      WORK
_____ ATTORNEY	_____ ATTORNEY
_____ ADDRESS	_____ ADDRESS
_____ CITY - ZIP CODE	_____ CITY - ZIP CODE
_____ PHONE NUMBER	_____ PHONE NUMBER

INCOME	EST GROSS ANNUAL	EST
<b>GROSS MONTHLY</b>		
PETITIONER	\$ _____	\$ _____
_____ RESPONDENT	\$ _____	\$ _____
_____ COMBINED ANNUAL	\$ _____	\$ _____



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INCOME

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

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

PETITIONER'S SIGNATURE

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DATE

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RESPONDENT'S SIGNATURE

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DATE

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