

1 **1-007.1. Motions; how presented.**

2 A. **Requirement of written motion.** All motions, except motions made during
3 trial, or as may be permitted by the court, shall be in writing and shall state with particularity
4 the grounds and the relief sought.

5 B. **Unopposed motions.** The movant shall determine whether a motion will be
6 opposed. If the motion will not be opposed, an order approved by all parties shall
7 accompany the motion.

8 C. **Opposed motions.** The motion shall recite that the movant requested the
9 concurrence of all parties or shall specify why no such request was made. The movant shall
10 not assume that the nature of the motion obviates the need for concurrence from all parties
11 unless the motion is a:

- 12 (1) motion to dismiss;
- 13 (2) motion for new trial;
- 14 (3) motion for judgment as a matter of law;
- 15 (4) motion for summary judgment;
- 16 (5) motion for relief from a final judgment, order or proceeding pursuant
17 to Paragraph B of Rule 1-060 NMRA.

18 Notwithstanding the provisions of any other rule, the movant may file with any
19 opposed motion a brief or supporting points with citations or authorities. If the motion
20 requires consideration of facts not of record, the movant shall file copies of all affidavits,

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1 depositions or other documentary evidence to be presented in support of the motion.
2 Motions to amend pleadings shall have attached the proposed pleading. A motion for
3 judgment on the pleadings presenting matters outside the pleading shall comply with Rule
4 1-056 NMRA. A motion for new trial shall comply with Rule 1-059 NMRA.

5 D. **Response.** Unless otherwise specifically provided in these rules, any written
6 response and all affidavits, depositions or other documentary evidence in support of the
7 response shall be filed within fifteen (15) days after service of the motion. If a party fails to
8 file a response within the prescribed time period the court may rule with or without a hearing.

9 E. **Separate counter-motions and cross-motions required.** Responses to
10 motions shall be made separately from any counter-motions or cross-motions.

11 F. **Reply brief.** Any reply brief shall be filed within fifteen (15) days after
12 service of any written response.

13 G. **Request for hearing.** A request for hearing shall be filed at the time an
14 opposed motion is filed. The request for hearing shall be substantially in the form approved
15 by the Supreme Court.

16 H. **Notice of completion of briefing.** At the expiration of all response times
17 under this rule, the movant or any party shall file a notice of completion of briefing. The
18 notice alerts the judge that the motion is ready for decision.

19 [As amended, effective December 4, 2000; March 15, 2005; as amended by Supreme Court
20 Order No. 08-8300-32, effective November 17, 2008; as amended by Supreme Court Order

1 No. 19-8300-017, effective for all cases pending or filed on or after December 31, 2019.]

2 **Committee commentary.** — If a party does not respond to a motion within fifteen
3 days as required by Paragraph D of this rule, the moving party may submit a proposed order
4 to the judge or the judge sua sponte may enter an appropriate order. Although the specific
5 provisions of Rule 1-058(C) NMRA are not applicable, if a party submits a proposed order
6 to the court, a copy of the proposed order must be served on all other parties. *See* Rule 1-005
7 NMRA of these rules, Rules 16-303 and 16-305 of the Rules of Professional Conduct and
8 Rule 21-300 NMRA of the Code of Judicial Conduct. After assuring the non-responding
9 party has received notice of the proposed order, the judge may enter an appropriate order.

10 The notice of completion of briefing required under Paragraph H of this rule shall be
11 filed upon the expiration of the applicable deadline for filing responses and replies under
12 Paragraphs D or F of the rule. The Judicial Districts may adopt local rules to incorporate
13 additional filing requirements to coincide with the filing of the notice of completion of
14 briefing. *See, e.g.,* LR13-404(A) NMRA (adopting motion package procedure). The district
15 court may defer ruling on the request for hearing until the court receives the notice of
16 completion of briefing. After the court announces its decision, the court shall comply with
17 the requirements of Rule 1-058 NMRA.

18 [As amended by Supreme Court Order No. 08-8300-32, effective November 17, 2008.]

19

1 **1-055. Default.**

2 A. **Entry.** When a party against whom a judgment for affirmative relief is sought
3 has failed to plead or otherwise defend as provided by these rules and that fact is made to
4 appear by affidavit or otherwise, the clerk shall enter the party's default.

5 B. **Judgment.** Judgment by default may be entered as follows: in all cases the
6 party entitled to a judgment by default shall apply to the court for judgment by default; but
7 no judgment by default shall be entered against an infant or incompetent person unless
8 represented in the action by a general guardian, committee, conservator, or other such
9 representative who has appeared in the action. If the party against whom judgment by default
10 is sought has appeared in the action, the party (or, if appearing by representative, the party's
11 representative) shall be served with written notice of the application for judgment at least
12 three (3) days prior to the hearing on the application; provided, however, that the filing of an
13 appearance and disclaimer of interest shall not be construed as requiring the service of
14 written notice of application for judgment under the terms of this rule. In cases controlled by
15 Rule 1-009(J) NMRA, prior to entry of default judgment the court shall determine that the
16 party seeking relief has stated a claim on which relief can be granted, has complied with
17 Rules 1-009(J)(2) and 1-017(E) NMRA, and has substantially complied with the
18 requirements of Form 4-226 NMRA. If, in order to enable the court to enter judgment or to
19 carry it into effect, it is necessary to take an account or to determine the amount of damages
20 or to establish the truth of any averment by evidence or to make an investigation of any other
21 matter, the court may conduct those hearings or order those references as it deems necessary
22 and proper and shall accord a right of trial by jury to the parties entitled thereto.

1 C. **Setting aside default.** For good cause shown, the court may set aside an entry
2 of default and, if a judgment by default has been entered, may likewise set it aside in
3 accordance with Rule 1-060 NMRA.

4 D. **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule
5 apply whether the party entitled to the judgment by default is a plaintiff, a third-party
6 plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment
7 by default is subject to the limitations of Rule 1-054(C) NMRA.

8 E. **Limitations.** No judgment by default shall be entered against the state or an
9 officer or agency of the state or against a party in any case based on a negotiable instrument,
10 unless the original negotiable instrument is filed with the court and merged with the
11 judgment, or where the damages claimed are unliquidated unless the claimant establishes the
12 claimant's claim or right to relief by evidence satisfactory to the court.

13 [As amended, effective August 27, 1999; as amended by Supreme Court Order 16-8300-031,
14 effective for all cases pending or filed on or after July 1, 2017.]

15 **Committee commentary.** — Paragraph B of this rule was revised in 2016 to provide
16 additional protections to consumers in consumer debt collection cases. *See* Comment to Rule
17 1-009 NMRA. [~~Under~~ Paragraph B references Rule 1-009(J)(2) NMRA, under which, if the
18 party seeking relief in a consumer debt claim has not served and filed with the district court
19 the instrument of writing on which the party's claim is based, the district court shall not enter
20 a default judgment without the court's finding of the party's good cause failure to do so. For
21 cases involving a negotiable instrument which is not part of a consumer debt claim,
22 Paragraph E of this rule requires that the original negotiable instrument be filed with the

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1 court unless the party seeking default judgment provides sufficient alternative evidence to
2 demonstrate the party's right to relief.

3 [As adopted by Supreme Court Order No. 16-8300-031, effective for all cases pending or
4 filed on or after July 1, 2017; as amended by Supreme Court Order No. 19-8300-017,
5 effective for all cases pending or filed on or after December 31, 2019.]

1 **1-072. Appeal from magistrate courts in trial de novo cases.**

2 A. **Right of appeal.** A party who is aggrieved by the judgment or final order in
3 a civil action in the magistrate court may appeal, as permitted by law, to the district court of
4 the county within which the magistrate court is located. The notice of appeal shall be filed
5 in the district court within fifteen (15) days after the judgment or final order appealed from
6 is filed in the magistrate court clerk's office. If a timely notice of appeal is filed by a party,
7 any other party may file a notice of appeal within ten (10) days after the date on which the
8 first notice of appeal was served or within the time otherwise prescribed by this rule,
9 whichever period expires last. The three (3) day mailing period set forth in Rule 1-006
10 NMRA does not apply to the time limits set forth above. A notice of appeal filed after the
11 announcement of a decision, or return of the verdict, but before the judgment or order is filed
12 in the magistrate court clerk's office, shall be treated as timely filed. Notwithstanding any
13 other provision of this rule, no docket fee or other cost shall be imposed against the state, its
14 political subdivisions or the nonprofit corporations authorized to be formed under the
15 Educational Assistance Act [21-21A-1 NMSA 1978] in any such appeal.

16 B. **Notice of appeal.** An appeal from the magistrate court is taken by:

17 (1) filing with the clerk of the district court a notice of appeal with proof
18 of service; and

19 (2) promptly filing with the magistrate court:

20 (a) a copy of the notice of appeal that has been endorsed by the

1 clerk of the district court; and

2 (b) a copy of the receipt of payment of the docket fee.

3 C. **Content of the notice of appeal.** The notice of appeal shall be substantially
4 in the form approved by the Supreme Court. A copy of the magistrate court judgment or final
5 order appealed from, showing the date of the judgment or final order, shall be attached to the
6 notice of appeal filed in the district court.

7 D. **Service of notice of appeal.** At the time the notice of appeal is filed in the
8 district court, the appellant shall:

9 (1) serve each party or such party's attorney in the proceedings in the
10 magistrate court with a copy of the notice of appeal in accordance with Rule 1-005 NMRA;
11 and

12 (2) file proof of service with the clerk of the district court that a copy of
13 the notice of appeal has been served in accordance with Rule 1-005 NMRA.

14 E. **Docketing the appeal.** Upon the filing of the notice of appeal and proof of
15 service and payment of the docket fee, if required, the clerk of the district court shall docket
16 the appeal in the district court.

17 F. **Jury trial.** Any party may demand a jury trial by filing a demand and paying
18 the jury fees as provided by Rule 1-038 NMRA. A demand for jury trial shall be filed at the
19 time the notice of appeal is filed in the district court, but not later than:

20 (1) thirty (30) days after service of the notice of appeal on each party to

1 the action; or

2 (2) ten (10) days after the last pleading is filed, if additional pleadings are
3 filed pursuant to Paragraph I of this rule.

4 **G. Record on appeal.** Within fifteen (15) days after the appellant files a copy
5 of the notice of appeal with the magistrate court pursuant to Paragraph B of this rule, the
6 magistrate court shall file with the clerk of the district court the record on appeal taken in the
7 action in the magistrate court. For purposes of this rule, the record on appeal shall consist of:

8 (1) a title page containing the caption of the case in the magistrate court
9 and the names and mailing addresses of each party or, if the party is represented by counsel,
10 the name and address of the attorney;

11 (2) a copy of all papers and pleadings filed in the magistrate court;

12 (3) a copy of the judgment or order sought to be reviewed with date of
13 filing noted thereon;

14 (4) any exhibits; and

15 (5) any transcript of the proceedings made by the magistrate court, either
16 stenographically recorded or tape recorded. If the transcript of the proceedings is a tape
17 recording, the magistrate court shall prepare and file with the district court a duplicate of the
18 tape and index log.

19 Any party desiring a copy of the transcript of the proceedings shall be responsible for
20 paying the cost, if any, of preparing such copy.

21 The magistrate court clerk shall give prompt notice to all parties of the filing of the

1 record on appeal with the district court.

2 H. **Correction or modification of the record.** If anything material to either
3 party is omitted from the record on appeal by error or accident, the parties by stipulation, or
4 the magistrate court on motion, or the district court, on proper suggestion or on its own
5 initiative, may direct that the omission be corrected and a supplemental record transmitted
6 to the district court.

7 I. **Pleadings.** The complaint and other pleadings filed in the magistrate court
8 shall be the complaint and pleadings in the district court. An amended complaint may be
9 filed within thirty (30) days after service of the notice of appeal. An amended complaint shall
10 be served in the manner provided by Rule 1-004 NMRA of these rules. If an amended
11 complaint is filed, a responsive pleading shall be filed within thirty (30) days and served as
12 provided by these rules.

13 J. **Procedure on appeal.** Unless otherwise provided by this rule, all other Rules
14 of Civil Procedure for the District Courts shall apply to appeals from the magistrate court.

15 K. **Stay of proceedings to enforce a judgment.**

16 (1) When an appeal is taken, the appellant may obtain a stay of the
17 proceedings to enforce the judgment by posting a supersedeas bond with the clerk of the
18 magistrate court as provided in the Rules of Civil Procedure for the Magistrate Courts.

19 (2) When an appeal is taken by the state, by an officer or agency of the
20 state, by direction of any department of the state, by any political subdivision or institution

1 of the state or by any municipal corporation, the taking of an appeal shall operate as a stay.

2 L. **Review of supersedeas.** At any time after an appeal is filed pursuant to
3 Paragraph B of this rule, the district court may, upon motion and notice, review any action
4 of, or any failure or refusal to act by the magistrate court dealing with supersedeas or stay.
5 If the district court modifies the terms, conditions or amount of a supersedeas bond or if it
6 determines that the magistrate court should have allowed supersedeas and failed to do so on
7 proper terms and conditions, it may grant additional time within which to file in the district
8 court a supersedeas bond complying with the requirements for a supersedeas bond set forth
9 in the Rules of Civil Procedure for the Magistrate Courts. Any change ordered by the district
10 court shall be certified by the clerk of the district court and filed with the magistrate court
11 clerk by the party seeking the review.

12 M. **Rehearing.** A motion for reconsideration may be filed within ten (10) days
13 after filing of the district court's final order. The three (3) day mailing period set forth in Rule
14 1-006 does not apply to the time limits set by this rule. The motion shall state briefly and
15 with particularity, but without argument, the points of law or fact that in the opinion of the
16 movant the court has overlooked or misapprehended. No response to a motion for rehearing
17 shall be filed unless requested by the court.

18 N. **Disposal of appeals.** The district court shall dispose of appeals by entry of
19 an appropriate order disposing of the appeal. The court in its discretion may accompany the
20 order with a formal or memorandum opinion. Opinions shall not be published and shall not

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1 be used as precedent in subsequent cases. A mandate shall be issued by the court upon
2 expiration of whichever of the following events occurs latest:

3 (1) [~~fifteen (15)~~] thirty (30) days after entry of the order disposing of the
4 case;

5 (2) [~~fifteen (15)~~] thirty (30) days after disposition of a motion for
6 rehearing; or

7 (3) if a notice of appeal is filed, upon final disposition of the appeal.

8 O. **Remand.** Upon expiration of the time for appeal from the judgment or final
9 order of the district court, if the relief granted is within the jurisdiction of the magistrate
10 court, the district court shall remand the case to the magistrate court for enforcement of the
11 district court's judgment.

12 P. **Appeal.** Any aggrieved person may appeal from a judgment of the district
13 court to the New Mexico Supreme Court or Court of Appeals, as authorized by law in
14 accordance with the Rules of Appellate Procedure. Any supersedeas bond approved by the
15 magistrate court, or modified by the district court, shall continue in effect pending appeal to
16 the Supreme Court or Court of Appeals, unless modified pursuant to Rule 12-207 of the
17 Rules of Appellate Procedure.

18 [Adopted, effective January 1, 1996; as amended by Supreme Court Order No. 19-8300-017,
19 effective for all cases pending or filed on or after December 31, 2019.]

1 **1-079.1. Public inspection and sealing of court records; guardianship and**
2 **conservatorship proceedings.**

3 A. **Scope of rule; Rule 1-079 NMRA.** This rule governs access to court
4 records in proceedings to appoint a guardian or conservator under Chapter 45, Article 5,
5 Parts 3 and 4 NMSA 1978. This rule incorporates the provisions of Rule 1-079 NMRA in
6 their entirety and is intended to supplement only the automatic sealing provisions set forth
7 in Subparagraphs (C)(7) and (C)(8) of that rule. All other matters related to access to court
8 records in guardianship and conservatorship proceedings, including motions to seal and
9 unseal court records, remain subject to the provisions of Rule 1-079 NMRA.

10 B. **Guardianship proceedings.** All court records in proceedings commenced
11 for the appointment of a person to serve as guardian for an alleged incapacitated person
12 under Chapter 45, Article 5, Part 3 NMSA 1978, are confidential and shall be automatically
13 sealed without motion or order of the court, subject to the firearm-related reporting
14 requirements in Section 34-9-19 NMSA 1978 and the following:

15 (1) the register of actions and docket entries used by the court to
16 document the activity in a case shall not be sealed and shall be subject to public access,
17 provided that the court shall not disclose diagnostic, treatment, or other medical or
18 psychological information;

19 (2) except as provided in Subparagraph (4) of this paragraph, persons
20 identified in the petition under Section 45-5-303(B) NMSA 1978 shall be permitted to
21 access the order appointing a guardian under Section 45-5-304 NMSA 1978 and all court
22 records filed in the proceeding with a filing date that precedes the filing date of the order
23 appointing a guardian;

1 (3) ~~except as provided in Subparagraph (4) of this paragraph,~~ access to
2 court records filed after the order appointing a guardian under Section 45-5-304 NMSA
3 1978~~[, including any guardian report filed under Section 45-5-314 NMSA 1978,]~~ shall be
4 limited to the protected person, the guardian, and any other person the court determines
5 under Section 45-5-307(G)(2) or (H) NMSA 1978, Section 45-5-309(D) NMSA 1978,
6 Rule 1-140 NMRA, or Rule 1-141 NMRA; and

7 (4) access to a report filed by a qualified health care professional under
8 Section 45-5-303(E) NMSA 1978, a visitor under Section 45-5-303(F) NMSA 1978, ~~[or]~~
9 a guardian *ad litem* under Section 45-5-303.1 NMSA 1978, or a guardian under Section
10 45-5-314 NMSA 1978 shall be limited to the protected person, the petitioner, the visitor,
11 the guardian *ad litem*, an attorney of record, an agent under a power of attorney unless the
12 court orders otherwise, and any other person as determined by the court under Section 45-
13 5-303(L) NMSA 1978~~;~~.

14 C. **Conservatorship proceedings.** All court records in proceedings
15 commenced for the appointment of a conservator under Chapter 45, Article 5, Part 4
16 NMSA 1978, are confidential and shall be automatically sealed without motion or order of
17 the court, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA
18 1978 and the following:

19 (1) the register of actions and docket entries used by the court to
20 document the activity in a case shall not be sealed and shall be subject to public access,
21 provided that the court shall not disclose diagnostic, treatment, or other medical or
22 psychological information;

1 (2) except as provided in Subparagraph (4) of this paragraph, persons
2 identified in the petition under Section 45-5-404(B) NMSA 1978 shall be permitted to
3 access the order appointing a conservator under Section 45-5-407 NMSA 1978 and all
4 court records filed in the proceeding with a filing date that precedes the filing date of the
5 order appointing a conservator;

6 (3) except as provided in Subparagraph (4) of this paragraph, access to
7 court records filed after the order appointing a conservator under Section 45-5-407 NMSA
8 1978~~[, including a conservator report filed under Section 45-5-409 NMSA 1978,]~~ shall be
9 limited to the protected person, the conservator, and any other person the court determines
10 under Section 45-5-405(D) NMSA 1978, Section 45-5-415(G)(2) or (H) NMSA 1978,
11 Rule 1-140 NMRA, or Rule 1-141 NMRA; and

12 (4) access to a report filed by a qualified health care professional under
13 Section 45-5-407(C) NMSA 1978, a visitor under Section 45-5-407(D) NMSA 1978, ~~[or]~~
14 a guardian *ad litem* under Section 45-5-404.1 NMSA 1978, or a conservator under Section
15 45-5-409 NMSA 1978 shall be limited to the protected person, the petitioner, the visitor,
16 the guardian *ad litem*, an attorney of record, an agent under a power of attorney unless the
17 court orders otherwise, and any other person as determined by the court under Section 45-
18 5-407(O) NMSA 1978.

19 [Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed, or
20 pending but not adjudicated, on or after July 1, 2018 and for motions to seal or unseal filed
21 in all cases on or after July 1, 2018; as amended by Supreme Court Order No. 19-8300-
22 019, effective December 1, 2019.]

1 **Committee commentary.** — This rule is intended to supplement Rule 1-079(C)
2 NMRA as it applies to the automatic sealing of court records in guardianship and
3 conservatorship proceedings. These proceedings are treated separately because of the 2018
4 and 2019 amendments to the Uniform Probate Code, which established a complicated
5 framework for who may access court records that are otherwise sealed in guardianship and
6 conservatorship proceedings. *See* N.M. Laws 2019, Ch. 228; N.M. Laws 2018, Ch. 10.
7 Other issues related to access to court records in guardianship and conservatorship
8 proceedings, including motions to seal or unseal court records, remain subject to the
9 provisions of Rule 1-079 NMRA.

10 ~~[Paragraphs B and C of this rule are consistent with the framework established by~~
11 ~~the legislature for access to court records in guardianship and conservatorship proceedings~~
12 ~~except, as explained more fully below, with regard to access to certain reports that must be~~
13 ~~filed with the courts. To the extent that the amended statutes and rule are inconsistent, the~~
14 ~~rule governs how the courts shall provide access to court records. *See Albuquerque Rape*~~
15 ~~*Crisis Ctr. vs. Blackmer*, 2005-NMSC-032, ¶ 5, 138 N.M. 398, 120 P.3d 820 (recognizing~~
16 ~~that the Supreme Court has “ultimate rule-making authority” over rules of evidence and~~
17 ~~procedure).~~

18 ~~— In reviewing the 2018 statutory amendments, the Ad hoc Guardianship and~~
19 ~~Conservatorship Rules and Forms Committee noted an inconsistency between the resulting~~
20 ~~provisions of Chapter 45, Article 5, Parts 3 and 4, that limit access to certain reports that~~
21 ~~must be filed in guardianship and conservatorship proceedings, respectively. *Compare*~~
22 ~~NMSA 1978, § 45-5-303(L) (limiting access to a report filed under NMSA 1978, Section~~
23 ~~45-5-303 by a court-appointed qualified health care professional or visitor and under~~

1 ~~Section 45-5-303.1 by a guardian *ad litem*), with NMSA 1978, § 45-5-407(O) (limiting~~
2 ~~access to a report filed under NMSA 1978, Section 45-5-409 by a conservator). The~~
3 ~~committee concluded that the reference in Section 45-5-407(O) to the post-appointment~~
4 ~~reports filed by a conservator was a scrivener's error because (1) Section 45-5-407~~
5 ~~generally addresses procedures prior to the appointment of a conservator, and (2) the~~
6 ~~individuals who are entitled to access a report under Section 45-5-407(O), including a~~
7 ~~guardian ad litem and visitor, have often been released from the proceeding by the time a~~
8 ~~conservator report is filed. See NMSA 1978, § 45-5-409 (requiring a report and account to~~
9 ~~be filed annually within thirty (30) days of the anniversary of the conservator's~~
10 ~~appointment, upon the conservator's resignation or removal, and upon the termination of~~
11 ~~the conservatorship). The committee further concluded that the omission from Section 45-~~
12 ~~5-407(O) of the pre-appointment reports identified in Section 45-5-303(L) was an oversight~~
13 ~~because, whether such reports are filed in a guardianship or conservatorship proceeding,~~
14 ~~they necessarily include the same types of sensitive information. Subparagraphs (B)(4) and~~
15 ~~(C)(4) of the rule therefore permit equal access in guardianship and conservatorship~~
16 ~~proceedings to the pre-appointment reports filed by a qualified health care professional,~~
17 ~~visitor, and guardian ad litem. Subparagraphs (B)(3) and (C)(3) similarly permit equal~~
18 ~~access to the post-appointment reports filed by a guardian or conservator.]~~

19 [Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed or
20 pending but not adjudicated on or after July 1, 2018 and for motions to seal or unseal filed
21 in all cases on or after July 1, 2018; as amended by Supreme Court Order No. 19-8300-
22 019, effective December 1, 2019.]

1 **1-088.1. Peremptory excusal of a district judge; recusal; procedure for exercising.**

2 A. **Limit on excusals or challenges.** No party shall excuse more than one judge. A
3 party may not excuse a judge after the party has attended a hearing or requested that judge to
4 perform any act other than an order for free process or a determination of indigency. For the
5 purpose of peremptory excusals, the term “party” shall include all members of a group of parties
6 when aligned as co-plaintiffs or co-defendants in any of the following situations:

- 7 (1) the parties are represented by the same lawyer or law firm;
8 (2) the parties have filed joint pleadings;
9 (3) the parties are related to each other as spouse, parent, child, or sibling;
10 (4) the parties consist of a business entity or other organization and its owners,
11 parents, subsidiaries, officers, directors, or major shareholders; or
12 (5) the parties consist of a government agency and its subordinate agencies,
13 commissions, boards, or personnel. If the interests of any parties grouped together as one party
14 under this rule are found to be sufficiently diverse from one another, the assigned judge may grant
15 a motion to allow separate peremptory excusals for the party or parties whose interests are shown
16 to differ.

17 B. **Mass reassignment.** A mass reassignment occurs when one hundred (100) or more
18 pending cases are reassigned contemporaneously.

19 C. **Procedure for exercising peremptory excusal of a district judge.** A party may
20 exercise the statutory right to excuse the district judge before whom the case is pending by filing
21 a peremptory excusal as follows:

- 22 (1) A plaintiff may file a peremptory excusal within ten (10) days after service
23 of notice of assignment of the first judge in the case. A defendant may file a peremptory excusal

1 within ten (10) days after the defendant files the first pleading or motion [~~pursuant to~~] under
2 Rule 1-012 NMRA.

3 (2) Any party may file a peremptory excusal within ten (10) days after the clerk
4 serves notice of reassignment on the parties or completes publication of a notice of a mass
5 reassignment.

6 (3) In situations involving motions to reopen a case to enforce, modify, or set
7 aside a judgment or order, if the case has been reassigned to a different judge since entry of the
8 judgment or order at issue, the movant may file a peremptory excusal within ten (10) days after
9 filing the motion to reopen and service of the notice of reassignment, and the non-movant may file
10 a peremptory excusal within ten (10) days after service of the motion to reopen.

11 (4) In addition to the other limits contained in this rule, no peremptory excusal
12 may be filed by any original or later-added party more than one hundred twenty (120) days after
13 the judge sought to be excused was assigned to a case.

14 D. **Notice of reassignment.** After the filing of the complaint, if the case is reassigned
15 to a different judge, the clerk shall serve notice of the reassignment to all parties. When a mass
16 reassignment occurs, the clerk shall serve notice of the reassignments to all parties by [~~publication~~
17 ~~in the New Mexico Bar Bulletin for four (4) consecutive weeks~~] publishing the notice for four (4)
18 consecutive weeks on the State Bar web site and in two (2) consecutive New Mexico Bar Bulletins.
19 Service of notice by publication is complete on the date printed on the [~~fourth~~] second issue of the
20 Bar Bulletin.

21 E. **Service of excusal.** Any party excusing a judge shall serve notice of [~~such~~] the
22 excusal on all parties.

1 F. **Misuse of peremptory excusal procedure.** Peremptory excusals without cause
2 are intended to allow litigants an expeditious method of avoiding assignment of a judge whom the
3 party has a good faith basis for believing will be unfair to one side or the other, and they are not to
4 be exercised to hinder, delay, or obstruct the administration of justice. If it appears that an attorney
5 or group of attorneys may be using peremptory excusals for improper purposes or with such
6 frequency as to impede the administration of justice, the Chief Judge of the district shall send a
7 written notice to the Chief Justice of the Supreme Court and shall send a copy of the written notice
8 to the attorney or group of attorneys believed to be improperly using peremptory excusals. The
9 Chief Justice may take appropriate action to address any misuse, including issuance of an order
10 providing that the attorney or attorneys or any party they represent may not file peremptory
11 excusals for a specified period of time or until further order of the Chief Justice.

12 G. **Recusal.** Nothing in this rule precludes the right of any party to move to recuse a
13 judge for cause. No district judge shall sit in any action in which the judge's impartiality may
14 reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of
15 Judicial Conduct, and the judge shall file a recusal in any such action. Upon receipt of notification
16 of recusal from a district judge, the clerk of the court shall give written notice to each party.

17 H. **Objections to the validity of a peremptory excusal; excused judge to**
18 **rule.** An objection to the timeliness or validity of a peremptory excusal may be raised by any
19 party or by the court on its own motion. The excused judge shall rule on the timeliness or validity
20 of any such objection. If the excused judge determines that the excusal has met the applicable
21 procedural and legal requirements in this rule, the judge shall proceed no further. If the excused
22 judge determines that the excusal has not met the applicable procedural and legal requirements in
23 this rule, the judge may proceed to preside over the case.

1 [As amended, effective August 1, 1988; January 1, 1995; as amended by Supreme Court Order
2 No. 07-8300-001, effective March 15, 2007; by Supreme Court Order No. 08-8300-038, effective
3 December 15, 2008; as amended by Supreme Court Order No. 12-8300-031, effective for all cases
4 filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 15-8300-
5 019, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme
6 Court Order No. 18-8300-003, effective March 1, 2018; as amended by Supreme Court Order No.
7 19-8300-008, effective for all cases pending or filed on or after July 1, 2019.]

8 **Committee commentary.** — The March 2018 amendment to Rule 1-088.1(C)((4) NMRA
9 corrects a conflict between two subparagraphs of the rule that resulted in a failure of the rule to
10 accomplish the purposes underlying the two subparagraphs. Amendments in December 2015
11 added Subparagraph (C)(4) to provide the following: “Regardless of the other limits contained in
12 this rule, no peremptory excusal may be filed by any original party or later-added party more than
13 one hundred twenty (120) days after the first judge has been assigned to the case.”

14 The commentary to an earlier draft of the new subparagraph published for comment in
15 2013 to add a time limitation on excusals of judges who had actually been presiding over a case
16 for the prescribed period of time clearly stated the intent of the provision as follows:

17 [The] time limit on exercise of peremptories requires their exercise at the outset of
18 a case, before the judge has gotten involved in learning about the case and making
19 rulings. If the original parties do not perceive the need at the outset of the case to
20 peremptorily excuse the judge, there is little justification for allowing later-added
21 parties to review the judge’s rulings and remove the judge who has been presiding
22 over the case, especially since the constitutional right to disqualify a judge for cause
23 is always available.

24
25 But the wording of various parts of the 2013 proposals were amended for unrelated reasons
26 before their eventual promulgation in 2015, including an amendment that substituted “the first
27 judge has been assigned to the case” for “the case has been at issue before the judge sought to be

1 excused.” The result was a clear textual conflict between the intended limitation of the right to
2 excuse a judge who had already been presiding over a case for a period of time, and the intent of
3 the provisions in Subparagraphs (C)(2) and (C)(3) allowing any party to excuse a new judge within
4 ten (10) days of a mass reassignment or a reopening of the case.

5 The March 2018 amendment by its limitation on the excusal of a judge who has been
6 assigned to a case for at least one hundred twenty (120) days clarifies that Subparagraph (C)(4)
7 neither expands nor reduces the right of a party to file an excusal within ten (10) days of
8 reassignment in the situations described in Subparagraphs (C)(2) and (C)(3).

9 Reassignment of a judge usually occurs in individual cases in which a party has excused
10 the judge or the judge recuses himself or herself. When this happens, the clerk easily can and does
11 serve individual notice of the reassignment to the parties by mail or electronic
12 transmission. Whether served by mail or electronic transmission, [~~recently proposed amendments~~
13 ~~to~~] Rule 1-006 NMRA [~~would give~~] gives the parties an additional three (3) days to file a
14 peremptory excusal under this rule.

15 When a judge retires, dies, is disabled, or the judge assumes responsibility for different
16 types of cases (e.g., from a criminal to a civil docket), large numbers of cases are reassigned and
17 parties who have not previously exercised a peremptory excusal may choose to excuse the
18 successor judge. Providing individual notice to every party in each such case is administratively
19 difficult, expensive and time consuming. Clerks sometimes serve notice of reassignment in an
20 alternative manner—usually through publication in the New Mexico Bar Bulletin, on the State
21 Bar’s web site, or both.

22 The 2008 amendment formally incorporates into Rule 1-088.1 NMRA the use of notice by
23 publication in such a situation — now identified as a "mass reassignment."[-] The amended rule

1 requires that the specified notice be published on the State Bar’s web site for four (4) consecutive
2 weeks and in [~~four (4)~~] two (2) consecutive issues of the New Mexico Bar Bulletin and provides
3 that a party who has not yet exercised a peremptory excusal may do so within ten (10) days after
4 the [~~fourth and final publication]~~ date of the second Bar Bulletin. When a judge’s entire caseload
5 is reassigned, the publication notice need not contain the caption of each affected case, but must
6 contain the names of the initially-assigned judge and the successor judge.

7 There may be occasions when many, but not all, of a judge’s cases are reassigned; for
8 example when an additional judge is appointed in a judicial district and a portion of other judges’
9 cases are assigned to the new judge. When this occurs, if the number of pending cases collectively
10 reassigned exceeds one hundred (100), the 2008 amendment authorizes notice by publication. To
11 assure that the parties have notice of which cases were reassigned, the court should either make a
12 list available containing the title of the action and file number of each case reassigned, or not
13 reassigned, whichever is less. The court may [~~either~~] publish such a list in the Bar Bulletin, [~~or~~]
14 publish a notice in the Bar [~~Bulletin~~] Bulletin that directs the reader to the court’s web site where
15 the [~~such a~~] list will be posted, or post notice on the State Bar’s web site.

16 Substituting publication for individual notice increases the chance that a party will not
17 receive actual notice of a reassignment. Where actual notice is not achieved through publication,
18 the trial court has ample authority to accept a late excusal. *See* Rule 1-006(B)(2) NMRA
19 (providing that the court may permit act to be done after deadline has passed if excusable neglect
20 is shown).

21 As with any other pleading filed in court, a peremptory excusal of a judge must be signed
22 by the party’s attorney or, if the party is not represented by counsel, it must be signed by the

1 party. *See* Rule 1-011 NMRA. All of the procedures for excusing a judge in Paragraph C are
2 subject to the limitations in Paragraph A.

3 [Adopted by Supreme Court Order No. 08-8300-038, effective December 15, 2008; as amended
4 by Supreme Court Order No. 12-8300-031, effective for all cases filed or pending on or after
5 January 7, 2013; as amended by Supreme Court Order No. 15-8300-019, effective for all cases
6 pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 18-
7 8300-003, effective March 1, 2018; as amended by Supreme Court Order No. 19-8300-008,
8 effective for all cases pending or filed on or after July 1,2019.]

GUARDIANSHIP RULES
RULE 1-142
[NEW MATERIAL]

Supreme Court Approved
January 14, 2019

1 **1-142. Guardianship and conservatorship proceedings; proof of certification of**
2 **professional guardians and conservators.**

3 A. **Scope.** This rule establishes qualification requirements under Sections 45-5-
4 311 and 45-5-410 NMSA 1978 for an individual or entity who may be appointed as a
5 professional guardian or conservator.

6 B. **Definition.** For purposes of this rule, a “professional guardian or
7 conservator” means an individual or entity that serves as guardian or conservator for more
8 than two individuals who are not related to the guardian or conservator by marriage,
9 adoption, or third degree of blood or affinity.

10 C. **Proof of certification.** An order appointing a professional guardian or
11 conservator under Chapter 45, Article 5, Parts 3 or 4 NMSA 1978, shall include a provision
12 that requires the professional guardian or conservator to submit proof that the individual who
13 has been assigned the duties of guardian or conservator for the protected person is certified
14 and in good standing with the Center for Guardianship Certification. The proof required
15 under this paragraph shall be submitted to the court not later than the first to occur of the
16 following:

- 17 (1) Ninety (90) days after the filing of the order of appointment; or
18 (2) The filing of the initial report required under Section 45-5-314(A)
19 NMSA 1978 or the inventory required under Section 45-5-418(A) NMSA 1978.

20 D. **Continuing duty.** A professional guardian or conservator must submit proof

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[NEW MATERIAL]

Supreme Court Approved
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1 annually that the certification required under Paragraph C of this Rule is in good standing.

2 E. **Applicability.** This rule shall apply to all professional guardians and
3 conservators appointed on or after the effective date of this rule. Professional guardians or
4 conservators appointed before the effective date of this rule shall provide the proof required
5 under Paragraph C of this rule within six months of the effective date of this rule and as
6 further required by Paragraph D.

7 [Approved by Supreme Court Order No. 19-8300-001, effective for all cases on or after July
8 1, 2019.]

9 **Committee commentary.**— The definition of a professional guardian or conservator
10 focuses on the number of non-relatives who are under the care of the guardian or conservator.
11 The definition therefore excludes, for example, a guardian or conservator appointed to care
12 only for relatives, regardless of number. Similarly, the definition excludes a guardian or
13 conservator appointed to care for one or two non-relatives. The definition limits relatives by
14 blood or affinity to the third degree of relationship to the guardian or conservator, which
15 includes the guardian’s or conservator’s spouse, parent, stepparent, brother, sister,
16 stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or
17 any person denoted by the prefix “grand” or “great,” or the spouse or former spouse of the
18 persons specified. *Accord* NMSA 1978, § 40-10B-3(E).

19 The Center for Guardianship Certification (CGC) provides certification to guardians
20 and conservators who demonstrate “sufficient skill, knowledge and understanding of the

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1 universal guardianship principles to be worthy of the responsibility entrusted to him or her.”
2 *Center for Guardianship Certification*, <https://guardianshipcert.org/about-us/>. Certification
3 by the CGC demonstrates that the guardian or conservator has met certain professional and
4 ethical standards, including the following:

5 Certification entitles the guardian [or conservator] to represent to the courts
6 and the public that he or she is eligible to be appointed, is not disqualified by
7 prior conduct, agrees to abide by universal ethical standards governing a
8 person with fiduciary responsibilities, submits to a disciplinary process, and
9 can demonstrate through a written test an understanding of basic guardianship
10 principles and laws.

11 *Id.* To view the CGC’s certification requirements, visit [https://guardianshipcert.org/](https://guardianshipcert.org/certification-requirements/)
12 [certification-requirements/](https://guardianshipcert.org/certification-requirements/).

13 Under Paragraph C of this rule, an order appointing a professional guardian or
14 conservator shall require the professional guardian or conservator to submit proof within
15 ninety (90) days that the person who has been assigned the duties of a guardian or
16 conservator has been certified with the CGC. A person assigned the duties of a guardian or
17 conservator is the individual who makes decisions on behalf of the protected person,
18 including but not limited to the professional guardian’s or conservator’s employee,
19 subcontractor, agent, case manager, guardianship coordinator, or an individual who signs a
20 report submitted under NMSA 1978, Sections 45-5-314, 45-5-409, or 45-5-418. If a
21 corporate entity is appointed as a guardian or conservator, the identity of the person who will
22 be assigned the duties of a guardian or conservator may not be known at the time that the

GUARDIANSHIP RULES
RULE 1-142
[NEW MATERIAL]

Supreme Court Approved
January 14, 2019

1 order of appointment is issued. The ninety (90) day time limit set forth in Paragraph C is
2 intended to provide a reasonable amount of time for a corporate entity to assign the duties
3 of a guardian or conservator to a specific individual and to submit proof that the individual
4 is certified.

5 [Approved by Supreme Court Order No. 19-8300-001, effective for all cases on or after July
6 1, 2019.]

GUARDIANSHIP RULES
RULE 1-143
[NEW MATERIAL]

Supreme Court Approved
June 24, 2019

1 **1-143. Guardianship and conservatorship proceedings; appointment of visitor,**
2 **qualified health care professional, and guardian *ad litem*; timing and review of**
3 **reports.**

4 **A. Scope; computation of time.** This rule governs the appointment of and
5 filing of reports by a visitor, qualified health care professional, and guardian *ad litem* in a
6 guardianship or conservatorship proceeding under Chapter 45, Article 5, Parts 3 and 4
7 NMSA 1978. All time periods set forth in this rule, regardless of length, shall be computed
8 using calendar days as provided in Rule 1-006(A)(1) NMRA.

9 **B. Appointment.** Upon the filing of a petition for the appointment of a
10 guardian or conservator, the court shall appoint a qualified health care professional, visitor,
11 and if necessary, a guardian *ad litem*.

12 **C. Timing of reports.** An order of appointment under Paragraph B of this rule
13 shall require the appointee to file a report as follows.

14 **(1) Qualified health care professional.** A qualified health care
15 professional shall file the report required under Section 45-5-303(E) or 45-5-407(C)
16 NMSA 1978 no later than fourteen (14) days before the hearing on a petition to appoint a
17 guardian or conservator.

18 **(2) Visitor.** A visitor shall file the report required under Section 45-5-
19 303(F) or 45-5-407(D) NMSA 1978 no later than eleven (11) days before the hearing on a
20 petition to appoint a guardian or conservator.

21 **(3) Guardian ad litem.** A guardian *ad litem* shall file the report

GUARDIANSHIP RULES
RULE 1-143
[NEW MATERIAL]

Supreme Court Approved
June 24, 2019

1 required under Section 45-5-303.1(A)(6) or 45-5-404.1(A)(6) NMSA 1978 no later than
2 seven (7) days before the hearing on a petition to appoint a guardian or conservator.

3 **D. Provision of reports.** Within three (3) days of the filing of a report
4 required under Paragraph C of this rule, the petitioner shall provide a copy of the report to
5 the alleged incapacitated person, the visitor, the guardian *ad litem*, any attorney of record,
6 any agent under a power of attorney unless the court orders otherwise, and any other person
7 the court determines under Rule 1-079.1(B)(4) or (C)(4) NMRA. The report may be
8 provided to such persons in any manner reasonably calculated to afford a meaningful
9 opportunity to review the report before the hearing on the petition to appoint a guardian or
10 conservator.

11 **E. Review.** Prior to the hearing, the guardian *ad litem* shall review the reports
12 with the alleged incapacitated person by making the alleged incapacitated person aware of
13 the contents of the reports and their significance.

14 [Approved by Supreme Court Order No. 19-8300-005, effective July 1, 2019.]

15 **Committee commentary.** — The time limits and review requirements set forth in
16 this rule are intended to provide an opportunity for meaningful communication about the
17 content and recommendations contained in the reports before the hearing on the petition
18 for the alleged incapacitated person and any other person entitled to access the reports
19 under Rule 1-079.1 NMRA.

20 [Approved by Supreme Court Order No. 19-8300-005, effective July 1, 2019.]

**MAGISTRATE COURT CIVIL RULES
RULE 2-103**

**Supreme Court Approved
April 12, 2019**

1 **2-103. Rules and forms.**

2 A. **Rules.** Each magistrate court or division thereof may from time to time make
3 and amend rules governing its practice not inconsistent with law, these rules or regulations
4 prescribed by the administrative office of the courts or the district court chief judge of the
5 judicial district in which the magistrate court is located. Such rules may relate to office hours
6 and procedures, to the performance of clerical duties by clerical assistants and to other
7 procedures for effecting a just, speedy and inexpensive determination of causes pending
8 before such court. Proposed rules or amendments shall be submitted to the [~~director of the~~
9 ~~administration office of the courts~~] district court chief judge of the judicial district in which
10 the local rules would apply and shall not become effective until approved by the [~~director~~
11 chief judge.

12 B. **Forms.** [~~Forms used or distributed by the magistrate courts shall be submitted~~
13 ~~to the director of the administration office of the courts and shall not become effective until~~
14 ~~approved by the director. A party may file a pleading or paper that is substantially in the~~
15 ~~form approved by the Supreme Court. Forms may be combined.]~~

16 (1) Forms that are generated by the magistrate court using the court's
17 automated case management system shall be substantially in the form approved by the
18 Supreme Court.

19 (2) Local forms may be developed, used, and distributed by individual
20 magistrate courts or magistrate court divisions subject to the following requirements:

21 (a) Any local form shall be submitted to the district court chief

**MAGISTRATE COURT CIVIL RULES
RULE 2-103**

**Supreme Court Approved
April 12, 2019**

1 judge of the judicial district in which the local form is intended for use and shall not become
2 effective until approved by the chief judge;

3 (b) Any local form approved by a chief judge shall not be
4 generated by the magistrate court using the court's automated case management system; and

5 (c) Any local form shall not be inconsistent with law, these rules,
6 or regulations prescribed by the Supreme Court, the administrative office of the courts, or
7 the district court chief judge of the judicial district in which the local form is intended for
8 use.

9 (3) A party may file a pleading or paper that is substantially in the form
10 approved by the Supreme Court.

11 [As amended, effective January 1, 1987; as amended by Supreme Court Order 07-8300-34,
12 effective January 22, 2008; as amended by Supreme Court Order No. 19-8300-003, effective
13 July 1, 2019.]