

1-053.1. Domestic violence special commissioners; duties.

A. **Appointment.** Domestic violence special commissioners shall be at-will positions subject to the New Mexico Judicial Branch Policies for At-will Employees. Consistent with the authority set forth in this rule, domestic violence special commissioners may perform those duties assigned by the chief judge of the district in domestic violence proceedings.

B. **Qualifications.** Any person appointed to serve as a special commissioner under this rule shall

(1) be a lawyer licensed to practice law in New Mexico with at least three (3) years of experience in the practice of law; and

(2) be knowledgeable in the area of domestic relations and domestic violence matters.

C. **Duties.** A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act, Sections 40-13-1 to -13 NMSA 1978:

(1) review petitions for orders of protection and motions to enforce, modify, or terminate orders of protection;

(2) if deemed necessary, interview petitioners, provided that any interview shall be on the record;

(3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify, or terminate orders of protection; and

(4) prepare recommendations, in the form, if any, approved by the Supreme Court, for review and final approval by the district court regarding petitions for orders of protection and motions to enforce, modify, or terminate orders of protection.

D. **Removal.** On motion of any party for good cause shown, or on the court's own motion, the district court may remove the domestic violence special commissioner from acting in a proceeding.

E. **Authority.** The domestic violence special commissioner's recommendations shall not become effective until reviewed and adopted as an order of the court.

F. **Recommendations.**

(1) ***Recommendations concerning ex parte orders.*** After conducting the necessary review, the domestic violence special commissioner shall promptly submit to the district court recommendations concerning the entry of an *ex parte* temporary order of protection. The district court judge shall immediately review the recommendations and shall determine whether to immediately enter an order consistent with the recommendations, to enter a different order, to request the commissioner to conduct further proceedings, or to request the commissioner to make additional findings and conclusions. Unless otherwise ordered by the court, an *ex parte* order of protection signed by the court shall remain in effect, in accordance with the provisions of Section 40-13-4 NMSA 1978, until the court enters a final order ruling on the petition for an order of protection.

(2) ***Recommendations.*** At the conclusion of the proceedings, the domestic violence special commissioner shall submit to the district court for review and approval the commissioner's recommendations, including proposed findings and conclusions, and shall serve each of the parties with a copy together with a notice that specific objections may be filed within ~~ten (10)~~ fourteen (14) days after service of the recommendations.

G. **Objections.** Any party may file timely objections to the domestic violence special commissioner's recommendations. The party filing objections shall promptly serve them on other

parties. Objections must specifically identify the following:~~[specific portions of the~~
~~commissioner's recommendations to which the party objects. The party filing objections shall~~
~~promptly serve them on other parties.]~~

- (1) the specific portions of the recommendations to which the party objects;
- (2) a summary of the evidence presented at the hearing conducted by the
commissioner;
- (3) the specific findings of fact made by the commissioner to which the party
objects; and
- (4) the specific errors made by the commissioner in applying the substantive
and/or procedural law to the commissioner's findings of fact.

H. **District court proceedings.** After receipt of the recommendations of the domestic
violence special commissioner, the district court judge shall ~~[take the following actions:]~~ observe
the following procedure:

- ~~[(1)—Review of recommendations.]~~
- ~~[—(a)]~~(1) The district court judge shall immediately review the
recommendations of the domestic violence special commissioner and determine whether to
immediately adopt the recommendations. The district court judge shall set aside the decision only
if the decision is found to be
- (a) arbitrary, capricious, or an abuse of discretion;
 - (b) not supported by substantial evidence in the record as a whole; or
 - (c) otherwise not in accordance with law.
- ~~[—(b)]~~(2) If ~~[the]~~a party files timely, specific objections to the recommendations as
set forth in Paragraph G of this rule, the district court judge shall conduct ~~[a hearing]~~an independent

1 review appropriate and sufficient to resolve the objections. The ~~[hearing]~~ review shall consist of a
2 review of the record presented to the special commissioner. ~~[unless the court determines that~~
3 ~~additional evidence will aid in the resolution of the objections.]~~

4 ~~[(e)](a) [The court shall make an independent determination of the~~
5 ~~objections.]~~ The review does not require an in-person hearing before the district court judge.

6 (b) If the district court judge finds that the objections to the
7 recommendations are not specifically stated as set forth in Paragraph G of this rule, the district
8 court judge may issue a general denial of the objections.

9 ~~[—(d)](3)~~ The district court judge may adopt the recommendations, modify
10 them, reject them in whole or in part, receive further evidence, or ~~[recommit]~~ remand them to the
11 domestic violence special commissioner with instructions.

12 ~~[(2)](4) [Findings and conclusions; entry of final order. After the hearing, the~~
13 ~~court]~~ After reviewing any objections, the district court judge shall enter a final order. When
14 required by Rule 1-052 NMRA, the district court judge also shall enter findings of fact and
15 conclusions of law.

16 I. **Limitations on private practice.** Full-time domestic violence special
17 commissioners shall devote full time to their duties under the Family Violence Protection Act and
18 shall not engage in the private practice of law or in any employment, occupation, or business
19 interfering with or inconsistent with the discharge of their duties. Part-time domestic violence
20 special commissioners may engage in the private practice of law so long as in the discretion of the
21 appointing judge it does not interfere with nor is inconsistent with the discharge of their duties as
22 ~~[a]~~ domestic violence special ~~[commissioner]~~ commissioners and subject to applicable Code of
23 Judicial Conduct provisions, as stated in Paragraph J of this rule.

J. **Code of Judicial Conduct.** A domestic violence special commissioner is required to conform to all applicable provisions of the Code of Judicial Conduct.

[Adopted, effective October 18, 1996; as amended by Supreme Court Order No. 06-8300-019, effective October 16, 2006; as amended by Supreme Court Order No. 17-8300-020, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. 22-8300-019, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary for 2006 amendment. —

Authority

Former Paragraph C of Rule 1-053.1 NMRA has been amended to make clear the permissible scope of the domestic violence special commissioner's duties. Those duties include not only the review of petitions and the conducting of hearings for requests for all orders of protection, *see, e.g.*, Form 4-961 NMRA (Petition for order of protection from domestic abuse), Form 4-962A NMRA (Counter-petition for order of protection), Form 4-972 NMRA (Petition for emergency order of protection), and related proceedings, *see, e.g.*, Form 4-961B NMRA (Request for order to omit address and phone number of petitioner), but also for motions to enforce, modify, or terminate orders of protection. *See* Form 4-968 NMRA (Application to modify, terminate, or renew the order of protection).

The requirement in Rule 1-053.1(C) NMRA that interviews with the petitioner be conducted on the record is taken from NMSA 1978, Section 40-13-10(A)(2) (2005).

Form of recommendations

Rule 1-053.1(C)(4) NMRA reflects current practice by providing that where court-approved forms are available, the domestic violence special commissioner will use the forms in preparing recommendations for the court. *See* Forms 4-961 to 4-974 NMRA.

1 *See* relevant [~~committee~~] Committee comments to Rule 1-053.2 NMRA for discussion of
2 other provisions in the 2006 amendments to Rule 1-053.1 NMRA.

3 **Committee commentary for 2017 amendment. —**

4 The Committee notes that Rule 1-053.1(J) NMRA was amended to remove incorrect
5 references to the Code of Judicial Conduct and clarify that domestic violence special
6 commissioners are required to conform to all applicable Code of Judicial Conduct provisions. *See*
7 Rule 21-004(C) NMRA.

8 [As amended by Supreme Court Order No. 17-8300-020, effective for all cases pending or filed
9 on or after December 31, 2017; as amended by Supreme Court Order No. 22-8300-019, effective
10 for all cases pending or filed on or after December 31, 2022.]