

# UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO



## Local Rules of Civil Procedure

EFFECTIVE JULY 1, 2011  
Amended Effective January 1, 2012  
Amended Effective December 1, 2014.  
Amended Effective December 1, 2016  
Amended Effective October 1, 2020

# LOCAL CIVIL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

## I. SCOPE OF RULES

### RULE 1. Scope, Application and Construction.

**1.1 Title and Citation.** These are the Local Civil Rules of the United States District Court for the District of New Mexico. The proper citation is: "D.N.M.LR-Civ.\_\_\_\_."

**1.2 Effective Date.** These rules take effect on July 1, 2011.

#### 1.3 Application of Rules.

- (a) **In General.** These rules apply to civil proceedings.
- (b) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous local civil rules and govern all actions pending on or filed after their effective date, unless the Court otherwise orders.

**1.4 Rule of Construction.** The format of these rules coincides with the numbering and content of the Federal Rules of Civil Procedure ("FED. R. CIV. P."). These rules should be construed consistently with the Federal Rules of Civil Procedure.

#### 1.5 Definitions. In these rules:

- (a) **"Clerk"** refers to the District Court Clerk for this District, a deputy clerk, or any of the Clerk's offices located in Albuquerque, Santa Fe and Las Cruces.
- (b) **"Court" or "Judge"** refers to a United States District Judge or United States Magistrate Judge.
- (c) **"day"** refers to a calendar day.
- (d) **"District"** refers to the United States District Court for the District of New Mexico.
- (e) **"document"** refers to a pleading, motion or paper.
- (f) **"electronic transmission"** includes, but is not limited to: facsimile, electronic mail, or other electronic data transmission.
- (g) **"Federal Bar"** refers to members of the bar of the United States District Court for the District of New Mexico.
- (h) **"party"** refers to a party or attorney representing the party.
- (i) **"pro se party"** refers to a party appearing in an action without an attorney.

#### 1.6 Bankruptcy Cases.

- (a) **Bankruptcy Matters Other Than Appeals.**
  - The local rules of the United States Bankruptcy Court for this District govern practice and procedure in all bankruptcy matters except appeals.
  - Every paper in a non-appeal matter is filed with the Clerk of the Bankruptcy Court.
- (b) **Bankruptcy Appeals.**

- Every paper in a bankruptcy appeal, except those papers required to be filed with the Clerk of the Bankruptcy Court, pursuant to the FED. R. BANKR. P., is filed with the Clerk.
- Bankruptcy appeal briefs must conform with D.N.M.LR-Civ. 7.4 and 7.5.

**1.7 Waiver of Rules.** These rules may be waived by a Judge to avoid injustice.

## II. COMMENCEMENT OF ACTION; SERVICE AND FILING

### RULE 3. Commencement of Action.

#### 3.1 Civil Cover Sheet.

- A civil cover sheet form, available from the Clerk, must be completed and attached to the pleading initiating a civil action. This requirement is for administrative purposes, and information appearing on the civil cover sheet will have no legal effect in the action.
- The Clerk will file the initiating paper even if it is submitted without the completed cover sheet. The Clerk will give written notice of the deficiency and deadline for correcting the deficiency. The Court may dismiss the action, without prejudice, for failure to cure the deficiency.
- A *pro se* party filing a civil action need not complete the cover sheet.

**3.2 Notification of Multidistrict Litigation.** A party filing a paper involving an action subject to pre-trial proceeding before the Judicial Panel on Multidistrict Litigation (see 28 U.S.C. § 1407) must, at the time of filing, submit:

- (a) a written description of the nature of the case; and
- (b) a list of the titles and numbers of all related cases filed in this District.

**3.3 Fees.** The filing fee may be paid by cash or check or charged to a credit card. A *pro se* party or attorney may move for leave to proceed in forma pauperis.

### RULE 4. Process.

**4.1 Summons.** A party must prepare the summons on a form available from the Clerk.

### RULE 5. Filing and Service.

#### 5.1 Electronic Filing and Service. *[Effective 12/1/2014]*

- (a) **Requirement and Procedure.** Except for documents filed by *pro se* parties, or as otherwise ordered by the Court, electronic filing is mandatory. Electronic filing must be performed through the court's electronic filing system (CM/ECF). Faxing, email or any other form of electronic submission does not constitute electronic filing and will not be accepted by the Clerk. Registration, technical, and procedural guidelines for e-filing are set out in the Court's CM/ECF Administrative Procedures Manual.

- (b) **Service by Electronic Filing.** Electronic filing constitutes service for purposes of FED. R. CIV. P. 5, except as to parties excused from electronic filing by Federal rules, these rules, or Court order. Electronic service is complete on transmission.
- (c) **Timing.** Unless otherwise specified by rule or ordered by the Court, an electronic document is considered filed on the date of the electronic transfer, including weekends and holidays. A filing day is defined as 12:00:00 a.m. to midnight. The time and date of filing are reflected in the Court's Notice of Electronic Filing.

**5.2 Paper Filing and Service.** In cases where electronic filing is not required under Fed.R.Civ.P. 5.1, an original and two copies of a paper, including a document that initiates an action, must be filed with the Clerk. Copies of filed documents must be served on all parties. In consolidated actions, parties in all companion cases must be served.

### III. PLEADINGS, MOTIONS AND OTHER PAPERS

#### RULE 7. Motion Practice.

##### 7.1 Writing Requirement; Opposition.

- (a) A motion must be in writing and state with particularity the grounds and the relief sought. A party may adopt by reference another party's motion or other paper by making specific reference to the filing date and docket number of such motion or other paper. Movant must determine whether a motion is opposed, and a motion that omits recitation of a good-faith request for concurrence may be summarily denied. In *pro se* inmate cases, movant need not determine whether the motion is opposed. An attorney's motion to withdraw from representation of a party must follow the procedure provided in D.N.M.LR-Civ. 83.8.
- (b) A motion, response, or reply must include a certificate of service on each party. The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion. The failure to file and serve a reply in support of a motion within the time prescribed for doing so constitutes consent that briefing on the motion is complete.

**7.2 Unopposed Motions; Case Management Deadlines.** An unopposed motion must be accompanied by a proposed order approved by each party, in accordance with the procedure set by the assigned Judge. A non-dispositive motion which alters or affects case management deadlines requires approval of the assigned Judge, as provided in D.N.M.LR-Civ. 16.1.

##### 7.3 Form of Motion and Related Evidence.

- (a) A motion, response or reply must cite authority in support of the legal positions advanced. Movant's authority may be submitted in a separate brief filed and served contemporaneously with the motion.

- (b) Parties must submit evidence, in the form of declarations, affidavits, deposition excerpts, or other documents, in support of allegations of fact.

#### **7.4 Timing of and Restrictions on Responses and Replies.**

- (a) **Timing.** A response must be served and filed within fourteen (14) calendar days after service of the motion. A reply must be served and filed within fourteen (14) calendar days after service of the response. These time periods are computed in accordance with FED. R. CIV. P. 6(a) and (d) and may be extended by agreement of all parties. For each agreed extension, the party requesting the extension must file a notice identifying the new deadline and the document (response or reply) to be filed. If an extension of time is opposed, the party seeking the extension must file a separate motion within the applicable fourteen (14) day period. An extension of briefing time must not interfere with established case management deadlines.
- (b) **Surreply.** The filing of a surreply requires leave of the Court.
- (c) **Expedited Briefing.** When the Court orders an expedited briefing schedule, briefs and any supporting papers must be served on each party by the most expeditious reasonable method of service.
- (d) **Cases With Briefing Schedule Set by Court (Bankruptcy or Social Security Appeals).** The parties will be given a briefing schedule by the Clerk or by the Court. Timing of responses and replies must conform with the briefing schedule unless all parties agree otherwise.
- (e) **Notice of Completion.** Upon completion of briefing, the movant must file a notice certifying that the motion is ready for decision and identifying the motion and all related filings by date of filing and docket number.

**7.5 Length of Motion and Brief.** The length of a motion or, if a separate brief is filed in support of a motion, the combined length of a motion and supporting brief, must not exceed twenty-seven (27) double-spaced pages. A response must not exceed twenty-four (24) double-spaced pages. A reply must not exceed twelve (12) double-spaced pages. Unless otherwise ordered, these page limits apply to non-motion briefs, e.g., merits briefs in Social Security or bankruptcy appeals and proceedings under 28 U.S.C. §§ 2241, 2254, and 2255. Page limits on exhibits are governed by D.N.M.LR-Civ. 10.5.

#### **7.6 Oral Argument.**

- (a) **When Allowed.** A party may (but need not) request oral argument on any motion. Unless otherwise ordered by the Court, however, all motions will be decided on the briefs without a hearing.
- (b) **Hearing by Telephone Conference.** The Court may conduct hearings by telephone conference.

**7.7 Withdrawal of Documents.** A party may withdraw a document from consideration by the Court by filing and serving a notice of withdrawal which specifically identifies the document being withdrawn. Withdrawal requires consent of all other parties or approval of the Court.

## **7.8 Citation of Supplemental Authorities.**

- (a) If controlling authority comes to a party's attention after the party's brief has been filed, or after oral argument but before decision, a party must promptly file a "Notice of Supplemental Authorities," setting forth the citations.
- (b) If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before decision, a party may promptly file a "Notice of Supplemental Authorities," setting forth the citations.
- (c) The Notice must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the Notice must not exceed 350 words. Any response must be filed within seven (7) days of the filing of the Notice and will be limited to 350 words. No reply to the response will be permitted.

## **RULE 10. Form of Documents.**

**10.1 Form.** A paper presented for filing must be on size 8 1/2 by 11 inch white, opaque, unglazed paper of good quality and be typewritten or printed on one side without interlineations. The typewritten text of all documents must be at least 12 pitch, and type must be of letter quality. The left, right, and bottom margins must be at least 1 inch, the top margin must be at least 1 1/2 inches. Except for footnotes and quotations, the text of all documents must be double spaced. The first page of each document must have the case file number and initials of the assigned Judges.

**10.2 Titles of Documents.** The title of a document must clearly identify its substance and any filed document to which it responds or is connected.

### **10.3 Filing of Non-Conforming Documents.**

- (a) **Acceptance of Documents.** The Clerk will not refuse to file any document because it is not in proper form.
- (b) **Signature.** A paper filed without signature will be stricken unless it is signed within fourteen (14) days after the omission is called to the party's attention.
- (c) **Non-Conforming Documents.** The Clerk will give to the submitting party written notice of a deficiency and deadline for correcting the deficiency. The Clerk will also provide any applicable forms and instruction sheets. Failure to remedy a deficiency or to show good cause for non-compliance within forty-five (45) days from the date of notice may result in striking of the document or dismissal of the action without prejudice in accordance with D.N.M.LR-Civ. 41.2.

**10.4 Attachments to Pleadings.** Exhibits are not attached to a pleading unless the documents attached form the basis for the action or defense.

**10.5 Page Limit for Exhibits.** All exhibits to a motion, response or reply, including excerpts from a deposition, must not exceed a total of fifty (50) pages, unless all parties agree otherwise<sup>1</sup>. If agreement cannot be reached, then the party seeking to exceed the page limit must file a motion in accordance with D.N.M.LR-Civ. 7. A party may file only those pages of an exhibit which are to be brought to the Court's attention.

A page from a condensed deposition transcript (containing four pages of testimony) will be considered one page for purposes of this rule.

**10.6 Identifying Portions of Exhibits.** The portions of an exhibit the party wishes to bring to the Court's attention must be marked, e.g., by brackets, shading, or underlining, in the original, the copy for the Court and the copy for each party. Marking must be apparent on exhibits that are scanned and filed and/or served electronically so that, when printed in hard copy, the reader can clearly see what is marked to read and the text can be easily read. This rule applies equally to parties who are excused from electronic filing.

**10.7 Non-duplication of Exhibits.** An exhibit should be submitted only once and may later be referred to by document title and filing date. An exhibit may be submitted more than once, however, if the submitting party wishes to bring to the Court's attention portions of the exhibit different from those previously marked under D.N.M.LR-Civ. 10.6.

## **RULE 11. Signing of Documents.**

**11.1 Signatures.** The Court will treat a duplicate signature as an original signature, and a document filed or served by electronic transmission is considered signed in accordance with FED. R. CIV. P. 11(a).

## **RULE 15. Amended and Supplemental Pleadings.**

**15.1 Motion to Amend Pleading.** A proposed amendment to a pleading must accompany the motion to amend.

## **RULE 16. Pre-trial Procedures.**

**16.1 Joint Status Report.** A Joint Status Report form is available at the Clerk's office and online. Following the FED. R. CIV. P. 26(f) meet-and-confer conference, the parties must complete the Joint Status Report. The parties must file the completed Report at least seven (7) days before the scheduling conference, or as ordered by the Court. After the filing of the Joint Status Report, the Court will enter a scheduling order setting all pre-trial case management deadlines. Modification of any deadline in the Court's scheduling orders, whether or not opposed, requires a showing of good cause and Court approval.

### **16.2 Settlement Conferences.**

- (a)** In every civil case the parties must participate in a settlement conference with a Judge unless otherwise ordered by the Court. Cases excepted from this rule are listed under D.N.M.LR-Civ. 16.3.
- (b)** In every bankruptcy adversary proceeding filed in Bankruptcy Court, the parties must participate in a settlement conference with members of the bankruptcy facilitation panel unless otherwise ordered by the Bankruptcy Court.
- (c)** For each party, at least two persons must attend settlement conferences:

- the attorney who will try the case; and
  - the party or designated representative with final settlement authority, other than an attorney of record.
- (d) A request to be excused must be made in writing to the Court at least seven (7) days before the conference or as ordered by the Court.
- (e) Evidence of settlement offers made, and of statements made, at the settlement conference, regardless of whether made in written, oral or graphic form, will be inadmissible as provided in FED. R. EVID. 408. Statements which are made by any party to the Judge who is conducting the settlement conference, and which are identified by that party as confidential, will not be disclosed by the Judge to any other party. The Judge who is conducting the settlement conference may not reveal to the trial Judge any information about offers made, or about statements made, by any party at the settlement conference, other than whether the case was or was not settled.
- (f) Within seven (7) days of notice of assignment of a member of the bankruptcy facilitation panel to facilitate an adversary proceeding in Bankruptcy Court, any party may move the Court to disqualify the panel member based on the standards set forth in 28 U.S.C. § 455.

**16.3 Exclusion From Pre-trial Case Management.** The following types of cases are excluded from pre-trial case management procedures described in D.N.M.LR-Civ. 16 unless the parties request, or the assigned Judge determines, that the case should be governed by this rule:

- (a) Government Collections Actions (150-153);
- (b) Condemnation Actions (210);
- (c) Rent, Lease and Ejectment (230);
- (d) Prisoner Petitions (463, 510-555);
- (e) Statutory Penalty Actions (610-690);
- (f) Bankruptcy Appeals and Withdrawals (422-423);
- (g) Social Security Reviews (861-865);
- (h) Federal Tax Suits (870-871, 875);
- (i) State Reapportionment (400);
- (j) Commerce/ICC Rate (450);
- (k) Deportation (460);
- (l) Selective Service (810);
- (m) Freedom of Information Act (895);
- (n) Food Stamp Denial (891);
- (o) Proceedings to compel arbitration or to confirm or set aside arbitration awards;
- (p) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
- (q) Proceedings to compel the giving of testimony or production of documents in this District:
  - (1) in connection with discovery;
  - (2) in connection with testimony de bene esse;
  - (3) for perpetuation of testimony; or

- (4) for use in a matter pending or contemplated in another U. S. District Court;
- (r) Proceedings requesting only injunctive or other emergency relief; and
- (s) Proceedings involving water rights matters.

## V. DISCOVERY

### RULE 26. Discovery.

#### 26.1 Form of Discovery Requests.

##### (a) Requirements of Serving Party.

- (1) **Space to Respond.** When a party serves discovery requests (interrogatories, requests for production, and requests for admissions) upon any other party electronically, such discovery requests must be in a form that allows the recipient to copy or transfer the text of the document into the written response, or permits the written response to be typed directly into the document, and thus avoids the need to retype the text. If the serving party elects not to use the electronic form, the discovery requests must be prepared in such a fashion that sufficient space for insertion of the written responses is provided after each interrogatory/request or sub-part thereof.
- (2) **Numbering.** Regardless of the number of sets, a party must sequentially number all interrogatories, requests for production, or requests for admissions. For example, the first set of interrogatories is numbered 1-10; the same party's second set of interrogatories is numbered 11-20, etc.

- (b) **Requirements of Responding Party.** The party answering, responding or objecting to a discovery request must either set forth the answer, response or objection in the space provided or quote fully each interrogatory or request before any answer, response or objection.

**26.2 Certification of Service.** The following documents must be served, but not filed with the Clerk. Only a certificate indicating the date of service is filed.

- (a) interrogatories;
- (b) requests for production or inspection;
- (c) requests for admissions;
- (d) responses to (a)-(c);
- (e) initial disclosures as described in FED. R. CIV. P. 26(a)(1); and
- (f) expert witness reports as described in FED. R. CIV. P. 26(a)(2).

**26.3 Required Disclosures.** All provisions of FED. R. CIV. P. 26 are applicable to actions in this District, unless specifically exempted by local rule.

- (a) **Exemptions from Initial Disclosures.** The following are exempted:

- (1) all disclosure in cases excluded from case management procedures by D.N.M.LR-Civ. 16.3; and

- (2) disclosure of experts having knowledge of the case who are used for the sole purpose of case preparation and not as witnesses.
- (b) **Exemption from Expert Report Disclosure.** Unless otherwise ordered by the Court, a party must provide the written reports required by Fed. R. Civ. P. 26(a)(2)(B) only as to experts retained or specially employed by a party to provide expert testimony. Such reports need not be provided as to hybrid fact/expert witnesses such as treating physicians. The party must disclose the existence of any hybrid fact/expert witness pursuant to Fed. R. Civ. P. 26(a)(2)(A) and disclose the subject matter on which the expert witness is expected to present evidence under Fed. R. Evid. 702, 703, or 705, as well as a summary of the facts and opinions to which the hybrid fact/expert witness is expected to testify, pursuant to Fed. R. Civ. 26(a)(2)(C).
- (c) **Exemption When Joint Status Report Filed.** When required disclosures have previously been made in the Joint Status Report pursuant to D.N.M.LR-Civ. 16.1, the required disclosures pursuant to FED. R. CIV. P. 26 may incorporate portions of the Joint Status Report.
- (d) **Required Initial Disclosure.** In all cases in which the physical or mental medical condition of a party is an issue, the party whose condition is an issue must make a good faith effort to produce the following information that the disclosing party may use to support its claims or defenses, unless solely for impeachment:
- (1) a list of the name, address and phone number of any healthcare provider, including without limitation, any physicians, dentists, chiropractors, mental health counselors, clinics and hospitals which have treated the party within the last five (5) years preceding the date of the occurrence set forth in the pleadings and continuing through the current date;
  - (2) all records of such healthcare providers which are already in that party's possession, which will be made available for inspection and copying by all other parties to the action;
  - (3) for each healthcare provider, a signed authorization to release medical records form, as set forth in Appendix "A." Within fourteen (14) days after receiving medical records by use of these authorization forms, a party must make the records available for inspection and copying by all other parties to the action.
- (e) **Duties in Responding to Initial Disclosures.** When information, records or a release subject to this rule is withheld on a claim that it is privileged or subject to objection, or that disclosure is prohibited by regulation or statute, the claim must be made expressly in writing and must be supported by a description of the nature of the documents, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### **26.4 Timing of Discovery and Initial Disclosures.**

- (a) **Discovery.** A party may not seek discovery under these rules or the Federal Rules of Civil Procedure before the parties have conferred as required by FED. R. Civ. P. 26(f) except by agreement of all parties or by Court order.

- (b) **Party Entering Case After Initial Scheduling Conference.** A party first served or joined after the Initial Scheduling Conference must meet all established case management deadlines. If the deadline for initial disclosures has passed, the party must comply with FED. R. CIV. P. 26(a)(1).

## 26.5 Changing Discovery Limitations.

- (a) **General Limits.** The Court, *sua sponte* or on motion by a party, may change the limitations on discovery imposed by federal or local rule and may fashion discovery to meet special circumstances.
- (b) **Number of Interrogatories.** Unless otherwise ordered by the Court, to serve more interrogatories than are allowed by FED. R. CIV. P. 33, a party must file a motion in accordance with D.N.M.LR-Civ. 7, which sets forth the proposed interrogatories and explains why they are necessary.

## 26.6 Objections to Discovery.

A party served with objections to:

- an interrogatory;
- request for production or inspection; or
- request for admission must proceed under D.N.M.LR-Civ. 37.1 within twenty-one (21) days of service of an objection unless the response specifies that documents will be produced or inspection allowed. In this case, the party must proceed under D.N.M.LR-Civ. 37.1 within twenty-one (21) days after production or inspection of the documents.

Failure to proceed within this time period constitutes acceptance of the objection. For good cause, the Court may, *sua sponte* or on motion by a party, change the twenty-one (21) day period.

## RULE 30. Depositions.

**30.1 Notice of Deposition.** Counsel must confer in good faith regarding scheduling of depositions before serving notice of deposition. Service of notice of deposition in accordance with FED. R. CIV. P. 30(b) must be made at least fourteen (14) days before the scheduled deposition. Proof of service of notice to take a deposition is not filed with the Clerk except when the adequacy or content of the notice is the basis for a motion, or response to a motion, relating to FED. R. CIV. P. 30 or 31. The time for serving notice may be shortened by agreement of all parties or by Court order.

**30.2 Non-Appearance at Deposition.** Failure of a deponent to appear at the time and place designated may be regarded as a willful failure to appear pursuant to FED. R. CIV. P. 37(d) or contemptible conduct pursuant to FED. R. CIV. P. 45(e),

- unless a motion for protective order and a notice of non-appearance are served at least seven (7) days before the scheduled deposition; or
- if the Court finds the motion for protective order is frivolous or for dilatory purposes.

**30.3 Filing of Depositions.** Deposition transcripts are not filed unless otherwise ordered.

**30.4 Filing of Certificate of Completion of Deposition.** A certificate of completion of deposition is not filed unless otherwise ordered.

**30.5 Deposition Fees.** A court reporter must certify in a deposition transcript the reporter's fees for the deposition.

**30.6 Final Disposition of Deposition Transcripts.** After final disposition of a civil action, the Clerk will return to the submitting party all depositions filed.

## **RULE 37. Failure to Make Disclosure or Cooperate in Discovery.**

**37.1 Relief Sought in Protective Order and Motion to Compel.** A party seeking relief pursuant to FED. R. CIV. P. 26(c) or 37(a) must attach to the motion a copy of:

- (a) the interrogatory, request for production or inspection, relevant portion of deposition transcript, or request for admission; and
- (b) the response or objection thereto.

The motion must comply with the requirements of D.N.M.LR-Civ. 7.

**37.2 Time to Respond.** A party must respond to a discovery request within the time specified in the Court order compelling discovery. Absent a specific designation of time in the order, a party must respond within the time allowed for response to the original request.

**37.3 Compliance with Discovery Order Pending Appeal of the Order.** A party's duty to comply with a discovery order is not stayed by filing an appeal from or objection to the order, unless otherwise ordered.

## **VI. TRIALS**

### **RULE 40. Trial Continuances.**

**40.1 Continuances.** Good cause must be shown for continuance of a trial.

### **RULE 41. Dismissal of Action Without Prejudice.**

**41.1 Dismissal for Want of Prosecution.** A civil action may be dismissed if, for a period of ninety (90) days, no steps are taken to move the case forward. The Clerk will give written notice that the action may be dismissed thirty (30) days after the date of the notice, unless good cause is shown.

**41.2 Non-Conforming Papers.** An action filed with any non-conforming paper may be dismissed, without prejudice, for failure to remedy the deficiency within forty-five (45) days of entry of notice in accordance with D.N.M.LR-Civ. 10.3(c).

## **VII. JUDGMENT**

### **RULE 54. Judgment; Costs.**

**54.1 Motion to Tax Costs.** A motion to tax costs must be filed and served on each party within thirty (30) days of entry of judgment. Failure to file and serve within this time period constitutes waiver of a claim to costs. The motion must comply with the requirements of D.N.M.LR-Civ. 7 and must include:

- an itemized cost bill documenting costs and including receipts as required by rule or statute; and
- a party's affidavit that the costs are allowable by law, correctly stated and necessary to the litigation.

**54.2 Taxable Costs.**

**(a) Transcripts.** The cost of an original transcript of a court proceeding is taxable when requested by a party and authorized by the Court before transcription.

**(b) Deposition Costs.**

**(1) Reporter's Transcript Fees.** The reporter's charge for the original or a copy of a deposition transcript is taxable when the deposition is reasonably necessary to the litigation.

**(2) Reasonably Necessary to the Litigation.** A deposition is reasonably necessary to the litigation when:

- (A)** a substantial portion of the deposition is admitted into evidence or used at trial for impeachment purposes;
- (B)** the deposition is used by the Court in ruling on a motion for summary judgment; or
- (C)** the Court so determines.

**(c) Witness Costs.**

**(1) Lay Witness.**

**(A)** The rates for witness fees, mileage and subsistence are set by statute and are taxable if the witness testifies at trial or at a deposition found reasonably necessary to the litigation.

**(B)** The witness will be paid the smaller of:

- (i)** mileage for the distance from the witness's residence to court; or
- (ii)** the *per diem* rate specified by 28 U.S.C. § 1821.

**(C)** The request for witness costs must be itemized, separating:

- witness fees;
- mileage; and
- allowance for subsistence.

**(D)** A party will not receive a witness fee, mileage or allowance for subsistence.

**(2) Expert Witness Fees.** An expert witness fee is not taxable under 28 U.S.C. §1920 unless the Court, *sua sponte* or on motion by a party,

appoints the expert and approves the fee amount. An expert witness not appointed by the Court will be paid the same fee as a lay witness.

- (d) **Interpreter and Translator Fees.** An interpreter's fee or translator's fee is taxable if:
- (1) the cost of the witness, whose testimony is interpreted or translated, is taxable; or
  - (2) the translated document is admitted into evidence.
- (e) **Copies of Papers.** The cost for copying an exhibit is taxable when the exhibit is requested by the Court or when the copy is admitted into evidence in place of an original.
- (f) **Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries.** The cost of a photograph, 8" x 10" in size or less, is taxable if the photograph is admitted into evidence. The following costs are not taxable unless the Court otherwise orders:
- photographs larger than 8" x 10";
  - costs of models; or
  - the cost of compiling summaries, computations or statistical comparisons.

**54.3 Costs in Comparative Fault Cases.** In comparative fault cases, each party is taxed a percentage of the total taxable costs. The percentage of costs taxed need not equal the percentage of a party's fault; distribution of costs is left to the Court's discretion.

**54.4 Jury Cost Assessment.** All jury costs, mileage and *per diem* allowances are taxed equally to all parties when a jury trial is settled or otherwise disposed of:

- in advance of trial
- during trial, but prior to verdict.

No assessment will be made if the Clerk is notified of the settlement before 12:00 noon on the business day before the action is set for trial or if good cause is shown.

#### **54.5 Application for Award of Attorney's Fees.**

- (a) **Filing of Motion.** A motion for attorney's fees not brought pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), must be filed and served within thirty (30) days after entry of judgment. Failure to file and serve within this time constitutes waiver of a claim to attorney's fees. Movant must submit supporting authority and evidence (affidavits and time records). The motion must comply with D.N.M.LR-Civ. 7.
- (b) **Time Records.** An attorney must keep concurrent time records in 42 U.S.C. § 1983 cases and in other actions where there is a potential for an award of attorney fees. Time records are kept by the attorney and are not filed until after final judgment unless otherwise ordered.

#### **RULE 56. Summary Judgment.**

## 56.1 Summary Judgment Procedures.

- (a) **Time for Filing.** Unless otherwise ordered by the Court, motions for summary judgment will not be considered unless filed within the deadline set in the Rule 16 Scheduling Order.
- (b) **Statement of Material Facts.** The moving party must file with the motion a written memorandum containing a short, concise statement of the reasons in support of the motion with a list of authorities relied upon (the “Memorandum”). A party opposing the motion must file a response containing a short, concise statement of the reasons in opposition to the motion with authorities. The moving party may file a written reply with authorities.
- The Memorandum must set out a concise statement of all of the material facts as to which the movant contends no genuine issue exists. The facts must be **numbered** and must refer with particularity to those portions of the record upon which the movant relies.
  - The response must contain a concise statement of the material facts cited by the movant as to which the non-movant contends a genuine issue does exist. Each fact in dispute must be **numbered**, must refer with particularity to those portions of the record upon which the non-movant relies, and must state the **number** of the movant's fact that is disputed. All material facts set forth in the Memorandum will be deemed undisputed unless specifically controverted. The response may set forth additional facts other than those which respond to the Memorandum which the non-movant contends are material to the resolution of the motion. Each additional fact must be **lettered** and must refer with particularity to those portions of the record upon which the non-movant relies.
  - The reply must contain a concise statement of those facts set forth in the response which the movant disputes or to which the movant asserts an objection. Each fact must be **lettered**, must refer with particularity to those portions of the record upon which the movant relies, and must state the **letter** of the non-movant's fact. All material facts set forth in the response will be deemed undisputed unless specifically controverted.

## RULE 58. Entry of Judgment.

**58.1 Final Judgment Based Upon a Negotiable Instrument.** A negotiable instrument that is the basis of a final judgment must accompany the judgment. The instrument must be:

- filed as an exhibit upon entry of judgment;
- merged into the judgment and marked as merged; and
- marked with the docket number of the action.

The instrument may be delivered to a party only by Court order.

## 58.2 Proposed Orders and Judgments.

- (a) **Approval of Order or Judgment.** An order or judgment reflecting the Court's decision and prepared by the prevailing party, submitted in accordance with the procedure set by the assigned Judge, will be entered if:
- (1) all parties approve the order;
  - (2) a copy of the order or judgment served on each party is not objected to within seven (7) days of service; or
  - (3) good cause is shown.
- (b) **Entry of Order or Judgment.** An original order or judgment will be filed in lieu of making an entry in an order or judgment book. This procedure satisfies the notice of entry requirement of FED. R. CIV. P. 77(d).

## VIII. PROVISIONAL AND FINAL REMEDIES

### RULE 65. Sureties.

#### 65.1 Bonds and Other Sureties.

- (a) **Attorney as Surety.** An attorney may not act as a surety for any cost or bond in a case where the attorney has entered an appearance.
- (b) **Bond for Costs on Appeal.** The Court may require an appellant to file a bond or provide other security in a form and amount necessary to ensure payment of costs on appeal.
- (c) **Corporate Sureties.** A surety company must be duly qualified to conduct business in New Mexico and hold a certificate of authority from the United States Secretary of the Treasury. An agent executing a bond from a surety company must attach a power of attorney to the bond.
- (d) **Supersedeas Bonds.**
- (1) The amount of a supersedeas bond must cover the judgment, interest and allowable costs. Interest will be computed at the current rate of United States Treasury obligations. A party seeking approval of the bond must file a motion that complies with the requirements of D.N.M.LR-Civ. 7.
  - (2) The United States, any state, or any of their political subdivisions, officers or agents need not post a supersedeas bond or other undertaking to secure payment of costs on appeal.

### RULE 67. Deposit in Court.

#### 67.1 Disbursements from Court Registry.

- (a) **By Court Order.** A party must provide the Court with the following information to be integrated into a Court order before disbursement of funds will be made:
- the payee's name, address and Social Security number or tax identification number;
  - the amount of principal; and
  - the amount of interest.

- (b) **Court Registry Fees.** The Clerk will deduct a fee from interest earned on interest bearing funds in the Court Registry. The Judicial Conference of the United States authorizes this fee, and the amount is set by the Director of the Administrative Office of the U. S. Courts. A fee schedule is available from the Clerk.

## IX. SPECIAL PROCEEDINGS

### RULE 72. Objection to Non-dispositive Pre-trial Matters.

- 72.1 Procedure.** Objections to a non-dispositive pre-trial matter decided by a pre-trial Magistrate Judge will follow the procedures and requirements set forth in D.N.M.LR-Civ. 7.3, 7.4 and 7.5.

### RULE 73. United States Magistrate Judges.

#### 73.1 Direct Assignment of Civil Cases.

- (a) **Allocation of Civil Case Assignments.** Civil cases excluding prisoner cases and bankruptcy appeals may be randomly assigned to a Magistrate Judge as the trial Magistrate Judge (hereinafter "trial Magistrate Judge") to preside over all dispositive motions, evidentiary hearings and trial; the Court will determine the percentage of civil cases to be assigned to each trial Magistrate Judge. For every civil case, excluding Social Security appeals, a Magistrate Judge will be assigned as pre-trial Magistrate Judge (hereinafter "pre-trial Magistrate Judge") to preside over all non-dispositive pre-trial matters in accordance with FED. R. CIV. P. 72(a). The pre-trial Magistrate Judge will also conduct settlement conferences in all civil cases pursuant to D.N.M. LR-Civ. 16.2.
- (b) **Consent to Proceed Before a Trial Magistrate Judge.** In a case assigned to a trial Magistrate Judge, each party's attorney will receive notice in the form of an NEF ("Notice of Electronic Filing") stating in part, that the case "has been randomly assigned to a U. S. Magistrate Judge to conduct dispositive proceedings in this matter, including motions and trial." A party proceeding pro se will receive the notice and a form entitled, "Consent/Refusal to Proceed Before a U.S. Magistrate Judge" (available at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov) and at the Clerk's Office). Consent or non-consent will be by text only notice filed by a party's attorney or by a completed consent/refusal form submitted to the Clerk by a party proceeding pro se. Unless otherwise notified by the Clerk's Office or the Court, consent by each party must be made no later than twenty-one (21) days after the entry of the original Order setting the Rule 16 Initial Scheduling Conference.
- (c) **Refusal to Proceed Before a Trial Magistrate Judge.** A party's failure to timely indicate consent will be considered that party's refusal of consent to proceed before the assigned trial Magistrate Judge. If a party explicitly or implicitly refuses consent, the assigned trial Magistrate Judge will be replaced by a randomly assigned District Judge. The assigned pre-trial Magistrate Judge will remain the same.

- (d) **Recusal by A Trial Magistrate Judge.** An assigned trial Magistrate Judge may decline to hear the case if it is determined that the case would interfere with the efficient and effective processing of cases within the Magistrate Judge's jurisdiction or if a conflict arises. Upon recusal by an assigned trial Magistrate Judge, the Clerk will randomly reassign the case to another trial Magistrate Judge. If the recusal occurs before entry of the Order setting the Rule 16 Initial Scheduling Conference, the procedures in (b) and (c) will be followed. If the recusal occurs after entry of the Order setting the Rule 16 Initial Scheduling Conference, the parties will have fourteen (14) days from the date a new trial Magistrate Judge is randomly assigned to consent or not consent to the newly assigned trial Magistrate Judge. Failure to timely consent will result in the case being randomly reassigned to a District Judge.

**73.2 Consent to Proceed Before a Pre-Trial Magistrate Judge.**

- (a) **Designation of Magistrate Judge on Cases Not Assigned to a Trial Magistrate Judge.** By consent of all parties, the assigned pre-trial Magistrate Judge may preside over any dispositive matter, including trial.
- (b) **Form of Consent.** Parties wishing to consent must jointly complete and submit a form entitled "Notice, Consent, and Reference of a Dispositive Motion (or Civil Action) to a Magistrate Judge" (available at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov)).
- (c) If the parties consent to the originally assigned pre-trial Magistrate Judge as the trial judge, another Magistrate Judge will be assigned to the case as the pre-trial Magistrate Judge.

**73.3 Appeal of Final Judgment or Order.** If the parties consent to proceed before the assigned trial Magistrate Judge, or consent to have the assigned pre-trial Magistrate Judge preside over a dispositive matter, including trial, the appeal of a final judgment will be to the United States Court of Appeals for the Tenth Circuit.

**73.4 Consent to Settlement Conference Conducted by a Magistrate Judge or Bankruptcy Judge.** The parties, by unanimous agreement, may request a particular Magistrate Judge, who is not the trial or pre-trial Magistrate Judge, or a Bankruptcy Judge, to conduct a settlement conference.

**X. DISTRICT COURTS AND CLERKS**

**RULE 79. Custody of Files and Exhibits.**

**79.1 Removal of Pleadings and Other Papers From Court File.** A Court order is required to remove any contents of a Court file.

**79.2 Return of Exhibits in Civil Actions.** In civil cases, the Clerk will return all exhibits after the trial to the party who introduced same in evidence to be retained until the judgment is final. Such parties will be responsible for producing the exhibits if required for an appeal record.

**79.3 Fees for Copies of Documents.** The Clerk will charge the statutory fee to provide copies of documents. A person who requests that copies be mailed must provide a pre-addressed, stamped envelope, unless otherwise approved by the Clerk.

## **XI. GENERAL PROVISIONS**

### **RULE 81. General Provisions.**

#### **81.1 Removed Actions.**

- (a) **Removal From State Court.** A party removing an action under 28 U.S.C. § 1446 must file with the Clerk legible copies of records and proceedings from the state court action within twenty-eight (28) days after filing notice of removal. The expense of obtaining and filing copies may be taxed as costs in the action.
- (b) **Remand to State Court or Other Forum.** When an action is remanded, the Clerk will transmit to the state court administrator or appropriate official in another forum, the court file and a certified copy of the order of remand.

### **RULE 83. Miscellaneous Rules.**

#### **83.1 Courtroom and Courthouse Decorum.**

- (a) **Prohibition Against Cameras, Cellular Telephones with Cameras, Transmitters, Receivers, and Recording Equipment.** No cameras, cellular telephones with cameras, transmitters, receivers or recording equipment may be brought into or used in any courtroom or court environs. Environs include:
  - the entire floor where a courtroom is located;
  - the entire floor where the grand jury meets; and
  - the entire floor where a chambers of any Magistrate or District Judge is located.
- (b) **Authority to Impound Equipment.** The U. S. Marshals Service may impound the above-described equipment brought into the courtroom or its environs.
- (c) **Exemptions from Prohibition.** The prohibitions of this rule do not apply to:
  - (1) a stenographic or recording device used by an official court reporter or other authorized court personnel;
  - (2) equipment brought into court during investiture, ceremonial or naturalization proceedings;
  - (3) a telephone or pager if turned off while court is in session;
  - (4) a lap-top computer as long as it does not make noise or interfere with court proceedings and it is not used to record or transmit court proceedings;
  - (5) a note-taking or other device required because of a person's disability; or
  - (6) attorneys and jurors with cellular telephones with cameras, but prohibit the use of the camera or recording features while in the courtroom or court environs; or
  - (7) court orders authorizing the use of such equipment.

## 83.2 Bar Admission, Membership and Dues *[Effective 12/1/2014]*

- (a) **Application.** An applicant for admission to the bar of this court must be licensed by the highest court of a state, federal territory, or the District of Columbia, be on active status in a state, federal territory, or the District of Columbia, and be a member of the bar in good standing in all courts and jurisdictions where the applicant has been admitted. Each applicant must complete the application form available from the Clerk, be approved by the Clerk, pay the admission fee to the Clerk, and take the prescribed oath. A fee schedule is available at the Clerk's Office. The admission fee is deposited into the Treasury of the United States as mandated by the Judicial Conference of the United States.
- (b) **Consent to Jurisdiction; Certification of Familiarity with Local Rules.** An attorney who applies for admission to the bar of this court:
- (1) consents to this court's exercise of disciplinary jurisdiction over any alleged misconduct;
  - (2) certifies familiarity with the local rules of this court; and
  - (3) certifies familiarity with the Rules of Professional Conduct adopted by the Supreme Court of New Mexico and adopted by this court in D.N.M.LR-Civ. 83.9.
- (c) **Member in Good Standing.** An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. In good standing means not suspended or disbarred by any court for any reason. An attorney whose suspension or disbarment has been stayed by order of the disciplining court prior to the effective date of the suspension or disbarment remains in good standing. An attorney who is not in good standing may not practice before the bar of this court or continue to be an attorney of record in any pending case. On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, the clerk of this court shall make a notation in the court record of such lack of good standing.
- (d) **Relief From Rule of Good Standing.**
- (1) **Applications.** An attorney who seeks relief from the rule of good standing in subdivision (c) must file a request for relief.
  - (2) **Standards.** It is presumed that discipline imposed by another court against a member of the bar of this court is appropriate. To obtain relief, the attorney so disciplined has the burden to establish by clear and convincing evidence:
    - (A) that the procedure resulting in discipline by the court was so lacking in notice or opportunity to be heard as to deny due process,
    - (B) that the application of the good standing rules in subdivision (c) would result in grave injustice, or
    - (C) that the kind of misconduct warrants substantially less severe discipline.
  - (3) **Reinstatement by Original Disciplining Court.** An attorney who has been reinstated or readmitted by the original disciplining court, but who remains suspended or disbarred in a different court for the same conduct

as that at issue in the original disciplining court, may apply for reinstatement or readmission pursuant to D.N.M.LR-Civ. 83.10(b) and is not disqualified by the requirement that an attorney be in good standing in all courts where admitted.

- (e) **Resignation.** An attorney may resign from the bar of this court only if the attorney is in good standing, is not counsel of record in a pending case, and is not the subject of any disciplinary proceeding before this court.
- (f) **When Self-Reporting is Required.** An attorney who has been admitted to the bar of this court must notify the clerk of the court in the following circumstances:
  - (1) **Eligibility.** The attorney must remain a licensed member in active status and in good standing of the bar of at least one state, federal territory, or the District of Columbia. If at any time these eligibility criteria are not met, the attorney must, within 14 days after the attorney receives notice of the change in status, notify the clerk of this court of the change in status and the reason for the change.
  - (2) **Suspension or Disbarment by Another Court.** If the attorney is suspended or disbarred for any reason by any court, the attorney must, within 14 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of the disciplinary action. An order of suspension or disbarment that is stayed or appealed must be reported.
  - (3) **Resignation Pending Investigation of Misconduct.** If the attorney resigns from the bar of any other federal or state court while an investigation into allegations of misconduct is pending, the attorney must, within 14 days of the resignation, give to the clerk of this court written notice of the resignation and the fact that an investigation was pending.
  - (4) **Pending Charges.** If the attorney is charged in any court with a crime as defined in D.N.M.LR-Civ. 83.13, the attorney must, within 14 days after the attorney receives notice that the charge has been filed, notify the clerk of this court in writing of the charge.
  - (5) **Conviction.** If the attorney is convicted of a crime as defined in D.N.M.LR-Civ. 83.13, the attorney must, within 14 days of the conviction, provide the clerk of this court written notice of the conviction, including the terms of the conviction, the court entering the conviction, and the date of conviction. In addition, the attorney must, within 14 days of the conviction becoming final with no further right of direct appeal, notify the clerk of this court that the conviction has become final. The definition of conviction in D.N.M.LR-Civ. 83.13(b) applies to this paragraph.
- (g) **Effect of Failure To Self-Report.** Failure to self-report is a separate cause for disciplinary action. However, a failure to self-report an administrative suspension for failure to pay an annual registration fee or to comply with mandatory continuing legal education requirements does not constitute separate cause for further disciplinary action by this court.

- (h) **Bar Dues.** Following admission, a member of the Federal Bar must pay dues to the Clerk on or before January 31 in every odd numbered year.
- (i) **Failure to Pay Dues.** An attorney who fails to pay dues on time will be put on delinquent status and will not be allowed to practice in this District. The attorney will be reinstated upon payment of the delinquent dues.
- (j) **Temporary Waiver of Membership.** An eligible attorney who has applied for membership, but has not yet been admitted, may seek leave of the Court to represent a party in a specific action.

**83.3 Appearance of Attorneys Licensed Outside the District.** *[Effective 1/1/2012]* An attorney who is not a member of the Federal Bar may appear in an action, and may file and serve documents electronically either by associating with a member of the Federal Bar or by applying to be admitted under these rules:

- (a) **Association.** The non-member attorney must associate with a member of the Federal Bar as follows:
  - (1) the Federal Bar member must sign the first pleading, certify that the non-member attorney is a member in good standing of the bar of a state, a territory, or the District of Columbia, accept service, and continue in the action unless another Federal Bar member is substituted; and
  - (2) the non-member attorney must pay to the Clerk \$100 for each case in which the non-member attorney appears; or
- (b) **Admission.** The non-member attorney must apply to practice in accordance with D.N.M.LR-Civ. 83.2.

#### **83.4 Entry of Appearance.**

- (a) **Individual Attorney.** To participate in a pending proceeding, an attorney must enter an appearance or obtain leave of the Court to sign and file any pleading, motion, or other document. The attorney must:
  - be eligible to appear under D.N.M.LR-Civ. 83.2 or 83.3;
  - file a written entry of appearance which includes the attorney's name, firm name, address, telephone number, electronic address, and facsimile number; and
  - sign the initial pleading or motion filed on behalf of a party.
- (b) **Appearance by Law Firm (Including Governmental Entity or Agency Attorney's Office and Public Defenders).** Entry of appearance by a law firm allows any member of that firm to participate in the action; however, each attorney in the firm wishing to receive documents from the Clerk must make a written entry of appearance in the action. A member of a firm may file a withdrawal of appearance from a particular case without meeting the requirements of D.N.M.LR-Civ. 83.8, provided that at least one member remains in the case.
- (c) **Limited Entry of Appearance.** An attorney may not appear in a limited manner as provided in N.M.R. PROF'L CONDUCT 16-303(E) except by Court order.

**83.5 Appearance by Party.** A party who is represented by an attorney may not personally make any filings, other than a notice of appeal, or represent himself or herself unless otherwise ordered.

**83.6 Change of Address.** All attorneys of record and parties appearing pro se have a continuing duty to notify the Clerk, in writing, of any change in their firm name, mailing addresses, telephone numbers, facsimile numbers, or electronic addresses.

**83.7 Representation of Corporation, Partnership or Business Entity Other Than a Natural Person.** A corporation, partnership or business entity other than a natural person must be represented by an attorney authorized to practice before this Court.

**83.8 Withdrawal of Appearance.** In addition to the provisions of D.N.M.LR-Civ. 83.4(b), an attorney may withdraw from an action as follows:

- (a) **Unopposed Motion to Withdraw.** The motion to withdraw and proposed order must indicate consent of the client represented by the withdrawing attorney and:
  - notice of appointment of substitute attorney; or
  - a statement of the client's intention to appear *pro se* and the client's address and telephone number; or
  - if the client is a corporation, partnership or business entity other than a natural person, the client's address and telephone number.
- (b) **Contested Motion to Withdraw.** The attorney must file and serve on all parties, including the client, a motion to withdraw. The attorney must give notice in the motion that objections must be served and filed within fourteen (14) days from date of service of the motion and that failure to object within this time constitutes consent to grant the motion.
- (c) **Party is Corporation, Partnership or Business Entity Other Than a Natural Person.** A motion to withdraw from representation of a corporation, partnership or business entity other than a natural person must include a notice that the corporation, partnership or business entity other than a natural person can appear only with an attorney. Absent entry of appearance by a new attorney, any filings made by the corporation, partnership or business entity other than a natural person may be stricken and default judgment or other sanctions imposed.

**83.9 Rules of Professional Conduct.** The Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico apply except as otherwise provided by local rule or by Court order. See, e.g., D.N.M.LR-Civ. 83.4(c). Lawyers appearing in this District must comply with the section for lawyers of "A Creed of Professionalism of the New Mexico Bench and Bar."

**83.10 Attorney Discipline.**

- (a) **Disbarment or Suspension of an Attorney.** The Court, *sua sponte* or upon determining that a member of the Bar of this District Court has been disciplined, suspended or disbarred by any state or has been convicted of a felony, may discipline, suspend or disbar the attorney. The Chief District Judge will appoint a

panel of federal judges who may include Article III Judges, Magistrate Judges and Bankruptcy Judges, to review any state disciplinary proceedings or felony convictions and, if necessary, conduct a hearing to determine whether discipline, suspension or disbarment is appropriate.

- (b) **Procedure for Readmission.** An attorney disbarred or suspended must file a written application setting forth, in detail, the grounds for readmission. An attorney disbarred or suspended under (a) who files a certification that the conviction has been vacated or reversed, may seek readmission review in accordance with the procedures in (a) to determine if disbarment or suspension may be appropriate even though the conviction has been vacated or reversed.

**83.11 Clinical Law Student Practice.** A law student participating in the clinical program at the University of New Mexico School of Law may, under the control and direction of the dean of the law school, represent a party. A member of the Federal Bar, designated by the dean, must actively supervise the student and sign any pleading, motion or other paper prepared by the student. An order authorizing the student's appearance must be filed before the student appears in court.

**83.12 Complaints of Judicial Misconduct or Disability.** A person may lodge a complaint against a Judge in accordance with 28 U.S.C. § 351, et seq. by obtaining a complaint form from the Clerk and filing with:

Circuit Executive  
United States Court of Appeals for the Tenth Circuit  
Byron White U. S. Courthouse  
1823 Stout Street  
Denver, Colorado 80257

**83.13 Conviction of Crime [*Effective 12/1/2014*]**

- (a) **Crime.** As used in these rules, a crime for which discipline may be imposed is any felony, i.e., a crime punishable by a term of imprisonment of more than one year; any lesser crime that reflects adversely on the honesty, trustworthiness or fitness of the attorney in other respects; or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation to commit a crime.
- (b) **Conviction.** As used in these rules, a conviction includes a verdict of guilty, a plea of guilty, or a plea of nolo contendere, regardless of whether entry of judgment of conviction or imposition of sentence is suspended or deferred by the court.
- (c) **Duty of the Clerk.** After receiving notice of a conviction of a member of the bar of this court for a crime as defined in subdivision (a), the clerk must immediately notify the Chief Judge and the attorney.
- (d) **Interim Suspension.**
  - (1) **General Procedure.** The Chief Judge may place an attorney on interim suspension immediately on proof of a conviction of the attorney for a crime

as defined in subdivision (a), regardless of the pendency of any appeal. Alternatively, the Chief Judge may refer the attorney to a panel of judges for investigation and recommendation pursuant to D.N.M.LR-Civ.83.10(a).

- (2) **Opportunity to Object.** The attorney may submit in writing any objection that establishes that the suspension may not properly be ordered, such as proof that the crime did not constitute a crime as defined in subdivision (a) or that the attorney is not the individual convicted.
  - (3) **Termination.** On a written showing by the attorney of extraordinary circumstances, the Chief Judge may vacate an order of suspension.
  - (4) **Effect of Reversal or Vacatur of Conviction.** With the exception of a guilty plea resulting in a deferred judgment or sentence, if an attorney suspended under this rule demonstrates that the underlying conviction has been reversed or vacated, the order of interim suspension shall be vacated and the attorney reinstated. The vacatur of the interim suspension does not automatically terminate any disciplinary proceeding then pending against the attorney.
- (e) **Formal Charges.** When the conviction for a crime as defined in subdivision (a) is the result of a guilty verdict, on conclusion of direct appeal, the Clerk of the Court must submit formal charges to the Chief Judge. The Chief Judge will appoint a panel of judges pursuant to D.N.M.LR-Civ. 83.10(a) to determine the nature and extent of the discipline to be imposed.
  - (f) **Other Grounds for Discipline.** Notwithstanding the disposition of criminal charges, the panel of judges may consider the underlying facts to determine if disciplinary proceedings are warranted.

**LOCAL FORM 1**  
**HIPAA**  
**AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION**  
**MEDICAL RECORDS**

THIS DOCUMENT DOES NOT AUTHORIZE RELEASE OF ANY RECORDS CONCERNING OR RELATED TO ANY ALCOHOL, DRUG,  
HIV OR PSYCHIATRIC CARE, TESTING OR TREATMENT

**Patient name:** \_\_\_\_\_ **D.O.B.:** \_\_\_/\_\_\_/\_\_\_ **S.S.N.:** \_\_\_\_\_

**Dates of Treatment: beginning** \_\_\_\_\_ **through** \_\_\_\_\_  
*[relevant time period must be inserted]*

**AUTHORIZATION:**

I, \_\_\_\_\_, authorize the disclosure of my protected health information as described herein.

1. I authorize the following person(s) and/or organization(s) to disclose the protected health information described in paragraph 3.

*[individual medical provider name must be inserted]*

2. I authorize the following person(s) and/or organization(s) to receive the protected health information described in paragraph 3.

*[individual firm or lawyer must be inserted]*

3. The records authorized to be released include:

all medical records and billing records including without limitation: medical reports, clinical notes, nurse's notes, history of injury, subjective and objective complaints, x-rays, x-ray reports or interpretations, other diagnostic tests (including a copy of the report), diagnosis and prognosis; if applicable, emergency room records or logs, history and physical examination report, laboratory reports, tissue committee reports, reports of operation, operation logs, progress notes, doctors' orders, nurse's notes, physical

therapy records, admission and discharge summaries, and all out-patient records; hospital bills, bills for the services you have rendered, bills for medication; and any other documents, records, or information in your possession relative to my past, present or future physical condition.

4. I expressly waive any laws, regulations and rules of ethics which might prevent any health care provider who has examined or treated me from disclosing my records pursuant to this Authorization.
5. The purpose of this Authorization relates to a legal action now pending in the United States District Court for the District of New Mexico.
6. I understand that I may revoke this Authorization at any time by sending a letter to the person or organization listed in paragraph one (1), except to the extent that such person(s) and/or organization(s) may have already taken action in reliance on this Authorization. If I do not sign, or if I later revoke, this Authorization, the services provided to me by such person or organization will not be affected in any way.
7. This Authorization expires one year from its date of execution.
8. THIS AUTHORIZATION DOES NOT PERMIT THE PERSON OR ORGANIZATION LISTED IN PARAGRAPH TWO (2) TO OBTAIN OR REQUEST FROM THE MEDICAL PROVIDER IDENTIFIED IN PARAGRAPH ONE (1) ORAL STATEMENTS, OPINIONS, INTERVIEWS, OR REPORTS THAT ARE NOT ALREADY IN EXISTENCE.
9. Copying costs will be borne by the person or organization named in paragraph two (2).
10. A photocopy or facsimile of this Authorization is as valid as an original.
11. I understand that a potential exists for information that is disclosed pursuant to this Authorization to be subject to re-disclosure by the recipient and therefore be no longer protected by federal confidentiality rules.

SIGNATURE OF PATIENT OR  
AUTHORIZED REPRESENTATIVE:

CAPACITY OF REPRESENTATIVE,  
IF APPLICABLE:

DATE OF SIGNATURE

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**LOCAL FORM 2**  
**HIPAA**  
**AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION**  
**MENTAL HEALTH RECORDS**

**Patient name:** \_\_\_\_\_ **D.O.B.:** \_\_\_ / \_\_\_ / \_\_\_ **S.S.N.:** \_\_\_\_\_

**Dates of Treatment: beginning** \_\_\_\_\_ **through** \_\_\_\_\_  
*[relevant time period must be inserted]*

**AUTHORIZATION:**

I, \_\_\_\_\_, authorize the disclosure of my protected health information as described herein.

1. I authorize the following person(s) and/or organization(s) to disclose the protected health information described in paragraph 3.

*[individual medical provider name must be inserted]*

2. I authorize the following person(s) and/or organization(s) to receive the protected health information described in paragraph 3.

*[individual firm or lawyer must be inserted]*

3. The records authorized to be released include:

- complete copy of medical records
- test results
- other

4. I expressly waive any laws, regulations and rules of ethics which might prevent any health care provider who has examined or treated me from disclosing my records pursuant to this Authorization.

5. The purpose of this Authorization relates to a legal action now pending in the United States District Court for the District of New Mexico.
6. I understand that I may revoke this Authorization at any time by sending a letter to the person or organization listed in paragraph one (1), except to the extent that such person(s) and/or organization(s) may have already taken action in reliance on this Authorization. If I do not sign, or if I later revoke, this Authorization, the services provided to me by such person or organization will not be affected in any way.
7. This Authorization expires one year from its date of execution.
8. THIS AUTHORIZATION DOES NOT PERMIT THE PERSON OR ORGANIZATION LISTED IN PARAGRAPH TWO (2) TO OBTAIN OR REQUEST FROM THE MEDICAL PROVIDER IDENTIFIED IN PARAGRAPH ONE (1) ORAL STATEMENTS, OPINIONS, INTERVIEWS OR REPORTS THAT ARE NOT ALREADY IN EXISTENCE.
9. Copying costs will be borne by the person or organization named in paragraph two (2).
10. A photocopy or facsimile of this Authorization is as valid as an original.
11. I understand that I have a right to examine the information to be disclosed, unless deemed that such disclosure is not in my best interest.
12. I understand that a potential exists for information that is disclosed pursuant to this Authorization to be subject to re-disclosure by the recipient and therefore be no longer protected by federal confidentiality rules.

SIGNATURE OF PATIENT OR  
AUTHORIZED REPRESENTATIVE:

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CAPACITY OF REPRESENTATIVE,  
IF APPLICABLE:

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DATE OF SIGNATURE

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