

# RULES OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

**Revised November 13, 1990**

## **LR5-101. Divisions of court.**

For the purpose of identifying the judicial positions, the district shall be divided into eight divisions. The judges of divisions I and V shall reside in Eddy county; the judges of divisions II, VI and VIII shall reside in Chaves county, and the judges of divisions III, IV and VII shall reside in Lea county. The foregoing divisions are made pursuant to the provisions of Section 34-6-18 NMSA 1978.

[Approved, effective, April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, substituted "eight" for "seven" at the end of the first sentence. In the last sentence, deleted "34-6-17 and" preceding "34-6-18 NMSA 1978."

## **LR5-102. Chief judge.**

Beginning in 1998, every third year in the month of May, the district judges of the fifth judicial district shall, by a majority vote, elect the chief judge. In the event of a vacancy in the office of the chief judge, the district judges shall, by majority vote, elect one of their number to serve for the remainder of the term. All administrative matters of the district shall be accomplished by the chief judge through the district court administrator's office in Roswell, New Mexico.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-103 as LR5-102 and rewrote the first sentence.

## **LR5-103. Terms of court.**

Pursuant to the provisions of Section 34-6-2 NMSA 1978, the regular terms of the district court shall be held and commenced as follows:

CHAVES COUNTY, commencing on the second Monday of January, April, July and October;

EDDY COUNTY, commencing on the second Monday of February, May, August and November;

LEA COUNTY, commencing on the second Monday of March, June, September and December.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-104 as LR5-103.

#### **LR5-104. Disqualification; designation of judges.**

Pursuant to Rule 1-088 of the Rules of Civil Procedure for the District Courts and Rule 5-105 of the Rules of Criminal Procedure for the District Courts, in the event of recusal or excusal of an assigned district judge, the clerk of the district court shall immediately randomly assign the case to another district judge who resides in the county in order that at all times a district judge will be assigned to a pending case. Counsel for all parties will have ten (10) days in which to agree upon a district judge to hear the case, and if that district judge so agrees, the clerk of the district court shall reassign the case to that district judge.

If all district judges who reside in the county have been excused or recused, and counsel for all parties fail to agree upon another district judge to hear the case, the clerk of the district court in the county in which the case is pending shall randomly assign a district judge of another division in in the district to hear the case.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-106 as LR5-104 and rewrote the rule.

#### **LR5-105. Default and motion days.**

A. Default and motion days in each county must be obtained by the attorney from the clerk of district court or the assigned judge's trial court administrative assistant.

B. The clerk of the district court or the assigned judge's trial court administrative assistant is directed to provide the court with a calendar showing all defaults, motions, and arraignments which are set for hearing, pursuant to this rule. The attorneys shall provide the clerk with notice of defaults to be heard prior to noon on the second to last court day preceding the scheduled default day.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-107 as LR5-105. In Paragraph A, added "or the assigned judge's trial court administrative assistant at the end. In Paragraph B, deleted "judge's secretary" following "district court or", "legal defenses" following "motions,", added "second to" preceding "last court date"; and deleted Paragraph C. For former LR5-105 relating to "assignment of cases" see the 1999 Court Rules Edition Volume 2.

#### **LR5-106. Local rule exemption to Rule 1-016(B) of the Rules of Civil Procedure for the District Courts; pretrial scheduling.**

All civil non-jury cases shall be exempt from any pretrial scheduling unless one of the attorneys involved files a request for scheduling of the case or the judge orders a scheduling conference. Such request shall be filed upon the attorney's certification that scheduling is necessary.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-108 as LR5-106 and rewrote the rule.

#### **LR5-107. Action by more than one judge.**

A district judge shall not act in any civil case within the district in which any other judge of the district has acted in a discretionary manner without prior consent of such judge and consent of all parties to the action.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-111 as LR5-107 and deleted the second sentence in the first paragraph and the last paragraph.

#### **LR5-108. Dress requirements.**

Attorneys and employees of the district court shall wear dresses, dress suits, dress slack suits, dress slacks, sport or suit coats and ties while attending or appearing before the court, unless some physical reason prevents the wearing of such articles. Jean-style pants, denim pants or other similar pants shall not be worn.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-112 as LR5-108; rewrote the rule and made gender neutral changes.

#### **LR5-109. Local rules advisory committee.**

The chief judge may appoint a local rules advisory committee consisting of members of the New Mexico State Bar who practice law in Chaves, Lea and Eddy counties. Appointments shall be made upon advice of the president of each county bar association.

The duties of the local rules advisory committee will include:

A. review of local rules to determine that they are in compliance with New Mexico Rules of Civil and Criminal Procedure;

B. review of proposed local rules;

C. initiation of proposals for local rules as needed.

This committee will meet upon the request of the chief judge or as is reasonable.

A representative or representatives of the committee will attend the district judge's meeting when necessary to present the committee's view of existing or proposed rules.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-115 as LR5-109; in the first undesignated paragraph, deleted "composed of a workable number of" preceding "members", and substituted "upon the request of the chief judge or as is reasonable" for "bi-monthly" in the undesignated paragraph following Subparagraph C.

#### **LR5-201. Requested findings of fact and conclusions of law.**

When requested by the judge, findings of fact and conclusions of law shall be submitted within twenty (20) days after such submission is ordered by the court unless a longer period is granted. The original of the requested findings of fact and conclusions of law shall be filed with the clerk of the court, and a copy thereof shall be delivered to the judge by counsel.

[Approved, effective April 1, 1999.]

## ANNOTATIONS

**The 1999 amendment**, effective April 1, 1999, added "and conclusions of law" in the rule heading and substituted "judge by counsel" for "or the judge's secretary" at the end of the second sentence.

### **LR5-202. Orders, decrees and judgments.**

A. **Filing.** Orders and judgments shall be separately filed and shall not be included as part of any pleading.

B. **Date of execution.** Orders and judgments shall not be dated nor shall they show the place of execution. The date of filing and of entry shall be the same in all cases and shall be shown by the clerk's stamp and record unless filed in open court.

C. **Submission to the court.** Orders, decrees and judgments shall be submitted to the clerk of the district court or the assigned judge's trial court administrative assistant for delivery to the trial judge unless the case is assigned to an out-of-county or out-of-district judge, in which case the document shall be submitted to the trial judge or the judge's trial court administrative assistant. Orders, decrees and judgments should be submitted not later than fifteen (15) days following the announcement of the court's decision unless otherwise ordered. The prevailing party shall be responsible for such filing. Orders and judgments will not be signed by the judge unless they have been initialed by attorneys for all parties to the cause or pro se parties. Should the attorney for any party fail or refuse to so initial a proposed order or judgment within five (5) working days, the attorney submitting the proposed order shall certify to the court that opposing counsel or pro se party has failed or refused to initial the same.

Cases which have multiple defendants and are ready for a partial closing against one or more defendants will not be signed by the judge unless the title of the judgment or order specifies the name of the defendant or defendants to whom the judgment or order applies that relief is being entered against.

D. **Filing with clerk.** Every order, judgment or other instrument signed by the court shall be immediately delivered to the clerk for filing. No order or judgment will be taken from the courthouse after it has been signed.

E. **Notice of entry of judgment to opposing parties.** In all contested civil cases, attorneys for the parties who wish notice of entry of judgment, shall send a notice of entry of judgment form (LR5-FORM D) and a stamped, self-addressed envelope to the clerk of the district court. The clerk of the district court shall enter the date of entry of judgment and mail the notice to all attorneys or parties who have complied with this rule.

[Approved, effective April 1, 1999.]

## ANNOTATIONS

**The 1999 amendment**, effective April 1, 1999, rewrote Paragraph C and added Paragraph E.

### **LR5-203. Judgment based on written instrument.**

A default judgment based on a written instrument shall be accompanied by the instrument which shall be filed as an exhibit in the case at the time the judgment is entered. The instrument may be returned to the filing party only as is done in case of other exhibits. The substitution by a copy of the instrument shall be appropriately marked as having been merged into the judgment and shall show the docket number of the action.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, at the beginning of the first sentence, added "A default" preceding "judgment"; substituted "the" for "said" preceding "instrument"; in the second sentence, substituted "The" for "Said" at the beginning; and substituted "the" for "said" preceding "instrument".

### **LR5-204. Certificates as to the state of the record.**

Certificates as to the state of the record (default certificates) are not automatically entered or prepared by the clerk. Attorneys should submit a prepared certificate as to the state of the record to the clerk for signature and filing. A duplicate copy must be furnished if the attorney wishes an endorsed copy.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-205 as LR5-204.

### **LR5-205. Settlement conference.**

A. Pursuant to Rule 1-016 NMRA, a settlement conference may be conducted by a judge of this district who is not assigned to the case, a judge pro tem, or a member of the bar who is acceptable to both parties. A settlement conference will be ordered if the trial judge deems it to be appropriate or after agreement by counsel that such a conference may result in a settlement of some or all of the issues in the case. If the conference is assigned to a judge pro tem or lawyer, the parties will arrange directly with the judge pro tem or lawyer for the payment of the hourly fee and expenses.

B. Upon a settlement conference being ordered, the trial judge or the settlement conference judge may enter a settlement conference order. All parties shall participate

at the settlement conference in good faith and sanctions shall be imposed if the settlement conference judge finds that a party has not participated in good faith in the settlement conference, and the trial judge adopts the findings made by the settlement conference judge.

C. The judge or lawyer hearing such settlement conference is expected to promote a settlement, and will be an active participant in the conference. The judge may ask questions of counsel regarding testimony they expect to elicit and may state the judge's opinion of the strength or weakness of any position taken by either or both parties.

D. The initial step following the entry of a settlement conference order prior to the actual mediation will be submission by both parties to the judge hearing the settlement conference of short confidential written statements of fact with the applicable law supporting those contentions from each side. This submission should be a statement of what the lawsuit is about and why each side believes they should prevail. The statement should clearly set out the issues to be determined by the jury, e.g. liability (including statement of facts) damages (medical expenses, etc.). The statements should contain frank and realistic appraisals of the strengths and weaknesses of both positions, and the settlement value of the lawsuit. This may be a statement of a range or other requested relief. The statement shall also include the parties' last offer of settlement.

E. When the settlement conference is held, each party, together with his or her attorney, shall appear. If one of the parties has insurance coverage, a representative of the insurance company shall be present for the settlement conference, unless the settlement conference judge allows the representative to be present by telephone. Each side must have settlement authority.

F. The first discussion in the settlement conference hearing will be a short statement by counsel of the lawsuit. All parties and counsel will be present at this stage.

G. Each side may address the strengths and weaknesses of the other side's case. These statements may include discussions of testimony which is expected from the witnesses on either side of the case.

H. Then the judge will excuse defense counsel and the defendant and confer with the plaintiff and plaintiff's counsel. The judge will discuss with the plaintiff, the costs of further litigation and give a frank appraisal of the judge's opinion of the strengths and weaknesses of the plaintiff's case, including the judge's appraisal of the value of the lawsuit. The judge will excuse the plaintiff and counsel, and confer with the defendant and defense counsel. The same procedure will be followed.

I. Thereafter the judge will continue alternate meetings with the parties until such time as the judge is satisfied that no further progress toward settlement can be made or that the case has been settled.

J. With all parties present, the judge will address what the judge believes to be the strengths and weaknesses of each side of the case, and state the judge's opinion of the lawsuit, and what a fair settlement would be. The parties will be allowed to confer with each other to see if an agreement can be reached.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-206 as LR5-205 and rewrote the rule.

#### **LR5-206. Motions and exhibits.**

A. Except for motions filed under Rule 1-056 NMRA, the page limit for briefs shall be fifteen (15) pages. Briefs filed under Rule 1-056 NMRA shall not exceed twenty-five (25) pages in length. These page limits may be exceeded with leave of the court.

B. All exhibits or other submissions to the court with a motion shall be provided to opposing counsel in the same form as they are provided to the court.

[Approved, effective April 1, 1999.]

#### **LR5-301. [Reserved.]**

#### **LR5-401. Written interrogatories.**

A. **Limit.** No more than twenty-five (25) interrogatories per set and only two sets of interrogatories per party, for a total of fifty (50) interrogatories per party may be served without leave of the court. Each sub-part shall be considered an interrogatory.

B. **Supplemental interrogatories.** Subject to the provisions of Rules 1-026 and 1-033, supplemental interrogatories seeking disclosure of witness and exhibits shall be supplemented no less than thirty (30) days before trial.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, added the bold catchline to Paragraphs A and B; and rewrote the rule.

#### **LR5-501. Domestic relations; dissolution of marriage, legal separation; provisions for children.**



A. All petitions for dissolution of marriage, petitions for legal separation, or any action affecting paternity, child custody, enforcement of child support or spousal support shall contain the following:

(1) the social security number of the petitioner;

(2) the dates of birth and social security numbers of all minor children;

(3) in all cases where there are minor children, an appropriate monthly child support obligation worksheet table A or B based on the best information available to the petitioner shall be attached as an exhibit to the petition. The temporary domestic order shall set temporary child support based on the petition and worksheet.

B. The answer shall contain the social security number of the respondent.

Unless an answer and child support worksheet is filed contravening the petitioner's child support worksheet, the temporary child support shall be set pending a final order.

In the event the answer contravenes the child support calculation filed by the petitioner, a hearing shall be set within thirty (30) days to determine child support pendente lite.

C. No decree of dissolution of marriage or legal separation shall be granted in any proceeding in which a respondent enters an appearance when minor children may be affected by the decree unless the petitioner and respondent agree in writing to a child custody and visitation plan or a parenting plan if the parents have chosen to share joint custody of the children.

[Approved, effective April 1, 1999.]

## ANNOTATIONS

**Cross references.** - For domestic relations mediation program, see 40-12-5 NMSA 1978.

**The 1999 amendment**, effective April 1, 1999, rewrote the rule.

### **LR5-502. Domestic relations; interim relief.**

In actions for dissolution of marriage or proceedings under Section 40-4-3 NMSA 1978, the following matters will control:

#### **A. Temporary domestic order.**

(1) At such time that a petitioner files an action for dissolution of marriage or proceedings under Section 40-4-3 NMSA 1978, the clerk of the district court shall issue a temporary domestic order (TDO), which shall be provided by the district court, (LR5-

FORM A), and the parties shall comply with the requirements thereof. Petitioner shall receive a copy of the TDO from their counsel at such time as the petition is filed. It is the responsibility of counsel, or petitioner, if *pro se*, to cause the order to be served on the respondent and to file an affidavit of service.

(2) The TDO shall take effect at such time as the petition and TDO are served upon the respondent or upon respondent's counsel, unless the parties had agreed otherwise and set such agreement in writing.

#### **B. Ex parte application for special TDO.**

(1) If a party requires a more specialized order than the form provided, the party may file an ex parte application with the court for a TDO. The party requesting such ex parte order must be present in court and deliver to the court their affidavit containing specific facts, including dates and incidents, which support the circumstances required for the issuance of the order. The provisions of Rule 1-066 NMRA shall be strictly adhered to.

(2) A copy of the order and supporting documents shall be served upon the opposite party and their attorney as soon as practicable. A party against whom such an order is issued may request a hearing within two (2) days of service. The court shall notify counsel for both parties of the date and time set for such hearing and both parties shall appear at that time.

(3) No ex parte order to vacate the marital residence shall be issued against a party except where:

(a) there is immediate danger as to physical harm from the other party; or

(b) there are minor children and moving from the residence would impose a material hardship on the party seeking the order.

(4) No ex parte custody and visitation order shall be issued unless a child is in immediate physical danger, is in danger of being concealed or is in danger of being removed from the court's jurisdiction.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, deleted "pendente lite" in the undesignated paragraph; in Subparagraph A(1), substituted "(LR5-FORM A), and the parties shall comply with the requirements thereof" for "complying with the requirements of the form attached hereto. (LR5-FORM A)"; in Subparagraph B(1), substituted "the party" for "they".

**LR5-503. Domestic relations; community assets and debts.**

A. In all actions for dissolution of marriage, separation or division of community property the following will control:

(1) No later than sixty (60) days after the filing of the answer or entry of appearance on behalf of the respondent, whichever occurs first, the petitioner shall prepare, serve on respondent and file with the court a list of all community assets and debts and a list of all claimed separate property, including its current valuation; and

(2) No later than thirty (30) days from the date of the filing of petitioner's list or ninety (90) days after the filing of the answer or entry of appearance on behalf of the respondent, whichever occurs first, the respondent shall prepare, serve on petitioner and file with the court a list of all community assets and debts and a list of all claimed separate property, including its current valuation and any objections to the classification or valuation of any items on petitioner's list.

B. Should the alleged value of any contested item exceed five hundred (\$500.00) dollars the following will control:

(1) The item shall be appraised by an appraiser mutually selected by the parties with the cost of such appraisal borne by the community. If the parties are unable to agree on an appraiser, either may move the court to appoint an appraiser; and

(2) Any appraisal performed shall be filed with the court and shall be considered by the court along with all other evidence in the action.

C. In the event either party fails to comply with this rule, the list filed by the opposing party shall be deemed conclusive as to the extent and value of the community assets.

D. In the event that neither party complies with this rule, the court may order a dispositional sale of the community estate and subsequent division of the proceeds.

[Approved, effective April 1, 1999.]

## **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, rewrote the rule.

### **LR5-504. Domestic relations; mediation.**

The fifth judicial district court shall provide a domestic relations mediation program in Chaves, Eddy and Lea counties to assist the court, parents and other interested parties in determining the best interest of children involved in domestic relations cases.

**A. To effect the program.** A thirty dollar (\$30.00) surcharge will be collected in Chaves, Eddy and Lea counties for all new and reopened domestic relations cases except in actions to enforce previously ordered child support.

## **B. Payments from mediation fund.**

(1) **Mediation fees.** Mediators shall be paid fifty dollars (\$50.00) per hour, not to exceed three hundred fifty dollars (\$350.00) plus gross receipts tax. (Seven hours) The court may order additional mediation not to exceed five hours. The court may order additional mediation or counseling upon showing of good cause.

(2) **Other.** Money in the fund may be used to offset the cost of operating the domestic relations mediation program on written order of the chief judge.

**C. Contact with mediator.** When a case has been ordered to mediation by the court, neither attorney shall individually contact the mediator regarding the case or attempt to influence the outcome of the mediation.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**Cross references.** - For the tables referred to in this rule, see Section 40-4-11.1 NMSA 1978.

**The 1999 amendment,** effective April 1, 1999, rewrote the rule.

## **LR5-505. Domestic relations; personal appearance.**

No divorce shall be granted without the personal appearance and testimony of the party asking relief except in cases wherein depositions or telephone testimony are authorized by the district judge or rules of the court.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment,** effective April 1, 1999, renumbered LR5-503 as LR5-505; substituted "Domestic relations; personal appearance" for "Personal appearance; divorce" in the rule heading.

## **LR5-506. Domestic relations; dismissal for lack of prosecution.**

All domestic relations cases in which no action appears to have been taken to bring the case to a conclusion within one hundred eighty (180) days may be dismissed by the court.

The clerk shall mail a copy of the order of dismissal to all counsel and a certificate of mailing shall be placed in the file.

Cases dismissed by the court may be reinstated upon the docket of the court upon application being made within thirty (30) days of the order of dismissal.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-505 as LR5-506; and changed the time frame for dismissal for nonaction from 120 days to 180 days.

#### **LR5-507. Domestic relations; re-opened cases.**

A case is re-opened upon the filing of an order to show cause or a motion to modify a final decree or judgment. Counsel must subsequently file a vacating order if the order to show cause was not heard, or file a final order on the court's determination after a hearing on modification of a final decree or judgment.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-506 as LR5-507.

#### **LR5-508. Adoption; new birth certificate.**

Within five (5) days after the filing of a judgment of adoption, counsel for the petitioners shall prepare a form VSB909 of the vital statistics bureau of health services division, and upon certification by the clerk of the district court, shall forward it to Children, Youth and Families Department, Adoptions Unit, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-507 as LR5-508; substituted "prepare" for "have prepared a birth certificate in the new name of the adopted individual on", added "of the district court" following "clerk"; and made corrections to the Adoptions Unit address.

#### **LR5-601. Jury fees, filing fees and other fees.**

A. No jury deposits, filing fees or other fees collected by the clerk will be refunded.

B. Fees are to be paid to the clerk by attorney firm checks, cash, money order or certified check. No personal checks shall be accepted.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, deleted former Paragraph B and redesignated Paragraph C as Paragraph B.

#### **LR5-602. District court clerk trust account; court registry.**

A. Except as provided by statute or court rule, the clerk shall not make any disbursement or accept any actual tender of property or money unless pursuant to court order.

B. The clerk shall not accept payment of judgments, money in garnishment or restitution in criminal cases unless required by statute, Supreme Court rule or by court order.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-603 as LR5-602; and combined present Paragraphs B and C as Paragraph B.

#### **LR5-701. Motions; settings.**

At the time of the filing of a motion, movant shall either file a request for hearing (LR5-FORM B) or a notice of hearing (LR5-FORM C) on the motion. If a request for hearing is filed, the movant shall furnish the clerk of the district court with a notice of hearing form reflecting the style, caption and number of the case. The clerk of the district court shall deliver the file and the notice of hearing form to the trial court administrative assistant who shall complete the notice of hearing setting forth the date, time and place of the hearing, file the original notice of hearing in the clerk's office, place the motion on the court's docket for hearing and mail a copy to the movant's attorney.

The movant's attorney shall serve notice of hearing on all persons entitled to notice at least five (5) working days before the scheduled hearing.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, rewrote the rule.

#### **LR5-702. Motion for default in multi-party cases.**

In cases where there are multiple parties, a motion for default must specify the party or parties to whom the default motion applies.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, added "In cases where there are multiple parties," at the beginning of the paragraph, and deleted "in cases where multiple parties are involved" at the end of the rule.

#### **LR5-703. Motions to vacate and continue trial settings.**

All motions to vacate and continue trial settings for civil cases set on the merits shall be filed not less than ten (10) working days prior to trial, state the reason and must be approved by the party litigant as well as the attorney. No motion to vacate and continue a trial setting will be considered or granted in the absence of good cause and in the absence of the signature of the party litigant.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, added "be filed not less than ten (10) working days prior to trial" following "merits shall be" near the end of the first sentence.

#### **LR5-801. Mailing and endorsement of pleadings.**

A. **Mailing of pleadings.** Copies of papers or pleadings will not be returned to attorneys by mail unless accompanied by a self-addressed envelope with sufficient postage to carry them to their destination.

B. **Endorsed copies of pleadings.** Only one (1) copy of each civil pleading will be presented to the clerk for endorsement.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-803 as LR5-801; in Paragraph B, deleted "endorsed" preceding "copy"; and deleted "made by the clerk. A duplicate copy must be" preceding "presented".

#### **LR5-802. Pleadings; corporations.**

A. **Counsel required.** Unless otherwise provided by rule or law, the clerk of the court will not accept the filing of pleadings by corporations unless such organizations are represented by counsel.

B. **Exceptions.** An exception to this rule shall be made when a corporation:

(1) is a party to an appeal from the magistrate court;

(2) files a disclaimer of any interest in the proceeding when suit has been brought against it in district court; or

(3) through an officer, director or general manager answers a writ of garnishment.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-804 as LR5-802, and rewrote the rule.

#### **LR5-803. Removal of court files.**

Court files shall not be removed from the office of the district court clerk except by court personnel.

Attorneys, abstractors and other persons may have the court files, except for sequestered and sealed files, reproduced at their own expense.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, rewrote the rule.

#### **LR5-901. Appearance of counsel.**

Whenever counsel undertakes to participate in a civil case, counsel shall file a written entry of appearance in the cause, except that the filing of any signed pleading in the cause will be considered as compliance with this rule.

[Approved, effective April 1, 1999.]

#### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, substituted "counsel" for "in behalf of a party thereto, whether civil or criminal, he" in the middle of the paragraph.



## **LR5-902. Dismissals for lack of prosecution.**

A. **Dismissals without prejudice.** All cases, other than domestic relations cases, may be dismissed by the court without prejudice if an examination of the file, case status report or docket sheet reveals that:

- (1) the case has been tried and no judgment or order was entered within a reasonable time;
- (2) counsel has indicated that the case has been settled or should be dismissed and no order has been entered within a reasonable time;
- (3) there remains no justiciable issue for consideration of the court; or
- (4) there has been a lack of prosecution for a six (6) month period in a case not subject to a pre-trial scheduling order entered pursuant to Rule 1-016 NMRA.

B. **Notice of dismissal.** The clerk shall mail a copy of the order of dismissal to all counsel.

### **C. Reinstatement.**

- (1) Cases dismissed without prejudice by the court may be reinstated upon application being made within thirty (30) days after service of the order of dismissal.
- (2) In reinstated cases, the court shall enter a pre-trial scheduling order pursuant to Rule 1-016 NMRA.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-903 as LR5-902; redesignated the paragraphs; in present Subparagraph A(4), substituted "case" for "cases"; and in present Subparagraph C(2), substituted "NMRA 1997, Rule 1-016" for "Rule 1-016 NMRA".

## **LR5-903. Uncontested matters; appearance and waiver.**

When an appearance and waiver reflecting the acceptance of service of a copy of the complaint is to be filed in an uncontested matter, such pleading shall be signed and dated at least one (1) day after the filing of the complaint.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-904 as LR5-903.

### **LR5-1001. Duplicating of tapes.**

A. Ten (10) working days notice must be given to the clerk by anyone requesting the duplication of tapes filed in the clerk's office. In the case of an emergency, the ten (10) day requirement shall be waived by court order only.

B. The district attorney's office and the public defender's office must furnish the clerk of the district court with sufficient blank tapes for the duplication of tapes filed in the clerk's office.

C. Only one set of tapes per party will be reproduced without a court order showing good cause. A record will be made of the tapes duplicated and a receipt given by the receiving party.

D. Non-indigent persons must pay four dollars (\$4.00) per tape for the reproduction of tapes plus any certification fees.

E. Any subpoena duces tecum used to circumvent the time limits of this rule shall issue only upon order of a district judge for emergency reasons only.

F. This rule does not apply to the reproduction of tapes for the appellate courts or grand jury proceedings.

[Approved, effective April 1, 1999.]

### **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-1002 as LR5-1001; in Paragraph A, substituted "duplication" for "reproduction" preceding "of tapes"; in Paragraph B, substituted "duplication of tapes filed in the clerk's office" for "reproduction"; in Paragraph C, substituted "Only one set of tapes per party" for "No more than two tapes (except for preliminary hearing tapes); deleted Paragraph E and redesignated Paragraphs F and G as Paragraphs E and F; in present Paragraph F, added "or grand jury proceedings" at the end.

### **LR5-1002. Audio recording (tapes) free process; civil cases.**

In all civil cases where the court allows free process, the record of the hearing shall be by audio recording (tape).

The clerk shall stamp the file "free process".

[Approved, effective April 1, 1999.]

## **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-1003 as LR5-1002.

### **LR5-1003. Interpreters.**

In criminal and children's court cases it shall be the duty of an attorney representing any non-English speaking party or who calls a non-English speaking witness or needs a sign language interpreter to promptly and diligently inquire into and ascertain such matter and when known to counsel to immediately advise the district court clerk's office and the assigned judge before whom the case is pending of such fact and of the need for an interpreter, but in no event not less than five (5) working days prior to the time of hearing or trial before the court so that adequate arrangements can be made for the presence of a qualified interpreter.

[Approved, effective April 1, 1999.]

## **ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, renumbered LR5-1004 as LR5-1003; deleted the first paragraph; substituted "non-English speaking witness or needs a sign language interpreter" for "who does not speak the English language"; and substituted "interpreter, but in no event" for "for a specific language"; and deleted the last paragraph.

### **LR5-1004. Interviewing, examining and questioning jurors.**

No attorney or any party to an action or any other person shall personally or through any investigator or other person acting for an attorney or party, interview, examine or question any juror either in person or in writing during the juror's term of jury service to the court, except with the prior permission of the court granted by the trial judge upon good cause shown.

[Approved, effective April 1, 1999.]

### **LR5-1005. Violation of local rules.**

Violations of any of these rules may result in sanctions.

[Approved, effective April 1, 1999.]

### **LR5-Form A. Temporary domestic order.**

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
FIFTH JUDICIAL DISTRICT COURT

\_\_\_\_\_,  
Petitioner,  
vs.

No. DR-

\_\_\_\_\_  
Respondent.

**TEMPORARY DOMESTIC ORDER**

**THIS MATTER** comes before the court upon the filing of a petition for dissolution of marriage, or a petition for legal separation, pursuant to Section 40-4-1 NMSA 1978. The court, being fully advised, finds that it is in the best interests of the parties and any children of the parties to issue this order automatically upon the filing of the petition.

**IT IS THEREFORE ORDERED:**

1. The terms of this order will govern the relations and conduct between the parties, until further order of this court, or unless there is an order entered in a domestic violence case between the parties. If there is a domestic violence case between the parties, the order entered in that case will supersede any provisions contained in this order that are inconsistent therewith.

2. That neither party shall threaten, intimidate, harass, molest, injure, or mentally or physically abuse the other party or any children of the parties.

3. That neither party shall remove, cause to remove, or allow the removal of any minor children of the marriage from the State of New Mexico without the written consent of the other party.

4. If there are minor children, the non-custodial parent shall continue to have contact and communication with the children personally and by telephone. The non-custodial parent shall have reasonable visitation including, but not limited to, two weekends per month. If the parties cannot agree on a time-sharing arrangement during the pendency of this case, the court will establish a time-sharing arrangement at a hearing on a motion for interim relief.

5. That the parties shall keep each other informed at all times of the whereabouts of the children, a telephone number where the children may be reached, and of any factors which bear upon the minor children's physical and mental well being.

6. That the non-custodial parent shall have telephone access with the children if calls are made at reasonable times and in a reasonable manner.

7. That neither party shall interfere with the parent-child relationship of the other party and any children.

8. That neither party shall become intoxicated on alcohol or any controlled substance in the presence of the children.

9. That each party who has medical and dental insurance coverage in effect on the spouse and/or children shall keep that coverage in effect.

10. That each party shall be responsible for one-half of the medical and dental expenses for any minor children not covered by insurance.

11. That each party shall maintain in full force and effect any existing insurance on the party's life, and shall not change the beneficiary or beneficiaries of said policy or policies.

12. Child support is hereby set in the amount of \$ \_\_\_\_\_, per \_\_\_\_\_, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, payable by \_\_\_\_\_ to \_\_\_\_\_ until further order of the court.

13. That neither party shall sell, remove, assign, transfer, dispose of, conceal, encumber, or damage any property, real or personal, community or separate, except as necessary in the ordinary course of business or for the necessities of life, in which case an accounting in writing shall be made to the other party and to this court. And, any transfer which shall have taken place during the thirty (30) days next preceding the entry of this order and which was not in the ordinary course of business or for necessities of life is hereby set aside and the parties are ordered to return such property to the *status quo*.

14. That each party shall deliver to the other party copies of all bills, statements and due notices of all creditor obligations within forty-eight (48) hours of receipt thereof.

15. Neither party shall incur unreasonable or unnecessary debts hereafter. Any such debt or any debt which did not contribute to the benefit of both spouses or their minor children incurred after the separation of the parties, except for the expenses and fees of this action, shall presumptively be the separate debt of the party incurring such debt.

16. Neither party may deny the other party access to the residence of the parties, whether it be community or separate property, without a court order. If the parties are unable to resolve this issue, they may apply to the court for relief.

17. In the event the parties are living in the same residence at the time of the service of this order, the parties shall attempt to decide between themselves which party shall move from the family residence. The party moving out of the residence is not prejudiced by reason of the move in any way with respect to custody of any minor children, with respect to a claim of any interest in the family residence, or the personal property in or on the premises.

18. If the parties do not determine which party will move from the residence, the court will determine which party will move at the date of any hearing on interim relief, considering among others the following factors:

a. Minor children should continue to reside in the family residence during the pendency of this case.

b. The parent who is and has been primarily caring personally for the children's basic daily needs should remain in the family residence during the pendency of this case.

c. The spouse who maintains his or her principal place of business within the family residence should continue to reside in the family residence during the pendency of this case.

19. The party moving from the family residence may return to pick up personal belongings and effects at any reasonable time, upon giving prior notice to the other party, and shall provide an accounting of items taken.

20. The party who vacates the family residence shall notify the other party (or the other party's attorney), in writing, within twenty-four (24) hours of such vacation, of an address where the vacating party can receive written communications.

21. This order is in effect as of the time and date it is served on the respondent.

22. This order is binding upon the parties unless modified by agreement of the parties in a stipulated order approved by the court or by order of the court upon application of either party at any time during the pendency of these proceedings.

**FAILURE BY ANY PARTY TO OBEY ANY PART OF THIS ORDER MAY BE PUNISHABLE AS CONTEMPT OF COURT.**

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DISTRICT JUDGE

CC: Respondent  
Childrens' schools

[Approved, effective April 1, 1999.]

### ANNOTATIONS

**The 1999 amendment**, effective April 1, 1999, substituted "children" for "child(ren)" throughout the form; redesignated the options under "IT IS THEREFORE ORDERED".

### LR5-Form B. Request for hearing.

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE FIFTH JUDICIAL DISTRICT COURT

\_\_\_\_\_,  
Plaintiff-Petitioner,  
vs.

NO: \_

\_\_\_\_\_,  
Defendant-Respondent.

### REQUEST FOR HEARING

1. Type of  
case: \_\_\_\_\_ Jury: \_\_\_\_\_ Non-  
Jury: \_\_\_\_\_

2. Assigned Judge:

3. Hearings presently set: \_\_\_\_\_

4. Specific matters to be heard:

\_\_\_\_\_  
5. Estimated total time required for this hearing:

\_\_\_\_\_  
6. Request submitted by:

\_\_\_\_\_  
7. Other attorneys and pro se parties of record entitled to notice: \_\_\_\_\_

\_\_\_\_\_  
8. \_\_\_\_\_ I have consulted with opposing counsel and the following dates are available to both of us:

\_\_\_\_\_  
9. \_\_\_\_\_ I have called / written opposing counsel to inquire as to available dates and have had no response. I am available on the following dates:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME, ADDRESS, TELEPHONE AND FAX NUMBERS

By: \_\_\_\_\_

\_\_\_\_\_  
[Approved, effective April 1, 1999.]

**ANNOTATIONS**

**The 1999 amendment**, effective April 1, 1999, rewrote the form.

**LR5-Form C. Notice of hearing.**

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE FIFTH JUDICIAL DISTRICT COURT

\_\_\_\_\_,  
Plaintiff-Petitioner,  
vs.

NO: \_

\_\_\_\_\_,  
Defendant-Respondent.



NOTICE OF HEARING

The above matter will be heard before the Honorable \_\_\_\_\_, at the \_\_\_\_\_ county courthouse, at \_\_\_\_\_, \_\_\_\_\_ .M., on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ with \_\_\_\_\_ allocated for hearing.

\_\_\_\_\_  
Trial court administrative assistant  
Notice of hearing mailed to: \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_

\_\_\_\_\_  
**PLEASE ACKNOWLEDGE RECEIPT IN WRITING WITHIN THREE (3) DAYS.**  
**RECEIPT**  
**ACKNOWLEDGED:** \_\_\_\_\_,  
\_\_\_\_\_  
**BY** \_\_\_\_\_

[Approved, effective April 1, 1999.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated January 15, 1999, this form is effective April 1, 1999.

**LR5-Form D. Notice of entry of judgment.**

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE FIFTH JUDICIAL DISTRICT COURT  
\_\_\_\_\_  
Plaintiff,  
vs. \_\_\_\_\_ NO: \_\_\_\_\_  
\_\_\_\_\_  
Defendant.

TO: \_\_\_\_\_

Judgment was entered and filed in the above cause on the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Clerk of the District Court

By: \_\_\_\_\_

\_\_\_\_\_  
Deputy

Mailed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
\_\_\_\_\_.

[Approved, effective April 1, 1999.]

### ANNOTATIONS

**The 1999 amendment**, effective April 1, 1999, placed the form that appeared at former rule, LR5-204 as new Form D.

### LR5-001

FIFTH JUDICIAL DISTRICT COURT  
COUNTIES OF CHAVES, EDDY, LEA

Pursuant to the power granted to the Fifth Judicial District by the Supreme Court, together with SCRA 083 of the Rules of Civil Procedure and the Laws of New Mexico, I, Alvin F. Jones, Chief Judge of the Fifth Judicial District, hereby certify that the attached rules were adopted by the District Judges of the Fifth Judicial District and said rules were filed with the Clerk of the Supreme Court, and copies of said rules have been furnished to the Administrative Office of the Courts, the New Mexico State Library, and the Institute of Public Law and Services. These rules are effective November 13, 1990.

/s/ ALVIN F. JONES

Chief Judge

Fifth Judicial District Court

### LR5-002

FIFTH JUDICIAL DISTRICT COURT

COUNTIES OF CHAVES, EDDY, LEA

Pursuant to the power granted to the Fifth Judicial District by the Supreme Court, together with SCRA 083 of the Rules of Civil Procedure and the Laws of New Mexico, I, Alvin F. Jones, Chief Judge of the Fifth Judicial District, hereby certify that Rule 5-1(2)(A) [LR5-501 B(1)] and Rule 7-3 [LR5-703] were adopted by the District Judges of the Fifth Judicial District and said rules were filed with the Clerk of the Supreme Court and published in the New Mexico Bar Bulletin. Copies of said rules have been furnished to the Administrative Office of the Courts, the New Mexico State Library, and the Institute of Public Law and Services. A diskette containing all the Rules of the District Court, Fifth Judicial District, was mailed to the Supreme Court of New Mexico. These rules are effective July 1, 1992.

/s/ ALVIN F. JONES  
Chief Judge  
Fifth Judicial District Court

## **LR5-003**

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO  
NO. 99-8200  
IN THE MATTER OF THE APPROVAL  
OF LOCAL RULES FOR THE FIFTH  
JUDICIAL DISTRICT

### ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation from the Rules of Civil Procedure for the District Courts Committee, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation is hereby approved; and

IT IS FURTHER ORDERED that local rules LR5-501 to LR5-508 and Form A are hereby *provisionally approved* until statewide rules and forms have been adopted by this Court, which rules and forms will supersede all local domestic relations rules and forms.

DONE at Santa Fe, New Mexico this 13th day of January, 1999.

/s/ PAMELA B. MINZNER

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ PATRICIO M. SERNA

Justice

/s/ PETRA JIMENEZ MAES

Justice