

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE DISTRICT COURTS
PROPOSAL 2021-009**

March 17, 2021

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rule 1-102 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 16, 2021, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

1-102. Deposit of litigant funds.

A. **Distinct accounts.** Litigant funds deposited with the district court shall be deposited by the court within two (2) business days of receipt in one or more trust fund checking accounts in a bank that is a member of the Federal Deposit Insurance Corporation distinct from the court's accounts for general funds. [~~Such funds shall be deposited in an interest bearing account appropriate for the type of deposit.~~]

B. **Interest bearing accounts.** Funds deposited in a trust fund checking account under Paragraph A of this rule shall be invested in accordance with Section 34-6-36 NMSA 1978 in obligations of the United States or in an interest bearing account [~~may be deposited only~~] in a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings & Loan Insurance Corporation, as may be prescribed by regulation of the Director of the Administrative Office of the Courts. To the extent that the [~~amount of~~] funds are deposited [~~in any such account exceeds the maximum insured amount such excess must be fully secured in the same manner as provided in Section 6-10-16 NMSA 1978 Comp.~~] with the court in accordance with Section 42A-1-19 NMSA 1978, the funds shall be invested by the court clerk in federal securities or in federally-insured interest bearing accounts in a financial institution located within the court's judicial district.

C. **Interest.** Interest on deposits shall inure to the benefit of the person entitled to the

principal only as follows:

(1) in proceedings [~~when~~] if a single deposit of twenty-five thousand dollars (\$25,000) or more is made for a minimum period of thirty (30) days and the court, [~~upon~~] on the request and stipulation of the parties, so orders; or

(2) in an eminent domain proceeding [~~when~~] if the applicable statute provides for investment at interest for the benefit of a party.

D. **Records of clerk.** In any case in which interest is ordered to be paid [~~to the litigant pursuant to~~] under Paragraph C of this rule, the clerk shall, before making payment, ascertain the amount of interest included in [~~such~~] the payment and shall require the payee to furnish [~~the payee's social security number or employer identification number, and the payee's mailing address~~] a completed Form W-9 (Request for Taxpayer Identification Number and Certification) providing the payee's name, mailing address, and taxpayer identification number. The clerk shall make and keep a record of the payee's name, [~~number and~~] mailing address, taxpayer identification number, and the amount of interest included in [~~such~~] the payment.

E. **Administrative trust account.** Deposits other than those made [~~pursuant to~~] under Subparagraph [~~(1) or (2) of Paragraph C~~] (C)(1) or (C)(2) of this rule shall be made in a separate account designated the administrative trust account. The clerk shall distribute to the state treasurer interest earned on the administrative trust account within ten (10) days after receipt by the clerk of each monthly statement dealing with [~~such~~] the account.

[As amended by Supreme Court Order No. _____, effective _____.]