

# RULES OF THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT

## I. Authority, Title and Scope.

### ANNOTATIONS

**Compiler's notes.** - The district court of the ninth judicial district has provided the following: "The Rules of the District Court of the Ninth Judicial District of New Mexico, revised on the 16th day of February, 1987, and all District Court Rules promulgated subsequent thereto are hereby rescinded and the following Rules are substituted therefor. This set contains all the Local Court Rules for the Ninth Judicial District Court in effect on the 29th day of July, 1991."

### LR9-001 (1993 Repl.)

—  
IN THE NINTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF CURRY  
IN THE MATTER OF THE \_\_\_\_\_ )  
PROMULGATION OF DISTRICT \_\_\_\_\_ )  
COURT RULES AND  
REVISIONS \_\_\_\_\_ ) No. 19,070

—

### O R D E R

Pursuant to the authority vested by the Supreme Court of the  
State of New Mexico in the District Courts of this State, and by  
virtue of the provisions of Rule 1-083, Rules of Civil Procedure  
for the District Courts of New Mexico, the following addition  
has been made in the Local Court Rules of the Ninth Judicial  
District Court, State of New Mexico:

Rule 38 is a new rule

Of necessity, the Table of Contents

has been revised to reflect the new

page numbers

IT IS THE ORDER OF THE COURT that notice is hereby given of  
the promulgation of the above new rule.

IT IS FURTHER ORDERED that copies of said Local Court Rules  
of the Ninth Judicial District Court be and they are hereby  
furnished to the Clerk of the Supreme Court of New Mexico and  
the Institute of Public Law.

/s/ FRED T. HENSLEY

CHIEF JUDGE

**LR9-002 (1993 Repl.)**

—  
NINTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO

—  
IN THE MATTER OF THE RULES  
OF THE NINTH JUDICIAL DISTRICT COURT

—  
ORDER

This matter having come before the Court on its own Motion  
after having submitted local rule LR9-703 to the Supreme Court  
District Court Civil Rules Committee and the Court having agreed  
to the revisions proposed by the District Court Civil Rules  
Committee;

The Court orders that local rule LR9-703 with Appendix B be  
and the same are hereby adopted;

It is further ordered that the above new local rule and  
Appendix B be effective for cases filed in the Ninth Judicial  
District Court on and after February 1, 1994;

It is further ordered that the amended local rules be  
transmitted to the Clerk of the Supreme Court for filing and to  
the New Mexico Compilation Commission for publication in  
accordance with Supreme Court rules.

Done by the Court this 8th day of December, 1993.

/s/ DAVID W. BONEM  
Chief Judge

/s/ FRED T. HENSLEY  
District Judge

/s/ STEPHEN K. QUINN  
District Judge

**I.**

**AUTHORITY, TITLE AND SCOPE**

**LR9-101. Authority.**

The following rules are hereby adopted and promulgated by the judges of the Ninth Judicial District of the State of New Mexico, comprised of the counties of Curry and Roosevelt, pursuant to the authority vested in the court by Rule 1-083, Rules of Civil Procedure for the District Courts.

### **LR9-102. Title.**

The following Local Rules of Procedure for the Ninth Judicial District Court shall be known as the "local rules."

### **LR9-103. Scope.**

Except where otherwise designated, the local rules apply to all cases brought in the Ninth Judicial District Court.

### **LR9-104. Effective date.**

Except where otherwise designated, the local rules shall become effective immediately.

## **II.**

### **GENERAL POWERS AND DUTIES OF THE COURT**

### **LR9-105. Terms of court.**

The District Court of the Ninth Judicial District, State of New Mexico, shall always be in session. Two regular terms of court are hereby established to begin on the first day of January and the first day of July of every year.

### **LR9-106. Assignment of judge.**

The name of the judge before whom a case is to be tried shall appear on the receipt given by the clerk of the district court upon receiving the filing fee. In cases filed in forma pauperis, the clerk of the district court shall orally notify the person filing of the name of the judge.

### **LR9-107. Mode of attire.**

All attorneys, their employees, law clerks, law students, officers and employees of the court appearing in court or in the judge's office or chambers shall be properly attired befitting the dignity of the court.

### **LR9-108. Interpreters.**

Where an interpreter is needed, counsel shall notify the assigned judge one week before the hearing. Interpreter charges in civil cases shall be taxed as costs.

### **LR9-109. Control of court files.**

Court files of closed or pending causes shall not be removed from the office of the clerk of the district court except by court personnel.

### **LR9-110. Disqualification or recusal of judge.**

If an affidavit of disqualification against the judge who is presiding is filed, or if said judge recuses himself, another resident judge shall hear the cause.

Affidavits of disqualification must be filed in triplicate, so that the clerk of the district court may deliver a copy to the disqualified judge and forward one to the Supreme Court if necessary.

### **LR9-111. Library rules.**

A. The law library is maintained for the use of the court. After the needs of the court are met, and should it not interfere with the operation of the court, members of the bar shall be allowed to use the library. Law students employed in law offices and performing law business shall be allowed use of the library subject to the same restrictions as bar members.

B. The law library shall remain locked at all times, and all members of the bar shall be furnished a door key to the library. All other persons must first obtain the permission of a district judge before using this facility.

C. Library books of the reference or textbook type may not be removed from the library at any time except for use in court. Other volumes may be checked out by members of the bar of this district for not to exceed three (3) days, but only when a chargeout card is signed by the attorney and placed in the stacks in place of the volume removed. Attorneys will replace all volumes on the shelves and remove chargeout cards of volumes returned.

### **LR9-112. Appearance and withdrawals.**

A. Whenever counsel undertakes to participate in a cause in behalf of a party, counsel will file a written entry of appearance in the cause. For the purposes of this local rule, the filing of any signed pleading in a cause will be considered as compliance with the requirement of making a written formal entry of appearance.

B. Withdrawal of counsel shall be in accordance with Rule 1-089 of the Rules of Civil Procedure for the District Courts. The application of counsel to withdraw shall state the last known mailing address of the client.

C. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se.

### **LR9-113. Payment to the clerk of the district court.**

A. Any check payable to the clerk of the district court that is returned for insufficient funds, shall subject the person submitting the same to a twenty-five dollar (\$25.00) service charge. The check together with the service charge shall be paid by cash, cashiers check or money order to the clerk of the district court within five (5) working days from the date of mailing notification to the address of the check issuer as set forth on the check.

B. Any person who issues a check that is returned for insufficient funds to the clerk of the district court shall be prohibited in the future from making payment by check to the Ninth Judicial District Court.

### **LR9-114. Conflicts and priorities.**

A. To resolve conflicts in hearings and trials, the following priorities shall govern, unless otherwise ordered by the court:

Priority 1: Criminal and juvenile matters.

Priority 2: All matters given preference by statute.

Priority 3: Civil jury trials.

Priority 4: Civil non-jury trials.

Priority 5: Domestic relations matters.

Priority 6: All other matters.

B. The case or matter first set for hearing shall take precedence in each of the above categories, except that in criminal trials the oldest case shall be given priority.

### **LR9-115. Disbursement of trust monies.**

Monies that are held by the court in interest bearing accounts will not be disbursed to a prevailing party until a judgment or order is filed with the clerk of the district court. The judgment or order shall set forth the name of the prevailing party and the amount awarded. The judgment or order shall also set forth the name of the party who has been awarded the accrued interest of said monies. Trust monies will not be disbursed until the clerk of the district court is furnished the name, address, and social security number or federal tax identification number of the party awarded the accrued interest.

### **LR9-116 to LR9-118. Reserved.**

### III.

#### PLEADING AND PROCEDURE

##### **LR9-119. Form of pleadings.**

A space for the recording stamp of the clerk of the district court shall be left in the upper right-hand corner of the first page of each pleading. This space shall be at least 2 1/4" x 2 1/4" in size and preferably should be above the case number and below the title of the court. The clerk of the district court may refuse to accept for filing any pleading which does not conform to this rule.

##### **LR9-200. Interrogatories, requests for production and requests for admission.**

A. Interrogatories, answers to interrogatories, requests for production or inspection, requests for admissions and responses to such requests shall be served upon other counsel or parties but shall not be routinely filed with the court. However, a certificate shall be filed with the court indicating the date of service.

B. Parties propounding interrogatories shall serve at least two copies upon each party to be served. Interrogatories shall be numbered consecutively. Adequate spacing shall be left under each interrogatory for an answer. The party answering interrogatories shall serve at least two copies upon the party propounding interrogatories.

C. In objection to an interrogatory or request, the objector shall first set out the complete interrogatory or request followed by the reason for the objection. The party upon whom objections to interrogatories or requests are served shall respond in writing to the objections within twenty (20) days of receipt of an objection, or will be deemed to have accepted the objection as valid. The twenty (20) day period may be enlarged or shortened at the direction of the court.

D. If relief is sought in accordance with the Rules of Civil Procedure for the District Courts concerning an interrogatory, request for production or inspection, request for admission or the response or objection thereto, a copy of the interrogatory, request, response or objection in dispute shall be filed with the court with any motions filed.

E. No motion under this local rule will be considered unless filed not less than ten (10) days before trial or before the termination date of any discovery deadline set by the court.

F. No party shall serve more than fifty (50) interrogatories in the aggregate, including all subparts, without leave of court. Subparts of an interrogatory shall relate directly to the subject matter of the interrogatory. A party desiring to serve additional interrogatories shall file a written motion setting out the proposed additional interrogatories and the reasons establishing good cause for their use.

### **LR9-201. Free process application; attorney's affidavit.**

An application for free process in any civil case, must be accompanied by an affidavit by the party in the form prescribed by the court stating that he is unable by reason of poverty to deposit the amount of money for court costs. There must also be an affidavit filed by the attorney in the case, if any, stating that he has not received or contracted to be paid any fee, and promising that in case any money is paid him on account of his services, he will first deduct the costs and pay them to the clerk of the district court, and further stating that he is satisfied of the truth of the matter contained in the client's affidavit of poverty. The court may conduct a hearing prior to the allowance of free process.

### **LR9-202. Appointments of counsel.**

Any party desiring appointed counsel in any proceeding where such appointment is mandated by law shall make application therefore by filing an affidavit in the form prescribed by the court.

In all actions requiring appointment of counsel, after filing of appropriate financial statements and after order of the court determining the appropriateness of such appointment, the party preparing the order for appointment shall apply to the clerk of the court in the applicable county who shall maintain a list of all attorneys who practice primarily in that county. The clerk shall endorse the name next appearing in alphabetical order for appointment in that specific case. No attorney's names may be removed from the alphabetical list of those eligible for appointment without the concurrence of all judges of the district.

Individuals applying for court appointed counsel in applicable situations will be responsible for filling out the necessary financial affidavit.

### **LR9-203. Pro se filings.**

Any party desiring to proceed pro se in any cause shall include with the first pleadings filed their full name, home address and telephone number, business address and telephone number (if any); thereafter it shall be the responsibility of the party to apprise the court of any changes in such information. Failure to comply with this rule shall result in dismissal of the action.

### **LR9-204. Motion practice.**

All pre-trial motions, hearings on the merits and post-trial motions shall be set and heard by the judge to whom the case is assigned. All motions and responses filed with the court shall contain a concise statement of authorities relating to the relief requested. Responses to motions shall be filed with the clerk of the district court not less than seventy-two (72) hours prior to the time that the matter is set for hearing.

### **LR9-205. Default judgments; setting aside.**

Any judge may sign a default judgment, however only the judge to whom the case is assigned shall hear a motion to set aside the default judgment.

### **LR9-206. Consolidated cases.**

Motions to consolidate and the cases consolidated for trial shall be heard by the judge assigned to the case bearing the lowest case number. Pleadings filed after consolidation shall contain in the caption the case numbers of each case consolidated.

### **LR9-207. Findings of fact and conclusions of law.**

Original requested findings of fact and conclusions of law of the non-prevailing party shall be filed in the office of the clerk of the district court within ten (10) days after decision, unless otherwise ordered by the court. The prevailing party's requested findings of fact and conclusions of law shall be filed in the office of the clerk of the district court within ten (10) days after the non-prevailing party's, requested findings of fact and conclusions of law are filed, unless otherwise ordered by the court. Copies of the non-prevailing and prevailing parties' requested findings of fact and conclusions of law shall be delivered to the judge and opposing counsel.

### **LR9-208. Memorandum briefs.**

Memorandums of authorities and briefs shall not be filed with the clerk of the district court without court approval, but shall be directed to the attention of the judge assigned to the case with copies served on counsel of record.

### **LR9-209. Disposition of civil exhibits.**

The following procedure will be followed in the disposition of exhibits in civil cases:

A. In all civil cases where no appeal is filed, sixty (60) days after entry of final judgment or other final determination of the actions, such as dismissal, stipulation, or settlement, the clerk of the district court shall notify each party of the action to pick up exhibits filed in the cause within twenty (20) days. Exhibits not picked up in that time will be destroyed by order of the court.

B. In any other civil case in which there is an appeal, the clerk of the district court shall notify both parties to pick up their exhibits sixty (60) days after the time the mandate is received affirming the judgment in the case.

C. If the case is reversed and it must be retried, the clerk of the district court shall retain the exhibits until there is a final determination.



### **LR9-300. Orders and judgments.**

A. Orders, judgments, and decrees will be submitted to the court for signature not later than [than] four (4) days following the day of announcement by the court of its decision, unless a longer time is granted by the court.

B. Every order, judgment, or decree, or other instrument which has been signed by the court shall be immediately delivered to the appropriate clerk for filing. No signed order, judgment, or decree will be taken from the courthouse until after it has been docketed, filed, or recorded.

C. Orders, judgments, or decrees will not be signed by the court unless they have been initialed by the attorney or attorneys for all parties to the cause or after proper notice to opposing counsel of record.

D. Orders, decrees, and judgments will be submitted and delivered directly to the judge who is trying or has tried the case, and not to the clerk of the district court.

### **LR9-301. Costs bill.**

Within twenty (20) days after filing of final judgment, the party recovering costs shall file with the clerk of the district court an itemized and verified cost bill, with proof of service of a copy on opposing counsel. Any party failing to file a cost bill within the said twenty (20) days shall be deemed to have waived costs. If no objections are filed within ten (10) days after service of the cost bill, the clerk of the district court shall tax the claimed costs which are allowable by law. The judge shall settle any objections filed.

### **LR9-302. Executions.**

All executions issued by the clerk of the district court after judgment shall contain only the information set forth in the judgment and such information shall be set forth in the same format in which it is recited in the judgment.

### **LR9-303. Order to release property in custody of court.**

No cash bonds shall be returned without an order setting forth the amount and to whom the funds are to be returned. No litigation funds held by the court in interest bearing trust accounts shall be returned without an order setting forth the amount and to whom the funds are to be returned and providing a manner for disbursement of the accrued interest.

### **LR9-304. Application for payment of attorney fees.**

All applications for payment of attorney fees submitted by appointed counsel shall be accompanied by a copy of the order appointing counsel. Counsel shall submit the

application to the trial judge for approval prior to submission to the district court financial specialist for payment.

### **LR9-305. Time stamped copies of pleadings.**

The clerk of the district court will time-stamp the original and no more than two copies of a filed pleading. Additional time-stamped copies shall be made from the copies procured at the time of filing the pleading and are not the responsibility of the clerk of the district court.

### **LR9-306. Proceedings alleging delinquency or need of supervision, service of summons and petition.**

In proceedings pending before the children's court alleging delinquency or need of supervision, service of the summons and petition on the respondent and other persons enumerated in R [Rule] 10-105, Children's Court Rules may be by first class mail.

### **LR9-307. New and re-opened cases.**

A. Pursuant to [Section] 34-6-40 NMSA 1978, a filing fee of [sixty dollars] (\$60.00) shall be charged by the clerk in all new or re-opened civil cases.

B. For the purpose of fee collection, a newly filed case is any first pleading commencing a civil action, under Rule 1-003 of the District Court Rules of Civil Procedure or an appeal or transfer from any inferior court, not exempted by statute from such fee.

C. For the purpose of fee collection, a re-opened case is:

(1) The filing of any request for judicial action sixty (60) days or more after the final disposition of the case;

(2) "Judicial action" shall not include:

(a) any request for action by the court which may be performed by the clerk of the district court pursuant to these rules even if further action may be required by the judge;

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

(c) the filing of any pleading to enforce a child support order entered in a domestic relations proceeding.

D. The court may waive the fee upon a finding that the filing party is indigent according to the standard established under [Section] 34-6-46 NMSA 1978. The court may assess the fee from a non-indigent losing party.

## ANNOTATIONS

**Cross-references.** - As to miscellaneous district court civil filing fees, see Rule 1-099 SCRA 1986.

**Compiler's note.** - In Paragraph A, reference is made to a \$60.00 filing fee. However, after the amendment to 34-6-40 NMSA 1978 by Laws 1992, ch. 111, § 20, that fee is now \$72.00.

### **LR9-308. Administrative appeals from department of motor vehicles.**

The following procedure will be followed upon receipt of appeals from the administrative hearings of the Department of Motor Vehicles [motor vehicle division of the taxation and revenue department] revoking licenses. This procedure will apply to all requests to review the decisions of the DMV. (This does not apply to motions for restoration of driving privileges that follow five year revocations).

A. **Statutory authority.** These causes are governed by [Section] 66-8-112 NMSA 1978, which provides, in part: "(G)... on review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's license or privilege to drive based on the record of the administrative proceeding."

B. **Filing of action.** Immediately upon the filing of an action, the clerk of the district court will determine whether the notice of appeal or application has been served on the Department of Motor Vehicles [motor vehicle division of the taxation and revenue department]. If the applicant is represented by counsel, that is the responsibility of the counsel. If the applicant is pro se, that is the responsibility of the court clerk.

C. **Filing of record of administrative proceeding.** Immediately upon the filing of an action, a form order will be generated by the judicial secretary, which orders the DMV to file the record of the administrative hearing and schedules a deadline therefor. The order will be signed by the district judge.

D. **Review by the district judge.** Immediately upon receipt of the record of the administrative hearing, the record will be submitted to the assigned judge for review. The review will be conducted by the judge without a hearing unless the judge determines that a hearing is necessary.

## ANNOTATIONS

**Bracketed material.** - The bracketed material in this rule was inserted by the compiler and is not part of the rule as adopted by the court.

**LR9-309. Reserved.**

## IV.

### CASE CONTROL

#### **LR9-400. Settings.**

A. Requests for settings for trial or for motions shall be directed to the calendar clerk who will make the setting. The calendar clerk will enter the date and time of the setting for the trial or hearing.

B. The person requesting the setting shall give written notice of such setting to all parties concerned, and file the original notice of setting with the clerk of the district court.

#### **LR9-401. Vacating trials or settings.**

A. Neither criminal nor civil settings involving hearings on the merits will be vacated without prior approval of the judge assigned to the case.

B. Before counsel contacts the assigned judge to vacate a setting, counsel shall contact all parties or attorneys entitled to notice in order to inform the court of each party's position as regards the vacation. The court shall either vacate the case, refuse to vacate or schedule a hearing on the request. Request to vacate settings of hearings on the merits shall be by motion or stipulated order.

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

D. Rule LR9-104 shall govern in conflicts in settings.

#### **LR9-402. Pre-trial conferences.**

Pre-trial conferences will be held upon request of counsel or in cases in which it appears to the court that such conferences would be desirable. At such conferences the court will expect counsel to be prepared in accordance with the Pre-Trial Notice and Check List approved by the Circuit Committee on Pre-Trial of the Judicial Conference of the Tenth Circuit and to prepare a pre-trial order as nearly as possible to that used by the United States District Court for the District of New Mexico.

#### **LR9-403. Dismissal of cases.**

A. If an examination of the case file reveals that (1) a cause is ready for default, or (2) there remains no justifiable issue for the consideration of the court, the court may direct counsel to proceed to judgment forthwith. Upon failure to [of] counsel to submit judgment within thirty (30) days thereafter, the court may, of its own motion, dismiss the cause.

B. If an examination of the court file shows that no substantial activity has occurred in the action for a period of six (6) months or more, the action will be dismissed for lack of prosecution.

### **LR9-404. Dismissal of domestic relations cases.**

A. All domestic relations cases in which no action appears to have been taken to bring the case to a conclusion for the past one hundred and twenty (120) days may be dismissed by the court without prejudice.

B. All child support cases filed under the provisions of the [Revised] Uniform Reciprocal Enforcement of Support Act [Uniform Interstate Family Support Act, §§ 40-6A-101 to 40-6A-903 NMSA 1978] in which no action appears to have been taken to bring the case to a conclusion for the past twelve (12) months may be dismissed by the court without prejudice.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the Uniform Interstate Family Support Act in Subsection B was inserted by the compiler in light of the repeal of the Revised Uniform Reciprocal Enforcement of Support Act, 40-6-1 to 40-6-41 NMSA 1978. The bracketed material was not adopted by the court and is not part of the rule.

**Compiler's note.** - The Revised Uniform Reciprocal Enforcement of Support Act, referred to in Subsection B, was compiled as 40-6-1 to 40-6-41 NMSA 1978, and was repealed by Laws 1994, ch. 107, § 904.

### **LR9-405. Notice of bankruptcy proceedings.**

If in any cause pending, a notice of bankruptcy relating to a party defendant shall be filed, the plaintiff shall file a pleading within thirty (30) days showing cause, if any he shall have, why the complaint should not be dismissed without prejudice as filed against the party(s) who are the subject of the notice of bankruptcy proceedings. Failure to file such a responsive pleading shall result in the court dismissing the complaint without prejudice.

### **LR9-406. Probate proceedings.**

A copy of the notice to creditors published as required by [Section] 45-3-801 NMSA 1978, shall be mailed promptly first class to all known or reasonably ascertainable creditors of decedent discoverable by reasonable diligence other than those with mere conjectural claims. An affidavit of mailing listing said creditors by name only shall be filed in the cause.

### **LR9-407 to LR9-409. Reserved.**

V.

**JURY MATTERS**

**LR9-500. Jury fees.**

Jury and filing fees will not be refunded.

**LR9-501. Requested instructions.**

All requested instructions, both civil and criminal, shall be prepared and submitted as required by the appropriate rules of procedure.

**LR9-502 to LR9-505. Reserved.**

VI.

**CRIMINAL CASES**

**LR9-506. Transportation of prisoners.**

Defendants under the jurisdiction of the Ninth Judicial District Court and incarcerated at the state penitentiary may be transported to court for attorney conferences not more than three (3) full days prior to trial or hearing, if requested. Prisoners may not be transported to court for attorney conferences at any other time.

**LR9-507. Disposition of criminal exhibits.**

A. In all criminal cases in which there is a final determination of the case against the defendant(s) other than a verdict of guilty, the parties shall have sixty (60) days after entry of the final judgment or final determination to retrieve their exhibits. Exhibits not retrieved shall be disposed of in accordance with procedures outlined in this rule.

B. In the event that there is an appeal by either side of any matter (before trial) which is a final determination of the action or interlocutory appeal, the clerk of the district court shall notify the parties sixty (60) days after the mandate or order is received from the appellate court to retrieve their exhibits if the case is disposed of by the appellate court. Exhibits not retrieved shall be disposed of in accordance with the procedure outlined in this rule.

C. In the event the case against the defendant results in a conviction, if there is no notice of appeal or other order requiring the preservation of the exhibits filed within sixty (60) days of entry of the "judgment and sentence", the attorneys for all parties shall be notified to retrieve the exhibits within twenty (20) days. If they are not retrieved within that time, they will be destroyed by order of the court.

D. If the case is reversed on appeal, the clerk of the district court will retain the exhibits until final determination of the case is reached.

E. If the case is affirmed on appeal, the clerk of the district court will retain the exhibits for sixty (60) days after the mandate is received. If no court order is entered requiring retention of the exhibits the [sic] of the clerk of the district court will notify attorneys for both parties to retrieve the exhibits within twenty (20) days. Exhibits not retrieved shall be disposed of in accordance with procedures outlined in this rule.

F. It shall be the attorney's responsibility to retain the exhibits or deliver them to the defendant or police agency for any future proceedings. In the event that a new trial is granted or the conviction is set aside at a later date, it is the parties' responsibility, not the court's, to have the exhibits available at that time.

### **LR9-508. Time for presentation of plea and disposition agreements.**

Plea and disposition agreements or other similar agreements entered into pursuant to Rule 21(G) [Rule 5-304] of the Rules of Criminal Procedure for the District Courts, shall only be accepted by the court if presented and accepted at least [thirty] (30) days prior to the time the cause has first been scheduled for trial on its merits. The provisions of this rule may be waived by the court upon a showing that factors which were justifiably unanticipated by the parties necessitated the entry into the subject agreement. This rule shall be effective only as to those cases filed after July 1, 1987.

### **LR9-509. Property bonds.**

All property bonds made to secure the presence of the defendant in criminal cases shall be in the form provided by the court administrator's office. On presentation to the court for approval, the following documentation must accompany the bond form: (1) An appraisal of the market value of the property secured from a qualified realtor; (2) An appropriate waiver of homestead exemptions of the subject property; (3) A title search showing the name(s) of the title holder(s) of the subject property and the holders and amounts of any encumbrances filed against the subject property; (4) If such encumbrances exist and have been paid down from the original recorded amount, a statement from the lender as to the current amount owed; and (5) A mortgage in favor of the State of New Mexico executed by the owner(s) of the subject property.

### **LR9-600. Order admitting defendant to bond.**

Bond shall be reviewed, set or denied upon the defendant's first appearance in district court. The prosecutor shall prepare an order encompassing the release conditions immediately after the same are established. Conditions of release identical to those by prior district or magistrate court order may be established by attaching a copy of the prior order setting forth those conditions as an exhibit to the order contemplated in this rule.

## **LR9-601. Notification to victims and witnesses of court proceedings.**

Commencing upon the effective date of the Crime Victims' and Witnesses' Bill of Rights [Act] (Chapter 19, Laws of 1987) [31-24-1 to 31-24-7 NMSA 1978], hereinafter referred to as "the act", it shall be the responsibility of the prosecuting agency in a criminal case to notify victims and witnesses as defined in the act of the pendency of a sentencing proceeding or of any other court proceeding for which the act mandates notification. In accord with the act, the prosecuting agency shall notify such individuals of their right to be heard at such proceedings. Waivers of appearance or notification may be utilized in lieu of notification. The prosecuting agency shall notify the court if arrangements are inadequate for separation of parties as required by the act, and shall be responsible for making restitution requests as provided by the act.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed material in this rule was inserted by the compiler and is not part of the rule as adopted by the court.

## **LR9-602. Jointly-charged defendants; case caption; effect.**

In situations where a prosecutor desires to jointly charge two or more defendants in a criminal complaint, indictment, or information, he shall instead file individual charging documents for each defendant, under separate cause numbers, cross-referenced in the case caption with the words "CONSOLIDATED WITH..." followed by the cause number(s) of the co-defendants who would otherwise have been jointly charged. Individual charging documents styled in this manner shall be treated for all purposes as if there were one charging document filed with all co-defendants listed thereon, including the transfer of all co-defendants together when one exercises the right of peremptory challenge against the assigned judge or the judge recuses himself as to one or more co-defendants.

All co-defendants charged in this manner shall be assigned the same judge and shall be tried together unless severed by the court.

## **LR9-603, LR9-604. Reserved.**

### **VII.**

#### **DOMESTIC RELATIONS RULES**

## **LR9-605. Statement of financial condition.**

A. At least ten (10) days prior to a trial on the merits in a domestic relations case, each party shall file with the court a verified statement setting out his proposed evidence of all



assets, liabilities, incomes, values, payments, and all other pertinent information reflecting the entire financial condition of the parties. Counsel for each party shall immediately be served with a copy of the statement. Responsive financial statements may be filed. Uncontroverted matter included in financial statements may be deemed admitted.

B. Failure to file or timely serve this statement may, in the discretion of the court, result in the assessment of costs or attorney fees against the delinquent party, and/or a continuance of the trial on the merits.

### **LR9-606. Child support guidelines.**

Pursuant to [Section] 40-4-11.1 [NMSA 1978] every decree or judgment relating to child support shall conform to the child support guidelines or shall set forth acceptable rationale supporting deviation from the same. Worksheets supportive of the child support determination as specified in the statute shall be included in the court file and presented at the time of presentation of the decree or judgment.

### **LR9-607. Child support payments.**

Support payments ordered by the court shall be paid through the Child Support Unit, Domestic Relations Division of the District Court, Curry County Courthouse, Clovis, New Mexico, except where payment is to be made by allotment from the pay of a member of the armed forces of the United States, or other cases where payment direct to the payee is found by the court to be preferable. Payments shall be made by cashier's check, money order, or cash, payable to the child support unit and mailed or delivered to said child support unit. However, payments made in cash must be made in person at the child support office. Counsel for the parties or if a party has no counsel, the party shall furnish a copy of decree or order to the child support unit together with the mailing addresses and telephone numbers of each party.

### **LR9-608. Child support enforcement.**

The child support officer is assigned the duty of enforcing payment of child support awarded by the court. When such payments are in arrears more than one month, the child support officer shall report this fact to the court, who thereupon shall order the person obligated to pay such support to appear before the court to show cause why he should not be held to be in contempt of court for failure to make such payments.

### **LR9-609. Child support fee.**

The Child Support Unit of the Domestic Relations Division of the Ninth Judicial District Court shall assess a fee as authorized by the court, for each child support case handled through that office. This fee shall be payable by the payor of child support payments

upon the initial payment being made through the child support unit to the district court clerk and deposited to the state treasurer's account.

### **LR9-700. Contempt.**

Orders to show cause for contempt must be based upon motion and affidavit specifying with particularity the manner in which the court's order has been violated.

### **LR9-701. Presence of parties before court.**

In any domestic relations case when the marriage has resulted in the birth of child(ren) who are not eighteen years of age, both parties shall appear before the court upon the presentation of the final decree for approval. The provisions of this rule may be waived for good cause shown. In all other domestic relations cases where the parties have reached an agreed result, an order encompassing such an agreement may be presented to the court together with appropriate waivers without the necessity of the parties' presence.

### **LR9-702. Interim relief.**

In actions for dissolution of marriage or proceedings under Section 40-4-3 NMSA 1978, the following pendente lite matters will control:

#### **A. Temporary domestic order.**

(1) Coincident with the filing of a petition, the clerk of the district court shall issue, along with the summons, a temporary domestic order (TDO) prepared by the petitioner in the form as appended to these local rules. (LR9-Form A) The TDO shall be served upon the respondent or his attorney, along with summons and petition. Counsel for petitioner shall provide a copy of the TDO to the petitioner at the time the petition is signed; receipt of the TDO by petitioner shall be acknowledged in the verification of the petition.

(2) The TDO shall be in effect from the time the petition and the TDO are served upon the respondent, or respondent's counsel, unless the parties agree in writing otherwise.

#### **B. Ex Parte application for temporary domestic order.**

(1) The party seeking an ex parte order must be present in court and present his/her affidavit, containing specific facts, including dates and incidents, sufficient to show the circumstances required for the issuance of the order. The provisions of Rule 66 [Rule 1-066], Rules of Civil Procedure [for the District Courts], shall be strictly applied.

(2) A copy of such an order and all supporting documents must be served upon the other party and his/her attorney as soon as practicable. A party against whom such an order is issued may obtain a hearing within two (2) days of service, if she/he disagrees with the terms of the order. The court will contact counsel for the party who obtained the

order and advise of the date and time of the court appearance. Both parties must appear at that time.

(3) No ex parte order to vacate the marital residence will be issued against, a party, unless:

(a) there are minor children and they or the party seeking the order, are in immediate physical danger from the other party; or

(b) there are minor children and the party seeking the order is so situated that moving would be a material hardship.

(4) No ex parte custody and visitation order will be issued unless a child is in immediate physical danger, is in danger of being concealed or is in danger of being removed by another for the purpose of interfering with the court's jurisdiction.

### ANNOTATIONS

**Bracketed material.** - The bracketed material in Paragraph B(1) was inserted by the compiler and is not part of the rule as adopted by the court.

### **LR9-703. Court mediation program for child-related disputes.**

**A. Mediation program established.** Pursuant to Section 40-12-1 NMSA 1978 *et seq.*, a domestic relations mediation program is established in the Ninth Judicial District Court. The program shall 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 mediators appointed by the Ninth Judicial District Court.

**B. Referral.** In a domestic relations case involving a dispute over any child-related issue except child support, if the parties stipulate, or if the court for good cause shown finds it appropriate, the court may refer the parties for confidential mediation.

**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 or respondent may present to the assigned judge a proposed order referring the parties to mediation.

**D. Fees.** In order to implement the ninth judicial district mediation program, the following fees shall be charged in each domestic relations case:

(1) in addition to fees collected pursuant to Section 34-6-40 NMSA 1978 for the docketing of civil cases, the district court clerk shall collect a surcharge of thirty dollars (\$30.00) on all new and reopened domestic relations cases;

(2) upon submission of an order for mediation, the parents shall pay the cost of the domestic relations mediation program pursuant to a sliding fee scale approved by the Supreme Court. See Appendix B to these rules.

**E. Compensation.** Mediators shall be paid fifty dollars (\$50.00) per hour plus applicable gross receipts tax for each hour of mediation services not exceeding six hours of mediation services. The court may order additional mediation at the rate of fifty dollars (\$50.00) per hour not exceeding five additional hours.

**F. Mediation fund.** The domestic relations surcharge and mediation fees imposed pursuant to the Domestic Relations Mediation Act shall be paid to the district court to be credited to the domestic relations mediation fund. On written order of the chief judge of the district, money deposited in the domestic relations mediation fund may be used to offset the cost of the domestic relations mediation program.

[Adopted, effective February 1, 1994.]

## **ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated December 8, 1993, this rule is effective for cases filed in the Ninth Judicial District Court on and after February 1, 1994.

**LR9-704 to LR9-706. Reserved.**

## **VIII.**

### **RULES RELATING TO MAGISTRATE AND MUNICIPAL COURT APPEALS**

**LR9-707. Appearance in magistrate and municipal court appeals.**

An attorney representing a defendant in magistrate court appeals or municipal court appeals must file his entry of appearance with the clerk of the district court.

**LR9-708. Dismissal of appeals.**

Any criminal appeal from magistrate court or any appeal from municipal court which is not finally heard and determined within six (6) months from the date of docketing the same shall be subject to dismissal absent a showing of cause for further delay.

**LR9-709 to LR9-802. Reserved.**

## **IX.**

## **CONCLUSION**

### **LR9-803. Disciplinary action.**

Any infraction of these rules shall, in addition to other appropriate remedies, subject the attorney or non-complying party to such disciplinary action as the judges of the Ninth Judicial District shall deem appropriate.

### **LR9-804. Severability.**

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

### **LR9-805. Supreme court rules control.**

If any of the above rules conflict in letter or application directly with the rules of criminal or civil procedure adopted by the Supreme Court of New Mexico, the latter shall control.

Adopted this 16th day of February, 1987.

/s/ STEPHEN K. QUINN

DISTRICT JUDGE

DIVISION I

/s/ FRED T. HENSLEY

CHIEF JUDGE

DIVISION II

/s/ DAVID W. BONEM

DISTRICT JUDGE

DIVISION III

REVISED - May 27th, 1987

REVISED - July 20th, 1988

REVISED - November 14, 1988

REVISED - September 5, 1989

REVISED - July 29, 1991

**APPENDIX A**

FORM A

TEMPORARY DOMESTIC ORDER

THIS MATTER coming before the Court upon the filing of a petition for dissolution of marriage pursuant to 40-4-1 through 40-4-20 NMSA 1978, or upon the filing of a petition for legal separation pursuant to 40-4-3 NMSA 1978, and the Court being well advised, now finds that it is in the best interests of the parties and any children of the parties to issue this order automatically upon the filing of the petition.

IT IS THEREFORE ORDERED:

1. That neither party shall threaten, intimidate, harrass, molest, injure, or mentally or physically abuse the other party or any children of the parties.

2. That neither party shall remove, cause to remove, or allow the removal of any minor children of the marriage from the State of New Mexico without the written consent of the other party.

3. That the non-custodial parent shall have reasonable visitation including, but not limited to, two weekends per month.

4. That the parties shall keep each other informed at all times of the whereabouts of the child(ren), a telephone number where the child(ren) may be reached, and of any factors which bear upon the minor child's or children's physical and mental well being.

5. That the non-custodial parent shall have telephone access with the child(ren) if calls are made at a reasonable time and in a reasonable manner.

6. That neither party shall interfere with the parent-child relationship of the other party and any child.

7. That neither party shall become intoxicated on alcohol or any controlled substance in the presence of the children.

8. That each party who has medical and dental insurance coverage in effect on the spouse and/or children should keep that coverage in effect.

9. That each party shall be responsible for one-half of the medical and dental expenses for any minor child not covered by insurance.

10. That each party shall maintain in full force and effect any existing insurance on his/her life, and shall not change the beneficiary or beneficiaries of said policy or policies.

11. That neither party shall sell, remove, assign, transfer, dispose of, conceal, encumber, or damage any property, real or personal, community or separate, except as necessary in the ordinary course of business or for the necessities of life, in which cases an accounting in writing shall be made to the other party and to this Court. And, any such transfer which shall have taken place during the thirty (30) days next proceeding the entry of this order and which was not in the ordinary course of business or for necessities of life is hereby set aside and the parties are ordered to return such property to the status quo.

12. That each party shall deliver to the other party copies of all bills, statements and due notices of all creditor obligations within 48 hours of receipt thereof.

13. Neither party shall incur unreasonable or unnecessary debts hereafter. Any such debt or any debt which did not contribute to the benefit of both spouses or their minor children incurred after the separation of the parties, except for the expenses and fees of this action, shall presumptively be the separate debt of the party incurring such debt.

14. Neither party may deny the other party the residence of the parties, whether it be community or separate property, without a Court order. If necessary the parties should attempt to resolve the question of who shall vacate the residence in a fair manner. If the parties are unable to resolve this issue,

they may apply to the Court for relief.

15. The person moving from the family residence may return to pick up personal belongings and effects at any reasonable time, upon giving prior notice, and shall provide an accounting of items taken.

16. The party who vacates the family residence shall notify the other party (or the other party's attorney), in writing, within twenty-four (24) hours of such vacation, of an address where the vacating party can receive written communications.

17. This order is in effect as of the time and date it is served on the Respondent.

18. This order is binding upon the parties unless modified by agreement of the parties in a stipulated order approved by the Court or by order of the Court upon application of either party at any time during the pendency of these proceedings.

FAILURE BY ANY PARTY TO OBEY ANY  
PART OF THIS ORDER MAY BE PUNISHABLE  
AS CONTEMPT OF COURT.

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DISTRICT JUDGE

**ANNOTATIONS**

[DOUBLE CLICK TO VIEW APPENDIX B](#)



**Cross-references.** - For domestic relations mediation program, see 40-12-5 NMSA 1978.