

1 **1-072. Appeal from magistrate courts in trial de novo cases.**

2 A. **Right of appeal.** A party who is aggrieved by the judgment or final order in
3 a civil action in the magistrate court may appeal, as permitted by law, to the district court of
4 the county within which the magistrate court is located. The notice of appeal shall be filed
5 in the district court within fifteen (15) days after the judgment or final order appealed from
6 is filed in the magistrate court clerk's office. If a timely notice of appeal is filed by a party,
7 any other party may file a notice of appeal within ten (10) days after the date on which the
8 first notice of appeal was served or within the time otherwise prescribed by this rule,
9 whichever period expires last. The three (3) day mailing period set forth in Rule 1-006
10 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the
11 announcement of a decision, or return of the verdict, but before the judgment or order is filed
12 in the magistrate court clerk's office, shall be treated as timely filed. Notwithstanding any
13 other provision of this rule, no docket fee or other cost shall be imposed against the state, its
14 political subdivisions or the nonprofit corporations authorized to be formed under the
15 Educational Assistance Act [21-21A-1 NMSA 1978] in any such appeal.

16 B. **Notice of appeal.** An appeal from the magistrate court is taken by:

17 (1) filing with the clerk of the district court a notice of appeal with proof
18 of service; and

19 (2) promptly filing with the magistrate court:

20 (a) a copy of the notice of appeal that has been endorsed by the

1 clerk of the district court; and

2 (b) a copy of the receipt of payment of the docket fee.

3 C. **Content of the notice of appeal.** The notice of appeal shall be substantially
4 in the form approved by the Supreme Court. A copy of the magistrate court judgment or final
5 order appealed from, showing the date of the judgment or final order, shall be attached to the
6 notice of appeal filed in the district court.

7 D. **Service of notice of appeal.** At the time the notice of appeal is filed in the
8 district court, the appellant shall:

9 (1) serve each party or such party's attorney in the proceedings in the
10 magistrate court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA;
11 and

12 (2) file proof of service with the clerk of the district court that a copy of
13 the notice of appeal has been served in accordance with Rule 1-005 NMRA.

14 E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of
15 service and payment of the docket fee, if required, the clerk of the district court shall docket
16 the appeal in the district court.

17 F. **Jury trial.** Any party may demand a jury trial by filing a demand and paying
18 the jury fees as provided by Rule 1-038 NMRA. A demand for jury trial shall be filed at the
19 time the notice of appeal is filed in the district court, but not later than:

20 (1) thirty (30) days after service of the notice of appeal on each party to

1 the action; or

2 (2) ten (10) days after the last pleading is filed, if additional pleadings are
3 filed pursuant to Paragraph I of this rule.

4 **G. Record on appeal.** Within fifteen (15) days after the appellant files a copy
5 of the notice of appeal with the magistrate court pursuant to Paragraph B of this rule, the
6 magistrate court shall file with the clerk of the district court the record on appeal taken in the
7 action in the magistrate court. For purposes of this rule, the record on appeal shall consist of:

8 (1) a title page containing the caption of the case in the magistrate court
9 and the names and mailing addresses of each party or, if the party is represented by counsel,
10 the name and address of the attorney;

11 (2) a copy of all papers and pleadings filed in the magistrate court;

12 (3) a copy of the judgment or order sought to be reviewed with date of
13 filing noted thereon;

14 (4) any exhibits; and

15 (5) any transcript of the proceedings made by the magistrate court, either
16 stenographically recorded or tape recorded. If the transcript of the proceedings is a tape
17 recording, the magistrate court shall prepare and file with the district court a duplicate of the
18 tape and index log.

19 Any party desiring a copy of the transcript of the proceedings shall be responsible for
20 paying the cost, if any, of preparing such copy.

21 The magistrate court clerk shall give prompt notice to all parties of the filing of the

1 record on appeal with the district court.

2 H. **Correction or modification of the record.** If anything material to either
3 party is omitted from the record on appeal by error or accident, the parties by stipulation, or
4 the magistrate court on motion, or the district court, on proper suggestion or on its own
5 initiative, may direct that the omission be corrected and a supplemental record transmitted
6 to the district court.

7 I. **Pleadings.** The complaint and other pleadings filed in the magistrate court
8 shall be the complaint and pleadings in the district court. An amended complaint may be
9 filed within thirty (30) days after service of the notice of appeal. An amended complaint shall
10 be served in the manner provided by Rule 1-004 NMRA of these rules. If an amended
11 complaint is filed, a responsive pleading shall be filed within thirty (30) days and served as
12 provided by these rules.

13 J. **Procedure on appeal.** Unless otherwise provided by this rule, all other Rules
14 of Civil Procedure for the District Courts shall apply to appeals from the magistrate court.

15 K. **Stay of proceedings to enforce a judgment.**

16 (1) When an appeal is taken, the appellant may obtain a stay of the
17 proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the
18 magistrate court as provided in the Rules of Civil Procedure for the Magistrate Courts.

19 (2) When an appeal is taken by the state, by an officer or agency of the
20 state, by direction of any department of the state, by any political subdivision or institution

1 of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

2 L. **Review of supersedeas.** At any time after an appeal is filed pursuant to
3 Paragraph B of this rule, the district court may, upon motion and notice, review any action
4 of, or any failure or refusal to act by the magistrate court dealing with supersedeas or stay.
5 If the district court modifies the terms, conditions or amount of a supersedeas bond or if it
6 determines that the magistrate court should have allowed supersedeas and failed to do so on
7 proper terms and conditions, it may grant additional time within which to file in the district
8 court a supersedeas bond complying with the requirements for a supersedeas bond set forth
9 in the Rules of Civil Procedure for the Magistrate Courts. Any change ordered by the district
10 court shall be certified by the clerk of the district court and filed with the magistrate court
11 clerk by the party seeking the review.

12 M. **Rehearing.** A motion for reconsideration may be filed within ten (10) days
13 after filing of the district court's final order. The three (3) day mailing period set forth in Rule
14 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and
15 with particularity, but without argument, the points of law or fact that in the opinion of the
16 movant the court has overlooked or misapprehended. No response to a motion for rehearing
17 shall be filed unless requested by the court.

18 N. **Disposal of appeals.** The district court shall dispose of appeals by entry of
19 an appropriate order disposing of the appeal. The court in its discretion may accompany the
20 order with a formal or memorandum opinion. Opinions shall not be published and shall not

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**Supreme Court Approved
November 1, 2019**

1 be used as precedent in subsequent cases. A mandate shall be issued by the court upon
2 expiration of whichever of the following events occurs latest:

3 (1) [~~fifteen (15)~~] thirty (30) days after entry of the order disposing of the
4 case;

5 (2) [~~fifteen (15)~~] thirty (30) days after disposition of a motion for
6 rehearing; or

7 (3) if a notice of appeal is filed, upon final disposition of the appeal.

8 O. **Remand.** Upon expiration of the time for appeal from the judgment or final
9 order of the district court, if the relief granted is within the jurisdiction of the magistrate
10 court, the district court shall remand the case to the magistrate court for enforcement of the
11 district court's judgment.

12 P. **Appeal.** Any aggrieved person may appeal from a judgment of the district
13 court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in
14 accordance with the Rules of Appellate Procedure. Any supersedeas bond approved by the
15 magistrate court, or modified by the district court, shall continue in effect pending appeal to
16 the Supreme Court or Court of Appeals, unless modified pursuant to Rule 12-207 of the
17 Rules of Appellate Procedure.

18 [Adopted, effective January 1, 1996; as amended by Supreme Court Order No. 19-8300-017,
19 effective for all cases pending or filed on or after December 31, 2019.]