Rules of the District Court of the Third Judicial District

Table of Corresponding Rules

Local Rules of the Third Judicial District Court

The table below lists the former rule number and corresponding new number, and the new rule number and the corresponding former rule number prior to recompilation by Supreme Court Order No. 16-8300-015.

Former Rule No.	Corresponding New Rule No.
LR3-101	Withdrawn
LR3-102	Withdrawn
LR3-103	Withdrawn
LR3-104	Withdrawn
LR3-105	Withdrawn
LR3-106	Withdrawn
LR3-107	Withdrawn
LR3-108	Withdrawn
LR3-109	Withdrawn
LR3-110	Withdrawn
LR3-111	Withdrawn
LR3-113	Withdrawn
LR3-201	Withdrawn
LR3-202	Withdrawn
LR3-203	Withdrawn
LR3-204	Withdrawn
LR3-205	Withdrawn
LR3-207	Withdrawn
LR3-208	Withdrawn
LR3-209	Withdrawn
LR3-210	Withdrawn
LR3-211	Withdrawn
LR3-212	Withdrawn
LR3-213	Withdrawn
LR3-214	Withdrawn
LR3-216	Withdrawn
LR3-217	Withdrawn

New Rule No.	Corresponding Former Rule No.
LR3-101	New
LR3-102	New
LR3-103	New
LR3-104	New
LR3-105	New
LR3-106	New
LR3-107	New
LR3-108	New
LR3-109	New
LR3-110	New
LR3-111	New
LR3-112	New
LR3-113	New
LR3-114	New
LR3-201	New
LR3-202	New
LR3-203	New
LR3-204	New
LR3-205	New
LR3-206	New
LR3-207	New
LR3-208	New
LR3-209	New
LR3-301	New
LR3-302	New
LR3-401	New
LR3-402	New

LR3-218	Withdrawn
LR3-301	Withdrawn
LR3-307	Withdrawn
LR3-402	Withdrawn
LR3-403	Withdrawn
LR3-404	Withdrawn
LR3-405	Withdrawn
LR3-406	Withdrawn
LR3-407	Withdrawn
LR3-408	Withdrawn
LR3-501	Withdrawn
LR3-502	Withdrawn
LR3-503	Withdrawn
LR3-511	Withdrawn
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LR3-605	Withdrawn
LR3-701	Withdrawn
LR3-702	Withdrawn
LR3-703	Withdrawn
LR3-704	Withdrawn
LR3-705	Withdrawn
LR3-706	Withdrawn
LR3-707	Withdrawn
LR3-708	Withdrawn
LR3-709	Withdrawn
LR3-710	Withdrawn
LR3-901	Withdrawn
LR3-902	Withdrawn
LR3-Form 1.10	Withdrawn

LR3-403	New
LR3-404	New
LR3-601	New

LR3-Form 1.11	Withdrawn
LR3-Form 1.12	Withdrawn
LR3-Form 2.10	Withdrawn
LR3-Form 2.11	Withdrawn
LR3-Form 2.12	Withdrawn
LR3-Form 2.13	Withdrawn
LR3-Form 2.14	Withdrawn
LR3-Form 2.15	Withdrawn
LR3-Form 3.10	Withdrawn
LR3-Form 3.20	Withdrawn
LR3-Form 3.21	Withdrawn
LR3-Form 3.60	Withdrawn
LR3-Form 5.10	Withdrawn
LR3-Form 5.11	Withdrawn
LR3-Form 7.10	Withdrawn
LR3-Form 7.11	Withdrawn
LR3-Form 7.12	Withdrawn
LR3-Form 7.13	Withdrawn
LR3-Form 7.14	Withdrawn
LR3-Form 9.10	Withdrawn

I. Rules Applicable to All Cases

LR3-101. Citation.

The following rules shall be known and cited as the Local Rules of the Third Judicial District Court. Individual rules may be cited as “LR3-___.”

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-102. Disciplinary action for failure to comply.

[Related Statewide Rules 1-011, 5-112, and 5-206 NMRA]

Failure to comply with these rules may subject the attorney or non-complying party to any disciplinary action as the court deems appropriate, including civil or criminal contempt or other appropriate sanction.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-103. Court appointments and application for fees.

A. **Appointments**. Each eligible attorney who practices in the Third Judicial District must accept court appointments. The only attorneys exempt from such appointments are those in the following categories:

(1) attorneys who are employees of any governmental agency that restricts the attorneys from the private practice of law; and

(2) attorneys who are in-house counsel for a business entity that restricts the attorneys from the private practice of law.

B. **Application for fees**. If the attorney applies for fees in an assigned matter, the application must include a justification for payment in the form as the court may require. The application for payment must have attached a copy of the order of appointment, the affidavit of indigency, where required, and an itemized statement of services provided. Applications that do not comply with this rule will be rejected.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-104. District court trust and litigant accounts.

[Related Statewide Rule 1-102 NMRA and Statute NMSA 1978, § 34-6-36]

A. **Tendering money into court's registry**. The Court Executive Officer shall not disburse or accept any money except under court order or statute. Any tender of money to the court shall be in the form of a money order, cashier's check, certified check, or cash, or, at the sole discretion of the Court Executive Officer, by attorney's trust check.

B. **Disbursement of funds**.

(1) Proposed orders of disbursement shall specifically provide what disposition is to be made as to any accrued interest on the funds held as provided by Rule 1-102 NMRA.

(2) Disbursement of money held in the court account shall be on court order only. Disbursements shall be made forthwith on the order of the court after review by the court finance department.

(3) Before going to the judge for approval, all disbursement orders will be reviewed by the Court Executive Officer or the Court Executive Officer's designee. Orders of disbursement shall provide to whom disbursement is to be made and the specific amount to be disbursed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-105. Court security.

[Related Statewide Rule 5-115 NMRA and Statute NMSA 1978, § 4-41-16]

A. **Weapons**. All deadly weapons, including knives and objects that could be used to inflict bodily harm, except those carried by authorized court security officers, are prohibited in the judicial complex and any other related judicial office. Weapons that are intended for use as trial or hearing exhibits are not subject to this rule. Law enforcement officers who are witnesses shall not carry weapons in the courtroom and shall comply with all applicable sections of the court's security manual.

B. **Prisoner procedures**.

(1) The law enforcement agency having custody of any prisoner appearing for a court proceeding shall be responsible for keeping the prisoner secure while the prisoner is at the judicial complex. That agency shall be responsible for searching the prisoner and keeping the prisoner handcuffed or manacled. Prisoners are to be taken to the holding facility in the judicial complex immediately on arrival, and shall be kept separate from court personnel and members of the public.

(2) No attorney shall have the authority to authorize a prisoner to be released from handcuffs or manacles. Law enforcement officers having custody of a prisoner may remove handcuffs or manacles so a prisoner may sign documents or perform other functions necessary for the court proceeding, and as otherwise ordered by the court.

(3) Prisoners shall not be allowed to mingle with family members or other persons, except at the discretion of the court after discussion with the law enforcement agency having custody of the prisoner.

C. **Other precautions**.

(1) Metal detectors and physical searches may be used in any case on court order.

(2) Any law enforcement officer, court employee, or attorney who believes that an altercation or violent situation may occur at a court proceeding shall promptly notify the court. The court may implement appropriate security measures on such occasions.

(3) During court proceedings where a party is in custody, security personnel shall remain in the courtroom near the prisoner during the entire proceeding.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-106. Pleadings and filed papers.

[Related Statewide Rules 1-011, 1-089.1, 5-206, 5-108, 10-115, and 10-165 NMRA]

In addition to the contact information required by the applicable statewide rules of procedure, all pleadings and papers filed by counsel shall contain the State Bar number of the attorney who is filing the pleading or other paper, and shall identify the party who is being represented. Attorneys appearing pro hac vice shall state that they have complied with Rule 1-089.1 NMRA or Rule 5-108 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-107. Pro se filings (parties who wish to represent themselves without an attorney).

[Related Statewide Rules 1-011, 5-206, 10-115, and 10-165 NMRA]

A. **Pro se appearances by individuals.** Any party who is an individual desiring to proceed pro se in any cause shall include with all pleadings filed the individual's full name, contact address, and contact telephone number, and any business address and telephone number, if available. Thereafter, it shall be the responsibility of the pro se party to apprise the court of any changes in the information. Failure to comply with this rule may result in sanctions including dismissal of the action or default.

B. **No pro se appearances by entities.** Entities such as partnerships, corporations, nonprofit agencies, trusts, or any other form of collective entity, must be represented by a licensed attorney, authorized to practice in the State of New Mexico in matters pending in the district court. Pro se appearances, pleadings, and other filings by those entities may be dismissed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-108. Appearances, withdrawals, and substitution of counsel.

[Related Statewide Rules 1-089.1, 5-107, and 10-165 NMRA]

A. **Entry of appearance**. An attorney shall enter an appearance in an action as required by Rules 1-089, 5-107, and 10-165 NMRA.

B. **Withdrawal**. Counsel may withdraw in contested matters under Rule 1-089 NMRA only with the consent of the assigned judge.

(1) Any application for withdrawal of counsel under Rule 1-089 NMRA shall state the last known mailing address and telephone number(s) of the attorney's client, unless another attorney enters an appearance for the party prior to or simultaneously with the application for withdrawal.

(2) If no hearing on any pending issue is set, the court shall consent, without a hearing, to the withdrawal of the counsel if it is accompanied by an entry of appearance of substitute counsel or party pro se.

(3) If a hearing on pending issues has been set, the court shall consent, without a hearing, to the withdrawal of counsel if it is accompanied by an entry of appearance of substitute counsel or party pro se, and if the entry waives any right substitute counsel or party pro se may have to request vacation of the hearing that has been set on the grounds of the new entry and if the entry is approved by opposing counsel or party pro se.

(4) If the conditions set forth in Subparagraph (2) or (3) of this paragraph are not met, the court shall approve the withdrawal of counsel only under the following conditions:

(a) for good cause shown upon motion and hearing, with notice to opposing counsel or party pro se; if there is no entry of appearance of substitute counsel or of a party pro se, the withdrawing attorney shall provide the court with a certificate stating the party's last known address at which service of papers may be made in accordance with Rule 1-005 NMRA and the last known telephone numbers and employer of the party; or

(b) upon such terms as the court may deem just.

(5) All orders allowing withdrawal of counsel and substitution of a party pro se shall contain the name and the last known address of the party whose attorney is being allowed to withdraw. A copy of any order allowing withdrawal shall be served on all parties, under Rules 1-089, 5-107, and 10-165 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-109. Change of address or telephone number.

Counsel and pro se litigants shall inform the court of any change of mailing address or telephone number by filing a notice thereof in each pending matter and serving it on all parties involved therein. Failure to comply with this rule may result in sanctions including dismissal of the action or default.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-110. Service of notices and the mailing of other pleadings.

[Related Statewide Rules 1-005, 5-103, and 10-104 NMRA]

A. **Service of notices and pleadings**. All attorneys who maintain an office in Doña Ana County and who consent in writing, will have an appropriate box or other place designated in the Third Judicial District Court for service of court notices, orders, and other court documents. Counsel will apply using a form approved by the district court for that purpose. Except for court-initiated documents, the court will not mail notices or pleadings to counsel who do not consent or who do not maintain an office in Dona Ana County unless a pre-addressed and stamped envelope is provided. Pleadings will be mailed to pro se litigants only if pre-addressed and stamped envelopes are provided.

B. **Attorney boxes; service by court**. Attorneys' boxes are for the court's use only in serving notices, judgments, and other court documents. Placement of notices and pleadings in the attorney's box by court personnel constitutes service. The date when the court's document is placed in the box shall be stamped on the document.

C. **Attorney boxes; non-court use generally prohibited**. No one other than the Court Executive Officer and court staff may place documents in attorney boxes, unless written permission of the Court Executive Officer or chief judge is first obtained.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-111. Hearings and scheduling conflicts.

A. **Requests for hearing**. All requests for hearing shall be filed with the clerk and submitted to the assigned judge using Form 4-110 NMRA. Counsel and pro se litigants requesting a hearing shall provide pre-addressed, stamped envelopes for any party entitled to notice who does not have a box at the courthouse. Attorneys who have a box at the courthouse will receive notices of hearing in their assigned court boxes.

B. **Vacating hearings**. Hearings will not be vacated ex parte or by agreement of counsel and parties, but only by the court.

C. **Motions to continue or vacate hearings due to scheduling conflicts**. Motions to vacate hearings due to conflicts with other courts shall be governed by the rule that the case first scheduled for that date will have priority, unless otherwise directed by the court. Any party or counsel filing a request to vacate a hearing due to a scheduling conflict will attach to the request a copy of the other court's prior notice of hearing and serve a copy of the request on opposing pro se parties or counsel.

D. **Re-setting**. If the court grants a continuance, the parties shall file another request for hearing within five (5) business days and advise the court of their non-availability dates.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-112. Telephone conferences and hearings.

Telephonic appearances must be arranged in advance through a telephone conference provider approved by the court, unless otherwise authorized by the judge assigned to the case. On motion and good cause shown the court may permit an alternative method of telephonic appearance. Any costs associated with the telephone conference must be borne by the party making the telephonic appearance.

A. **Civil cases**. Telephonic appearances by parties and attorneys are permitted in civil cases, with prior approval of the Court. In addition, when a party seeks to take telephonic testimony, that party must request leave of the court for such telephonic testimony.

B. **Criminal cases**. Telephonic appearances in criminal cases are permitted only if all parties of record agree and only if the hearing is one where the presence of the defendant is not required and no testimony is required for the hearing.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-113. Orders and judgments.

[Related Statewide Rules 1-058 and 5-121 NMRA]

A. **Stipulation regarding no action prohibited**. No stipulated order requiring the case to remain open without action shall be permitted.

B. **Signing orders or judgments**. A district judge may sign an order or judgment when the judge who presided is unavailable, if satisfied that the order or judgment complies with the assigned judge's decision. Any order or other matter once presented to a judge for approval or signature and refused shall not be presented to any judge except the assigned judge.

C. **Orders and judgments filed separately**. Orders and judgments shall be separately filed, and shall not be included as part of any motion or other filed paper.

D. **Filing with court clerk required**. Every order, judgment, or other instrument that has been signed by the court shall be immediately delivered to the court clerk for filing.

Orders and judgments shall not be dated. The date of entry shall be that shown by the court's stamp, unless filed in open court.

E. **Requirements prior to signing by judge**. Orders and judgments shall not be signed by the court unless legibly signed or otherwise approved by all counsel of record and all pro se parties, or until after a hearing on the form of the order or judgment.

F. **Deadlines; preparation; procedure on submittal**. Subject to Rule 1-058(B) NMRA, all orders, judgments, and decrees shall be submitted to the assigned judge within ten (10) business days of the decision unless otherwise directed by the court. In matters decided by the court after a hearing or trial, the prevailing party or the party designated by the court shall prepare orders or judgments and shall submit them to opposing counsel and pro se parties within five (5) business days from the date the order or judgment was rendered by the court. If the proposed order or judgment is approved by all counsel and pro se parties, the order or judgment shall so indicate and may be signed by the court immediately, if appropriate. Orders may be approved telephonically, via facsimile, or electronically, and shall so indicate. Any proposed order or judgment to which the parties have agreed shall be approved without reservation by counsel or pro se parties, and not "approved as to form" or in any other way limiting approval. If the approval of opposing counsel or pro se parties cannot be obtained by the tenth (10th) day or by the deadline directed by the court, such counsel or pro se party designated by the court shall follow these rules below.

(1) If opposing counsel or pro se party does not agree as to the form of the proposed order or judgment, such counsel or pro se party shall send objections in writing to opposing counsel or pro se party within five (5) business days from the receipt of the proposed order or judgment.

(2) If, after conferring, opposing counsel or pro se party cannot agree on the proposed form of order or judgment, each shall submit a separate proposed order or judgment and any written objections to the court and to opposing counsel or pro se party. Either shall request a presentment hearing or shall notify the court that a hearing is not requested. The court may either set a presentment hearing or determine the form of the order without a hearing.

(3) The court will inform all counsel and pro se parties of its ruling on the objections, and the prevailing or designated party shall prepare a proper order or judgment, if different from the one initially submitted, in accordance with the court's decision on the objections, or the court may prepare its own judgment or order.

G. **Judgments based on written instrument; requirements**. A final judgment based on a written instrument shall be accompanied by the instrument, which shall be filed as an exhibit in the case at the time the judgment is entered unless the instrument is already part of the court's official record.

H. **Show cause orders**. Orders to show cause shall be submitted to the judge assigned to hear the case. If, however, the assigned judge is unavailable, then the proposed order may be signed by any judge, but only after the date for hearing has been obtained from the trial court administrative assistant of the judge who will hear the matter.

I. **Failure to comply**. The court may award attorney fees and costs required by failure to comply with this rule.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-114. Depositing of wills.

[Related Statute NMSA 1978, § 45-2-515]

Anyone wishing to deposit a will with the district court under the New Mexico Uniform Probate Code shall place the will in a sealed, legal-sized envelope, with the testator's name written on the outside of the envelope and shall furnish the Court Executive Officer or designee with a signed statement of the testator requesting such depositing, using a form approved by the district court for that purpose. If this statement is not furnished, the Court Executive Officer or designee will not accept the will.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

II. Rules Applicable to Civil Cases

LR3-201. Default judgments.

[Related Statewide Rule 1-055 NMRA]

A. **Certificate as to the state of the record**. A certificate as to the state of the record is to be submitted with the court concurrent with filing a motion for default judgment using a form approved by the district court for that purpose.

B. **Servicemembers civil relief affidavit**. A servicemembers civil relief affidavit is to be filed with the court concurrent with filing a motion for default judgment using a form approved by the district court for that purpose.

C. **Proof of damages for default judgments**.

(1) In suits on written agreements, it will not be necessary to submit evidence other than the original written agreement. Judgment will be entered for the principal amount claimed in the complaint provided that amount does not exceed the face

amount of the written agreement, less any credits, plus interest and attorney fees if provided for in the written agreement or by statute.

(2) In actions on insurance subrogation claims, proof of damages may consist of repair estimates, copies of medical bills and copies of checks paying the same, or other evidence showing that the insurance company has in fact paid for its insured's property damages and reimbursed the insured's medical expenses. Damages will not be awarded on default for any pain and suffering in the absence of actual evidence submitted under oath in open court.

(3) In all other types of claims, proof must be submitted to substantiate the amount of damages to be awarded.

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

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-202. Disposition of civil exhibits.

[Related Statewide Regulation NMAC 1.17.230.303]

A. **Retention by court clerk after trial**. Evidence introduced as exhibits at trial shall be retained by the clerk for one (1) year following the expiration of the appeal period or final disposition of the case, after which time counsel may retrieve the exhibits from the clerk's office.

B. **Retention by party after motion hearing**. Evidence introduced at motion hearings may be retained by the party introducing the evidence and returned to the court if the court deems necessary for further action.

C. **Release before end of retention period; destruction**. Release of exhibits in advance of the one (1) year retention period may be obtained by court order. After sixty (60) days' notice, exhibits not timely retrieved shall be destroyed.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-203. Civil case control.

[Related Statewide Rule 1-016 NMRA]

A. **Case management scope**. This case management system is to guide and control the progress of cases from filing of the complaint to the time of trial. These case control rules shall apply to all civil cases, with the exception of the following:

(1) commitments;

(2) conservator and guardian proceedings;

(3) probate proceedings;

(4) writ actions; and

(5) domestic relations proceedings.

B. **Scheduling**.

(1) ***Order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings***. Upon the filing of the initial pleading in civil cases to which these rules apply, the court will enter an order requiring scheduling reports and a discovery plan and limiting stipulations to enlarge time for responsive pleadings. The court will issue this order with the summons, to be served on the defendant(s) with the summons and complaint. A party other than the party filing the initial pleading who asserts a claim against another party who has not been served with a copy of this order shall serve a copy of this order on each person against whom a claim is asserted and shall file a certificate of such service.

(2) ***Requirements of scheduling reports***. As further detailed in the order requiring scheduling reports, the parties shall confer with the goal of agreeing on the track to which each case should be assigned, based on the criteria laid out below. Scheduling reports will provide information to allow the court to schedule trial and certain pretrial hearings early in the case and to allow the court to allocate the necessary judicial resources to fairly and promptly resolve the dispute. To accomplish this, the order shall

(a) require the filing of scheduling reports by all parties sixty (60) calendar days after the filing of the initial pleading or ten (10) business days after entry of appearance;

(b) require the parties to either

(i) stipulate to a discovery plan; or

(ii) timely request a hearing at which the court will formulate a discovery plan;

(c) inform the parties that, in the absence of a discovery order filed under either Subparagraphs (2)(b)(i) or (2)(b)(ii) of this paragraph, the parties shall comply with the discovery plan set forth in the scheduling order;

(d) provide limits on the power of parties to stipulate to an extension of time to file responsive pleadings; and

(e) direct the parties to inform the court and the alternative dispute resolution coordinator when the case is at issue.

(3) ***Scheduling reports***.

(a) *Scheduling reports required*. Within sixty (60) calendar days after the initial pleading in a civil action is filed, parties of record shall file a scheduling report. A copy of the scheduling report shall be served on each party of record and a copy delivered to the assigned judge.

(i) If all parties can agree that the matter is likely to be ready for trial within four (4) to six (6) months, they shall confer and submit a joint scheduling report stipulating to Track A, using a form approved by the district court for that purpose.

(ii) If all parties cannot agree that the matter is likely to be ready for trial within four (4) to six (6) months, the parties shall confer and each party shall submit a scheduling report in a form approved by the district court for that purpose with a caption that describes the party, e.g. “Plaintiff’s Scheduling Report,” “Defendant’s Scheduling Report.”

(iii) If the parties agree on a track other than Track A, they may submit a joint scheduling report in a form approved by the district court for that purpose.

(iv) The assigned judge will set the case on a docket and set other pretrial hearings without a hearing, based upon the information in the scheduling reports, as provided in Paragraph C of this rule.

(b) *Cases not at issue within sixty (60) days*.

(i) If all parties are not of record within sixty (60) calendar days after the filing date of the initial pleading, each party making a claim against one or more absent parties (plaintiff for defendant, third-party plaintiff for third-party defendant, etc.) shall, within five (5) business days after the sixtieth (60th) day, file with the court, serve parties of record, and deliver a copy to the assigned judge, a written explanation in a form approved by the district court for that purpose.

(ii) Any party who enters an appearance in the case more than sixty (60) calendar days after the filing of the initial pleading shall file a scheduling report within ten (10) business days and deliver a copy to the assigned judge.

C. **Assigning Case Track**. Each case will fall into Track A, B, or C, depending on the complexity and time requirements. Cases will be designated considering the criteria below, either by stipulation of the parties or by determination of the court.

(1) ***Track A***.

(a) Cases ready for trial within four (4) to six (6) months of filing of the initial pleading;

(b) No more than two (2) trial days required;

(c) Legal issues are few and clear;

(d) No multiple claims or third-party complaints;

(e) Defendants served quickly; responsive pleadings filed promptly;

(f) Required discovery limited;

(g) Witnesses: five (5) or fewer witnesses, with expert witnesses allowed if testimony is concise and brief; and

(h) Damages are in a fixed amount or capable of determination with limited evidence.

(2) ***Track B***.

(a) Cases ready for trial within six (6) to twelve (12) months of filing the initial pleading;

(b) No more than five (5) trial days required;

(c) Required discovery is not extensive;

(d) Expert witnesses are limited to two (2) per party; and

(e) Damage issues are not complex.

(3) ***Track C***.

(a) Trial preparation likely to require more than twelve (12) months;

(b) Trial likely to require more than five (5) days;

(c) Legal issues are numerous, complicated, novel, or unique;

(d) Numerous claims;

(e) Numerous parties represented by different counsel;

(f) Required discovery is extensive;

(g) Large number of fact and expert witnesses; and

(h) Damage issues are complex or require extensive evidence.

D. **Scheduling Order**. The court will consider the scheduling report(s) submitted by the parties and will enter a scheduling order that will govern discovery and trial dates unless amended. The parties may request a scheduling conference under Rule 1-016 NMRA if the case presents unique or complex issues that require the court's attention.

E. **Sanctions**. If a party fails to timely comply with the provisions of this rule, the party will be subject to appropriate sanctions, which may include dismissal or default.

F. **Pre-trial conferences; scheduling orders; management**.

(1) ***Scheduling conference***. Any party may request a scheduling conference before the court files a scheduling order. The face of the request shall state the date that a scheduling order must be filed in order to comply with Rule 1-016(B) NMRA, and counsel shall be prepared to advise the court on those matters contained in Rule 1-016(B) NMRA.

(2) ***Pretrial conference***.

(a) Unless excused by the court, counsel who will handle the case at trial shall participate at any pretrial or scheduling conference set by the court.

(b) Counsel shall be prepared to advise the court of those matters provided for in Rule 1-016(C) NMRA.

(c) The parties shall exchange pretrial statements five (5) business days before the pretrial conference. After the conference plaintiff shall incorporate each portion submitted into a pretrial order to be submitted to the parties five (5) business days after the pretrial conference and to the court ten (10) business days after the pretrial conference.

(d) The pretrial order shall contain the following:

(i) Jurisdiction. State whether there is a question of jurisdiction over the parties or subject matter and, if so, each party shall provide citation of authority for that party's position.

(ii) Propriety of parties. State if there is a need for a guardian, personal representative, etc.; whether parties are correctly stated as an individual, partnership, corporation, etc.; and whether there is a question of misjoinder of parties or need for realignment of parties.

(iii) Outline of events. Statement by each counsel outlining the events or transactions out of which the claim, counter-claim, or cross-claim arose, or upon which the defense is founded.

(iv) Factual allegations; plaintiff. The plaintiff shall state the factual contentions as to the liability of each defendant, specifically including the injuries and damages claimed by each plaintiff. Special damages, general damages, and punitive damages, as well as the specific factual and legal basis for punitive damages, shall be separately stated.

(v) Factual allegations; defendant. The defendant shall state the factual contentions as to non-liability and as to each affirmative defense, and shall specifically respond to plaintiff's claims and state the basis for each affirmative defense.

(vi) Factual allegations; others. Where counter-claims, cross-claims, or third-party claims exist, a statement of that party's factual contentions as to liability, non-liability, and affirmative defenses shall be stated in the manner described in Subparagraphs (G)(2)(d)(iv) and (G)(2)(d)(v) of this rule.

(vii) Admissions or stipulations. Counsel or pro se litigants shall make an effort to stipulate to all matters not at issue, including, but not limited to, the following:

a. date(s);

b. place;

c. time;

d. vehicles;

e. ownership;

f. passengers;

g. traffic control devices;

h. weather;

i. foundation matters; and

j. other.

Only matters actually agreed upon shall be included. It is the responsibility of each party to introduce stipulations at the appropriate time. A party may read any stipulation to the jury or request the court, out of the presence of the jury, to do so.

(viii) Discovery. State what discovery has been completed and, if the deadlines for discovery set in the scheduling conferences have not been met, state why, in detail, and when discovery is expected to be completed. Discovery includes the exchange of names of witnesses along with a brief summary of the subject matter of each witness's testimony.

(ix) Laws involved. State as follows:

a. Source of law.

1. United States of America (constitution or statute);

2. State (constitution or statute);

3. Ordinances (attach copies);

4. Regulations (attach copies);

5. Decisions (attach copies if not published).

b. Issues of law; evidentiary problems.

c. Memoranda of law. State whether necessary, due date, and the issues to be included in the memorandum.

(x) Amendments to pleadings. State whether amendments addressed in the scheduling order have been completed and, if not, state why not. If additional amendments are requested, state, in detail, why they were not included in the scheduling order. State requested amendments.

(xi) Briefs. The parties shall state the need and schedule for filing and exchanging pretrial briefs.

(xii) Masters. The parties shall state the advisability of referring the matter to a master, settlement facilitator, or a mediator, and shall state the possibilities of settlement.

(xiii) Other matters. Other matters as the court may require, with or without a party's request, which shall include any deviations from the scheduling order.

G. **Exhibits**.

(1) A pre-numbered exhibit list describing each exhibit shall be submitted to all other parties at least twenty-one (21) calendar days prior to trial and to the court five (5) business days before the scheduled trial or such other time as may be set by the court.

(2) Actual exhibits shall be made available to all counsel for examination no less than fifteen (15) calendar days prior to trial.

(3) Each exhibit shall be numbered separately. The exhibits shall be numbered Plaintiff's No. 1, 2, 3, etc.; Defendant's No. A, B, C, etc.

(4) Drawings by experts and non-experts shall be prepared prior to trial and made available to all counsel along with exhibits.

(5) The parties shall notify each other, in writing, of objections to each other's exhibits ten (10) business days prior to trial. A copy of the objections shall be given to the court five (5) business days prior to trial, and objections will be considered by the court at such time as may be set by the court. Any exhibit not objected to may be admitted into evidence the morning of trial and may be referred to and shown to the jury during opening statements.

H. **Witnesses**.

(1) It is the responsibility of each party to subpoena that party's witnesses.

(2) A separate witness list shall be exchanged by all parties twenty-one (21) calendar days prior to trial and a copy delivered to the court five (5) business days before trial or at such other time as may be directed by the court. No witnesses, including expert witnesses, may be permitted to testify if the witness has not been disclosed as required by the scheduling order except rebuttal witnesses or when good cause has been shown.

(3) Objections to witnesses shall be made known to each party ten (10) business days prior to trial and to the court five (5) business days prior to trial.

(4) Each party is responsible to have witnesses available as needed and to obtain interpreters as may be required.

I. **Jury instructions**.

(1) ***Plaintiff to defendant***. Plaintiff shall submit instructions to other parties fifteen (15) business days prior to trial and shall include all applicable mandatory instructions.

(2) ***Defendant to plaintiff***. Defendant and all other parties shall submit instructions to all parties ten (10) business days prior to trial. The parties shall not offer

any alternate for an instruction requested by the plaintiff unless the requested alternate is accompanied by objections to the plaintiff's requested instruction.

(3) ***All parties to court***. All parties shall submit instructions to the court five (5) business days prior to trial.

(4) Each party shall submit verdict forms with their instructions. Verdict forms shall include the caption of the case.

(5) Additional instructions may be submitted as the court permits.

J. **Findings of fact and conclusions of law**. The parties shall comply with LR3-205 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-204. Consolidation of cases.

[Related Statewide Rule 1-042 NMRA]

A. **Motions; where filed; assigned judge upon consolidation**. Motions for consolidation will be filed in the proceeding with the lowest case number (the oldest case). If consolidation is ordered, the judge assigned to the lowest numbered case will preside over all of the cases that are consolidated, unless otherwise stipulated by all parties.

B. **Motions and orders; copies**. The motion to consolidate and the court's order to consolidate shall be filed in the case bearing the lowest case number. Copies of the motion and order shall be filed in the remaining cases.

C. **Post-consolidation pleadings**. All pleadings filed after consolidation will be docketed and placed only in the file with the lowest case number. No copies shall be filed in the remaining cases. A copy of the final judgment, however, will be placed in each of the consolidated files.

D. **Case caption**. Pleadings filed after consolidation shall contain in the caption the case numbers of each case consolidated.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-205. Findings of fact and conclusions of law.

[Related Statewide Rule 1-052 NMRA]

When counsel desire that the court enter findings of fact and conclusions of law, or when findings of fact and conclusions of law are required by the Rules of Civil Procedure, they shall be submitted to the court by the plaintiff fifteen (15) business days prior to trial and by all other parties ten (10) business days prior to trial. Counsel are to request only ultimate findings of fact as are necessary to determine the issues.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-206. Jury matters.

[Related Statewide Rules 1-038, 1-047, and 1-051 NMRA]

A. **Jury fees**. When a jury trial continues for more than one (1) day, the party demanding the jury shall pay to the court administrator jury fees for each subsequent day when court commences on each subsequent day.

B. **Jury panel and questionnaires**.

(1) If requested in writing at least forty-eight (48) hours prior to trial, attorneys and pro se parties may obtain the randomized list of the venire for a pending jury trial no later than twenty-four (24) hours prior to trial.

(2) Supplemental jury questionnaires requested by parties shall be submitted only upon order of the court after a showing of good cause or as otherwise provided by rule. The parties requesting such questionnaires shall be responsible for the costs associated with

(a) preparing and submitting the questionnaires;

(b) providing sufficient copies and properly stamped envelopes to the jury clerks for mailing to the venire;

(c) providing stamped, pre-addressed envelopes for the return of the questionnaires to the Third Judicial District Court Clerk’s office; and

(d) making copies of the returned questionnaires.

C. **Jury instructions**. In addition to requirements of Rule 1-051 NMRA, at the bottom of the court’s copy of each jury instruction, counsel shall identify the Uniform Jury Instruction number or other supporting citations, along with the following:

Given _____

Denied _____

Modified _____

Withdrawn _____

D. **Introduction of certain evidence before a jury**. Any evidence sought to be introduced in a jury trial under Rules 11-404, -608, or -609 NMRA must be brought to the attention of the Court and ruled on prior to it being presented to the jury.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-207. Reopening cases.

[Related Statewide Rules 1-004 and 1-005 NMRA]

A. **Closed files**. After a final judgment, decree, or order of dismissal has been entered, the Court Executive Officer or designee shall close the court file.

B. **Certificate to reopen**. To reopen a closed case, the attorney or pro se party shall file a certificate of reopen status with the new pleading in a form approved by the district court for that purpose.

C. **Service of pleadings on reopening case**.

(1) If ninety (90) or more calendar days have passed since the final disposition of the case, service on the opposing party must be accomplished under Rule 1-004 NMRA for personal service.

(2) If fewer than ninety (90) calendar days have passed since the final disposition of the case, service on the opposing party or opposing party's attorney, if the opposing party is represented, may be accomplished under Rule 1-005 NMRA.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-208. Attorney fees.

In all proceedings in which a party is entitled to recover attorney fees, whether by reason of a statutory right or by contract, the following guidelines will be applicable:

A. **Fees up to $1,000.00**. A party may recover one-third of the first three thousand dollars ($3,000.00) for which a judgment is entered.

B. **Fees between $1,000.00 and $2,500.00**. Where the fee requested is between one thousand dollars ($1,000.00) and two thousand five hundred dollars ($2,500.00), it shall be sufficient for the applying attorney to accompany the request with a letter not

exceeding one (1) page explaining why the amount requested is reasonable under the circumstances.

C. **Fees in excess of $2,500.00**. Where a request is made for a fee of more than two thousand five hundred dollars ($2,500.00), the request shall be supported by a written statement signed by the attorney, containing, at a minimum, the following:

(1) the time expended by the attorney;

(2) the extent to which the issues were contested;

(3) the novelty and complexity of the issues involved;

(4) the experience, in years of practice, that the attorney has;

(5) the amount involved, expressed monetarily or by a general description if the issues involve matters other than a money demand;

(6) in debt collection cases, the type of security held and the estimated amount of the judgment that can be collected from the foreclosure sale or, if the debt is unsecured, so state;

(7) unless the judgment will be collected from a foreclosure sale, an estimate of the approximate time anticipated to be involved in collection of the judgment; and

(8) the amount that the attorney believes would be a reasonable attorney fee.

D. **Factors considered by court**. The court will consider the relative success of the party requesting the attorney fees; the ability, experience, skill, and reputation of the attorney; and the fees generally charged in this locality for similar legal services.

E. **Reasonableness**. In all events, the fee awarded, whether based on percentage or on consideration of the foregoing factors and whether resulting from a contested or a default proceeding, may be increased or decreased so that the fees will be reasonable.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-209. Electronic filing authorized.

[Related Statewide Rule 1-005.2 NMRA]

In accordance with Rule 1-005.2 NMRA, electronic filing is implemented for all civil and probate actions in the Third Judicial District Court. The electronic filing of documents is mandatory for parties represented by attorneys in accordance with Rule 1-005.2 NMRA, which includes attorneys who represent themselves. Guidelines for

using the electronic filing system are set forth in the court's user guide that is available in the clerk's office and on the court's website.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

III. Rules Applicable to Criminal Cases

LR3-301. Transport of persons in custody.

[Related Statewide Rule 5-502 NMRA]

A. **Motion for transport; when filed**. A motion for transport shall be filed no later than ten (10) business days before the hearing for which transport is needed unless a shorter time is ordered by the court.

B. **Motion for transport; contents**. The motion and order for transport shall contain the following information:

(1) the name and any known aliases, date of birth, and social security number of the person to be transported;

(2) the name of the agency responsible for the transport;

(3) the place where the person is incarcerated or in custody;

(4) the time, date, location of the proceeding, and the estimated length of the proceeding;

(5) the nature of the proceeding for which transport is sought; and

(6) the time and date the person is to be returned to the original place of incarceration or custody.

C. **Transport order; service**. A certified copy of the transport order shall be served on the transporting agency and on the custodian of the institution having custody of the person no later than five (5) business days before the proceeding for which transport is sought unless a shorter time is ordered by the court after counsel filing the motion has confirmed with the transporting agency that it is possible to do so in a shorter period of time.

D. **Persons in custody of the Doña Ana County Detention Center or the J. Paul Taylor Center; transport orders not required**. Transport orders to the Third Judicial District Court are not needed for persons in custody of the Doña Ana County Detention Center or the J. Paul Taylor Center.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-302. Bond procedures.

[Related Statewide Rules 5-401, 5-401A, and 5-401B NMRA]

A. **Bond form**. All bonds shall be in the form approved by the New Mexico Supreme Court.

B. **Magistrate court bonds**.

(1) When a defendant is arraigned in district court under an indictment or a bind-over order from magistrate court, and the bond requirements set by the district court are met by the bond posted in magistrate court, the magistrate court bond must be filed in district court at or before the district court arraignment. If the magistrate court bond is not filed in district court by the time of the arraignment, the defendant may be taken into custody until the magistrate court bond is filed with the district court.

(2) All bonds posted in magistrate court must be presented at arraignment in district court in proper form and in the amount set by the assigned judge. Real property bonds must comply with requirements for real property bonds.

C. **Failure to comply; custody**. If bond requirements are not complied with at arraignment, the defendant may be taken into custody pending compliance.

D. **Forms of payment accepted**. Any tender of money to the court shall be in the form of a money order, certified check, or cash, or, at the sole discretion of the Court Executive Officer, by attorney's trust check. Personal checks will not be accepted.

E. **Real property bonds**. Where real property is to be posted as bond, the following requirements apply.

(1) In posting a real property bond, sureties and defendant must

(a) execute an appearance bond;

(b) provide proof of ownership;

(c) provide a recent assessment of the real property from the county assessor's office; and

(d) provide a list of the real property, encumbrances, and the number and amount of other bonds and undertakings for bail entered into and remaining undischarged.

(2) In providing proof of ownership, an original or certified copy of a warranty deed is required. Quitclaim deeds or real estate contracts will not be accepted.

(3) If the real property being posted is mortgaged, an affidavit is required from the person or firm holding the mortgage showing the amount of any encumbrances on the real property.

(4) If the real property is clear of any and all encumbrances, proof of clear title is necessary.

(5) All persons listed as owners of the real property must have their signatures witnessed by a court clerk or by a person authorized to administer oaths.

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

F. **Release of bond monies; conditions**. No order authorizing the release and return of bond monies will be presented to the court for signature without first being approved by the district attorney's office, counsel for defendant, and the Court Executive Officer or designee, except when the order is prepared by the Court Executive Officer or designee under the Uniform Disposition of Unclaimed Property Act. The Court Executive Officer or designee will not release any monies without a proper court order.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-303. Case management pilot program for criminal cases.

A. **Scope; application**. This is a special rule governing time limits for criminal proceedings in the Third Judicial District Court. This rule applies in all criminal proceedings in the Third Judicial District Court but does not apply to probation violations, which are heard as expedited matters separately from cases awaiting a determination of guilt, nor to any other special proceedings in Article 8 of the Rules of Criminal Procedure for the District Courts. The Rules of Criminal Procedure for the District Courts and existing case law on criminal procedure continue to apply to cases filed in the Third Judicial District Court, but only to the extent they do not conflict with this rule. The Third Judicial District Court may adopt forms to facilitate compliance with this rule, including the data tracking requirements in Paragraph Z of this rule.

B. **Trials for defendants in custody on a detention order**. All cases in which the defendant has been in custody more than six (6) months shall be a top priority for disposition with a definite setting. These cases will have a six (6)-month deadline with their own special docket. Cases may be vacated from the six (6)-month deadline docket only when competency is at issue or for exceptional circumstances. All cases on this

docket will have track 1 deadlines but the deadline for trial will be no later than one hundred eighty-nine (189) days after the date of the detention order.

C. **Mandatory hearing pending preliminary examination for defendants not in custody**. The Third Judicial District Court recognizes that criminal cases for out-of-custody defendants are often resolved through a stipulated agreement, or other settlement agreement, including resolution through a diversionary program; that a mandatory hearing between the prosecuting authorities and the defendant and defense counsel before the preliminary examination presents an earlier opportunity for the parties to resolve the case by a stipulated agreement or settlement agreement; that earlier resolution of criminal cases will reduce the backlog of criminal cases on the preliminary examination docket, thereby promoting judicial economy; and that resolution of criminal cases weeks before a scheduled preliminary examination will eliminate the need for witnesses, including law enforcement officers, to appear in court.

Where the defendant is not in custody pending a preliminary examination in the Third Judicial District Court, a mandatory status hearing with the state and the defendant appearing in person shall be held at any time between twenty-five (25) and forty-five (45) days before the preliminary examination hearing date. The district court shall conduct the mandatory hearing in accordance with the following procedures:

(1) The mandatory status hearing shall be held in person, unless the chief judge orders otherwise.

(2) The state shall provide written discovery and any recordings to the defendant and shall file a certification with the court attesting that written discovery has been provided at least five (5) days before the mandatory status hearing. If the state fails to comply with this requirement, the court may impose sanctions, including dismissal without prejudice.

(3) Before the mandatory status hearing, the state shall inform the defendant and defense counsel of all offers to resolve the case.

(4) The defendant shall appear in person at the mandatory status hearing. If a defendant fails to appear for the mandatory status hearing, a bench warrant may be issued. If a bench warrant is issued, the preliminary examination hearing shall be vacated.

(5) If the parties enter into a stipulated waiver, plea agreement, or other resolution that eliminates the need for a preliminary examination, the parties shall submit the waiver, plea agreement, or other resolution for the district court's consideration at the status hearing. A waiver, plea agreement, or other resolution of the case will not be accepted on the day of the preliminary examination.

(6) If no agreement is reached to resolve the case, the preliminary examination hearing shall proceed on the originally scheduled date. Continuance of the

status hearing shall be granted only in exceptional circumstances at the discretion of the judge presiding over the preliminary examination and after approval of the chief judge of the Third Judicial District Court.

D. **Arraignment**.

(1) ***Number of arraignments per day***. The number of arraignments to be held on a single day is currently limited to forty (40). Any increase shall be in the discretion of the chief judge.

(2) ***Deadline for arraignment***. The defendant shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the bind-over order, indictment, or the date of the arrest, whichever is later, but the arraignment of a defendant in custody on the case to be arraigned shall be held no later than seven (7) days after the filing of the bind-over order, information, indictment, or date of arrest, whichever is later.

(3) ***Certification by prosecution required; matters certified***. At or before arraignment or waiver of arraignment, or on the filing of a bind-over order, the state shall certify that before obtaining an indictment or filing an information, the case has been investigated sufficiently to be reasonably certain that

(a) the case will reach a timely disposition by plea or trial within the case processing time limits set forth in this rule;

(b) the court will have sufficient information on which to rely in assigning a case to an appropriate track at the status hearing provided for in Paragraph K of this rule;

(c) all discovery in the possession of the state and relied on in the investigation leading to the bind-over order, indictment, or information will be provided in accordance with Subparagraph (E)(3) of this rule; and

(d) the state understands that, absent extraordinary circumstances, the state's failure to comply with the case processing timelines set forth in this rule will result in sanctions as set forth in Paragraph T of this rule.

(4) ***Certification form***. The court may adopt a form and require use of the form to fulfill the certification and acknowledgment required by this paragraph.

E. **Disclosure by the state; requirement to provide contact information; continuing duty; failure to comply**.

(1) ***Deadline for the state to submit evidence to the State Forensic Laboratory***. Within fifteen (15) days of arraignment or the filing of a waiver of arraignment, the state shall file a certification that it has exercised due diligence to

ensure that all evidence that may require testing has been submitted to the State Forensic Laboratory.

(2) ***Scope of disclosure by the state***. The scope of the state's discovery disclosure obligation shall be governed by Rule 5-501(A)(1)-(6) NMRA. In addition to producing a "speed letter" authorizing the defendant to examine physical evidence in possession of the state, the state shall provide the defendant with physical or digital copies of any documentary evidence and audio, video, and audio-video recordings made by law enforcement officers or otherwise in possession of the state at the time of the disclosure. As part of its production obligation under Rule 5-501(A)(5) NMRA, the state shall provide contact information for its witnesses that is current as of the date of disclosure, including, to the extent available, witnesses' addresses, phone numbers, and email addresses.

(3) ***Deadline for disclosure by the state***. If the case is a ten (10)-day case as described by Rule 5-302(A)(l) NMRA, the state shall make its initial discovery disclosures to the defendant within five (5) days after the first appearance. If the case is a sixty (60)-day case as described by Rule 5-302(A)(1) NMRA, the state shall make its initial discovery disclosures to the defendant within fifteen (15) days after the first appearance.

(4) ***Motion to withhold contact information for safety reasons***. A party may seek relief from the court by motion, for good cause shown, to withhold specific contact information if necessary to protect a victim or a witness. If the address of a witness is not disclosed under court order, the party seeking the order shall arrange for a witness interview or accept at its business offices a subpoena for purposes of a deposition under Rule 5-503 NMRA.

(5) ***Continuing duty***. The state shall have a continuing duty to disclose additional information to the defendant, including the names and current contact information for newly-discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

(6) ***Evidence deemed in the possession of the state***. Evidence is deemed to be in the possession of the state for purposes of this rule and Rule 5-501(A) NMRA if this evidence is in the possession or control of any person or entity who has participated in the investigation or evaluation of the case.

F. **Disclosure by defendant; notice of alibi; entrapment defense; failure to comply**.

(1) ***Initial disclosures; deadline; witness contact information***. Not less than five (5) days before the scheduled date of the status hearing described in Paragraph H of this rule, the defendant shall disclose or make available to the state all information described in Rule 5-502(A)(1)-(3) NMRA. At the same time, the defendant

shall provide addresses, and phone numbers and email addresses if available, for the defendant's witnesses that are current as of the date of disclosure.

(2) ***Deadline for notice of alibi and entrapment defense***. Notwithstanding Rule 5-508 NMRA or any other rule, not less than ninety (90) days before the date scheduled for commencement of trial as provided in Paragraph K, Paragraph L, and Paragraph M of this rule, the defendant shall serve on the state a notice in writing of the defendant's intention to offer evidence of an alibi or entrapment as a defense.

(3) ***Continuing duty***. The defendant shall have a continuing duty to disclose additional information to the state, including the names and contact information for newly-discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

G. **Witness disclosure**. Within twenty-five (25) days after arraignment or waiver of arraignment each party shall, subject to Rule 5-501(F) NMRA and Rule 5-502(C) NMRA, file a list of names and contact information for known witnesses the party intends to call at trial and that the party has verified is current as of the date of disclosure required under this subparagraph, including a brief statement of the expected testimony for each witness, to assist the court in assigning the case to a track as provided in this rule. The continuing duty to make the disclosure to the other party continues at all times before trial, requiring this disclosure within five (5) days of when a party determines or should reasonably have determined the witness will be expected to testify at trial.

H. **Status hearing**. A status hearing, at which the defendant shall be present, shall be commenced within thirty (30) days of arraignment or the filing of a waiver of arraignment.

I. **Case track assignment**. At the status hearing, the court shall determine the appropriate assignment of the case to one (1) of three (3) tracks. When the defendant is detained pending trial, the case shall be given the highest priority for trial scheduling. Any track assignment under this rule only shall be made after considering the following factors:

(1) the complexity of the case, starting with the assumption that most cases will qualify for assignment to track 1; and

(2) the number of witnesses, time needed reasonably to address any evidence issues, and other factors the court finds appropriate to distinguish track 1, track 2, and track 3 cases.

J. **Scheduling order required**. At the conclusion of the status hearing, the court shall issue a scheduling order, which assigns the case to one (1) of three (3) tracks under Paragraph K, Paragraph L, or Paragraph M of this rule, and which identifies the dates when events required by that track shall be scheduled. Before issuing the

scheduling order, the court shall make efforts to ensure that attorneys are not required to be in separate courtrooms at the same time.

(1) ***Form of scheduling order***. The chief judge of the Third Judicial District Court shall adopt a uniform scheduling order to implement the time requirements of this rule. The scheduling order shall be applied in the same manner by all judges of the Third Judicial District Court and shall contain the same deadlines and procedures for the handling of exhibits to include a uniform procedure for the return of exhibits to the state if the case does not proceed to trial. The scheduling order shall not require that the trial witness list contain any information beyond what is required under Rule 5-501(A)(5) NMRA and Rule 5-502 (A)(3). Additional requirements may be included in the scheduling order at the discretion of the assigned judge and the judge may alter any of the deadlines described in Paragraph K, Paragraph L, and Paragraph M of this rule to allow for the case to come to trial sooner, including the deadlines for the parties to conduct pretrial interviews set forth in Subparagraph (K)(1)(h), Subparagraph (L)(1)(h), and Subparagraph (M)(1)(h) of this rule.

K. **Deadlines in track 1 cases**.

(1) ***Track 1; deadlines for commencement of trial and other events***. For track 1 cases, the scheduling order shall have the trial commence within two hundred ten (210) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 1 cases:

(a) *Track 1 — deadline for submission of trial materials*. The parties shall submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) *Track 1 — deadline for plea agreement*. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 1 — deadline for pretrial conference*. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than fourteen (14) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 1 — deadline for notice of need for court interpreter*. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 1 — deadline for pretrial motions hearing*. A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(f) *Track 1 — deadline for pretrial motions*. Pretrial motions shall be filed not less than fifty (50) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 1 — deadline for responses to pretrial motions*. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 1 — deadlines for completing witness interviews*. Witness interviews shall be completed not less than sixty (60) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA;

(i) *Track 1 — deadline for disclosure of scientific evidence*. The results of any scientific evidence, if not already produced, shall be produced by the parties no later than one hundred twenty (120) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than one hundred fifty (150) days after the arraignment;

(j) *Track 1 — deadline for amending criminal information or indictment*. The state shall not file any amendment to the criminal information after ninety (90) days from the date of the arraignment, unless otherwise ordered by the court on good cause shown; and

(k) *Track 1 — deadline for submitting transport orders*. The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(2) ***Sanctions***. If the state has requested to receive nonscientific evidence from law enforcement within thirty (30) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within ninety (90) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under Subparagraph (T)(4) of this rule.

L. **Deadlines in track 2 cases**.

(1) ***Track 2; deadlines for commencement of trial and other events***. For track 2 cases, the scheduling order shall have the trial commence within three hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 2 cases:

(a) *Track 2 — deadline for submission of trial materials*. The parties shall submit trial witness lists, trial exhibits lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) *Track 2 — deadline for plea agreement*. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 2 — deadline for pretrial conference*. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than fourteen (14) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 2 — deadline for notice of need for court interpreter*. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 2 — deadline for pretrial motions hearing*. A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(f) *Track 2 — deadline for pretrial motions*. Pretrial motions shall be filed not less than sixty (60) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 2 — deadline for responses to pretrial motions*. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 2 — deadlines for completing witness interviews*. Witness interviews shall be completed not less than seventy-five (75) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA.

(i) *Track 2 — deadline for disclosure of scientific evidence*. The results of any scientific evidence, if not already produced, shall be produced by the parties no later than one hundred eighty (180) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than two hundred ten (210) days after the arraignment;

(j) *Track 2 — deadline for amending criminal information or indictment*. The state shall not file any amendment to the criminal information after one hundred twenty (120) days from the date of arraignment, unless otherwise ordered by the court on good cause shown; and

(k) *Track 2 — deadline for submitting transport orders*. The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing;

(2) ***Sanctions***. If the state has requested to receive nonscientific evidence from law enforcement within ninety (90) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within one hundred twenty (120) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under Subparagraph (T)(4) of this rule.

M. **Deadlines in track 3 cases; written findings required**. Written findings are required to place a case on track 3 and any findings shall be entered by the court within five (5) days of assignment to track 3.

(1) ***Track 3; deadlines for commencement of trial and other events***. For track 3 cases, the scheduling order shall have trial commence within four hundred fifty-five (455) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur, but no case may be set more than three hundred sixty-five (365) days from when the defendant is detained pending trial except on consent by defense counsel or on a finding of exceptional circumstances beyond the control of the parties. The scheduling order shall also set dates for other events according to the following requirements for track 3 cases:

(a) *Track 3 — deadline for submission of trial materials*. The parties shall submit trial witness lists, trial exhibits lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) *Track 3 — deadline for plea agreement*. A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 3 — deadline for pretrial conference*. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than twenty (20) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 3 — deadline for notice of need for court interpreter*. All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 3 — deadline for pretrial motions hearing*. A hearing for resolution of pretrial motions shall be set not less than forty-five (45) days before the trial date;

(f) *Track 3 — deadline for pretrial motions*. Pretrial motions shall be filed not less than seventy (70) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 3 — deadline for responses to pretrial motions*. Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than fifty-five (55) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 3 — deadlines for completing witness interviews*. Witness interviews shall be completed not less than one hundred (100) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA.

(i) *Track 3 — deadline for disclosure of scientific evidence*. The results of any scientific evidence, if not already produced, shall be produced by the parties no later than three hundred five (305) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than three hundred thirty-five (335) days after the date of arraignment;

(j) *Track 3 — deadline for amending criminal information or indictment*. The state shall file any amendment to the criminal information not less than one hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good cause shown; and

(k) *Track 3 — deadline for submitting transport orders*. The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(2) **Sanctions**. If the state has requested to receive nonscientific evidence from law enforcement within ninety (90) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within two hundred seventy-five (275) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under Subparagraph (T)(4) of this rule.

N. **Extensions of time limits for good cause; cumulative limit**. The court may, for good cause, grant any party an extension of the time requirements imposed by an order entered in compliance with Paragraph J of this rule. Any extensions of time shall not result in delay of the date scheduled for commencement of trial unless the court finds good cause beyond the control of the parties or the court under Subparagraph (P)(1) of this rule. In no case shall a party be given time extensions that, in total, exceed thirty (30) days for track 1 cases, sixty (60) days for track 2 cases, and ninety (90) days for track 3 cases.

O. **Extension of time limits for commencement of trial; triggering events**. As deemed necessary, the court may enter an amended scheduling order to extend the time limits for commencement of trial consistent with the deadlines in Paragraph K, Paragraph L, or Paragraph M of this rule when one of the following triggering events occurs:

(1) if an evaluation of competency has been ordered, the date an order is filed in the court finding the defendant competent to stand trial;

(2) if a mistrial is declared by the district court, the date the order declaring a mistrial is filed in the court;

(3) in the event of a remand from an appeal, the date the mandate or order is filed in the court disposing of the appeal;

(4) if the defendant is arrested on any valid warrant in the case or surrenders in this state on any valid warrant in the case, the date of the arrest or surrender of the defendant, and the assigned judge determines that this circumstance reasonably requires additional time to bring the case to trial;

(5) if the defendant is arrested or surrenders in another state or country, the date the defendant is returned to this state;

(6) if the defendant has been referred to a preprosecution or court diversion program, the date a notice is filed in the court that the defendant has been deemed not eligible for, is terminated from, or is otherwise removed from the preprosecution or court diversion program;

(7) if the defendant's case is severed from a case to which it was previously joined, the date from which the cases are severed, but the nonmoving defendant or at least one of the nonmoving defendants shall continue on the same basis as previously established under these rules for track assignment and otherwise;

(8) if a defendant's case is severed into multiple trials, the date from which the case is severed into multiple trials, but the court shall continue at least one (1) of the previously-joined defendants or counts on the original track assignment, which defendant or counts shall be determined by the court on consideration of the complexity of the now-severed cases or counts;

(9) if a judge enters a recusal and the newly-assigned judge determines the change in judge assignment reasonably requires additional time to bring the case to trial, the date the recusal is entered;

(10) if the court grants a change of venue and the court determines the change in venue reasonably requires additional time to bring the case to trial, the date of the court's order; or

(11) if the court grants a motion to withdraw the defendant's plea, the date of the court's order.

P. **Extension of time for commencement of trial due to good cause or exceptional circumstances; sanctions**.

(1) ***Extension of trial date for good cause***. On a finding of good cause beyond the control of the parties or the court, the court may extend the trial date for a maximum of thirty (30) days for a track 1 case, forty-five (45) days for a track 2 case, and sixty (60) days for a track 3 case. To grant the extension, the court shall enter written findings of good cause.

(2) ***Extension of trial date due to exceptional circumstances***. Without regard to which party requests any extension of the trial date, the court shall not extend the trial date more than sixty (60) days beyond the original date scheduled for commencement of trial without written findings of exceptional circumstances approved in writing by the chief judge or a judge, including a judge pro tempore previously approved to preside over those matters by order of the Chief Justice, who is designated by the chief judge to approve the written findings. When the chief judge or the chief judge's designee accepts the finding by the district judge of exceptional circumstances, the chief judge shall approve rescheduling of the trial to a date certain. The order granting an extension to a date certain for extraordinary circumstances may reassign the case to a different judge for trial, so long as that judge has not been previously excused on the case, or include any other relief necessary to bring the case to prompt resolution.

(3) ***Requirements for multiple requests for extension of trial date***. Any extension of the trial date sought beyond the date certain in a previously-granted extension will again require a finding by the district judge of exceptional circumstances approved in writing by the chief judge or designee with an extension to a date certain.

(4) ***Rejecting extension request for exceptional circumstances; dismissal required***. In the event the chief judge or designee rejects the district judge's request for an extension based on exceptional circumstances, the case shall be tried within the previously-ordered time limit or shall be dismissed with prejudice if it is not, subject to the provisions in Subparagraph (T)(6) of this rule.

(5) ***Sanctions***. If the court is unable to proceed to trial and must grant an extension for reasons the court does not find meet the requirement of good cause or exceptional circumstances, the court shall impose sanctions as provided in Paragraph T of this rule, which may include dismissal of the case with prejudice subject to the provisions in Subparagraph (T)(6) of this rule.

Q. **A new probable cause determination is not required for recently refiled charges**. If a probable cause determination has been made by preliminary hearing or grand jury and the court dismisses the case without prejudice, the same charges may

be refiled under the same case number by information within six (6) months of the dismissal without requiring a new probable cause determination.

R. **Reassignment**. If on the date the case is set or reset for trial the court is unable to hear a case for any reason, including a trailing docket, the case may be reassigned for immediate trial to any available judge or judge pro tempore, so long as

(1) that judge has not been previously excused and was not involved in plea negotiations in any capacity; and

(2) attorneys for the state and defense are not scheduled for hearings in another courtroom at the same time as the reassigned setting.

S. **Certification of readiness before pretrial conference or docket call**. Both the prosecutor and defense counsel shall submit a certification of readiness form three (3) days before the final pretrial conference or docket call, indicating that they have been unable to reach a plea agreement, that both parties have contacted their witnesses and the witnesses are available and ready to testify at trial, and that both parties are ready to proceed to trial. This certification may be by stipulation. If either party is unable to proceed to trial, that party shall submit a written request for extension of the trial date as outlined in Paragraph O of this rule. If the state is unable to certify the case is ready to proceed to trial and does not meet the requirements for an extension in Paragraph O of this rule, it shall prepare and submit notice to the court that the state is not ready for trial and the court shall dismiss the case.

T. **Failure to comply**.

(1) If a party fails to comply with any provision of this rule or the time limits imposed by a scheduling order entered under this rule, the court shall, on its own motion or on motion of a party, impose sanctions as the court may deem appropriate in the circumstances and taking into consideration the reasons for the failure to comply.

(2) In considering the sanction to be applied the court shall not accept negligence or the usual press of business as sufficient excuse for failure to comply. If the case has been refiled after an earlier dismissal, dismissal with prejudice is the presumptive outcome for a repeated failure to comply with this rule, subject to the provisions in Subparagraph (T)(6) of this rule.

(3) A motion for sanctions for failure to comply with this rule or any of the Rules of Criminal Procedure for the District Courts must be made in writing, but an oral motion may be made during a setting scheduled for another purpose if the basis of the motion was not and reasonably could not have been known before that setting.

(4) The sanctions the court may impose under this paragraph include, but are not limited to, the following:

(a) a reprimand by the judge;

(b) prohibiting a party from calling a witness or introducing evidence;

(c) a monetary fine imposed on a party's attorney or that attorney's employing office with appropriate notice to the office and an opportunity to be heard;

(d) civil or criminal contempt; and

(e) dismissal of the case with or without prejudice, subject to the provisions in Subparagraph (T)(6) of this rule.

(5) The court shall not impose any sanction against the state for violation of this rule if an in-custody defendant was not at a court setting as a result of a failure to transport, but the court may impose a sanction if the failure to transport was attributable to the prosecutor's failure to properly prepare and serve a transportation order if required. If the court finds that the prosecutor prepared and timely filed the transport order, but the executing law enforcement agency failed to execute the transport order, the court may impose sanctions against the executing law enforcement agency under Subparagraph (T)(4) of this rule.

(6) The sanction of dismissal, with or without prejudice, shall not be imposed under the following circumstances:

(a) the state proves by clear and convincing evidence that the defendant is a danger to the community; and

(b) the failure to comply with this rule is caused by extraordinary circumstances beyond the control of the parties.

Any court order of dismissal with or without prejudice or prohibiting a party from calling a witness or introducing evidence shall be in writing and include findings of fact about the moving party's proof of and the court's consideration of the above factors.

U. **Intake process**. The district attorney's office will only accept felony intakes through email at 3rdfelonyintake@da.state.nm.us. Intakes for in-custody defendants must be received within twenty-four (24) hours of arrest. Intakes for out-of-custody defendants must be received within ten (10) days of the completion of the investigation.

V. **Grand jury**. The grand jury will continue to sit one day per week when it is in session. The chief judge shall have discretion to expand the number of days the grand jury sits on a showing by the state that additional grand jury days are needed to reduce the backlog of pending cases or to ensure the timely resolution of future cases.

W. **Multiple indictments; judge assignment**. If multiple indictments are or have been returned for one defendant, all cases for that defendant shall be assigned to the judge presiding over the case with the lowest case number.

X. **Peremptory excusal of a district judge; time limits; limits on excusal; reassignment**. A party on either side may file one (1) peremptory excusal of any district judge in the Third Judicial District Court, regardless of which judge is currently assigned to the case, within ten (10) days of the arraignment or the filing of a waiver of arraignment.

(1) ***Reassignment***. If necessary, after the exercise of peremptory excusal, the case may be reassigned by the chief judge to any judge in the Third Judicial District Court, so long as that judge has not been previously excused on the case. The chief judge may also reassign the case to a judge pro tempore previously approved to preside over these matters by order of the Chief Justice, who shall not be subject to peremptory excusal.

(2) ***Limits on excusal***. Peremptory excusals shall not hinder, delay, or obstruct the administration of justice. If it appears that an attorney or group of attorneys may be using peremptory excusals for improper purposes or with any frequency by impeding the administration of justice, the chief judge of the district 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 peremptory excusals for a specified period of time or until further order of the chief judge.

Y. **Settlement conference**. A judge assigned to a criminal case shall have the authority to assign another judge or judge pro tempore ("settlement judge") to participate in a settlement conference to assist the parties in resolving the case in a manner that serves the interests of justice, but any judge who presides over any phase of the criminal case shall not participate in plea discussions pertaining to that case.

(1) ***Settlement conference setting***. The case may be referred to settlement conference at the request of either party, or on the court's own motion. For those cases in which the defendant is in custody, a settlement conference shall be set when the court issues the scheduling order under Paragraph J of this rule.

(2) ***Discovery deadline***. Before assigning the case to a settlement judge, the judge assigned to the case ("referring judge") shall ensure that the parties have had a meaningful opportunity to engage in discovery. All written discovery and any recordings must be completed ten (10) days before the scheduled settlement conference.

(3) ***Appearance of counsel***. Counsel for the prosecution and defense shall appear at the settlement conference in person at the courthouse. Counsel for the prosecution and defense shall each have full authority to act in all matters pertaining to the settlement conference and shall be prepared to engage in negotiation.

(4) ***Appearance of defendant***. The defendant shall be required to appear at the settlement conference, whether or not the defendant is in custody.

(5) ***Record of settlement conference***. The settlement conference shall not be recorded.

(6) ***Plea offer not required***. The prosecution is not required to make a plea offer and the defendant is not required to accept a plea offer. If the prosecution does not intend to offer a plea and has knowledge of this before the scheduled settlement conference, then the prosecution must notify the referring judge and opposing counsel in writing at least five (5) days before the scheduled settlement conference. On notice that the prosecution does not intend to offer a plea, the referring judge shall vacate the settlement conference, set the case for trial, and issue a scheduling order in accordance with this rule.

(7) ***Communication***. The settlement judge, parties, and attorneys shall not communicate any of the substance of the plea discussions to the referring judge or any judge who may preside over any phase of the case.

(8) ***Statements not admissible***. No statement made by a participant in the settlement conference shall be admissible at the trial of a defendant in the case.

(9) ***Returning the case with a plea agreement***. If plea discussions result in a tentative plea agreement, the settlement judge shall not take the plea, but shall return the case to the referring judge, or transfer the case to another designated judge to accept or reject the plea.

(10) ***Returning the case with no plea agreement***. If plea discussions do not result in a plea agreement, the case shall be returned to the referring judge or transferred to another designated judge for further proceedings with a certificate of readiness.

Z. **Data reporting to the Supreme Court required**. The chief judge, district attorney, and public defender shall provide statistical reports to the Supreme Court as directed.

[Adopted by Supreme Court Order No. S-1-RCR-2023-00001, effective June 14, 2023; as amended by Supreme Court Order No. S-1-RCR-2024-00070, effective for all cases pending or filed on or after July 1, 2024.]

ANNOTATIONS

The 2024 amendment, approved by Supreme Court No. S-1-RCR-2023-00001, effective July 1, 2024, clarified that a new probable cause determination is not required when charges are refiled within six month after the court dismisses a case without prejudice and a probable cause determination has previously been made by a

preliminary hearing or grand jury; in Paragraph A, after “Paragraph”, changed “Y” to “Z”; in Paragraph D, Subparagraph D(3)(d), after “Paragraph”, changed “S” to “T”; after “law enforcement agency under”, deleted “Paragraph (S)(4)” and added “Subparagraph (T)(4)” throughout the rule; after “law enforcement agency under”, after “Subparagraph”, deleted “(S)(6)” and added “(T)(6)” throughout the rule; added new Paragraph Q and redesignated the succeeding paragraphs accordingly; “substituted “but” for “except that” throughout the rule; and substituted “before” for “prior to” throughout the rule.

IV. Rules Applicable to Domestic Relations Cases

LR3-401. Domestic relations mediation and safe exchange and supervised visitation programs.

[Related Statewide Rule 1-125 NMRA and
related Statutes NMSA 1978, §§ 40-12-1 to -6]

A. **Mediation evaluation.** All domestic relations actions, whether new or reopened, that involve a dispute over custody, periods of parental responsibility, or visitation of minor children shall be subject to mediation or evaluation of the contested custody, parental responsibility, and visitation issues and will be governed by the procedures of the domestic relations mediation program.

B. **Programs established.** In accordance with the Domestic Relations Mediation Act, the Third Judicial District Court has established a domestic relations mediation program, as well as a safe exchange and supervised visitation program, to assist the court, parents, and other interested parties in determining the best interests of children involved in domestic relations cases.

C. **Domestic relations mediation fund; deposit and disbursement of fees.** The court maintains a domestic relations mediation fund for the deposit of all fees collected under the Domestic Relations Mediation Act, which are used to offset the costs of operating the court’s domestic relations mediation program and safe exchange and supervised visitation program. Deposits into the domestic relations mediation fund shall include the following:

(1) ***The surcharge authorized under Section 40-12-6 NMSA 1978 on all new and reopened domestic relations cases*.**

(a) The statutory mandated surcharge must be paid when the petition or motion is filed, together with the filing fee. A separate check is not required.

(b) If a required filing fee or surcharge is not paid, the case will be closed without disposition of the pending matter until payment is made.

(2) ***Fees paid by the parties for mediation services and safe exchange and supervised visitation services provided under the Domestic Relations Mediation Act*.** Fees incurred for the services listed above shall be paid by the parties to the court clerk as directed by court order, under a sliding fee scale approved by the Supreme Court in accordance with the requirements of Rule 1-125(I) NMRA. The current sliding fee scales approved by the Supreme Court shall be posted on this court's website and inside the courthouse.

D. **Immunity.** Attorneys and other persons appointed by the court to serve as mediators, or in other such roles under the rules governing this district's programs under the Domestic Relations Mediation Act, are arms of the court and are immune from liability for conduct within the scope of their duties as provided by law.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 18-8300-006, effective for all cases pending or filed on or after September 1, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-006, effective September 1, 2018, expanded the scope of the domestic relations mediation program, established a safe exchange and supervised visitation program for the Third Judicial District Court, provided for the deposit and disbursement of funds collected for the domestic relations mediation fund, and provided immunity from liability for attorneys and other persons appointed by the court to serve as mediators for conduct within the scope of the Domestic Relations Mediation Act; in the heading, deleted "program" and added "and safe exchange and supervised visitation programs"; in Paragraph A, after the first occurrence of "custody", added "periods of parental responsibility", and after the second occurrence of "custody", added "parental responsibility"; in Paragraph B, in the heading, changed "Establishment of program" to "Programs established", deleted "Under" and added "In accordance with", after "Domestic Relations Mediation Act", added "the Third Judicial District Court has established", after "domestic relations mediation program", deleted "has been established" and added "as well as a safe exchange and supervised visitation program"; in Paragraph C, in the heading, deleted "Mediation surcharge" and added "Domestic relations mediation fund; deposit and disbursement of fees", added the introductory paragraph, in Subparagraph C(1), deleted "The Court Executive Officer or designee shall collect the statutory mandated surcharge for all new and reopened domestic relations cases in addition to the filing fee, which shall be deposited in the domestic relations mediation fund" and added the subparagraph heading, redesignated former Subparagraphs C(2) and C(3) as Subparagraphs C(1)(a) and C(1)(b), respectively, deleted Subparagraphs C(4) and C(5), and added a new Subparagraph C(2); and added Paragraph D.

LR3-402. Safe exchange and supervised visitation program.

[Statewide Rule 1-125 NMRA and related Statute NMSA 1978, § 40-12-5.1]

A. **Establishment of program**. Under the Domestic Relations Mediation Act, the Third Judicial District Court has elected to establish a safe exchange and supervised visitation program to assist the court, parents, their children, and other interested parties in determining the best interests of children involved in domestic relations and domestic violence cases referred by the district court. The district court, in conjunction with the Administrative Office of the Courts, has procured one or more providers by means of a request for proposals and entered into one or more contracts to deliver the services within the district.

B. **Sliding fee scale**. In accordance with the Domestic Relations Mediation Act, the costs of the safe exchange and supervised visitation program shall be paid by parents receiving services through the program under a sliding fee scale approved by the New Mexico Supreme Court. All safe exchange and supervised visitation fees shall be paid by parents to the district court's contractor who shall serve as fiscal agent of the district court for the receipt of the sliding scale fees. These funds are to be used as part of the contractor's court-approved program budget, with quarterly accounting reports submitted to the district court. Any funds in excess of the program budget as approved by the district court are to be remitted by contractor's check, cash, money order, or certified check to the Court Executive Officer or designee to be credited to the domestic relations mediation fund at the end of the fiscal year.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-403. Child support payments.

In all cases involving child support payments, the payments shall be paid through the State of New Mexico Child Support Enforcement Department.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

LR3-404. Parenting classes.

In all cases involving custody and visitation of minor children parented by the parties, the court will issue an order requiring the parenting parties to enroll in the court-approved parenting classes within forty-five (45) days of the filing of the order, unless otherwise ordered by the court. Verification of attendance at the ordered parenting classes shall be required before the court will enter a final order in the case.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

V. Rules Applicable to Children's Court Cases [Reserved]

VI. Rules Applicable to Court Alternative Dispute Resolution Programs

LR3-601. Settlement facilitation program.

A. **Mandatory settlement facilitation**. The court shall require the parties and their representatives to attend settlement conferences conducted by a court-appointed settlement facilitator or a facilitator stipulated to by the parties. If a party refuses to attend a settlement conference conducted by a court-appointed settlement facilitator, the court may impose reasonable sanctions against the party or the party's attorney.

(1) ***Parties' responsibilities***. The parties are responsible for scheduling and holding a settlement conference no less than thirty (30) calendar days prior to the pretrial conference and are required to do so as soon as the parties have sufficient information to evaluate their claims or defenses. The court may modify this time limit by order for good cause shown.

(2) ***Attendance***. All parties will be required to attend settlement conferences with their representatives and insurer unless good cause is shown. Parties or insurers who attend shall have plenary settlement authority. Parties who do not attend are subject to sanctions.

(3) ***Settlement***. If the case settles during the settlement facilitation, then the party designated by the settlement facilitator or by mutual agreement of the parties shall prepare the appropriate pleadings for submission to the court within ten (10) business days so the appropriate order or judgment may be entered.

B. **Settlement facilitator**.

(1) ***Selection of facilitator***. A settlement facilitator will be chosen by mutual agreement of the parties, and a notice of facilitator selection will be filed in the form as the court may require at the time. A copy of the notice of facilitator selection shall be sent to the Alternative Dispute Resolution (ADR) office. In the event the parties do not choose a mutually agreeable facilitator within the deadline set in the scheduling order, one will be appointed by the court. If the parties agree to a different facilitator after one has been appointed by the court, the parties shall be obligated to pay the court-selected facilitator for any time and expense the facilitator may have incurred under the court's appointment.

(2) ***Payment to facilitator***. If the parties agree to a facilitator, they are presumed to agree to pay that facilitator's fees. In the event that the facilitator is appointed by the court, the parties are expected to inquire about what that facilitator charges. If the facilitator's fees are deemed unreasonable, either party may motion the court for a determination of an appropriate fee or for another facilitator assignment.

Each party shall pay directly to the settlement facilitator the fee due from the party within thirty (30) calendar days from the date of the settlement conference.

(3) ***Good faith participation***. Parties shall participate in good faith in settlement conferences. The parties must communicate with the facilitator on scheduling a settlement conference. Good faith participation includes, but is not limited to, providing appropriate documentary evidence of liability and damages or lack thereof to opposing parties and the facilitator during the conference. Upon motion of any party, or upon the court's own motion, the court may award sanctions for failure to participate in good faith.

(4) ***Settlement conference information sheet***. Prior to the settlement conference, each party to the settlement conference shall complete a settlement conference information sheet in substantially the format requested by the facilitator. The completed form shall set forth all of the information necessary for an informed evaluation of the case. Unless otherwise directed by the settlement facilitator, the settlement conference information sheet shall be provided to the settlement facilitator at least seven (7) business days before the settlement conference. The settlement conference information sheet may be sent to the facilitator without providing a copy to the opposing party. It shall not be filed with the court nor in any way be made a part of the court record.

(5) ***Facilitator's outcome report and certification of facilitation compliance***. Within five (5) business days after completion of the settlement conference, the settlement facilitator shall file with the clerk of the court a certificate of facilitation compliance. The settlement facilitator shall also complete and return to the ADR coordinator for the Third Judicial District Court a facilitator's outcome report using the form as the court may require at the time.

(6) ***Motion to be excused from settlement facilitation***. The court may excuse any party from participation in settlement facilitation upon motion and good cause shown.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

VII. Forms
[Reserved]