

1 **LR2-603. Court-annexed arbitration.**

2 ~~[SECTION I: GENERAL PROVISIONS]~~

3 A. General provisions.

4 ~~A. (1)~~ **Application.** This rule applies to civil cases, whether jury or non-jury,
5 except for cases within the following categories:

6 _____ Appeals

7 _____ Uniform Arbitration Act

8 _____ Extraordinary writs

9 _____ Adoption

10 _____ Commitment

11 _____ Conservatorship

12 _____ Guardianship

13 _____ Probate

14 _____ Children's Code

15 _____ Domestic relations

16 _____ Workers' compensation

17 _____ Student loan

18 _____ Driver's license

19 _____ Election

20 _____ Tax

21 ~~B. (2)~~ **Court hearings.** If a court hearing is required ~~[regarding]~~about any aspect
22 of arbitration prior to referral or any matter during referral, the court shall set and hear the matter

1 promptly after the matter is brought to the attention of the assigned judge by request for hearing
2 or by the court alternatives director.

3 ~~€.~~ (3) ***“At issue” required.*** All cases referred to arbitration must be “at issue”
4 [~~prior to~~]before referral. For purposes of this rule, a case is “at issue” when at least one answer to
5 the complaint has been filed. Answers to cross-claims, counterclaims, and third-party complaints
6 need not have been filed. Service on all parties need not have been made.

7 ~~[SECTION II: MANDATORY REFERRAL]~~

8 **B. Mandatory referral.**

9 [~~A.~~] (1) ***Types of cases for mandatory referral.*** All cases, jury and non-jury, shall
10 be referred to arbitration [~~where~~]when no party seeks relief other than a money judgment and no
11 party seeks an amount in excess of [~~twenty-five~~] fifty thousand dollars [~~(\$25,000.00)]~~ (\$50,000.00)
12 from any party or combination of parties, exclusive of punitive damages, interest, costs, and
13 attorney fees.

14 [~~B.~~] (2) ***Mandatory certification.*** In all cases filed on or after the effective date of
15 this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint, or any
16 other pleading in which affirmative relief is requested shall file and serve concurrently with the
17 pleading for affirmative relief, a separate certification indicating whether the party is or is not
18 seeking relief other than a money judgment and whether the amount sought exceeds or does not
19 exceed [~~twenty-five~~] fifty thousand dollars [~~(\$25,000.00)]~~ (\$50,000.00) exclusive of punitive
20 damages, interest, costs, and attorney fees. The certification shall be a good faith attempt to state
21 the type and amount of relief to be sought at trial and shall not act as a [~~limitation~~]limit on relief.

22 [~~C.~~] (3) ***Review of certification; referral order.*** Within thirty (30) days after a case
23 is at issue, the court will review the court file, including the certifications filed, to determine

1 whether referral to arbitration is mandated by [~~Section H(A)~~] Subparagraph (B)(1) of this rule. If
2 so mandated, the court will prepare and file an order referring the case to arbitration[~~5~~] and mail or
3 deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion
4 may postpone filing a referral order if it appears from the court file that the case may be resolved
5 on a pending motion for judgment on the pleadings or other pending dispositive motion. If referral
6 is not mandated, no order will be entered.

7 [~~D.~~]____(4) ***Failure to file certification.*** If a party fails to file a certification, the court
8 after written notice may impose an appropriate sanction including but not limited to dismissing the
9 party's complaint without prejudice. The court in its discretion may impose the sanction without
10 hearing.

11 [~~E.~~]____(5) ***Referral on motion.*** At any time after a case is at issue and notwithstanding
12 any certifications filed, on a party's motion or the court's own motion, the court may enter an order
13 referring the case to arbitration provided the court finds that the requirements of [~~Section H(A)~~]
14 Subparagraph (B)(1) are met. The court in its discretion may enter the order without hearing.

15 [~~F.~~]____(6) ***Denial of referral.*** Notwithstanding a finding that the requirements of
16 [~~Section H(A)~~] Subparagraph (B)(1) have been met, at any time [~~prior to~~]before referral, on a
17 party's or the court's own motion, the court for good cause may deny referral to arbitration. The
18 court in its discretion may enter the order without hearing.

19 [~~SECTION III: PERMISSIVE REFERRAL~~]

20 C. Permissive referral. Any case may be referred to arbitration [~~where~~]when the
21 parties stipulate to arbitration. The court may require the parties to stipulate to an arbitrator as set
22 forth in [~~Subsection IV(C)(3)~~] Subparagraph (D)(3)(c) of this rule.

23 [~~SECTION IV: ARBITRATORS~~]

1 **D. Arbitrators.**

2 ~~A.~~ (1) **Arbitrator pool.** The court will maintain a pool from which arbitrators will
3 be appointed. The pool shall include all active members of the State Bar of New Mexico who have
4 been licensed to practice law for five (5) or more years and who are residents of or have an office
5 in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys,
6 out-of-Bernalillo County attorneys, and out-of-state attorneys, may be included in the pool on
7 written request to the court alternatives director. The chief judge for good cause may remove an
8 attorney from the arbitrator pool either temporarily or permanently. The removal may be on the
9 court's own motion ~~and~~ without notice to the attorney, or it may be on written request to the court
10 alternatives director. The court will periodically review the pool of arbitrators for completeness
11 and accuracy, and it may require any member of the State Bar of New Mexico to submit
12 information necessary for this purpose. The court will provide written notice to attorneys as they
13 are added to the pool, either by letter or notice published in the Bar Bulletin.

14 ~~B.~~ (2) **Training.** The court may require any attorney who is part of the arbitrator
15 pool to attend arbitrator training.

16 ~~C.~~ (3) **Appointment to case.** After a case is referred to arbitration, an attorney shall
17 be appointed as arbitrator by the filing of a court order on either random selection, court selection,
18 or stipulation. With appointments on random or court selection, the court will file an order
19 appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled
20 to notice. With stipulations, the parties shall file the order of appointment.

21 ~~(+)~~ (a) **Random selection.**

22 ~~(+)~~ (i) **Notice of choices.** Within ten (10) days after a case is
23 referred to arbitration, the court alternatives director will mail to all parties a notice listing three

1 [~~(3)~~] attorneys as choices for arbitrator. The three attorneys shall be selected at random from the
2 arbitrator pool [~~except that~~]but none of the three may be employed by the same law firm as any of
3 the other three or as any counsel in the case. The notice of choices shall not be filed with the clerk.

4 [~~(b)~~](ii) *Peremptory strikes.* Within seven (7) days after the notice of
5 choices is mailed, each party may peremptorily strike one attorney by written notice to the court
6 alternatives director. A maximum of two strikes will be counted altogether; a maximum of one
7 strike will be counted for each side, *e.g.*, all plaintiffs or defendants or third-party defendants; and
8 strikes will be counted in the order received. The first attorney remaining after strikes are counted
9 shall be appointed. The period for making strikes shall not be extended. The notice of strikes shall
10 not be filed with the clerk.

11 [~~(2)~~](b) *Court selection.* For good cause, the court may select an arbitrator
12 rather than provide the parties with a notice of choices.

13 [~~(3)~~](c) *Stipulation.* The parties may stipulate to the appointment of any
14 licensed attorney, whether or not part of the pool and with any length of experience, by stipulated
15 order filed within seven (7) days after the notice of choices is mailed, or within seven (7) days
16 after a vacancy is created by order of excusal or otherwise. The stipulated order must be approved
17 by all parties and by the proposed arbitrator. Approval of counsel and the proposed arbitrator may
18 be telephonic; approval of parties pro se must be by signature. The court or the proposed arbitrator
19 may require the parties to pay compensation at the arbitrator's usual hourly fee.

20 [~~(4)~~](d) *Excusal; conflicts check.* Promptly on appointment, the arbitrator
21 shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties
22 [~~thereof~~] of any conflict. On discovery of a conflict of interest in hearing a case, an arbitrator shall
23 file a motion for excusal. On a party's, the arbitrator's, or the court's own motion, the court for

1 good cause may order that the arbitrator be excused from appointment to the case. The court in its
2 discretion may enter the order without hearing.

3 ~~[(5)]~~ (e) *Vacancy*. Vacancies caused by excusal or otherwise shall be filled
4 by appointment of the first of the remaining three choices or if none remains, by appointment of
5 an attorney selected by the court, or the parties may stipulate to a replacement as provided in
6 ~~[Subsection IV(C)(3)]~~ Subparagraph (D)(3)(c) of this rule.

7 ~~[D.]~~ 4. **Compensation**. The court shall compensate arbitrators in the amount of one
8 hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator
9 files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is
10 excused from appointment. The arbitrator shall submit a written request for compensation to the
11 court alternatives director within thirty (30) days after the arbitrator is entitled to compensation.
12 Failure to submit a request shall be deemed a waiver of compensation. Arbitrators compensated
13 by the parties under ~~[Subsection IV(C)(3)]~~ Subparagraph (D)(3)(c) of this rule shall not be
14 compensated by the court.

15 ~~[SECTION V: PROCEDURES DURING REFERRAL]~~

16 E. Procedures during referral.

17 ~~[A.]~~ (1) **General**.

18 ~~[(4)]~~ (a) *Court jurisdiction*. The assigned judge continues to have jurisdiction
19 over a case during referral to arbitration. In general, however, the assigned judge should not hear
20 any matters after an arbitrator is appointed except the judge may hear the following:

21 ~~[(a)]~~ (i) motions to excuse the arbitrator;

22 ~~[(b)]~~ (ii) motions to withdraw referral to arbitration;

- 1 ~~[(e)]~~ [(iii)] motions for sanctions under ~~[Subsection V(A)(5)]~~
2 Subparagraph (D)(3)(c) of this rule;
- 3 ~~[(d)]~~ [(iv)] motions for free process;
- 4 ~~[(e)]~~ [(v)] motions ~~[regarding]~~about attorney representation;
- 5 ~~[(f)]~~ [(vi)] motions to add new parties;
- 6 ~~[(g)]~~ [(vii)] motions to set aside default or any other judgment;
- 7 ~~[(h)]~~ [(viii)] motions to compel settlement;
- 8 ~~[(i)]~~ [(ix)] any post-judgment enforcement and execution matters; and
- 9 ~~[(j)]~~ [(x)] requests for settlement conference under Rule LR2-
10 602 NMRA.

11 _____After a case is referred to arbitration and before an arbitrator is
12 appointed, the court in its discretion may vacate any pending hearings on matters that may be heard
13 by the arbitrator, and may set hearings on matters needing immediate consideration.

14 ~~[(2)]~~ [(b)] *Arbitrator jurisdiction, powers, and duties.* The arbitrator’s
15 jurisdiction begins when the order of appointment is filed and continues until the arbitrator is
16 excused, ten (10) days after an award is filed, or the arbitration proceedings are otherwise
17 concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator’s
18 decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of
19 fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider
20 the efficient, cost-effective, and informal resolution of the case as a factor in all the arbitrator’s
21 decisions and in all aspects of the arbitrator’s management of the case. The arbitrator may limit
22 discovery ~~[whenever]~~when appropriate. The arbitrator may administer oaths. With the exception
23 of contempt, the arbitrator may enter appropriate sanctions including sanctions under Rules 1-016,

1 1-030, and 1-037 NMRA or any other Supreme Court rule, sanctions for failure to comply with
2 any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's
3 decisions. On agreement of the parties, the arbitrator may serve as a mediator or settlement
4 facilitator. The arbitrator's jurisdiction, powers, and duties may not be delegated. The arbitrator
5 must personally conduct the hearings and trial, and must personally sign decisions and the award.

6 ~~[(3)]~~ (c) *Supreme Court and local rules.* All Supreme Court rules, including
7 rules of civil procedure (including Rule 1-006~~[(D)]~~) NMRA) and rules of evidence, and all second
8 judicial district local rules apply during referral to arbitration unless specifically waived by written
9 court order or the arbitrator. The arbitrator may waive rules of evidence only on agreement of the
10 parties.

11 ~~[(4)]~~ (d) *Good faith participation.* All parties shall participate in good faith
12 in the arbitration proceedings. The arbitrator may enter an award of default or of dismissal against
13 any party failing to participate in good faith or reflect the failure in the award. In any award, the
14 arbitrator shall include a certification that the party failed to participate in good faith. The court
15 shall consider the certification when deciding attorney fees, costs, and interest on appeal, or when
16 considering whether to set aside the default.

17 ~~[(5)]~~ (e) *120-day deadline; sanction.* Within one hundred twenty (120) days
18 after the arbitrator is appointed, the arbitrator shall file an award unless the arbitration proceedings
19 have otherwise been concluded. On a party's, the arbitrator's, or the court's own motion, the court
20 for good cause may extend the one hundred twenty (120) day period. The court in its discretion
21 may enter the order without hearing. If the arbitrator or a party fails to comply with this provision,
22 the court after written notice may impose an appropriate sanction including but not limited to
23 requiring the arbitrator or party to pay a penalty into the second judicial district arbitration fund.

1 ~~[(6)]~~ (f) *Filing papers.* Any motion or other paper to be heard or otherwise
2 considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any
3 decisions except for the award. On a party's or the court's own motion, the court may order that
4 an inappropriately filed paper be stricken. The court in its discretion may enter the order without
5 hearing. Failure to submit a motion to strike shall be deemed waiver of any prejudice caused by a
6 paper inappropriately filed.

7 ~~[(7)]~~ (g) *Court file; review; copy.* The arbitrator may review the court file at
8 any time during regular court hours. The court shall provide the arbitrator a copy of the file or
9 ~~[portions]~~ parts of the file at no cost on request; requests shall be made to the court alternatives
10 director.

11 ~~[(8)]~~ (h) *Summonses; subpoenae.* The clerk shall issue summonses and
12 subpoenae in cases referred to arbitration in the same manner as with other civil cases. The
13 summonses and subpoenae shall be served and enforceable as provided by law.

14 ~~[(9)]~~ (i) *Record of proceeding.* Any party to an arbitration proceeding, at the
15 party's own expense, may engage a certified court reporter to make a record of testimony given at
16 an arbitration proceeding for use as allowed by the rules of evidence. A copy of the record may be
17 obtained by any other party to the arbitration proceeding in the same manner that deposition copies
18 are obtained. Costs associated with making the record or obtaining a copy of it shall not be
19 recoverable.

20 ~~[(10)]~~ (j) *Withdrawal of referral.* At any time after a case is referred to
21 arbitration, on a party's, the arbitrator's, or the court's own motion, the court for good cause may
22 order that the referral to arbitration be withdrawn and the case be returned to the court's docket.
23 The court in its discretion may enter the order without hearing.

1 ~~[B.]~~ (2) **Hearings; trial.**

2 ~~[(1)]~~ (a) *Place, date, and time.* The arbitrator shall set an appropriate place,
3 date, and time for all hearings and trial. Hearings shall be set during regular business hours except
4 on agreement of the parties. The arbitrator may conduct hearings by telephone.

5 ~~[(2)]~~ (b) *Notice.* The arbitrator shall provide twenty (20) days written notice
6 of trial. The arbitrator shall provide five (5) days notice, in writing or by telephone, of all other
7 hearings. Notice of trial or hearings may be waived by the parties.

8 ~~[(3)]~~ (c) *Requests for hearing.* Unless otherwise directed by the arbitrator,
9 parties may request hearings informally, by letter, or by telephone, provided the requesting party
10 notifies all other parties as well as the arbitrator. The arbitrator may decide motions and other
11 preliminary matters on written submissions.

12 ~~[(4)]~~ (d) *Statement of witnesses, exhibits.* No later than ten (10) days ~~[prior~~
13 ~~to]~~ before trial, each party shall serve on all other parties a statement listing all the exhibits and
14 witnesses the party may use and briefly describing the matters about which each witness will be
15 called to testify. The arbitrator may waive this provision.

16 ~~[(5)]~~ (e) *Return of exhibits and depositions.* After an award is filed or the
17 arbitration proceedings are otherwise concluded, the arbitrator shall return all exhibits and
18 depositions to the submitting party.

19 ~~[C.]~~ (3) **Evidentiary exceptions.** The following exceptions apply during referral to
20 arbitration.

21 ~~[(1)]~~ (a) *Depositions.* The arbitrator may hear testimony by deposition.

1 ~~[(2)]~~ (b) *Documentary evidence.* The following documents, if relevant, shall
2 be admitted in evidence without further proof, provided a copy of ~~[said]~~the documents is served
3 on all parties no later than ten (10) days ~~[prior to]~~before the hearing or trial:

4 ~~[(a)]~~ (i) estimates and bills for services and products, if dated and
5 itemized;

6 ~~[(b)]~~ (ii) reports of experts, if dated and signed; and

7 ~~[(c)]~~ (iii) records and reports as described in Rule 11-803(6), (8), (9),
8 (11), (12), and (14) through (18) NMRA.

9 ~~[D.]~~ (4) *Award.*

10 ~~[(1)]~~ (a) *Final decision; scope.* The arbitrator’s final decision shall be called
11 an “award”. The award shall clearly set forth the amount awarded to each party and address all
12 pending claims, attorney fees, costs and interest as allowed by law, including any required award
13 of costs under Rule 1-068 NMRA. The award may be an award of default, dismissal, summary
14 judgment, or money damages.

15 ~~[(2)]~~ (b) *Amount.* The amount of the award shall be limited only by the
16 evidence and shall not be limited by the circumstances under which the case was referred to
17 arbitration.

18 ~~[(3)]~~ (c) *Filing.* Unless the parties agree otherwise, within ten (10) days after
19 the last hearing, the arbitrator shall file an award with the clerk and serve copies on all parties
20 entitled to notice. If an arbitrator fails to comply with this provision, the court after written notice
21 may impose an appropriate sanction including but not limited to requiring the arbitrator to pay a
22 penalty into the second judicial district’s arbitration fund.

1 ~~[(4)]~~ (d) *Amended award.* Within ten (10) days after an award is filed, the
2 arbitrator may file an amended award. Copies shall be served on all parties entitled to notice.

3 ~~[(5)]~~ (e) *Binding award.* At any time before the award is filed, the parties
4 may file with the clerk a stipulation that the award will be binding and that the right to appeal the
5 award is waived.

6 ~~[(6)]~~ (f) *Judgment on award.* If no appeal is taken and the time for appeal
7 has expired, the right to appeal has been waived, or the appeal has been voluntarily dismissed, the
8 court shall prepare and file a judgment or final order adopting that part of the award not appealed
9 as a judgment or final order of the court^[s] and shall mail or deliver endorsed copies to all parties
10 entitled to notice. The judgment or final order shall be enforceable and binding as any other
11 judgment or final order.

12 ~~[SECTION VI: APPEAL]~~

13 ~~—~~ F. Appeal.

14 ~~[A.]~~ (1) *Right to appeal.* Any party of record at the time the arbitrator’s award is
15 filed may appeal the award, ~~[except that]~~ but a party may not appeal an award of default, including
16 an award of default entered under ~~[Subsection V(A)(4)]~~ Subparagraph (E)(1)(d) of this rule. An
17 award of default shall only be set aside under Rules 1-055 and 1-060 NMRA.

18 ~~[B.]~~ (2) *Procedures to appeal.*

19 ~~(1)~~ (a) *Notice of appeal.* To exercise the right to appeal, a party must file a
20 “notice of appeal from arbitration” with the clerk within fifteen (15) days after the award or
21 amended award is filed. If a timely notice of appeal is filed by a party, any other party may file a
22 notice of appeal within fifteen (15) days after the date on which the first notice of appeal was

1 served. The period for filing the notice shall not be extended. A copy of the notice of appeal shall
2 be served on all parties entitled to notice. Cross-appeals are not required.

3 ~~[(2)]~~ (b) *Voluntary dismissal.* At any time after filing a notice of appeal and
4 before trial before the assigned judge, a party may withdraw the appeal by filing a notice of
5 voluntary appeal dismissal. A copy of the notice shall be served on all parties.

6 ~~[(C)]~~ (3) ***Procedures on appeal.***

7 ~~[(4)]~~ (a) *Docket status.* After a notice of appeal is filed, the case shall be
8 returned to the same status on the assigned judge's docket that it had ~~[prior to]~~ before referral to
9 arbitration. Requests for trial must be submitted as required by local rule.

10 ~~[(2)]~~ (b) *De novo proceedings.* All appeals shall be in the form of de novo
11 proceedings before the assigned judge. No reference shall be made to any of the arbitrator's
12 decisions including the award. Neither the arbitrator nor the court alternatives director shall be
13 permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed
14 and until disposition of the appeal, the court shall seal the award.

15 ~~[(3)]~~ (c) *Discovery.* Any discovery obtained while the case was referred to
16 arbitration may be used in the de novo proceedings.

17 ~~[(D)]~~ (4) ***Award of fees, costs, and interest against appellant.*** If the court makes a
18 decision on the merits which is the same as or less favorable to the appellant than the arbitrator's
19 award, the court shall order that the appellant pay all other parties' expenses incurred during the
20 appeal including but not limited to reasonable attorney fees, costs, and pre-judgment interest dating
21 from the arbitration award. The court for good cause shown may waive this provision; the court
22 shall state the basis for its good cause finding on the record.

LOCAL RULES
RULE LR2-603

Supreme Court Approved
March 9, 2022

1 [As amended, effective March 1, 1997; as amended by Supreme Court Order No. 06-8300-026
2 effective January 15, 2007; as amended by Supreme Court Order No. 16-8300-015, effective for
3 all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order
4 No. 22-8300-009, effective for all cases pending or filed on or after June 1, 2022.]