LOCAL CIVIL RULES

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

EFFECTIVE JULY 1, 2002
(as amended to December 1, 2002)

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LOCAL CIVIL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

I. SCOPE OF RULES

RULE 1. Scope, Application and Construction.

1.1 Title and Citation. These are the Local Civil Rules of the United States District Court for the District of New Mexico. The proper citation is: "D.N.M.LR-Civ.____."

1.2 Effective Date. These rules take effect on July 1, 2002.

1.3 Application of Rules.

(a) In General. These rules apply to civil proceedings.

(b) Relationship to Prior Rules; Actions Pending on Effective Date. These rules supersede all previous local civil rules and govern all actions pending on or filed after their effective date, unless the Court otherwise orders.

1.4 Rule of Construction. The format of these rules coincides with the numbering and content of the Federal Rules of Civil Procedure ("FED. R. CIV. P."). These rules should be construed consistently with the Federal Rules of Civil Procedure.

1.5 Definitions. In these rules:

(a) **"Clerk"** refers to the District Court Clerk for this District, a deputy clerk, or any of the Clerk's offices located in Albuquerque, Santa Fe and Las Cruces.

(b) **"Court," "Judicial Officer" or "Judge"** refers to a United States District Judge or United States Magistrate Judge.

(c) **"District"** refers to the United States District Court for the District of New Mexico.

(d) **"electronic transmission"** includes, but is not limited to: facsimile, electronic mail, or other electronic data transmission.

(e) **"electronic case"** refers to a proceeding in which filing by electronic transmission has been authorized.

(f) **"Federal Bar"** refers to members of the bar of the United States District Court for the District of New Mexico.

(g) **"party"** refers to a party or attorney representing the party.

(h) **"*pro se* party"** refers to a party appearing in an action without an attorney.

(i) **"document"** refers to a pleading, motion or paper.

1.6 Bankruptcy Cases.

(a) Bankruptcy Matters Other Than Appeals.

- The local rules of the United States Bankruptcy Court for this District govern practice and procedure in all bankruptcy matters except appeals.
- Every paper in a non-appeal matter is filed with the Clerk of the Bankruptcy Court.

(b) Bankruptcy Appeals.

- Every paper in a bankruptcy appeal, except those papers required to be filed with the Clerk of the Bankruptcy Court, pursuant to the FED. R. BANKR. P., is filed with the Clerk.
- Bankruptcy appeal briefs must conform with D.N.M.LR-Civ. 7.6 and 7.7.

1.7 Waiver of Rules. These rules may be waived by a Judge to avoid injustice.

II. COMMENCEMENT OF ACTION; SERVICE AND FILING

RULE 3. Commencement of Action.

3.1 Civil Cover Sheet.

- A civil cover sheet form, available from the Clerk, must be completed and attached to the pleading initiating a civil action. This requirement is for administrative purposes, and information appearing on the civil cover sheet will have no legal effect in the action.
- The Clerk will file the initiating paper even if it is submitted without the completed cover sheet. The Clerk will give written notice of the deficiency and deadline for correcting the deficiency. The Clerk may dismiss the action, without prejudice, for failure to cure the deficiency.
- A *pro se* party filing a civil action need not complete the cover sheet.

3.2 Notification of Multidistrict Litigation. A party filing a paper involving an action subject to pretrial proceeding before the Judicial Panel on Multidistrict Litigation (see 28 U.S.C. § 1407) must, at the time of filing, submit:

(a) a written description of the nature of the case; and

(b) a list of the titles and numbers of all related cases filed in this District.

RULE 4. Process.

4.1 Summons. A party must prepare the summons on a form available from the Clerk.

RULE 5. Filing.

5.1 Filing Requirement. An original and two copies of a paper must be filed with the Clerk in accordance with the procedures outlined in these rules. This includes the document initiating any action. Notice of filing must be given to all parties. In actions consolidated for pretrial purposes, parties in all companion cases must be noticed.

5.2 Locations for Filing. Every paper is filed with the Clerk. Wherever court is in session, papers may be filed in open court.

5.3 Fees.

(a) Requirement of Filing Fee. The Clerk will file a civil action only if a filing fee is paid, an application to proceed *in forma pauperis* is made or the action is filed by facsimile in accordance with D.N.M.LR-Civ. 5.4. The filing fee may be charged on *VISA* or MasterCard.

(b) *In Forma Pauperis* Application Presented by an Attorney. When an attorney presents an application to proceed *in forma pauperis*, the Clerk will provisionally file the action pending the Court's ruling on the application. The provisional filing date will become the filing date if:

- the application is granted; or
- the application is denied, but the attorney pays the filing fee within twenty (20) calendar days of denial of the application. If the attorney fails to pay the fee, the Clerk will return all pleadings unfiled.

(c) Filing Provision for *Pro Se* Actions. Any paper initiating an action submitted by a *pro se* party will be filed, docketed and assigned a case number. The Clerk may dismiss the action, without prejudice, for failure:

(1) to pay a filing fee;
(2) to submit an *in forma pauperis* application; or
(3) to cure defects in accordance with D.N.M.LR-Civ. 10.3 and 41.2.

(d) Fees for Copies of Documents. The Clerk will charge the statutory fee to provide copies of documents. A person who requests that copies be mailed must provide a pre-addressed, stamped envelope, unless otherwise approved by the Clerk.

5.4 Emergency Filing by Facsimile. A party may, upon a showing of good cause, and with prior judicial approval, file any paper by facsimile. The facsimile must be sent to the Clerk's office and identify the approving judicial officer. The filing party must keep the original document in case a verified document is needed later in the proceedings. Any filing fee must be paid within twenty (20) calendar days. A facsimile filing has the same effect as a written filing.

5.5 Filing by Electronic Transmission. Administrative Order Nos. 97-26 and 97-83 are superseded by provisions herein relating to electronic filing and service.

(a) Electronic Filing Authorized. A party may file a document by electronic transmission in accordance with guidelines established by the Court. Filing by facsimile is not permitted except pursuant to D.N.M.LR-Civ. 5.4. A document electronically filed after 5:00 p.m. on a business day (day 1) and before 8:00 a.m. the next business day (day 2) is considered filed on day 1. The time and date of actual filing are reflected in the Court's digital file stamp.

(b) Documents of Record. A document filed electronically and stored in the Court's server is the official document of record. Affidavits and other documents requiring an original verified signature may be filed electronically. By electronically filing an affidavit or other verified document, the filing party or attorney certifies that the original signed paper will be kept and will be produced on request or at the direction of the Court.

5.6 Service by Electronic Transmission.

(a) By the Court. The Court or Clerk may serve and give notice by electronic transmission, in lieu of service and notice by mail, to any person who has a written request, on file with the Clerk, to receive service and notice by electronic transmission. The request remains effective in all subsequent litigation in this District involving the person who filed the request; however, any person may withdraw his or her request by sending written notice to the Clerk.

(b) Between Parties. In addition to means of service specified in FED. R. CIV. P. 5(b), parties may agree to service between themselves by electronic transmission, including transmission through the Court's server.

Electronic service under subdivisions (a) and (b) is the equivalent of service by mail in accordance with FED. R. CIV. P. 5(b), 5(e), and 77(d), and is complete on transmission.

III. PLEADINGS, MOTIONS AND OTHER PAPERS

RULE 7. Motion Practice.

7.1 Writing Requirement; Opposition.

(a) A motion must be in writing and state with particularity the grounds and the relief sought. A party may adopt by reference another party's motion or other paper by making specific reference to the filing date and docket number of such motion or other paper. Movant must determine whether a motion is opposed. An attorney's motion to withdraw from representation of a party must follow the procedure provided in D.N.M.LR-Civ. 83.8.

(b) A motion, response, or reply must include a certificate of service on each party. The failure of a party to file and serve a response in opposition to a motion within

the time prescribed for doing so constitutes consent to grant the motion. The failure to file and serve a reply in support of a motion within the time prescribed for doing so constitutes consent that briefing on the motion is complete.

7.2 Unopposed Motions; Case Management Deadlines. An unopposed motion must be accompanied by a proposed order approved by each party. A non-dispositive motion which alters or affects case management deadlines requires approval of the assigned Magistrate Judge, as provided in D.N.M.LR-Civ. 16.1.

7.3 Opposed Motions Where Each Party is Represented by an Attorney.

(a) Movant must file and serve on all parties a copy of the motion, any brief in support of the motion, affidavits, and other papers related to the motion. Two copies of a response that is not filed electronically must be served on the movant.

(b) Except in cases in which filing is accomplished electronically, upon completion of briefing, the movant must submit to the Clerk, as a package for transmission to the assigned Judge, one additional copy of all papers related to the motion. In all cases, upon the completion of briefing, the movant must file and serve on each party a Notice of Completion of Briefing. The Notice of Completion of Briefing must identify by date of filing and docket number the motion which is ready for decision and all briefs or other papers which have been filed relating to that motion.

7.4 Opposed Motions Where Any Party Appears *Pro Se*.

(a) Movant must request concurrence of each party, at least three (3) working days before filing a motion. Movant must recite that concurrence was refused or explain why concurrence could not be obtained. A motion that omits recitation of a good-faith request for concurrence may be summarily denied.

(b) In inmate cases, movant need not determine whether the motion is opposed.

(c) Movant must file and serve on all parties copies of the motion, supporting brief, affidavits and other papers related to the motion. The response and reply must be filed and served on all parties.

7.5 Form of Motion and Related Evidence.

(a) A motion, response or reply must cite authority in support of the legal positions advanced. Movant's authority may be submitted in a separate brief filed and served contemporaneously with the motion.

(b) Movant must submit evidence, in the form of affidavits, deposition excerpts, or other documents, in support of allegations of fact.

7.6 Timing of and Restrictions on Responses and Replies.

(a) **Timing.** A response must be served within fourteen (14) calendar days after service of the motion. A reply must be served within fourteen (14) calendar days after service of the response. These time periods are computed in accordance with FED. R. CIV. P. 6(a) and (e) and may be extended by agreement of all parties. If an extension

of time is opposed, the party seeking the extension must file a separate motion within the applicable 14-day period. An extension of briefing time must not interfere with established case management deadlines.

(b) Surreply. The filing of a surreply requires leave of the Court.

(c) Expedited Briefing. When the Court orders an expedited briefing schedule, briefs and any supporting papers must be served on each party by the most expeditious reasonable method of service.

(d) Cases With Briefing Schedule Set by Court (Bankruptcy or Social Security Appeals). The parties will be given a briefing schedule by the Clerk or by the Court. Timing of responses and replies must conform with the briefing schedule unless all parties agree otherwise.

7.7 Length of Motion and Brief. The length of a motion or, if a separate brief is filed in support of a motion, the combined length of a motion and supporting brief, must not exceed twenty-seven (27) double-spaced pages. A response brief must not exceed twenty-four (24) double-spaced pages. A reply brief must not exceed twelve (12) double-spaced pages.

7.8 Oral Argument.

(a) When Allowed. A motion will be decided on the briefs unless the Court sets oral argument.

(b) Hearing by Telephone Conference. The Court may permit hearing by telephone conference. The party requesting a telephonic hearing must initiate the call and pay the expense. The requesting party must provide to the Court and all participants copies of all documents necessary for the hearing. The documents must be delivered before the hearing by the most expeditious reasonable method of service.

7.9 Withdrawal of Documents. A party may withdraw a document from consideration by the Court by filing and serving a notice of withdrawal which specifically identifies the document being withdrawn. Withdrawal requires consent of all other parties or approval of the Court.

RULE 10. Form of Papers.

10.1 Form. A paper presented for filing must be on size 8½ by 11 inch white, opaque, unglazed paper of good quality and be typewritten or printed on one side without interlineations. The typewritten text of all papers must be at least 12 pitch, and type must be of letter quality. The left, right, and bottom margins must be at least 1 inch, the top margin must be at least 1½ inches. Except for footnotes and quotations, the text of all papers must be double spaced. The first page of each paper must have the case file number and initials of the assigned Judges.

10.2 Titles of Papers.

(a) Identification of Substance. The title of a paper must clearly identify its substance.

(b) Responses or Replies. The title of a response or a reply must identify by title and approximate date of filing the paper to which it responds.

(c) Affidavit. The title of an affidavit must identify by title and approximate date of filing the paper it supports.

10.3 Filing of Non-Conforming Papers.

(a) Acceptance of Papers. The Clerk will not refuse to file any paper because it is not in proper form.

(b) Signature. Any paper filed without signature will be stricken unless it is signed within fourteen (14) calendar days after the omission is called to the party's attention.

(c) Non-Conforming Papers. The Clerk will give to the submitting party written notice of a deficiency and deadline for correcting the deficiency. The Clerk will also provide any applicable forms and instruction sheets. Failure to remedy a deficiency or to show good cause for non-compliance within forty-five (45) calendar days from the date of notice may result in dismissal of the action without prejudice in accordance with D.N.M.LR-Civ. 41.2.

10.4 Attachments to Pleadings. Exhibits are not attached to a pleading unless the documents attached form the basis for the action or defense.

10.5 Page Limit for Exhibits. Exhibits to a motion, response or reply, including excerpts from a deposition, must not exceed fifty (50) pages unless all parties agree otherwise. If agreement cannot be reached, then the party seeking to exceed the page limit must file a motion in accordance with D.N.M.LR-Civ. 7. A party may file only those pages of an exhibit which are to be brought to the Court's attention.

10.6 Highlighting of Exhibits. The portions of an exhibit the party wishes to bring to the Court's attention must be highlighted in the original, the copy for the Court and the copy for each party. Highlighting must be apparent on exhibits that are scanned and filed and/or served electronically.

10.7 Non-duplication of Exhibits. An exhibit should be submitted only once and may later be referred to by document title and filing date. An exhibit may be submitted more than once, however, if the submitting party wishes to bring to the Court's attention portions of the exhibit different from those previously highlighted under D.N.M.LR-Civ. 10.6.

RULE 11. Signing of Documents.

11.1 Signatures. The Court will treat a duplicate signature as an original signature, and a document filed or served by electronic transmission is considered signed in accordance with FED. R. CIV. P. ll(a).

RULE 15. Amended and Supplemental Pleadings.

15.1 Motion to Amend Pleading. A proposed amendment to a pleading must accompany the motion to amend.

RULE 16. Pretrial Procedures.

16.1 Initial Pretrial Report. An Initial Pretrial Report form is available from the Clerk. The parties must complete the Initial Pretrial Report during their FED. R. CIV. P. 26(f) meet-and-confer conference. A consolidated report, signed by the parties and with dates left blank, must be sent to the assigned Magistrate Judge at least five (5) calendar days before the scheduling conference. Any deadlines established in the Initial Pretrial Report will govern actions in pretrial matters once the report is entered by the Court. Any modification of the deadlines, whether or not opposed, will require a showing of good cause and Court approval.

16.2 Settlement Conferences.

(a) In every civil case the parties must participate in a settlement conference with a Judge unless otherwise ordered by the Court. Cases excepted from this rule are listed under D.N.M.LR-Civ. 16.3.

(b) In every bankruptcy adversary proceeding filed in Bankruptcy Court, the parties must participate in a settlement conference with members of the bankruptcy facilitation panel unless otherwise ordered by the Bankruptcy Court.

(c) For each party, at least two persons must attend settlement conferences:

- the attorney who will try the case; and
- the party or designated representative with final settlement authority, other than an attorney of record.

(d) A request to be excused must be made in writing to the Court at least five (5) calendar days before the conference.

(e) Evidence of settlement offers made, and of statements made, at the settlement conference, regardless of whether made in written, oral or graphic form, will be inadmissible as provided in FED. R. EVID. 408. Statements which are made by any party to the Judge who is conducting the settlement conference, and which are identified by that party as confidential, will not be disclosed by the Judge to any other party. The Judge who is conducting the settlement conference may not reveal to the trial Judge any information about offers made, or about statements made, by any party at the settlement conference, other than whether the case was or was not settled.

(f) Within five (5) days of notice of assignment of a member of the bankruptcy facilitation panel to facilitate an adversary proceeding in Bankruptcy Court, any party may move the Court to disqualify the panel member based on the standards set forth in 28 U.S.C. § 455.

16.3 Exclusion From Pretrial Case Management. The following types of cases are excluded from pretrial case management procedures described in D.N.M.LR-Civ. 16 unless the parties request, or the assigned Magistrate Judge determines, that the case should be governed by this rule:

(a) Government Collections Actions (150-153);
(b) Condemnation Actions (210);
(c) Rent, Lease and Ejectment (230);
(d) Prisoner Petitions (510-550);
(e) Forfeiture and Statutory Penalty Actions (610-690);
(f) Bankruptcy Appeals and Withdrawals (422-423);
(g) Social Security Reviews (861-865);
(h) Federal Tax Suits (870-871, 875);
(i) State Reapportionment (400);
(j) Commerce/ICC Rate (450);
(k) Deportation (460);
(l) Selective Service (810);
(m) Freedom of Information Act (895);
(n) Food Stamp Denial (891);
(o) Proceedings to compel arbitration or to confirm or set aside arbitration awards;
(p) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
(q) Proceedings to compel the giving of testimony or production of documents in this District:
  (1) in connection with discovery;
  (2) in connection with testimony *de bene esse*;
  (3) for perpetuation of testimony; or
  (4) for use in a matter pending or contemplated in another U. S. District Court;
(r) Proceedings requesting injunctive or other emergency relief; and
(s) Proceedings involving water rights matters.

V. DISCOVERY

RULE 26. Discovery.

26.1 Form of Discovery Requests.

(a) Requirements of Serving Party.

(1) Space to Respond. A party, when serving the following documents, must provide space, when not on a diskette, for an answer, response or objection after each:

- interrogatory;
- request for production of documents or things; or
- request for admission.

(2) Numbering. Regardless of the number of sets, a party must sequentially number:

- interrogatories;
- requests for production of documents or things; or
- requests for admissions.

For example, the first set of interrogatories is numbered 1-10; the same party's second set of interrogatories is numbered 11-20, etc.

(b) Requirements of Responding Party. The party answering, responding or objecting to a discovery request must either set forth the answer, response or objection in the space provided or quote fully each interrogatory or request before any answer, response or objection.

26.2 Certification of Service. The following documents must be served, but not filed with the Clerk. Only a certificate indicating the date of service is filed.

(a) interrogatories;
(b) requests for production or inspection;
(c) requests for admissions;
(d) responses to (a)-(c);
(e) initial disclosures as described in FED. R. CIV. P. 26(a)(1); and
(f) expert witness reports as described in FED. R. CIV. P. 26(a)(2).

26.3 Required Disclosures. All provisions of FED. R. CIV. P. 26 are applicable to actions in this District, unless specifically exempted by local rule.

(a) Exemptions from Initial Disclosures. The following are exempted:

(1) all disclosure in cases excluded from case management procedures by D.N.M.LR-Civ. 16.3; and

(2) disclosure of experts having knowledge of the case who are used for the sole purpose of case preparation and not as witnesses.

(b) Exemption from Expert Report Disclosure. Treating physicians need not prepare an expert report as required by FED. R. CIV. P. 26(a)(2)(B).

(c) Exemption When Initial Pretrial Report Filed. When required disclosures have previously been made in an Initial Pretrial Report pursuant to D.N.M.LR-Civ. 16.1, the required disclosures pursuant to FED. R. CIV. P. 26 may incorporate portions of the Initial Pretrial Report.

(d) Required Initial Disclosure. In all cases in which the physical or mental medical condition of a party is an issue, the party whose condition is an issue must make a good faith effort to produce the following information that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

(1) a list of the name, address and phone number of any healthcare provider, including without limitation, any physicians, dentists, chiropractors, mental health counselors, clinics and hospitals which have treated the party within the last 5 years preceding the date of the occurrence set forth in the pleadings;

(2) all records of such healthcare providers which are already in that party's possession;

(3) for each healthcare provider, a signed authorization to release medical records form, as set forth in Appendix "A." Within 10 days after receiving medical records by use of these authorization forms, a party must sequentially number each record received and produce, at that party's expense, complete copies of all numbered records to all other parties.

(e) **Duties in Responding to Initial Disclosures.** When information, records or a release subject to this rule is withheld on a claim that it is privileged or subject to objection, or that disclosure is prohibited by regulation or statute, the claim must be made expressly in writing and must be supported by a description of the nature of the documents, or things not produced that is sufficient to enable the demanding party to contest the claim.

26.4 Timing of Discovery and Initial Disclosures.

(a) **Discovery.** A party may not seek discovery under these rules or the Federal Rules of Civil Procedure before the parties have conferred as required by FED. R. CIV. P. 26(f) except by agreement of all parties or by Court order.

(b) **Party Entering Case After Initial Scheduling Conference.** A party must meet all established case management deadlines. Under FED. R. CIV. P. 26(a)(1), initial disclosures by a party first served or joined after the Initial Scheduling Conference are due within 30 calendar days after the party is served or joined, unless a different time is set by stipulation or Court order.

26.5 Changing Discovery Limitations.

(a) **General Limits.** The Court, *sua sponte* or on motion by a party, may change the limitations on discovery imposed by federal or local rule and may fashion discovery to meet special circumstances.

(b) **Number of Interrogatories.** Unless otherwise ordered by the Court, to serve more interrogatories than are allowed by FED. R. CIV. P. 33, a party must file a motion in accordance with D.N.M.LR-Civ. 7, which sets forth the proposed interrogatories and explains why they are necessary.

26.6 Objections to Discovery. A party served with objections to:

- an interrogatory;
- request for production or inspection; or
- request for admission

must proceed under D.N.M.LR-Civ. 37.1 within twenty (20) calendar days of service of an objection unless the response specifies that documents will be produced or inspection allowed. In this case, the party must proceed under D.N.M.LR-Civ. 37.1 within twenty (20) calendar days after production or inspection of the documents.

Failure to proceed within this time period constitutes acceptance of the objection. For good cause, the Court may, *sua sponte* or on motion by a party, change the twenty (20) day period.

RULE 30. Depositions.

30.1 Notice of Deposition. Counsel must confer in good faith regarding scheduling of depositions before serving notice of deposition. Service of notice of deposition in accordance with FED. R. CIV. P. 30(b) must be made at least fourteen (14) calendar days before the scheduled deposition. Proof of service of notice to take a deposition is not filed with the Clerk except when the adequacy or content of the notice is the basis for a motion, or response to a motion, relating to FED. R. CIV. P. 30 or 31. The time for serving notice may be shortened by agreement of all parties or by Court order.

30.2 Non-Appearance at Deposition. Failure of a deponent to appear at the time and place designated may be regarded as a willful failure to appear pursuant to FED. R. CIV. P. 37(d) or contemptible conduct pursuant to FED. R. CIV. P. 45(e),

- unless a motion for protective order and a notice of non-appearance are served at least five (5) calendar days before the scheduled deposition; or
- if the Court finds the motion for protective order is frivolous or for dilatory purposes.

30.3 Filing of Depositions. Deposition transcripts are not filed unless otherwise ordered.

30.4 Filing of Certificate of Completion of Deposition. A certificate of completion of deposition is not filed unless otherwise ordered.

30.5 Deposition Fees. A court reporter must certify in a deposition transcript the reporter's fees for the deposition.

30.6 Final Disposition of Deposition Transcripts. After final disposition of a civil action, the Clerk will return to the submitting party all depositions filed.

RULE 37. Failure to Make Disclosure or Cooperate in Discovery.

37.1 Relief Sought in Protective Order and Motion to Compel. A party seeking relief pursuant to FED. R. CIV. P. 26(c) or 37(a) must attach to the motion a copy of:

(a) the interrogatory, request for production or inspection, relevant portion of deposition transcript, or request for admission; and

(b) the response or objection thereto.

The motion must comply with the requirements of D.N.M.LR-Civ. 7.

37.2 Time to Respond. A party must respond to a discovery request within the time specified in the Court order compelling discovery. Absent a specific designation of time in the order, a party must respond within the time allowed for response to the original request.

37.3 Compliance with Discovery Order Pending Appeal of the Order. A party's duty to comply with a discovery order is not stayed by filing an appeal from or objection to the order, unless otherwise ordered.

VI. TRIALS

RULE 40. Trial Continuances.

40.1 Continuances. Good cause must be shown for continuance of a trial.

RULE 41. Dismissal of Action Without Prejudice.

41.1 Dismissal for Want of Prosecution. A civil action may be dismissed if, for a period of ninety (90) calendar days, no steps are taken to move the case forward. The Clerk will give written notice that the action may be dismissed thirty (30) calendar days after the date of the notice, unless good cause is shown.

41.2 Non-Conforming Papers. An action filed with any non-conforming paper may be dismissed, without prejudice, for failure to remedy the deficiency within forty-five (45) calendar days of entry of notice by the Clerk in accordance with D.N.M.LR-Civ. 10.3(c).

VII. JUDGMENT

RULE 54. Judgment; Costs.

54.1 Motion to Tax Costs. A motion to tax costs must be filed and served on each party within thirty (30) calendar days of entry of judgment. Failure to file and serve within this time period constitutes waiver of a claim to costs. The motion must comply with the requirements of D.N.M.LR-Civ. 7. and must include:

- an itemized cost bill documenting costs and including receipts as required by rule or statute; and
- a party's affidavit that the costs are allowable by law, correctly stated and necessary to the litigation.

A claim for attorney's fees or other expenses not taxable in accordance with 28 U.S.C. § 1920 must be made in a separate motion and comply with D.N.M.LR-Civ. 54.5.

54.2 Taxable Costs.

(a) Transcripts. The cost of an original transcript of a court proceeding is taxable when requested by a party and authorized by the Court before transcription.

(b) Deposition Costs.

(1) Reporter's Transcript Fees. The reporter's charge for the original or a copy of a deposition transcript is taxable when the deposition is reasonably necessary to the litigation.

(2) Reasonably Necessary to the Litigation. A deposition is reasonably necessary to the litigation when:

(A) a substantial portion of the deposition is admitted into evidence or used at trial for impeachment purposes;

(B) the deposition is used by the Court in ruling on a motion for summary judgment; or

(C) the Court so determines.

(c) Witness Costs.

(1) Lay Witness.

(A) The rates for witness fees, mileage and subsistence are set by statute and are taxable if the witness testifies at trial or at a deposition found reasonably necessary to the litigation.

(B) The witness will be paid the smaller of:

(i) mileage for the distance from the witness's residence to court; or

(ii) the *per diem* rate specified by 28 U.S.C. § 1821.

(C) The request for witness costs must be itemized, separating:

- witness fees;
- mileage; and
- allowance for subsistence.

(D) A party will not receive a witness fee, mileage or allowance for subsistence.

(2) Expert Witness Fees. An expert witness fee is not taxable under 28 U.S.C. § 1920 unless the Court, *sua sponte* or on motion by a party, appoints the expert and approves the fee amount. An expert witness not appointed by the Court will be paid the same fee as a lay witness.

(d) Interpreter and Translator Fees. An interpreter's fee or translator's fee is taxable if:

(1) the cost of the witness, whose testimony is interpreted or translated, is taxable; or

(2) the translated document is admitted into evidence.

(e) Copies of Papers. The cost for copying an exhibit is taxable when the exhibit is requested by the Court or when the copy is admitted into evidence in place of an original.

(f) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The cost of a photograph, 8" x 10" in size or less, is taxable if the photograph is admitted into evidence. The following costs are not taxable unless the Court otherwise orders:

- photographs larger than 8" x 10";
- costs of models; or
- the cost of compiling summaries, computations or statistical comparisons.

54.3 Costs in Comparative Fault Cases. In comparative fault cases, each party is taxed a percentage of the total taxable costs. The percentage of costs taxed need not equal the percentage of a party's fault; distribution of costs is left to the Court's discretion.

54.4 Jury Cost Assessment. All jury costs, mileage and *per diem* allowances are taxed equally to all parties when a jury trial is settled or otherwise disposed of:

C in advance of trial

C during trial, but prior to verdict.

No assessment will be made if the Clerk is notified of the settlement before 12:00 noon on the business day before the action is set for trial or if good cause is shown.

54.5 Application for Award of Attorney's Fees.

(a) Filing of Motion. A motion for attorney's fees not brought pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), must be filed and served within thirty (30) calendar days after entry of judgment. Failure to file and serve within this time constitutes waiver of a claim to attorney's fees. Movant must submit a supporting brief and evidence (affidavits and time records). The motion must comply with D.N.M.LR-Civ. 7.

(b) Time Records. An attorney must keep concurrent time records in 42 U.S.C. § 1983 cases and in other actions where there is a potential for an award of attorney fees. Time records are kept by the attorney and are not filed until after final judgment unless otherwise ordered.

RULE 56. Summary Judgment.

56.1 Summary Judgment Procedures.

(**a**) **Time for Filing.** Motions for summary judgment will not be considered unless filed within the deadline set in the Initial Pretrial Report to allow sufficient time for the opposing party to file counter-affidavits and responses thereto, and to permit the Court reasonable time to hear arguments, if granted, and to consider the merits.

(**b**) **Statement of Material Facts.** The moving party must file with the motion a written memorandum containing a short, concise statement of the reasons in support of the motion with a list of authorities relied upon. A party opposing the motion must file a written memorandum containing a short, concise statement of the reasons in opposition to the motion with authorities. The moving party may file a written reply memorandum.

C The memorandum in support of the motion must initially set out a concise statement of all of the material facts as to which movant contends no genuine issue exists. The facts must be numbered and must refer with particularity to those portions of the record upon which movant relies.

C A memorandum in opposition to the motion must contain a concise statement of the material facts as to which the party contends a genuine issue does exist. Each fact in dispute must be numbered, must refer with particularity to those portions of the record upon which the opposing party relies, and must state the number of

the movant's fact that is disputed. All material facts set forth in the statement of the movant will be deemed admitted unless specifically controverted.

RULE 58. Entry of Judgment.

58.1 Final Judgment Based Upon a Negotiable Instrument. A negotiable instrument that is the basis of a final judgment must accompany the judgment. The instrument must be:

- filed as an exhibit upon entry of judgment;
- merged into the judgment and marked as merged; and
- marked with the docket number of the action.

The instrument may be delivered to a party only by Court order.

58.2 Proposed Orders and Judgments.

(a) Approval of Order or Judgment. An order or judgment reflecting the Court's decision and prepared by the prevailing party will be entered if:

(1) all parties approve the order;

(2) a copy of the order or judgment served on each party is not objected to within five (5) calendar days of service; or

(3) good cause is shown.

(b) Entry of Order or Judgment. An original order or judgment will be filed in lieu of making an entry in an order or judgment book. This procedure satisfies the notice of entry requirement of FED. R. CIV. P. 77(d).

VIII. PROVISIONAL AND FINAL REMEDIES

RULE 65. Sureties.

65.1 Bonds and Other Sureties.

(a) Attorney as Surety. An attorney may not act as a surety for any cost or bond in a case where the attorney has entered an appearance.

(b) Bond for Costs on Appeal. The Court may require an appellant to file a bond or provide other security in a form and amount necessary to ensure payment of costs on appeal.

(c) Corporate Sureties. A surety company must be duly qualified to conduct business in New Mexico and hold a certificate of authority from the United States Secretary of the Treasury. An agent executing a bond from a surety company must attach a power of attorney to the bond.

(d) Supersedeas Bonds.

(1) The amount of a supersedeas bond must cover the judgment, interest and allowable costs. Interest will be computed at the current rate of United States Treasury obligations. A party seeking approval of the bond must file a motion that complies with the requirements of D.N.M.LR-Civ. 7.

(2) The United States, any state, or any of their political subdivisions, officers or agents need not post a supersedeas bond or other undertaking to secure payment of costs on appeal.

RULE 67. Deposit in Court.

67.1 Disbursements from Court Registry.

(a) **By Court Order.** A party must provide the Court with the following information to be integrated into a Court order before disbursement of funds will be made:

- the payee's name, address and social security number or tax identification number;
- the amount of principal; and
- the amount of interest.

(b) **Court Registry Fees.** The Clerk will deduct a fee from interest earned on interest bearing funds in the Court Registry. The Judicial Conference of the United States authorizes this fee, and the amount is set by the Director of the Administrative Office of the U. S. Courts. A fee schedule is available from the Clerk.

IX. SPECIAL PROCEEDINGS

RULE 73. United States Magistrate Judges.

73.1 Direct Assignment of Civil Cases. [*amended 12/01/02*]

(a) Every other civil case (or 50%)--excluding prisoner cases and bankruptcy appeals--and every social security appeal will be randomly assigned to a Magistrate Judge pool. For each case in that pool, a presiding Magistrate Judge will be assigned to conduct all dispositive proceedings, including trial, upon consent of the parties. For each case, excluding social security appeals, a discovery Magistrate Judge will also be assigned to hear and decide all non-dispositive pretrial and discovery matters in accordance with FED. R. CIV. P. 72(a). Each Magistrate Judge will be assigned cases on an equal and random rotation.

(b) In a case assigned to a presiding Magistrate Judge, the Clerk will provide each party and/or attorney a "Consent to Proceed Before a U. S. Magistrate Judge" form, which will be used by the Clerk of Court to determine the consent of the parties. The form appears on the Court's web site at www.nmcourt.fed.us and is also available at the Clerk's Office. Each party is to return the completed consent form to the Clerk within twenty (20) days after service.

(c) A party's failure to return the completed consent form timely will be considered that party's refusal of consent to proceed before the assigned presiding Magistrate Judge. If a party explicitly or implicitly refuses consent:

(1) in a civil case, the presiding Magistrate Judge will be replaced by a randomly assigned District Judge. The assigned discovery Magistrate Judge will remain the same.

(2) in a social security appeal, the presiding Magistrate Judge will be replaced by a randomly assigned District Judge and a randomly assigned Magistrate Judge.

(d) If the parties consent to proceed before the assigned presiding Magistrate Judge, the assigned presiding Magistrate Judge will conduct all dispositive proceedings in the action, including trial, and order the entry of final judgment. The appeal of a judgment or final order entered by the presiding Magistrate Judge will be to the United States Court of Appeals for the Tenth Circuit.

(e) An assigned Magistrate Judge may decline to hear the case if it is determined that the case would interfere with the efficient and effective processing of cases within the Magistrate Judge's jurisdiction. The assigned Magistrate Judge may then transfer the case to the Clerk to be randomly reassigned to another Judge.

73.2 Consent to Trial or to Rule on Dispositive Matters.

(a) Designation of Magistrate Judge on Cases Not Assigned to the Magistrate Judge Pool. Full-time Magistrate Judges are designated to exercise civil trial jurisdiction and, by consent of all parties, may handle any dispositive matter including trial.

(1) Consent to Trial. Consent is to trial by the assigned Magistrate Judge only.

(2) Consent to Rule on a Dispositive Matter. Parties may consent to refer any dispositive matter to the assigned Magistrate Judge.

(b) Form of Consent. Parties wishing to consent must complete and submit a form, available from the Clerk, entitled "Consent to Proceed Before a United States Magistrate Judge and Order of Reference."

73.3 Consent to Settlement Conference.

Designation of Particular Magistrate Judge to Conduct Settlement Conference. The parties, by unanimous agreement, may choose a particular Magistrate Judge, who may exercise the authority provided by 28 U.S.C. § 636, to conduct a settlement conference.

X. DISTRICT COURTS AND CLERKS

RULE 79. Custody of Files and Exhibits.

79.1 Removal of Pleadings and Other Papers From Court File. A Court order is required to remove any contents of a Court file.

79.2 Return of Exhibits in Civil Actions. In civil cases, the Clerk will return all exhibits after the trial to the party who introduced same in evidence to be retained until the judgment is final. Such parties will be responsible for producing the exhibits if required for an appeal record.

XI. GENERAL PROVISIONS

RULE 81. General Provisions.

81.1 Removed Actions.

(a) Removal From State Court. A party removing an action under 28 U.S.C. § 1446 must file with the Clerk legible copies of records and proceedings from the state court action within thirty (30) calendar days after filing notice of removal. The expense of obtaining and filing copies may be taxed as costs in the action.

(b) Remand to State Court or Other Forum. When an action is remanded, the Clerk will transmit to the state court administrator or appropriate official in another forum, the court file and a certified copy of the order of remand.

RULE 83. Miscellaneous Rules.

83.1 Courtroom and Courthouse Decorum.

(a) Prohibition Against Cameras, Transmitters, Receivers, and Recording Equipment. No cameras, transmitters, receivers or recording equipment may be brought into or used in any courtroom or court environs. Environs include:

- the entire floor where a courtroom is located;
- the entire floor where the grand jury meets; and
- the entire floor where a chambers of any Magistrate or District Judge is located.

(b) Authority to Impound Equipment. The U. S. Marshals Service may impound the above-described equipment brought into the courtroom or its environs.

(c) Exemptions from Prohibition. The prohibitions of this rule do not apply to:

(1) a stenographic or recording device used by an official court reporter or other authorized court personnel;

(2) equipment brought into court during investiture, ceremonial or naturalization proceedings;

(3) a telephone or pager if turned off while court is in session;

(4) a lap-top computer as long as it does not make noise or interfere with court proceedings; or

(5) a note-taking or other device required because of a person's disability.

83.2 Bar Admissions, Membership and Annual Dues.

(a) Membership. To become a member of the Federal Bar, an attorney must:

(1) be a member in good standing of the State Bar of New Mexico;

(2) complete the application form available from the Clerk;

(3) pay the admission fee to the Clerk; and

(4) take the prescribed oath.

(b) Admission Fees. A newly admitted member of the Federal Bar must pay an admission fee of fifty dollars ($50). Of this fee, thirty dollars ($30) is deposited in the Federal Bench and Bar Fund and the balance into the Treasury of the United States as mandated by the Judicial Conference of the United States.

(c) **Annual Bar Dues.** A member of the Federal Bar must pay annual dues of twenty-five dollars ($25) to the Clerk on or before January 31 of the year following admission and every year thereafter.

(d) **Failure to Pay Annual Dues.** An attorney who fails to pay annual dues on time will be put on delinquent status and will not be allowed to practice in this District. The attorney will be reinstated upon payment of the delinquent annual dues.

(e) **Temporary Waiver of Membership.** An eligible attorney who has applied for membership, but has not yet been admitted, may seek leave of the Court to represent a party in a specific action.

(f) **Committee on Admissions and Grievances.** A Committee on Admissions and Grievances, composed of three members of the Federal Bar appointed by the Court, is responsible for:

(1) reviewing the qualification and character of each applicant to the Federal Bar;

(2) investigating allegations and grievances concerning a member of the Federal Bar; and

(3) submitting to the Court written recommendations on admissions and grievances.

83.3 Admission of a Non-Resident Attorney. An attorney residing outside the District may participate in an action, and may file and serve documents electronically under these rules, if:

- the attorney is a member in good standing of the bar of any other state and associates with a resident member of the Federal Bar. The resident attorney must sign the first pleading, accept service and continue in the action unless another resident member of the Federal Bar is substituted; or
- the attorney applies to practice in accordance with D.N.M.LR-Civ. 83.2.

83.4 Entry of Appearance.

(a) **Individual Attorney.** An attorney must enter an appearance or obtain leave of the Court to sign and file any pleading, motion or other paper. To enter an appearance, an attorney must:

- be eligible to appear under D.N.M.LR-Civ. 83.2 or 83.3; and
- sign the initial pleading filed on behalf of a party and file a written entry of appearance which includes the attorney's name, address, and telephone number.

(b) **Appearance by Member of a Law Firm.** Entry of appearance by one member of a law firm in an action allows any member of that firm to participate in the action; however, each attorney in the firm wishing to receive papers from the Clerk must make a written entry of appearance in the action.

(c) **Limited Entry of Appearance.** An attorney may not appear in a limited manner as provided in N.M.R. PROF'L CONDUCT 16-303(E) except by Court order.

83.5 Appearance by Party. A party who is represented by an attorney may not personally make any filings, other than a notice of appeal, or represent himself or herself unless otherwise ordered.

83.6 Change of Address. All attorneys of record and parties appearing *pro se* have a continuing duty to notify the Clerk, in writing, of any change in their mailing addresses, telephone numbers and, for those having a request on file as described in D.N.M.LR-Civ. 5.6, any change in facsimile numbers or electronic addresses.

83.7 Representation of Corporation or Partnership. A corporation or a partnership must be represented by an attorney authorized to practice before this Court.

83.8 Withdrawal of Attorneys. An attorney may withdraw from an action as follows:

(a) Unopposed Motion to Withdraw. The motion to withdraw and proposed order must indicate consent of the client represented by the withdrawing attorney and:

- C notice of appointment of substitute attorney; or
- C a statement of the client's intention to appear *pro se* and the client's address and telephone number.

(b) Contested Motion to Withdraw. The attorney must file and serve on all parties, including the client, a motion to withdraw. The attorney must give notice in the motion that objections must be served and filed within fourteen (14) calendar days from date of service of the motion and that failure to object within this time constitutes consent to grant the motion.

(c) Party is Corporation or Partnership. When the party is a corporation or partnership, the attorney must give notice in the motion to withdraw that a corporation or partnership can appear only with an attorney. Absent entry of appearance by a new attorney, any filings made by the party may be stricken and default judgment or other sanctions imposed.

83.9 Rules of Professional Conduct. The Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico apply except as otherwise provided by local rule or by Court order. *See, e.g.*, D.N.M.LR-Civ. 83.4(c). Lawyers appearing in this District must comply with "A Lawyer's Creed of Professionalism of the State Bar of New Mexico."

83.10 Attorney Discipline.

(a) Disbarment or Suspension of an Attorney. The Court, *sua sponte* or upon recommendation by the State Bar of New Mexico Disciplinary Board, may discipline, suspend or disbar an attorney under D.N.M.LR-Civ. 83.9.

(b) Automatic Suspension. Any member of the Bar of this District Court disbarred or suspended from practice by any state or convicted of a felony is automatically suspended from practice in this District.

(c) **Procedure for Readmission.** An attorney must file a written application setting forth, in detail, the grounds for readmission. The application will be referred to the Committee on Admissions and Grievances.

83.11 **Clinical Law Student Practice.** A law student participating in the clinical program at the University of New Mexico School of Law may, under the control and direction of the dean of the law school, represent a party. A member of the Federal Bar, designated by the dean, must actively supervise the student and sign any pleading, motion or other paper prepared by the student. An order authorizing the student's appearance must be filed before the student appears in court.

83.12 **Complaints of Judicial Misconduct or Disability.** A person may lodge a complaint against a Judge in accordance with 28 U.S.C. § 372(c) by obtaining a complaint form from the Clerk and filing with:

Circuit Executive
United States Court of Appeals for the Tenth Circuit
Byron White U. S. Courthouse
1823 Stout Street
Denver, Colorado 80257

LOCAL FORM 1.

TO _____
[Individual Provider Name Must Be Inserted]

RE:

PATIENT NAME: _____

D.O.B.: _____

S.S.N.: _____

DATES OF
TREATMENT: _____TO _____
[Releasor to Designate Relevant Time Period]

AUTHORIZATION TO RELEASE MEDICAL RECORDS

THIS DOCUMENT DOES NOT AUTHORIZE THE RELEASE OF ANY RECORDS CONCERNING OR RELATED TO ANY ALCOHOL, DRUG, HIV OR PSYCHIATRIC CARE, TESTING OR TREATMENT

You are hereby authorized and requested to furnish the following to the law firm of _____ [Individually Authorized Law Firm Must be Specified]. This authority to Release includes, but is not limited to: medical reports, clinical notes, nurse's notes, history of injury, subjective and objective complaints, x-rays, x-ray reports or interpretations, other diagnostic tests (including a copy of the report), diagnosis and prognosis; if applicable, emergency room records or logs, history and physical examination report, laboratory reports, tissue committee reports, reports of operation, operation logs, progress notes, doctors' orders, nurse's notes, physical therapy records, admission and discharge summaries, and all out-patient records; hospital bills, bills for the services you have rendered, bills for medication; and any

other documents, records, or information in your possession relative to my past, present or future physical condition.

I hereby expressly waive any laws, regulations and rules of ethics which might prevent any hospital, doctor or other person, who has treated or examined me in a professional capacity, or otherwise, from releasing my records subject to this Release.

I hereby authorize you or any member or employee of your office or association, who has examined or treated me, as well as any hospital in which I have been a patient, to produce and release to the person presenting this form complete and legible copies of any and all information concerning my physical condition, care and treatment. This form is valid for one year from the date of execution.

THIS IS NOT AN AUTHORIZATION FOR THE ABOVE-MENTIONED ATTORNEY OR LAW FIRM TO OBTAIN OR REQUEST STATEMENTS, OPINIONS, INTERVIEWS OR REPORTS WITH ANY OF MY MEDICAL PROVIDERS.

_____

[Signed by Party]

_____

[Date]

APPENDIX “A”

LOCAL FORM 2.

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL MENTAL HEALTH INFORMATION

I, _____, hereby authorize _____

_____ to release the following information relating to mental status.

[ ] Complete copy of medical records _____

[ ] Test results _____

[ ] Other _____

To the following:

For the purpose of:

[ ] Continuing medical care

[ ] Disability determination

[ ] Insurance Claim

[ ] Other _____

_____

_____

I understand that I may revoke this authorization at any time except to the extent that action has already been taken in reliance hereon. If not revoked sooner in writing, this authorization will expire ninety (90) days from the date signed.

I understand that I have the right to examine the information to be disclosed, unless deemed that such disclosure is not in my best interest.

_____
Date of Birth

_____ _____
Patient Signature Date Signed

_____ _____
Guardian/Legal Representative Signature Date Signed

_____ _____
Witness Signature Date Signed

_____ _____
Attorney Signature Date Signed

THIS IS NOT AN AUTHORIZATION FOR THE ABOVE-MENTIONED ATTORNEY OR LAW FIRM TO OBTAIN OR REQUEST STATEMENTS, OPINIONS, INTERVIEWS OR REPORTS WITH ANY OF MY MEDICAL PROVIDERS.