

**PROPOSED REVISIONS TO THE RULES OF THE DISTRICT COURT OF THE
SECOND JUDICIAL DISTRICT
PROPOSAL 2025-023**

March 6, 2025

The Second Judicial District Court has recommended adoption of new Rule LR2-128 NMRA, amendments to Rules LR2-102, LR2-106, LR2-109, LR2-111, LR2-114, LR2-126, LR2-127, LR2-306, LR2-308, LR2-603 NMRA, and the withdrawal of Rules LR2-107, LR2-304, LR2-305 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 <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> 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 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

LR2-102. Chief judge.

[Related Statewide Rule 23-109 NMRA]

Under Rule 23-109 NMRA, the chief judge shall be elected during March of the year in which the current chief judge's term expires. The term of the chief judge shall begin [~~July 1~~] May 15 of the year of his or her election.

[As amended 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. _____, effective for all cases pending or filed on or after _____.]

LR2-106. Priorities for resolving scheduling conflicts.

A. **Scheduling priorities.** Scheduling conflicts between or within the various courts (i.e., children's court, civil court, criminal court, and domestic relations court) shall be resolved using the following order of priorities:

- (1) all matters given preference by statute or Supreme Court rule;
- (2) trials and hearings on the merits, with jury trials taking precedence over non-jury trials;
- (3) children's court cases, with the oldest case generally taking precedence;

(4) criminal court cases, with the following factors all being considered to determine priority:

~~[(a) — date of indictment or date of information;]~~

~~[(b) — date of arraignment; and]~~

(a) age of the case;

~~[(e)](b)~~ whether the defendant is or is not in custody;

(c) whether a defendant is being detained pending trial on this case; and

(d) whether a continuance has previously been granted.

(5) domestic relations court cases, with the oldest case generally taking precedence but child related issues taking precedence over all other issues;

(6) civil court cases;

(7) all other matters.

B. **Court-appointed hearing officers.** Trials, hearings, or conferences scheduled by a court-appointed hearing officer (arbitrator, settlement facilitator, special master, etc.) shall be given the same priority as those set by a judge.

C. **Scheduling conflicts.** Scheduling conflicts which are not resolved under Subsection A of this rule or by the assigned judges shall be resolved by the presiding judge(s). If the presiding judge(s) cannot resolve the conflict, the matter may be referred to the chief judge.

[As amended, effective January 23, 1998; as amended 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. _____, effective for all cases pending or filed on or after _____.]

[WITHDRAWN]

[LR2-107. Court hours; holidays; weather delays and closings.

A. ~~**Working hours; holidays.** The usual working hours for Second Judicial District Court offices shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday. The usual working hours for the court may be different than those of the individual clerks' offices. District court offices will observe those legal holidays published annually by the Administrative Office of the Courts and any others designated as legal holidays by the Supreme Court.~~

B. ~~**Weather delays and closings.** The second judicial district court shall observe the same schedule as the Albuquerque Public Schools with respect to court closing and delayed opening due to weather conditions.~~

[As amended by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016; as withdrawn by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

LR2-109. Decorum.

[Related Statewide Rules 1-090 and 5-115 NMRA]

Individuals appearing in court or in a judge's office or chambers shall conduct themselves in a manner befitting the dignity of the court. Under no circumstances shall anyone disrupt the court proceedings or court operations. ~~[Portable telephones, pagers, and beepers shall be turned off.]~~ Attorneys, their employees, law clerks, runners, law students, and court employees appearing in court or in a judge's office or chambers shall dress in a manner befitting the dignity of the court.

[As amended 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. _____, effective for all cases pending or filed on or after _____.]

LR2-111. Transportation of incarcerated and in-custody persons for hearings and trial; dress.

[Related Statewide Rule 5-502 NMRA]

A. **Submission of transportation orders.** Except as described below, [A] a court order is required for the transportation for trial, hearing, or other proceeding of any person under the jurisdiction of the [second judicial district] Second Judicial District and incarcerated or in custody at the New Mexico State Penitentiary, New Mexico Youth Diagnostic Development Center, Metropolitan Detention Center (“MDC”), Bernalillo County Youth Services Center (“BCYSC”), state hospital, or other such institution. Nothing in this rule precludes the court from developing an administrative process to ensure transportation from the MDC and BCYSC. ~~except the~~ In criminal, delinquency, and youthful offender cases, a transportation order is not required for transportation from MDC and BCYSC. ~~the~~ [The] prosecutor shall submit a proposed transportation order for all proceedings and shall serve an endorsed copy of the transportation order on the institution in such a manner that the copy is received at least twenty-one (21) days prior to the date of the requested transport. If the proceeding is scheduled in fewer than twenty-one (21) days, the prosecutor shall submit the proposed transportation order within one (1) business day of the proceeding being set and serve the institution with an endorsed copy of the transportation order immediately upon receipt of the signed order.

Upon court order, incarcerated or in-custody persons should be transported to allow sufficient time for consultation with counsel, if any. This section does not apply to transportation orders obtained under Rule 5-502(D) NMRA.

B. **Contents of proposed order.** Proposed transportation orders shall include the following:

- (1) the full name and any aliases of the person to be transported and that person’s date of birth and social security number;
- (2) the applicable case number and caption;
- (3) the designated transporting agency (usually the sheriff of the appropriate county);
- (4) the place where the person is incarcerated or in custody;
- (5) the place(s) where the person is to be transported;
- (6) the reason for the transport;
- (7) the place, date, and time of the proceeding and, if known, the length of such proceeding;
- (8) the date the person is to be returned, if applicable; and
- (9) the requirement, if any, for civilian clothing.

C. **Notice to ~~Bernalillo County~~ Metropolitan Detention Center.** The criminal clerk shall notify MDC ~~[the ——— Bernalillo County~~ [Metropolitan Detention Center (“BCDC”)] of criminal trials and other hearings for defendants in custody or incarcerated at [BCDC] MDC. ~~[BCDC]~~ MDC personnel shall transport such defendants to such hearings.

D. **Notice to Bernalillo County Youth Services Center.** The Children’s Court clerk shall notify the BCYSC of proceedings in Children’s Court for respondent children in custody or

incarcerated at BCYSC. BCYSC personnel shall transport such respondent children to such hearings.

[D]E. ~~[Prisoners']~~ Inmates' **dress.** The incarcerating or custodial institution shall ~~[ensure] permit [that — prisoners]~~ inmates appearing for jury trials to be clean and dressed in civilian clothing unless otherwise ordered by the court.

[LR2-113 recompiled and amended as LR2-111 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. _____, effective for all cases pending or filed on or after _____.]

LR2-114. Counsel of record; appearance; withdrawal.

[Related Statewide Rules 1-089, 5-107, and 10-165 NMRA]

A. **Entry of appearance required.** All counsel for a party, including state prosecutors and public defenders, court-appointed counsel, and counsel in appeals from metropolitan court, shall enter an appearance and shall do so either (1) by filing the party's initial pleading, criminal information or indictment, or delinquency petition, or (2) by filing an entry of appearance. Counsel shall promptly file notice of any change of address or telephone number and serve such notice on all other parties.

B. **Additional appearance requirements for criminal, delinquency, and youthful offender cases.** In all criminal, delinquency, and youthful offender cases, at arraignment in criminal cases or first appearance in juvenile cases or within seven (7) days thereafter, the prosecutor and the public defender or other defense counsel who will actually try the case shall file an entry of appearance as trial counsel. Within seven (7) days after discovery of any conflict affecting public defender representation, the public defender shall file a notice of conflict, and provide a copy of such notice to the assigned judge.

C. **Additional appearance requirements for abuse/neglect cases.** In all abuse/neglect cases, the attorney(s) assigned to represent the child(ren) and the attorney(s) assigned to represent the respondent(s) shall file an entry of appearance as counsel before the initial custody hearing commences.

[E] D. **Withdrawal of counsel.** Unless as provided for in Rule 1-089(C) NMRA, all [A]H withdrawals in all cases shall be by court order upon motion and shall not be granted ex parte. In addition to the grounds for withdrawal, motions to withdraw shall set forth the dates and times of any hearings set[;] and the dates of any relevant Supreme Court deadlines (e.g., in criminal cases, the date the trial deadline expires). In addition, unless the court otherwise orders for good cause, motions to withdraw shall

(1) be accompanied by an entry of appearance by substitute counsel or the client as a party pro se in which such substitute counsel or party pro se certifies that he or she is ready and able to proceed without delay and comply with the existing deadlines; or

(2) set forth in the motion the client's last known address and telephone numbers including work number, and acknowledge that the client has twenty (20) days in which to obtain counsel or be deemed appearing pro se.

Motions to withdraw shall be in the form set forth in LR2-Form 701 NMRA[;] and entries of appearance by substitute counsel or party pro se shall be in the form set forth in LR2-Form 702 NMRA. A copy of the motion to withdraw shall be served on the client as well as all other parties. An endorsed copy of the order allowing withdrawal shall be served on the client and all other parties.

[LR2-117 recompiled and amended as LR2-114 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. _____, effective for all cases pending or filed on or after _____.]

LR2-126. Rule 1-099 NMRA filing fee and certificate.

[Related Statewide Rule 1-099 NMRA]

A. **Filing fee.** For every pleading, motion, or other paper (hereinafter “paper”) filed in a civil court, domestic relations court, or children’s court civil case, the submitting party shall determine whether Rule 1-099 NMRA requires payment of a filing fee and shall pay the fee at the time the paper is presented for filing.

B. **Required certificate.** In domestic relations court cases, the submitting party shall attach a Rule 1-099 NMRA certificate in the form set forth in LR2-Form 706 NMRA to every motion, application, and petition, except applications for writs of garnishment and the first filed petition, unless that paper is accompanied by a Rule 1-099 NMRA filing fee.

C. **Required fee not paid.** If a required Rule 1-099 NMRA fee is not paid, the clerk shall not file the paper and no judicial action will be taken in the case.

[LR2-132 recompiled and amended as LR2-126 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. _____, effective for all cases pending or filed on or after _____.]

LR2-127. Orders to show cause.

Unless issued sua sponte, [The] the court may issue an ex parte order to show cause why a party should not be held in contempt only if the motion [therefor] is verified or accompanied by an affidavit specifically describing the factual basis for the claim of contempt and identifying verbatim that portion of the prior order of the court on which the contempt charge is based. The movant shall submit a proposed order. The order to show cause shall include the date, time, and place of the hearing.

[LR2-134 recompiled as LR2-127 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. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

LR2-128. Notice of unavailability.

Except as part of a request for hearing, a notice of unavailability shall not be filed. The clerk shall not accept for filing any notice of unavailability.

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

[WITHDRAWN]

~~LR2-304. Furloughs.~~

~~_____ [The court’s policy is to refuse furloughs for incarcerated and in custody defendants under the jurisdiction of the second judicial district. In exigent circumstances, on agreement of the parties, or for good cause shown, the assigned judge may order that a furlough be granted.]~~

[LR2-405 recompiled and amended as LR2-304 by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016; withdrawn by Supreme Court Order No. _____.]

[WITHDRAWN]

[LR2-305. Designation of proceedings for transcript conference.

~~[Related Statewide Rules 12-210 and 211 NMRA]~~

~~[In all criminal cases where an appeal has been filed and any portion of the proceedings before the district court was taken stenographically, within seven (7) days after having been served with the notice that the case is placed on the appellate court's general calendar or in the expedited bench decision program, the prosecuting attorney and the defense attorney shall attend a conference with the managing court reporter or the managing court reporter's designee for the purpose of ensuring that the appellant's designation of proceedings to be included in the transcript (hereinafter called "designation") is complete and accurate. The managing court reporter's office shall set the date, time, and place of the conference. Each attorney shall bring to the conference the following information: the dates of all proceedings and the specific portions of these proceedings that should be included in the transcript, e.g., pretrial hearing, voir dire, opening, testimony, closing, verdict, post trial hearing. The managing court reporter or the managing court reporter's designee may, but is not required to, assist the appellant with the typing and filing of the designation. This rule shall not be construed to relieve the appellant of the burden of filing the designation as required by Rules 12-201(E), 12-210(B), and 12-211(C)(1) NMRA. The district court, on its own motion or a party's motion, may impose an appropriate sanction for failure to comply with this rule.]~~

[LR2-407 recompiled and amended as LR2-305 by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016; withdrawn by Supreme Court Order No. _____.]

LR2-306. Appeals from driver's license revocation hearings.

[Related Statutes NMSA 1978, §§ 66-8-105 to -112, and Statewide Rule 1-074 NMRA]

A. **Applicability.** This rule governs appeals to the district court from driver's license revocation proceedings and proceedings conducted under the Implied Consent Act, Sections 66-8-105 through -112 NMSA 1978.

B. **Pleadings.** The first page of all pleadings shall include the civil division docket number of the case followed by the capital letters "LRA" (License Revocation Appeal).

C. **Extensions.** All requests for extension of time to file pleadings shall be by written motion filed in the civil clerk's office, which will direct the motions to the criminal ~~[on-record appeals]~~ division. The division will refer the motions to the appropriate judge. Motions for extension of time will be granted only for good cause. Motions shall contain specific grounds. Requests for extensions of time due to press of business, whether or not that press of business is explained with reference to specific cases, will not ordinarily be seen as good cause. In most cases, the time requested should not exceed fourteen (14) calendar days. Motions requesting subsequent extensions on the same pleading will rarely be granted. A motion requesting an extension that is filed on the day that the appellant's statement of appellate issues or the appellee's response is due or later will not be favored and may be denied.

D. **Failure to comply with Rule 1-074.** Pleadings that fail to comply with Rule 1-074 NMRA, particularly Paragraphs K through N, may be stricken or other sanctions may be imposed. If the re-filing of the noncomplying pleadings is permitted by the express order of the court, the revised pleadings shall be re-filed within fourteen (14) calendar days of the filing of that order.

E. **Stays.** Motions filed to stay the revocation of driving privileges pending the appeal to district court under Rule 1-074 NMRA, and their corresponding orders, may be presented directly to the judge of the criminal division assigned to the appeal for signature of the order. Prior concurrence by the motor vehicle division with the stay will expedite the court's decision regarding the stay while also complying with Rule 1-007.1 NMRA.

[Approved, effective November 3, 1999; LR2-409 recompiled and amended as LR2-306 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. _____, effective for all cases pending or filed on or after _____.]

LR2-308. Case management pilot program for criminal cases.

A. **Scope; application.** This is a special pilot rule governing time limits for criminal proceedings in the Second Judicial District Court. This rule applies in all criminal proceedings in the Second 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 Second Judicial District Court, but only to the extent they do not conflict with this pilot rule. The Second Judicial District Court may adopt forms to facilitate compliance with this rule, including the data tracking requirements in Paragraph M.

B. **Arraignment.**

(1) ***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, except that the arraignment of a defendant in custody at the Bernalillo County Metropolitan Detention Center on the case to be arraigned shall be held not later than seven (7) days after the filing of the bind-over order, indictment, or date of arrest, whichever is later.

(2) ***Certification by prosecution required; matters certified.*** At or before arraignment or waiver of arraignment, or upon 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 upon which to rely in assigning a case to an appropriate track at the scheduling conference [~~status hearing~~] provided for in Paragraph G;

(c) all discovery in the possession of the state or relied upon in the investigation leading to the bind-over order, indictment or information will be provided in accordance with Subparagraph (C)(2) of this rule; and

(d) the state understands that, absent extraordinary circumstances, the state's failure to comply with the case processing time lines set forth in this rule will result in sanctions as set forth in Paragraph I.

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

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

(1) ***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 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, witness addresses, phone numbers, and email addresses.

(2) ***Deadline for disclosure by the state.*** If the case is a ten (10)-day case as described by Rule 5-302(A)(1) NMRA, the state shall make its discovery disclosures to the defendant within five (5) days after arraignment or the filing of a waiver of arraignment under Rule 5-303(J) NMRA. 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 at arraignment or within five (5) days of when a written waiver of arraignment is filed under Rule 5-303(J) NMRA.

(3) ***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 pursuant to court order, the party seeking the order shall arrange for a witness interview or accept at its business offices a subpoena for purposes of deposition under Rule 5-503 NMRA.

(4) ***Continuing duty.*** The state shall have a continuing duty to disclose additional information to the defendant, 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 such information, including current contact information for witnesses.

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

(6) ***Providing copies; electronic or paper; e-mail addresses for district attorney and public defender required.*** Notwithstanding Rule 5-501(B) NMRA or any other rule, the state shall provide to the defendant electronic or printed copies of electronic or printed information subject to disclosure by the state. The Second Judicial District Attorney's Office and the Law Offices of the Public Defender shall provide to each other a single e-mail address for delivery of discovery electronically. In addition to delivering discovery to the given general address for the Law Offices of the Public Defender, the state shall copy such delivery to any attorney for the Law Offices of the Public Defender who has entered an appearance in the case at the time discovery is sent electronically.

(7) ***Service of subsequent pleadings.*** Service of pleadings and papers between the parties shall be made to the attorney, or to the party if not represented by counsel, by emailing an electronic scan of the file-endorsed pleading or paper, attachments included, to the attorney or party. If the attachments are too voluminous for emailing, or otherwise cannot be sent by email, the email to the attorney or party will recite this circumstance and certify that the attachments have been mailed or delivered to the attorney's or party's last known address. Service by email is complete upon transmission and, in case of attachments that cannot be emailed, upon mailing or delivery.

D. 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 scheduling conference [~~status hearing~~] described in Paragraph G, 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 also phone numbers and email addresses if available, for its 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 G, the defendant shall serve upon 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 such information.

(4) ***Providing copies required; electronic or paper.*** Notwithstanding Rule 5-502(B) NMRA or any other rule, the defendant shall provide to the state electronic or printed copies of electronic or printed information subject to disclosure by the defendant. The Second Judicial District Attorney's Office and the Law Offices of the Public Defender shall provide to each other a single e-mail address for delivery of discovery electronically. In addition to delivering discovery to the given general address for the Second Judicial District Attorney's Office, the defendant shall copy such delivery to any attorney for the Second Judicial District Attorney's Office who has entered an appearance in the case at the time discovery is sent electronically.

(5) ***Service of subsequent pleadings.*** Service of pleadings and papers between the parties shall be made to the attorney, or to the party if not represented by counsel, by emailing an electronic scan of the file-endorsed pleading or paper, attachments included, to the attorney or party. If the attachments are too voluminous for emailing, or otherwise cannot be sent by email, the email to the attorney or party will recite this circumstance and certify that the attachments have been mailed or delivered to the attorney's or party's last known address. Service by email is complete upon transmission and, in case of attachments that cannot be emailed, upon mailing or delivery.

E. Remote Audio-Visual Pretrial Interviews. Pretrial interviews shall be completed remotely via court-approved audio-visual technology unless the parties otherwise agree to in-person interviews or a party files a Notice of In-Person Interview and the court orders in-person

interviews. Absent extraordinary circumstances, each witness in a given case shall be interviewed only once, and each witness interview shall be recorded by interviewing counsel.

F. **Peremptory excusal of a district judge; limits on excusals; time limits; reassignment.** A party on either side may file one (1) peremptory excusal of any judge in the Second 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. If necessary, the case may later be reassigned by the chief judge to any judge in the Second 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 such matters by order of the Chief Justice, who shall not be subject to peremptory excusal.

G. **Scheduling conference ~~[Status hearing]~~; witness disclosure; case track determination; scheduling order.**

(1) ***Witness list disclosure requirements.*** 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 such disclosure to the other party continues at all times prior to trial, requiring such disclosure within five (5) days of when a party determines or should reasonably have determined the witness will be expected to testify at trial.

(2) **~~[Status hearing]~~ Scheduling conference; factors for case track assignment.** A scheduling conference ~~[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. In track 1 and 2 cases only, the court may, in its discretion, accept the parties' stipulation to a track assignment and scheduling order in lieu of conducting a scheduling conference. A scheduling conference is mandatory in track 3 cases.

(3) ***Case track assignment required; factors.*** At the scheduling conference ~~[status hearing]~~, the court shall determine the appropriate assignment of the case to one of three tracks. Written findings are required to place a case on track 3 and such findings shall be entered by the court within five (5) days of assignment to track 3. Any track assignment under this rule only shall be made after considering the following factors:

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

(b) 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.

(4) ***Defendants detained pending trial.*** When the defendant is detained pending trial, the case shall be given the highest priority for trial scheduling.

(5) ***Scheduling order required.*** After hearing argument and weighing the above factors, the court shall, before the conclusion of the scheduling conference ~~[status hearing]~~, issue a scheduling order that assigns the case to one of three tracks and identifies the dates when events required by that track shall be scheduled, which are as follows for tracks 1, 2, and 3:

(a) ***Track 1; deadlines for commencement of trial and other events.*** For track 1 cases, the scheduling order shall have 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 H, 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:

(i) Track 1 - deadline for plea agreement. A 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 not 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 upon a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty, the state may dismiss charges, 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;

(ii) Track 1 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled fifteen (15) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) 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;

(iv) Track 1 - deadline for pretrial motions hearing. A hearing for resolution of pretrial motions shall be set not less than thirty-five (35) days before the trial date;

(v) Track 1 - deadline for pretrial motions. Pretrial motions shall be filed not less than fifty (50) days before the trial date;

(vi) 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;

(vii) Track 1 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than sixty (60) days before the trial date. Absent agreement by the parties or order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses of the other party's initial witness list shall request those interviews no later than fourteen (14) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the thirty (30) days following the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that thirty (30)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served upon the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews; and

(viii) Track 1 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than

one hundred twenty (120) days before the trial date. The court may provide for production of scientific evidence less than one hundred twenty (120) days before the trial date as long as the modification does not result in a delay of the date scheduled for trial;

(b) *Track 2; deadlines for commencement of trial and other events.* For track 2 cases, the scheduling order shall have trial commence within three hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph H, 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:

(i) *Track 2 - deadline for plea agreement.* A 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 not 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 upon a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty, the state may dismiss charges, 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;

(ii) *Track 2 - deadline for pretrial conference.* The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled fifteen (15) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) *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;

(iv) *Track 2 - deadline for pretrial motions hearing.* A hearing for resolution of pretrial motions shall be set not less than thirty-five (35) days before the trial date;

(v) *Track 2 - deadline for pretrial motions.* Pretrial motions shall be filed not less than sixty (60) days before the trial date;

(vi) *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-five (45) 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;

(vii) *Track 2 - deadlines for requesting and completing witness interviews.* Witness interviews shall be completed not less than seventy-five (75) days before the trial date. Absent agreement by the parties or order of the court, the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses of the other party's initial witness list shall request those interviews no later than twenty-one (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the forty-five (45) days following the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that forty-five (45)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served upon the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness

interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews; and

(viii) *Track 2 - deadline for disclosure of scientific evidence.* All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred twenty (120) days before the trial date. The court may provide for production of scientific evidence less than one hundred twenty (120) days before the trial date as long as the modification does not result in a delay of the date scheduled for trial; and

(c) *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 H, whichever is the latest to occur, except that no case may be set past three hundred sixty-five (365) days where the defendant is detained pending trial except upon consent by defense counsel or upon 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:

(i) *Track 3 - deadline for plea agreement.* A 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 not 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 upon a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty, the state may dismiss charges, 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;

(ii) *Track 3 - deadline for pretrial conference.* The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled twenty (20) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) *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;

(iv) *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;

(v) *Track 3 - deadline for pretrial motions.* Pretrial motions shall be filed not less than seventy (70) days before the trial date;

(vi) *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;

(vii) *Track 3 - deadlines for requesting and completing witness interviews.* Witness interviews shall be completed not less than one hundred (100) days before the trial date. Absent agreement by the parties or order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party

wishing to interview witnesses of the other party's initial witness list shall request those interviews no later than twenty (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the sixty (60) days following the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that sixty (60)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served upon the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews; and

(viii) **Track 3 - deadline for disclosure of scientific evidence.** All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred fifty (150) days before the trial date. The court may provide for production of scientific evidence less than one hundred fifty (150) days before the trial date as long as the modification does not result in a delay of the date scheduled for trial.

(6) ***Form of scheduling order; additional requirements and shorter deadlines allowed.*** The court may adopt upon order of the chief judge of the district court a form to be used to implement the time requirements of this rule. 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 Subparagraph (G)(5) of this rule to allow for the case to come to trial sooner.

(7) ***Extensions of time; cumulative limit.*** The court may shorten or extend deadlines in the scheduling order provided any extensions of time shall not result in delay of the plea deadline or the date scheduled for commencement of trial.

H. **Time limits for commencement of trial.** 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 G whenever one of the following triggering events occurs:

(1) the date of arraignment or the filing of a waiver of arraignment of the defendant;

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

(3) if a mistrial is declared by the trial court, the date such order is filed in the court;

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

(5) 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;

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

(7) 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;

(8) if the defendant's case is severed from a case to which it was previously joined, the date from which the cases are severed, except that 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;

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

(10) 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;

(11) 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

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

I. 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 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 following 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 (I)(6).

(3) A motion for sanctions for failure to comply with this rule or any of the Rules of Criminal Procedure must be made in writing, except that 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 prior to 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 upon 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 (I)(6).

(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, except that 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 so required.

(6) The sanction of dismissal, with or without prejudice, shall not be imposed if 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 regarding the moving party's proof of and the court's consideration of the above factors.

J. Extension of time for trial; reassignment; dismissal with prejudice; sanctions.

(1) ***Extending date for trial; good cause or exceptional circumstances; reassignment to available judge for trial permitted; sanctions.*** The court may extend the trial date for a total of up to 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, upon showing of good cause which is beyond the control of the parties or the court. To grant such an extension the court shall enter written findings of good cause. 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, in the manner provided in Paragraph K of this rule. 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, the court shall impose sanctions as provided in Paragraph I of this rule, which may include dismissal of the case with prejudice subject to the provisions in Subparagraph (I)(6). 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 a written finding of exceptional circumstances approved in writing by the chief judge or a judge, including a judge pro tempore previously approved to preside over such matters by order of the Chief Justice, that the chief judge designates.

(2) ***Requirements for extension of trial date for exceptional circumstances.*** When the chief judge or the chief judge's designee accepts the finding by the trial 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 or include any other relief necessary to bring the case to prompt resolution.

(3) ***Requirements for multiple requests.*** Any extension sought beyond the date certain in a previously granted extension will again require a finding by the trial 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 trial 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 (I)(6).

K. Assignment calendar for cases.

(1) ***Scheduling by event categories; trailing docket; functional overlap among judges.*** The presiding judge of the criminal division shall establish an assignment calendar for all judges. The assignment calendar shall identify the weeks or other time periods when each judge will schedule events in the following categories: trials; motions and sentencing; arraignments, pleas and miscellaneous matters. Each judge may schedule an event in the week or other time period set aside for that event category, on a trailing docket. The assignment calendar shall include functional overlap so that more than one judge is always scheduled to hear matters in each event category on any given day. In the scheduled weeks or other time periods, the judges shall schedule events within the time requirements of Paragraph G of this rule.

(2) ***Reassignments permitted.*** If on or before the date of a scheduled event, the assigned judge is or will be unable to preside over the scheduled event for any reason, including a trailing docket, vacation, or illness, the case may be reassigned by order of the presiding judge of the criminal division to another judge on the assignment calendar so long as the other judge

- (a) is scheduled that day to hear that category of scheduled event; and
- (b) was not subject to a previously-exercised peremptory excusal.

This subparagraph does not apply to sentencing hearings following a trial. The judge who presided at trial shall conduct the sentencing. The court may adopt a form of order to expedite permitted reassignments.

(3) ***Reassignment for scheduled event; case returns to original judge.*** If another judge scheduled on the assignment calendar for the type of scheduled event is not available to immediately preside over the scheduled event, the assigned judge may designate any other new calendar judge, or a judge pro tempore previously approved by order of the Chief Justice and designated by the chief judge for this purpose, to preside over the scheduled hearing, trial, or other scheduled event. A judge designated for this purpose shall not have been previously excused from the case. Upon conclusion of the hearing, trial, or other scheduled event, the case shall again be assigned to the original judge without requirement of further order, except when the reassignment was for trial in which case the judge who presided over the trial shall also preside over sentencing.

L. **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.

M. **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. 14-8300-025, effective for all cases pending or filed on or after February 2, 2015; as amended by Supreme Court Order No. 16-8300-001, effective for new cases filed and for pending cases in which a track assignment is made on or after February 2, 2016; LR2-400 recompiled and amended as LR2-308 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 Nos. 17-8300-031 and 18-8300-001, effective for all cases pending or filed on or after January 15, 2018; as amended by Supreme Court Order Nos. 22-8300-012 and 22-8300-014, effective September 12, 2022, as directed in Supreme Court Order No. 22-8500-031; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

LR2-603. Court-annexed arbitration.

A. General provisions.

(1) ***Application.*** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

- Appeals
- Uniform Arbitration Act
- Extraordinary writs
- Adoption
- Commitment
- Conservatorship
- Guardianship
- Probate

Children's Code
Domestic relations
Workers' compensation
Student loan
Driver's license
Election
Tax

(2) ***Court hearings.*** If a court hearing is required about any aspect of arbitration prior to referral or any matter during referral, the court shall set and hear the matter promptly after the matter is brought to the attention of the assigned judge by request for hearing or by the court alternatives director.

(3) ***"At issue" required.*** All cases referred to arbitration must be "at issue" before referral. For purposes of this rule, a case is "at issue" when at least one answer to the complaint has been filed. Answers to cross-claims, counterclaims, and third-party complaints need not have been filed. Service on all parties need not have been made.

B. Mandatory referral.

(1) ***Types of cases for mandatory referral.*** All cases, jury and non-jury, shall be referred to arbitration when no party seeks relief other than a money judgment and no party seeks an amount in excess of fifty thousand dollars (\$50,000.00) from any party or combination of parties, exclusive of punitive damages, interest, costs, and attorney fees.

(2) ***Mandatory certification.*** In all cases filed on or after the effective date of this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint, or any other pleading in which affirmative relief is requested shall file and serve concurrently with the pleading for affirmative relief, a separate certification indicating whether the party is or is not seeking relief other than a money judgment and whether the amount sought exceeds or does not exceed fifty thousand dollars (\$50,000.00) exclusive of punitive damages, interest, costs, and attorney fees. The certification shall be a good faith attempt to state the type and amount of relief to be sought at trial and shall not act as a limit on relief.

(3) ***Review of certification; referral order.*** Within thirty (30) days after a case is at issue, the court will review the court file, including the certifications filed, to determine whether referral to arbitration is mandated by Subparagraph (B)(1) of this rule. If so mandated, the court will prepare and file an order referring the case to arbitration and mail or deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion may postpone filing a referral order if it appears from the court file that the case may be resolved on a pending motion for judgment on the pleadings or other pending dispositive motion. If referral is not mandated, no order will be entered.

(4) ***Failure to file certification.*** If a party fails to file a certification, the court after written notice may impose an appropriate sanction including but not limited to dismissing the party's complaint without prejudice. The court in its discretion may impose the sanction without hearing.

(5) ***Referral on motion.*** At any time after a case is at issue and notwithstanding any certifications filed, on a party's motion or the court's own motion, the court may enter an order referring the case to arbitration provided the court finds that the requirements of Subparagraph (B)(1) are met. The court in its discretion may enter the order without hearing.

(6) **Denial of referral.** Notwithstanding a finding that the requirements of Subparagraph (B)(1) have been met, at any time before referral, on a party's or the court's own motion, the court for good cause may deny referral to arbitration. The court in its discretion may enter the order without hearing.

C. **Permissive referral.** Any case may be referred to arbitration when the parties stipulate to arbitration. The court may require the parties to stipulate to an arbitrator as set forth in Subparagraph (D)(3)(c) of this rule.

D. **Arbitrators.**

(1) **Arbitrator pool.** The court will maintain a pool from which arbitrators will be appointed. The pool shall include all active members of the State Bar of New Mexico who have been licensed to practice law for five (5) or more years and who are residents of or have an office in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys, out-of-Bernalillo County attorneys, and out-of-state attorneys, may be included in the pool on written request to the court alternatives director. The chief judge for good cause may remove an attorney from the arbitrator pool either temporarily or permanently. The removal may be on the court's own motion without notice to the attorney, or it may be on written request to the ~~court alternatives director~~ **chief judge or the chief judge's designee**. The court will periodically review the pool of arbitrators for completeness and accuracy, and it may require any member of the State Bar of New Mexico to submit information necessary for this purpose. The court will provide written notice to attorneys as they are added to the pool, either by letter or notice published in the Bar Bulletin.

(2) **Training.** The court may require any attorney who is part of the arbitrator pool to attend arbitrator training.

(3) **Appointment to case.** After a case is referred to arbitration, an attorney shall be appointed as arbitrator by the filing of a court order on either random selection, court selection, or stipulation. With appointments on random or court selection, the court will file an order appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled to notice. With stipulations, the parties shall file the order of appointment.

(a) **Random selection.**

(i) **Notice of choices.** Within ten (10) days after a case is referred to arbitration, the court alternatives director will mail to all parties a notice listing three attorneys as choices for arbitrator. The three attorneys shall be selected at random from the arbitrator pool but none of the three may be employed by the same law firm as any of the other three or as any counsel in the case. The notice of choices shall not be filed with the clerk.

(ii) **Peremptory strikes.** Within seven (7) days after the notice of choices is mailed, each party may peremptorily strike one attorney by written notice to the court alternatives director. A maximum of two strikes will be counted altogether; a maximum of one strike will be counted for each side, e.g., all plaintiffs or defendants or third-party defendants; and strikes will be counted in the order received. The first attorney remaining after strikes are counted shall be appointed. The period for making strikes shall not be extended. The notice of strikes shall not be filed with the clerk.

(b) **Court selection.** For good cause, the court may select an arbitrator rather than provide the parties with a notice of choices.

(c) **Stipulation.** The parties may stipulate to the appointment of any licensed attorney, whether or not part of the pool and with any length of experience, by stipulated

order filed within seven (7) days after the notice of choices is mailed, or within seven (7) days after a vacancy is created by order of excusal or otherwise. The stipulated order must be approved by all parties and by the proposed arbitrator. Approval of counsel and the proposed arbitrator may be telephonic; approval of parties pro se must be by signature. The court or the proposed arbitrator may require the parties to pay compensation at the arbitrator's usual hourly fee.

(d) *Excusal; conflicts check.* Promptly on appointment, the arbitrator shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties of any conflict. On discovery of a conflict of interest in hearing a case, an arbitrator shall file a motion for excusal. On a party's, the arbitrator's, or the court's own motion, the court for good cause may order that the arbitrator be excused from appointment to the case. The court in its discretion may enter the order without hearing.

(e) *Vacancy.* Vacancies caused by excusal or otherwise shall be filled by appointment of the first of the remaining three choices or if none remains, by appointment of an attorney selected by the court, or the parties may stipulate to a replacement as provided in Subparagraph (D)(3)(c) of this rule.

[4.](4) **Compensation.** The court shall compensate arbitrators in the amount of one hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is excused from appointment. The arbitrator shall submit a written request for compensation to the court alternatives director within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a waiver of compensation. Arbitrators compensated by the parties under Subparagraph (D)(3)(c) of this rule shall not be compensated by the court.

E. **Procedures during referral.**

(1) **General.**

(a) *Court jurisdiction.* The assigned judge continues to have jurisdiction over a case during referral to arbitration. In general, however, the assigned judge should not hear any matters after an arbitrator is appointed except the judge may hear the following:

- (i) motions to excuse the arbitrator;
- (ii) motions to withdraw referral to arbitration;
- (iii) motions for sanctions under Subparagraph (D)(3)(c) of this rule;
- (iv) motions for free process;
- (v) motions about attorney representation;
- (vi) motions to add new parties;
- (vii) motions to set aside default or any other judgment;
- (viii) motions to compel settlement;
- (ix) any post-judgment enforcement and execution matters; and
- (x) requests for settlement conference under Rule LR2-

602 NMRA.

After a case is referred to arbitration and before an arbitrator is appointed, the court in its discretion may vacate any pending hearings on matters that may be heard by the arbitrator, and may set hearings on matters needing immediate consideration.

(b) *Arbitrator jurisdiction, powers, and duties.* The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is

excused, ten (10) days after an award is filed, or the arbitration proceedings are otherwise concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator's decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider the efficient, cost-effective, and informal resolution of the case as a factor in all the arbitrator's decisions and in all aspects of the arbitrator's management of the case. The arbitrator may limit discovery when appropriate. The arbitrator may administer oaths. With the exception of contempt, the arbitrator may enter appropriate sanctions including sanctions under Rules 1-016, 1-030, and 1-037 NMRA or any other Supreme Court rule, sanctions for failure to comply with any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's decisions. On agreement of the parties, the arbitrator may serve as a mediator or settlement facilitator. The arbitrator's jurisdiction, powers, and duties may not be delegated. The arbitrator must personally conduct the hearings and trial, and must personally sign decisions and the award.

(c) *Supreme Court and local rules.* All Supreme Court rules, including rules of civil procedure (including Rule 1-006 NMRA) and rules of evidence, and all second judicial district local rules apply during referral to arbitration unless specifically waived by written court order or the arbitrator. The arbitrator may waive rules of evidence only on agreement of the parties.

(d) *Good faith participation.* All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter an award of default or of dismissal against any party failing to participate in good faith or reflect the failure in the award. In any award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider the certification when deciding attorney fees, costs, and interest on appeal, or when considering whether to set aside the default.

(e) *120-day deadline; sanction.* Within one hundred twenty (120) days after the arbitrator is appointed, the arbitrator shall file an award unless the arbitration proceedings have otherwise been concluded. On a party's, the arbitrator's, or the court's own motion, the court for good cause may extend the one hundred twenty (120) day period. The court in its discretion may enter the order without hearing. If the arbitrator or a party fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator or party to pay a penalty into the second judicial district arbitration fund.

(f) *Filing papers.* Any motion or other paper to be heard or otherwise considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any decisions except for the award. On a party's or the court's own motion, the court may order that an inappropriately filed paper be stricken. The court in its discretion may enter the order without hearing. Failure to submit a motion to strike shall be deemed waiver of any prejudice caused by a paper inappropriately filed.

(g) *Court file; review; copy.* The arbitrator may review the court file at any time during regular court hours. The court shall provide the arbitrator a copy of the file or parts of the file at no cost on request; requests shall be made to the court alternatives director.

(h) *Summonses; subpoenae.* The clerk shall issue summonses and subpoenae in cases referred to arbitration in the same manner as with other civil cases. The summonses and subpoenae shall be served and enforceable as provided by law.

(i) *Record of proceeding.* Any party to an arbitration proceeding, at the party's own expense, may engage a certified court reporter to make a record of testimony given at

an arbitration proceeding for use as allowed by the rules of evidence. A copy of the record may be obtained by any other party to the arbitration proceeding in the same manner that deposition copies are obtained. Costs associated with making the record or obtaining a copy of it shall not be recoverable.

(j) *Withdrawal of referral.* At any time after a case is referred to arbitration, on a party's, the arbitrator's, or the court's own motion, the court for good cause may order that the referral to arbitration be withdrawn and the case be returned to the court's docket. The court in its discretion may enter the order without hearing.

(2) ***Hearings; trial.***

(a) *Place, date, and time.* The arbitrator shall set an appropriate place, date, and time for all hearings and trial. Hearings shall be set during regular business hours except on agreement of the parties. The arbitrator may conduct hearings by telephone.

(b) *Notice.* The arbitrator shall provide twenty (20) days written notice of trial. The arbitrator shall provide five (5) days notice, in writing or by telephone, of all other hearings. Notice of trial or hearings may be waived by the parties.

(c) *Requests for hearing.* Unless otherwise directed by the arbitrator, parties may request hearings informally, by letter, or by telephone, provided the requesting party notifies all other parties as well as the arbitrator. The arbitrator may decide motions and other preliminary matters on written submissions.

(d) *Statement of witnesses, exhibits.* No later than ten (10) days before trial, each party shall serve on all other parties a statement listing all the exhibits and witnesses the party may use and briefly describing the matters about which each witness will be called to testify. The arbitrator may waive this provision.

(e) *Return of exhibits and depositions.* After an award is filed or the arbitration proceedings are otherwise concluded, the arbitrator shall return all exhibits and depositions to the submitting party.

(3) ***Evidentiary exceptions.*** The following exceptions apply during referral to arbitration.

(a) *Depositions.* The arbitrator may hear testimony by deposition.

(b) *Documentary evidence.* The following documents, if relevant, shall be admitted in evidence without further proof, provided a copy of the documents is served on all parties no later than ten (10) days before the hearing or trial:

(i) estimates and bills for services and products, if dated and itemized;

(ii) reports of experts, if dated and signed; and

(iii) records and reports as described in Rule 11-803(6), (8), (9), (11), (12), and (14) through (18) NMRA.

(4) ***Award.***

(a) *Final decision; scope.* The arbitrator's final decision shall be called an "award". The award shall clearly set forth the amount awarded to each party and address all pending claims, attorney fees, costs and interest as allowed by law, including any required award of costs under Rule 1-068 NMRA. The award may be an award of default, dismissal, summary judgment, or money damages.

(b) *Amount.* The amount of the award shall be limited only by the evidence and shall not be limited by the circumstances under which the case was referred to arbitration.

(c) *Filing.* Unless the parties agree otherwise, within ten (10) days after the last hearing, the arbitrator shall file an award with the clerk and serve copies on all parties entitled to notice. If an arbitrator fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator to pay a penalty into the second judicial district's arbitration fund.

(d) *Amended award.* Within ten (10) days after an award is filed, the arbitrator may file an amended award. Copies shall be served on all parties entitled to notice.

(e) *Binding award.* At any time before the award is filed, the parties may file with the clerk a stipulation that the award will be binding and that the right to appeal the award is waived.

(f) *Judgment on award.* If no appeal is taken and the time for appeal has expired, the right to appeal has been waived, or the appeal has been voluntarily dismissed, the court shall prepare and file a judgment or final order adopting that part of the award not appealed as a judgment or final order of the court and shall mail or deliver endorsed copies to all parties entitled to notice. The judgment or final order shall be enforceable and binding as any other judgment or final order.

F. Appeal.

(1) ***Right to appeal.*** Any party of record at the time the arbitrator's award is filed may appeal the award, but a party may not appeal an award of default, including an award of default entered under Subparagraph (E)(1)(d) of this rule. An award of default shall only be set aside under Rules 1-055 and 1-060 NMRA.

(2) ***Procedures to appeal.***

(a) *Notice of appeal.* To exercise the right to appeal, a party must file a "notice of appeal from arbitration" with the clerk within fifteen (15) days after the award or amended award is filed. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fifteen (15) days after the date on which the first notice of appeal was served. The period for filing the notice shall not be extended. A copy of the notice of appeal shall be served on all parties entitled to notice. Cross-appeals are not required.

(b) *Voluntary dismissal.* At any time after filing a notice of appeal and before trial before the assigned judge, a party may withdraw the appeal by filing a notice of voluntary appeal dismissal. A copy of the notice shall be served on all parties.

(3) ***Procedures on appeal.***

(a) *Docket status.* After a notice of appeal is filed, the case shall be returned to the same status on the assigned judge's docket that it had before referral to arbitration. Requests for trial must be submitted as required by local rule.

(b) *De novo proceedings.* All appeals shall be in the form of de novo proceedings before the assigned judge. No reference shall be made to any of the arbitrator's decisions including the award. Neither the arbitrator nor the court alternatives director shall be permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed and until disposition of the appeal, the court shall seal the award.

(c) *Discovery.* Any discovery obtained while the case was referred to arbitration may be used in the de novo proceedings.

(4) *Award of fees, costs, and interest against appellant.* If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator's award, the court shall order that the appellant pay all other parties' expenses incurred during the appeal including but not limited to reasonable attorney fees, costs, and pre-judgment interest dating from the arbitration award. The court for good cause shown may waive this provision; the court shall state the basis for its good cause finding on the record.

[As amended, effective March 1, 1997; as amended by Supreme Court Order No. 06-8300-026 effective January 15, 2007; as amended 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. 22-8300-009, effective for all cases pending or filed on or after June 1, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Public Comment on Second Judicial District Court Local Rules from the NMJC Subcommittee on Legislation and Local Rules

Michelle Castillo Dowler <metrmxc@nmcourts.gov>

Fri, Apr 4, 2025 at 1:24 PM

Reply-To: metrmxc@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Hello,

Please accept this commentary from the NMJC Subcommittee on Legislation and Local Rules regarding the proposed changes for the Second Judicial District Local Rules.

Thank you,

Judge Castillo Dowler
Member, Subcommittee



Review of the Proposed Local Rules 2nd.docx

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**REVIEW OF THE PROPOSED LOCAL RULES
FOR THE SECOND JUDICIAL DISTRICT
BY
NEW MEXICO JUDICIAL COUNCIL
SUBCOMMITTEE FOR LEGISLATION AND RULES**

Local rules of procedure govern the practical and procedural affairs of a local court, and fill in gaps in the Rules of Criminal and Civil Procedure. The general purpose of a local rule is facilitate the progression of cases in a particular judicial district. *See e.g. State v. Seigling*, 2017-NMCA-035, ¶ 31, 392 P.3d 226. This review focused on the need for local rules to be unique to the judicial district and not duplicative of statewide rules of procedure.

1. LR 2-102 – Chief Judge

A. Amendment

- To conform with existing Rule 23-109 NMRA

B. Rule is duplicative of Rule 23-109 NMRA

C. Do not recommend, entire rule should be withdrawn due to being duplicative of Rule 23-109 NMRA

2. LR 2-106 – Priorities for resolving scheduling conflicts

A. Amendment

- Changes priorities on scheduling conflicts specifically for criminal cases to age of case, status of incarceration of Defendant and prior continuances as opposed to date of indictment and arraignment

B. No conflicts

C. Recommended

3. LR 2-107 – Court hours; holidays, weather delays and closings

A. Withdrawn

B. Recommended

4. LR 2-109 – Decorum

A. Amendment

- To remove requirement to turn off phones, pagers and beepers due to technology updates

B. No conflicts

C. Recommended

5. LR 2-111 – Transportation of incarcerated and in-custody persons for hearings and trial; dress

A. Amendment

- To accurately reflect names of transport partners and update current practices with transport entities

- B. No Conflicts
- C. Recommended

6. LR 2-114 – Counsel of Record; Appearance; Withdrawal

- A. Amendment
 - To add language to include Children’s Court
- B. No conflicts but Rule is duplicative of 1-089, 5-107, and 10-165 NMRA
- C. Do not recommend, entire rule should be withdrawn due to being duplicative of statewide rules

7. LR 2-126 – Rule 1-099 NMRA filing fee and certificate

- A. Amendment
 - To conform with Rule 1-099 NMRA
- B. No Conflicts
- C. Recommended

8. LR 2-127 – Orders to Show Cause

- A. Amendment
 - To reflect current practices
- B. No Conflicts
- C. Recommended

9. LR 2-1XX – Notice of Unavailability

- A. New
 - Directing that a Notice of Unavailability shall not be filed or accepted except as part of a request for hearing
- B. No Conflicts
 - Similar rule exists in the 5th district
- C. Recommended

10. LR 2-304 – Furloughs

- A. Withdrawn
 - Rule dictated a policy against furloughs
- B. No Conflicts
- C. Recommended

11. LR 2-305 – Designation of proceedings for transcript conference

- A. Withdrawn to update rule to current practices and technology
- B. No conflicts
- C. Recommended

12. LR 2-306 – Appeals from driver’s license revocation hearings

- A. Amendment
 - Minor technical updates
- B. No conflicts
- C. Recommended

13. LR 2-308 – Case management pilot program for criminal cases

- A. Amendment
 - Changing the name of the hearing from “Status Hearing” to “Scheduling Conference” and allowing stipulation to track assignment in track 1 and 2 cases only
- B. No conflicts
- C. Recommended

14. LR 2-603 – Court Annexed Arbitration

- A. Amendment
 - Changes the authority for removal of an attorney from the arbitrator pool upon written request from the “court alternatives director” to the “chief judge or chief judge’s designee”
- B. No conflicts
- C. Recommended