

1 **1-053.2. Domestic relations hearing officers; duties.**

2 A. **Appointment.** Domestic relations hearing officers shall be at-will positions subject
3 to the New Mexico Judicial Branch Policies for At-will Employees. Consistent with the authority
4 set forth in this rule, domestic relations hearing officers may perform those duties assigned by the
5 judges of the district in domestic relations proceedings.

6 B. **Qualifications.** Any person appointed to serve as a domestic relations hearing
7 officer shall have the same qualifications as provided in Section 40-4B-4 NMSA 1978 for a child
8 support hearing officer.

9 C. **Duties.** A domestic relations hearing officer may perform the following duties in
10 domestic relations proceedings:

- 11 (1) review petitions for indigency;
- 12 (2) conduct hearings on all petitions and motions, both before and after entry
13 of the decree;
- 14 (3) in a child support enforcement division case, carry out the statutory duties
15 of a child support hearing officer;
- 16 (4) carry out the statutory duties of a domestic violence special commissioner
17 and utilize the procedures as set forth in Rule 1-053.1 NMRA;
- 18 (5) assist the court in carrying out the purposes of the Domestic Relations
19 Mediation Act, Sections 40-12-1 to -6 NMSA 1978; and
- 20 (6) prepare recommendations for review and final approval by the district court.

21 D. **Removal.** On motion of any party for good cause shown, or on the court's own
22 motion, the district court may remove the domestic relations hearing officer from acting in a
23 proceeding.

1 E. **Authority.** The domestic relations hearing officer's recommendations shall not
2 become effective until reviewed and adopted as an order of the court.

3 F. **Recommendations.** Within thirty (30) days after the conclusion of the proceedings,
4 the domestic relations hearing officer shall file and submit to the district court for review and
5 approval the hearing officer's recommendations, including proposed findings and conclusions, and
6 shall serve each of the parties with a copy together with a notice that specific objections may be
7 filed within [~~ten (10)~~] fourteen (14) days after service of the recommendations.

8 G. **Objections.** Any party may file timely objections to the domestic relations hearing
9 officer's recommendations. [~~Objections must identify the specific portions of the hearing officer's~~
10 ~~recommendations to which the party objects.~~] The party filing objections shall promptly serve
11 them on other parties. Objections must specifically identify the following:

12 (1) the specific portions of the recommendations to which the party objects;

13 (2) a summary of the evidence presented at the hearing conducted by the
14 domestic relations hearing officer;

15 (3) the specific findings of fact made by the domestic relations hearing officer
16 to which the party objects; and

17 (4) the specific errors made by the domestic relations hearing officer in
18 applying the substantive and/or procedural law to the domestic relations hearing officer's findings
19 of fact.

20 H. **District court proceedings.** After receipt of the recommendations of the domestic
21 relations hearing officer, the district court judge shall [~~take the following actions:~~] observe the
22 following procedure:

(1) ~~[Review of recommendations.]~~The district court judge shall review the recommendations of the domestic relations hearing officer and determine whether to 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.

(2) If a party files timely, specific objections to the recommendations as set forth in Paragraph G of this rule, the district court judge shall conduct an independent review appropriate and sufficient to resolve the objections. The review shall consist of a review of the record presented to the hearing officer.

(a) ~~[The court shall review the recommendations of the domestic relations hearing officer and determine whether to adopt the recommendations.]~~The review does not require an in-person hearing before the district court judge.

(b) ~~[If a party files timely, specific objections to the recommendations, the court shall conduct a hearing appropriate and sufficient to resolve the objections. The hearing shall consist of a review of the record unless the court determines that additional evidence will aid in the resolution of the objections].~~If the district court judge finds that the objections to the recommendations are not specifically stated as set forth in Paragraph G of this rule, the district court judge may issue a general denial of the objections.

~~[(c) The court shall make an independent determination of the objections.]~~

1 [~~———(d)~~](3) The district court judge may adopt the recommendations, modify
2 them, reject them in whole or in part, receive further evidence, or [~~recommit~~] remand them to the
3 domestic relations hearing officer with instructions.

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

8 I. **Child Support Hearing Officer Act.** The court and child support hearing officers
9 acting under the Child Support Hearing Officer Act, [~~(c)~~Sections 40-4B-1 to -10 [~~through 40-4B-~~
10 ~~40]~~ NMSA 1978[~~)]~~], and domestic relations hearing officers acting under [~~Rule 1-053.2(C)(3)~~
11 ~~NMRA~~] Subparagraph (C)(3) of this rule shall comply with this rule notwithstanding any contrary
12 provision of the Child Support Hearing Officer Act.

13 J. **Limitations on private practice.** Full-time domestic relations hearing officers
14 shall devote full time to domestic relations matters and shall not engage in the private practice of
15 law or in any employment, occupation, or business interfering with or inconsistent with the
16 discharge of their duties. Part-time domestic relations hearing officers may engage in the private
17 practice of law so long as in the discretion of the appointing judge it does not interfere with nor is
18 inconsistent with the discharge of their duties as [~~a~~] domestic relations hearing [~~officer~~] officers
19 and subject to applicable Code of Judicial Conduct provisions, as stated in Paragraph K of this
20 rule.

21 K. **Code of Judicial Conduct.** A domestic relations hearing officer is required to
22 conform to all applicable provisions of the Code of Judicial Conduct.

[Adopted, effective January 1, 1998; 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. —

Introduction

Child support hearing officers acting under the Child Support Hearing Officer Act, NMSA 1978, §§ 40-4B-1 to -10 (1988, as amended through 1993), domestic relations hearing officers acting under Rule 1-053.2 NMRA, and domestic violence special commissioners acting under the Family Violence Protection Act, NMSA 1978, §§ 40-13-1 to -8 (1987, as amended through 2019), and Rule 1-053.1 NMRA, assist the court in carrying out its functions in certain domestic relations matters. In *Lujan v. Casados-Lujan*, 2004-NMCA-036, 135 N.M. 285, 87 P.3d 1067, the Court of Appeals considered the appropriate division of responsibility between domestic violence special commissioners and the court. In *Buffington v. McGorty*, 2004-NMCA-092, 136 N.M. 226, 96 P.3d 787, the Court of Appeals addressed comparable issues concerning the constitutional requirements and appropriate procedures that should govern the relationship of the court to child support hearing officers and domestic relations hearing officers.

These amendments and the 2006 amendments to Rule 1-053.1 NMRA respond to the concerns addressed in *Lujan* and *Buffington* and address additional, related matters. To the extent appropriate, given the different but sometimes overlapping tasks assigned to the three different judicial officers, the ~~[committee]~~ Committee sought to have the same provisions apply to child support hearing officers, domestic relations hearing officers, and domestic violence special commissioners. For this reason, many of the ~~[committee]~~ Committee comments contained here are

equally applicable to the 2006 amendments to Rule 1-053.1 NMRA and will not be repeated as
[~~committee~~] Committee comments to that rule.

Child support hearing officers

The Legislature created the position of child support hearing officer. *See* NMSA 1978, § 40-4B-2. The statute provides that the hearing officers follow certain procedures in the course of their duties. [~~E.g.~~] *See, e.g.* NMSA 1978, § 40-4B-7. For two reasons, the [~~committee~~] Committee recommended that child support hearing officers comply with Rule 1-053.2 NMRA rather than the Child Support Hearing Officer Act when the two conflict. First, under Rule 1-053.2 NMRA domestic relations hearing officers sometimes perform a dual role in the same proceeding, acting both in their regular capacity and as child support hearing officers. *See* Rule 1-053.2(C)(3) NMRA. To assure consistency and efficiency, the officer should not have to follow different procedures in the same proceeding. Second, some of the procedural provisions of the Child Support Hearing Officer Act are of doubtful validity. *See Buffington*, 2004-NMCA-092. Rule 1-053.2(I) NMRA therefore provides that when a hearing officer acts as a child support hearing officer, whether under authority granted by NMSA 1978, Section 40-4B-4 or by Rule 1-053.2(C)(3) NMRA, the hearing officer shall comply with the procedures set forth in Rule 1-053.2 NMRA where the rule and the Child Support Hearing Officer Act are inconsistent. *See Albuquerque Rape Crisis* [~~Center~~] *Ctr.* v. *Blackmer*, 2005-NMSC-032, ¶ 5, 138 N.M. 398, 120 P.3d 820 (recognizing that the Supreme Court may exercise power of superintending control to revoke or amend statutory provisions that conflict with the court's procedural rules); *see also* Rule 1-091 NMRA; NMSA 1978, § 38-1-1(A) (1966).

Removal of hearing officer

Each party may exercise a peremptory excusal of the district court judge assigned to a case. *See* Rule 1-088.1 NMRA. There is no equivalent provision for peremptory excusal of a domestic

relations hearing officer. In some judicial districts there is only one hearing officer and the use of peremptory challenges would cause undue administrative difficulties. Peremptory challenges also might lead to severely unbalanced workloads where a judicial district has more than one hearing officer. For these reasons, the ~~[committee]~~ Committee recommended that peremptory challenges not be available to remove hearing officers. Instead, Rule 1-053.2(D) NMRA provides the court with broad discretion to remove a hearing officer from a case for good cause shown by a party, or on the court's own motion.

Authority of hearing officer

Although the hearing officer performs a critical function within the judiciary, hearing officers are not judges, do not wear robes, and are not addressed as judge or your honor. Nonetheless, hearing officers are required to conform to the Code of Judicial Conduct and are entitled to the respect due all officers of the court as they assist the court in performing its core judicial function. It is a bedrock principle that “[t]he hearing officer assists the district court in determining the factual and legal issues, and the core judicial function is independently performed by the district judge.” *Buffington*, 2004-NMCA-092, ¶ 31.

This principle was built into former Rule 1-053.2 NMRA, which provided that “all orders be signed by a district judge before the recommendations of a domestic relations hearing officer become effective.” Rule 1-053.2(C) NMRA (now superseded). The 2006 amendment carries forward the rule that hearing officer recommendations are not effective until “adopted as an order of the court,” Rule 1-053.2(E) NMRA, and makes explicit what was implicit in the superseded rule: The court must review the recommendations before entering an order. *See* Rule 1-053.2(E) NMRA. This provision is inconsistent with NMSA 1978, Section 40-4B-8(C), which provides that if the court fails to act on the hearing officer's recommendation within fifteen (15) days, the

recommendations have the force of a court order even if not considered or signed by the court. Because child support hearing officers, those acting as child support hearing officers, and the court, now must comply with Rule 1-053.2 NMRA where inconsistent with the Child Support Hearing Officer Act, *see* Rule 1-053.2(I) NMRA, that statutory provision is no longer valid.

Opportunity to object to recommendations of hearing officer

The former version of Rule 1-053.2 NMRA did not provide a means for a party who disagreed with the recommendations of the hearing officer to voice those objections to the judge who was to consider whether to adopt the recommendations. In *Buffington*, 2004-NMCA-092, ¶ 30, the Court of Appeals held that due process requires that a party have a meaningful opportunity to present objections to the court before the court enters an order based on the recommendations. The rule now provides that opportunity.

When the hearing officer presents the recommendations to the judge, the hearing officer must serve the parties with a copy of the recommendations and with a notice informing the parties that they may file objections with the court within ~~[ten (10)]~~ fourteen (14) days of service of the recommendations. *See* Rule 1-053.2(F) NMRA; *see also* *Buffington*, 2004-NMCA-092, ¶ 30 ~~[(suggesting that ten days is an adequate time for filing objections)]~~ [(suggesting that the ten-day time limit under a previous version of Rule 1-053.2(F) NMRA is an adequate time for filing objections)].

Objections must be specific

The purpose of the objections is to focus the court's attention on areas of dispute concerning the recommendations. Objections should be sufficiently detailed to accomplish this purpose. General objections to the recommendations as a whole or objections that do not point out the nature of the party's disagreement with the recommendation will not suffice.

Review of recommendations

Unobjected-to recommendations

The court will review the recommendations and make an independent determination whether to adopt them even when no party presents specific objections. If the court agrees with the recommendations it shall enter an order consistent with them. If the court chooses not to adopt the recommendations, the court should consider returning the matter to the hearing officer for further proceedings. The court may instead modify or reject the recommendations and enter a different or contrary order from that recommended. When this is done, the court should consider whether it would be appropriate to give notice to the parties of the court's proposed action and order, thus allowing the parties an opportunity to present objections to the court's proposed order, even though the parties had no objection to the hearing officer's different recommendations. [~~Compare~~] *See Buffington*, 2004-NMCA-092, ¶ 30 (due process requires a right to object to hearing officer's recommendations before adopted by court). If the court does not afford the parties the opportunity to view and object in advance of the entry of the court's modified or contrary order, a party may file a motion for reconsideration after the order is entered. *See* NMSA 1978, § 39-1-1 (1917); *In re Keeney*, 1995-NMCA-102, ¶ 10, 121 N.M. 58, 908 P.2d 751.

Objected-to recommendations

When the court receives timely, specific objections, "[t]he district court must then hold a hearing on the merits of the issues before the court, including the hearing officer's recommendations and the parties' objections thereto." *Buffington*, 2004-NMCA-092, ¶ 31. Rule 1-053.2(H)(1)(b) NMRA mandates a hearing to consider the recommendations and the objections. The *Buffington* court noted that "[t]he nature of the hearing and review to be conducted by the district court will depend upon the nature of the objections being raised." *Buffington*, 2004-

NMCA-092, ¶ 31. Rule 1-053.2(H)(1)(b) NMRA provides this flexibility but creates a presumption that the hearing will consist of a review of the record rather than a de novo proceeding. However, the court has discretion in all cases to determine that a different form of hearing take place, including a de novo proceeding at which evidence is presented anew before the court, or a hearing partly on the record before the hearing officer and partly based on the presentation of new evidence not before the hearing officer. *See id.* The required hearing need not always consist of oral presentations before the court. When appropriate and sufficient to resolve the objections, the court may rely on written presentations of the parties. *See* [~~National~~] Nat'l Excess [~~Insurance~~] Ins. Co. v. Bingham, 1987-NMCA-109, ¶ 9, 106 N.M. 325, 742 P.2d 537 (noting that summary judgment motions may be resolved without oral argument “when the opposing party has had an adequate opportunity to respond to movant’s arguments through the briefing process”).

Entry of findings of fact and conclusions of law

As in any case tried without a jury, the court must enter findings of fact and conclusions of law when required to do so under the terms of Rule 1-052 NMRA.

Opportunity to submit objections to report required. — While this rule contains no express provision, due process requires that the parties be given a right to object to the report and recommendations of the hearing officer. *Buffington*, 2004-NMCA-092.

Hearing officers distinguished. — This rule and the Child Support Hearing Officer Act describe both material similarities and material differences between a domestic relations hearing officer and a child support hearing officer. *Buffington*, 2004-NMCA-092.

Committee commentary for 2017 amendment. —

The Committee notes that Rule 1-053.2(K) NMRA was amended to remove incorrect references to the Code of Judicial Conduct and clarify that domestic relations hearing officers are

- 1 required to conform to all applicable Code of Judicial Conduct provisions. *See* Rule 21-004(C)
- 2 NMRA.
- 3 [As amended by Supreme Court Order No. 17-8300-020, effective for all cases pending or filed
- 4 on or after December 31, 2017; as amended by Supreme Court Order No. 22-8300-019, effective
- 5 for all cases pending or filed on or after December 31, 2022.]