

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS**

PROPOSAL 2024-004

March 13, 2024

The Rules of Civil Procedure for State Courts Committee has recommended new Rule 1-071.3 NMRA and recompiled Rules 1-071.4, 1-071.5, and 1-071.6 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 12, 2024, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

[NEW MATERIAL]

1-071.3. Statutory stream adjudication suits; proposed water rights settlement agreements.

A. **Notice of proposed settlement.** In a stream system adjudication suit in which a proposed negotiated water rights settlement agreement has been reached, notice shall be given to all claimants, regardless of whether they have been served and joined as defendants, who claim water rights within the stream system or section identified by the court.

B. **Form of notice.** Notice of a proposed negotiated water rights settlement shall be given by first class mail with proper postage to all known claimants whose names and addresses are reasonably ascertainable. For all unknown claimants and claimants whose names and addresses cannot be reasonably determined, notice shall be given in a manner reasonably calculated under all the circumstances to apprise claimants of the proceeding and shall be approved by the court.

C. **Service of notice of intent to participate.** A claimant or any other person, firm, corporation or other entity who desires to participate in the proceeding to consider whether to approve a proposed negotiated water rights settlement shall serve on the plaintiff a Notice of Intent to Participate within the time prescribed by the court.

D. **Required content of notice of intent to participate.** Any person, firm, corporation or other entity that has been served with a proposed consent order or other document requiring a response by the party and that has not suffered a default judgment shall attach either a copy of the

proposed consent order or other document requiring a response and shall file an affidavit stating that it has not suffered a default judgment in the proceeding.

Any person, firm, corporation, or other entity that has not been served with a proposed consent order or other document requiring a response shall file an affidavit accompanying its Notice of Intent to Participate demonstrating in specific detail:

- (1) The issue[s] it wants to raise during the proceedings;
- (2) The reasons the Notice of Intent to Participate is timely filed;
- (3) That it claims an interest relating to the property or transaction which is the subject of the action;
- (4) That it is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and
- (5) That its interest is not adequately represented by existing parties.

E. **Response to notice of intent to participate.** Within thirty (30) days after a Notice of Intent to Participate has been served on the plaintiff, the plaintiff shall file and serve on the proposed participant a response challenging the sufficiency of the Notice of Intent to Participate. Failure to file a timely response shall be deemed consent to the granting of the request to participate unless the court, sua sponte, orders the proposed participant to show cause why the Notice of Intent to Participate should be granted. When a challenge to the sufficiency of the Notice of Intent to Participate is made, the proposed participant shall bear the burden of persuasion that the request to participate should be granted.

F. **Proceedings to determine if the notice of intent to participate should be granted.** The court shall conduct such scheduling conferences, hearings, and other proceedings as necessary to resolve the issue of whether the Notice of Intent to Participate satisfies the requirements of this rule.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Paragraph D draws from Rule 1-024(A)(2) NMRA— Intervention of Right. Because Paragraph D is similar to Rule 1-024(A)(2), case law construing Rule 1-024 may be relevant, though not binding, on the construction of the similar language in Paragraph D. This is because the Notice of Intent to Participate is not the same as a Motion to Intervene as a Matter of Right and does not necessarily involve the same considerations.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

1-071.4. Statutory stream system adjudication suits; annual joint working session.

A. **Joint working sessions in state adjudications.** Thirty (30) days before the end of each fiscal year, the judges, special masters, the state and other parties in each stream adjudication court shall coordinate and set a working session for the purpose of discussing common issues among all pending stream adjudications and resource needs of each adjudication court. The judges presiding over state stream system adjudications shall invite judges and special masters presiding over federal stream system adjudications to participate.

B. **Report of state's priorities.** Thirty (30) days prior to the joint working session, the state shall file a report setting out the plaintiff's suggested priorities and its analysis of resources needed by the courts and the state for each adjudication pending in state court.

[Provisionally approved by Supreme Court Order No. 07-8300-013 for one year, effective June 13, 2007; provisionally approved by Supreme Court Order 08-8300 for one additional year,

effective June 9, 2008; provisionally approved by Supreme Court Order No. 09-8300-015, for one additional year, effective June 9, 2009; provisionally approved by Supreme Court Order No. 10-8300-020, for one additional year, effective June 8, 2010; approved by Supreme Court Order No. 11-8300-027, effective for new and pending cases on or after June 8, 2011; Rule 1-071.3 NMRA recompiled as Rule 1-071.4 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — The annual joint working session is called to balance the demands of state and federal court adjudications with the personnel and financial resources available to the state engineer and the courts. While each adjudication court must manage its case to ensure expeditious resolution, case management plans must be realistic and based on current resource information. Each adjudication court must take care to monitor its case management to avoid unnecessarily undermining the progress in other pending adjudications.

Because of the prohibition against *ex parte* contacts between the state and the judiciary, and because other parties' substantive and procedural rights might be impacted by decisions reached in the joint working session, such sessions are to be held only after notice of the date, time and place.

[Rule 1-071.3 NMRA recompiled as Rule 1-071.4 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

1-071.5. Statutory stream system adjudication suits; ex parte contacts; general problems of administration.

Rule 21-209(A) NMRA of the Code of Judicial Conduct applies to stream adjudications, except that judges, special masters and members of their staff in accordance with this rule may communicate with the plaintiff with respect to matters not addressing the merits of any pending adjudication that relate to general problems of administration and management of a pending or impending adjudication or the accurate reporting of water rights claims in the court's records.

[Provisionally approved by Supreme Court Order No. 07-8300-013 for one year, effective June 13, 2007; provisionally approved by Supreme Court Order No. 08-8300 for one additional year, effective June 9, 2008; provisionally approved by Supreme Court Order No. 09-8300-015, for one additional year, effective June 9, 2009; provisionally approved by Supreme Court Order No. 10-8300-020, for one additional year, effective June 8, 2010; approved by Supreme Court Order No. 11-8300-027, effective for new and pending cases on or after June 8, 2011; as amended by Supreme Court Order No. 13-8300-017, effective for all cases pending or filed on or after December 31, 2013; Rule 1-071.4 NMRA recompiled as Rule 1-071.5 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — The unique nature of a stream system adjudication, including its complexity and size, require coordination between the courts and the state to effectively manage the adjudication. At the same time, the courts are regulated by the Code of Judicial Conduct's prohibition against *ex parte* communications concerning pending matters. This rule expressly permits the court to have limited *ex parte* contacts with the plaintiff for the purposes of general administration and management of the adjudication.

[Rule 1-071.4 NMRA recompiled as Rule 1-071.5 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

1-071.6. Statutory stream system adjudication suits; excusal or recusal of a water judge.

Each water judge in each judicial district, including judges assigned to stream system adjudications, whether judges *pro tempore* or sitting judges, are designated by the chief justice of the Supreme Court. Paragraph E of Rule 1-088 NMRA applies and water judges cannot be excused peremptorily. If there is an excusal for cause or a recusal, the chief justice shall reassign the water right matter to another designated water judge.

[Provisionally approved by Supreme Court Order No. 07-8300-013 for one year, effective June 13, 2007; provisionally approved by Supreme Court Order 08-8300 for one additional year, effective June 9, 2008; provisionally approved by Supreme Court Order No. 09-8300-015, for one additional year, effective June 9, 2009; provisionally approved by Supreme Court Order No. 10-8300-020, for one additional year, effective June 8, 2010; approved by Supreme Court Order No. 11-8300-027, effective for new and pending cases on or after June 8, 2011; Rule 1-071.5 NMRA recompiled as Rule 1-071.6 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — This rule clarifies the applicability of Paragraph E of Rule 1-088 NMRA to water judges. Judges designated by the Supreme Court cannot be peremptorily excused.

[Rule 1-071.5 NMRA recompiled as Rule 1-071.6 NMRA by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]