

**RULES OF THE DISTRICT COURT OF  
THE FIFTH JUDICIAL DISTRICT -  
COUNTIES OF CHAVES, EDDY, LEA**

**Revised November 13, 1990**

**LR5-001.**

FIFTH JUDICIAL DISTRICT COURT

COUNTIES OF CHAVES, EDDY, LEA

Pursuant to the power granted to the Fifth Judicial District by the Supreme Court, together with SCRA 083 of the Rules of Civil Procedure and the Laws of New Mexico, I, Alvin F. Jones, Chief Judge of the Fifth Judicial District, hereby certify that the attached rules were adopted by the District Judges of the Fifth Judicial District and said rules were filed with the Clerk of the Supreme Court, and copies of said rules have been furnished to the Administrative Office of the Courts, the New Mexico State Library, and the Institute of Public Law and Services. These rules are effective November 13, 1990.

/s/ ALVIN F. JONES  
Chief Judge  
Fifth Judicial District Court

**LR5-002.**

FIFTH JUDICIAL DISTRICT COURT

COUNTIES OF CHAVES, EDDY, LEA

Pursuant to the power granted to the Fifth Judicial District by the Supreme Court, together with SCRA 083 of the Rules of Civil Procedure and the Laws of New Mexico, I, Alvin F. Jones, Chief Judge of the Fifth Judicial District, hereby certify that Rule 5-1(2)(A) [LR5-501 B(1)] and Rule 7-3 [LR5-703] were adopted by the District Judges of the Fifth Judicial District and said rules were filed with the Clerk of the Supreme Court and published in the New Mexico Bar Bulletin. Copies of said

rules have been furnished to the Administrative Office of the Courts, the New Mexico State Library, and the Institute of Public Law and Services. A diskette containing all the Rules of the District Court, Fifth Judicial District, was mailed to the Supreme Court of New Mexico. These rules are effective July 1, 1992.

/s/ ALVIN F. JONES  
Chief Judge  
Fifth Judicial District Court

### **LR5-101. Divisions of court.**

For the purpose of identifying the judicial positions, the district shall be divided into seven divisions. The judges of divisions I and V shall reside in Eddy county; the judges of divisions II and VI shall reside in Chaves county, and the judges of divisions III, IV and VII shall reside in Lea county. The principal office of division VII shall be located in Hobbs, New Mexico. The foregoing divisions are made pursuant to the provisions of Sections 34-6-17 and 34-6-18 NMSA 1978.

### **LR5-102. Additional office for district court.**

The convenience of the public can better be served by the establishment of an additional office for the judges of divisions III, IV and VII. An additional office for the court is accordingly established in Hobbs, New Mexico. This rule is promulgated pursuant to Section 34-6-17 NMSA 1978.

In the matter of presentation of default matters or submission of contested matters to the court away from the county seat, the moving party or the presenting party shall furnish the court file to the judge for action in such matters. Contested matters or default matters will not be heard without the presence of the court files on these matters.

### **LR5-103. Chief judge.**

Alvin F. Jones, Judge of Division II, shall be the chief (presiding) judge of the fifth judicial district until May 19, 1995. All administrative matters of the district shall be accomplished by the chief judge through the district court administrator's office in Roswell, New Mexico.

### **LR5-104. Terms of court.**

Pursuant to the provisions of Section 34-6-2 NMSA 1978, the regular terms of the district court shall be held and commenced as follows:

CHAVES COUNTY, commencing on the second Monday of January, April, July and October;

EDDY COUNTY, commencing on the second Monday of February, May, August and November;

LEA COUNTY, commencing on second Monday of March, June, September and December.

### **LR5-105. Assignment of cases.**

Pursuant to Rule 1-088 of the Rules of Civil Procedure for the District Courts and Rule 5-105 of Rules of Criminal Procedure for the District Courts providing for the designation or assignment of judge by local rule at the time of the complaint, information or petition is filed, cases shall be assigned and judges designated as follows:

#### **Chaves county:**

Civil cases shall be randomly assigned to the judges of divisions II and VI.

Domestic relations shall be assigned to the judge of division VI.

Children's court cases shall be assigned to the judge of division II.

Criminal cases shall be assigned as follows:

Each month one-third of the criminal cases will be assigned to the judges of divisions III, IV, and VII, as follows:

Beginning July, 1990, division VII

Beginning August, 1990, division III

Beginning September, 1990, division IV

Monthly rotation shall continue until further order of the chief judge of the fifth judicial district court. All criminal cases assigned to the district judges of divisions III, IV, and VII will be set for trial within four months of the date of assignment. A specific week for trial will be designated by the assigned district judge. If the cases are not tried during the week set, the clerk of the district court will re-assign the cases to the district judges of divisions II and VI. The remaining two-thirds of the criminal cases shall be randomly assigned to the district judges of divisions II and VI.

#### **Eddy county:**

The clerk of the district court shall make a random assignment of all civil, domestic relations and children's court cases to the judges of divisions I and V.

Criminal cases shall be randomly assigned to the judges of divisions I and V.

**Lea county:**

Civil cases shall be randomly assigned to the judges of divisions III, IV, and VII.

Domestic relations cases, except for domestic violence cases, shall be randomly assigned to the judges of divisions III, IV, and VII. All domestic violence cases shall be assigned to the judge of division VII.

Criminal cases shall be randomly assigned to the judges of divisions III, IV and VII.

Children's court cases: All abuse and neglect cases shall be assigned to the judge of division III. All delinquent and children in need of supervision cases shall be assigned to the judge of division IV.

**LR5-106. Disqualification; designation of judges.**

Pursuant to Rule 1-088 of the Rules of Civil Procedure for the District Courts and Rule 5-105 of the Rules of Criminal Procedure for the District Courts, in the event of recusal or excusal of an assigned district judge, counsel for all parties have ten (10) days in which to agree upon a district judge to hear the case, and if that district judge so agrees, the clerk of the district court shall assign the case to such district judge.

If there is no agreement filed within ten (10) days, the clerk of the district court shall assign the case to another resident district judge in the county in which the case is pending.

If all district judges in the county have been excused or recused, and counsel for all parties fail to agree upon another district judge to hear the case, the clerk of the district court in the county in which the case is pending shall randomly assign a district judge of another division in the district to hear the case.

In the event all judges in the district are excused or recused, and counsel fail to agree on another district judge within ten (10) days, the clerk of the district court shall notify the Supreme Court as provided by SCRA 1986 Rules 1-088 and 5-105.

Children's court cases: In the event a district judge is excused or recused in a children's court case, the clerk of the district court shall immediately assign the case to another resident district judge. In the event all resident district judges are recused or excused, the clerk of the district court in the county in which the case is pending shall immediately assign, at random, the case to the district judge of another division.

In the event all judges in the district are excused or recused, and counsel fail to agree on another district judge, the clerk of the district court shall notify the Supreme Court for designation of a district judge.

**LR5-107. Default and motion days.**

A. Default and motion dates in each county must be obtained by the attorney from the clerk of district court.

B. The clerk of the district court or judge's secretary is directed to provide the court with a calendar showing all defaults, motions, legal defenses and arraignments which are set for hearing, pursuant to this rule. The attorneys shall provide the clerk with notice of defaults to be heard prior to noon on the last court day preceding the scheduled default day.

C. As to motions and orders set on notice for Hobbs, copies of the notice are to be mailed to the judge who is to hear the case at the time of service of such notice, and the district court clerk will be notified of all matters to be considered at the Hobbs hearings in order that the proper court files may be produced.

### **LR5-108. Local rule exemption to Rule 1-016B of the Rules of Civil Procedure for the District Courts; pretrial scheduling.**

All civil non-jury and all criminal cases shall be exempt from any pretrial scheduling unless one of the attorneys involved files a request for scheduling of the case. Such request shall be filed within sixty (60) days of the filing of the case and shall contain the attorneys certification that said case is of such a complicated or complex nature that scheduling is necessary.

### **LR5-109. Filing hours.**

Hours of the court are from 8 a.m. to 12 noon and 1 p.m. to 5 p.m. Pleadings or other papers should be offered for filing with the district court clerk no later than one-half hour before closing.

### **LR5-110. Docket call.**

All civil cases at issue shall be set for trial on the merits as determined by the judges of each county.

### **LR5-111. Action by more than one judge.**

A district judge shall not act in any civil case within the district in which any other judge of the district has acted in a discretionary manner without prior consent of such judge and consent of all parties to the action. Such consents must also be obtained in cases where a judge who has acted in a discretionary manner in the case becomes incapacitated, ill or absent for an extended period of time.

If the district judge is so disabled or incapacitated that consent cannot be given, the chief judge shall reassign the case to another district judge.

### **LR5-112. Dress requirements.**

A. Female attorneys and employees of the district court shall wear dresses, dress suits, dress slacks or dress slack suits while attending or appearing before the court. "Levis", "blue jeans" pants or other similar pants shall not be worn.

B. Male attorneys and employees of the district court shall wear sport or suit coats, slacks and ties while attending or appearing before the court, unless some physical reason prevents the wearing of such articles.

C. The sheriff and sheriff's officers attending court during regular sessions of court shall wear the uniform prescribed by the sheriff denoting such sheriff or deputies to be on official duty at the time.

### **LR5-113. Law library.**

The judges in each county in the fifth judicial district will promulgate the rules pertaining to use of the library in their respective counties. Attorneys should check with the clerk of the district court in each county for information on the local rules.

### **LR5-114. Practice of law by employees prohibited.**

The clerk of the district court, or any of the deputies, shall not practice law, and they are prohibited from commenting on or expressing an opinion on the sufficiency, legality or timeliness of any pleading offered for filing.

### **LR5-115. Local rules advisory committee.**

The chief judge may appoint a local rules advisory committee composed of a workable number of members of the New Mexico State Bar who practice law in Chaves, Lea and Eddy counties. Appointments shall be made upon advice of the president of each county bar association.

The duties of the local rules advisory committee will include:

A. Review of local rules to determine that they are in compliance with New Mexico Rules of Civil and Criminal Procedure;

B. Review of proposed local rules;

C. Initiation of local rules as needed.

The committee will meet bi-monthly.

A representative or representatives of the committee will attend the district judge's meeting when necessary to present the committee's view of existing or proposed rules.

### **LR5-201. Requested findings of fact.**

When requested by the judge, findings of fact and conclusions of law shall be submitted within twenty (20) days after such submission is ordered by the court unless a longer period is granted. The original of the requested findings of fact and conclusions of law shall be filed with the clerk of the court, and a copy thereof shall be delivered to the judge or the judge's secretary.

### **LR5-202. Orders, decrees and judgments.**

A. **Filing.** Orders and judgments shall be separately filed and shall not be included as part of any pleading.

B. **Date of execution.** Orders and judgments shall not be dated nor shall they show the place of execution. The date of filing and of entry shall be the same in all cases and shall be shown by the clerk's stamp and record unless filed in open court.

C. **Submission to the court.** Orders, decrees and judgments shall be submitted to the trial judge, or the trial secretary or the clerk for delivery. Orders, decrees and judgments should be submitted not later than fifteen (15) days following the announcement of the court's decision unless otherwise ordered. The prevailing party shall be responsible for such filing. Orders and judgments will not be signed by the judge unless they have been initialed by attorneys for all parties to the cause. Should the attorney for any party fail or refuse to so initial a proposed order or judgment within five (5) working days, the attorney submitting the proposed order shall forthwith give notice for presentation of judgment.

D. **Filing with clerk.** Every order, judgment or other instrument signed by the court shall be immediately delivered to the clerk for filing. No order or judgment will be taken from the courthouse after it has been signed.

### **LR5-203. Judgment based on written instrument.**

Judgment based on written instrument shall be accompanied by said instrument which shall be filed as an exhibit in the case at the time the judgment is entered. Said instrument may be returned to the filing party only as is done in case of other exhibits. The substitution by a copy of the said instrument shall be appropriately marked as having been merged into the judgment and shall show the docket number of the action.

### **LR5-204. Notice of entry of judgment to opposing parties.**

In all contested civil cases, attorneys for parties who wish notice of entry of judgment, shall send the following notice of entry of judgment form and a stamped, self-addressed envelope to the clerk. The clerk shall enter the date of entry of judgment and mail the notice to all attorneys or parties who have complied with this rule.

IN THE FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

NO.:

\_\_\_\_\_  
DEFENDANT

NOTICE OF ENTRY OF JUDGMENT

TO: \_\_\_\_\_

Judgment was entered and filed in the above cause on the  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
CLERK OF THE DISTRICT COURT

BY: \_\_\_\_\_

Deputy

Mailed \_\_\_\_\_ Clerk.

**LR5-205. Certificates as to the state of the record.**

Certificates as to the state of the record (default certificates) are not automatically entered or prepared by the clerk. Attorneys should submit a prepared certificate as to the state of the record to the clerk for signature and filing. A duplicate copy must be furnished if the attorney wishes an endorsed copy.

**LR5-206. Settlement conference.**

Pursuant to Rule 1-016 of the Rules of Civil Procedure for the District Courts, a settlement conference may be conducted by a judge of this district who is not assigned to the case, a retired judge, or a member of the bar who is acceptable to both parties. A settlement conference will be ordered only after agreement by counsel that such a conference may result in a settlement of all, or at least some, of the issues pending in the case. If the conference is assigned to a retired judge or lawyer, the parties will arrange directly with the retired judge or lawyer for the payment of the hourly fee and expenses.



Upon agreement by counsel that a settlement conference is appropriate, the judge assigned to the case may enter a settlement conference order. Upon entry of this order all proceedings will be stayed until the results of the conference are known.

The judge hearing such settlement conference is expected to promote a settlement, and will be an active participant in the conference. The judge may ask questions of counsel regarding testimony they expect to elicit and may state his/her opinion of the strength or weakness of any position taken by either or both parties.

A. The initial step following the entry of a settlement conference order will be submission by both parties to the judge hearing settlement conference of short statements of fact with the applicable law supporting those contentions from each side. This submission should be a statement of what the lawsuit is about and why each side believes they should win. The statement should clearly set out the issues to be determined by the jury, e.g. liability (including statement of facts) damages (medical expenses, etc.). The statements should contain frank and realistic appraisals of the strengths and weaknesses of both positions, and the settlement value of the lawsuit. This may be a statement of a range or other requested relief.

B. When the settlement conference is held each party must appear. If an insurance carrier is involved, the adjustor should be there as well. Each side must have settlement authority.

C. The first discussion in the settlement conference hearing will be a short statement by counsel of the strengths and weaknesses of their side of the lawsuit. All parties and counsel will be present at this stage.

Each side may address the strengths and weaknesses of the other side's case. These statements may include discussions of testimony which is expected from the witnesses on either side of the case.

D. Then the judge will excuse defense counsel and the defendant and confer with the plaintiff and plaintiff's counsel. The judge will discuss with the plaintiff, the costs of further litigation and give a frank appraisal of his or her opinion of the strengths and weaknesses of the plaintiff's case, including the judge's appraisal of the value of the lawsuit. The judge will excuse the plaintiff and counsel, and confer with the defendant and defense counsel. The same procedure will be followed.

E. Thereafter the judge will continue alternate meetings with the parties until such time as the judge is satisfied that no further progress toward settlement can be made or that the case has been settled.

F. Finally, with all parties present, the judge will address what the judge believes to be the strengths and weaknesses of each side of the case, and state his or her opinion of the lawsuit, and what a fair settlement would be. The parties will be allowed to confer with each other to see if an agreement can be reached.

### **LR5-301. Criminal settings.**

The judges and clerks of the district court in each county will set the criminal cases for trial.

### **LR5-302. Bail designee.**

The sheriffs of Chaves, Lea and Eddy counties and the clerks of the district courts of said counties are designated as persons authorized to approve and accept bail bonds from bondsmen approved by the court only, and to accept bail release orders after the bail and conditions of release have been set by the court.

The clerks of the district courts in Chaves, Lea and Eddy counties are designated as persons authorized to accept property bonds after approval by the judge setting bail and conditions of release.

### **LR5-303. Property bond.**

Where property is to be posted as bond, the following requirements apply:

A. Real property located in New Mexico having an unencumbered net value equal to the amount of the bond set may be posted by persons who are residents of the State of New Mexico.

B. In posting a property bond, the defendant and sureties must:

(1) execute a bail bond (Criminal Form 9-304);

(2) provide proof of ownership;

(3) provide an appraisal of the market value of the property secured from a qualified realtor;

(4) provide a title search showing the name(s) of the title holders of the subject property and the holders and amount of any encumbrances filed against said property;

(5) if such encumbrances exist and have been paid down from the original recorded amount, present a statement from the lenders as to the current amount owed.

C. Sureties posting property shall be responsible for the appearance of the defendant at all court proceedings. If the defendant fails to appear as required, the property posted is subject to forfeiture by the court.

D. A first mortgage, or a second mortgage if specifically approved by the court, in favor of the State of New Mexico, fifth judicial district court, executed by the owners of the

subject property and the recording fee therefore shall accompany the bond form. Upon acceptance by the court, the mortgage shall be recorded by the clerk.

### **LR5-304. Bail after grand jury indictment.**

Upon filing of a grand jury indictment with the district court on cases where bonds have previously been posted in magistrate court on the same offense, the bonds will not be accepted by the district court as bonds on the grand jury indictment until the bondsman or agent for the bonding company has filed written consent with the district court that said bonds may continue in effect on the grand jury indictment.

### **LR5-401. Written interrogatories.**

No more than one set with fifty (50) interrogatories may be served without leave of the court. Each sub-part shall be considered an interrogatory. Interrogatories seeking disclosure of witness and exhibits shall be answered or supplemented no less than thirty (30) days before trial.

All written interrogatories submitted shall be singly numbered with adequate space after the interrogatory for the answer. Lack of adequate space may restrict an answer and thwart the purpose of the interrogatory.

Interrogatories and answers thereto shall be served upon other counsel or parties, but shall not be routinely filed with the court. However, both counsel propounding interrogatories and counsel answering interrogatories shall file a certificate with the court indicating the date of their service.

### **LR5-402. Subpoenas; issuance in blank.**

The clerk shall not issue subpoenas totally in blank. The clerk may issue a subpoena in blank as to the name of the witness or the required documents only.

### **LR5-501. Domestic relations mediation.**

The fifth judicial district court shall provide a domestic relations mediation program in Chaves, Eddy and Lea counties to assist the court, parents and other interested parties in determining the best interest of children involved in domestic relations cases. (Sections 40-12-1 to 40-12-6 NMSA 1978.)

A. To effect the program:

A \$30.00 surcharge will be collected in Chaves, Eddy and Lea counties for all new and re-opened domestic relations cases.

B. Payments from mediation fund:

(1) **Mediation fees.** Mediators shall be paid \$50.00 per hour, not to exceed \$350.00 plus gross receipts tax. (Seven hours) The court may order additional mediation not to exceed five hours. The court may order additional mediation or counseling upon showing of good cause.

(2) **Other.** Money in the fund may be used to offset the cost of operating the domestic relations mediation program on written order of the chief judge.

## **LR5-502. Domestic relations; 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) At such time that a petitioner files an action for dissolution of marriage or proceedings under Section 40-4-3 NMSA 1978, the clerk of the district court shall issue a temporary domestic order (TDO), which shall be provided by the district court, complying with the requirements of the form attached hereto. (LR5-FORM A) Petitioner shall receive a copy of the TDO from their counsel at such time as the petition is filed. It is the responsibility of counsel, or petitioner, if pro se, to cause the order to be served on the respondent and to file an affidavit of service.

(2) The TDO shall take effect at such time as the petition and TDO are served upon the respondent or upon respondent's counsel, unless the parties had agreed otherwise and set such agreement in writing.

### **B. Ex parte application for special TDO.**

(1) If a party requires a more specialized order than the form provided, they may file an ex parte application with the court for a TDO. The party requesting such ex parte order must be present in court and deliver unto the court their affidavit containing specific facts, including dates and incidents, which support the circumstances required for the issuance of the order. The provisions of Rule 1-066 of the Rules of Civil Procedure shall be strictly adhered to.

(2) A copy of the order and supporting documents shall be served upon the opposite party and their attorney as soon as practicable. A party against whom such an order is issued may request a hearing within two (2) days of service. The court shall notify counsel for both parties of the date and time set for such hearing and both parties shall appear at that time.

(3) No ex parte order to vacate the marital residence shall be issued against a party except where:

(a) there is immediate danger as to physical harm from the other party; or

(b) there are minor children and moving from the residence would impose a material hardship on the party seeking the order.

(4) No ex parte custody and visitation order shall be issued unless a child is in immediate physical danger, is in danger of being concealed or is in danger of being removed from the court's jurisdiction.

### **LR5-503. Personal appearance; divorce.**

No divorce shall be granted without the personal appearance and testimony of the party asking relief except in cases wherein depositions or telephone testimony are authorized by the district judge or rules of the court.

### **LR5-504. Provisions for child(ren) in uncontested dissolution of marriage (divorce) or legal separation cases.**

No decree of dissolution of marriage or legal separation shall be granted in any proceeding in which a respondent enters an appearance when minor child(ren) may be affected by the decree unless the parents submit in writing a child support enforcement table A or B before dissolution of marriage or legal separation hearing and:

A. the parents agree in writing to a child custody/visitation plan; or

B. the parents agree in writing to a parenting plan if the parents have chosen to share joint custody of the child(ren).

## **ANNOTATIONS**

**Cross-references.** - For the tables referred to in this rule, see Section 40-4-11.1 NMSA 1978.

### **LR5-505. Dismissal of domestic relation cases for lack of prosecution.**

All domestic relations cases in which no action appears to have been taken to bring the case to a conclusion within one hundred twenty (120) days may be dismissed by the court.

The clerk shall mail a copy of the order of dismissal to all counsel and a certificate of mailing shall be placed in the file.

Cases dismissed without prejudice by the court may be reinstated upon the docket of the court upon application being made within thirty (30) days of the order of dismissal.

### **LR5-506. Re-opened domestic cases.**

A case is re-opened upon the filing of an order to show cause or a motion to modify a final decree or judgment. Counsel must subsequently file a vacating order if the order to show cause was not heard, or file a final order on the court's determination after a hearing on modification of a final decree or judgment.

### **LR5-507. Adoption; new birth certificate.**

Within five (5) days after the filing of a judgment of adoption, counsel for the petitioners shall have prepared a birth certificate in the new name of the adopted individual on form VSB909 of the vital statistics bureau of the health services division, and upon certification by the clerk, shall forward it to HSD Adoptions, P.O. Box 2348, Santa Fe, New Mexico 87503.

### **LR5-508. Services of motions and orders to show cause in re-opened cases.**

Ninety (90) days following entry of judgment in civil cases, motions and orders to show cause shall be served upon the respondent and not on the attorney who represented the party in the original proceedings. Such attorney shall not automatically be deemed to represent the party in subsequent actions.

### **LR5-601. Jury fees, filing fees and other fees.**

- A. No jury deposits, filing fees or other fees collected by the clerk will be refunded.
- B. In civil cases, the daily jury fee required by Rule 1-038 of New Mexico Rules of Civil Procedure for the District Courts shall be paid to the clerk prior to the commencement of trial for each day the case proceeds to trial.
- C. Fees are to be paid to the clerk by attorney firm checks, cash, money order or certified check. No personal checks are to be accepted.

### **LR5-602. Witness fees, expert witness, out-of-state witness, other witness, interpreter, guardian ad litem and testing fees.**

- A. **Supreme Court/administrative office of the court guidelines.** Supreme Court/administrative office of the court guidelines control the payment of witness, attorney, interpreter, guardian-ad-litem and testing fees. Contact the court clerk or financial specialist for details.
- B. **Out-of-state witness fees - criminal cases.** No out-of-state witness fees will be paid unless an order authorizing such payment from the funds of the administrative office of the court is secured and filed in the case prior to the incurrence of such expense.

C. **Expert witness fees.** Expert witnesses called by court appointed attorneys and guardians-ad-litem shall be paid from the district court budget. No expert witness fees will be paid unless an order authorizing such payment from the funds of the district court is secured and filed in the case prior to the incurrence of such expense.

### **LR5-603. District court clerk trust account; court registry.**

A. Except as provided by statute or court rule, the clerk shall not make any disbursement or accept any actual tender of property or money unless pursuant to court order.

B. The clerk shall not invest any monies in interest-bearing accounts except where required by statute or Supreme Court rule.

C. The clerk shall not accept payment of judgments, monies in garnishment or restitution in criminal cases unless specifically ordered by the court to do so.

### **LR5-701. Motions; settings.**

Except in those matters governed by Rule 1-066, the court clerk will not accept a motion for filing in civil, children's and criminal cases unless accompanied by notice of hearing.

Attorneys will call the clerk's office or assigned judge's secretary for a date of hearing and will prepare a notice of hearing setting forth the date and place of hearing. The original notice of hearing shall be filed in the clerk's office at the time the motion is filed.

The clerk or judge's secretary will place the motion on the court's calendar for hearing upon filing of the notice of hearing.

The movant attorney shall serve notice of hearing on those entitled to notice.

At least five (5) working days notice shall be given to opposing parties.

### **LR5-702. Motion for default in multi-party cases.**

A motion for default must specify the party or parties to whom the default motion applies in cases where multiple parties are involved.

### **LR5-703. Motions to vacate and continue trial settings.**

All motions to vacate and continue trial settings for civil cases set on the merits shall state the reason and must be signed by the party litigant as well as the attorney. No motion to vacate and continue a trial setting will be considered or granted in the absence of good cause and in the absence of the signature of the party litigant.

## **LR5-801. Form of pleading and other papers.**

Pleadings and other papers shall be in typewritten or printed form on good quality white paper, size 8 1/2 x 11 inches, and shall have a left margin of at least 1 1/2 inches and the contents thereof, except for quotations, shall be double spaced. A space for the clerk's recording stamp shall be left in the upper right-hand corner of the first page of each pleading. This space shall be at least 2 1/2 by 2 1/2 inches. The caption or hearing of each pleading filed must briefly describe the type of suit or pleading being filed, i.e., "petition to recover damages for wrongful death", "order denying summary judgment", etc.

All pleadings shall contain the name, address and telephone number of the attorney filing the pleading and the name of the client represented. The attorney's name shall be typed below the signature line.

Orders and judgments presented for the signature of a judge must have the judge's name typed below the signature line.

The clerk may refuse to accept for filing any pleading which does not conform to this rule.

## **LR5-802. Pro se pleadings.**

Except in cases involving magistrate and municipal appeals, any party upon first filing a pleading not signed by an attorney shall submit an affidavit concerning the preparation of the pleadings on a form, similar to the following form, approved by the district court. (LR5-Form B) Such form will be furnished upon request.

## **LR5-803. Mailing and endorsement of pleadings.**

A. **Mailing of pleadings.** Copies of papers or pleadings will not be returned to attorneys by mail unless accompanied by a self-addressed envelope with sufficient postage to carry them to their destination.

B. **Endorsed copies of pleadings.** Only one (1) endorsed copy of each pleading will be made by the clerk. A duplicate copy must be presented to the clerk for endorsement.

## **LR5-804. Pleadings; corporations.**

The clerk of the court will not accept the filing of pleadings by corporations unless such organizations are represented by counsel.

Exceptions:



A. An exception to this rule shall be made when a corporation appeals a judgment of the magistrate court.

B. An exception to this rule shall be made when a corporation files a disclaimer when suit has been brought against it in district court.

### **LR5-805. Pleadings filed in open court.**

Pleadings filed in open court shall be delivered to the clerk the same day for filing.

### **LR5-901. Appearance of counsel.**

Whenever counsel undertakes to participate in a case in behalf of a party thereto, whether civil or criminal, he shall file a written entry of appearance in the cause, except that the filing of any signed pleading in the cause will be considered as compliance with this rule.

### **LR5-902. Withdrawal of counsel.**

Any application for withdrawal of counsel pursuant to Rule 1-089 of Rules of Civil Procedure for the District Courts shall state the last known mailing address of such attorney's client in the case, unless another attorney entered their appearance for such party simultaneously with the application for withdrawal.

### **LR5-903. Dismissals for lack of prosecution.**

All cases, other than domestic relations cases, may be dismissed by the court without prejudice if an examination of the file, case status report or docket sheet reveals that:

- A. The case has been tried and no judgment or order was entered within a reasonable time;
- B. Counsel has indicated that the case has been settled or should be dismissed and no order has been entered within a reasonable time;
- C. There remains no justiciable issue for consideration of the court; or
- D. Lack of prosecution for a six (6) month period in cases not subject to a pre-trial scheduling order entered pursuant to Rule 1-016.

#### **Notice:**

The clerk shall mail a copy of the order of dismissal to all counsel.

#### **Reinstatement:**

A. Cases dismissed without prejudice by the court may be reinstated upon application being made within thirty (30) days after service of the order of dismissal.

B. In reinstated cases, the court shall enter a pre-trial scheduling order pursuant to SCRA 1986, Rule 1-016.

#### **LR5-904. Uncontested matters; appearance and waiver.**

When an appearance and waiver reflecting the acceptance of service of a copy of the complaint is to be filed in an uncontested matter, such pleading shall be signed and dated at least one day after the filing of the complaint.

#### **LR5-1001. Transfer of tapes; civil and criminal cases.**

The audio tapes of the court reporter or monitor attending the trials shall be deposited with the clerk of the court, accompanied by tape logs and a receipt for tapes, not later than five (5) days after the trial date. The clerk shall check the receipt for tapes for completeness and return a signed copy to the court reporter or monitor. Such audio tape shall be in the custody of the clerk and subject to rules relating to records in the custody of the clerk.

#### **LR5-1002. Duplicating of tapes.**

A. Ten (10) working days notice must be given to the clerk by anyone requesting the reproduction of tapes filed in the clerk's office. In the case of an emergency, the ten day requirement shall be waived by court order only. In civil cases, no tapes will be reproduced without a court order.

B. The district attorney's office, public defender's office or other defense counsel must furnish sufficient blank tapes for the reproduction.

C. No more than two tapes (except for preliminary hearing tapes) will be reproduced without a court order showing good cause.

D. Non-indigent persons must pay \$4.00 per tape for the reproduction of tapes plus any certification fees.

E. A record will be made of the tapes duplicated and a receipt given by the receiving party. Tapes will be reproduced only one time per party.

F. Any subpoena duces tecum used to circumvent the time limits of this rule shall issue only upon order of a district judge for emergency reasons only.

G. This rule does not apply to the reproduction of tapes for the appellate courts.

### **LR5-1003. Audio recording (tapes) free process; civil cases.**

In all civil cases where the court allows free process, the record of the hearing shall be by audio recording (tape).

The clerk shall stamp the file "free process".

### **LR5-1004. Interpreters.**

Attorneys in civil cases must provide and pay for their own interpreters.

In criminal and children's court cases it shall be the duty of an attorney representing any party or who calls a witness who does not speak the English language to promptly and diligently inquire into and ascertain such matter and to advise the district court clerk's office and the judge before whom the case is pending of such fact and of the need of an interpreter for a specific language not less than five (5) working days prior to the time of hearing or trial before the court so that adequate arrangements can be made for the presence of a qualified interpreter.

Violation of this rule shall be to invite a sanction.

### **LR5-1005. Probate.**

It is the duty of the attorneys to file with the district court clerk of the county in which probate is commenced a notice of completion of probate in all probate proceedings, whether summary, informal or formal.

A probate file shall be closed by the court if no action has been taken in the proceeding for a period of eighteen (18) months.

### **LR5-1006. Grand jury records and proceedings.**

A. All grand jury proceedings, including but not limited to target letters, subpoenas for witnesses and docket record of subpoenas issued or returned and filed, are secret and confidential.

A separate docket of target letters and grand jury subpoenas shall be maintained by the clerk to insure the secrecy of such subpoenas.

B. Final reports of grand juries after they have been accepted, received by the court and filed are public records; the drawing and selection of grand juries and indictments, after the defendant has been served with an arrest warrant incident to such indictment, are public records. No other grand jury records or proceedings shall be transcribed, made public, or released to any person except upon written order of the court where law or the interest of justice so require.

C. No narrative reports shall be received by the court from any grand jury except upon those items set out by statute and relating to the conditions of jails, penal institutions and persons incarcerated therein within the county where the grand jury is sitting. It is not a function of a grand jury, an arm of the judiciary, to criticize or regulate other branches or agencies of government or private persons or institutions. The judicial power is loaned to the grand jury so that it may determine probable cause in criminal cases and return indictments where it finds probable cause but for no other purpose not required by statute.

D. The shorthand notes or audio tapes, or both, of the court reporter or monitor attending any grand jury shall be deposited with the clerk of the court not later than five (5) days after such attendance upon any grand jury. Such shorthand notes and audio tapes shall be in the custody of the clerk and subject to rules relating to records in the custody of the clerk.

**LR5-Form A.**

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_,  
Petitioner

vs.

No.

DR- \_\_\_\_\_

\_\_\_\_\_,

**TEMPORARY DOMESTIC ORDER**

THIS MATTER coming before the court upon the filing of a petition for dissolution of marriage pursuant to Section 40-4-1 through Section 40-4-20 NMSA 1978, or upon the filing of a petition for legal separation pursuant to Section 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, harass, 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, except for children under the age of two (2) years.

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 child(ren).

8. That each party who has medical and dental insurance coverage in effect on the spouse and/or child(ren) 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 preceding 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 forty-eight (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 child(ren) 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 access to 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. In the event the parties are living in the same residence at the time of the 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.

16. If the parties do not determine which party will move from the residence, the court will determine which party will move at the date of any hearing on 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.

17. If there are minor children, the person moving from the family residence shall continue to have contact and communication with the children, personally and by telephone. If the parties cannot agree on a time-sharing arrangement during the pendency of this case, the court will establish a time-sharing arrangement at a hearing on a motion

for interim relief.

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

19. 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.

20. This order is in effect as of the time and date it is served on the respondent.

21. 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.

\_\_\_\_\_  
FIFTH JUDICIAL DISTRICT JUDGE

**LR5-Form B.**

IN THE DISTRICT COURT

COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
PLAINTIFF,

NO.

\_\_\_\_\_  
DEFENDANT.

**PRO SE AFFIDAVIT**

AFFIANT, being first duly sworn upon oath, deposes and states:

1. I am a party in this cause.

2. I am not represented by an attorney. The pleading which I am now filing was composed by \_\_\_\_\_.  
It was typed by \_\_\_\_\_.

3. I have not paid or given anything of value to anyone preparing or helping prepare the pleadings or given advice concerning this case except \_\_\_\_\_ (write NONE if applicable) to \_\_\_\_\_ (name of person).

Affiant: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
STATE OF NEW MEXICO )  
 )                    ss:  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_.