

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS
PROPOSAL 2022-025**

September 1, 2022

On March 16, 2022, the Supreme Court provisionally adopted new Rule 1-145 NMRA. The new rule took effect on March 16, 2022.

If you would like to comment on the provisionally adopted rule 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:

Elizabeth A. Garcia, Clerk of Court
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 September 30, 2022, 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.

[NEW MATERIAL]

1-145. Conservatorship proceedings; professional conservators; procedures and time limits for filing reports and financial statements.

A. **Scope; computation of time.** This rule governs the filing of reports by a professional conservator in a conservatorship proceeding under Section 45-5-409 NMSA 1978. *See* Rule 1-142(B) NMRA (defining the term "professional . . . conservator"). All time periods set forth in this rule shall be computed in accordance with the provisions of Rule 1-006(A) NMRA, unless otherwise indicated.

B. **Appointment.** On the filing of a petition for the appointment of a conservator the court, taking into account the priorities set forth in Section 45-5-410(A) NMSA 1978, may appoint a professional conservator.

C. **Timing of reports.** An order of appointment under Paragraph B of this rule shall require the professional conservator to file a report, substantially in compliance with Form 4-998 NMRA, within the following time limits:

- (1) in the case of an annual report, within thirty (30) days after the anniversary date of the professional conservator's appointment;
- (2) in the case of all other reports, within sixty (60) days after the professional conservator's resignation, removal, or termination, whichever is applicable; or

(3) a reasonable period of time as determined by the court beyond the deadlines specified in Subparagraphs (1) and (2) of this paragraph.

D. **Filing and service of reports.** A professional conservator's report shall be filed in the court in which the case is currently assigned, with copies served on

(1) the protected person, consistent with the provisions of Rule 1-004.1(C) NMRA;

(2) the protected person's guardian, if any, in accordance with the provisions of Rules 1-004.1(D) and 1-005 NMRA; and

(3) the district judge currently assigned to the case, in accordance with the provisions of Rules 1-004.1(D) and 1-005 NMRA.

E. **Required documents; financial statements; separate confidential filing.**

(1) Every report filed by a professional conservator shall require a separate confidential filing of financial statements that detail the following:

(a) all income and assets reported, respectively, in Sections II and IV of Form 4-998; and

(b) all expenses and debts reported, respectively, in Sections III and V of Form 4-998.

(2) For purposes of this rule, the term "financial statements" shall mean written documentation in any form from a third-party financial institution that reflects one or more of the relevant individual transactions for or on behalf of the protected person that occurred during the period covered in the report.

(3) Considering the confidential nature of the information contained in the financial statements, the separate confidential filing shall

(a) be filed contemporaneously with Form 4-998;

(b) be automatically sealed by the court, without the need for a separate court order;

(c) include a cover sheet captioned "Sealed—Confidential Information" that indicates the total number of pages, excluding the cover sheet, being filed;

(d) not redact any confidential information;

(e) not be disclosed to any person or entity other than the State Auditor as provided in Paragraph F of this Rule, unless authorized by court order. Absent a court order, and notwithstanding the provisions of Rule 1-079.1(C)(4) NMRA, the confidential filing required under this Paragraph shall not be disclosed to the protected person, the parties to the proceeding, a court-appointed guardian, or counsel of record and their employees.

F. **Audit process.**

(1) The court shall forward a professional conservator's report and all financial statements to the State Auditor for review within five (5) days of the court's receipt of those documents.

(2) The State Auditor shall submit, within fifteen (15) business days of receiving a professional conservator's report and all financial statements from the court, one of the following:

(a) a letter of review declining to conduct an audit;

(b) a letter of acceptance to conduct an audit; or

(c) a letter requesting that the professional conservator submit additional information or financial statements to help assess whether an audit is warranted or appropriate.

(3) The professional conservator shall comply with any request made by the State Auditor for additional information or financial statements within fifteen (15) business days of receiving the request. For good cause shown, the court may extend the time limit governing the professional conservator's response for an additional period of up to fifteen (15) business days.

(a) If, in the opinion of the State Auditor, the professional conservator's response satisfactorily provides the requested information or financial statements missing from the initial submission, the State Auditor shall submit the following within fifteen (15) business days of receiving the response:

(i) a letter of review declining to conduct an audit, or

(ii) a letter of acceptance to conduct an audit.

(b) If the professional conservator fails to respond to the State Auditor's request or if, in the opinion of the State Auditor, a submitted response lacks the requested information or financial statements, the State Auditor shall promptly notify the court of the professional conservator's lapse. The court, in turn, shall set the matter for a status conference, at which the professional conservator, appearing through counsel, shall advise the court of the reason for the delayed or inadequate response. Any costs associated with preparing for and appearing at the status conference shall be borne by the professional conservator and shall not be charged to the protected person's estate. The court may issue any order, up to and including an order holding the professional conservator in contempt, appropriate to promote the efficient processing of the report.

(4) If the State Auditor decides to conduct an audit of the contents in the professional conservator's report without requesting additional information or financial statements, an audit report shall be filed with the court within ninety (90) days of the State Auditor's submission of the letter of acceptance to conduct an audit. If the State Auditor decides to conduct an audit of the contents in the professional conservator's report after requesting and receiving additional information or financial statements, an audit report shall be filed with the court within ninety (90) days of the professional conservator's submission of the additional information or financial statements.

G. **Costs incurred.** Any costs incurred by the State Auditor in exercising its authority to subpoena documents, records, or statements under Section 45-5-409(H) NMSA 1978 shall be borne by the professional conservator and shall not be charged to the protected person's estate. [Provisionally adopted by Supreme Court Order No. 22-8300-005, effective for all cases filed or pending on or after March 16, 2022.]

**No Comments
Received**