

1 **3-106. 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 3-302 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.** Except as provided in Paragraph E of this rule, after the  
2 filing of the complaint, if the case is reassigned to a different judge, the clerk shall give notice of  
3 the reassignment to all parties.

4           E.     **Service of excusal.** Any party electing to excuse a judge shall serve notice of ~~such~~  
5 the election and reassignment on all parties.

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

15           ~~[F.]~~G. **Recusal; procedure.** No judge shall sit in any action in which the judge's  
16 impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico  
17 or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action  
18 and the clerk of the court shall give written notice of the recusal to the parties to the action. Upon  
19 recusal, another metropolitan court judge shall be assigned or designated to conduct any further  
20 proceedings in the action in the manner provided by Rule 3-105 NMRA.

21           ~~[G.]~~H. **Failure to recuse.** If a party believes that the judge's impartiality may reasonably  
22 be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial  
23 Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set

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

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

1           [~~F~~]. **Inability of a judge to proceed.** If a trial or hearing has been commenced and the  
2 judge is unable to proceed, any other judge of the district may proceed with it upon certifying  
3 familiarity with the record and determining that the proceedings in the case may be completed  
4 without prejudice to the parties. The successor judge may recall any witness. If no other judge is  
5 available, either party may certify that fact by letter to the district court of the county in which the  
6 action is pending. The district court may make [~~such~~an] investigation as the court deems  
7 warranted. If the court finds that the judge is in fact disabled or unavailable, the court shall  
8 designate another judge to preside over the case.

9 [As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; July 1, 1990; October 1,  
10 1992; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 13-8300-026,  
11 effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme  
12 Court Order No. 20-8300-020, effective for all cases pending or filed on or after December 31,  
13 2020.]