

1 **7-106. Excusal; recusal; disability.**

2 A. **Definition of parties.** “Party” as used in this rule shall be the defendant and the
3 state, municipality, or county filing the complaint or citation.

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

6 C. **Limitation on excusals.** No party shall excuse more than one judge, including a
7 pro tem judge. A party may not excuse a judge after the party has requested that judge to perform
8 any discretionary act other than conducting an arraignment or first appearance, setting initial
9 conditions of release, or making a determination of indigency. No judge may be excused from
10 conducting an arraignment or first appearance or setting initial conditions of release. Any judge
11 designated by the chief justice of the Supreme Court of New Mexico may not be excused except
12 under Article VI, Section 18 of the New Mexico Constitution.

13 D. **Procedure for excusing a judge.** A party may exercise the statutory right to excuse
14 the judge before whom the case is pending by filing with the clerk of the court a notice of excusal.
15 When a judge, including a pro tem judge, is designated to hear any matter because of the
16 unavailability of the assigned judge, subject to the limitations in Paragraph C of this rule, the
17 parties shall exercise their right to the excusal either in writing or orally when the designated judge
18 first calls the case. In all other instances, the notice of excusal must be signed by a party and filed
19 within ten (10) days after the later of[±]

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

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

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

4 F. **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 metropolitan court shall send a written notice to the Chief Justice of
8 the Supreme Court and shall send a copy of the written notice to the attorney or group of attorneys
9 believed to be improperly using excusals. The Chief Justice may take appropriate action to address
10 any misuse, including issuance of an order providing that the attorney or attorneys or any party
11 they represent may not file excusals for a specified period of time or until further order of the Chief
12 Justice.

13 [F-]G. **Recusal.** No judge shall sit in any action in which the judge’s impartiality may
14 reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of
15 Judicial Conduct, and the judge shall file a certificate of recusal in any such action. Upon receipt
16 of notification of recusal from a judge, the clerk of the metropolitan court shall give written notice
17 to each party. Upon recusal, another judge shall be assigned or designated to conduct any further
18 proceedings in the action in the manner provided by Rule 7-105 NMRA.

19 [G-]H. **Failure to recuse.** If a party believes that the judge’s impartiality may reasonably
20 be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial
21 Conduct, the party may file a notice of facts requiring recusal. The notice shall specifically set
22 forth the constitutional grounds alleged. Upon receipt of the notice, the judge may file a certificate
23 of recusal in the action or enter an order finding that there are not reasonable grounds for recusal.

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

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

9 [As amended, effective May 1, 1986; July 1, 1988; September 1, 1989; September 1, 1990;
10 November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 06-8300-024, effective
11 December 18, 2006; as amended by Supreme Court Order No. 15-8300-014, effective for all cases
12 pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 20-
13 8300-020, effective for all cases pending or filed on or after December 31, 2020.]