UNANNOTATED

Rules of Civil Procedure for the Magistrate Courts

ARTICLE 1
General Provisions

2-101. Scope and title.

A. **Scope.** These rules shall govern the civil procedure in all magistrate courts. These rules shall be subject to the provisions of Rule 23-114 NMRA, the rule governing free process for civil cases.

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

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

D. **Citation form.** These rules shall be cited by set and rule numbers, as in NMRA, Rule 2-___.

[As amended, effective January 1, 1987; amended by Supreme Court Order No. 07-8300-040, effective February 25, 2008.]

2-102. Conduct of court proceedings.

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

B. **Nonjudicial proceedings.** Proceedings designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be photographed in or broadcast from the courtroom with the permission and under the supervision of the court like all other court proceedings in accordance with Rule 23-107 NMRA.

C. **Closed circuit television recordings.** The Administrative Office of the Courts (AOC) may install closed circuit television systems in the magistrate courts. The recordings produced by the closed circuit television system do not constitute a record of

the proceedings, and the presence of closed circuit television recording equipment in the courtroom shall have no effect upon the status of the magistrate court as a non-record court.

[As amended by Supreme Court Order No. 08-8300-006, effective January 29, 2008; as amended by Supreme Court Order No. 18-8300-020, effective December 31, 2018.]

2-103. Rules and forms.

A. **Rules.** Each magistrate court or division thereof may from time to time make and amend rules governing its practice not inconsistent with law, these rules or regulations prescribed by the administrative office of the courts or the district court chief judge of the judicial district in which the magistrate court is located. Such rules may relate to office hours and procedures, to the performance of clerical duties by clerical assistants and to other procedures for effecting a just, speedy and inexpensive determination of causes pending before such court. Proposed rules or amendments shall be submitted to the district court chief judge of the judicial district in which the local rules would apply and shall not become effective until approved by the chief judge.

B. **Forms.**

(1) Forms that are generated by the magistrate court using the court's automated case management system shall be substantially in the form approved by the Supreme Court.

(2) Local forms may be developed, used, and distributed by individual magistrate courts or magistrate court divisions subject to the following requirements:

(a) Any local form shall be submitted to the district court chief judge of the judicial district in which the local form is intended for use and shall not become effective until approved by the chief judge;

(b) Any local form approved by a chief judge shall not be generated by the magistrate court using the court's automated case management system; and

(c) Any local form shall not be inconsistent with law, these rules, or regulations prescribed by the Supreme Court, the administrative office of the courts, or the district court chief judge of the judicial district in which the local form is intended for use.

(3) A party may file a pleading or paper that is substantially in the form approved by the Supreme Court.

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008; as amended by Supreme Court Order No. 19-8300-003, effective July 1, 2019.]

2-104. Time.

A. **Computing time.** This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less.***

(a) When the period is stated in days but the number of days is ten (10) days or less,

(i) exclude the day of the event that triggers the period;

(ii) exclude intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) This subparagraph shall not apply to any statutory notice that is required to be given prior to the filing of an action.

(3) ***Period stated in hours.*** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) ***Unavailability of the court for filing.*** If the court is closed or is unavailable for filing at any time that the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) ***"Last day" defined.*** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) ***"Next day" defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) ***"Legal holiday" defined.*** "Legal holiday" means the day that the following are observed by the judiciary:

(a) New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day (traditionally observed on the day after Thanksgiving), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

B. **Extending time.**

(1) ***In General.*** When an act may or must be done within a specified time, the court may, for cause shown, extend the time

(a) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) ***Exceptions.*** A court shall not extend the time for commencement of trial under Rule 2-305 NMRA or for taking an appeal under Rule 2-705 NMRA, except to the extent and under the conditions stated in those rules.

C. **Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, electronic transmission, or by deposit at a location designated for an attorney at a court facility under Rule 2-203(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. **Public posting of regular court hours.** The court shall publicly post the hours that it is regularly open.

[As amended, effective August 1, 2004; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Committee commentary. — In 2014, the Joint Committee on Rules of Procedure amended the time computation rules, including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and restyled the rules to more closely resemble the federal rules of procedure. *See* Fed. R. Civ. Pro. 6; Fed. R. Crim. Pro. 45.

The method for computing time periods of ten days or less set forth in Subparagraph (A)(2) of this rule does not apply to any statutory notice that must be given prior to the filing of an action. For example, several provisions of the Uniform Owner-Resident Relations Act require such notice. *See, e.g.*, NMSA 1978, § 47-8-33(D) (requiring the landlord to give the tenant three days notice prior to terminating a rental agreement for failure to pay rent).

Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable for filing due to weather, technological problems, or other circumstances. A person relying on Subparagraph (A)(4) to extend the time for filing a paper should be prepared to demonstrate or affirm that the court was closed or unavailable for filing at the time that the paper was due to be filed under Subparagraph (A)(1), (A)(2), or (A)(3).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

2-105. Assignment and designation of judges.

A. **Assignment.** In magistrate courts with two or more judges, cases shall be assigned randomly among the judges of the court under a selection system administered by the Supreme Court, unless the presiding judge orders otherwise for good cause shown. Once a judge is assigned to hear a case that judge shall have sole responsibility for the case and no other judge may take any action on the case except

(1) in cases where the judge has been reassigned because the assigned judge has been recused, is excused, is sick, or is otherwise unavailable and another judge has been assigned; or

(2) with the approval of the assigned judge and all of the parties.

B. **Reassignment.**

(1) ***Courts with two or more judges.*** In magistrate courts with two or more judges, upon receipt of a notice of excusal or upon recusal, the magistrate court shall give written notice to the parties to the action.

(a) *Recusal.* Upon recusal, the selection system administered by the Supreme Court shall randomly assign another magistrate judge first, to another judge in the originating court, or, if all of those judges have been excused or have recused, to another judge in the same magistrate district to preside over the case unless for good cause shown the presiding magistrate shall make a specific assignment. In situations where recusal would be required for multiple judges in a magistrate district, recusing magistrate judges may enter a joint recusal prior to formal assignment by the selection system in order to expedite the recusal process.

(b) *Excusal; reassignment*. Upon the filing of a notice of excusal, the selection system administered by the Supreme Court shall randomly reassign the case first, to another judge in the originating court, or, if all of those judges have been excused or have recused, to another judge in the same magistrate district, unless the presiding judge determines that there is justifiable reason to assign a case to a particular judge and the reason is included in the notice of reassignment.

(c) *Designation by district court*. If all magistrate judges in the magistrate district have been excused or have recused themselves, one of the judges on the district court's order of designation shall be randomly assigned to conduct any further proceedings. The magistrate court shall send notice of the reassignment to the parties. The district court's order of designation shall be entered at the beginning of the calendar year.

(2) ***Other courts.*** In magistrate courts with only one magistrate judge, upon receipt of a notice of excusal or upon recusal, the magistrate court shall give written notice to the parties to the action.

(a) *Recusal*. Upon recusal, another magistrate judge of the magistrate district shall be randomly assigned to preside over the case by the selection system administered by the Supreme Court.

(b) *Excusal*. Upon the filing of the notice of excusal, another magistrate judge of the magistrate district shall be randomly assigned to preside over the case by the selection system administered by the Supreme Court.

(c) *Designation by district court*. If all the magistrate judges in the magistrate district have recused themselves or been excused, one of the judges on the district court's order of designation shall be randomly assigned to conduct any further proceedings. The magistrate court shall send notice of the reassignment to the parties. The district court's order of designation shall be entered at the beginning of the calendar year.

C. **Assignment out-of-district.** If a judge or an employee of the magistrate district in which a civil proceeding is pending is a party to that proceeding, no judge of the magistrate district may hear the matter and one of the judges on the district court's order of designation shall be randomly assigned to conduct any further proceedings. The magistrate court shall send notice of the reassignment to the parties.

D. **Assignment of direct criminal contempt cases.** Cases of direct criminal contempt shall be assigned to the judge before whom the contempt occurred.

E. **Reassignment to multiple cases.** The district court judge may designate a magistrate judge from another magistrate district to sit in actions arising in a particular magistrate district for a specific period of time.

F. **Subsequent proceedings.** All proceedings shall be conducted in the original magistrate court, except that with the consent of all parties and the assigned judge, proceedings may be held in another magistrate court in the same judicial district in which the original magistrate court is located. The clerk of the original magistrate court shall continue to be responsible for the court file and shall perform such further duties as may be required. Within five (5) business days after assignment or designation of a new judge, the clerk shall make a copy of the court file for the designated judge and forward it to the judge. Within ten (10) business days of adjudication of the case, the original documents of the adjudication shall be forwarded to the clerk of the original magistrate court for filing.

G. **Unavailability of judge.** At any time during the pendency of the proceedings if the assigned judge is unavailable, the assigned judge may designate another judge of the magistrate district to hear any matter that is not dispositive of the case or the parties may agree on another judge to hear any matter, including the merits of the case. The agreement is subject to the approval of the assigned judge and the judge agreed upon by the parties. If another judge is agreed upon to hear the merits of the case, the case shall be reassigned to that judge.

[As amended, effective May 1, 1986; October 1, 1987; September 1, 1989; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 10-8300-016, effective May 14, 2010; by Supreme Court Order No. 13-8300-004, effective for all cases pending or filed on or after May 5, 2013; as amended by Supreme Court Order No. 15-8300-006, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 17-8300-026, effective for all cases pending or filed on or after December 31, 2017.]

2-106. Excusal; recusal; disability.

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

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

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

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

(a) the filing of the complaint; or

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

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

(a) the filing of the answer under Rule 2-302 NMRA by that party; or

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

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

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

E. **Misuse of excusal procedure.** Excusals are not to be exercised to hinder, delay, or obstruct the administration of justice. If it appears that an attorney or group of attorneys may be using excusals for improper purposes or with such frequency as to impede the administration of justice, the Chief Judge of the district shall send a written notice to the Chief Justice of the Supreme Court and shall send a copy of the written notice to the attorney or group of attorneys believed to be improperly using excusals. The Chief Justice may take appropriate action to address any misuse, including issuance of an order providing that the attorney or attorneys or any party they represent

may not file excusals for a specified period of time or until further order of the Chief Justice.

F. **Recusal; procedure.** No magistrate shall sit in any action in which the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action. Upon recusal, another judge shall be assigned or designated to conduct any further proceedings in the action in the manner provided by Rule 2-105 NMRA.

G. **Failure to recuse.** If a party believes that the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set forth the grounds alleged. Upon receipt of the notice, the judge may file a certificate of recusal in the action or enter an order finding that there are not reasonable grounds for recusal. If within ten (10) days after the filing of notice of facts requiring recusal, the judge fails to file a certificate of recusal in the action, any party, may certify that fact by letter to the district court of the county in which the action is pending with a copy of the notice of recusal. No filing fee shall be required for the filing of a letter certifying grounds for recusal described in Paragraph F of this rule. The party's certification to the district court shall be filed in the district court not less than five (5) days after the expiration of time for the magistrate court judge to file a certificate of recusal or not less than five (5) days after the filing of an order in the magistrate court finding the grounds alleged in the notice of recusal do not constitute reasonable grounds for recusal, whichever date is earlier. A copy of the letter shall also be filed with the magistrate court. The district court shall make an investigation as the court deems warranted and enter an order in the action, either prohibiting the magistrate court judge from proceeding further or finding that there are insufficient grounds to reasonably question the magistrate court judge's impartiality under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct.

H. **Stay.** If a letter is filed with the district court and magistrate court certifying the issue of recusal to the district court under Paragraph G of this rule, the magistrate court judge may enter a stay of the proceedings pending action by the district court. If the magistrate court judge fails to stay the proceedings, the party filing the letter in the district court may petition the district court for a stay of magistrate court proceedings. The district court may grant a stay of the proceedings for not more than fifteen (15) days after the filing of a letter certifying a recusal issue to the district court. Unless a stay is granted, the magistrate court judge shall proceed with the adjudication of the merits of the proceedings.

I. **Inability of a judge to proceed.** If a trial or hearing has been commenced and the judge is unable to proceed, any other judge of the district may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. The successor judge may recall any witness. If no other judge is available in the district, either party may certify that fact by

letter to the district court of the county in which the action is pending. The district court may make an investigation as the court deems warranted. If the court finds that the magistrate is in fact disabled or unavailable, the court shall designate another judge to preside over the case.

[As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; July 1, 1990; October 1, 1992; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 20-8300-020, effective for all cases pending or filed on or after December 31, 2020.]

2-107. Pro se and attorney appearance.

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

(1) if the party is an individual party, in person;

(2) if the property is community property, one spouse may appear for both spouses.

B. **Other authorized non-attorney appearances.** A party to any civil action may appear, prosecute, and defend any proceeding

(1) on a writ of garnishment or attachment

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

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

(2) in an action brought under the provisions of the Uniform Owner-Resident Relations Act, Sections 47-8-1 to -52 NMSA 1978, or the Mobile Home Park Act, Sections 48-10-1 to -23 NMSA 1978, if the appearance is by

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

(b) a “landlord,” as defined in the Mobile Home Park Act; or

(c) the person authorized to manage the premises;

(3) if the party is a corporation or limited liability company, whose voting shares or memberships are held by a single shareholder or member or closely knit group of shareholders or members, all of whom are natural persons active in the

conduct of the business, and the appearance is by one such shareholder or member who has been authorized to appear on behalf of the corporation or limited liability company; or

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

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

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

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

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

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

C. **Attorney appearance.** A party may appear, prosecute, defend, and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address, and telephone number. Counsel not admitted to practice law in New Mexico, but who are licensed to practice law and in good standing in another state or territory, shall comply with Rule 24-106 NMRA. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited under Rule 16-102(C) NMRA, the attorney shall:

(1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;

(2) note the limitation in the signature block of any paper the attorney files; and

(3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

D. **Collection agencies.** Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names, provided that no suit authorized by this section may be

instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law.

E. **Fees for non-attorneys prohibited.** Any person who appears, prosecutes, or defends a proceeding under Paragraph B of this rule shall not receive a fee for providing that service.

[As amended, effective July 1, 1987; July 1, 1988; July 1, 1990; October 1, 1992; October 1, 1996; November 1, 2000; March 21, 2005; as amended by Supreme Court Order No. 08-8300-014, effective June 20, 2008; as amended by Supreme Court Order No. 13-8300-040, effective December 31, 2013.]

Committee commentary. — A friend or family member may not represent a party, nor a parent represent a minor child, unless the friend, family member, or parent is a licensed attorney and enters an appearance in the case. This rule does not prevent a minor or incompetent person from suing or defending through a representative or guardian ad litem as provided in Rule 2-401(C) NMRA, but the representative or guardian ad litem acts as the litigant, not as an attorney.

Paragraph B of this rule allows certain non-attorneys to appear, prosecute, and defend a civil action in magistrate court under specific, limited circumstances. *See State v. Rivera*, 2012-NMSC-003, ¶ 1, 268 P.3d 40. Paragraph E was added to this rule in 2013 to clarify that non-attorneys are not permitted to collect a fee for rendering legal services, such as appearing in court or drafting legal documents, because doing so would constitute the unauthorized practice of law. *See State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, ¶ 26, 85 N.M. 521, 514 P.2d 40 (concluding that a collection agency was engaged in the unauthorized practice of law when it solicited claims for collection and charged a fee for legal services).

Paragraph E of this rule does not preclude a non-attorney from receiving a salary or wages for performing work within the ordinary scope of the non-attorney's employment, even if such duties include appearing in court under the provisions of Paragraph B. For example, a non-attorney manager of real estate may receive wages for the performance of managerial duties, which may include appearing in court under Subsection (B)(2) of this rule. But such a real estate manager is not permitted to collect an additional fee for appearing in court or providing legal services.

Corporations, limited liability corporations, and partnerships appearing under Paragraph B of this rule are required to submit an entry of appearance form approved by the Supreme Court, if available.

[Adopted by Supreme Court Order No.13-8300-040, effective December 31, 2013.]

2-108. Withdrawal or substitution of attorneys.

A. **Approval of court.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. 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. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court prior to entry of the court's order. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 2-107 NMRA need not obtain consent of the court before withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

B. **Withdrawal without consent.** If an attorney who has appeared without limitation ceases to act in a cause for a reason other than withdrawal or consent, upon motion of any party, the court may require the taking of such steps as may be advised to insure that the cause will proceed with promptness and dispatch.

C. **Representation after final judgment.** Attorneys of record shall continue to be subject to service for ninety (90) days after entry of final judgment. After expiration of the ninety (90) day period, unless an attorney enters an appearance, the party shall be deemed to have entered an appearance pro se. This rule does not preclude the earlier withdrawal of counsel as provided above.

D. **Service upon responding party.** In the event of further legal proceedings between the parties after the ninety (90) days have elapsed, the moving party shall effect service of process upon the responding party in the manner prescribed by Rule 2-202 NMRA.

[As amended, effective July 1, 1990; September 15, 2000; February 16, 2004; as amended by Supreme Court Order No. 08-8300-014, effective June 20, 2008.]

2-109. Withdrawn.

2-110. Suspended.

[As amended, effective January 1, 1996; as amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016; suspended by Supreme Court Order No. 21-8300-032, effective November 22, 2021, until further order of the court.]

2-111. Audio and audio-visual appearances of party.

A. **When permitted.** The court may permit parties or attorneys to appear through the use of a simultaneous audio or audio-visual communication or may on its own

motion use such communication for a civil proceeding when it will legitimately serve the interests of justice considering, among other issues, the economic needs of the parties and the probable length of the proceeding. When an appearance through the use of an audio or audio-visual communication is conducted, the court may require the party requesting to appear by audio or audio-visual communication to pay the expense of the communication. Prior to an audio or audio-visual appearance, the party or attorney shall file with the court a written request to appear by audio or audio-visual communication substantially in the form approved by the Supreme Court. The judge shall conduct any audio or audio-visual proceeding in a place open to the public.

B. **Conduct of audio-visual proceedings.** The following conditions must be met for any audio-visual proceeding conducted under Paragraph A of this rule:

(1) a party and the party's attorney, if any, shall have the ability of private, unrecorded communication;

(2) the judge, legal counsel, if any, and the party shall be able to hear, see, and communicate with each other through a two-way audio-visual communication between the court and any remote location; and

(3) the proceedings shall be conducted in a place open to the public, including a place where through the use of audio-visual equipment, members of the public may simultaneously see and hear the proceedings contemporaneously with the judge.

C. **Appearance.** Any appearance under this rule constitutes an appearance in open court.

[Approved, effective November 1, 2000; as amended by Supreme Court Order No. 13-8300-029, effective for all cases filed or pending on or after December 31, 2013.]

2-112. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) "court record" means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the court or as required by Paragraph C of this rule.

C. **Protection of personal identifier information.**

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court’s judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person’s name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

D. **Motion to seal court records required.** Except as provided in Paragraph C of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 2-307 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been

filed or is to be filed. Any party or member of the public may file a response to the motion to seal within fifteen (15) days after the motion is filed. The movant shall lodge the court record with the court pursuant to Paragraph E when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph E. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

E. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph D of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rule 2-203.1 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a file-stamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

F. **Requirements for order to seal court records.**

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

(a) the existence of an overriding interest that overcomes the right of public access to the court record;

(b) the overriding interest supports sealing the court record;

(c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;

(d) the proposed sealing is narrowly tailored; and

(e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

G. **Sealed court records as part of record on appeal.** Court records sealed under the provisions of this rule that are filed as part of an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal such records or modify a sealing order entered in the magistrate court shall be filed in the district court pursuant to Rule 1-079 NMRA if the case is pending on appeal.

H. **Motion to unseal court records.**

(1) A sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 2-307 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph F for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph F. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

I. **Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Adopted by Supreme Court Order No. 10-8300-005, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 10-8300-023, temporarily suspending Paragraph C for 90 days effective August 11, 2010; by Supreme Court Order No. 10-8300-037, extending the temporary suspension of Paragraph C for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 11-8300-007, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017.]

Committee commentary. — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., NMSA 1978, § 7-1-4.2(H) (providing for confidentiality of taxpayer information); NMSA 1978, § 14-6-1(A) (providing for confidentiality of patient health information); NMSA 1978, § 24-1-9.5 (limiting disclosure of test results for sexually transmitted diseases); NMSA 1978, § 29-10-4 (providing for confidentiality of certain arrest record information); NMSA 1978, § 29-12A-4 (limiting disclosure of local crime stoppers program information); NMSA 1978, § 29-16-8 (providing for confidentiality of DNA information); NMSA 1978, § 31-25-3 (providing for confidentiality of certain communications between victim and victim counselor); NMSA 1978, § 40-8-2 (providing for sealing of certain name change records); NMSA 1978, § 40-6A-312 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); NMSA 1978, § 40-10A-209 (providing for limitations on disclosure of certain information during

proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act); NMSA 1978, § 40-13-7.1 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); NMSA 1978, § 40-13-12 (providing for limits on internet disclosure of certain information in domestic violence cases); NMSA 1978, § 44-7A-18 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). If a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph D of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph F of this rule before deciding whether to seal any particular court record.

Paragraph C of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph C discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph C. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs D and E set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion,

the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled “conditionally under seal”. If necessary to prevent disclosure pending the court’s ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk’s docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court’s register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court’s docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph F. The order must state the facts supporting the court’s decision to seal the court record and must identify an overriding interest that overcomes the public’s right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there

must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph F also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph H of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 10-8300-005, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 11-8300-007, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011.]

2-113. Court interpreters.

A. **Scope and definitions.** This rule applies to all civil proceedings filed in the magistrate court. The following definitions apply to this rule:

(1) "case participant" means a party, witness, or other person required or permitted to participate in a proceeding governed by these rules;

(2) "interpretation" means the transmission of a spoken or signed message from one language to another;

(3) "transcription" means the interpretation of an audio, video, or audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice mail messages, that is memorialized in a written transcript for use in a court proceeding;

(4) "translation" means the transmission of a written message from one language to another;

(5) "court interpreter" means a person who provides interpretation or translation services for a case participant;

(6) "certified court interpreter" means a court interpreter who is certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts or who is acknowledged in writing by the Administrative Office of the Courts as a court interpreter certified by another jurisdiction that is a member of the Consortium for Language Access in the Courts;

(7) "justice system interpreter" means a court interpreter who is listed on the Registry of Justice System Interpreters maintained by the Administrative Office of the Courts;

(8) "language access specialist" means a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements;

(9) "non-certified court interpreter" means a justice system interpreter, language access specialist, or other court interpreter who is not certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts;

(10) "sight translation" means the spoken or signed translation of a written document; and

(11) "written translation" means the translation of a written document from one language into a written document in another language.

B. **Identifying a need for interpretation.**

(1) The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. The need for a court interpreter may be identified by the court or by a case participant. A court interpreter shall be appointed if one is requested.

(2) The court is responsible for making arrangements for a court interpreter for a juror who needs one.

(3) A party is responsible for notifying the court of the need for a court interpreter as follows:

(a) if a party needs a court interpreter, the party or the party's attorney shall notify the court when the party files the complaint or petition or when the party files the answer or other responsive pleading; and

(b) if a court interpreter is needed for a party's witness, the party shall notify the court in writing substantially in a form approved by the Supreme Court upon service of a notice of hearing and shall indicate whether the party anticipates the proceeding will last more than two (2) hours.

(4) If a party fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay.

(5) Notwithstanding any failure of a party, juror, or other case participant to notify the court of a need for a court interpreter, the court shall appoint a court interpreter for a case participant whenever it becomes apparent from the court's own observations or from disclosures by any other person that a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding.

C. **Appointment of court interpreters.**

(1) When a need for a court interpreter is identified under Paragraph B of this rule, the court shall appoint a certified court interpreter except as otherwise provided in this paragraph.

(2) Upon approval of the court, the parties may stipulate to the use of a non-certified court interpreter for non-evidentiary hearings without complying with the waiver requirements in Paragraph D of this rule.

(3) To avoid the appearance of collusion, favoritism, or exclusion of English speakers from the process, the judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party's attorney shall not act as a court interpreter for the proceeding, except that a

party and the party's attorney may engage in confidential attorney-client communications in a language other than English.

(4) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraphs (d) and (e) of this paragraph. If the court has made diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a language access specialist or less qualified non-certified court interpreter only after the following requirements are met:

(a) the court provides notice to the parties substantially in a form approved by the Supreme Court that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter but none is reasonably available and has concluded after evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding that an accurate and complete interpretation of the proceeding can be accomplished with a less qualified non-certified court interpreter;

(b) the court makes a written finding that the proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting to provide an accurate and complete interpretation for the proceeding;

(c) the court makes a written finding that the proposed court interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters Code of Professional Responsibility set forth in Rule 23-111 NMRA;

(d) with regard to a non-certified signed interpreter, in no event shall the court appoint a non-certified signed language interpreter who does not, at a minimum, possess both a community license from the New Mexico Regulations and Licensing Department and a generalist interpreting certification from the Registry of Interpreters for the Deaf; and

(e) a non-certified court interpreter shall not be used for a juror.

D. **Waiver of the right to a court interpreter.** Any case participant identified as needing a court interpreter under Paragraph B of this rule may at any point in the case waive the services of a court interpreter with approval of the court only if the court explains in open court through a court interpreter the nature and effect of the waiver and makes a written finding that the waiver is knowingly, voluntarily, and intelligently made. The waiver may be limited to particular proceedings in the case or for the entire case. With the approval of the court, the case participant may retract the waiver and request a court interpreter at any point in the proceedings.

E. **Procedures for using court interpreters.** The following procedures shall apply to the use of court interpreters:

(1) **Qualifying the court interpreter.** Before appointing a court interpreter to provide interpretation services to a case participant, the court shall qualify the court interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may use the questions in Form 4-114 NMRA to assess the qualifications of the proposed court interpreter. A certified court interpreter is presumed competent, but the presumption is rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified court interpreter, the court shall inquire into the following matters:

(a) whether the proposed court interpreter has assessed the language skills and needs of the case participant in need of interpretation services; and

(b) whether the proposed court interpreter has any potential conflicts of interest.

(2) **Instructions regarding the role of the court interpreter during trial.** Before the court interpreter begins interpreting for a party during trial, the court shall instruct the parties and others present in the courtroom regarding the role of the court interpreter. If the court interpreter will provide interpretation services for a juror, the court also shall instruct the jury in accordance with UJI 13-110A NMRA.

(3) **Oath of the court interpreter.** Before a court interpreter begins interpreting, the court shall administer an oath to the court interpreter as required by Section 38-10-8 NMSA 1978. If a court interpreter will provide interpretation services for a juror, the court also shall administer an oath to the court interpreter in accordance with UJI 13-110B NMRA. All oaths required under this subparagraph shall be given in open court.

(4) **Objections to the qualifications or performance of a court interpreter.** A party shall raise any objections to the qualifications of a court interpreter when the court is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon as the party learns of any information calling into question the qualifications of the court interpreter. A party shall raise any objections to court interpreter error at the time of the alleged interpretation error or as soon as the party has reason to believe that an interpretation error occurred that affected the outcome of the proceeding.

(5) **Record of the court interpretation.** Upon the request of a party, the court may make and maintain an audio recording of all spoken language court interpretations or a video recording of all signed language interpretations. Unless the parties agree otherwise, the party requesting the recording shall pay for it. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. This subparagraph shall not apply to court interpretations during jury discussions and deliberations.

(6) **Court interpretation for multiple case participants.** When more than one case participant needs a court interpreter for the same spoken language, the court may appoint the same court interpreter to provide interpretation services for those case participants. When more than one case participant needs court interpretation for a signed language, separate court interpreters shall be appointed for each case participant. If a party needs a separate court interpreter for attorney-client communications during a court proceeding, prior to the commencement of the court proceeding, the party shall obtain a court interpreter of the party's own choosing and at the party's own expense.

(7) **Use of team court interpreters.** To avoid court interpreter fatigue and promote an accurate and complete court interpretation, when the court anticipates that a court proceeding requiring a court interpreter for a spoken language will last more than two (2) hours the court shall appoint a team of two (2) court interpreters to provide interpretation services for each spoken language. For court proceedings lasting less than two (2) hours, the court may appoint one (1) court interpreter but the court shall allow the court interpreter to take breaks approximately every thirty (30) minutes. The court shall appoint a team of two (2) court interpreters for each case participant who needs a signed language court interpreter when the court proceeding lasts more than one (1) hour. If a team of two (2) court interpreters are required under this subparagraph, the court may nevertheless proceed with only one (1) court interpreter if the following conditions are met:

(a) two (2) qualified court interpreters could not be obtained by the court;

(b) the court makes a written finding that it contacted the Administrative Office of the Courts for assistance in locating two (2) qualified court interpreters but two (2) could not be found; and

(c) the court allows the court interpreter to take a five (5)-minute break approximately every thirty (30) minutes.

(8) **Use of court interpreters for translations and transcriptions.** If a court interpreter is required to provide a sight translation, written translation, or transcription for use in a court proceeding, the court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription. Whenever possible, the court shall provide the court interpreter with advance notice of the need for a translation or transcription before the court proceeding begins and, if possible, the item to be translated or transcribed.

(9) **Modes of court interpretation.** The court shall consult with the court interpreter and case participants regarding the mode of interpretation to be used to ensure a complete and accurate interpretation.

(10) **Remote spoken language interpretation.** Court interpreters may be appointed to serve remotely by audio or audio-video means approved by the Administrative Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably available for in-person attendance in the courtroom. Electronic equipment used during the hearing shall ensure that all case participants hear all statements made by all case participants in the proceeding. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow for consecutive interpreting of each sentence. The electronic equipment that is used must permit attorney-client communications to be interpreted confidentially.

(11) **Court interpretation equipment.** The court shall consult and coordinate with the court interpreter regarding the use of any equipment needed to facilitate the interpretation.

(12) **Removal of the court interpreter.** The court may remove a court interpreter for any of the following reasons:

(a) inability to adequately interpret the proceedings;

(b) knowingly making a false interpretation;

(c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;

(d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;

(e) failing to appear as scheduled without good cause;

(f) misrepresenting the court interpreter's qualifications or credentials;

(g) acting as an advocate; or

(h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter's Code of Professional Responsibility.

(13) **Cancellation of request for a court interpreter.** A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party or a witness to be called by the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. **Payment of costs for the court interpreter.** Unless otherwise provided in this rule, and except for court interpretation services provided by an employee of the court as part of the employee's normal work duties, all costs for providing court interpretation

services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts consistent with guidelines issued by the Administrative Office of the Courts.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

Committee commentary. — This rule governs the procedure for the use of court interpreters in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter Standards of Practice and Payment Policies issued by the Administrative Office of the Courts (the AOC Standards), also provide guidance to the courts on the certification, use, and payment of court interpreters. But in the event of any conflicts between the AOC Standards and this rule, the rule controls.

The rule requires the use of certified court interpreters whenever possible but permits the use of less qualified interpreters in some situations. For purposes of this rule, a certified court interpreter may not be reasonably available if one cannot be located or if funds are not available to pay for one. But in all instances, before a court may use a non-certified court interpreter, the court must contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may in fact be available to pay for a certified court interpreter.

The rule does not attempt to set forth the criteria for determining who should be a certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC. When a court interpreter is certified by the AOC, the certified court interpreter is placed on the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC and can be viewed on its web site. A certified court interpreter is also issued an identification card by the AOC, which can be used to demonstrate to the court that the cardholder is a certified court interpreter.

In collaboration with the New Mexico Center for Language Access (NMCLA), the AOC is also implementing a new program for approving individuals to act as justice system interpreters and language access specialists who are specially trained to provide many interpretation services in the courts that do not require a certified court interpreter. Individuals who successfully complete the Justice System Interpreting course of study offered by the NMCLA are approved by the AOC to serve as justice system interpreters and will be placed on the AOC Registry of Justice System Interpreters. Those who are approved as justice system interpreters will also be issued identification cards that may be presented in court as proof of their qualifications to act as a justice system interpreter. Under this rule, if a certified court interpreter is not reasonably available, the court should first attempt to appoint a justice system interpreter to provide court interpretation services. If a justice system interpreter is not reasonably available, the court must contact the AOC for assistance before appointing a non-certified court interpreter for a court proceeding.

In addition to setting forth the procedures and priorities for the appointment of court interpreters, this rule also provides procedures for the use of court interpreters within

the courtroom. In general, the court is responsible for determining whether a juror needs a court interpreter, and the parties are responsible for notifying the court if they or their witnesses will need a court interpreter. But in most cases, the court will be responsible for paying for the cost of court interpretation services, regardless of who needs them. However, the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.

Although this rule generally applies to all court interpreters, the court should be aware that in some instances the procedures to follow will vary depending on whether a spoken or signed language court interpreter is used. Courts should also be aware that in some instances when court interpretation services are required for a deaf or hard-of-hearing individual, special care should be taken because severe hearing loss can present a complex combination of possible language and communication barriers that traditional American Sign Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-hearing individual is having trouble understanding a court interpreter and there is an indication that the person needs other kinds of support, the court should request assistance from the AOC for a language assessment to determine what barriers to communication exist and to develop recommendations for solutions that will provide such individuals with meaningful access to the court system.

While this rule seeks to provide courts with comprehensive guidance for the appointment and use of court interpreters, the courts should also be aware that the AOC provides additional assistance through a full-time program director who oversees the New Mexico Judiciary's court interpreter program and who works in tandem with the Court Interpreter Advisory Committee appointed by the Supreme Court to develop policies and address problems associated with the provision of court interpreter services in the courts. Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure of the proper procedure for providing court interpretation services under this rule, the court is encouraged, and sometimes required under this rule, to seek assistance from the AOC to ensure that all case participants have full access to the New Mexico state court system.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

2-114. Courtroom closure.

A. **Courtroom proceedings open.** All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of an order for courtroom closure. Unless otherwise ordered by the court, the following persons may be present during a closed courtroom proceeding: the

parties and their attorneys, witnesses while testifying, and court employees and security personnel. This rule does not affect the court's inherent authority to impose reasonable time, place, and manner limitations on public access to the courtroom, including reasonable limitations on broadcasting, televising, photographing, and recording of court proceedings as set forth in Rule 23-107 NMRA.

B. **Motion for courtroom closure.** A motion for courtroom closure must advance an interest that overrides the public's interest in attending the proceeding.

(1) ***Motion of the court*.** If the court determines on the court's own motion that a courtroom proceeding should be closed, the court shall file and serve on each party an order to show cause why the proceeding should not be closed.

(2) ***Motion of a party, or other interested person or entity*.** A party, or any person or entity with a sufficient interest, may move to exclude the public from any portion of a courtroom proceeding. A motion for courtroom closure shall be filed and served at least twenty (20) days prior to the commencement of the courtroom proceeding, unless upon good cause shown the court waives the time requirement.

(3) ***Response*.** A party opposing a motion for courtroom closure or responding to an order to show cause may file a written response within fifteen (15) days after service of the motion or order to show cause, unless a different time period is ordered by the court. A reply is not permitted without leave of the court, which may be granted upon a showing of good cause.

(4) ***Response by non-party*.** Any member of the public may file a written response to a motion for courtroom closure at any time before the hearing required under Paragraph C of this rule.

(5) ***Continuance*.** In the court's discretion or at the request of the parties, the court may continue a courtroom proceeding to allow time to file written responses.

C. **Public hearing.** Unless the court denies a motion for courtroom closure on the pleadings, the court shall hold a public hearing on any proposed courtroom closure considered under Subparagraph (B)(1) or (B)(2) of this rule.

(1) ***Notice of hearing to the public*.** Media organizations, persons, and entities that have requested to receive notice of proposed courtroom closures shall be given timely notice of the date, time, and place of any hearing under this paragraph. Any member of the public shall be permitted a reasonable opportunity to be heard at the hearing.

(2) ***In camera review*.** Although the court is required to hold a public hearing on a motion for courtroom closure, this rule does not preclude the court from holding part of a hearing in camera for the limited purpose of reviewing sensitive or confidential

information relevant to the motion. Any evidence tendered to the court for an in camera review that is not ordered to be disclosed shall be returned to the party.

D. **Order for courtroom closure.** An order for courtroom closure shall be in writing, shall articulate the overriding interest being protected, and shall specify the court's findings underlying the order. The court may order the exclusion of the public from all or part of a courtroom proceeding only if

(1) the court concludes that such order is necessary to preserve an overriding interest that is likely to be prejudiced if the courtroom is not closed;

(2) the order for courtroom closure is narrowly tailored to protect the overriding interest; and

(3) the court has considered reasonable alternatives to courtroom closure.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-020, effective December 31, 2018.]

Committee commentary. — New Mexico statute requires all courtroom proceedings to be open to the public unless otherwise provided by law. *See* NMSA 1978, § 34-1-1 (1851) ("Except as provided in the Children's Code [32A-1-1 NMSA 1978] and in other laws making specific provisions for exclusion of the public, all courts of this state shall be held openly and publicly, and all persons whatsoever shall be freely admitted to the courts and permitted to remain so long as they shall observe good order and decorum.").

Numerous statutes identify particular types of information as confidential or otherwise subject to limitations on disclosure. *See, e.g*., committee commentary to Rule 2-112 NMRA (listing statutory confidentiality provisions). This rule does not authorize automatic courtroom closure for proceedings involving information designated by statute as confidential. Instead, if a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule. And statutory confidentiality provisions notwithstanding, the court must still engage in the balancing test set forth in Paragraph D of this rule before deciding whether to close any particular proceeding and must provide for public notice and hearing as set forth in Paragraph C of this rule prior to entering any order for courtroom closure.

The prerequisites to a courtroom closure order, as set forth in Paragraph D, are taken from *State v. Turrietta*, 2013-NMSC-036, ¶¶ 17, 19, 308 P.3d 964, which provides that the court cannot order a full or partial closure of the courtroom unless the closure is warranted under the four-factor "overriding interest" standard set forth in *Waller v. Georgia*, 467 U.S. 39 (1984). Under *Waller*,

[1] the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, [2] the closure must be no broader than necessary to protect that interest, [3] the [magistrate] court must consider reasonable alternatives to closing the proceeding, and [4] it must make findings adequate to support the closure.

Turrietta, 2013-NMSC-036, ¶ 17 (quoting *Waller*, 467 U.S. at 48).

Courts are obligated to consider reasonable alternatives to courtroom closure. *See id*. ¶¶ 28, 30; *Presley v. Georgia*, 558 U.S. 209, 214-15 (2010). For example, if the alleged overriding interest is the potential for witness intimidation, reasonable alternatives to closure might include "screening observers, admonishing spectators of possible criminal sanctions, the wait-and-see method, or increased security in the courtroom." *Turrietta*, 2013-NMSC-036, ¶ 29 (internal citations omitted). Or, to protect sensitive information conveyed by potential jurors during jury selection, the court could consider alternatives to closure such as sealing "[t]hose parts of the transcript reasonably entitled to privacy" or disclosing "the substance of the sensitive answers while preserving the anonymity of the jurors involved." *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cnty*., 464 U.S. 501, 513 (1984). The range of reasonable alternatives available to the court will depend on the circumstances.

This rule permits public participation prior to the issuance of an order closing a courtroom proceeding. Under Subparagraph (B)(2), a non-party may file a motion for courtroom closure if such non-party has a sufficient interest in closing the proceeding, for example, if such non-party is the subject of testimony or evidence. Under Paragraph C, the public is entitled to notice and an opportunity to be heard before a courtroom proceeding is closed. The court shall follow the procedure developed by the Supreme Court for providing notice of public hearings to media organizations and other persons and entities who have requested to receive notice under Subparagraph (C)(1) of this rule.

This rule shall not diminish the court's inherent authority to exclude disruptive persons from the courtroom to ensure decorum, prevent distractions, and ensure the fair administration of justice.

[Adopted by Supreme Court Order No. 16-8300-022, effective for all cases pending or filed on or after December 31, 2016.]

ARTICLE 2
Commencement of Action

2-201. Commencement of action.

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

B. **Jurisdiction.** Magistrates have jurisdiction in all cases as may be provided by law.

C. **Form of complaint.** The complaint shall be in substantially the form approved by the court administrator and the supreme court.

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

E. **Consumer debt claims.**

(1) ***Definition.*** The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 2-201(E)(2) and 2-401(D) NMRA, and Form 4-226 NMRA.

(2) ***Copy to be served and filed.*** When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause.

[As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph E of this rule was added in 2020 to provide additional protections to consumers in consumer debt collection cases. In addition, Rules 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

After considering the New Mexico Supreme Court's 2016 amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and its creation of Form 4-226 NMRA, regarding consumer debt claim litigation in the district courts, the Committee concluded that similar amendments to the magistrate and metropolitan court rules are required to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases in these courts. The abuses include pleadings and judgments based on

insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase “acting in the ordinary course of business,” *see Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, overruled on other grounds by *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as “business practice that is routine, regular, usual, or normally done”). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule.

[As adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

2-202. Summons.

A. **Summons; issuance.** On receipt of a complaint and payment of the docket fee, the clerk or the magistrate shall docket the action, issue a summons, and deliver it to the plaintiff or the plaintiff’s attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. On request of the plaintiff, separate, additional, or amended summons shall issue against any defendant. A defendant waives the service of summons by filing an answer in the proceedings.

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

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

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

(3) the name and address of the plaintiff’s attorney shall be shown on the summons, otherwise the plaintiff’s address.

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

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

E. **Summons; service by mail.** A summons and complaint may be served on a defendant of any class referred to in Subparagraph (F)(1) or (F)(2) of this rule by mailing a copy of the summons and the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and acknowledgment substantially conforming with the form approved by the Supreme Court, and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within twenty (20) days after the date of mailing, plus three (3) days as provided by Rule 2-104 NMRA, service of the summons and the complaint shall be made by a person authorized by Paragraph D of this rule, in the manner prescribed by Paragraph F of this rule. Service of a summons by mail is only effective if an acknowledgment of service signed by the person being served is filed with the court. The court shall order the payment of the costs of personal service by the person served if the person does not complete and return to the sender within twenty-three (23) days after mailing the notice and acknowledgment of receipt of summons, unless good cause is shown for not signing, filing, and serving a signed acknowledgment of service in the time required by this paragraph.

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

F. **Summons; personal service.** Personal service shall be made as provided by law as follows:

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

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

(3) on the State of New Mexico:

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

(b) service of process on the governor, attorney general, agency, bureau, department, commission, or institution or head of the institution may be made either by delivering a copy of the summons and the complaint to the head or to that individual's receptionist. If an executive secretary is employed, this person shall be considered the head;

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

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

(6) on the board of trustees of any land grant referred to in Sections 49-1-1 through 49-9-12 NMSA 1978, process shall be served on the president, or in the president's absence, on the secretary of the board;

(7) on a conservator of an estate or the guardian of a minor, by delivering a copy of the summons and the complaint to the conservator or the guardian. Service of process so made shall be considered as service on the minor. In all other cases, process shall be served by delivering a copy of the summons and the complaint to the minor, and if the minor is living with an adult, a copy of the summons and the complaint shall also be delivered to the adult residing in the same household. If a guardian ad

litem has been appointed, a copy of the summons and the complaint shall be delivered to the representative, in addition to serving the minor;

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

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

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

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

H. **Service by publication.** Service by publication may not be made, unless provided by law in cases of attachment or replevin.

I. **Alias process.** If the process has not been returned, or has been returned without service, or has been improperly served, the clerk, on application of any party to the suit, shall issue other process as the party applying may direct.

J. **Service; applicable statute.** If the rules make no provision for service of process, process shall be served as provided for by any applicable statute.

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

[As amended, effective January 1, 1990; July 1, 1990; January 1, 1993; May 1, 1994; October 15, 2002; as amended by Supreme Court Order No. 18-8300-015, effective December 31, 2018; as amended by Supreme Court Order No. 21-8300-012, effective for all cases filed or pending on or after December 31, 2021.]

2-203. Service and filing of pleadings and other papers.

A. **Service; when required.** Except as otherwise provided in these rules, every written order, every pleading subsequent to the original complaint, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of settlement, designation of record on appeal, and similar paper shall be served upon each of the parties. Service on a party is not required if:

(1) the party is in default for failure to appear except that pleadings asserting new or additional claims for relief against such party shall be served in the manner provided for service of summons in Rule 2-202 NMRA; or

(2) the party unconditionally admits to all of the allegations of the complaint prior to entry of a judgment on the pleadings.

B. **Service; how made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney's or party's last known address. Service by mail is complete upon mailing.

C. **Definitions.** As used in this rule:

(1) "Delivering a copy" means:

(a) handing it to the attorney or to the party;

(b) sending a copy by facsimile or electronic transmission when permitted by Rule 2-204 NMRA or Rule 2-205 NMRA;

(c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

(d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

(e) leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

(i) the court, in its discretion, chooses to provide such a location; and

(ii) service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

(2) "Mailing a copy" means sending a copy by first class mail with proper postage.

D. **Filing by a party; certificate of service.** All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

(1) summonses without completed returns;

(2) subpoenas without completed returns; and

(3) offers of settlement when made.

Except for the papers described in Subparagraph (1) of this paragraph, the attorney, or party, if the party is unrepresented, shall file a certificate of service with the court within a reasonable time after service, indicating the date and method of service of any paper not filed with the court.

E. **Filing with the court defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note on the papers the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy or filing an electronic copy as may be permitted under Rule 2-204 NMRA or Rule 2-205 NMRA. If a party has filed a paper using electronic or facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

F. **Filing and service by the court.** Unless otherwise ordered by the court, the court shall serve all written court orders and notices of hearing on the parties. The court may file papers before serving them on the parties. For papers served by the court, the certificate of service need not indicate the method of service. For purposes of Rule 2-104(C) NMRA, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court's certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in Subparagraph (C)(1)(e) of this rule.

G. **Filing and service by an inmate.** The following provisions apply to documents filed and served by an inmate confined to an institution:

(1) If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.

(2) The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(3) Whenever service of a document on a party is permitted by mail, the document is deemed mailed when deposited in the institution's internal mail system addressed to the parties on whom the document is served.

(4) The date of filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date when the document was deposited in the institution's internal mail system.

(5) A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

(6) Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

[As amended, effective March 1, 2000; November 1, 2004; March 21, 2005; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

2-203.1. Pleadings and papers; captions.

Pleadings and papers filed in the magistrate court shall have a caption or heading, which shall briefly include:

A. the name of the court as follows:

"State of New Mexico

County of _____

Magistrate Court";

B. the names of the parties; and

C. a title that describes the cause of action or relief requested. The title of a pleading or paper shall have no legal effect in the action.

[Approved, effective December 17, 2001.]

2-204. Service and filing of pleadings and other papers by facsimile.

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

B. **Facsimile service by court of notices, orders or writs.** Facsimile service may be used by the court for issuance of any notice, order or writ. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

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

D. **Filing pleadings or paper by facsimile.** A pleading or paper may be filed with the court by facsimile transmission if:

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

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

(3) unless otherwise approved by the court, the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

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

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

F. **Time of filing.** If facsimile transmission of a pleading or paper is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the

pleading or paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court's facsimile machine will be determinative.

G. **Service by facsimile.** Any document required to be served by Paragraph A of Rule 2-204 NMRA may be served on a party or attorney by facsimile transmission if the party or attorney has:

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

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

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

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

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

I. **Conformed copies.** Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by facsimile transmission.

[Approved, effective January 1, 1997; as amended, effective March 21, 2005.]

2-205. Electronic service and filing of pleadings and other papers.

A. **Definitions.** As used in these rules

(1) “electronic transmission” means the transfer of data from computer to computer other than by facsimile transmission;

(2) “document” includes the electronic representation of pleadings and other papers; and

(3) “EFS” means the electronic filing system approved by the Supreme Court for use by the magistrate courts to file and serve documents by electronic transmission in civil actions.

B. **Electronic filing authorized; registration by attorneys required.**

(1) A magistrate court shall implement the mandatory filing of documents by electronic transmission in accordance with this rule through the EFS by parties

represented by attorneys. Self-represented parties are prohibited from electronically filing documents and shall continue to file documents through traditional methods. Parties represented by attorneys shall file documents by electronic transmission even if another party to the action is self-represented or is exempt from electronic filing under Paragraph M of this rule. For purposes of this rule, "civil actions" does not include actions sealed under Rule 2-112 NMRA.

(2) Unless exempted under Paragraph M of this rule, attorneys required to file documents by electronic transmission shall register with the EFS through the New Mexico Judiciary's web site. Every registered attorney shall provide a valid, working, and regularly checked email address for the EFS. The court shall not be responsible for inoperable email addresses or unread email sent from the EFS.

C. **Service by electronic transmission.** Any document required to be served by Rule 2-203(A) NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail or if the attorney for the party to be served has registered with the court's EFS. Documents filed by electronic transmission under Paragraph A of this rule may be served by an attorney through the court's EFS, or an attorney may elect to serve documents through other methods authorized by this rule, Rule 2-203 NMRA, or Rule 2-204 NMRA. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic transmission, a party served by electronic transmission notifies the sender of the electronic transmission that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 2-203 or 2-204 NMRA designated by the party to be served. The court may serve any document by electronic transmission to an attorney who has registered with the EFS under this rule and to any other person who has agreed to receive documents by electronic transmission.

D. **Format of documents; protected personal identifier information.** All documents filed by electronic transmission shall be formatted in accordance with the Rules of Civil Procedure for the Magistrate Courts and shall comply with all procedures for protected personal identifier information under Rule 2-112 NMRA.

E. **Electronic services fee.**

(1) In addition to any other filing fees required by law, parties required to file electronically shall pay an electronic services fee of eight dollars ($8.00) per electronic transmission of one or more documents filed in any single case.

(2) Parties electing to serve a document previously filed through the EFS may do so without charge.

(3) Parties electing to both file and serve documents through the EFS shall pay an electronic services fee of twelve dollars ($12.00) per electronic transmission of

one or more documents simultaneously filed and served on one or more persons or entities in any single case.

(4) The provisions of this paragraph shall not apply to actions brought by the New Mexico Department of Workforce Solutions on behalf of employees to collect unpaid or underpaid wages under Section 50-4-26 NMSA 1978.

F. **Single transmission.** Whenever a rule requires multiple copies of a document to be filed only a single electronic transmission of the document is necessary. If an attorney files or serves multiple documents in a case by a single electronic transmission, the applicable electronic services fee under Paragraph E of this rule shall be charged only once regardless of the number of documents filed or parties served.

G. **Time of filing.** For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight on the day preceding the next business day of the court it will be considered filed on the immediately preceding business day of the court. For any questions of timeliness, the time and date registered by the court's computer will be determinative. For purposes of electronic filing only, the date and time that the filer submits the electronic filing envelope will serve as the filing date and time for purposes of meeting statute of limitations or any other filing deadlines, notwithstanding rejection of the attempted filing or its placement into an error queue for additional processing.

H. **Signatures.**

(1) All electronically filed documents shall be deemed to contain the filing attorney's signature under Rule 2-301(H) NMRA. Attorneys filing electronically thereby certify that required signatures or approvals have been obtained before filing the document. The full, printed name of each person signing a paper document shall appear in the electronic version of the document.

(2) If a document filed by electronic transmission contains a signature block from an original paper document containing a signature, the signature in the electronic document may represent the original signature in the following ways:

(a) by scanning or other electronic reproduction of the signature; or

(b) by typing in the signature line the notation "/s/" followed by the name of the person who signed the original document.

(3) All electronically filed documents signed by the court shall be scanned or otherwise electronically produced so that the judge's original signature is shown.

I. **Demand for original; electronic conversion of paper documents.**

(1) Original paper documents filed or served electronically, including original signatures, shall be maintained by the attorney filing the document and shall be made available, upon reasonable notice, for inspection by other parties or the court. If an original paper document is filed by electronic transmission, the electronic version of the document shall conform to the original paper document. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

(2) For cases in which electronic filing is mandatory, if an attorney who is exempt under Paragraph M of this rule or a self-represented party files a paper document with the court, the clerk shall convert the paper document into electronic format for filing. The filing date shall be the date on which the paper document was filed even if the document is electronically converted and filed at a later date. The clerk shall retain the paper documents as long as required by applicable statutes, rules, and regulations.

J. **Electronic file stamp and confirmation receipt; effect.** The clerk of the court's endorsement of an electronically filed document shall have the same force and effect as a manually affixed file stamp. When a document is filed through the EFS, it shall have the same force and effect as a paper document and a confirmation receipt shall be issued by the system that includes the following information:

(1) the case name and docket number;

(2) the date and time of filing as defined under Paragraph G of this rule;

(3) the document title;

(4) the name of the EFS service provider;

(5) the email address of the person or entity filing the document; and

(6) the page count of the filed document.

K. **Conformed copies.** Upon request of a party, the clerk shall stamp additional paper copies provided by the party of any pleading filed by electronic transmission. A file-stamped copy of a document filed by electronic transmission can be obtained through the court's EFS. Certified copies of a document may be obtained from the clerk's office.

L. **Proposed documents submitted to the court.** Unless a Supreme Court approved rule provides otherwise, this paragraph governs the submission of proposed documents to the court.

(1) Proposed documents shall be identified by a party's attorney as "proposed" and filed by the party's attorney in the EFS. Any proposed document

adopted, or modified, and signed by a judge under this rule will be electronically filed by the court in the EFS and served on the parties as required by these rules.

(2) Documents issued by the clerk under this rule shall be sent to the requesting party through the EFS, and the requesting party is responsible for electronically filing the document in the EFS if necessary under these rules and serving it on the parties as appropriate under these rules.

M. **Requests for exemptions from rules establishing mandatory electronic filing systems.**

(1) An attorney may file a petition with the Supreme Court requesting an exemption, for good cause shown, from any mandatory electronic filing system that may be established by this rule. The petition shall set forth the specific facts offered to establish good cause for an exemption. No docket fee shall be charged for filing a petition with the Supreme Court under this subparagraph.

(2) Upon a showing of good cause, the Supreme Court may issue an order granting an exemption from the mandatory electronic filing requirements of this rule. An exemption granted under this subparagraph remains in effect statewide for one (1) year from the date of the order and may be renewed by filing another petition in accordance with Subparagraph (1) of this paragraph.

(3) An attorney granted an exemption from a mandatory electronic filing system under this paragraph may file documents in paper format with the magistrate court and shall not be charged an electronic filing fee under this rule or local rule for doing so. When filing paper documents under an exemption granted under this paragraph, the attorney shall attach to the document a copy of the Supreme Court exemption order. The magistrate court clerk shall scan the attorney's paper document into the electronic filing system including the attached Supreme Court exemption order. No fee shall be charged for scanning the document. The attorney remains responsible for serving the document in accordance with these rules and shall include a copy of the Supreme Court exemption order with the document that is served.

(4) An attorney who receives an exemption under this paragraph may nevertheless file documents electronically in any magistrate court that accepts electronic filings without seeking leave of the Supreme Court provided that the attorney complies with all requirements under this rule, complies with all applicable rules for the magistrate court's EFS, and pays any applicable electronic filing fees. By doing so, the attorney does not waive the right to exercise any exemption granted under this paragraph for future filings.

N. **Technical difficulties.** Substantive rights of the parties shall not be affected when the EFS is not operating through no fault of the filing attorney.

[As amended, effective March 21, 2005; as amended by Supreme Court Order No. 21-8300-002, effective for all cases pending or filed on or after September 9, 2021.]

ARTICLE 3
Pleadings and Motions

2-301. Pleadings allowed; signing of pleadings, motions, and other papers; sanctions.

A. **Pleadings.** There shall be a complaint and, if the defendant wishes to contest the plaintiff's claim in any way, an answer. The answer may assert a counterclaim or a setoff. If a counterclaim is filed, a reply shall be filed and served on each party within twenty (20) days. The complaint may interplead two (2) or more persons who have or may have a claim to funds owed by the plaintiff.

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

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

D. **Third-party practice.** Within ten (10) days after service of a defendant's answer on the plaintiff, a defendant may file a third-party complaint against any person who is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant. A third-party complaint shall be served on the third-party defendant in the manner provided by Rule 2-202 NMRA. A copy of the third-party complaint shall be served on all other parties under Rule 2-203 NMRA, Rule 2-204 NMRA, or Rule 2-205 NMRA. On motion and hearing the court may permit a defendant to file a third-party complaint at any time prior to trial.

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

the proceedings shall be binding on all parties to the action on whom service has been made.

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

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

H. **Signing of pleadings.** Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of a party or attorney constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not filed to delay the proceedings. If a pleading, motion, or other paper is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false, and the action may proceed as though the pleading or other paper had not been served. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. For a willful violation of this rule an attorney or party may be subjected to appropriate disciplinary or other action. Similar action may be taken if scandalous or indecent matter is inserted. A "signature" means an original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

I. **Unsworn affirmations under penalty of perjury.** Any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a court proceeding as a notarized written statement, provided that the statement includes the following:

(1) the date that the statement was given;

(2) the signature of the person who gave the statement; and

(3) a written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct.

[As amended, effective October 1, 1987; October 1, 1992; January 1, 1997; December 17, 2001; March 21, 2005; as amended by Supreme Court Order No. 15-8300-017, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 17-8300-024, effective for all cases pending or filed on or after December 31, 2017.]

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

A new Paragraph I was added in 2017 for consistency with the 2014 amendments to Rule 1-011 NMRA of the Rules of Civil Procedure for the District Courts and Rule 23-115 NMRA of the Supreme Court General Rules, which both provide that an unsworn, written affirmation has the same effect in a court proceeding as a notarized written statement as long as the affirmation satisfies the enumerated requirements.

[As amended by Supreme Court Order No. 15-8300-017, effective for all cases pending or filed on or after December 31, 2015; amended by Supreme Court Order No. 17-8300-024, effective for all cases pending or filed on or after December 31, 2017.]

2-302. Defenses; answer.

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

B. **Defenses; how presented.** The answer shall describe in concise and simple language the reasons why the defendant denies the claim of the plaintiff as well as any defenses he may have to the claim of the plaintiff. Defenses shall be raised in the answer and not by motion. A party may file a motion to have the answer clarified or explained. On the filing of such motion, the magistrate may, in his discretion, require a more explicit answer or order a pretrial conference to clarify the issues.

C. **Form of answer.** The answer shall be in substantially the form approved by the court administrator and the supreme court.

D. **Permissive counterclaim or setoff.** If the defendant possesses a claim or claims against the plaintiff at the time the action is begun, they may be asserted in the answer as a counterclaim or setoff. The facts and circumstances giving rise to the claim or claims must be briefly described, in the form of answer approved by the supreme court.

E. **Nature of claim and amount claimed.** The nature of the defendant's claim or claims and the total sum claimed shall comply with applicable law. A claim which exceeds the jurisdiction of the magistrate court shall be amended by the defendant prior to trial to conform to the court's jurisdiction or shall be dismissed without prejudice. There shall be no compulsory counterclaim.

2-303. Judgment on the pleadings.

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

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

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

D. **Judgment on the pleadings.** The court may, on its own motion, enter judgment on the pleadings if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A judgment on the pleadings may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. At least fifteen days before entering such judgment on the pleadings, the court shall provide written notice of its intention to the parties to enter the judgment unless objections are received by a certain date.

[As amended, effective December 17, 2001; as amended by Supreme Court Order No. 07-8300-027, effective November 1, 2007.]

2-304. Amended and supplemental pleadings.

A. **Amendments before response.** At any time before a responsive pleading is served, a party may amend that party's initial pleading once without permission of the court. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

B. **Amendments after response to pleading.** At any time after the filing of an answer or response, upon request of a party, the court may, upon reasonable notice and upon such terms as may be just, permit a party to amend the party's pleading. Permission to amend the party's pleading shall be freely granted when justice so requires. The court may grant a continuance to permit an objecting party to respond to the amended pleading.

C. **Supplemental pleadings.** Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events that have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time for filing the response. The court may grant a continuance to permit an objecting party to respond to the supplemental pleading.

[As amended, effective December 17, 2001.]

2-305. Dismissal of actions.

A. **Voluntary dismissal; effect thereof.**

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

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

(b) by filing a stipulation of dismissal signed by all parties who have appeared generally in the action.

(2) Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when filed by a plaintiff who has once dismissed an action based on or including the same claim.

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

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

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

D. **Dismissal for failure to prosecute.** If an action has been pending for six (6) months from the date the complaint is filed, and the plaintiff or defendant asserting a counterclaim has failed to take any available steps to have the claims resolved, the court shall file and serve on the parties a thirty (30)-day notice stating that the court intends to dismiss the claims without prejudice for failure to prosecute. If the plaintiff or defendant asserting a counterclaim fails to take any available steps to bring the case to trial or otherwise prosecute the claims within thirty (30) days after service of the notice, the court shall dismiss the claims without prejudice.

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

[As amended, effective November 1, 1995; November 1, 2000; as amended by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016.]

2-306. Pretrial conference; scheduling order.

A. **Pretrial conference.** With or without the filing of a motion, the court may order the parties to appear before the court for a pretrial conference to clarify the pleadings and to consider other matters to aid the disposition of the case. Witnesses may not be called or subpoenaed for a pretrial conference unless ordered by the court.

B. **Pretrial scheduling order.** The court may enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete any permitted discovery.

The scheduling order may also include:

(4) the dates for conferences or hearings before trial;

(5) a trial date; and

(6) any other matters deemed appropriate by the court.

[As amended, effective December 17, 2001.]

2-307. Motions.

A. **Defenses and objections which may be raised.** Any matter that is capable of determination without trial of the general issue, including defenses and objections, may be raised before trial by motion. All motions shall state with particularity the grounds and the relief sought.

B. **Requirement of written motion.** All motions, except motions made during a pretrial conference or trial, or as may be permitted by the court, shall be in writing. A copy of every written motion shall be served on each party or the party's attorney as provided by Rule 2-203 NMRA. A motion for relief filed more than ninety (90) days after entry of the judgment shall be served on the opposing party in the manner provided by Rule 2-202 NMRA for service of a summons.

C. **Unopposed motions.** If both parties are represented by attorneys, prior to filing a written motion, the moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order approved by opposing counsel shall accompany the motion.

D. **Opposed motions.** A motion filed by an attorney in a case in which the opposing party is represented by an attorney shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a:

(1) motion to dismiss;

(2) motion for new trial;

(3) motion for judgment on the pleadings.

E. **Notice and hearing.** No written motion shall be considered by the court unless served on each party or the party's attorney as required by these rules.

[Approved, effective March 21, 2005.]

2-308. Offer of settlement.

Except as provided in this rule, at any time more than ten (10) days before the trial begins, any party may serve upon any adverse party an offer to allow an appropriate judgment to be entered in the action in accordance with the terms and conditions specified in the offer. A claimant may not make an offer of settlement under this rule until thirty (30) days after the filing of a responsive pleading by the party defending against that claim. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon such judgment may be entered as the court may direct. An offer not accepted shall be

deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.

If an offer of settlement made by a claimant is not accepted and the judgment finally obtained by the claimant is more favorable than the offer, the defending party must pay the claimant's costs, excluding attorney fees, including double the amount of costs incurred after the making of the offer. If an offer of settlement made by a defending party is not accepted and the judgment finally obtained by the claimant is not more favorable than the offer, the claimant shall pay the costs, excluding attorney fees, incurred by the defending party after the making of the offer and shall not recover costs incurred thereafter.

The fact that an offer has been made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, any party may make an offer of settlement, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

ARTICLE 4
Parties

2-401. Parties; capacity.

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

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

C. **Minors or incompetent persons.** When a minor or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

D. **Consumer debt claims.**

(1) Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law; and further provided that the collection agency must plead specific facts in its initial pleading demonstrating that it is the real party in interest.

(2) In any consumer debt claim in which the party seeking relief alleges entitlement to enforce the debt but is not the original creditor, the party must file an affidavit establishing the chain of title or assignment of the debt from the original creditor to and including the party seeking relief. The affidavit must be based on personal knowledge, setting forth those facts as would be admissible in evidence, showing affirmatively that the affiant is competent to testify to the matters stated in the affidavit. An affidavit based on a review of the business records of the party or any other person or entity in the chain of title must establish from personal knowledge compliance with the requirements of Rule 11-803(6)(a)-(c) NMRA, or demonstrate reliance on an attached certification complying with Rule 11-902(11) or (12) NMRA. The business records must be attached to the affidavit or certification.

[As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph D of this rule was added in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 2-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

Subparagraph (D)(2)'s affidavit requirements derive from Rule 1-056(E) NMRA. A proper affidavit can support the introduction of business records. See Nader v. Blair, 549 F.3d 953, 963 (4th Cir. 2008) (stating that "employees who are familiar with the

record-keeping practices of a business are qualified to speak from personal knowledge that particular documents are admissible business records, and affidavits sworn by such employees constitute appropriate summary judgment evidence."). In like manner, an affidavit from the "custodian or another qualified witness" or "a certification that complies with Rule 11-902(11) or (12) NMRA" that demonstrates compliance with Rule 11-803(6) NMRA suffice, if the business records accompany the affidavit or certification.

The business records exception allows the records themselves to be admissible, but not simply statements about the purported contents of the records. *See Bank of New York v. Romero*, 2014-NMSC-007, ¶ 33, 320 P.3d 1 (holding that, based on the plain language of Rule 11-803(F) NMRA (2007) (now Rule 11-803(6) NMRA), "it is clear that the business records exception requires some form of document that satisfies the rule's foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule and concluding that testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay") (quoting *State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115) (internal quotation marks omitted).

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

2-402. Notice of trial; joint or separate trials.

A. **Notice of trial.** After the answer has been filed, the magistrate shall set a date for trial of the action. He shall issue a written notice of trial announcing the time and place thereof, file the original and send copies to all parties not in default. The notice of trial shall be in substantially the form approved by the court administrator and the supreme court.

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

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

2-403. Substitution of parties.

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

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

ARTICLE 5
Discovery and Pretrial Matters

2-501. Discovery.

A. **Disclosure by plaintiff.** Unless otherwise ordered by the court, not less than twenty (20) days before trial, the plaintiff or the plaintiff's attorney shall disclose and make available for inspection, copying and photographing any records, papers, documents or other tangible objects in the plaintiff's possession, custody and control which the plaintiff intends to introduce in evidence at the trial. The plaintiff shall also disclose to the defendant an itemized list of the damages that the plaintiff claims.

B. **Disclosure by defendant.** Unless otherwise ordered by the court, not less than fifteen (15) days before trial, the defendant shall disclose and make available to the plaintiff for inspection, copying and photographing any records, papers, documents or other tangible objects in the defendant's possession, custody or control which the defendant intends to introduce in evidence at the trial.

C. **Witness disclosure.** Unless otherwise ordered by the court, not less than twenty (20) days before trial, the plaintiff shall disclose to the defendant or the defendant's counsel a list of the names, addresses and telephone numbers of the witnesses that the plaintiff intends to call at the trial, along with a summary of their testimony. Not less than fifteen (15) days before trial, the defendant shall disclose to the plaintiff or the plaintiff's counsel a list of the names, addresses and telephone numbers of the witnesses that the defendant intends to call at the trial, along with a summary of their testimony.

D. **Continuing duty to disclose.** If a party discovers additional material or witnesses which the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

E. **Failure to comply.** If it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from calling a witness not disclosed, prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

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

G. **Further discovery.** The court may, for good cause shown, order further discovery as permitted by the Rules of Civil Procedure for the District Courts.

[As amended, effective May 1, 2002.]

2-502. Subpoenas.

A. **Form; issuance.**

(1) Every subpoena shall

(a) state the name of the court from which it is issued;

(b) state the title of the action and the action number;

(c) command each person to whom it is directed to attend a trial or hearing and give testimony or to produce for trial or hearing designated books, documents, or tangible things in the possession, custody, or control of that person, or to permit inspection of premises of a party, at a time and place therein specified;

(d) state the time and date of the hearing or trial and the name of the judge before whom the witness is to appear or produce documents; and

(e) be substantially in the form approved by the Supreme Court.

(2) All subpoenas shall issue from the court in which the matter is pending.

(3) The judge or clerk shall issue a subpoena, other than a subpoena duces tecum, signed but otherwise in blank, to a party requesting it, who shall fill it in before service. The judge or clerk may issue a subpoena duces tecum to a party only if the subpoena duces tecum is completed by the party prior to issuance by the judge or clerk. An attorney authorized to practice law in New Mexico and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court in which the case is pending.

(4) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

B. **Service.**

(1) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena on a person named therein shall be made by delivering a copy thereof to that person and, if that person's attendance is commanded, by tendering to that person the full fee for one day's expenses provided by Section 10-8-4(A) NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Section 10-8-4(D) NMSA 1978. The fee for per diem expenses shall not be prorated. If attendance is required for more than one (1) day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior to or at the same time as service of any subpoena commanding production of documents and things or inspection of premises of a party before trial, notice shall be served on each party in the manner prescribed by Rule 2-203 NMRA.

(2) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

C. **Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

(2)

(a) Unless specifically commanded to appear in person, a person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises of a party need not appear in person at the hearing or trial.

(b) Subject to Subparagraph (D)(2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve a written objection on all parties to the lawsuit or file a motion to quash the subpoena with the court. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. The order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(c) Absent a court order, a person commanded to produce and permit inspection and copying shall not respond to the subpoena before the expiration of fourteen (14) days after the date of service of the subpoena.

(3)

(a) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iii) subjects a person to undue burden.

(b) The court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena if a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information,

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

If the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. **Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. **Contempt.** Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued.

[As amended, effective January 1, 1994; May 1, 1994; May 1, 2002; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

ARTICLE 6
Trials

2-601. Conduct of trials.

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

B. **Evidence.** Evidence shall be admitted in accordance with the New Mexico Rules of Evidence. At his own expense and for the purpose of preserving testimony, a party may cause a record, as defined in Rule 2-109 NMRA, to be made. The trial shall be conducted expeditiously, but each party shall be permitted to present his position amply and fairly.

C. **Oath of witnesses.** The magistrate shall administer the following oath to each witness: "You do solemnly swear (or affirm) that the testimony you give is the truth, the whole truth and nothing but the truth under penalty of perjury?"

D. **Competence of court interpreter.** Any party in interest or the court on its own motion may question the interpreter under oath as to the interpreter's fitness, competence or impartiality. If the judge finds that the interpreter is incompetent, partial or otherwise unfit, the interpreter shall be prohibited from acting as an interpreter during the hearing. Interpreters certified by the Administrative Office of the Courts are presumed competent.

[Approved, effective October 1, 1974; as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

Committee commentary. — This rule is meant to operate in reference to the Court Interpreters Act, Sections 38-10-1 to 38-10-8 NMSA 1978.

2-602. Jury trial.

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

B. **Demand.** Either party to an action may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the

defendant, and the magistrate shall collect from the demanding party the non-refundable jury fee established by law and, an additional deposit of seventy-five dollars ($75.00) to be used for payment of the actual costs of empaneling the jury, which fee shall be refundable all or in part.

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

[As amended, effective October 1, 1996; as amended by Supreme Court Order No. 08-8300-035, effective December 15, 2008.]

2-603. Jurors.

A. **Magistrate jury.** A jury in the magistrate court consists of six (6) jurors with the same qualifications as jurors in the district court. Whenever a jury is required, the magistrate shall select prospective jurors in the manner provided by law.

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

C. **Peremptory challenges.** Each party shall be entitled to one (1) peremptory challenge. If peremptory challenges are exercised, the magistrate shall excuse those prospective jurors challenged.

D. **Selection of jury.**

(1) The magistrate shall cause the name of each prospective juror present to be entered into the court's jury management system. A list of the names of the prospective jurors present shall be prepared at the direction of the magistrate, and a copy of the list shall be provided to each party or the party's attorney.

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

(3) When six (6) qualified jurors have been selected, they shall constitute the jury for the case to be tried.

(4) One (1) or more alternate jurors may be selected at the direction of the magistrate. The parties may exercise their peremptory challenges in the selection of the alternate juror or jurors, if their peremptory challenges have not been exhausted in the selection of the other jurors.

E. **Additional jurors.** If a jury cannot be completed by reading the names of those present, the sheriff or responsible person shall summon a sufficient number of jurors to fill the deficiency.

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

G. **Juror qualification and questionnaire forms; retention schedule; certification of compliance with privacy requirements.** Prior to the examination of prospective jurors under this rule, the court shall require each prospective juror to complete a juror qualification and questionnaire forms as approved by the Supreme Court, which shall be subject to the following protections:

(1) All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity shall be kept confidential unless ordered unsealed under the provisions in Rule 2-112 NMRA;

(2) All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity shall be destroyed according to the following deadlines:

(a) All copies in the possession of the court shall be destroyed ninety (90) days after expiration of the term of service of the juror or prospective juror unless an order has been entered directing their retention for a longer period of time; and

(b) All copies in the possession of the attorneys, parties, and any other individual or entity shall be destroyed within one hundred twenty (120) days after final disposition of the proceeding for which the juror or prospective juror was called unless permitted by written order of the court to retain the copies for a longer period of time, in which case the court's order shall set the deadline for destruction of those copies; and

(3) On or before the destruction deadline required under this rule, all attorneys and parties shall file a certification under oath in a form approved by the Supreme Court that they have complied with the confidentiality and destruction requirements set forth in this paragraph.

H. **Supplemental questionnaires.** The court may order prospective jurors to complete supplemental questionnaires. Unless otherwise ordered by the court, the party requesting supplemental questionnaires shall be required to pay the actual costs of producing and mailing the supplemental questionnaires. The confidentiality and destruction protections in Subparagraphs (G)(1), (2), and (3) of this rule shall apply to any supplemental questionnaires ordered under this paragraph.

[As amended, effective September 1, 1989; as amended by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 18-8300-008, effective December 31, 2018.]

Committee commentary. — Paragraph G of this rule was added to clarify the procedure for using and retaining juror qualification and questionnaire forms. In cases where an issue may be raised on appeal concerning jury selection or a particular juror, the appellant may consider filing a motion in the district court within ninety (90) days of the jury verdict to request an order requiring the retention of the juror qualification and questionnaire forms for inclusion in the record proper filed in the appellate court. Paragraph G of this rule supersedes administrative regulations concerning the retention of juror qualification and questionnaire forms.

[Adopted by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 18-8300-008, effective December 31, 2018.]

2-604. Trial by jury.

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

2-605. Instructions to juries.

A. **Procedural instructions.** After the parties have completed their presentation of the evidence, and before arguments to the jury, the magistrate shall orally instruct the jury on the procedure to be followed by them in deciding the case. Such instructions shall be given in substantially the following form:

"Ladies and gentlemen of the jury:

The case will now be submitted to you for decision. Upon retiring to the jury room and before commencing your deliberations you will select one of your members as foreman. You will then determine the facts in the case from the evidence that has been presented here in open court during the trial. From the facts and the law as you understand it you will decide upon a verdict.

You are the sole judges of all disputed questions of fact. Your verdict should not be based on speculation, guess or conjecture. Neither sympathy nor prejudice should influence your verdict.

You should first decide whether or not the defendant is liable to the plaintiff at all (and whether or not the plaintiff is liable to the defendant on the defendant's counterclaim/setoff). If you find the defendant liable to the plaintiff (or the plaintiff liable to the defendant), you should then determine the amount of damages that should be awarded.

When five or more of you have agreed upon a verdict, you will return to open court and your foreman will then announce the verdict."

B. **UJI instructions.** If requested by a party or, if the court deems it appropriate, on the court's own motion, the court may give the jury any other applicable instructions contained in the New Mexico Uniform Jury Instructions (UJI) Civil. Whenever the court determines the jury should be instructed on a subject and no applicable instruction on the subject is found in UJI Civil, the instruction given on that subject shall be brief, impartial and free from hypothesized facts.

[As amended, effective January 1, 1994.]

2-606. Nonjury trials.

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

[As amended, effective May 1, 1986.]

ARTICLE 7
Judgment and Appeal

2-701. Judgments; costs.

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

B. **Judgment on multiple claims or involving multiple parties.**

(1) Except as provided in Subparagraph (B)(2), if more than one claim for relief is presented in an action, whether as a claim or counterclaim, the court may enter a final judgment about one or more, but fewer than all of the claims, only after expressly finding no just reason for delay. If the court fails to make a determination of no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all of the claims, shall not terminate the action for any of the

claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

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

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

D. **Demand for judgment.** A judgment by default shall not be different in kind from, or exceed in amount, that claimed in the complaint. Except for a default judgment, each final judgment shall grant the relief sought by the party in whose favor judgment is rendered, even if the party has not demanded the relief in the party's pleadings.

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

[As amended, effective January 1, 1995; as amended by Supreme Court Order No. 21-8300-021, effective for all cases pending or filed on or after December 31, 2021.]

2-702. Default.

A. **Failure to respond to summons.** If the defendant fails to appear at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons, and if the plaintiff proves by an appropriate return that proper service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs, and other items allowed by law. The court may require evidence as to any fact before entering

default judgment. At a minimum, before entering a default judgment, the court shall require the plaintiff to allege sufficient facts to demonstrate the following:

(1) the plaintiff is a proper party to bring the lawsuit;

(2) the defendant is a proper party;

(3) a legal relationship exists between the plaintiff and the defendant that forms the basis of the lawsuit; and

(4) the amount of the damages, debt, or other relief requested, including principal, interest, and all other charges or costs.

In cases controlled by Rule 2-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rules 2-201(E)(2) and 2-401(D) NMRA, and has substantially complied with the requirements of Form 4-226 NMRA.

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

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

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

[As amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph A of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 2-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

Paragraph A references Rule 2-201(E)(2) NMRA, which requires a party seeking relief in a consumer debt claim to serve with the pleading, and file with the magistrate court,

the written instrument on which the party based its claim. If the party seeking relief fails to comply with this provision, the magistrate court shall not enter a default judgment without the party establishing good cause for its failure to comply.

[Adopted by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

2-703. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or other parts of the file and errors therein arising from oversight or omission may be corrected by the magistrate at any time of his own initiative or on the request of any party after such notice to the opposing party, if any, as the magistrate orders. During the pendency of an appeal, such mistakes may be so corrected before the transcript is filed in the district court, and thereafter while the appeal is pending may be so corrected with leave of the district court.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** If the judgment has not been filed in the district court, on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

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

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

(3) the judgment is void;

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

(5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 2-201(E) NMRA to comply with Rules 2-201(E)(2) and 2-401(D) NMRA, and to substantially comply with Form 4-226 NMRA.

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

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

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released or discharged. The application shall be served upon the judgment creditor in the manner prescribed by Rule 2-202 for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at such hearing, a default satisfaction of judgment may be entered upon:

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

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

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

(2) proof of payment of the full amount of such judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs has not been paid in full, payment into the court of a money order or cashier's check made payable to the administrative office of the courts. Upon receipt of a money order or cashier's check pursuant to this subparagraph, the administrative office of the courts shall deposit such money order or cashier's check in a suspense account in the state treasury. Funds deposited in such account shall be disbursed in accordance with Section 39-1-6.2 NMSA 1978.

D. **Filing in district courts.** If the judgment has been filed in the district court pursuant to Paragraph E of Rule 2-803, the motion for an order declaring the judgment satisfied shall be filed in the district court.

[As amended, effective July 1, 1990; January 1, 1993; January 1, 1997; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph B of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 2-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-702, 3-201, 3-401, 3-702, and 3-704

NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046, provides that a judgment "is not voidable under Rule 1-060(B) due to a lack of prudential standing." (Emphasis added). Rule 1-060(B)(4) NMRA is equivalent to Rule 2-703(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment to Rule 2-703 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 2-703(B)(3) NMRA.

Rule 2-703(B)(5) NMRA now provides that noncompliance with the requirements of Rule 2-201(E)(2) NMRA or Rule 2-401(D) NMRA, or the failure to substantially comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment entered in a case controlled by Rule 2-201(E) NMRA. The addition of this language provides a ground for relief, but does not compel the magistrate court to grant relief in every case in which the movant shows noncompliance with these consumer debt provisions. The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When the movant meets this requirement, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire "that the ultimate result will address the true merits and substantial justice will be done." *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a motion to void the judgment under Rule 2-703(B)(3) NMRA does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

2-704. Harmless error.

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

2-705. Appeal.

A. **Right of appeal.** A party who is aggrieved by the judgment or final order in a civil action may appeal, as permitted by law, to the district court of the county within which the magistrate court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after the judgment or final order appealed from is filed in the

magistrate court. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served or within the time otherwise prescribed by this rule, whichever period expires last. The three (3) day mailing period set forth in Rule 2-104 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the magistrate court, shall be treated as timely filed. Notwithstanding any other provision of this rule, no docket fee or other cost shall be imposed against the state or its political subdivisions in any such appeal.

B. **Notice of appeal.** An appeal from the magistrate court is taken by

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

(2) promptly filing the following with the magistrate court

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

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

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

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

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

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

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

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

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

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

(4) any exhibits.

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

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

G. **Stay of proceedings to enforce a judgment.**

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

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

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

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

J. **Remand.** On remand of the case by the district court to the magistrate court, the magistrate court shall enforce the mandate of the district court.

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

[As amended, effective November 1, 1988; January 1, 1994; July 1, 1996; as amended by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016.]

ARTICLE 8
Special Proceedings

2-801. Writs of execution.

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

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

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

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

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

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

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

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

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

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 2-203;

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

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

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

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

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

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

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

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

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

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

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

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

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

2-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, including an affidavit from the judgment creditor that the judgment creditor has made reasonable investigation and has no knowledge that the judgment debtor owns property within the state subject to execution, the clerk of the court shall issue a writ of garnishment.

B. **Service of writ of garnishment.** Within thirty (30) days of its issuance, a writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 2-202 NMRA for service of the summons and complaint.

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

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

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

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

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

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

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

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

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

H. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 2-203 NMRA.

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

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

the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

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

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

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

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

[As adopted, effective January 1, 1996; as amended by Supreme Court Order No. 08-8300-046, effective December 31, 2008; as amended by Supreme Court Order No. 14-8300-019, effective for all cases pending or filed on or after December 31, 2014.]

2-803. Prejudgment writs of attachment; exemptions.

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

B. **Exemptions; how claimed.** Exemptions of personal property provided by Sections 42-10-1 to 42-10-7 NMSA 1978 also apply to attachment proceedings. If the party is a natural person, notice of a right to claim exemptions shall be given as provided by Rule 2-801. A claim of exemption may be filed and served in the same manner and time as required in execution proceedings. The petitioner may dispute the claimed exemption in the same manner and time provided for a dispute on a claim of exemption in an execution proceeding.

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

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

[As amended, effective July 1, 1988; July 1, 1992; as recompiled and amended effective January 1, 1996.]

2-804. Judgment; supplementary proceedings.

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

B. **Statements.** Any person with information which is subject to discovery shall give a statement relating to the assets of a judgment debtor. If the statement is to be obtained from the judgment debtor or from a person who refuses to voluntarily give a statement, the judgment creditor may obtain a statement by serving a written "notice of statement" upon the person to be examined and upon the judgment debtor not less than five (5) days before the date scheduled for the statement. The notice will state the time and place for taking of the statement. A subpoena may also be served to secure the presence of the person to be examined or the materials to be examined during the statement.

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

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

E. **Docketing judgment in district court.** Upon the expiration of the time for appeal, the judgment creditor may file in the district court of the county in which the magistrate issued the judgment a certified copy of the judgment. Upon payment of the prescribed docket fee, the clerk of the district court shall docket the judgment, in the same manner in which judgments of the district court are docketed, and shall issue a transcript of judgment as though the judgment had been issued by the district court. The docketing of a judgment in the district court pursuant to this paragraph shall not prevent the magistrate court from issuing writs and other orders in aid of enforcement of the judgment of the magistrate court.

[As amended, effective July 1, 1988; July 1, 1992; as amended and recompiled, effective January 1, 1996.]

2-805. Mediation.

A. **Purpose.** The purpose of mediation programs in the magistrate courts is the early, efficient, cost-effective and informal resolution of disputes.

B. **Administration.** Mediation shall be administered by a court. Mediators shall be volunteers who have been (1) certified by the Administrative Office of the Courts as qualified to conduct mediations in the magistrate courts and (2) approved by the local presiding judge.

C. **Order required.** All referrals to mediation require a written court order. When the court orders mediation, notice shall be provided and the parties shall appear and mediate in good faith. Nothing in the rules governing the mediation programs shall be construed to require settlement. Nothing in the rules governing the mediation programs shall be construed to discourage or prohibit parties from stipulating to private alternative dispute resolution.

D. **Immunity.** Persons certified by the Administrative Office of the Courts to serve as mediators under these rules are appointed to serve as arms of the court and as such are immune from liability for conduct within the scope of their appointment.

E. **Confidentiality.** Mediation proceedings shall be held in private and shall be confidential as provided by law.

F. **Report to the court.** No report of the content of mediation shall be made to the court. The mediator shall inform the court by written report of the result of the mediation session. If the mediation process is successful, the mediator shall reduce the agreement to writing on a form to be signed by the parties.

G. **Costs.** If a party fails to appear as ordered by the court for mediation, and the other party or parties appear, the court may, after a hearing, assess costs against a party who fails to appear as ordered for a mediation to reimburse the party or parties who did appear for attorney fees or lost wages.

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

Committee commentary. — The committee feels that mandatory attendance at mediation serves the same purpose as mandatory attendance at a pretrial conference and will serve to encourage voluntary settlement.

2-806. Enforcement of mediated settlement agreement.

A. **Scope.** This rule applies to any case in which the parties have entered into a mediated settlement agreement that, by its terms, requires performance over a period of time, and in which the parties have agreed to comply with the terms of the agreement without first asking the court to enter a stipulated judgment.

B. **Stipulation of dismissal.**

(1) If the parties have entered into a mediated settlement agreement and agree that the court should not enter a stipulated judgment, the parties shall file a stipulation of dismissal.

(2) The mediated settlement agreement shall be reduced to writing and signed by the parties.

(3) The mediated settlement agreement shall be filed, unless the parties agree in writing to waive the filing of the mediated settlement agreement in the pending case. If the parties waive filing, then each party shall be responsible for retaining a copy of the mediated settlement agreement, and in any action related to the mediated settlement agreement, the responsibility to produce a copy of the mediated settlement agreement belongs to the parties and not to the court.

(4) If the parties have entered into a mediated settlement agreement and have filed a stipulation of dismissal, the court shall close the case, provided that the court shall retain jurisdiction to later reopen the case to enter such orders and judgments as may be appropriate to enforce the mediated settlement agreement and to grant such other relief as the court deems just and proper.

C. **Motion for judgment and statement of noncompliance.**

(1) In the event of noncompliance with the terms of a mediated settlement agreement, the party alleging noncompliance may, within five (5) years of the filing of the stipulation of dismissal, move the court to reopen the case and to enter a judgment enforcing the terms of the agreement. A party seeking a judgment under this rule shall file with the court and serve on the opposing party a motion for judgment and statement of noncompliance, together with a copy of the mediated settlement agreement.

(2) If a party to a mediated settlement agreement files a motion for judgment and statement of noncompliance within five (5) years of the filing of the stipulation of

dismissal, the court clerk shall reopen the case, and no additional filing fee shall be required.

(3) The party alleged to have breached the terms of a mediated settlement agreement may, within fifteen (15) days after service of the motion for judgment and statement of noncompliance, file with the court and serve on the opposing party a written response, and may request a hearing.

(4) If the party alleged to have breached the terms of a mediated settlement agreement timely files a response and requests a hearing under Subparagraph (C)(3) of this rule, the court shall hold a hearing and shall proceed under the Rules of Civil Procedure for the Magistrate Courts.

D. **Entry of judgment.** If a case has been reopened under Paragraph C of this rule, the court may enter a judgment for any remaining money due, and the court and may order other relief that the court deems just and proper.

E. **Retention of case files.** The court shall retain a case file for any case in which the parties have reached a mediated settlement agreement for five (5) years after the filing of the stipulation of dismissal.

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]

Committee commentary. — This rule was adopted in 2014 to create a uniform, statewide procedure for managing mediation case files in the magistrate and metropolitan courts. This rule allows parties who have entered into a mediated settlement agreement to file a stipulation of dismissal of the pending case, while the court retains jurisdiction to later reopen the case and enter a judgment if a party fails to comply with the terms of the agreement. This rule does not preclude the parties to a mediated settlement agreement from asking the court to enter a stipulated judgment, rather than filing a stipulation of dismissal.

The court's authority under this rule to reopen a case that has been dismissed and to enter a judgment enforcing a mediated settlement agreement is limited to a five (5)-year period following the filing of the stipulation of dismissal. The time limitations in this rule do not limit the parties' right to file a breach of contract action or pursue other remedies in accordance with the law.

In addition to clarifying case management procedures, this rule is intended to promote mediation by providing incentives to both parties. For example, a debtor who pays under the terms of a mediated settlement agreement can obtain a dismissal of the lawsuit and avoid an adverse legal judgment. The creditor can secure payment of a debt under the terms of a mediated settlement agreement, while reserving the option to later seek a judgment–without having to file an additional lawsuit for breach of contract–if the debtor fails to pay.

Generally, the parties should file the mediated settlement agreement with the court, along with the stipulation of dismissal. But if the parties choose to keep the agreement confidential under Subparagraph (B)(3) of this rule, each party should retain a copy of the agreement.

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]