

1-038. Jury trial in civil actions.

A. **Jury demand.** In civil actions any party may demand a trial by jury of any issue triable of right by serving ~~[upon]~~ on the other parties a demand therefor in writing after the commencement of the action and ~~[not]~~ no later than ten (10) days after service of the last pleading directed to ~~[such]~~ the issue, and filing the demand as required by Paragraph ~~[D]~~ E of Rule 1-005 NMRA.

B. **Jury; twelve-person or six-person juries.**

(1) A jury of either six persons or twelve persons may be demanded.

(2) Unless a party, in the party's demand for trial by jury, specifically demands trial by a jury of twelve persons, the party shall be deemed to have consented to trial by a jury of six persons under the conditions and provisions hereinafter set out.

(3) If any party initially demands a six-person jury, any other party may demand a twelve-person jury by serving ~~[upon]~~ on the other party or parties a demand therefor in writing after the commencement of the action and ~~[not]~~ no later than ten (10) days after service of a six-person jury demand or after service of the last pleading directed to ~~[such]~~ the issue, whichever is later.

C. **Payment of jury fees.** Any party initially demanding a jury of six persons shall, at the time of filing of the jury demand, deposit with the clerk of the court a non-refundable jury fee of one hundred fifty dollar (\$150.00), and after the first day of trial shall deposit one hundred fifty dollar (\$150.00) additional upon commencement of court on each subsequent day the attendance of the jury is required for the trial. Any party initially demanding a jury of twelve persons shall, at the time of filing the jury demand, deposit with the clerk of the court a non-refundable jury fee of three hundred dollars (\$300.00), and after the first day of trial, shall deposit three hundred dollars

1 (\$300.00) additional upon commencement of court [~~upon~~] on each subsequent day the attendance
2 of the jury is required for the trial. If a jury of six persons has been initially demanded and another
3 party subsequently files a demand for a jury of twelve persons, each party shall deposit with the
4 clerk of the court for and on account of jury fees the sum of one hundred fifty dollar (\$150.00) and
5 each party shall deposit one hundred fifty dollar (\$150.00) additional upon commencement of
6 court [~~upon~~] on each subsequent day the attendance of the jury is required for the trial.

7 **D. Waiver.** Trial by jury is waived by:

- 8 (1) failing to file and serve a demand as required by this rule;
9 (2) failing to make a jury fee deposit as required by this rule;
10 (3) failing to appear at trial;
11 (4) filing a waiver of jury trial; or
12 (5) oral consent, in open court, entered in the record. A demand for trial by jury
13 may not be withdrawn without the consent of the parties.

14 **E. Challenges in civil cases.** The court shall permit the parties to a case to express in
15 the record of trial any challenge to a juror for cause. The court shall rule [~~upon~~] on the challenge
16 and may excuse any juror for good cause. Challenges for good cause and peremptory challenges
17 will be made outside the hearing of the jury. The party making a challenge will not be announced
18 or disclosed to the jury panel but each challenge will be recorded by the clerk. The opposing parties
19 will alternately exercise peremptory challenges. In cases tried before a jury of six, each party may
20 challenge three jurors peremptorily. In cases tried before a jury of twelve, each party may challenge
21 five jurors peremptorily. When there are two or more parties defendant, or parties plaintiff, they
22 will exercise their peremptory challenges jointly and if all cannot agree on a challenge desired by
23 one party on a side, that challenge shall not be permitted. However, if the relief sought by or against

1 the parties on the same side of a civil case differs, or if their interests are diverse, or if cross-claims
2 are to be tried, the court shall allow each [~~such~~] party on that side of the suit three peremptory
3 challenges if the case is to be tried before a jury of six or five peremptory challenges if the case is
4 to be tried before a jury of twelve.

5 F. **Six-member jury; majority verdict.** In civil cases tried to a jury of six persons,
6 when the jury, or as many as five of them, have agreed [~~upon~~] on a verdict, they must be conducted
7 into court, their names called by the clerk, and the verdict rendered by their foreperson; the verdict
8 must be in writing, signed by the foreperson and must be read by the clerk to the jury, and the
9 inquiry made whether it is their verdict. Either party may require the jury to be polled, which is
10 done by the court or clerk, asking each juror if it is the juror's verdict; if upon [~~such~~] the inquiry or
11 polling, more than one of the jurors disagree thereto, the jury must be sent out again but if no
12 [~~such~~] disagreement [~~be~~] is expressed, the verdict is complete and the jury discharged from the
13 case.

14 G. **Majority verdict in civil causes tried before a jury of twelve.** In civil causes tried
15 before a jury of twelve, when the jury, or as many as ten of them, have agreed [~~upon~~] on a verdict,
16 they must be conducted into court, their names called by the clerk, and the verdict rendered by
17 their foreperson; the verdict must be in writing, signed by the foreperson and must be read by the
18 clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury
19 to be polled, which is done by the court or clerk, asking each juror if it is the juror's verdict; if upon
20 [~~such~~] the inquiry or polling more than two of the jurors disagree thereto, the jury must be sent out
21 again but if no [~~such~~] disagreement [~~be~~] is expressed, the verdict is complete and the jury
22 discharged from the case.

H. **Costs.** Jury fees paid by a party shall be taxed as a part of the costs of the case against the party losing the case.

I. **Stipulation to jury.** Notwithstanding any other provisions of this rule, if a six-person jury has been demanded and no other party has made a timely demand for a jury of twelve persons, all parties may, by unanimous agreement, file a stipulation to trial by a jury of twelve persons. ~~[Such]~~ The stipulation shall be filed no later than thirty (30) days ~~[prior to]~~ before the commencement of trial. In ~~[such a case]~~ these cases, the jury fee shall be divided pro rata among all the parties.

J. **Dismissal of party demanding jury or withdrawal of jury demand.** When any party who has demanded a jury has been dismissed from a lawsuit or withdraws the party's jury demand ~~[prior to]~~ before the commencement of trial, the district court shall apportion the payment of the jury fee among the remaining parties who desire the matter be tried to a jury as shall be fair and just under the circumstances. Nothing contained in this rule shall require the district court to apportion any amount of the jury fee against any particular party.

K. **Non-refundable jury fees.** Jury fees may not be refunded by the clerk, but shall be deposited in the manner provided by law.

[As amended, effective August 1, 1989; August 27, 1999; February 1, 2001; as amended by Supreme Court Order No. 08-8300-034, effective December 15, 2008; as amended by Supreme Court Order No. S-1-RCR-2025-00173, effective for all cases pending or filed on or after December 31, 2025.]