

1 **2-106. Excusal; recusal; disability.**

2 A. **Excusal.** Whenever a party to any civil action or proceeding of any kind files a
3 notice of excusal, the judge's jurisdiction over the cause terminates immediately.

4 B. **Limitation on excusals.** No party shall excuse more than one judge. A party may
5 not excuse a judge after the party has requested that judge to perform any discretionary act other
6 than an order for free process or a determination of indigency.

7 C. **Excusal procedure.** A party may exercise the statutory right to excuse the judge
8 before whom the case is pending by filing with the clerk of the court a notice of excusal. The notice
9 of excusal must be[=]

10 (1) signed by a party plaintiff or that party's attorney and filed within ten (10)
11 days after the later of[=]

12 (a) the filing of the complaint; or

13 (b) service by the court of notice of assignment or reassignment of the
14 case to a judge;

15 (2) signed by any other party or any other party's attorney and filed within ten
16 (10) days after the later of[=]

17 (a) the filing of the answer [~~pursuant to~~] under Rule 2-302 NMRA by
18 that party; or

19 (b) service by the court of notice of assignment or reassignment of the
20 case to a judge; or

21 (3) by each party plaintiff and defendant in a restitution case, including an
22 action in forcible entry or detainer, by filing a notice of excusal within three (3) days after service.

1 D. **Notice of reassignment; service of excusal.** After the filing of the complaint, if
2 the case is reassigned to a different judge, the court shall give notice of the reassignment to all
3 parties. Any party electing to excuse a judge shall serve notice of [~~such~~] the election on all parties.

4 E. **Misuse of excusal procedure.** Excusals are not to be exercised to hinder, delay, or
5 obstruct the administration of justice. If it appears that an attorney or group of attorneys may be
6 using excusals for improper purposes or with such frequency as to impede the administration of
7 justice, the Chief Judge of the district shall send a written notice to the Chief Justice of the Supreme
8 Court and shall send a copy of the written notice to the attorney or group of attorneys believed to
9 be improperly using excusals. The Chief Justice may take appropriate action to address any misuse,
10 including issuance of an order providing that the attorney or attorneys or any party they represent
11 may not file excusals for a specified period of time or until further order of the Chief Justice.

12 [~~E.~~]F. **Recusal; procedure.** No magistrate shall sit in any action in which the judge's
13 impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico
14 or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action.
15 Upon recusal, another judge shall be assigned or designated to conduct any further proceedings in
16 the action in the manner provided by Rule 2-105 NMRA.

17 [~~F.~~]G. **Failure to recuse.** If a party believes that the judge's impartiality may reasonably
18 be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial
19 Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set
20 forth the grounds alleged. Upon receipt of the notice, the judge may file a certificate of recusal in
21 the action or enter an order finding that there are not reasonable grounds for recusal. If within ten
22 (10) days after the filing of notice of facts requiring recusal, the judge fails to file a certificate of
23 recusal in the action, any party, may certify that fact by letter to the district court of the county in

1 which the action is pending with a copy of the notice of recusal. No filing fee shall be required for
2 the filing of a letter certifying grounds for recusal described in Paragraph ~~[E]~~ F of this rule. The
3 party's certification to the district court shall be filed in the district court not less than five (5) days
4 after the expiration of time for the magistrate court judge to file a certificate of recusal or not less
5 than five (5) days after the filing of an order in the magistrate court finding the grounds alleged in
6 the notice of recusal do not constitute reasonable grounds for recusal, whichever date is earlier. A
7 copy of the letter shall also be filed with the magistrate court. The district court shall make ~~[such]~~
8 an investigation as the court deems warranted and enter an order in the action, either prohibiting
9 the magistrate court judge from proceeding further or finding that there are insufficient grounds to
10 reasonably question the magistrate court judge's impartiality under the provisions of the
11 Constitution of New Mexico or the Code of Judicial Conduct.

12 ~~[G.]~~H. **Stay.** If a letter is filed with the district court and magistrate court certifying the
13 issue of recusal to the district court ~~[pursuant to]~~ under Paragraph ~~[F]~~ G of this rule, the magistrate
14 court judge may enter a stay of the proceedings pending action by the district court. If the
15 magistrate court judge fails to stay the proceedings, the party filing the letter in the district court
16 may petition the district court for a stay of magistrate court proceedings. The district court may
17 grant a stay of the proceedings for not more than fifteen (15) days after the filing of a letter
18 certifying a recusal issue to the district court. Unless a stay is granted, the magistrate court judge
19 shall proceed with the adjudication of the merits of the proceedings.

20 ~~[H.]~~I. **Inability of a judge to proceed.** If a trial or hearing has been commenced and the
21 judge is unable to proceed, any other judge of the district may proceed with it upon certifying
22 familiarity with the record and determining that the proceedings in the case may be completed
23 without prejudice to the parties. The successor judge may recall any witness. If no other judge is

**MAGISTRATE COURT CIVIL
RULE 2-106**

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1 available in the district, either party may certify that fact by letter to the district court of the county
2 in which the action is pending. The district court may make [~~sueh~~] an investigation as the court
3 deems warranted. If the court finds that the magistrate is in fact disabled or unavailable, the court
4 shall designate another judge to preside over the case.

5 [As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; July 1, 1990; October 1,
6 1992; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 20-8300-020,
7 effective for all cases pending or filed on or after December 31, 2020.]