

Rules of the District Court of the Fourth Judicial District

I. Authority, Title and Scope

LR4-101. Authority.

These local rules are adopted and promulgated by the district judges of the Fourth Judicial District of the State of New Mexico, comprised of the counties of San Miguel, Mora and Guadalupe, pursuant to the authority vested in the court by Rule 1-083 NMRA and by Rule 5-102 NMRA.

LR4-102. Title.

These local rules shall be known as the "Local Rules of the Fourth Judicial District Court".

LR4-103. Scope.

These local rules shall apply to all cases brought in the Fourth Judicial District Court.

LR4-104. Applicability.

These local rules shall apply to all cases filed on or after their effective date.

LR4-105. Supreme Court rules control.

If any of these local rules conflict with any rules promulgated by the New Mexico Supreme Court, the latter rules shall control.

II. General Powers and Duties of Court

LR4-201. Failure to comply.

The failure to comply with the requirements of these local rules may subject counsel or any party appearing *pro se* to sanctions.

LR4-202. Assignment of cases.

The district court clerk alternately shall assign all cases filed to the two court divisions (divisions I and II), with each district judge initially receiving an equal number of cases.

LR4-203. Mode of attire.

All attorneys and other officers of the court shall be dressed in a dignified manner in court.

LR4-204. Interpreters.

When an interpreter is needed, counsel or any party appearing *pro se* shall notify the district court clerk and the district judge assigned to the case in writing at least five (5) days before the hearing.

LR4-205. Prohibition against smoking.

Smoking shall be prohibited in any courtroom while court is in session.

LR4-206. Removal of court files.

Court files shall not be removed from the office of the district court clerk except by employees of the Fourth Judicial District Court.

LR4-207. Removal of library books.

Library books may not be removed from the district court law library unless they are first checked out on a form maintained by the district court clerk. Library books may not be checked out for more than ten (10) days each time.

LR4-208. Civil filing fees.

A. Pursuant to Section 34-6-40 NMSA 1978 and Rule 1-099 NMRA, a filing fee shall be collected by the district court clerk in all new and reopened civil cases.

B. A surcharge shall be collected by the district court clerk in all new and reopened domestic relations cases, under the domestic relations mediation program established by LR4-702.

C. An arbitration user fee also may be collected from any party referred to arbitration provided by an arbitration program established by separate local rule approved by the New Mexico Supreme Court pursuant to Section 34-6-44 NMSA 1978.

D. The court may waive the filing fee upon a finding that the filing party is indigent, according to the standard established under Section 34-6-46 NMSA 1978. The court may assess the filing fee against any non-indigent losing party as a cost.

LR4-209. Payments to district court clerk.

All fees, fines, assessments, costs or other payments to the district court clerk shall be paid by cash, money order, cashier's check or a check drawn on an attorney's trust account. No personal checks shall be accepted for payment by the district court clerk.

LR4-210. Filing of pleadings in open court.

No pleading to be considered for decision by the district judge assigned to the case shall be filed with the district court clerk on the day the matter is to be heard, except with the prior express permission of the judge. Absent such permission, the pleading shall be filed in open court with the judge, who then shall endorse the date and time of receipt on the pleading, and upon conclusion of the hearing shall deliver it to the district court clerk for docketing.

LR4-211. Filing by facsimile prohibited.

A. Documents which are sent to the district court clerk by electronically transmitted image (facsimile) shall not be accepted for filing by the district court clerk.

B. Other documents which are not to be filed with the district court clerk may be sent by electronically transmitted image (facsimile) only with the prior express permission of the district judge for whom they are intended.

ANNOTATIONS

Cross references. — For district court civil and criminal rules relating to filing of facsimile pleadings, see Rules 1-005.1 and 5-103.1 NMRA.

LR4-212. Copies of jury questionnaires.

All requests for copies of jury questionnaires shall be made to the district court clerk at least three (3) working days before the copies are desired.

LR4-213. Court holidays.

The district court shall observe as legal holidays those prescribed by the chief justice of the New Mexico Supreme Court.

III. Pleadings and Practice

LR4-301. Entry of appearance; no extension of time.

When any party to an action has been properly served with process, an oral appearance on the record or a written entry of appearance by such party or the party's counsel shall not enlarge the time prescribed for filing an answer or other responsive pleading.

LR4-303. Telephonic hearings.

A. The court in its discretion may hear any matter by telephonic hearing as permitted by law.

B. It shall be the responsibility of the party requesting a telephonic hearing to arrange and pay for it.

LR4-304. Motion practice.

A. All motions shall be filed with the district court clerk, except as provided in LR4-210. No motion shall be filed without a statement that the moving party has conferred or attempted to confer in good faith with opposing counsel regarding the relief sought in the motion, in an effort to resolve any differences or to secure concurrence in the motion. The motion shall state, with particularity, the efforts made to comply with this local rule. If the motion is one enumerated in Paragraph C of Rule 1-007.1 NMRA, it shall not be necessary to confer with opposing counsel. If the motion will not be opposed, an order approved by opposing counsel shall accompany the motion.

B. Every motion shall include a certificate of service signed by counsel setting forth the name and address of each person served and the date and manner of service.

C. Every opposed motion, response or reply to a response shall cite authority for the position advanced or, alternatively, shall be accompanied by a separate brief or memorandum of law filed and served contemporaneously with the filing of the motion, response or reply to a response. A supporting brief or memorandum shall not exceed ten (10) pages of argument, without the express permission of the court.

D. Unless otherwise provided by rule of procedure or by statute, any written response or reply to a motion shall be filed within fifteen (15) days after service of the motion. The failure to file a response or reply to a motion within the prescribed time limit shall be deemed as consent to the granting of the motion. In such event, the moving party may obtain a date and time to formally present an appropriate order to the court for signature and entry, upon not less than five (5) days written notice to opposing counsel or any party appearing *pro se*.

E. The practice of filing cross-motions which operate as both a motion and as a response or reply to the original motion is prohibited.

F. If exhibits are attached to a motion, response or reply, only relevant excerpts from depositions or other papers shall be attached to it. The pertinent portions of such exhibits shall be highlighted, underlined or otherwise emphasized for the court's attention.

G. Within fifteen (15) days after the timely filing of a response or reply to a motion, the moving party shall request a hearing by submitting a request for setting (LR4-Form

A) to the district judge assigned to the case. A motion shall be deemed withdrawn upon the failure of the moving party to submit a request for setting within the prescribed time limit, and the motion shall have to be refiled for the court to consider it. The court may grant or deny a request for hearing, and if such request is denied, the court shall make a decision based on the papers filed.

H. If a motion requests a decision before the expiration of the time limit set forth in this local rule, the moving party shall:

- (1) indicate this in the title of the motion;
- (2) state in the motion the reason for requesting an expedited decision;
- (3) provide a "courtesy copy" of the motion to the district judge assigned to the case; and
- (4) file with the motion a request for expedited hearing.

LR4-305. Interrogatories, requests for production and requests for admission.

A. **Service of interrogatories.** Parties propounding interrogatories shall serve the original and one (1) copy upon each party who is required to answer them and one copy upon every other party. Interrogatories shall be numbered consecutively. The party answering the interrogatories shall serve the original and one (1) copy upon the party propounding them and one copy upon every other party.

B. **Objections.** In objecting to an interrogatory, request for production or request for admission, the objecting party shall set out the reason for the objection, together with supporting authority for the objection.

C. **Limitation on interrogatories.** No party shall serve on any other party more than fifty (50) interrogatories in the aggregate, including all subparts, except with leave of the court. Subparts of an interrogatory shall relate directly to the subject matter of the interrogatory.

D. **Criminal cases.** Discovery in criminal cases is governed by the Rules of Criminal Procedure for the District Courts.

ANNOTATIONS

Cross references. — For statewide rule governing interrogatories, see Rule 1-033 NMRA.

LR4-306. Attendance of disabled persons under subpoena.

A. All subpoenas issued by the district court clerk shall contain language informing disabled persons whose attendance is sought at a deposition, hearing or trial that they are entitled to reasonable accommodations for their disabilities, under the Americans with Disabilities Act of 1990, 42 USCA, Section 12101, *et seq.*

B. Counsel or any party *pro se* requesting the issuance of a subpoena for a disabled person shall notify the district court clerk in writing at least five (5) days before any hearing or trial of the anticipated attendance of the disabled person so reasonable accommodations can be made. Such notice shall specify the type of accommodation reasonably necessary for the person's disability.

LR4-307. Submission of trial briefs, findings of fact and conclusions of law.

A. The original of any trial brief or memorandum of law shall not be filed with the district court clerk, but instead shall be delivered to the district judge assigned to the case. Copies of such brief or memorandum shall be served on opposing counsel or any party appearing *pro se*.

B. The original of all requested findings of fact and conclusions of law shall be filed with the district court clerk and a copy delivered to the district judge assigned to the case.

LR4-308. Submission of orders, judgments and decrees.

Unless otherwise ordered by the court, all orders, judgments and decrees shall be submitted by the prevailing party to the district judge who is trying, or has tried the case, by delivering the original directly to the judge, or in the absence of the judge, to the district court clerk for delivery to the judge. All orders, judgments and decrees shall be submitted to the district judge for signature no later than ten (10) days immediately following the date of announcement by the judge of the decision. A copy of the proposed order, judgment or decree shall be served on all other parties.

LR4-309. Retention and disposition of exhibits and depositions.

All exhibits and depositions shall be retained by the district court clerk for the time periods prescribed by the Records Retention and Disposition Schedule for the District Courts of New Mexico, 1 NMAC 3.92.230, after which time periods all exhibits and depositions shall be destroyed by the district court clerk unless their return is requested beforehand in writing by the party who submitted them.

LR4-310. Electronic filing authorized.

In accordance with Rule 1-005.2 NMRA, electronic filing is implemented for all civil and probate actions in the Fourth Judicial District Court. The electronic filing of

documents is mandatory for parties represented by attorneys in accordance with Rule 1-005.2 NMRA, which includes attorneys who represent themselves. Guidelines for using the electronic filing system are set forth in the court's user guide that is available in the clerk's office and on the court's website.

[Adopted by Supreme Court Order No. 12-8300-LR2, effective for all cases filed or pending on or after August 20, 2012.]

IV. Case Control

LR4-401. Settings.

A. **Requests for setting.** All requests for setting shall be submitted on a form approved by the court and shall be completed except for the date and time of the setting. Counsel requesting a setting shall provide preaddressed, stamped envelopes and copies of the request for all counsel and parties *pro se* entitled to notice. The secretary or calendar clerk for the district judge assigned to the case shall file the original of the request for setting with the district court clerk and shall mail copies of the request to all counsel and parties *pro se* entitled to notice. Attorneys maintaining offices within San Miguel County may have all their notices of hearing placed in their individual boxes at the district court clerk's office, upon prior written notice to the court expressly waiving service under the applicable rules of procedure.

B. Vacating Settings.

(1) Settings shall not be vacated *ex parte* or by agreement of counsel, but only by the district judge assigned to the case.

(2) Before counsel requests that the district judge assigned to the case vacate a setting, counsel shall contact all attorneys and parties *pro se* entitled to notice to determine their positions regarding such request, and then shall inform the court of the same. The court shall vacate the case, refuse to vacate it, or schedule a hearing on counsel's request.

(3) An order entered pursuant to this local rule shall contain the reasons for vacating the setting.

V. Jury Matters

LR4-501. Jury instructions.

Requested jury instructions shall be prepared by counsel for the parties in accordance with these guidelines:

A. Prior to commencement of the trial, attorneys for all parties or any parties *pro se* shall confer and agree upon those jury instructions which are necessary and common to the case. Instructions necessary and common to the case shall be prepared by the plaintiff's counsel and shall be approved by all other counsel. Such stipulated instructions shall be submitted to the district judge assigned to the case at least five (5) days prior to the commencement of the trial.

B. All jury instructions to which the parties cannot agree shall be submitted to the district judge assigned to the case for consideration. Each party shall submit its contested jury instructions separately at least five (5) days prior to commencement of the trial. This rule does not preclude additional instructions being submitted at the close of the evidence pursuant to Rule 5-608 of the Rules of Criminal Procedure for the District Courts.

C. Jury instructions shall be submitted firmly clipped or stapled together with a cover sheet bearing the caption of the case, the title of the pleading (*i.e.*, "Plaintiff's Requested Instructions, Stipulated Instructions") and a signature line for counsel. Copies of the instructions shall be provided to each party and to the district judge assigned to the case.

D. Each contested jury instruction shall bear the heading "(Party's) Requested Instruction No. ____", and counsel shall number them consecutively.

E. At the bottom of each contested jury instruction, counsel shall list the Uniform Jury Instruction number or other citations supporting the instruction as a correct statement of the applicable law, along with the following information:

Given _____

Denied _____

Modified _____

Withdrawn _____

F. For each contested jury instruction submitted, the party shall provide the district judge assigned to the case with a clean copy that bears the text of the instruction and the heading "Instruction No. ____", with no number inserted. This set shall be given to the judge and not filed with the district court clerk.

G. In settling jury instructions, the action of the district judge assigned to the case shall be entered on the filed copy of each instruction. In addition, the action of the judge shall be noted on a praecipe (LR4-Form B) to be submitted by counsel.

VI. Criminal Cases

LR4-601. Negotiated pleas.

A. All plea and disposition agreements must be submitted to the court for approval no later than twenty (20) days prior to the date set for the trial of the case, or ten (10) days prior to the date set for hearing the plea and disposition.

B. Any plea and disposition agreement not presented to the court within the time fixed by this local rule shall not be considered by the court, except in those cases where good cause is shown to the court why such plea and disposition agreement could not be presented in a timely manner in compliance with this local rule.

C. Nothing contained in this local rule shall be construed as a prohibition against a defendant pleading guilty to the original charge or charges, without any bargaining at any time otherwise permitted by law.

D. Any violation of this local rule which results in unnecessary jury expense or other costs or inconvenience to the court may result in the assessment of such expenses or costs against the person or persons responsible for such failure to comply with this rule or such other sanctions as may be appropriate, or both.

E. All provisions of this local rule as to plea bargaining shall apply with equal force and effect in all Children's Court proceedings governing admissions, consent decrees or orders of *nolle prosequi*.

VII. Domestic Relations Cases

LR4-701. Parenting plans.

All parenting plans required pursuant to Section 40-4-9.1 NMSA 1978 shall be delivered to the court no later than fifteen (15) days prior to the hearing date on cases involving a custody determination.

LR4-702. Domestic relations mediation program.

A. **Establishment of program.** Pursuant to the Domestic Relations Mediation Act, Sections 40-12-1 to 40-12-6 NMSA 1978, the Fourth Judicial District has elected to establish a domestic relations mediation program to assist the court, parents and other interested parties in determining the best interests of minor children involved in domestic relations cases. A "domestic relations mediation fund" is hereby established in accordance with Section 40-12-6 NMSA 1978.

B. **Mediation surcharge.** Pursuant to Section 40-12-6 NMSA 1978 the district court clerk shall collect a thirty dollar (\$30.00) surcharge for all new and reopened domestic relations cases other than those filed pursuant to the Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978. This surcharge shall be in addition to the civil

filing fee required under LR4-208, for new and reopened cases. The district court clerk shall deposit all surcharges collected under this local rule in the "domestic relations mediation fund".

C. Mediation request. Either parent involved in the case may request mediation under this local rule or it may be ordered by the district judge assigned to the case where there is a dispute over custody or visitation of the minor children.

D. Mediation costs. Each party to the case shall pay a fee to offset the costs of the domestic relations mediation program. The fee shall be determined by using the sliding fee scale approved as Appendix A of these local rules.

E. Mediator appointment. The court shall have the right to select and appoint qualified mediators under this local rule.

VIII. Forms

LR4-Form A.

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF _____
STATE OF NEW MEXICO
No. _____

REQUEST FOR SETTING

1. Type of case:
2. Jury: _____ Non-jury: _____
3. Judge assigned to case:
4. Specific matter to be heard:
5. Date of any hearings presently set:
6. Date pretrial order was filed or date of pretrial conference:
7. Total time required for hearing:
8. Applicable time limits:
9. Request submitted by:

10. Names, addresses and telephone numbers of all counsel or parties *pro se* entitled to notice:

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above matter will be heard before the Honorable _____, District Judge, at the _____ County Courthouse, beginning at the hour of _____ o'clock _____ .m., on the _____ day of _____, _____, with _____ allocated for hearing.

Calendar Clerk

CERTIFICATE OF MAILING

I hereby certify that copies of the foregoing notice of hearing were mailed to all counsel and parties *pro se* listed above on the _____ day of _____, _____.

LR4-Form B.

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

Plaintiff,

vs.

No. _____

Defendant.

PRAECIPE

COMES NOW _____, by and through the attorney of record, _____, and hereby submits the following requested jury instructions in the above-captioned cause:

| Instruction No. | U.J.I. No. | Given | Refused | Modified | Withdrawn |
|-----------------|------------|-------|---------|----------|-----------|
|-----------------|------------|-------|---------|----------|-----------|

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Submitted by:

IX. Appendix

Appendix A. Sliding fee scale for mediation

| APPENDIX A — SLIDING FEE SCALE FOR MEDIATION | | | | | |
|--|--------------------|------|------|------|------|
| Gross Income | Number of Children | | | | |
| | 1 | 2 | 3 | 4 | 4+ |
| \$70,000 | \$95 | \$95 | \$95 | \$95 | \$95 |
| \$65,000 | \$95 | \$95 | \$95 | \$95 | \$90 |
| \$60,000 | \$95 | \$95 | \$95 | \$90 | \$85 |
| \$55,000 | \$95 | \$95 | \$90 | \$85 | \$80 |
| \$50,000 | \$90 | \$85 | \$80 | \$75 | \$75 |
| \$45,000 | \$85 | \$80 | \$75 | \$70 | \$65 |
| \$40,000 | \$80 | \$75 | \$70 | \$65 | \$60 |
| \$35,000 | \$75 | \$70 | \$65 | \$60 | \$55 |
| \$30,000 | \$70 | \$65 | \$60 | \$55 | \$50 |
| \$28,000 | \$65 | \$60 | \$55 | \$50 | \$45 |
| \$26,000 | \$60 | \$55 | \$50 | \$45 | \$40 |
| \$24,000 | \$55 | \$50 | \$45 | \$40 | \$35 |
| \$22,000 | \$50 | \$45 | \$40 | \$35 | \$30 |
| \$20,000 | \$45 | \$40 | \$35 | \$30 | \$25 |

| | | | | | |
|--------------------|------|------|------|------|------|
| \$18,500 | \$40 | \$35 | \$30 | \$25 | \$20 |
| \$17,000 | \$35 | \$30 | \$25 | \$20 | \$15 |
| \$15,500 | \$30 | \$25 | \$20 | \$15 | \$10 |
| \$14,000 | \$25 | \$20 | \$15 | \$10 | \$5 |
| \$12,500 | \$20 | \$15 | \$10 | \$5 | \$5 |
| \$11,000 | \$15 | \$10 | \$5 | \$5 | \$5 |
| \$10,000 | \$10 | \$5 | \$5 | \$5 | \$5 |
| Less than \$10,000 | \$5 | \$5 | \$5 | \$5 | \$5 |

Highest combined fee \$120.00