

# **RULES OF THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT**

## **LR10-001. Hour trials commence.**

Unless otherwise specified, all nonjury trials and hearings will commence at 9:30 a.m. and at 1:30 p.m., and jury trials, civil as well as criminal, shall commence at 9:00 a.m. and 1:30 p.m.

## **LR10-002. Orders; judgments; attorney for adverse party.**

Orders and judgments, except defaults and such as go as a matter of course, will not be signed by the court unless initialed by the attorneys for the adverse party, or after notice.

## **LR10-003. Orders; judgments; court signature; filing; date.**

All orders, judgments and other papers or documents signed by the judge must immediately be delivered to the clerk of the court who shall file them forthwith. It is not necessary that orders and judgments be dated; however, a date may be shown if desired by the author of the order or judgment.

## **LR10-004. Settings.**

The official court reporter shall maintain the calendar of the district judge, and the setting of all matters shall be made by the court reporter. Monday of each week shall be known as motion day for matters in Quay county, and the court will hear motions, default and uncontested matters between the hours of 9:00 a.m. and 12:00 noon on each motion day. No specific time setting need be obtained for the hearing of default or uncontested matters, although the court reporter shall be notified by counsel as to the time at which counsel plans to present a matter. When contested motions are involved which may require an extended period of time to be heard, counsel may consult with the court reporter and obtain a specific time setting for that matter. Default and uncontested matters may also be heard at other times when set by the court reporter.

## **LR10-005. Divorce actions.**

No final judgment will be granted or filed in any uncontested divorce case or action for separate maintenance until the expiration of ten (10) days after the filing of waiver of appearance or waiver of service of process by the adverse party except in cases where the parties have permanently separated for a period of at least six (6) months next preceding the filing of the complaint. In all divorce or separate maintenance cases where answer has been filed by the defendant or issue has been joined in any manner, besides by the filing of waiver of appearance or waiver of service of process, the court

reserves the right to withhold the entry of final decree for any reasonable time after hearing the evidence in the case.

### **LR10-006. Nonresident judges.**

When nonresident judges are to try cases in the district, the attorneys in the case must notify the clerk and the court reporter at least five (5) days prior to the time of the trial.

### **LR10-007. Vacating cases; notice to clerk.**

Attorneys whose cases are set for trial must immediately notify the clerk of the court if the case is not to be tried.

### **LR10-008. Nonresident counsel.**

Attorneys other than New Mexico attorneys must have New Mexico counsel appear with them.

## **ANNOTATIONS**

**Cross references.** - For appearances by nonadmitted and nonresident counsel, see Rule 1-089.1 NMRA.

### **LR10-009. Attorneys as witnesses.**

Attorneys will not be witnesses on behalf of their own clients in any case in which they appear, except with leave of the court.

## **ANNOTATIONS**

**Cross references.** - For a lawyer as a witness, see Rule 16-307 NMRA.

### **LR10-010. Apparel required.**

Attorneys will not practice in the district court without being fully attired and wearing a coat of some nature, and will stand when examining witnesses or addressing the court in open court. Women who are litigants or witnesses in a case must be fully attired and wearing a dress.

### **LR10-011. No smoking.**

No smoking shall be permitted in any of the courtrooms of the district while court is in session, except by leave of the court.

### **LR10-012. Removal of court files for use in county.**

Court files shall not be removed from the office of the clerk for use in the county without the leaving of a receipt for such file, and such files must be returned within ten (10) days after removal. In no instance should the files be out of the clerk's office on the date of the hearing or day preceding such hearing. No person, other than attorneys, shall withdraw files from the office of the clerk, except abstracters may withdraw such files for the purpose of copying the files for the compiling of abstracts, and for no other purpose. A photocopy machine is available in the district court clerk's office at Tucumcari for the convenience of attorneys, abstracters and other parties who may desire to obtain copies of files. A charge of ten cents (\$.10) per page for copying from court files will be made, or if the clerk makes the copies, the charge will be fifteen cents (\$.15) per page.

### **LR10-013. Removal of court files for use outside county.**

No files shall be removed from the office of the district court clerk for the purpose of being taken out of the county, nor shall any district court clerk or deputy district court clerk send out of the county any file or papers which have been filed in the clerk's office to any person, including attorneys who may represent a party or parties in the pleadings, except when the resident district judge or a judge designated by the resident judge or by the chief justice of the Supreme Court has entered an order permitting the removal of the file or papers out of the county, and containing a provision in the order as to when the papers and files shall be returned to the office of the district court clerk, provided that the clerk or any deputy clerk may send out of the county any files to a nonresident judge who has been designated by the resident judge or the chief justice or has been agreed upon by the parties to try the case after the resident judge is disqualified.

### **LR10-014. Library volumes.**

Library books shall not be removed from the library without leaving a receipt with the clerk of the court and must be returned within a period of ten (10) days after the removal, or the receipt must be renewed.

### **LR10-015. Photographing or televising.**

No photographing or televising shall be permitted in any of the courtrooms of the district court while court is in session, except as may be permitted under Canon of Ethics Number 35 of the New Mexico State Bar.

## **ANNOTATIONS**

**Cross references.** - For the broadcasting, televising, photographing and recording of judicial proceedings, see Rule 23-107 NMRA.

### **LR10-016. Copies to opposing counsel.**

Attorneys who file any pleading or order with the clerk of the court must forthwith send a copy of said pleading or order to opposing counsel or the opposing party or parties and shall file a certificate to this effect. Attorneys who write letters to the judge concerning the setting of case or other matters pertaining to cases on file shall send copies of said letter to opposing counsel or to all other parties in the case if not represented by counsel.

### **LR10-017. Attorney fees.**

All parties applying to the court for attorney fees in any case shall be required to present the file to the court along with filed written justification for the fees.

### **LR10-018. Jury instructions.**

In all cases to be tried to a jury, counsel for the respective parties shall submit to the court typewritten instructions on unlined, legal size bond paper at least ten (10) days before the date set for the trial of the case. The original and one copy of the requested instructions shall be submitted to the court, and the original shall contain no numbering or indication of the party submitting it or any citation of authorities or any matter whatsoever except the requested instruction. The copy of the requested instruction may contain citation of authorities as well as citation of UJI number, if applicable. The copy will also contain at the bottom of the page the following words:

Given

\_\_\_\_\_  
District Judge  
Refused

\_\_\_\_\_  
District Judge

### **ANNOTATIONS**

**Cross references.** - For instructions to the jury, see Rule 1-051 NMRA and Rule 5-608 NMRA.

### **LR10-019. Jury trials; jury fees.**

Jury trial of right is governed by Rule 1-038 NMRA of the Rules of Civil Procedure for the District Courts, as well as all applicable statutes and decisions of the appellate or Supreme Court. Jury fees, once deposited, will not be refunded or returned; if the case

is not tried, and the fee not used, it shall be placed in the general court fund of the state or disposed of in some legal manner as the district court may direct.

### **LR10-020. Requested findings and conclusions.**

In trials without a jury, the original of requested findings of fact and requested conclusions of law shall be filed with the clerk of the court by the party intending to appeal within ten (10) days after final hearing unless a different time is ordered by the court, and the party not intending to appeal or intending only to cross appeal shall file with the clerk of the court the original of his requested findings of fact and requested conclusions of law within seven (7) days after he has been served with a copy of the requested findings and conclusions filed by the party intending to appeal. Any party or counsel for any party filing requested findings of fact and requested conclusions of law with the clerk shall immediately serve or mail copies thereof to the trial judge and opposing counsel.

### **ANNOTATIONS**

**Cross references.** - For requested findings of fact and conclusions of law, see Rule 1-052 NMRA.

### **LR10-021. Affidavit of disqualification.**

Affidavits of disqualification against the resident judge shall be filed in duplicate so that the clerk may forward a duplicate copy to the chief justice of the Supreme Court. The party disqualifying the judge, or the party's counsel, upon mailing the affidavit of disqualification in duplicate to the clerk of the court, shall also mail a signed affidavit to the judge being disqualified.

### **LR10-022. Interpreter.**

In any case when an interpreter will be needed for the hearing or trial, counsel who desires to have an interpreter shall notify the court at least two (2) days before the hearing or trial date.

### **LR10-023. Vacating cases; court approval required.**

The setting of cases shall not be vacated without the approval of the court. Attorneys desiring to vacate a setting must present a legitimate reason therefor and must notify the court and all attorneys in the case within a reasonable time prior to date of trial of the intention to vacate the setting. If it becomes necessary for the court of its own motion to vacate a setting, notice of such vacation will be given to all attorneys immediately upon vacation of the setting being made so that request for an early re-setting may be made by any of the attorneys or parties.

## **LR10-024. Appointment of special masters, guardians, receivers and counsel.**

Special masters, guardians ad litem, receivers and attorneys to represent military defendants, alleged mentally ill persons, and indigents charged with criminal offenses will be appointed by order of the court.

## **LR10-025. Voir dire examinations.**

On *voir dire*, attorneys will not be permitted to argue the case to the jury or ask any juror's attitude toward an anticipated instruction or ask what the verdict of the prospective juror or jurors may be under a hypothetical situation, and questions that can be asked collectively of the jury should not be asked individually.

## **LR10-026. Offices of district judge.**

The offices of the district judge shall be located at the courthouse in each county of the district.

## **LR10-027. Court terms.**

The district court shall always be in session in the Tenth Judicial District. The regular terms of the district court in the Tenth Judicial District shall be held as follows:

**QUAY COUNTY** commencing on the first Tuesday in March and the fourth Tuesday in August;

**DE BACA COUNTY** commencing on the second Tuesday in February and the second Tuesday in August;

**HARDING COUNTY** commencing on the first Tuesday in June and the second Tuesday in January.

Every term of court continues until the next regular term commences. If, for any reason, a district judge is prevented from attending a regular term of the district court on the first day in any county or if, for any reason, said district judge does not attend a regular term of the district court on the first day in any county, such failure to attend shall not affect any proceedings or any pending matters or cases. All bonds and recognizance shall be returnable on the first day of the district court term in the applicable county or on such day as may be stated in the bond or recognizance or on such day as may be fixed by order of the court. A case filed in the district court after the first day of the term may be tried at any time during said term or after said term expires.

[Adopted June, 13, 1969, as amended, effective July 1, 1969.]

### **LR10-028. Pleadings.**

All pleadings to be filed with the clerk shall have a blank space at least 2 1/2" by 2 1/2" in size in the upper right-hand corner of the first page of the pleading for the clerk's recording stamp.

#### **ANNOTATIONS**

**Cross references.** - For form of papers, see Rule 1-100 NMRA and Rule 5-118 NMRA.

### **LR10-029. Defense of failure to state claim.**

When a defense of failure to state a claim upon which relief can be granted is raised, the motion or pleading raising the defense shall state the grounds therefor with particularity; otherwise, such defense may be subject to a motion to strike the pleading.

#### **ANNOTATIONS**

**Cross references.** - For defenses and objections of pleadings, see Rule 1-012 NMRA.

### **LR10-030. Appearance does not extend time to plead effective.**

When any party to an action has been properly served with process, an oral appearance on the record or a written appearance in the case by such party or the party's counsel shall not be considered as enlarging the time in which a responsive or other appropriate pleading may be filed by or for such party as provided by the Rules of Civil Procedure for the District Courts.

### **LR10-031. Adoption; application for birth record.**

Within five (5) days after the filing of the judgment of adoption, counsel for the petitioners or the petitioners shall have prepared an application for a birth record in the new name of the adopted individual on a form complying substantially with the form in the office of the state registrar of the vital statistics bureau. The application shall be transmitted to the state registrar of the vital statistics bureau.

[Adopted, November 5, 1971.]

### **LR10-032. Order or judgment and sentence; criminal matters.**

In all criminal matters, the attorney representing the successful party shall submit to the court within ten (10) days an order or judgment and sentence consistent with the ruling or finding of the court or with any jury verdict. In computing the period of time prescribed by this rule, Rule 5-104 NMRA of the Rules of Criminal Procedure for the District Courts is applicable.

[Adopted, February 12, 1969.]

### **LR10-033. Deleted.**

Deleted.

#### **ANNOTATIONS**

**Compiler's notes.** - The New Mexico Supreme Court entered an order effective November 1, 2000 provisionally approving statewide domestic relations rules and forms. That order provided that the "statewide rules and forms supersede all local domestic rules and forms". See 1-120 to 1-127 NMRA and 4A-111 to 4A-132 NMRA for the Supreme Court statewide domestic relations rules and forms.

### **LR10-034. Dismissals; civil cases.**

In all civil cases in which no action appears to have been taken upon examination of the court file for the past one (1) year, the court may in its discretion dismiss the same without prejudice without prior notice or hearing.

[Adopted February 12, 1969.]

#### **ANNOTATIONS**

**Cross references.** - For dismissal by the court in 180 days for failure of the parties to take action, see Rule 1-041(E)(2) NMRA.

### **LR10-035. Fees.**

A. Pursuant to Section 34-6-40 NMSA 1978, a filing fee of eighty-two dollars (\$82.00) shall be charged by the clerk in all new or re-opened civil cases.

B. A surcharge of thirty dollars (\$30.00) may be charged in domestic relations cases adopting a mediation procedure by separate rule pursuant to Section 40-12-4 NMSA 1978.

C. An arbitration user fee of fifty dollars (\$50.00) may also be charged any party referred to arbitration provided by an arbitration program established by separate rule approved by the Supreme Court pursuant to Section 34-6-44 NMSA 1978.

D. For the purpose of fee collection, a newly filed case is any first pleading commencing a civil action, under Rule 1-003 NMRA of the Rules of Civil Procedure for the District Court or an appeal or transfer from any inferior court not exempted by statute from such fee.

E. For the purpose of fee collection, a reopened case is:



(1) any pleading filed which seeks the alteration, change, amendment or relief from a judgment filed after that judgment is final;

(2) any pleading filed more than six (6) months from the date a judgment is final which seeks to enforce the terms of that judgment;

(3) a judgment is final upon expiration of the time for appeal, or upon entry of a judgment on a mandate after appeal.

F. The court may waive the 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 fee from a non-indigent losing party.

[Adopted, effective November 30, 1987.]

### **ANNOTATIONS**

**Cross references.** - For the "alternative dispute resolution fee", see 34-6-45 NMSA 1978.

For domestic relations mediation fees, see 40-12-6 NMSA 1978.

For definition of a "re-opened" case, see Rule 1-099 NMRA.

### **LR10-036. Deleted.**

Deleted.

### **ANNOTATIONS**

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### **LR10-Form A. Deleted.**

Deleted.

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