

1 **6-106. Excusal; recusal; disability.**

2 A. **Definition of parties.** "Party" as used in this rule means the defendant, the state, a
3 municipality, a county, or the person filing the complaint, or an attorney representing the
4 defendant, the state, county, municipality, or other party.

5 B. **Excusal.** Whenever a party to any criminal action or proceeding of any kind files a
6 notice of excusal, the judge's jurisdiction over the cause terminates immediately.

7 C. **Limitation on excusals.** No party shall excuse more than one judge. A party may
8 not excuse a judge after the party has requested that judge to perform any discretionary act other
9 than conducting an arraignment or first appearance, setting initial conditions of release, or making
10 a determination of indigency. No judge may be excused from conducting an arraignment or first
11 appearance or setting initial conditions of release. Any excusal of a judge scheduled to hear a
12 preliminary hearing must be filed at least four (4) days prior to the hearing.

13 D. **Excusal procedure.** A party may exercise the statutory right to excuse the judge
14 before whom the case is pending by filing with the clerk of the court a notice of excusal. The notice
15 of excusal must be signed by a party and filed within ten (10) days after the later of[;]

16 (1) arraignment or the filing of a waiver of arraignment; or

17 (2) service on the parties by the court of notice of assignment or reassignment
18 of the case to a judge.

19 E. **Notice of reassignment; service of excusal.** If the case is reassigned to a different
20 judge, the court shall give notice of the reassignment to all parties. Any party electing to excuse a
21 judge shall serve notice of [~~such~~] that election on all parties.

22 **F. Misuse of excusal procedure.** Excusals are not to be exercised to hinder, delay, or
23 obstruct the administration of justice. If it appears that an attorney or group of attorneys may be

1 using excusals for improper purposes or with such frequency as to impede the administration of
2 justice, the Chief Judge of the district shall send a written notice to the Chief Justice of the Supreme
3 Court and shall send a copy of the written notice to the attorney or group of attorneys believed to
4 be improperly using excusals. The Chief Justice may take appropriate action to address any misuse,
5 including issuance of an order providing that the attorney or attorneys or any party they represent
6 may not file excusals for a specified period of time or until further order of the Chief Justice.

7 ~~[F.]~~**G. Recusal; procedure.** No magistrate shall sit in any action in which the judge's
8 impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico
9 or the Code of Judicial Conduct, and the judge shall file a certificate of recusal in any such action.
10 Upon receipt of notification of recusal from a judge, the clerk of the magistrate court shall give
11 written notice to each party. Upon recusal, another judge shall be assigned or designated to conduct
12 any further proceedings in the action in the manner provided by Rule 6-105 NMRA.

13 ~~[G.]~~**H. Failure to recuse.** If a party believes that the judge's impartiality may reasonably
14 be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial
15 Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set
16 forth the constitutional grounds alleged. Upon receipt of the notice, the judge may file a certificate
17 of recusal in the action or enter an order finding that there are not reasonable grounds for recusal.
18 If within ten (10) days after the filing of notice of facts requiring recusal, the judge fails to file a
19 certificate of recusal in the action, any party may certify that fact by letter to the district court of
20 the county in which the action is pending with a copy of the notice of recusal. No filing fee shall
21 be required for the filing of a letter certifying grounds for recusal described in Paragraph ~~[F]~~ **G** of
22 this rule. The party's certification to the district court shall be filed in the district court not less
23 than five (5) days after the expiration of time for the magistrate court judge to file a certificate of

1 recusal or not less than five (5) days after the filing of an order in the magistrate court finding the
2 grounds alleged in the notice of recusal do not constitute reasonable grounds for recusal, whichever
3 date is earlier. A copy of the letter shall also be filed with the magistrate court. The district court
4 shall make [~~such~~] an investigation as the court deems warranted and enter an order in the action,
5 either prohibiting the magistrate court judge from proceeding further or finding that there are
6 insufficient grounds to reasonably question the magistrate court judge's impartiality under the
7 provisions of the Constitution of New Mexico or the Code of Judicial Conduct.

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

16 ~~[I].~~ **Inability of a judge to proceed.** If a trial or hearing has been commenced and the
17 judge is unable to proceed, any other judge of the district may proceed with it upon certifying
18 familiarity with the record and determining that the proceedings in the case may be completed
19 without prejudice to the parties. The successor judge may recall any witness. If no other judge is
20 available in the district, either party may certify that fact by letter to the district court of the county
21 in which the action is pending. The district court may make [~~such~~] an investigation as the court
22 deems warranted. If the court finds that the magistrate is in fact disabled or unavailable, the court
23 shall designate another judge to preside over the case.

**MAGISTRATE COURT CRIMINAL
RULE 6-106**

**Supreme Court Approved
November 1, 2020**

1 [As amended, effective January 1, 1987; July 1, 1988; September 1, 1989; September 1, 1990;
2 November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 07-8300-034, effective
3 January 22, 2008; as amended by Supreme Court Order No. 20-8300-020, effective for all cases
4 pending or filed on or after December 31, 2020.]