

# **Rules of the District Court of the Eleventh Judicial District**

## **Authority**

The following rules are hereby adopted and promulgated by the Judges of the Eleventh Judicial District of the State of New Mexico, comprised of the counties of McKinley and San Juan, pursuant to the authority vested in the court by Rule 1-083 of the Rules of Civil Procedure for the District Courts and Section 34-6-28 NMSA 1978.

## **Title and citation**

These rules shall be known as “local court rules” and shall be cited as LCR.

## **Effective date**

These rules are effective January 1, 1991, and supersede all prior rules.

### **LR11-101. Setting of the trial and hearings.**

A. The judge of each division will make his own trial or other settings and will furnish counsel and the clerk of the concerned court with a notice, list or calendar of settings.

B. All settings made by the court shall be binding upon all parties and attorneys properly noticed. No setting shall be vacated except upon good cause shown by written motion.

### **LR11-102. Assignment of cases to judges.**

A. The judges of divisions one, three, and four are primarily responsible for all cases in San Juan County. The judge of division two is primarily responsible for all cases in McKinley County. In the event of recusal or excusal in division two the case will be assigned to one of the remaining judges of the district by random selection. In the event of recusal or excusal in the other divisions, the case will be assigned by random selection to one of the judges sitting in San Juan County until all of such judges are exhausted by recusal or excusal, and only then assigned to division two.

B. Cases assigned to a particular judge will not be heard by another judge without consent of the judge to whom the case is assigned, except in case of an emergency and when the judge to whom it has been assigned is not available.

### **LR11-103. Submission of orders, judgments, briefs and findings.**

A. All proposed orders, decrees and judgments will be submitted to the judge assigned the case. All original findings of fact and conclusions of law will be filed with the clerk of the court and a copy submitted to the judge.

B. Orders, judgments, decrees and requested findings of fact and conclusions of law will be submitted to the court not later than fourteen (14) days following the date of announcement by the court of its decision, mailing time included. An order, judgement, or decree will be submitted to the court not later than seven (7) days, mailing time included, following the date the court was advised that a case which had been set for trial or hearing was settled unless a longer time is granted by the court.

C. Orders, decrees and judgments shall not be submitted to the court for signature unless they have been initialed by all attorneys of record or unless the attorney submitting same certifies to the court that opposing counsel has, after five (5) days of receiving the order, decree, or judgment, failed or refused to initial same.

#### **LR11-104. Motions.**

A. All motions will state the grounds therefor with particularity. A motion which fails to state the grounds as required may be denied summarily by the court.

B. Each motion other than a motion for order to show cause, change of custody, or a ministerial act shall be accompanied by a supporting written brief, separate and apart from the motion itself. Such brief shall be denominated as "Brief in Support of Motion to (subject of motion)." The responding party shall have fifteen (15) days after service of the motion to answer by written brief. Such answer shall be denominated "Answer Brief on (subject of motion)," for example: "Answer Brief on Summary Judgment Motion." The movant may have fifteen (15) days after the service of the response within which to reply if desired. Such reply shall be denominated "Reply Brief on (subject of motion)." Unless the court has endorsed its order of filing on the face of a brief, it shall neither be filed nor docketed. If no answer or reply brief is to be submitted, the parties should so advise the court. Counter affidavits if any, in motions for summary judgment, shall be filed when the answer brief is submitted.

C. All briefed motions will be decided on the basis of briefs unless otherwise ordered by the court.

D. On the face of each motion counsel will indicate that opposing counsel either objects or does not object to the motion.

#### **LR11-105. Deposition and interrogatories.**

A. **Deposition; filing not required; certificate of taking.** Depositions or interrogatories, and the responses thereto shall not be routinely filed with the court. The reporter or other person recording shall file a certificate with the court indicating the date that such was taken.

**B. Procedure.** A party propounding interrogatories shall serve the original and one copy upon the party to be served. They shall be numbered consecutively and shall leave adequate spacing under each interrogatory for an answer. A copy of the certificate of service shall be served with the interrogatories, but only the certificate of service needs be served on the other parties to the action. The party to whom the interrogatories are propounded shall provide typewritten answers to the same and shall serve the original upon the party propounding the interrogatories and copies thereof to all other parties. Interrogatories shall be answered within the time limit of Rule 1-033 NMRA, subject to order of the court.

**C. Objections to interrogatories.** In objecting to an interrogatory, the objector shall first set out the complete interrogatory followed by the reason for the objection. The party upon whom objections to interrogatories are served shall then have twenty (20) days within receipt of the objection to respond or the objection shall be deemed to have been accepted as valid and the court will take no action. As a preliminary matter any objection to an interrogatory should state that counsel has previously made a good faith effort to resolve the issue with opposing counsel prior to bringing the objection to the attention of the court.

**D. Number of interrogatories.** No party shall serve more than twenty-six (26) interrogatories in the aggregate quantity, counting all sub-parts, without leave of the court. Sub-parts of an interrogatory shall relate directly to the subject matter of the interrogatory. A party desiring to serve additional interrogatories shall file a written motion with the court setting forth the proposed additional interrogatories and the reasons establishing good cause for their use.

**E. Nature of first interrogatory.** The first interrogatory shall be limited to the inquiry as to the biographical information of the person, corporation, or other entity that is a party to the lawsuit. Such interrogatory shall inquire only into the name(s), place(s) of doing business, social security number, census number, age, marital status, children, and/or occupation of the deponent, and if so limited, shall constitute one interrogatory.

**F. Pre-trial interrogatories.** The prohibition concerning subsequent interrogatories in Paragraph D above shall not pertain to interrogatories, five (5) or less in number, submitted to opposing counsel less than thirty (30) but more than fifteen (15) days before the trial or evidentiary hearing, addressed only to the identity and addresses of fact witnesses, expert witnesses, the substance of their testimony, and the listing and description of exhibits not covered in (if applicable) or subsequent to the pretrial order. Interrogatories in compliance with this sub-paragraph shall be answered in ten (10) days, mailing time included, and impose a continuing duty on opposing counsel to revise and amend, by phone if necessary, to the time of trial or evidentiary hearing.

## **ANNOTATIONS**

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

### **LR11-106. Certificate of readiness.**

A. Any attorney of record in a case may prepare and forward to the court a certificate of readiness for trial when the case is fully at issue, all discovery is completed or scheduled to be completed on a definite date, and the case is in all respects ready for immediate trial. The certificate of readiness shall be prepared on a form approved by the court. An incomplete certificate of readiness will not be considered.

B. Any party in the case who objects to the certificate of readiness shall within ten (10) days from the receipt of a certificate of readiness prepare and forward to the court a response setting forth precisely and in detail the objections. If the response clearly shows the case is not ready for trial, counsel will be so notified.

C. After a certificate of readiness has been accepted by the court, the case will be placed on an active list in the order received. Settings will be made from the active list in the order they appear to the extent possible.

D. The court may set any case at its own discretion.

### **LR11-107. Continuance.**

A. No continuance or vacations of trial set by the court will be granted except for good cause shown and only after formal motion for same is made.

B. In the event of a conflict of settings the earlier setting will normally have precedence.

### **LR11-108. Pretrial conference.**

A. After the parties file the certificate of readiness, the court may order the parties to prepare and file an agreed pretrial order on a form approved by the court, setting forth in concise summary form the contentions of the parties, the factual and legal issues, witnesses to be called, exhibits to be introduced, stipulations, and other pertinent information to simplify the trial of the case.

B. Whenever a pretrial conference is called by the judge to whom the case has been assigned, counsel will observe the following requirements:

(1) The attorney who will handle the case at trial will be in attendance at the pretrial conference unless excused by the court.

(2) Counsel attending pretrials will bring with him/her all documents, photographs and other items of tangible physical evidence to be submitted to opposing counsel for the purpose of seeking stipulations as to introductions at trial. Counsel will undertake to have completed all steps permissible under the Rules of Civil Procedure for the District Courts relating to deposition and discovery.

(3) Counsel will be prepared to argue all pending motions.

(4) Counsel will have in mind all probable witnesses and be ready to disclose to opposing counsel their names and addresses and the subject of the expected testimony. Counsel will be prepared to supply opposing counsel with all medical reports relating to the parties or subject of the cause when applicable.

(5) Whenever practicable, the principal parties to the litigation will be present in court for pre-trial. They will not testify, but will aid counsel.

(6) Counsel will be thoroughly prepared to aid the court in preparing its pretrial order, which will cover the topics or subjects whenever applicable of Paragraph C of this rule.

C. Pretrial orders shall contain:

(1) A concise, descriptive statement of the nature of the action;

(2) The factual contentions of the plaintiff as to the liability of the defendant;

(3) The factual contention of the defendant as to non-liability and as to the affirmative defenses (Where counterclaims or cross claims exist, a statement of the factual contentions of the parties.);

(4) The admissions or stipulations of the parties with respect to the cause of action pleaded;

(5) All claims as to the damages and extent of injury, and any admissions or stipulations with respect thereto;

(6) Any amendments to the pleadings;

(7) A specification of the legal issues raised by the pleadings which are to be determined at the trial;

(8) A specification of the legal issues raised by the pleadings which are abandoned;

(9) A list of the exhibits marked in evidence by consent;

(10) If leave is granted to make any further use of discovery proceedings by way of additional interrogatories, depositions, or otherwise, such fact shall be stated in the pretrial order as well as any time limit imposed for the completion thereof;

(11) Disclosure of names of witnesses. Agreement as to limiting number;

(12) Any direction with respect to the filing of briefs;

(13) The order of opening or closing to the jury where there are several plaintiffs or defendants separately represented by counsel or where there is a consolidated action or an action which includes a third-party suit, counterclaim, or cross-claim;

(14) Any other matters which have been agreed upon in order to expedite the disposition of the matter;

(15) The estimated length of the trial;

(16) Probable trial date.

D. The pretrial conference result will in all cases be incorporated in a formal order to be signed by the trial judge and approved by participating counsel and filed in the cause.

### **LR11-109. Entry of appearance and withdrawal as attorneys.**

Whenever counsel undertakes to participate in a cause on behalf of a party, whether civil or criminal, he will file a written entry of appearance in the cause. The filing of any signed pleading in a cause by counsel will be considered as having complied with this rule. Any withdrawal of counsel in a civil or criminal case shall be in full compliance with the applicable rules of procedure, except that in domestic cases counsel will be deemed to have the consent of the court to withdraw ninety (90) days after entry of a final decree if there is no activity in the case for that period of time.

#### **ANNOTATIONS**

**Compiler's notes.** — See Rule 1-089 NMRA for withdrawal of attorneys.

### **LR11-110. Dismissal of case on motion of the court.**

A. Whenever it appears from an examination of the file in a case that a cause is ready for default or that there remains no justiciable issue for the consideration of the court, the court may direct counsel to submit judgment within twenty (20) days thereafter, or the court may, on its own motion, dismiss the cause.

B. Whenever it appears from the court file that there has been insufficient activity in a cause, the court will dismiss the cause and the file will be closed. The court, upon application of counsel, showing adequate justification, may order that the cause be reinstated and the file reopened.

#### **ANNOTATIONS**

**Reinstatement of action is permitted** if certain conditions are met. *Becenti v. Becenti*, 2004-NMCA-091, 136 N.M. 124, 94 P.3d 867.

**Good cause required for reinstatement.** — Paragraph B of this rule permits reinstatement of a case if good cause is shown by the moving party. *Becenti v. Becenti*, 2004-NMCA-091, 136 N.M. 124, 94 P.3d 867.

### **LR11-111. Jury trials — Payment of fees.**

A. No jury deposits, filing fees, or other fees collected by the Clerk will be refunded. In civil cases the daily jury fee required by Rule 1-038 NMRA shall be paid to the clerk prior to the commencement of trial for each day the case proceeds to trial unless directed otherwise by court order. Fees are to be paid to the clerk by attorney firm check, cash, money order, or certified check. No personal checks are to be accepted.

B. At the beginning of the trial counsel will submit requested jury instructions in accordance with the following outline:

- (1) Each requested instruction will be typed on a separate page;
- (2) The original will be submitted so that it may be used, if given, without redrafting, containing no numbering, and no citation. It shall be typewritten on unlined, unmarginated bond paper, size 8½" x 11";
- (3) Copies will contain, at the top, information as to the party submitting the requested instruction and, at the bottom, any citations counsel wishes to offer supporting the instruction as a correct statement of the law and the UJI number;
- (4) Counsel will prepare sufficient copies to provide the court with an original and one copy, and each opposing attorney one copy. The original and copies of each separate instruction shall be under one paper clip.

C. On voir dire:

- (1) The court will use the standard inquiry from the uniform jury instructions.
- (2) No attorney will be permitted, under the guise of questions, to argue the case to the jury nor to seek commitments from the jurors not related to their qualifications to hear the case.
- (3) No question may be asked as to the juror's attitude toward an anticipated instruction.
- (4) Questions that can be asked collectively of the jury may not be asked individually.

(5) The jury may not be questioned concerning what their verdict might be under a hypothetical situation.

(6) Counsel will not repeat questions that have been asked by the court.

(7) Jurors may not be asked the same questions that have been asked and which they have answered in the jury questionnaire filed with the court and available to counsel.

### **LR11-112. Withdrawal of court files.**

Files of cases docketed in the court may not be removed from the office of the clerk except for use within the environs of the court. Photocopies of any court record may be supplied by the clerk upon payment therefor at a nominal rate to be set by the clerk.

### **LR11-113. Court administration.**

The chief judge shall be the chief administrative officer of the district. The chief judge shall be selected by a majority of the district judges in the Eleventh Judicial District. In the event of a tie, the senior judge shall be the chief judge. The judge of division two shall have primary responsibility for all administrative duties necessary for court operation in McKinley County, including fiscal matters, property management, and control and employment of personnel in McKinley County.

### **LR11-114. Domestic relations cases.**

A. No decree will be granted by the court in a divorce case within thirty (30) days after the service of the complaint or the filing of a waiver unless such delay will result in hardship as shown by the party to the satisfaction of the judge. The petition should state the date that the parties permanently separated.

B. Child support will be determined by Section 40-4-11 NMSA 1978.

### **LR11-115. Domestic mediation.**

A. A domestic relations mediation program is hereby established in accordance with Section 40-12-1 NMSA 1978 et seq.

B. A domestic relations mediation fund is hereby established in accordance with Section 40-12-4 NMSA 1978.

(1) The clerk shall collect a thirty dollar (\$30.00) surcharge on all new and reopened domestic relations cases for the fund which shall be accounted for separately for the purposes stated herein.



(2) The money accumulated in the fund shall be deposited in an interest bearing account.

C. The domestic relations mediation may be initiated in each case in which child custody is an issue. At such time either party shall file a certificate of child custody issues.

D. The court may not hear a case involving child custody unless the matter has been submitted to mediation.

E. Upon filing a certificate of child custody issues, or upon direction of the court, the clerk will enter a notice of mediation to the parties to view certain video tapes at the clerk's office. This viewing must be completed within ten days of the notice. The notice will also set forth the further mediation procedures for the parties including the assigned mediator, provided the parties have not previously settled the issue after viewing the video tapes.

F. Mediation shall be completed within forty-five (45) days of the first meeting with the mediator. The mediator shall inform the court on a court-approved form of the outcome of mediation. A person shall not be called as a witness in a case in which that person acted as mediator.

G. In accordance with Section 40-12-5 C NMSA 1978 costs of the domestic relations mediation program shall be paid by the parties to the action on a sliding fee scale approved by the Supreme Court. All fees shall be paid to the district court to be credited to the domestic relations mediation fund. The clerk shall forward a notice of assessment of costs to the parties upon payment of the mediator from the fund. Mediation assessments are to be paid to the clerk by attorney firm check, cash, money order, or certified check. No personal checks are to be accepted.

H. Failure to abide by an order of the court which implements the rules and regulations of the domestic relations mediation program may be deemed to be contempt of court and punished accordingly.

I. The court may enter any order for effective implementation of this program.

## **LR11-116. Filings, case number.**

A. **San Juan County cases.** All civil, criminal and domestic relations cases in San Juan County shall initially be filed in the clerk's office in Aztec. All children's court delinquency, abuse and neglect cases shall initially be filed in the clerk's office in Farmington. At the time of initial filing, the case will be assigned to division one, three, four or six. Following the initial filing of the case, all subsequent filings of documents in cases assigned to divisions one and three shall be made at the division one or three clerk's office in Farmington.

**B. Docket number.** Each case filed with the court shall be assigned an alpha-numeric designation, the last character of which shall be a 1, 2, 3, 4, 5 or 6 according to the division to which the case is assigned. In those instances where a case is moved from one division to another the last character of the case designation shall be changed accordingly. In those instances where a case is assigned to an out-of-district judge, the last character shall be a zero (0).

[As amended, effective June 17, 2003.]

## **ANNOTATIONS**

**Committee commentary.** — If a docket fee has been previously paid or waived, a party may file a stipulated order at any time without paying a filing fee even though the signature of the judge is required. This permits the parties to agree to modifications of court orders such as custody orders.

**The 2003 amendment,** effective June 17, 2003, inserted the bold catchlines in Subsections A and B; in Subsection A, rewrote the first sentence which formerly read "All cases in San Juan County must initially be filed at the clerk's office in Aztec", inserted "or six" at the end of the second sentence, and substituted "divisions one and three" for "division four" and "one or three" for "four" in the third sentence; in Subsection B, inserted "4, 5 or 6" preceding "according to the division" in the middle of the first sentence; and deleted Subsection C.

### **LR11-117. Hours.**

The offices of the district clerks in San Juan and McKinley Counties shall be open from 8:00 a.m. through 12:00 noon, and from 1:00 p.m. to 5:00 p.m., Monday through Friday except on holidays and at other times designated by the court.

### **LR11-118. Trust fund acceptance and disbursement.**

The clerk shall not disburse from or accept money into the trust account except pursuant to court order or statute.

### **LR11-119. Severability and supreme court rule.**

A. If any of the above rules are invalidated either by court action or otherwise, the remainder of these rules shall continue in force unless modified by further order of the court.

B. If any of the above rules conflict in letter or application directly with the rules of civil or criminal procedure adopted by the Supreme Court of New Mexico, then the latter shall control.

## **LR11-120. Service by electronic transmission; water rights adjudication proceedings.**

In a water rights adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978, service of documents by electronic transmission shall be an authorized method of service for purposes of Rule 1-005 NMRA and shall proceed in accordance with Rule 1-005.2 NMRA except that the consent of a party or the party's attorney is not required. Every attorney representing a party in a water rights adjudication suit shall file written notice with the court providing an email address to be used for electronic service under this rule. Every party in a water rights adjudication suit who is not represented by an attorney shall file written notice with the court that either provides the court with an email address to be used for electronic service under this rule or that states that the party does not have access to an email address. If an unrepresented party does not have access to an email address, service shall be made on that party by any other method authorized by Rule 1-005 NMRA. Every attorney or party who provides an email address to the court pursuant to this rule shall file written notice with the court to notify the court of a change of email address.

[Adopted by Supreme Court Order No. 11-8300-002, effective February 21, 2011 for all new and pending cases.]

**Committee Commentary.** — Rule 1-005.2 NMRA permits the service of documents by electronic transmission upon the consent of the party or the party's attorney. Due to the exceptionally large number of parties to a water rights adjudication suit, the cost of service by mail would be unduly burdensome on all parties and the courts. Accordingly, the Supreme Court's approval of this local rule permits electronic service notwithstanding the consent that would otherwise be required by Rule 1-005.2 NMRA.