

**New Mexico
Magistrate Court Procedures
for Judges and Clerks**

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TABLE OF CONTENTS

	<u>Page</u>
I. THE COURT SYSTEM	6
1.1 Structure of the Courts (<i>See</i> Appendix 1)	6
1.10 Supreme Court	6
1.11 Court of Appeals	6
1.12 District Court	7
1.13 Magistrate Court	7
1.14 Metropolitan Court	12
1.15 Probate Court	13
1.16 Municipal Court	13
1.17 District Attorney	14
1.18 Public Defender Department	14
1.2 Judicial Agencies	15
1.21 Administrative Office of the Courts	15
1.22 Judicial Standards Commission	16
II. MAGISTRATE CLERK	18
2.1 Chief Clerk	18
2.2 Role of Magistrate Clerk	18
2.3 General Duties of Magistrate Clerk	18
III. ADMINISTRATIVE PROCEDURES	23
3.1 Mail	23
3.2 Procedures Relating to Records Inspection Requests	23
3.3 Requests for Electronic Information	25
3.4 Ordering Supplies	25
3.5 Maintenance of Equipment	26
3.5 Lease Agreements	27
3.6 Disposal of Equipment	27
3.7 Health and Safety	27
3.8 Court Security	28
3.9 Volunteers and Community Service Participants	28
3.10 Local Court Rules and Forms	29
IV. CASE INITIATION PROCEDURES	30
4.1 Opening a File	30
4.2 Filing Cases	31
4.3 Calendaring Cases	33
4.4 Distribution of Notices and Orders	34

4.5	Case Numbering–Assignment of Docket Number	34
4.6	Case Identification–Labels	35
4.7	Color Coding for Case Identification–Files	35
4.8	Retention of Files	37
V.	CRIMINAL	38
5.0	Criminal Actions--General Explanation	38
5.1	General Procedures in the Criminal Process	38
5.1.1	Traffic	67
5.1.2	Penalty Assessment Misdemeanors	68
5.1.3	Mandatory Court Appearances: When Defendant Acknowledges Receipt of Citation and Signs to Appear in Court/Jury Trials	68
5.1.4	Arrestable Motor Vehicle Code Violations (Immediate Court Appearances) . . .	69
5.2	DWI	72
5.3	Misdemeanors	77
5.4	Felonies	79
5.5	Special Criminal Proceedings	84
5.5.1	Bench Warrant	84
5.5.2	Extraditions	86
5.5.3	Dismissal by Prosecution or Dismissal for Lack of Probable Cause	87
5.5.4	Uncollectable Cases	87
5.5.5	Livestock Procedure	88
5.5.6	Transfer of Cases to District Court	89
5.5.7	Warrants	89
5.5.8	Time Limitations - Criminal	90
5.5.9	Non-Resident Violators Compact	91
VI.	CIVIL	93
6.0	General Civil	93
6.1	General Civil	97
6.2	Interpleader	108
6.3	Uniform Owner - Resident Relations Act	110
6.3.1	Writ of Restitution for Uniform Owner Resident Relations Act	117
6.4	Mobile Home Park Act	118
6.5	Forcible Entry or Unlawful Detainer	121
6.5.1	Execution - Forcible Entry and Unlawful Detainer	123
6.6	Civil Special Proceedings	124
6.6.1	Attachment	124
6.6.2	Garnishment	127
6.6.3	Execution	134
6.6.4	Replevin	137
6.65	Judgment and Supplementary Proceedings	138
6.66	Time Limits for Bringing Actions	139

6.6.7	Mediation	140
VII.	DISMISSALS	142
7.1	Civil Dismissals	142
7.2	Criminal Dismissals	143
VIII.	APPEALS	146
8.10	Civil Appeals	146
8.20	Criminal Appeals	149
IX.	EXCUSALS/RECUSALS	154
9.0	Excusal/Recusal Defined	154
9.1	Excusal/Recusal Procedure	154
X.	JURY, WITNESS, INTERPRETER AND COURT MONITOR PROCEDURES	158
10.1	Jury	158
10.11	Jury Trial	158
10.12	Jury Management, Civil and Criminal	160
10.13	Juror Fees	162
10.2	Witness Fees	163
10.3	Expert Witness Fees - Criminal and Civil	164
10.4	Interpreter Fees	165
10.5	Bailiff Fees	165
10.6	Court Monitor	166
XI.	FINANCIAL MANAGEMENT	172
11.1	Fees	172
11.2	Court Cash Handling	176
11.3	Daily Deposits: Segregation of Duties	185
11.4	Daily Deposits: Substitute Procedures for Segregation of Duties in Courts with Less Than Two Full-Time Clerks	186
11.5	Deposit of Monies	189
11.6	Cash Bonds	190
11.7	Agreement to Pay Court Costs and Fines	194
11.8	Monthly Reporting	199
11.9	Trust Accounts	201
11.10	Magistrate Administration; Public Money; Commingling; Trust Fund Bank Account	201
11.11	General Requirements Regarding Receipts	202
11.12	Receipting Jury Fee/Juror Costs in Civil Cases	205
11.13	Disbursements - Issuing Checks Through FACTs - Version 5	206

XII.	JUVENILE	232
12.0	Juveniles	232
12.1	Juvenile Jurisdiction.	232
XIII.	REQUIRED FORMS	235
13.0	235
13.1	Administrative Forms.	235
1.05	Tape Log	235
1.06	Certification of Interpreter	235
1.07	Certification of Witness	235
1.08	Certification of Bailiff	235
1.09	Magistrate Court Jury Pay Sheet	235
1.10	Adjustment of Fines Order	235
1.11	Community Service Work Program	235
1.12	Notice of Reassignment	235
1.13	Notice of Transfer for Change of Venue	235
1.14	Motion for Stay of Proceeding	235
1.15	Order Regarding Military Service	235
1.19	Notice of Failure to Attend DWI School	235
1.20	Cash Bond Assignment and/or Conversion	235
1.21	Response to Written Request for Inspection of Public Records	235
1.22	Tax Refund Intercept Program Letter	235
1.23	Motion for Competency Determination	235
1.24	Appearance, Plea and Waiver	235
1.25	Juror Summons Packet	235
1.26	Motion Requesting an Unrestricted Juvenile Bench Warrant	235
1.27	Order for an Unrestricted Juvenile Bench Warrant	235
XIV.	RETENTION SCHEDULE	236
14.1	Letter of Notification.	236
14.2	Letter Requesting Record Destruction	236
14.3	Letter of Authorization	237
14.4	Method of Destruction	237
14.5	Refer to the New Mexico State Records Center and Archives	238
14.6	Courts shall follow the disposition schedule set forth above, EXCEPT THAT ALL DWI FILES AND ALL DOMESTIC VIOLENCE FILES SHALL BE RETAINED AT THE COURT UNTIL FURTHER NOTICE FROM THE Administrative Office of the Courts	238
XV.	POLICY DIRECTIVES AND FILING MAGISTRATE COURT COMPLAINTS ...	244
15.0	Policy Directives	244
15.1	Court Information on How to File a Complaint or Make a Suggestion	244
15.2	Complaints Handled by the Administrative Office of the Courts	245

15.3 Complaints NOT Handled by the Administrative Office of the Courts 245
15.4 Complaint Procedure 245

I. THE COURT SYSTEM

1.1 Structure of the Courts (*See* Appendix 1)

1.10 Supreme Court

The Supreme Court is the state's highest court and the court of last resort for state appellate actions. In addition, the Supreme Court is charged with significant administrative functions, possesses superintending control over all inferior state courts, as well as the regulation of attorneys and judges.

No person shall be qualified to hold the office of justice of the Supreme Court unless that person is at least thirty-five years old; has been in the actual practice of law for at least ten years preceding that person's assumption of office; and has resided in this state for at least three years immediately preceding that person's assumption of office.

The Supreme Court consists of five justices who serve eight-year terms. The justices of the court elect a chief justice by majority vote to serve a two-year term. A majority of the justices of the Supreme Court shall be necessary to constitute a quorum for the transaction of business. A majority of the justices must concur in any judgment of the court.

The Supreme Court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions; shall have a superintending control over all inferior courts; shall have power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction and all other writs necessary or proper for the complete exercise of its jurisdiction; and to hear and determine the same. Such writs may be issued by direction of the court, or by any justice thereof. Each justice shall have power to issue writs of habeas corpus upon petition by or on behalf of a person held in actual custody, and to make such writs returnable before himself or before the Supreme Court, or before any of the district courts or any judge thereof.

The Supreme Court has jurisdiction over decisions imposing a death penalty or life imprisonment, final judgments of the Court of Appeals that are taken by writ of certiorari, and the discipline, removal or retirement of any justice, judge or magistrate upon review of a recommendation by the Judicial Standards Commission. The Supreme Court prescribes rules of pleading, practice and procedure in the courts.

1.11 Court of Appeals

The Court of Appeals is the intermediate appellate court between the superior court, the New Mexico Supreme Court, and inferior administrative agencies. The appellate jurisdiction of the Court of Appeals is coextensive with the state.

The Court of Appeals consists of not less than seven judges who are chosen as provided in the constitution, whose qualifications are the same as those justices of the Supreme Court and whose compensation is provided by law. The judges of the court elect a chief judge by majority vote to serve a two-year term.

The Court of Appeals reviews appeals in all cases, either administrative or judicial, except judicial claims involving contracts; criminal cases involving sentences of death or life imprisonment; administrative appeals from the Public Service Commission; removals from the State Corporation Commission; and cases involving writs of habeas corpus. By law, the judges act in panels of three on all appellate decisions. The Court of Appeals operates under procedural rules adopted by the Supreme Court.

1.12 District Court

The district court is the trial court of general jurisdiction. It has appellate jurisdiction over all cases in inferior courts. It possesses exclusive jurisdiction in all matters involving juvenile, domestic relations, and all cases not excepted in the Constitution or by law, such as those concurrent with probate courts in probate matters. The state's thirty-three counties are divided into thirteen judicial districts, eleven of which are multi-county. The district court consists of 72 full-time judges.

The district court has original jurisdiction in all matters and causes not excepted in the constitution. This includes: such jurisdiction of special cases and proceedings as may be conferred by law; appellate jurisdiction of all cases originating in inferior courts; and tribunals in their respective districts and supervisory control over the same. The district courts, or any judge thereof, have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise in the exercise of their jurisdiction; provided, that no such writs shall issue directed to judges or courts of equal or superior jurisdiction. The district courts also have the power of naturalization in accordance with the laws of the United States. Until otherwise provided by law, at least two terms of the district court shall be held annually in each county, at the county seat.

The qualifications of the district judges shall be the same as those of justices of the Supreme Court except that district judges shall have been in the actual practice of law for at least six years preceding assumption of office. Each district judge shall reside in the district for which the judge was elected or appointed. There is a chief judge in every judicial district.

1.13 Magistrate Court

A. See NMSA 1978, §35-1-2.

Magistrate Court is a court of limited original jurisdiction. The magistrate court is not a court of record. There is at least one magistrate court in each county, except in a class A county with a population of more than two hundred thousand persons in the last federal

decennial census. The name of the magistrate district is the same as the name of the county in which it is located.

B. Districts - NMSA 1978, §§35-1-1 through 35-1-38.

All magistrate courts are full-time courts, with magistrates riding circuit to different locations prescribed in the New Mexico Statutes Annotated.

C. Magistrates.

1. Presiding Magistrate - NMSA 1978, §35-1-37.

In magistrate districts where two or more divisions operate as a single court, the Director of the Administrative Office of the Courts shall designate the "presiding magistrate" to perform duties prescribed by regulation of the Administrative Office of the Courts. See Presiding Judge Responsibilities published by the Administrative Office of the Courts.

2. Qualifications - NMSA 1978, §35-2-1.

Each magistrate shall be a qualified elector of, and reside in, the magistrate district for which they are elected or appointed and be a high school graduate or have a certificate of equivalency. In magistrate districts with a population of more than 200,000, they must be a member of the bar and licensed to practice law in this state, but may not engage in private practice (metropolitan court).

3. Selection Process

a. Election - NMSA 1978, §§35-1-3 through 35-1-35.

Except as otherwise provided by law, magistrates shall be nominated and elected at large within each magistrate district at the primary and general elections. In magistrate districts having more than one magistrate, the separate offices shall be designated by division and, in all appointments to fill vacancies and in all nominations and elections to these offices, candidates shall be designated as appointed or elected to the office of magistrate of a specific division.

Exception: In certain districts, state law states that magistrate judges shall not be elected at large from the district, but shall be elected by the voters of the division for which the magistrate sits.

- b. By Appointment - NMSA 1978, §35-2-2.

The governor shall fill vacancies in the office of magistrate by appointment of persons who possess the qualifications established by law to serve until the next general election.

- c. Term - NMSA 1978, §35-1-3.

Magistrate judges shall serve four years.

D. Jurisdiction - NMSA 1978, §§35-3-1 through 35-3-10; NMRA 2-201B and 6-201B.

1. Administer oaths and affirmations and take acknowledgments of instruments in writing, but shall charge no fee. NMSA 1978, §§14-13-3 and 14-14-3.
2. Perform marriages. Magistrates may solemnize the contract of matrimony throughout the state but shall charge no fee for it.
3. Civil actions where the debt or claim does not exceed \$10,000, effective June 1999, exclusive of interest or costs.
4. Civil jurisdiction extends to actions in contract, quasi-contract and tort, and where expressly conferred by law.
5. Statewide personal jurisdiction over out-of-county defendants where the civil cause of action arose within the district.
6. A magistrate has no jurisdiction in any civil action:
 - a. For malicious prosecution, libel or slander;
 - b. Against public officers for misconduct in office;
 - c. For specific performance of contracts for the sale of real property;
 - d. In which the title or boundaries of land may be in dispute or drawn into question;
 - e. Affecting domestic relations; including divorce, annulment or separation, or custody, support, guardianship, adoption or dependency of children;
 - f. To grant writs of injunction, habeas corpus, or extraordinary writs; or

g. Where jurisdiction is vested exclusively in another court.

7. NMSA 1978, §35-3-4; NMRA 6-201B.

Magistrates have jurisdiction in all cases of misdemeanors and petty misdemeanors, including offenses and complaints under ordinances of a county. Magistrates also have jurisdiction in any other criminal actions where jurisdiction is specifically granted by law, and they may hold preliminary examinations in any criminal action where authorized by law.

Magistrates have jurisdiction over all offenses and complaints under ordinances of a municipality and may issued subpoenas and warrants and punish for contempt if that municipality has adopted an effective ordinance to provide for magistrate jurisdiction over municipal ordinances pursuant to the provisions of NMSA 1978, Subsection B of §35-14-1.

8. In any criminal action in the magistrate court which is beyond the jurisdiction of the magistrate court, the magistrate may commit to jail, discharge or recognize the defendant to appear before the district court as provided by law.
9. The magistrate court has jurisdiction to conduct probable cause determinations for juveniles charged under the Delinquency Act. NMSA 1978, §32A-2-1.

When a child who has been taken into custody is not released but is detained a judicial determination of probable cause shall be made by a judge or special master or magistrate within forty-eight hours, including Saturdays, Sundays and legal holidays, except for children taken into custody under an arrest warrant pursuant to the Children's Court Rules. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be non-adversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released.

10. Magistrates have jurisdiction over motor vehicle code violations committed by a juvenile. NMSA 1978, §32A-2-29.

The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code NMSA 1978, §66-1-1 or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in NMSA 1978, §32A-2-3 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

If the court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection A of NMSA 1978, §32A-2-3, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations.

The district court has exclusive original jurisdiction of all proceedings under the Children's Code NMSA 1978, §32-A-1-1 in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be a delinquent child. NMSA 1978, §32A-1-A.

E. Jurisdiction; Venue of Actions - NMSA 1978, §35-3-5.

1. Civil - in civil actions, in any magistrate district where the plaintiff or defendant resides or may be found or where the cause of action arose.
2. Criminal - in criminal actions, in the magistrate district where the crime is alleged to have been committed.
3. A magistrate also has jurisdiction in any criminal action involving violation of a law relation to motor vehicles arising in any magistrate district adjoining at any point that in which he serves and within magistrate trial jurisdiction; provided that the defendant is entitled to a change of venue to the district where the cause of action arose if he so moves at, or within fifteen days after, arraignment. NMSA 1978, §35-3-6(A).

NMRA 6-201C - Unless otherwise provided by law, the action must be commenced in the magistrate district where the crime is alleged to have been committed.

Note: Under this rule a change of venue is not permitted. This rule takes precedence over the statute. A new rule concerning criminal venue is currently being considered by the Supreme Court.

F. Jurisdiction; Territorial Limits - NMSA 1978, §35-3-6.

1. The territorial jurisdiction of a magistrate is coextensive with the magistrate district in which he serves.
2. A magistrate has jurisdiction to sit in any action arising in any other magistrate district when designated for a specific period of time by any district judge because of the unavailability of a magistrate in that magistrate district. Any magistrate acting

in another magistrate district by designation under this subsection shall include the cases heard by designation in his own reports to the Administrative Office of the Courts, indicating on the reports that his jurisdiction is by designation. No costs or fees shall be collected by any court for any filing or proceeding under this subsection.

3. In any criminal action in which a magistrate has territorial jurisdiction over the offense pursuant to this section, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever he resides or may be found with the state.
4. In any civil action arising within the magistrate's territorial jurisdiction, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever he resides or may be found within the state.
5. The territorial limitations of magistrate court jurisdiction shall not apply to actions to enforce judgments entered in the magistrate district and writs issued in aid of those actions.

1.14 Metropolitan Court (Refer to <http://www.metrocourt.state.nm.us/> for Metro Court information)

Effective July 1, 1980, the Bernalillo County metropolitan court was established in Albuquerque. Created by the 1979 legislature, the metropolitan court consolidated the Bernalillo County magistrate court, Small Claims Court, and the Albuquerque Municipal Court. Albuquerque's metropolitan court was established in accordance with statutory requirements of being located within the boundaries of a class A county with a population of more than 200,000 persons.

Metropolitan judges are elected. The governor fills vacancies in the office of metropolitan judge, by appointment of persons who possess the personal qualifications established by law, until the next general election. No person is eligible for election or appointment to the office of metropolitan judge unless that person is a member of the bar and has practiced in this state for a period of three years. There is a chief metropolitan judge of a metropolitan court. The chief metropolitan judge shall designate each metropolitan judge position as a separate and consecutively numbered division. Any additional metropolitan judge authorized within a metropolitan court shall be designated as metropolitan judge of the next consecutive division. A district court judge may designate a metropolitan judge as a special master.

The elected term of office for each judge of the metropolitan court is four years. Any person appointed to fill a vacancy on the metropolitan court after January 1, 1989 shall serve until the next general election. That person's successor shall be chosen at that general election and shall hold the office until the general election four years later. Additional judges shall be appointed and elected pursuant to Article 6 of the Constitution of New Mexico.

The metropolitan court constitutes a state magistrate court. In addition to the jurisdiction provided by law for magistrate courts, it has jurisdiction coextensive with the county over all offenses and complaints under ordinances of the county and of any municipality located within Bernalillo County. Civil jurisdictions extend to debts and sums claimed not exceeding \$10,000 exclusive of interest and costs.

1.15 Probate Court - NMSA 1978, §§34-7-1 through 34-7-11, Probate

The probate court has concurrent original jurisdiction with the district courts over informal proceedings for probate of will or appointment of a personal representative.

There shall be a probate judge in each county of the State. The position of probate judge shall be deemed a part-time position. The probate court is in session at such times as needed.

1.16 Municipal Court - NMSA 1978, §§35-14-1 through 35-14-12, Municipal Court; Creation

A. Municipal courts have jurisdiction over all offenses and complaints under ordinances of the municipality. For ordinance violations, municipal courts can impose fines of \$500 or less and/or imprisonment not to exceed 90 days except for a violation of:

1. Ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs. For these violations, a fine of not more than \$1,000 and/or imprisonment for not more than 364 days may be imposed. NMSA 1978, §3-17-1, as interpreted by the New Mexico Municipal League.
2. Industrial user waste water pretreatment ordinance violations as required by the United States environmental protection agency. For these violations, the courts may impose a fine not to exceed \$1,000 per day of violation. NMSA 1978, §3-17-1.
3. The governing body of a municipality with a population of one thousand five hundred persons or less in the last federal decennial census may designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. The designation shall be by adopted ordinance which shall not be effective until the expiration of the term of any incumbent municipal judge. NMSA 1978, §35-14-1.

B. Municipal judges are elected for terms of four years at a regular municipal election. In municipalities with a population of thirty thousand persons or more, additional judges may be elected if the municipal governing body determines the workload of the court requires more than one judge. Municipalities with a population of less than thirty thousand persons have only one municipal judge. NMSA 1978, §36-1-8.2, Municipal Court; Creation.

1.17 District Attorney - NMSA 1978, §36-1-18, Duties of District Attorney

- A. The district attorney shall be learned in the law, and a resident of New Mexico for three years prior to election. The district attorney is the law officer of the state and of the counties within the district, is elected for a term of four years, and performs such duties and receives such salary as may be prescribed by law.
- B. There is a district attorney for each judicial district, with the exception of the Eleventh judicial district which contains two district attorney divisions. NMSA 1978, §36-1-8.2. The legislature has the power to provide for the election of additional district attorneys in any judicial district and to designate the counties therein for which the district attorneys shall serve.

Refer to NMSA 1978, §36-1-20, Authority of District Attorney before Magistrate Court.

- C. The legislature possesses the power to provide for the election of additional district attorneys in any judicial district and to designate the counties therein for which the district attorneys shall serve; but no district attorney shall be elected for any district of which he is not a resident.

1.18 Public Defender Department

- A. The governor appoints the chief public defender, who is the administrative head of the department. Any vacancy in the office of the chief shall be filled by appointment of the governor. The chief shall serve at the pleasure of the governor. NMSA 1978, §31-15-4.
- B. The chief is responsible to the governor for the operation of the department. It is that persons duty to manage all operations of the department as set forth in the Public Defender Act. To perform those duties, the chief has every power implied as necessary for that purpose, those powers expressly enumerated in the Public Defender Act or other law, and full power and authority as set forth in the act.
- C. Under the control of the chief public defender, each district public defender administers the operation of the department within their own district. The public defender is required to represent:
 - 1. Any person financially unable to obtain counsel who is charged with a crime carrying a possible sentence of imprisonment;
 - 2. Any person who is financially unable to obtain counsel in any state post-conviction proceedings;

3. May confer with any person who is not represented by counsel and who is being forcibly detained;
4. The Public Defender has to have a court appointment to actively represent a defendant; and
5. The Public Defender has to be appointed by the court to represent the defendant.

1.2 Judicial Agencies

1.21 Administrative Office of the Courts

- A. The Administrative Office of the Courts, by Supreme Court order, dated 2/17/88, is officially the administrative arm of the Supreme Court.
- B. The Director of the Administrative Office of the Courts shall, under the supervision and direction of the Supreme Court:
 1. Supervise all matters relating to the administration of the courts.
 2. Examine fiscal matters and the state of the dockets of the courts, secure information as to the courts' need for assistance, prepare and transmit to the Supreme Court statistical data and reports as to the business of the courts.
 3. Submit to the Supreme Court and to the legislature by January 30th of each year a report of the activities of the administrative office and of the state of business of the courts, including the statistical data submitted to the Supreme Court, pursuant to NMSA 1978, § 34-9-3(B) and the Director's recommendations. The annual report is a public document.
 4. Deal with financial problems of those courts supported by legislative appropriations and be concerned with adequate but economical financing of each of those courts and the equitable distribution of available funds among them. For this purpose, the Director shall receive, adjust and approve proposed budgets submitted by the courts prior to submission of the budgets to the state budget division of the department of finance and administration, for inclusion in the executive budget. The district courts of all counties within a judicial district shall be included within a single budget. Budget proposals shall be submitted by the courts at the time and form prescribed by the Director.
 5. Perform other duties in aid of the administration of justice and the administration and dispatch of the business of the courts as directed by the Supreme Court. The courts shall comply with all requests of the Director for information.

6. Compile manuals prescribing detailed requirements for uniform procedures, records and forms for use by the courts.
- C. Following approval by the Supreme Court, the manuals shall be reproduced by the Administrative Office of the Courts and a copy filed with the Supreme Court Law Librarian. Upon the filing, any manual then constitutes a set of rules of the Supreme Court as having the effect of law. In addition, the follow applies:
1. Sections of any manual may be revised or amended periodically by the Director, and the revision or amendments become effective following approval by the Supreme Court, reproduction by the Administrative Office of the Courts and filing with the Supreme Court Law Librarian.
 2. The Director of the Administrative Office of the Courts shall distribute copies of each manual to each court concerned and, upon request, to other courts and to interested members of the public.
 3. Each court shall comply with all the requirements contained in the applicable manual, submit reports to the Director as requested and furnish additional information the Director may consider necessary.

1.22 Judicial Standards Commission - Refer to New Mexico Constitution, Article 6, Section 32. Refer to NMSA 1978, §§34-10-1 through 34-10-4

- A. The Judicial Standards Commission is an independent state commission that investigates complaints of judicial misconduct, holds hearings, and makes recommendations to the Supreme Court regarding the removal, retirement, and/or discipline of any state justice, judge or magistrate. The Commission is composed of two justices or judges of the Supreme Court, Court of Appeals, or District Court, one magistrate, two attorneys, and six lay citizens. Judicial members of the Commission are appointed by the Supreme Court, attorney members by the Board of Bar Commissioners, and lay members by the Governor. Judicial and attorney commissioners are appointed for four-year staggered terms. Lay members are appointed for five-year staggered terms. Each year, a lay member is selected as the Commission chair.
- B. If a position on the Commission becomes vacant for any reason, a successor is appointed by the original appointing authority and shall serve for the remainder of the term vacated. Actions by the commission are valid upon the majority vote of its members. As required by law, all investigations, hearings, and other proceedings being conducted by the Commission are confidential. Only records of proceedings that are filed in the Supreme Court lose their confidential character.

- C. Where appropriate, the Commission may close a matter, informally caution a judge or refer the judge for counseling or assistance, hold hearings, or appoint masters who are justices or judges of courts of record to conduct hearings. After hearings, the Commission may recommend to the Supreme Court that a judge be removed, retired, and/or disciplined.

- D. After the filing of the formal record, findings and conclusions, and recommendation in the Supreme Court, the Court shall review the record of the proceedings on a *de novo* basis and either order the removal, retirement, and/or discipline of the judge or reject the Commission's recommendation. The Supreme Court may also receive oral argument, permit the introduction of additional evidence, or take any other action deemed appropriate pursuant to the Court's original jurisdiction.

II. MAGISTRATE CLERK

2.1 Chief Clerk

The chief clerk of the magistrate court is charged with the administrative and clerical functions of the magistrate court. The chief clerk is responsible for the supervision of the processing of all paper work in the court; the establishment of office procedures; the management of the activities of all other clerks and the implementation of administrative directives from the Administrative Office of the Courts. The chief clerk shall work at the direction of the presiding judge so long as the judge's directions are not contrary to statute, Supreme Court rule, this manual, Administrative Office of the Courts' policies and directives or other applicable law. The chief clerk shall work with all judges in the court to maintain good communication.

2.2 Role of Magistrate Clerk

The clerk is often the first contact a person has with the court, prior to an individual seeing the judge. The clerk frequently deals with attorneys who are in magistrate court to handle cases for clients.

The clerk maintains the case files, performs court room duties, files papers for the judges and performs a number of other functions related to the work of the court, as assigned by the Chief Clerk.

The clerk is not a judge, and must not cross over into areas which are the responsibility of the judge.

Supreme Court Order 98-8500. Approval of the use of the legal information form in all courts in the State of New Mexico. Notice to be posted in all courts in the state of New Mexico--Court staff can not: give advice about whether you should file a case or whether you should take any particular action in a case; fill out a form for you or tell you what words to put in a form; advise you what to say in court; speculate about what decision the judge might make or what sentence the judge might impose.

Refer to Chapter 15, Policy Directives, Approval of the Use of the Legal Information Form in all Courts in the State of New Mexico.

2.3 General Duties of Magistrate Clerk

A. Processing and Retention Center of All Magistrate Court Documents.

Clerk issues, records, and files documents in accordance with New Mexico Statutes, Supreme Court Rules for the court, and Administrative Office of the Court's Policy Directives. Documents must always be processed accurately and timely.

B. Clerk to Record Orders and Keep Seal - NMSA 1978, §34-1-6.

The clerks of the supreme and inferior courts, and of the probate judges, shall seasonably record the judgments, rules, orders and other proceedings of the respective courts and make a complete alphabetical index thereto, issue and attest all processes issuing from their respective offices, and affix the seal of office thereto; they shall preserve the seal and other property belonging to their respective offices.

Note: The “seal” of a magistrate court, for purposes of this paragraph, is the file stamp with the court’s name and the date affixed to the relevant document.

C. Oaths and Notarial Acts - NMSA 1978, §§14-13-1 through 14-13-25; §§14-14-1 through 14-14-11.

Power to Administer Oaths

Clerks of magistrate courts, if the magistrate court has a seal, are hereby authorized and empowered to administer oaths and affirmations in all cases where magistrates and other officers within the state authorized to administer oaths may do so, under existing laws, and with like effect.

Whenever any person shall be required to take an oath before that person enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form: the person swearing shall, with their right hand uplifted, follow the words required in the oath as administered, “Do you swear or affirm that the facts contained in this document are the truth to the best of your knowledge, so help you God?” Alternatively, if a person objects to this language, use the following oath: “Do you solemnly, sincerely and truly declare and affirm, under penalty of perjury, that the facts contained in this document are the truth to the best of your knowledge?”

Power to Perform Notarial Acts

A judge, clerk or deputy clerk may perform notarial acts. NMSA 1978, §14-14-2. A "notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.

1. Clerks and judges shall not charge notary fees!
2. The clerk shall notarize documents only during court hours. At the discretion of the Chief Clerk, if time permits, clerks may notarize non-court documents for the public.

3. Judges and clerks **shall** include their title (“judge” or “clerk”) following their signature when they are performing a notarial act. NMSA 1978, §14-14-3.C (1993).
4. Judges and clerks are encouraged to use a stamp with the name of the court under their signature when they notarize a document if the notarial language is not already printed on the document.
5. Here is an example of notarial language:

(Court Name)

Subscribed and sworn to before me this _____ day of _____, _____.

Judge, notary or other officer authorized to administer oaths

Official Title

D. Receipting of Money - Refer to Chapter 11, Financial Management.

The clerk of the magistrate court is responsible for the receiving and receipting of all filing fees, fines, bonds, corrections fees, lab fees, jury demand fees, court automation fee, court facilities fees, traffic safety fees, judicial education fee, bench warrant fee, and other fees and costs authorized. All receipts shall be submitted to the Administrative Office of the Courts in accordance with its accounting regulations.

The clerk is also responsible for submission of certificates and juror pay sheets to the Administrative Office of the Courts.

E. Monitoring Recordings.

1. **Preliminary Hearings:** The clerk is responsible for serving as tape monitor during preliminary hearings. If a digital recording system is used, the clerk shall monitor the recording at the request of the judge. A duplicate recording may be requested by any party within six months following a preliminary hearing. NMRA 6-202B.
2. **Other Criminal Proceedings:** Parties wishing a record of other criminal proceedings may, with prior approval from the court, make such a recording at their own expense and with their own equipment and personnel. A party making a recording shall make copies of the recording available to all other parties in the proceeding. NMRA 6-601D.

3. Civil Proceedings: Parties wishing a record of civil proceedings may, with prior approval from the court, make such a recording at their own expense and with their own equipment and personnel. NMRA 2-109. A party making a recording shall make copies of the recording available to all other parties in the proceeding upon request.

F. Juror Management.

The clerk is responsible for sending jury questionnaires, summons and keeping juror attendance and payment records. The clerk shall use the jury management software in a manner appropriate to the needs of the court. In civil cases, the cost of the jury is reimbursed to the court by the party requesting the jury. Refer to Chapter 10, Jury, Witness, Interpreter and Court Monitor Procedures; NMSA 1978, §38-5-11, Qualifying Jury Panels; NMRA 6-605.

G. Personnel Management.

Personnel management in the magistrate courts is governed by the New Mexico Judicial Branch Personnel Rules (NMJBPR) which maybe found on the Human Resources link at <http://inside.nmcourts.com>. All judges and staff shall read and comply with the NMJBPR.

H. Public Relations.

The clerk is responsible for providing information on court matters to the public consistent with these Procedures. If the clerk has a specific question or concern, the clerk shall contact the Magistrate Court Director or Administrative Office of the Courts's General Counsel.

1. One clerk shall be designated as records custodian for purposes of the Inspection of Public Records Act (see Chapter 15, Policy Directive #9).
2. One clerk shall be designated as the contact person/coordinator to provide assistance with disabilities in compliance with Americans with Disabilities Act.

Court Staff can provide:

1. The status of a specific case, unless the case (or information in the case) is "sealed" (not available for public inspection because of state law or a judge's decision). (See Section 3.8 of this manual for instructions on how to seal a case.)
2. The court file on a specific case, unless the case is "sealed," for a person to review. Physical custody of original case files shall remain with the court (judges or staff) at all times.
3. General information on court rules, procedures and practices.

4. Court-approved forms (Forms are not available for all legal proceedings.).
5. Guidance on how to compute deadlines and due dates.
6. Court schedules and information on how to get matters scheduled .

Court staff cannot:

1. Give advice about whether a party should file a case or whether a party should take any particular action in a case.
2. Fill out a form for a person or tell the person what words to put in a form.
3. Advise the person what to say in court.
4. Speculate about what decision the judge might make or what sentence the judge might impose.

Note: Legal advice - Court staff provide information, not legal advice. The court, including the judge and all court staff, must remain impartial. They do not take sides in any matter coming before the court.

I. Destruction of Documents.

The Chief Clerk is responsible for destruction of court records in compliance with the Magistrate Court Records Retention and Disposition Schedule. Refer to Chapter 4 (4.10), Records Retention. The retention period is based on the date the case was closed, when all conditions and obligations have been met by the party ordered to do so. For example, a criminal case was opened in the 97th fiscal year and went to trial in the 98th fiscal year; but, all conditions were not met until the 99th fiscal year. The retention period commences in the 99th fiscal year. Refer to State Records Center and Archives for Retention Schedule for Magistrate Courts at www.state.nm.us/cpr.

III. ADMINISTRATIVE PROCEDURES

3.1 Mail

All mail shall be opened, date stamped, and filed daily. Confidential mail shall be distributed to the appropriate person without being opened unless receiving prior permission. All faxes shall be date stamped and filed daily. All payments received in the mail shall immediately be recorded in the mail log at the time they are received.

3.2 Procedures Relating to Records Inspection Requests -- See Chapter 15, Supreme Court Policy Directive #9; NMSA 1978, §§14-2-1 through 14-2-12. **These procedures relate to requests to view or obtain copies of paper files. For requests dealing with electronically stored information, please see Section 3.3.**

- A. The purpose of the Inspection of Public Records Act is to make available to the public, as part of the routine duties of the courts, the greatest possible information about the affairs of the magistrate courts and the official acts of the judges and clerks.
- B. The time requirements in this directive are mandated by statute. It is essential that the courts give priority to responding to written requests for records inspection. Penalties of \$100 per day of noncompliance can be imposed.
- C. All written requests are deemed denied if the records are not provided for inspection within 15 calendar days of receipt of the request; the only exception is a request that is extremely burdensome or broad. A denial of a written request requires a written explanation.
- D. The general rule is that every person has a right to inspect public records of this state. There are exceptions to this rule. They are listed in NMSA 1978, §14-2-1. Unserved search warrants are not public information. Unserved arrest warrants are not public information.
- E. NMSA 1978, §14-2-8, Procedure for Requesting Records.
 - 1. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.
 - 2. Nothing in the Inspection of Public Records Act [this article] shall be construed to require a public body to create a public record.
 - 3. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with

reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

4. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.
5. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.

F. Records Custodian--Oral and Written Requests:

1. Each presiding judge/chief clerk shall designate a clerk to serve as records custodian.
2. The records custodian shall receive and respond to written requests for records inspection according to the time frames set forth in this policy and by statute.
3. The presiding judge may appoint a clerk to respond to oral requests for records inspection. The records custodian may also be responsible for oral requests. To expedite records inspection upon oral request, the courts are encouraged to allow any available clerk to respond to the request when the demand is made.
4. The clerk should charge the appropriate fee for copying and certification.

Note: If requested, clerk can certify documents to be a true and correct copy of the original, at no charge. Refer to NMSA 1978, §35-6-1 for copying and certification fees.

G. Responding to Written Requests for Inspection:

1. A written request is received when it is delivered to the court, not to the records custodian.
2. If the records cannot be provided immediately, the custodian shall make the records available within 3 business days.

3. If the records cannot be made available for inspection within 3 business days after receipt, the custodian shall give written notice of when the records will be available.
4. The custodian shall provide records for inspection no later than 15 calendar days after receipt of the request unless the request is extremely burdensome or broad.
5. If a request is extremely burdensome or broad, the custodian shall give written notice within 15 calendar days of receipt that additional time is needed. The records must be provided within a reasonable time.
6. If the chief clerk or the judge believes the request to be burdensome, the court shall contact the Administrative Office of the Courts for direction and assistance.

3.3 Requests for Electronic Information

1. All requests for electronic transfer of information, for statistics derived from the court's database, or for any other request to be derived from information in the court's electronic database not addressed in this section (Section 3.3) **SHALL BE REFERRED to the Administrative Office of the Courts.**
2. If the paper file has been destroyed, the electronic register of actions of the case may be printed and provided without prior approval to a party in the case, the party's attorney, law enforcement, the public defender, or the district attorney. The court may also provide such persons with a written summary of the charges and dispositions.
3. If the paper file has been destroyed, with written authorization from a party in the case, a third party may be provided with a paper copy of the register of actions or with a written summary of the charges and dispositions.
4. All other requests for information contained solely in electronic registers of actions shall be referred to the Administrative Office of the Courts Director, the Magistrate Court Division Director or the Administrative Office of the Courts General Counsel.

3.4 Ordering Supplies

All magistrate courts must fill out a "Request for Supplies" when requesting office supplies from the Administrative Office of the Courts central supply room. Please refer to Appendix 5 for Supply Order Form.

1. On the line marked "Requested by," the judge or chief magistrate clerk must sign their name or designee.

2. Enter the court's county, division, and date of request where indicated.
3. Enter the name of the item(s) in the "Office Supply" section of the request. Additional information such as brand name, style number, size or color is requested. Enter the quantity of items requested.
4. If the item requested is in stock, the order will be filled immediately; if not in stock, it will be special ordered. Clerk must reorder items in writing.
5. Special ordered items are reviewed to determine if the item is justified (court may be contacted).
6. If the item is justified, order is forwarded to the purchasing and inventory specialist (special order items are accumulated and ordered twice monthly).
7. If the item is not justified, court will be contacted and reason will be provided.
8. A letter must be submitted for furniture and equipment.
9. Upon receipt of request, the central supply storekeeper at Administrative Office of the Courts will assign an inventory control number. A copy of the numbered request form, along with the supplies, will be mailed to the appropriate magistrate court. The storekeeper will enter the date the request was received and the date the order was shipped to the court.
10. When the supplies are received at the particular magistrate court, along with the duplicate numbered request form, the clerk should compare supplies ordered, to those received.
11. The request form must be signed and dated (date of receipt) indicating receipt of goods.
12. The signed copy must be retained by the magistrate court and filed in numerical order for audit purposes (internal and independent auditor).
13. The clerk shall create and retain a file of the request for supplies.

3.5 Maintenance of Equipment

When equipment in the court breaks down, the clerk should follow the procedures outlined in this section. If there are any questions regarding maintenance contracts or procedures regarding broken equipment, contact Magistrate Court Division.

A. Computers.

Contact your field technician for hardware or software issues. For computer usage policies, please see the Supreme Court's Internet and Computer Use Policy, "In the Matter of the Approval of the Computer Use and Internet Policy Adopting and Approving Computer Use and Internet Policy for the Judicial Branch of Government," Appendix 94.

B. Calculators and Tape Recorders.

Calculators, typewriters and tape recorders do not have maintenance contracts. Please contact the Administrative Office of the Courts (Magistrate Court Division) if items are broken.

C. Copiers and Postage Meters.

All copiers and postage meters are under maintenance agreements. The court should place a call to the appropriate vendor regarding broken copiers or postage meters. The court and Administrative Office of the Courts, Fiscal Services Division Procurement Specialist, have a copy of the contract and telephone number for service calls. The court is responsible for filling its own postage meter. The court shall send a monthly report to the Administrative Office of the Courts Purchasing Officer listing the date the meter was filled and the amount of postage added on that date.

3.5 Lease Agreements

The Administrative Office of the Courts is responsible for lease agreements for magistrate court facilities throughout the State of New Mexico. A copy of the lease should be kept by the court. Each court should be familiar with its own lease conditions.

3.6 Disposal of Equipment

Please contact the Asset Manager at Administrative Office of the Courts for instructions on disposing of property. Refer to NMSA 1978, §13-6-1; Appendix 6, Affidavit for the disposition of obsolete, worn-out or unusable computer hardware. After written permission has been received, property disposal should be completed in accordance with Administrative Office of the Courts instructions within thirty (30) days. The court will be provided with copies of the Administrative Office of the Courts's letters to the State Auditor and State Purchasing.

3.7 Health and Safety

UNDER CONSTRUCTION

3.8 Court Security

- A. Please refer to Appendix 92, Supreme Court Order 07-8500, regarding the Report and Recommendations of the Statewide Court Security Committee and Appendix 93, regarding the New Mexico Judiciary Statewide Court Emergency and Security Guidelines, dated April 26, 2006.
- B. ¹Making files confidential (“sealing” files).

This section (Items 1 through 6) was deleted by the New Mexico Supreme Court with the following comment: **“The Court is having a committee look at when and under what circumstances all courts in New Mexico may seal files.”**

3.9 Volunteers and Community Service Participants

- A. Volunteers in the Court.

A “volunteer” is any person who performs any type of clerical or other work for the court who is not a judicial branch employee or who is not paid for the work by funds appropriated to the Administrative Office of the Courts. A person assigned to the court under a DWI local program grant must be an Administrative Office of the Courts employee and is not a court volunteer.

Volunteers must comply with all laws, rules, directives, and regulations governing court procedure.

¹ Revised September 8, 2008

The court must have each volunteer sign a waiver before the volunteer begins work at the court. All signed waivers must be filed with the Director of the Administrative Office of the Courts. Compliance with the waiver requirement will be subject to audit.

If you have any questions about whether a particular task is appropriate for a volunteer, please call the Administrative Office of the Courts.

Refer to Chapter 15, Policy Directive #10, for information and waiver form for volunteers.

B. Community Service Participants.

Community service participants must comply with all laws, rules, directives and regulations governing court procedures. Those persons performing community service for the court are not required to sign the waiver because statutory immunity from liability is provided by NMSA 1978, §31-12-3.

3.10 Local Court Rules and Forms

Please contact the Director of the Magistrate Court Division to submit any proposed local court rules or amendments. The Magistrate Court Division has copies of each court's approved local rules.

NMRA 2-103 and 6-103 - Proposed local rules or amendments shall be submitted to the Director of the Administrative Office of the Courts and shall not become effective until approved by the Director. Forms used in the magistrate courts shall be substantially in the form approved by the Supreme Court.

IV. CASE INITIATION PROCEDURES

4.1 Opening a File

A. A file is opened upon receipt of a criminal complaint, uniform traffic citation, or other citation or a civil complaint. A separate complaint shall be filed and a separate file opened for each defendant. All complaints shall be date stamped indicating the name of the court and the date received.

1. Criminal Actions:

NMRA 6-201: Commencement of Criminal Action.

How commenced. A criminal action is commenced by filing with the court:

- a. a complaint consisting of a sworn statement containing the facts, common name of the offense charged, and where applicable, a specific section number of New Mexico Statutes Annotated, 1978 Compilation, which contains the offense. A separate complaint shall be filed for each defendant;
- b. a traffic citation issued by a state or local traffic enforcement officer pursuant to NMSA 1978, Section 66-8-130; or
- c. a citation issued by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed as soon as practicable with the magistrate court.

2. Civil Actions:

- a. How commenced. A civil action is commenced by filing with the court a complaint consisting of a written statement of a claim or claims setting forth briefly the facts and circumstances giving rise to the action.
- b. Jurisdiction. Magistrates have jurisdiction in all cases as may be provided by law.
- c. Form of complaint. The complaint shall be in substantially the form approved by the court administrator and the Supreme Court.

- B. The clerk should first collect the filing fee, if one is required, before entering information into the Case Management Application and assigning a docket number. See Section 4.5. There is no filing fee collected when the state brings charges against the defendant in a criminal case. The clerk does not collect from state agencies who are statutorily exempt from paying. The burden is placed on the agency to let the clerk know the applicable statute exempting payment. No filing fee is collected for persons whom the judge has determined to be indigent. No filing fee shall be collected from a person filing a complaint alleging domestic violence. NMSA 1978, §35-6-3 (1995).
- C. The clerk receipts filing fee and provides receipt to person who paid. Section 35-4-1. The person making the payment shall be listed on the receipt as the payor, even if the person is not a party to the case. Persons paying cash may choose whether the receipt is issued to the payor or to “cash.”
- D. The clerk prepares the appropriate colored file for the type of case and the appropriate label with the case name and participant identification number.
- E. The clerk files all papers related to the case in the file folder and secures the papers with a prong, staple or other appropriate device. Files are to be organized with the most recent dated document on the top.
- F. Files may be filed alphabetically or numerically, or in a tickler system. Courts with high density filing systems shall file alphabetically or in a tickler system. Outstanding warrants shall be filed in a separate file cabinet.
- G. The clerk processes the paperwork pursuant to the case type procedures.

4.2 Filing Cases

A. Filing Open Cases.

1. An open case is a new filing or a case wherein a party has not complied with all of the conditions and obligations imposed by the judge. This includes cases which have been remanded from the district court, cases transferred to the district court for a competency determination, and cases which were dismissed and subsequently re-filed.
2. Any colored file with a critical event, e.g., a trial setting, appearance date, agreement to pay date, etc. should be filed in a tickler system. Refer to Appendix 14 for an example of a tickler system in a larger court.
3. The clerk shall file civil cases separately from criminal cases.

B. Filing Agreement to Pay Fines and Costs.

1. After judgment, if the defendant is unable to pay the fines and other costs, the clerk prepares an "Agreement to Pay," NMRA 9-605. The defendant must sign the agreement. NMRA 9-605.
2. "Agreement to Pay" cases should be filed in the tickler system, as discussed above, according to the date of payment. Items due in another month are filed behind the appropriate monthly guides. Agreement to Pay cases may be filed numerically if the court uses an electronic system to keep track of due dates.
3. If the defendant fails to pay, an "Order to Show Cause," NMRA 9-611, should be issued. If the person fails to appear, "Bench Warrant," NMRA 9-212 is issued. When an order to show cause is issued, the case is moved to the new date (date ordered to appear in court) in the tickler system.

When a bench warrant is issued, the case is filed numerically or alphabetically in separate filing cabinets. The clerk should also flag the license of the defendant, if applicable.

Refer to MVD-10079 Flag License.

Refer to Failure to Pay, Chapter V, General Procedures Section.

Refer to Chapter 15, Supreme Court Policy Directive #7.

Refer to NMSA 1978, §§31-12-3 and 35-6-6.

C. Filing Closed Cases.

1. A closed criminal case is described as a file containing any of the following, provided all court-ordered conditions have been met:
 - a. Final Order on Criminal Complaint (Deferred Sentence), NMRA 9-603A.
 - b. Final Order, NMRA 9-603.
 - c. The back of a citation or an Order of Dismissal by the court serve as Final Orders.
 - d. Judgment and Sentence, NMRA 9-601 (DWI); NMRA 9-602 (General).
 - e. Order Dismissing Criminal Complaint with Prejudice, NMRA 9-414.
 - f. Notice of Dismissal (non-felony), NMRA 9-415.

- g. Notice of Dismissal (felony), NMRA 9-415A.
 - h. Bind Over Order, NMRA 9-207.
2. A closed civil case is described as a file containing any of the following, provided all court-ordered conditions have been met:
 - a. Satisfaction of Judgment, NMRA 4-706.
 - b. Stipulation of Dismissal, NMRA 4-304.
 - c. Notice of Dismissal of Complaint, NMRA 4-305.
 - d. Order Dismissing Action for Failure to Prosecute, NMRA 4-306.
 - e. Order Dismissing Action, NMRA 4-306B.
 - f. Order Declaring Judgment of the Court Satisfied in Full, NMRA 4-709.
 3. DWI and Domestic Violence cases are filed separately due to the retention schedule. Civil and criminal closed case files are filed separately in sequential docket number order.

4.3 Calendaring Cases

There are two ways of calendaring court appearances: a "trailing docket" and particular settings.

1. A trailing docket of cases is usually "first come, first served" and is used more often in simple traffic cases and first appearances. Several cases are set for the same date and time.
2. Alternatively, a particular cases may be scheduled for a particular date and time. Trials are typically placed on a calendar and parties, witnesses, etc., are notified to appear at a particular time on a particular date.
3. Certain information must be recorded when setting a hearing date, regardless of what type of calendaring device the court selects. The date, time, type of proceeding, docket number and names of plaintiff and defendant (or counsel) must be entered on the calendar for each scheduled hearing. Appropriate notations should be made on the calendar when a hearing has been canceled or rescheduled. All parties should be notified as soon as possible when a hearing is canceled or rescheduled.

4.4 Distribution of Notices and Orders

The clerk must send copies of all notices or orders issued by the court, or any action taken by the court, to **all criminal defendants, all counsel who have entered an appearance, and all parties in civil cases not represented by counsel.**

4.5 Case Numbering–Assignment of Docket Number

- A. After clerk has accepted the complaint and/or citation for filing, information is entered into the Case Management Application.
- B. Each calendar year, the Case Management Application assigns docket numbers in sequence to civil and criminal cases, to identify each case sequentially.
- C. On January 1 of each year, the sequential numbering of cases begin at “0”.
- D. The docket number includes the court type, court code, case category, calendar year and case number.
- E. The Case Management Application automatically assigns case (docket) numbers throughout the fiscal year (one number higher than the last year).

Example:

First field: Designates type of court–**M** for magistrate and **D** for district court.

Second field: Court code.

Third Field: case category–refer to Case Management Application for complete list.

Fourth Field: ten digit number

- * 1st character is a leading zero.
- * 2nd 4 characters indicate the year.
- * last 5 characters indicate the case number.

Example: M-49-TR-0200000234

“M” means magistrate court

“49” means the magistrate court location

“TR” means traffic

“0200000234” means the 234th traffic citation entered in the year 2000.

4.6 Case Identification–Labels

In order to distinguish one defendant from another, self-adhesive labels are placed on the colored files with the following information:

A. Criminal Case Label:

1. docket number
2. name of defendant
3. officer/agency
4. judge's initials (optional)
5. participant identification number
6. filing date (optional for each court to track time)

B. Civil Complaint Label:

1. docket number
2. name of parties
3. judge's initials (optional)
4. participant identification number (optional)
5. filing date (optional for each court to track time)

4.7 Color Coding for Case Identification–Files

The court uses different colors of files to identify the different case types (civil, felony, misdemeanor, DWI, traffic) filed in the magistrate court.

Case Type / File Color Coordination

Case Type	Case Category	File Color	Colorbar Indicator Flag
Civil	CV	Purple	
DWI Misdemeanor	DR	Orange	Red (DV)
DWI Felony	IR	Orange	Yellow
Domestic Misdemeanor	VR	Red	Red (DV) <small>(use red flag)</small>
Domestic Felony	VR	Red	Yellow
Felony	FR	Yellow	Red (DV)
			Orange (DWI)
Misdemeanor	MR	Blue	
Traffic	TR	Green	
Extradition	ER	Gray	
Search Warrant	SW	Manilla	
Miscellaneous	MS		
Parking	PR		

Note: There are variations of this format. Some courts may differentiate a Felony DWI with an orange dot on the file.

1. If multiple offenses appear on the same complaint, the file will be the color of the most serious offense. For example, if traffic and misdemeanor charges are filed, a light blue file folder will be used.
2. If a DWI felony is filed with a child abuse case, the case is filed in a yellow file under "FR".

3. Clerk prepares only one case file per civil case, regardless of the number of plaintiffs or defendants. In criminal actions, clerk prepares one case file per defendant.

Note: The DWI-felony charge is filed under the IR case type and an orange file prepared.

4.8 Retention of Files

Refer to Retention and disposition schedule at State Records Center and Archives at www.nmcpr.state.nm.us/nmac/_title01/T01C017.htm -- Also reference the Retention Schedule in Chapter 14.

V. CRIMINAL

5.0 Criminal Actions--General Explanation

A. What is a criminal action?

1. A criminal action is a court proceeding involving a person charged with committing a crime. A crime is an act or omission which is prohibited by criminal law.

Refer to Legal Dictionary: <http://www.fifthdistrictcourt.com/dictionary/legal.htm>

2. In magistrate court, the crimes in which persons are charged normally involve violations of the criminal laws of the State of New Mexico (e.g., driving while intoxicated is a crime under New Mexico Statutes Annotated, §66-8-102). However, criminal actions involving violations of county ordinances may also be brought to magistrate court.
3. Usually, the state brings a criminal action against the person charged with committing a crime. A private citizen may begin a criminal action against another person; if this occurs, the person bringing the action usually handles the case against the person charged with committing the crime. Private attorneys cannot represent the private citizen bringing the action unless they are appointed as a special prosecutor by the district attorney. The district attorney may dismiss the action brought by the private citizen or peace officer or may enter an appearance and prosecute the case. Note: Refer to NMRA 6-108, Non-attorney prosecutions.
4. Clerks cannot provide legal advice and cannot assist in completion of forms.

Supreme Court Order 98-8500, Approval of the Use of the Legal Information Form in all Courts in the State of New Mexico. Notice to be posted in all courts in the state of New Mexico--Court staff cannot: give advice about whether you should file a case or whether you should take any particular action in a case; fill out a form for you or tell you what words to put in a form; advise you what to say in court; speculate about what decision the judge might make or what sentence the judge might impose.

5.1 General Procedures in the Criminal Process

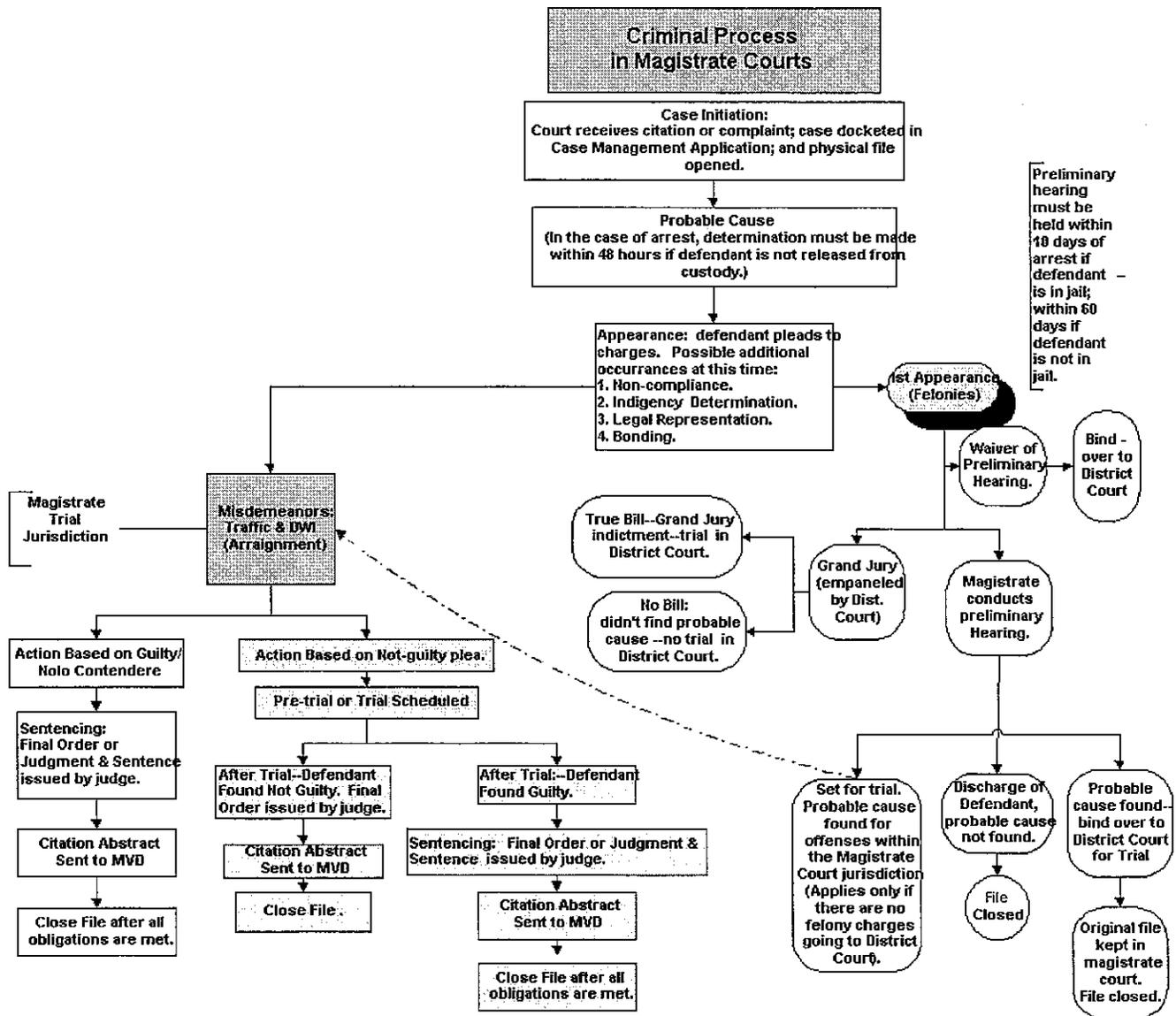
In magistrate court, criminal actions are handled differently depending on whether they involve felonies, misdemeanors, traffic or DWI. Felony crimes are more serious than misdemeanors, and the law provides more severe punishment for felonies. A clerk should understand the types of criminal actions and the procedures for each.

Crimes are classified as designated by law or by the penalty for the crime.

- A. Penalty assessment misdemeanors - NMSA 1978, §66-8-116. The penalties are fines and court cost only, as set in the statute. There is no imprisonment.
- B. Petty misdemeanors - NMSA 1978, §30-1-6(C). A crime is a petty misdemeanor if it is so designated by law or if upon conviction thereof a sentence of imprisonment for six months or less is authorized.
- C. Misdemeanor - NMSA 1978, §30-1-6(B). A crime is a misdemeanor if it is so designated by law or if upon conviction thereof a sentence of imprisonment is excess of six months but less than one year is authorized.
- D. Felony - NMSA 1978, §30-1-6(A). A crime is a felony if it is so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized.
- E. Degrees of Felonies - NMSA 1978, §30-1-7. Felonies under the Criminal Code, NMSA 1978, §30-1-1, are classified as follows:
 - 1. capital felonies
 - 2. first degree felonies
 - 3. second degree felonies
 - 4. third degree felonies
 - 5. fourth degree felonies

A felony is a capital, first, second, third or fourth degree felony when it is so designated under the Criminal Code. NMSA 1978, §30-1-1. A crime declared to be a felony, without specification of degree, is a felony of the fourth degree.

Criminal Procedure and Process Flow Chart



Preliminary hearing must be held within 10 days of arrest if defendant is in jail; within 60 days if defendant is not in jail.

Edited 8/20/00

A. Case Initiation.

1. The clerk accepts the citation or complaint to open each case. Criminal cases may only be opened with an original citation or complaint or a copy thereof faxed from the originating agency. NMRA 6-210 and 9-201.

When a criminal complaint is filed by a citizen (someone other than a certified law enforcement officer) there is a \$20.00 filing fee. Citizens can only file misdemeanor cases.

Proceed with caution—double docketing may occur! To avoid double docketing, all violations of the law for each incident, per complainant, need to be under one docket number.

2. The Case Management Application assigns the criminal docket number to the case (one number higher than the last criminal case that was docketed).
3. The clerk prepares the appropriate colored file folder and label. Refer to Chapter 4, Section 4.2 for label requirements. Cases are filed numerically or in the tickler system, by appearance date. If you file the case numerically, ensure that there is a system in place that will track the case by appearance date. For example, Crystal Reports or forms and reports (tickler report) can be used.

Refer to NMRA 6-201, Commencement of Action.

Refer to NMSA 1978, §35-5-1, Criminal actions; arrest followed by complaint.

Refer to NMSA 1978, §35-3-4, Jurisdiction; criminal actions.

B. Probable Cause.

1. If the defendant is arrested without a warrant and the defendant remains in jail, the magistrate must make a probable cause determination within 48 hours of arrest. If the judge finds probable cause, he or she makes note on the complaint that there is probable cause. Refer to NMRA 6-203, Probable cause determination; arrests without a warrant.
2. If the complaint and any attached statements fail to make a written showing of probable cause, an amended complaint or statement of probable cause may be filed at the time of the probable cause determination with sufficient facts to show probable cause for detaining the defendant.
3. If the magistrate fails to find probable cause, the case shall be dismissed without prejudice. NMRA 9-207A.

C. Bonding.

1. Criminal Bail Bonding Type Procedures. The procedures in this section are performed in a criminal proceeding. Procedures for a civil bond, such as an attachment or supersedeas bond, are covered in Chapter 6, "Civil Case Processing."

Note: Any statutory provision or rule of court governing the release of an accused may be carried out by a responsible person designated by the court. NMSA 1978, §31-3-1. The presiding judge of the court designates the designee. The presiding judge of the court sets the detention center bonds, on a bond schedule, for each criminal offense.

Note: Regardless of the type of bond executed, it must be accompanied by an Order Setting Conditions and Release form, even if conditions are not imposed. Only Supreme Court approved forms shall be used.

Note: Refer to Case Management Application.

2. Right to Bail. Refer to NMRA 6-401, Bail.
 - a. Any person bailable shall be ordered released pending trial on their own personal recognizance or upon execution of an unsecured appearance bond in an amount set by the court subject to any release conditions imposed, unless the court determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the safety of the community.
 - b. If the court determines that release on personal recognizance or upon execution of an unsecured appearance bond will not reasonably assure the appearance of the person as required, or will endanger the safety of any other person or the community, in addition to any release conditions imposed, the court shall order the pretrial release of such person subject to the posting of a secured bond that will reasonably ensure the appearance of the person as required, and the safety of any person and of the community. If the arrested person is unable to meet the conditions of release, the person remains in custody.
 - c. Any bond, property or appearance bond, shall be in the form approved by the Supreme Court. NMRA 6-401A3.
 - d. Whenever someone is arrested outside the jurisdiction of the court where the action is pending, the court with territorial jurisdiction should be contacted and arrangements made to have the defendant transferred or released on bond with conditions set by the court with jurisdiction.

Note: Refer to Bail Bonds, NMRA 9-302 through 9-312.

3. Types of Bonds.

a. Personal Recognizance, NMRA 9-302 and 9-303A.

A personal recognizance bond is the least restrictive bond. It does not involve the payment of money. The defendant is released without bail on the defendant's promise to appear and subject to conditions of release.

Bond conditions (such as restrictions on travel, association, etc.) must be imposed as part of release on one's own recognizance. If the judge imposes other conditions, not listed on the form, the clerk writes the specific conditions to the comments section on the form. NMRA 6-401.

b. Appearance Bond, NMRA 9-302.

An appearance bond is the second least restrictive bond condition because it does not involve the payment of money at the time the bond is executed and the defendant released. Conversely, an appearance bond requires the defendant to pay a certain amount of money, determined by the judge or designee, if the defendant fails to appear before the court as required, or fails to comply with any other conditions of release.

c. Bail Bond, NMRA 9-303, 9-303A and 9-304.

A bail bond requires the defendant or surety to deposit cash with the court in the full amount, or a percentage of the amount of the bond or may be a written promise to pay by a surety. NMRA 6-401.

4. Cash Deposit.

a. The amount of bond and the cash deposit requirement are established by the judge. The percentage is left to the discretion of the judge.

b. All bail accepted by the magistrate court shall be payable in American currency, or by cashier's or certified check, money order, or surety bond only. No personal or company checks, foreign checks or currency are to be accepted. Refer to Policy Directive No. 1 for appropriate instructions.

c. Upon payment of the required deposit, the clerk or designee issues a receipt to the person who paid. Refer to Chapter 11, "Financial Management."

- d. The "Cash Bond Assignment and/or Conversion" form, Appendix 16, may be used in conjunction with the cash receipt by the judge or designee if there is an assignment or voluntary conversion of a cash bond. The form provides for:
 - (1) assignment of any cash refund from the bond to the surety;
 - (2) assignment of any cash refund from the bond to the defendant if a surety posted bond;
 - (3) notice to the surety of the defendant's court appearance date after the bond is posted;
 - (4) permission from the surety to convert the bond to pay fines, fees and costs; and
 - (5) notice from the defendant that the bond should be forfeited and converted in lieu of appearance because the defendant was arrested on a bench warrant for failure to appear, or the defendant was arrested on a bench warrant for failure to pay fines.
- e. If a cash deposit is made by, or assigned to a licensed paid surety, the surety must execute a bail bond for the full amount of bond set.
- f. If the receipt is made out to a person other than the defendant, the receipt should be signed by the depositor as well as the designee or the clerk. The depositor should be informed that the amount deposited will be returned only if, and when, all conditions of the defendant's appearance bond are performed.
- g. When the conditions of the bond have been performed and the defendant is discharged from all obligations, the judge directs the clerk to return the amount which was deposited to the person to whom the receipt was issued, or to another upon written assignment by the person to whom the receipt was issued.

Note: Refer to Chapter 11 for instructions on returning the bond money.

- 5. Bail Bond—Promise by Surety to Pay.
 - a. As a condition of release, the defendant may be required to obtain a "Bail Bond," NMRA 9-304 and 6-401B.
 - b. If a surety provides bond for the defendant, NMRA 9-305, must also be completed. By execution of, NMRA 9-305, the sureties submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their

agent upon whom papers affecting their liability may be served. NMRA 6-407, NMSA 1978, §§31-3-5 and 31-3-2(D).

- c. The difference between a bail bond and an appearance bond is that a bail bond requires the payment of money to the court to secure appearance or is executed by surety, or sureties, on behalf of the defendant. The surety agrees to pay the amount of bond if the defendant fails to comply with the conditions of the bond or any additional conditions of release.

6. Bail Bondsman.

- a. Sureties who are allowed to execute bail bonds are uncompensated sureties or bail bondsmen.
- b. An uncompensated surety is one who has not taken money, property, or other consideration from the defendant to act as surety.
- c. A bail bondsman takes money, property, or other consideration to act as surety for the arrested person. A bail bondsman must be licensed and must have paid all outstanding default judgments on forfeited bonds before executing a bond. NMRA 6-401B.

Note: The terms compensated surety, corporate surety, and paid surety are used to refer to a bail bondsman or a corporation authorized to execute bail bonds. If the surety is not licensed as a bail bondsman or unable to show other authorization to execute bail bonds, the surety is assumed to be an uncompensated surety.

If there are questions referencing bail bondsman limitations, please contact the Public Regulation Commission, Agents Licensing Section, Post Office Box 1269, PERA Building, Santa Fe, New Mexico 87504-1269; Telephone: (505) 827-4551.

7. Discharge of Surety on Bail Bond. NMSA, 1978, §31-3-3.

- a. Uncompensated Surety--An uncompensated surety desiring to be discharged from the obligations of a bail bond before a final disposition of the charges against the defendant shall:
 - (1) arrest and take the defendant to the sheriff of the county in which the action is pending against the defendant;
 - (2) deliver to the sheriff a certified copy of the release order and the bail bond;

- (3) apply in writing to the judge for a written order discharging the surety from the obligations of the bail bond; and
 - (4) upon satisfactory proof that the surety has complied with the three requirements listed above, the judge may enter a written order discharging the surety from liability under the bond.
- b. Compensated Surety Discharge on Bail Bond NMSA 1978, §31-3-4.
- (1) A “paid surety” is a surety that has taken money, property or other consideration to act as a surety for the accused.
 - (2) When a paid surety desires to be discharged from the obligation of its bond, it may arrest the accused and deliver him to the sheriff of the county in which the action against the accused is pending.
 - (3) The paid surety shall, at the time of surrendering the accused, deliver to the sheriff a certified copy of the order admitting the accused to bail and a certified copy of the bail bond. Delivery of these documents shall be sufficient authority for the sheriff to receive and retain the accused until he may be brought before the court.
- c. The court shall order the discharge of a paid surety if:
- (1) there has been a final disposition of all charges against the accused;
 - (2) the accused is dead;
 - (3) circumstances have arisen in which the surety could not have foreseen at the time it became a paid surety for the accused; or
 - (4) the contractual agreement between the surety, the principal (arrested person), and the State has been terminated.

Note: Any property or appearance bonds shall be substantially in the form approved by the Supreme Court.

8. Property Bond. NMRA 6-401A.

- a. Unpaid Surety. If an unpaid surety executes a bail bond and pledges real property, the bond must be signed by the owners of the property who must also file an affidavit that contains: a description of the property; the encumbrances on the property; the number and amounts of other bonds and

undertakings for bail entered into by the surety remaining undischarged; and a statement that the owners are state residents who own real property in New Mexico having an unpledged and unencumbered net value equal to the amount of the bond. Proof may be required as to the matters set forth in the affidavit. NMRA 6-401A.

- b. Licensed Property Bondsman. A compensated surety who submits a property bond must be: a licensed property bondsman and must file, in each court where he posts bonds an irrevocable letter of credit in favor of the court; a sight draft made payable to the court; and a copy of his license. NMRA 6-401B.

In any magistrate district, the chief judge of the district court (upon concurrence with a majority of district judges of that court) may enter an order finding that the irrevocable letter of credit required by NMRA 6-401B results in the detention of persons otherwise eligible for bail. Where there is such an order, the compensated surety who submits a property bond must be licensed as a property bondsman and must pledge or assign real or personal property owned by the property bondsman as security for the bail bond. A licensed property bondsman must file, in each court in which he posts bonds, proof of ownership of the property used as security for the bonds as well as a copy of his license. The bondsman must attach to the bond a current list of all outstanding bonds, encumbrances and claims against the property each time a bond is posted, using the court-approved form. NMRA 9-305.

- c. Limits on Property Bonds. No single property bond can exceed the amount of real or personal property pledged. NMRA 6-401B. The aggregate amount of property bonds cannot exceed ten times the amount pledged. Any collateral, security or indemnity given to the bondsman by the principal shall be limited to a lien on the property of the principal, must be reasonable in relation to the amount of the bond and must be returned with the lien extinguished upon exoneration of the bond. If collateral is cash or a negotiable security, it shall not exceed fifty percent of the amount of the bond and no other collateral may be taken. If the collateral is a mortgage, the mortgage cannot exceed 100% of the amount of the bond. A collateral that is a lien on a vehicle or other personal property cannot exceed 100% of the amount of the bond. If the bond is forfeited, the bondsman must return any collateral in excess of the amount of indemnification and the premium authorized by the superintendent of insurance. NMRA 6-401D.

9. Release Proceeding.
 - a. The judge determines the conditions of release upon defendant's arrest, or the designee imposes conditions of release as designated by the judge setting the time for a first appearance or arraignment.
 - b. If this is done by the judge, clerk files "Order Setting Conditions of Release," NMRA 9-302, (appearance bond) or "Order setting conditions of Release Bail Bond," NMRA 9-303 and 9-303A (for bail bonds) upon judge's instructions. NMRA 6-401.
 - c. If the designee issues the release order, the original is delivered to the judge at the next opportunity. In either event, the defendant must sign the order or remain in custody.
 - d. Concurrently with the issuance of the release order, the judge or designee completes the appearance bond portion of the order, or a "Bail Bond," NMRA 9-304, is completed by the defendant and/or his attorney.
 - e. If security is required as a condition of release, either a partial or full cash deposit will be collected, and an appropriate receipt is issued to the person who paid. If collected by designee, the money is taken to the magistrate court for deposit. If the surety wants to assign the bond or agrees to the conversion of a cash bond, designee completes "Cash Bond Assignment and/or Conversion." NMRA 9-312. A secured bail bond may be posted in lieu of cash.
 - f. Copies of the order and bond are given to defendant. The file is placed in tickler pending hearing.
 - g. The court on its own motion or upon motion of the prosecuting attorney may at any time have the defendant arrested to review conditions of release.
 - h. If the judge revises or modifies the terms and conditions of release at any time, clerk files new order setting conditions of release. A defendant who is detained after new conditions are imposed has a right to a hearing to review the additional or different conditions of release.
 - i. If the judge increases the amount of the bond and if the original bond is still in effect, the clerk will file a separate bond in the amount of the additional requirement.

10. Failure to Comply With Conditions of Release and Failure to Appear.

- a. If the defendant willfully fails to comply with conditions of release or fails to appear as required, the judge may direct the clerk to prepare a "Bench Warrant," NMRA 9-212A, and "Notice of Forfeiture and Order to Show Cause," NMRA 9-307, notifying the defendant, sureties, the prosecution and the defense counsel to appear for a review of conditions of release. NMRA 6-207 and 6-406, NMSA 1978, §31-3-2.
- b. If the defendant has been released on a cash bond or a bond posted by a licensed surety, and the court decides to forfeit the bond, the court shall declare a forfeiture of the bond and issue a bench warrant at the time that the defendant failed to appear and proceed to issue a Notice of Forfeiture and Order to Show Cause (hearing should be held 30 or more days after service. NMRA 6-406C. Notice must be given to the surety within four working days of the declaration of forfeiture. The notice shall also be given to the chief clerk and a record shall be kept of the receipt of the notice. The clerk of the court is the agent upon whom papers affecting the liability of the bail bondsman may be served. NMSA 1978, §31-3-2(D).
- c. If the defendant is arrested and brought before the court the judge can impose a new bail bond and other conditions of release and the clerk prepares a new order setting conditions of release. Revocation of Release, NMRA 6-403.

The defendant, when arrested for failure to appear, is entitled to a new bond. The judge should consider all factors in determining conditions of release as set out in NMRA 6-401B.
- d. If the judge, after a hearing, sets the forfeiture aside the clerk prepares "Order Setting Aside Bail Bond Forfeiture," NMRA 9-308.
- e. If the forfeiture is not set aside at the hearing, the judge directs the clerk to prepare a "Default Judgment on Bond," NMRA 9-309 and 6-406.
- f. If the default judgment is not paid within 10 days after service on surety, execution may issue.

D. Appearance.

1. Procedures for a Defendant to enter a plea.

Defendant pleads to charges in the following ways:

- a. in person by a written or verbal plea
- b. by a written plea and waiver of arraignment
- c. by attorney.

A plea is the response of the defendant to the charges stated in the citation/complaint. There are four types of pleas:

- a. Guilty;
- b. Not guilty;
- c. Not guilty by reason of insanity;
- d. Nolo contendere (no contest).

2. Upon Appearance at an Arraignment.

- a. The judge informs the defendant of the charges, each element of each charge, the maximum penalty and the mandatory minimum penalty, if any, of each charge and the defendant's legal rights. At that time, the defendant enters a plea to the charges. See video arraignments. NMRA 6-110A.
- b. The defendant shall be arraigned on the complaint or citation within thirty (30) days after the filing of the complaint or citation or the date of the arrest, whichever is later. NMRA 6-506A.

3. If defendant fails to appear on or before the appearance date, refer to NMRA 6-207.

4. If the clerk receives a "Waiver of Appearance and Arraignment, and the Entry of Plea," NMRA 9-104, with the judge's approval the clerk will set the case for a pre-trial, trial, or for sentencing.

5. In the absence or unavailability of a judge, a clerk may accept a defendant's plea to a penalty assessment misdemeanor traffic offense. The clerk will require the defendant to file an "Appearance, Plea and Waiver" or sign the back of the citation. The clerk MAY NOT accept a plea to an offense that is punishable by a sentence of imprisonment.

Refer to NMRA 6-109-2 and 6-501C, Presence of the defendant; appearance of counsel.

Refer to NMSA 1978, §66-8-116, Penalty assessment misdemeanors; definition; schedule of assessments.

6. Penalty Statutes.

NMSA 1978, §§66-8-116, 66-8-116.1, 66-8-116.2, Penalty assessment misdemeanors; definition; schedule of assessments.

NMSA 1978, §66-8-7, Penalty for Traffic Misdemeanor.

NMSA 1978, §30-1-6, Penalty for Petty and Full Misdemeanor.

NMSA 1978, §66-8-102, Penalty for DWI.

NMSA 1978, §§30-6-1 and 66-8-9, Penalty for Felony.

NMSA 1978, §17-2-10, Game and fish penalty assessment misdemeanors; definition; schedule of assessments.

7. Plea by Telephone. (Refer to NMRA 6-110A, Audio Appearance of Defendant.)

Note: The Rules Committee is creating a “Plea by Phone” form. Once the form has been approved, it will be included in this section.

- a. The clerk should not quote a fine or discuss a citation over the phone unless the citation and/or complaint is filed in the court.
- b. Clerks must be authorized by the judge to accept a plea by telephone, and may accept pleas only for traffic cases which do not require that the defendant appear. Those persons are listed in NMSA 1978, §66-8-122. The defendant must enter a plea of guilty, not guilty or no contest. If the defendant pleads not guilty, the clerk must schedule a hearing date.
 - (1) Clerks may enter sentences as ordered by the judge for pleas of guilty or no contest, if directed by the judge to do so. The clerk must follow a schedule of fines set by the judge or the fines set by penalty assessments in NMSA 1978, §§66-8-116 through 66-8-116.3 with no discretion to be used by the clerk.
 - (2) If the defendant requests the clerk to impose a deferred or suspended sentence a sentence hearing must be scheduled to allow the citing officer to be present. The hearing may be telephonic, if ordered by the judge. Clerks can not grant a deferred or suspended sentence.

- (3) If local rule provides that a mandatory appearance on a traffic citation or penalty assessment citation is a written scheduled penalty, with no jail time to be imposed, the defendant has no right to request a jury trial or no right to court-appointed counsel. If there is no scheduled penalty and there is a potential period of imprisonment, the defendant has the right to request either.
 - (4) If a defendant wishes to speak to the judge for sentencing, the defendant must plead guilty or no contest. If the defendant pleads not guilty, the defendant is not allowed to speak with the judge in an ex-parte hearing. The case must be set for trial. If the defendant pleads guilty or no contest, speaks to the judge for sentencing and decides to plead not guilty, the case must be set for trial. If the judge has any information about the case as a result of the conversation with the defendant, the judge should recuse from the case to avoid the appearance of an ex-parte hearing. Another judge should be assigned to the case.
 - c. Upon notification from the defendant that the defendant wishes to plead guilty or no contest, the court shall fax or mail the defendant a written plea form. Refer to Chapter 13, Administrative Form 1.24, Appearance, Plea and Waiver. The defendant shall complete this form. When the form is signed and received by the court, the judge will assess the fines and fees. The clerk will send the defendant an assessment letter with the total amount due, an Agreement to Pay, pursuant to Chapter 15, Supreme Court Policy Directive #7, including the due date, and a copy of the abstract signed by the judge. If payment is not received as directed within thirty (30) days, the clerk will proceed with Failure to Pay (FTP) procedures.
 - d. A plea by telephone event code should be entered in FACTs.
 - e. The clerk shall confirm personal data as reflected on the citation.
8. Video Arraignment. NMRA 6-110A and 9-104A.
 - a. Video arraignments shall be conducted consistent with NMRA 6-110A.
 - (1) When permitted. The court may permit a defendant or attorneys to appear through the use of a simultaneous audio or audio-visual communication when it will legitimately serve justice considering, among other issues, the economic needs of the parties. When an appearance through the use of an audio or audio-visual communication to pay the expense of the communication. Prior to an

audio or audio-visual appearance, the defendant shall file with the court a written request to appear by audio or audio-visual communication substantially in the form approved by the Supreme Court. The judge shall conduct any audio or audio-visual proceeding in a place open to the public.

- b. Required audio-visual appearances. The court may require the defendant to appear through the use of a simultaneous audio-visual communication for:
 - (1) an arraignment, initial appearance or bail hearing; or
 - (2) a sentencing proceeding, after conviction at trial or a plea of guilty or no contest, unless the court is to take testimony or a statement from someone other than the defendant.

- c. Conduct of required audio-visual proceedings. The following conditions must be met for any required audio-visual proceeding conducted pursuant to Paragraph 2 of this rule:
 - (1) the defendant and the defendant's attorney, if any, shall have the ability of private, unrecorded communication;
 - (2) the judge, legal counsel, if any, and the defendant shall be able to communicate and see each other through a two-way audio-visual communication between the court and the place of custody or confinement; and
 - (3) the proceedings shall be conducted in a place open to the public through the use of audio-visual equipment which will permit members of the public to simultaneously see and hear the proceedings contemporaneously with the judge.

9. Video arraignments shall be conducted consistent with NMRA 6-501.

10. Procedure for preparing arraignment or first appearance packets.

It is suggested that the clerk prepare two arraignment packets consisting of the following:

- a. Judge's Arraignment Packet:
 - (1) the original complaint and other original documents

- (2) an arraignment or first appearance sheet listing all charges and the NMSA section number of the charge. (For an example, see Appendix 35)
 - (3) a guilty plea proceeding. NMRA 9-406A
 - (4) a judgment and sentence notes form. (For an example, see Appendix 37)
 - (5) appointment of public defender forms
 - (6) any other documents requested by the judge
 - b. Defendant's Packet:
 - (1) a copy of the complaint, which shall be given to the defendant and a copy of other documents from the original file
 - (2) a copy of the arraignment or first appearance sheet
 - (3) the waiver of right to an attorney and the waiver of jury trial forms
 - (4) a guilty plea proceeding form
 - c. The clerk makes arrangements for the defendant's packet to be delivered to the detention center. The original file stays in the court.
 - d. After arraignments are completed the defendants' packets are delivered to the court. The judge signs the arraignment sheet. The judge also signs the attorney and jury trial waiver forms and any other document that the defendant has signed. The forms signed by the defendant, if any, and the judge are placed in the original case file.
11. The detention center personnel should assemble defendants waiting to be arraigned at the detention center in a room which has been designated for video arraignments and first appearances. Detention center personnel should play the DVD which explains the arraignment process and the rights of the defendant. This DVD is recorded in the English, Spanish and Navajo language. The DVD is available from the Administrative Office of the Courts, Magistrate Court Division, upon request from the court.
 12. The judge introduces himself/herself to the defendants and explains all general release conditions that will apply to each defendant if the defendant is released on

bond. The judge also explains that violation of the release conditions will result in revocation of the bond and incarceration of the defendant.

13. The judge addresses each defendant individually as follows:
14. Confirm the defendants full name, date of birth, social security number and the physical and mailing address of the defendant. NMRA 6-401C and D.
15. Ask the defendant if all rights and release conditions were understood. If not, the judge explains those things which were not understood. The judge continues the explanation until satisfied that all rights and release conditions are understood. If at any time during the arraignment the judge determines the defendant is not capable of understanding these things because of incompetency, the judge transfers the case to district court for a competency hearing. NMRA 6-507.
16. After the judge determines the defendant understands all rights and release conditions, the judge explains each charge, including each element of the charge and the minimum and maximum penalties of each charge. The judge also explains each mandatory penalty to the defendant. For penalties, see NMSA 1978, §§31-18-14, 31-18-15, 31-10-1, 66-8-116 and 66-8-7. Some penalties are found within the statute charged, against the defendant.
17. After the judge determines the defendant understands each charge and the penalty for the charge, the judge asks the defendant if he/she wants an attorney to represent him/her. If the answer is “yes”, the judge asks the defendant if he/she can hire his/her own attorney or if he/she wants to apply for a free attorney (public defender). If the defendant can no afford to hire his/her attorney, the judge explains how to make application for a public defender. The judge records the defendant’s answers on the arraignment sheet.

If the defendant waives his/her right to an attorney, the judge explains the waiver of attorney form and the defendant and judge sign the form.
18. The judge asks the defendant if he/she wants a jury trial or a bench trial. If a trial is requested the judge may need to explain the difference between a jury trial and a bench trial. The judge records the defendant’s answers on the arraignment sheet.
19. If the defendant waives the right to a jury trial, the judge explains the jury trial waiver form and the defendant and the judge sign the form.
20. If the case includes any felony charges the judge does not ask the defendant to enter a plea. The clerk sets the case for a preliminary hearing.

21. If all charges are misdemeanors, the judge asks the defendant to enter a plea on each charge individually.
22. The judge records the defendant's plea on the arraignment sheet and the defendant signs the sheet, confirming that the plea is correct.
23. If the defendant enters a not guilty plea on each charge the clerk sets the case for pre-trial or trial.
24. If the defendant enters a plea of guilty or no contest on each charge, the judge proceeds to the Judgment and Sentence Form, NMRA 9-604. The form is explained to the defendant and if the judge finds the defendant knowingly, voluntarily and intelligently has entered the plea, the plea is accepted. The judge proceeds to sentencing or instructs the clerk to set the case for a sentence hearing. The judge may order the probation and parole office to prepare a Pre-Sentence Report. NMSA 1978, §31-21-9.
25. If any of the charges are included in the Victim's Rights Act, the case must be set for a sentence hearing and an attempt made to notify the victim of the hearing, pursuant to NMSA 1978, §31-26-1.
26. If the defendant enters a plea of not guilty on one charge and guilty or no contest on other charges, the court makes note of the plea on the arraignment sheet and also makes a note that, "The charge for which the defendant pled not guilty shall be set for trial. Sentencing on the charges for which the defendant pled guilty or no contest will be postponed until disposition is made on all charges."
27. If the defendant enters a plea of guilty or no contest to all charges, but has asked for an attorney to be present for sentencing, the case shall be set for a sentence hearing. The defendant is entitled to an attorney at any stage of the proceeding.
28. If the defendant has plead not guilty to a charge or if sentencing has been postponed until a later date, the judge sets bail after considering all factors in NMRA 6-401B. The judge may set any other release condition that is reasonably necessary to assure the appearance of the defendant and to assure the safety of any person or the community. An attempt must be made to notify the victim of a crime of any hearing where bail will be modified from a previously set bail, if the crime is included in the Victim's Rights Act.

E. Legal Representation.

1. In Districts That Do Not Have a Public Defender's Office.

The judge determines defendant's right, if any, to representation by an attorney at state expense, if the defendant cannot afford his/her own attorney:

- a. The clerk/judge assists defendant in completion of "Eligibility Determination for Indigent Defense Services," NMRA 9-403. Clerk affixes court seal or notarizes defendant's signature attesting to the accuracy of the information on the form. NMSA 1978, §31-15-12.
- b. Clerk prepares "Order of Appointment," NMRA 9-403A. NMSA 1978, §35-5-8. Courts should refer defendant to public defender to pay \$10.00 fee.
- c. Refer to "Guidelines for Determining Eligibility," NMRA 9-403.

2. In districts where there is a Public Defender's office, the Public Defender may assume responsibility of determining eligibility.

3. If the defendant chooses not to be represented by counsel, the judge or clerk files "Waiver of Counsel," NMRA 9-401A. The judge must certify the form signed by the defendant. NMSA 1978, §31-16-6.

F. Scheduling Jury and Non-Jury Trial.

There is a right to a jury trial in all cases within magistrate jurisdiction except contempt of court. NMSA 1978, §35-8-1.

Note: No jury fees or costs shall be collected in a criminal case.

1. At the time of the plea to a petty misdemeanor, either party may demand a jury trial, orally or in writing or within 10 days after entry of plea to a petty misdemeanor, either party may demand trial by jury in writing. If the offense is a misdemeanor or a combination of offenses where the potential or aggregate penalty includes imprisonment in excess of six (6) months the case shall be tried by a jury unless the defendant waives a jury trial. NMRA 6-602A.2. The clerk must make sure the demand is timely.
2. The clerk files "Waiver of Trial by Jury—Misdemeanor Offenses," NMRA 9-502, if jury trial waived by defendant.

3. The clerk schedules a date for trial. Refer to Calendaring in Case Management Application.
4. The clerk mails, faxes or electronically sends "Notice of Trial," NMRA 9-501, to all parties involved. Refer to NMRA 2-204 for facsimile information.
5. The trial must be scheduled as soon as possible. For time limits for commencement of trial. See NMRA 6-506.
6. If a jury trial is necessary, refer to Chapter 10, jury and courtroom procedures.
7. The clerk may issue subpoenas for witnesses, upon request. See, NMRA 6-606A.
8. If the defendant fails to appear for trial, the license should be flagged, if applicable. Refer to NMRA 6-207.
9. The clerk may issue flag MVD 10079 to suspend the driver's license if it is a traffic or MVD violation. Refer to Warrant Enforcement, Chapter 5, Section 5.51. Refer to Appendix 28, MVD 10079, Flagging a license.
10. There should only be one flag per case on the highest charge. The flag should not be released until all obligations are met.

G. Dispositions/Sentencing.

1. Defendant found Not Guilty/Final Order.
 - a. The decision and sentence shall be rendered in open court and subsequently a written final order shall be signed by the judge and filed, or the back of the abstract may be used as a final order. In all traffic cases, the abstract must be prepared and sent to the Motor Vehicle Department. The court shall notify the defendant of the entry of final order in accordance with, NMRA 6-701 and 6-209.

The clerk prepares the back of the citation as the final order for the judge's signature.
 - b. The clerk releases the bond. Refer to NMRA 9-602, 9-603, 9-603A, Judgment and Final Order forms.

2. Defendant found Guilty/Final Order.
 - a. The judgment and sentence shall be rendered in open court and subsequently a written judgment and sentence or final order shall be signed by the judge and filed. The court shall notify defendant of the entry of judgment and sentence or final order in accordance with NMRA 6-701 and 6-209.
 - b. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the department an abstract of the record. NMSA 1978, §66-8-135.
 - c. The clerk prepares the back of the citation as the final order for the judge's signature.

Refer to NMRA 9-601, 9-602 and 9-603, Judgment and Appeal, Judgment and Sentence, Final Order on a Criminal Complaint.

Refer to NMSA 1978, §31-20-5, Placing defendant on probation.

3. Sentencing. NMSA 1978, §31-19-1, Sentencing authority.

The following information describes the sentencing authority regarding misdemeanors; imprisonment and fines; and probation:

- a. When defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.
- b. When defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than five hundred dollars (\$500) or to both such imprisonment and fine in the discretion of the judge.
- c. When a defendant is convicted of a motor vehicle code violation the judge shall sentence the defendant for a definite term not to exceed 90 days and payment of a fine not to exceed \$300.00, NMSA 1978, §66-8-7, except for

penalty assessment misdemeanors which fines shall be as stated in NMSA 1978, §§66-8-116, 66-8-116.1 and 66-8-116.2 and probation shall not exceed 90 days, NMSA 1978, §66-8-116(C).

4. Jail for Nonpayment of Fine/Community Service in Lieu of Fines. NMSA 1978, §33-3-11 and Chapter 15, Supreme Court Policy Directive #7.
 - a. Whenever any person is committed to jail for nonpayment of any fine or costs or both, he shall be credited with eight times the federal hourly minimum wage a day in reduction thereof for each day or portion of a day of imprisonment. When the person has remained imprisoned a sufficient length of time to extinguish the fine or cost or both, computed at this rate, or has paid to the sentencing court the amount of the fine or costs or both, remaining after deducting credit allowed by this section and obtaining from the court an order of release from commitment, the officer having the prisoner in custody shall discharge him from custody under the commitment.
 - b. If the person in custody makes an affidavit that he has no property out of which he can pay the fine and costs, either or any part, the prisoner shall not be retained in custody longer than sixty days even though the fine and costs or either exceeds the amount credited toward repayment during those sixty days. The affidavit shall be delivered to the sheriff or jail administrator having custody of the prisoner.
5. Community Service in Lieu of Fines/Fees, Magistrate Court Procedure.

Per the Supreme Court Amended Order, dated June 18th, 2003, when community service is performed in lieu of payment, it shall be applied to the assessed fines/fees in reverse order of actual monetary payment to the courts.

- a. USE THIS PROCEDURE- After a defendant has been sentenced to financial assessment and the judge has ordered that community service may be or has been performed in lieu of all or part of their obligation.

Go to CASE DOCKET SCREEN -- From the Case Docket screen enter event code 5712 COMMUNITY SERVICE IN LIEU OF, and enter descriptive text that specifically states what the Judge has ordered, i.e., that the defendant may perform X number of community service hours in lieu of the fines/fees.

b. When the court receives notification that the community service has been completed:

- (1) On the CASE DOCKET SCREEN – Docket event code 5706 COMMUNITY SERVICE COMPLETED
- (2) On the CASE FINANCIAL DOCKET SCREEN – Docket adjustment events (event code range 300 ADJ:) to offset the assessment of the fines and fees that the defendant was sentenced to pay, calculating the adjustment amounts at the current federal minimum wage rate of community service **** (rounding the amount to the nearest dollar) ****. Adjustment against assessments should be made in the following order:
 - (a) 337 ADJ: FINE
 - (b) 314 ADJ: BENCH WARRANT FEE
 - (c) 82 ADJ: DOMESTIC VIOLENCE TREATMENT FEE
 - (d) 390 ADJ: BRIAN INJURY FEE
 - (e) 331 ADJ: JUDICIAL EDUCATION FEE
 - (f) 329 ADJ: DUI PREVENTION FEE
 - (g) 334 ADJ: TRAFFIC SAFETY FEE
 - (h) 328 ADJ: CORRECTIONS FEE
 - (i) 333 ADJ: SUBSTANCE ABUSE LAB FEE
 - (j) 332 ADJ: DUI LAB FEE K. 306 ADJ: MAG FACILITIES FEE L. 330 ADJ: AUTOMATION FEE M. 327 ADJ: CRIMINAL COURT COSTS

on the Case Financial screen enter the appropriate adjustment event code in the Action Code field, Fl to look up-Select P (Allocation Adjustment) in the Action Date field, enter the date you are making the adjustment in the Party field, enter the correct party type and number in the Adjustment field, enter a Y for (yes to adjust) in the Amount field, enter the amount of the adjustment (enter amount in a negative dollar amount) enter descriptive test Click on Save

c. **Example:**
COMMUNITY SERVICE IN LIEU OF FINES/FEEES

Note: This example uses the federal wage rate of \$5.15 per hour and other fee amounts which are no longer current.

A defendant is sentenced and owes \$139.00 in fines and fee. The fine is \$100.00, the brain injury fee is \$5.00, the automation fee is \$10.00, the correction fee is \$10.00, the traffic safety fee is \$3.00, the mag facilities fee is \$10.00 and the judicial ed fee is \$1.00. Then, because of hardship, the Judge says they can complete 21 hours of community service in lieu of monetary payment. Docket event code 5712 COMMUNITY SERVICE IN LIEU OF on the Case Docket screen, add descriptive text that specifically states what the Judge has ordered. When notification is received that 21 hours of community service was performed (21 hours of community service X \$5.15= \$108.15 this is rounded to the nearest dollar \$109.00), docket the following events:

d. CASE DOCKET
5706 COMMUNITY SERVICE COMPLETED

e. CASE FINANCIAL DOCKET

337 ADJ: FINE in the amount of-\$100.00 (add descriptive text stating community service was performed in lieu of the \$100.00 fine) .

390 ADJ: BRAIN INJURY FEE in the amount of-\$5.00 (add descriptive text stating community service was performed in lieu of the \$5.00 brain injury fee).

331 ADJ: JUDICIAL EDUCATION FEE in the amount of -\$2.00 (add descriptive text stating community service was performed in lieu of the \$2.00 judicial ed fee).

334 ADJ: TRAFFIC SAFETY FEE in the amount of-\$2.00 (add descriptive text stating community service was performed in lieu of the \$2.00 traffic safety fee).

Note the order in which the adjustments are done, refer to NMSA 1978, §31-12-3(A). The defendant still owes \$30.00 on this case.

6. Probation.

a. When the court has deferred or suspended a sentence, it shall order the defendant placed on supervised or unsupervised probation for all or some portion of the period of deferment or suspension. NMSA 1978, §31-19-1(C). The court shall attach to its order reasonable conditions as it may deem necessary to ensure that the defendant will observe all laws, reimburse law

enforcement or crime stoppers for any reward that was paid and pay the cost of their supervision. NMSA 1978, §31-20-6.

- b. The court may also require the defendant to:
- (1) provide for the support of persons for whose support he is legally responsible;
 - (2) undergo available medical or psychiatric treatment and enter and remain in a specified institution when required for that purpose;
 - (3) be placed on probation under the supervision, guidance or direction of the adult probation and parole division for a term not to exceed five years;
 - (4) serve a period of time in volunteer labor to be known as “community service”. The type of labor and period of service shall be at the sole discretion of the court; provided that a person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and a person who performs community service pursuant to court order or a criminal diversion program shall not be entitled to wages, shall not be considered an employee and shall not be entitled to workers’ compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this subsection, “community service” means labor that benefits the public at large or a public, charitable or educational entity or institution;
 - (5) make a contribution of not less than ten dollars (\$10) and not more than one hundred dollars (\$100), to be paid in monthly installments of not less than five dollars (\$5), to a local crime stopper program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court; and
 - (6) satisfy any other conditions reasonably related to his rehabilitation.
- c. When the judge has suspended or deferred a sentence, one day of probation may be imposed for each day of the sentence which was suspended or deferred.
- d. NMRA 6-802. If the defendant fails to comply with probation conditions, the judge may issue a warrant or a notice to appear to answer a charge of violation. If imposition of sentence was deferred, the court may impose any

sentence which might originally have been imposed, but credit shall be given for time served on probation.

Exception: NMSA 1978, §66-8-102(S). If the defendant violated a condition of probation imposed after conviction of DWI, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

7. Fines and fees assessed:

- a. Fees shall be assessed according to NMSA 1978, §§35-6-1, 35-6-3, 66-8-116.3 and in some cases fees required by the statute filed against the defendant. The Case Management Application will automatically assess the fees.
- b. Fines are assessed by the judge according to the penalty assessment schedule set in NMSA 1978, §§66-8-116, 66-8-116.1, 66-8-116.2 or as set in NMSA 1978, §§31-19-1 and 66-8-7. Some fines are found within the statute charged against the defendant.
- c. Clerk Collects Fines, Fees & Costs, refer to Chapter 15, Supreme Court Policy Directive #7.

The clerk prepares "Agreement to Pay Fines and Court Costs," NMRA 9-605, and "Personal Data Form," if the defendant is unable to pay fines and fees in full. The defendant signs an agreement and is given a copy.

Note: All cases require a docket fee, with the exception of a guilty or no contest plea to a penalty assessment misdemeanor which was not set for trial.

Refer to Chapter 11, Financial Management, Procedures on Collecting and Receipting.

8. Citation Abstract.

a. If guilty:

- (1) The clerk enters fines and fees on the citation abstract and mails it to the Motor Vehicle Division within 10 days of the conviction, NMSA 1978, §66-8-135, for traffic offenses, unless the sentence is deferred for any violation, except DWI.
- (2) DWI citation abstracts are to be completed and mailed within 10 days of conviction, even if the sentence is deferred or suspended.

- b. If not guilty or failure to appear:
 - (1) Within 10 days of adjudication or failure to appear, whichever is later, the clerk fills out the citation abstract and mails it to MVD, NMSA 1978, §66-8-135, for traffic offenses.

Note: When applicable, indicate on the abstract whether the original offense has been reduced to a lesser offense on the remarks line.

- (2) If the citation is torn, clerk should repair it. It is important that the citation not be written, stapled or mutilated in any manner above the microfilm line.
- (3) The reviewing judge for the defendant should sign the abstract copy. If the citation abstract is submitted with another judge's signature, the citation should indicate below signature "designee".
- (4) If a rubber stamp of the judge's signature is used on abstracts, the clerk must initial the abstract copy.

Refer to NMSA 1978, §66-5-30, Authority of Division to suspend or revoke license.

- 9. Required on citation abstract for both guilty and not guilty:
 - a. If a rubber stamp of the judge's signature is used on abstracts, clerk must initial the abstract copy. EXAMPLE: Judge Gerald Dean /(br).
 - b. If the penalty is deferred by the judge, the clerk must tickle the event to determine when a defendant's period of deferment is completed. In cases where the penalty has been deferred, the abstract is not mailed to the Motor Vehicle Division until the period of deferment is complete. If the defendant meets the conditions of probation, the citation is dismissed by the judge and sent to the Motor Vehicle Division. If the defendant doesn't meet the conditions of probation, that person may be sentenced on the defendant's original plea.

10. Deferred Sentence:

Note: On deferred sentences, then the probation has been completed the clerk should print or type on the citation abstract, "deferred sentence completed," under remarks, and supply all other required information.

H. Non-Compliance.

1. If defendant does not comply with conditions:
 - a. If the defendant fails to appear at any time, or does not comply with the terms of the conditions, the judge may issue an order to show cause or bench warrant. Flag license when bench warrant issued.
 - b. If the defendant fails to pay, the judge may issue an “Order to Show Cause” or “Bench Warrant.” Flag license if the charge is an MVD or traffic violation, NMSA 1978, §66-5-30, of the defendant when the bench warrant is issued. Follow warrant enforcement procedures, Chapter 5, Section 5.5.1.
 - c. If the defendant fails to comply with conditions of probation, the judge may issue an order to show cause or bench warrant. NMRA 6-802.
2. Failure to Appear. **Revised procedures will be provided shortly.**
3. Failure to Pay. **Revised procedures will be provided shortly.**
4. File Closing.
 - a. The case file is filed numerically by fiscal year in the closed cases, if all conditions and obligations have been met by the party ordered to do so and no appeal filed.
 - b. Suspended Sentences: clerk does not close file until all conditions have been met and the period of probation has expired.
 - c. Deferred Sentences: If all conditions and obligations have been met by the party ordered to do so, and no appeal has been filed, the case is filed numerically by fiscal year in the closed cases. Note: DWI abstracts are to be sent within 10 days to MVD.
 - d. Void Procedure—Refer to the Judicial Website at <http://inside.nmcourts.com/jidbbs.htm>
 - e. If appeal filed, refer to Chapter 8 for appeal procedures.
 - f. File closed in the Case Management Application.

5.1.1 Traffic

A. What is a traffic offense?

The range of offenses for traffic violations range from penalty assessments to traffic misdemeanors, misdemeanors, and fourth degree felonies.

A defendant charged with a violation of the Motor Vehicle Code, NMSA 1978, Chapter 65, Motor Carrier Acts and Chapter 66, Articles 1 through 8 of the Motor Vehicle Act, must appear before a magistrate to enter a plea unless the magistrate has specifically authorized the clerk in writing to accept a plea for the particular offense charged. Refer to NMRA 6-110A, Plea by Telephone.

1. Penalty Assessment Misdemeanors. NMSA 1978, §§66-8-116 to 66-8-116.2.

The legislature has designated certain petty misdemeanor violations as penalty assessment misdemeanors. In those cases, the violator has the option of appearing in court or admitting guilt and mailing in the required assessment. The clerk can process a citation as a penalty assessment misdemeanor if it is listed in NMSA 1978, §§ 66-8-116 to 66-8-116.2.

2. Mandatory court appearances, as the name implies, means that the violator must appear in court. The most frequent violations of the Motor Vehicle Code that require mandatory court appearance involve not carrying the necessary paperwork, e.g., not having one's driver's license or proof of financial responsibility. NMSA 1978, §66-5-16 (driver's license) and NMSA 1978, §66-5-229 (insurance) provide that a person shall not be convicted of the charge if that person can produce proof that the insurance or driver's license was valid at the time of issuance of the citation. A copy of the driver's license or insurance card should be included in the file. Both of these offenses are mandatory court appearances, or non-arrestable offenses. Refer to NMRA 6-109C, Presence of defendant; appearance of counsel.

3. Immediate court appearances are arrestable offenses. NMSA 1978, §66-8-122. Whenever any person is arrested for any violation of the Motor Vehicle Code, NMSA 1978, Articles 1 to 8, Chapter 66, or other law relating to motor vehicles punishable as a misdemeanor, that person shall be immediately taken before an available magistrate who has jurisdiction of the offense when the following occurs:

4. Failure to Appear/When Citation is Used as Notice to Appear for New Mexico Residents.

- a. The court must maintain a tickler system, using the citation as the complaint, in order to enable the court to track failures to appear. Refer to NMSA 1978, §66-8-131, Uniform traffic citation is complaint.
- b. Pursuant to statutory authority, NMSA 1978, §66-5-30, the Motor Vehicle Division may suspend the license of a driver without preliminary hearing, upon notice that:
 - (1) a defendant has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a court; whenever appearance is required by law or by the court as a consequence of any charge or conviction under the motor vehicle code, regardless of whether or not the person has been charged with or convicted of the separate misdemeanor charge of failure to appear.
 - (2) A defendant has failed to pay a penalty assessment within 30 days of the date of issuance by the state.

Refer to the General Criminal Process & Procedures Section 5.1 for Traffic case processing:

5.1.2 Penalty Assessment Misdemeanors

The most common misdemeanor traffic offenses have been designated by law as penalty assessment misdemeanors, and a specific fine has been set for each. NMSA 1978, §§66-8-116 to 66-8-116.2

Note: When a defendant is cited for a penalty assessment misdemeanor offense, the defendant may accept the option of pleading guilty and mailing the fine to MVD or the defendant may accept the option of appearance at a court for disposition of the citation. If the defendant agrees to appear in court for disposition of the citation, but mails payment to the Motor Vehicle Department instead of the court, it is the defendant's responsibility to take care of their court obligation and deal with the Motor Vehicle Department separately.

Refer to Motor Vehicle Department. http://www.state.nm.us/tax/mvd/mvd_home.htm

5.1.3 Mandatory Court Appearances: When Defendant Acknowledges Receipt of Citation and Signs to Appear in Court/Jury Trials

- A. Motor Vehicle Code traffic misdemeanors carry a potential period of imprisonment up to 90 days and a fine up to \$300 unless otherwise specified. Therefore, there is no constitutional right to a jury trial for Motor Vehicle Code traffic misdemeanors unless more than two offenses are charged so that the potential period of imprisonment exceeds 6 months.

B. Those offenses that carry a potential period of imprisonment in excess of six months shall be tried by jury unless the defendant executes a written waiver. NMRA 6-602A1 and B, NMRA 9-502. Petty misdemeanor offense. If the offense charged is a petty misdemeanor or an offense punishable by no more than six (6) months in jail, either party to the action may demand a trial by jury. The demand shall be made:

1. orally or in writing to the court at or before the time of entering a plea; or
2. in writing to the court within ten (10) days after the time of entering a pleas. If demand is not made as provided in this paragraph, trial by jury is deemed waived.

Note: At the request of the judge, the clerk prepares a Guilty Plea Proceeding, NMRA 9-406A, if all or any of the offenses charged carry a total potential period of imprisonment that exceeds 6 months.

Note: If local rule provides that a mandatory appearance or penalty assessment is a scheduled penalty with no jail time to be imposed, the defendant has no right to request a jury trial or no right to court-appointed counsel. If there is no scheduled penalty and there is a potential period of imprisonment, the defendant has the right to request either.

C. If the person is charged with a misdemeanor traffic offense other than a penalty assessment misdemeanor, and if the officer is not required by law to bring the person before the court immediately, the officer provides the person an opportunity to sign a notice to appear. The person is not provided the opportunity to mail in the payment to the Motor Vehicle Department, but instead, must appear before the judge. The notice to appear must be signed by the person at the time the citation is issued.

5.1.4 Arrestable Motor Vehicle Code Violations (Immediate Court Appearances) - NMSA 1978, §66-8-122.

A. Whenever any person is arrested for any violation of the Motor Vehicle Code, Articles 1 to 8 or other law relating to motor vehicles which are punishable as a misdemeanor, the person shall be immediately taken before an available magistrate who has jurisdiction of the offense when the:

1. person requests immediate appearance;
2. person is charged with driving while under the influence of intoxicating liquor or narcotic drugs;
3. person is charged with failure to stop in the event of an accident causing death, personal injuries or damage to property;

4. person is charged with reckless driving;
5. arresting office has good cause to believe the person arrested has committed a felony;
6. person refuses to give his written promise to appear in court or acknowledge receipt of a warning notice; or
7. person is charged with driving when his privilege to do so was suspended or revoked pursuant to NMSA 1978, §66-8-111 or pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs.

B. Warrant Enforcement Program.

1. The Warrant Enforcement Program was designed to collect the outstanding fines and fees owed to the magistrate courts throughout the state of New Mexico. The responsibilities begin for the Warrant Enforcement Assistant when a defendant has failed to pay their fines and fees as ordered by the judge on an agreement to pay.
2. Before a warrant for failure to pay is issued, the Warrant Enforcement Assistant should verify that defendant has:
 - a. a signed agreement to pay;
 - b. a balance; and
 - c. does not have an extension from the judge.
3. If the bench warrant letter is returned:
 - a. Send the Administrative Office of the Courts, Warrant Enforcement Office (WEO), a completed request for "Address Research Form, Appendix 25. The WEO will enter the defendant's information using TransUnion's Credit Commander software, or research the defendant's information using the city directory.
 - b. If a new address is found, update Case Managements Application and the defendant's physical file. Send the bench warrant letter to the new address.
 - c. If a new address is not found, file correspondence into the defendant's physical file.

Refer to NMSA 1978, §35-5-3, Criminal actions; disposition of complaint, summons and warrant.
Refer to NMRA 6-207, Bench Warrants.
Refer to NMRA 6-207D, Duty to Remove Warrant.

C. Tax Refund Intercept Program.

This program is designed to target defendants that have failed to respond to any court documents regarding their outstanding debt. During the later months of the year, the WEO will send each court participating in the TRIP, a report which lists any defendants that have an outstanding debt, and have not made payment within thirty days. Refer to Appendix 26 for sample TRIP letter.

1. The clerk should do the following:
 - a. Verify defendant's information on the report with their physical file.
 - b. If discrepancies occur, make the appropriate changes and note the changes on the report.
 - c. Upon verification of the report, send the original report to the centralized office and retain a copy for the court's records.
 - d. A TRIP letter will be generated from the WEO to all the defendants that fit the criteria. The event code 5717 will be docketed to the defendant's case in the Case Management Application.
 - e. If the defendant pays:
 - (1) Refer to the General Criminal Procedure, Chapter 5, for closing procedures.
 - (2) Send the WEO the deletion/update form.
 - f. If the defendant's income tax refund has been intercepted, follow the TRIP procedures.

Refer to Appendix 24, Deletion Update Form.

2. Use of a rubber stamp for Judge's signature on "routine" bench warrant letters or "forms".
 - a. Clerk should first obtain written permission from the judge to use the rubber stamp with his signature. The signed permission form should be kept in the court safe.

- b. The court should maintain a written record of the following:
- (1) Identify the types of documents that will contain the judge's signature stamp (TRIP letter, etc.).
 - (2) Identify the types of documents and the judge in the court for which the stamp is being used.
 - (3) The clerk should initial next to the judge's signature stamp, indicating who processed the paperwork.

Note: The judge's signature on the rubber stamp can be used ONLY for routine letters or forms (or citation abstracts as previously advised in Chapter 5).

D. Bench Warrant Cancellation.

If the obligation of the fine is met, the bench warrant should be canceled. Refer to your local court rule August 30, 2000, regarding procedures for canceling and recalling bench warrants. NMRA 6-207D.

Refer to Appendix 29, Notice of Suspension for Failure to Appear to Motor Vehicle Division.

5.2 DWI

The statute setting forth the penalties for DWI is: NMSA 1978, §66-8-102. It is critical that judges and clerks be extremely familiar with this statute.

A. General Procedures Used for DWI..

Refer to the General Criminal Process & Procedures Section, Chapter 5, for DWI case processing:

1. Case Initiation Procedures
2. Probable Cause
3. Bonding
4. Arraignment Procedures
5. Legal Representation
6. Scheduling
7. Dispositions---For Fines, Fees & Costs assessed on a DWI case, refer to NMSA 1978, §§66-8-102, 35-6-1 and 31-12-7 for minimum and mandatory fines and fees.
8. Non-compliance by Defendant
9. File Closing Procedures (also refer to Retention and Disposition Schedule)

Refer to Appendix 21, Supreme Court Order of Fees.

B. Special DWI Proceedings.

There are special procedures that apply to DWI cases. However, you will need to follow the General Procedure Section for the majority of the procedures in a DWI case, with the exception of the following:

1. Upon any conviction under, NMSA 1978, §66-8-102, the offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program, and if necessary, a treatment program approved by the court. Contact your local DWI Coordinator for alcohol and drug abuse screening program. <http://ipl.unm.edu/traf/>
- 2.. On a first conviction, clerk prepares community service letter, DWI School Form, Administrative Form 1.11, and sends to party or agency responsible for supervision.
3. Some defendants may plead guilty at arraignment. The judge should schedule a sentencing hearing for a future date so that a determination can be made regarding prior convictions. The judge may accept the plea, but should not adjudge the defendant to be guilty or sentence the defendant at that time because the mandatory minimum sentence depends on the number of prior convictions.

The judge has the duty to investigate the prior record of the defendant before sentencing. If the record reveals three prior DWI convictions, the defendant faces DWI felony charges. The District Attorney's office must be contacted to file felony charges and dismiss misdemeanors or amend complaint.

Refer to Appendix 21, Collection Scheme of Fines, Fees & Costs.

Refer to Chapter 13, Administrative Form 1.11.

C. Sentencing.

1. The judge sentences pursuant to NMSA 1978, §66-8-102. Refer to NMRA 9-406A, Guilty plea proceeding. The clerk files "Judgment and Sentence," NMRA 9-601, when jail time is imposed. Refer to General Criminal Procedures, Chapter 5, dispositions; sentencing; defendant found guilty.
2. The clerk shall give notice to the defendant when the sentencing hearing is to be held, if the court or prosecution needs additional time to investigate the defendant's record.
3. The clerk files "Judgment and Sentence," NMRA 9-601, when jail time is imposed.

4. When the penalty is deferred or suspended, the clerk must maintain a tickler to determine when a defendant's period of deferment is complete. Generally, the period of deferment is complete when the term of probation expires. Upon the successful completion of period and conditions of a deferral, the judge dismisses the complaint.

Note: Clerk should ensure that written verification of completion from the party or agency responsible for supervision of defendant on conditions of deferral, has been received and placed in the physical case file. Information is entered into the Case Management Application.

The clerk files "Final Order on Criminal Complaint (on deferred sentence)," NMRA 9-603A.

Refer to Chapter 5, General Criminal Procedures.

Refer to NMSA 1978, §§31-12-7 and 35-6-1 for Fees.

Refer to Chapter 15, Supreme Court Policy Directive #7, Relating to Acceptance of Partial Payments of Fines and Costs.

- D. Failure to Appear on DWI for both New Mexico and Non-New Mexico Residents/Licensees. Refer to Appendix 28, MVD 10079.

1. Please utilize Form MVD-10079 for reporting failures to appear on DWI criminal charges for both New Mexico and non-New Mexico residents/licenseses.
2. Complete the form, MVD-10079. Provide all requested information—in the "citation number" box immediately following the number, print or type (DWI).
3. The DWI abstract should be kept by the court, pending final adjudication. Records will be flagged and created based on the Failure to Appear Notice.

- E. Convictions.

1. First Conviction.

On the first conviction, judge shall order defendant under provisions of NMSA 1978, §66-8-102, to be punished by imprisonment for not more than 90 days or by a fine of not more than \$500, or both. If sentence is suspended in whole or in part or deferred, the period of probation may extend beyond 90 days, but shall not exceed one year. Upon a first conviction, offender may be sentenced to not less than 24 hours and not more than 48 hours of community service. In addition, the offender may be required to pay a fine of \$300. The offender shall be ordered by the court to participate in and complete a screening program and attend DWI School and may be required to participate in rehabilitation services. In addition to those penalties, if the

offender commits aggravated driving while under the influence of intoxicating liquor or drugs, offender shall be sentenced to not less than 48 consecutive hours in jail. If the offender fails to complete the community service, screening program, treatment program or DWI School , within a time specified by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional 48 consecutive hours in jail. Any jail sentence imposed for failure to complete, within the time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement.

Note: The screening report is confidential material and should be placed in an envelope before filed in case file. The envelope needs to be marked "confidential."

Refer to NMSA 1978, §66-5-30, Authority of division to suspend or revoke license.

2. Second Conviction.

A second conviction shall be punished by imprisonment for not more than 364 days or by a fine of not more than \$1,000, or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed 5 years. Upon a second conviction, each offender shall be sentenced to a jail term of not less than 96 consecutive hours, not less than 48 hours of community service and a fine of \$500. In addition, if an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 96 consecutive hours. If an offender fails to complete, within the time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven (7) consecutive days in jail. A penalty imposed on a second conviction pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

3. Third Conviction.

A third conviction shall be punished by imprisonment for not more than 364 days or by a fine of not more than \$1,000, or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five (5) years.

An offender shall be sentenced to a jail term of not less than 30 consecutive days and a fine of \$750. In addition, when offender commits aggravated DWI, offender shall be sentenced to a jail term of not less than 60 consecutive days. If offender fails to complete, within a time specified by the court, any screening program or treatment

program ordered by the court, the offender shall be sentenced to not less than an additional 60 consecutive days in jail. A penalty imposed on a 3rd conviction, pursuant to this paragraph, shall not be suspended or deferred or taken under advisement.

4. Fourth Conviction, Fifth, Sixth, Seventh or Subsequent Conviction.

A fourth or subsequent conviction should be handled in Magistrate Court as a felony and set for preliminary hearing or other proceeding.

F. DWI School.

1. If the defendant is a first offender, the defendant shall be ordered to attend DWI school.
2. The clerk fills out the DWI school form provided by the DWI school (if available) or prepares one. Either the judge or clerk can sign the form.
3. The clerk mails the DWI school form to the DWI school and retains a copy in the court file.
4. The clerk provides a copy of the DWI school form to the defendant for registration purposes. The defendant notifies the court of enrollment in DWI school.
5. Upon enrollment in DWI school, the clerk files the case in the tickler system. After the completion date if the defendant does not complete the DWI school the Motor Vehicle Division is notified by the clerk.
6. If the defendant successfully completes DWI school, the school notifies the magistrate court.

Note: If the defendant is a first offender, the defendant shall be ordered to attend the DWI school. The DWI school must be approved by the Traffic Safety Bureau of the State Highway and Transportation. NMSA 1978, §66-8-102(E). Refer to Appendix 20 for approved DWI schools.

Refer to www.ipl.unm.edu for DWI information through the Traffic Safety Law Center. This website includes Local DWI Grant Program County Coordinator information.

7. If the defendant does not successfully complete DWI school.

If the defendant does not complete DWI school, the school notifies the magistrate court. The procedure is as follows:

- a. The clerk files "Order to Show Cause," NMRA 9-611, or bench warrant, upon request of judge. The form should specify "order to show cause why your probation should not be revoked for failure to complete DWI school.
- b. The clerk mails order to defendant.
- c. If defendant does not appear at the show cause hearing, the clerk prepares a "Bench Warrant," NMRA 9-212A.
- d. The clerk mails to the Motor Vehicle Department, "Notice of Failure to Complete DWI School," Administrative Form 1.19, with the following information:
 - (1) defendant's date of birth;
 - (2) social security number;
 - (3) address;
 - (4) DWI citation number;

Note: The court shall not collect any driver's license reinstatement fee from the defendant. Payment must be remitted by the defendant directly to the Motor Vehicle Division.

Refer to Motor Vehicle Department, http://www.state.nm.us/tax/mvd/mvd_home.htm

Refer to Chapter 13, Administrative Form 1.19, Appendix 19, Failure to Attend DWI School.

5.3 Misdemeanors

A. What is a misdemeanor?

A misdemeanor is a crime which is less serious than a felony and in which the penalties are less severe. There are two types of misdemeanors and the penalties are set out in NMSA 1978, §31-19-1.

1. Petty Misdemeanors:
 - a. Crimes designated by law as petty misdemeanors;
 - b. Crimes for which the law provides a penalty of imprisonment not to exceed six months in a county jail, a fine of not more than \$500 or both.

2. Misdemeanors:
 - a. Crimes designated by law as misdemeanors; or
 - b. Crimes for which the law provides for a penalty of imprisonment of more than six months but less than one year in a county jail, a fine of not more than \$1,000 or both.
3. A citation may be filed to begin a criminal action for a petty misdemeanor or for a game and fish violation. If so, the clerk should follow the simplified citation procedures set forth in section 5.1 - Traffic.

Refer to Appendix 22, Misdemeanor Flow Chart.

Note: NMSA 1978, §31-18-13 provides that whenever a defendant is convicted of a crime not contained in the Criminal Code, NMSA 1978, §§ 30-1-1 through 30-1-51, and a different penalty is specified, the penalty shall control. Certain corporate crimes carry higher fines; for example, the Hazardous Waste Act provides penalties of up to \$250,000 for a misdemeanor.

B. Jury Trial.

NMRA 6-602 provides that either party may demand a jury trial on a petty misdemeanor charge, and demand must be made within 10 days after entering a plea. In accordance with the rule on a misdemeanor, trial by jury is assumed unless the defendant waives a jury trial with the approval of the court and the consent of the state (prosecution). The same is true for any complaint that charges more than one petty offense, where the combined, potential period of imprisonment exceeds six months.

C. Who represents the parties?

1. In a criminal misdemeanor action, the parties are the State of New Mexico (the prosecution) and the person charged with the crime (the defendant).
2. The State is represented by the district attorney or by an authorized law enforcement officer. The defendant has the right to be represented by an attorney (either a private attorney if he or she can afford one, or by the public defender) if the penalty provided by law carries a jail sentence. If the penalty does not involve a jail sentence, the defendant has no right to an attorney provided by the state. In such a case, the defendant may either hire a private attorney or may represent himself or herself.

5.4 Felonies

A. What is a felony?

A felony is a crime which is designated by law as a felony or which carries a sentence of death or imprisonment of one year or more in the state penitentiary. For example: murder is designated by law as a felony. NMSA 1978, §31-18-15.

There are six categories of felonies:

1. capital felony;
2. first degree felony;
3. second degree felony;
4. third degree felony;
5. fourth degree felony; and
6. special penalty felony.

Refer to Appendix 23, Felony Flow Chart.

Refer to the General Criminal Process & Procedures Section 5.1 for Processing Felonies.

Section B--Probable Cause Refer to NMRA 6-203 Probable cause determination; arrests without a warrant.

Section C--Bonding.

Section E--Legal Representation.

Section H--Non-Compliance.

B. What is the authority of the magistrate court over felonies?

If a criminal action involving a felony is brought in to magistrate court, the magistrate court has the authority to issue an arrest warrant, issue a search warrant, set conditions of release (bail), conduct a first appearance, conduct a preliminary hearing, and release due to lack of probable cause.

The magistrate does not have the authority to accept a plea or conduct a trial on a felony charge.

C. How does a felony action get into magistrate court?

A felony action must be brought in the magistrate court in the county where charged and where the crime has occurred.

Normally, a criminal action begins when the district attorney or an authorized law enforcement officer files a criminal complaint with the magistrate court.

D. Who represents the parties?

1. In a criminal felony action, the parties are the State of New Mexico (the prosecution) and the person charged with the crime (the defendant).
2. The State is represented by the district attorney. Due to the seriousness of a felony charge the defendant should be represented by an attorney, however if the defendant refuses an attorney the defendant may proceed pro-se. If the defendant cannot afford a private attorney, the public defender will represent the defendant.

E. Defendant arrested without a warrant.

1. If the defendant is arrested without a warrant and the defendant remains in jail, the magistrate must make probable a cause determination within 48 hours of arrest.
2. The district attorney or a law enforcement officer may file "Statement of Probable Cause" with the complaint or after, if the complaint does not show probable cause.

Note: Refer to NMRA 6-201D, Arrest Warrants, and NMRA 6-203, Probable Cause Determination.

F. Case Initiation.

1. The clerk accepts for filing from the district attorney or a police officer a "Criminal Complaint," NMRA 9-201 and 6-201.

Private citizens may file a complaint that is not within the trial jurisdiction of the court. NMRA 6-108A.

2. Case Management Application assigns docket number.
3. Clerk prepares yellow file folder with the docket number and case name on the label. Case is filed numerically.
4. If the defendant has not been arrested, law enforcement brings to the court a prepared "Affidavit for Arrest Warrant," NMRA 9-209, or a criminal complaint with any necessary attachments, and "Warrant for Arrest," NMRA 9-210, for judge's signature. NMRA 6-204 and 6-206. The judge advises clerk whether a summons or warrant will be issued. If criminal summons, NMRA 9-208 is issued. Service may be by mail, process server or officer.
5. Copies of the complaint, warrant, and the original arrest warrant or summons are given to the officer to serve on the defendant.

6. If the defendant requests waiver of first appearance, the clerk files "Waiver of First Appearance," Enter of Plea Not Guilty, NMRA 9-405A, with judge's approval, if defendant requests waiver of arraignment.
- G. Defendants Appearance. Upon the first appearance, the judge informs the defendant of the charges, penalties and of the defendant's legal rights. Judge reviews terms and conditions of release.
- H. Waiver of First Appearance. If the defendant requests a waiver of first appearance, the clerk files a "Waiver of Arraignment, Entry of Plea of Not Guilty," NMRA 9-405A with the judge's approval.
- I. Notice of Preliminary Examination.
1. The clerk prepares Notice of Preliminary Hearing Examination and mails to the prosecution, defense attorney and defendant.
 2. The judge sets the preliminary hearing date within ten (10) days of the first appearance if the defendant is in jail. Unless there is action by the grand jury, the preliminary hearing must be held within sixty (60) days of the first appearance if the defendant is not in jail. NMRA 6-202(D).
 3. Upon request of the prosecution or defense attorney, the clerk may issue subpoenas for witnesses. The clerk will give subpoenas to the proper agency for service. NMRA 6-202A.
 4. When a motion is filed by the prosecution to dismiss a case, the clerk prepares the "Notice of Dismissal on Criminal Complaint," NMRA 9-415A.
- J. Preliminary Examination. NMRA 6-202.
1. A record shall be made of the preliminary examination. NMRA 6-202B.
 2. The clerk serves as tape/recording monitor. See Chapter 10, "Jury and Courtroom Procedure" for description of tape/recording monitor duties. The clerk does not need to be certified to be a tape monitor, at this time.
 3. If the prosecution desires to reduce a felony to a misdemeanor as part of a plea and disposition agreement, the judge signs "Plea and Disposition Agreement," NMRA 9-408, and enters "Judgment and Sentence." The judge should not require dismissal of felony charges and re-filing of misdemeanor charges.

4. If the court finds that there is probable cause to believe that the defendant only committed an offense not within magistrate court trial jurisdiction, it shall bind the defendant over for trial in district court.
5. If the defendant is bound over for trial by the magistrate court, the district attorney shall file with the magistrate court:
 - a. a copy of the information filed in district court.
 - b. if an order is entered by the district court extending the time for filing an information, a copy of such order.
6. If, upon completion of the examination, it appears to the court that there is no probable cause to believe that the defendant has committed an offense, the court shall discharge the defendant.
7. If the court finds that there is probable cause to believe that the defendant committed only an offense **within** magistrate court trial jurisdiction, the action shall be set for trial as soon as possible.

Refer to General Procedures Section, Scheduling jury and non-jury trial.

Note: Indicate on tape/recording that it is an "original" and is being bound over to district court or appellate court.

- K. After preliminary hearing. If defendant is bound over to district court, or if defendant waives preliminary hearing:

Paperwork to be prepared:

1. "Bind-Over Order," NMRA 9-207, is filed by clerk, with offenses listed on bind-over order. The bind-over order serves as the final order.
2. Title page of "Transcript of Criminal Proceedings and Certificate," NMRA 9-608, is prepared by clerk.
3. The clerk makes a copy of case file.
4. A copy of the file with the Bind-Over Order with offenses listed and Title Page of Transcript of Criminal Proceedings and Certificate is sent to district court. The original file remains with magistrate court. The bond is transferred to the district court.

5. The tape and tape log of the preliminary hearing shall also be sent to district court within ten (10) days.

A duplicate of the tape may be requested by any party within six (6) months following the preliminary hearing. The taped record may be disposed of by the magistrate court after the expiration of six (6) months following the preliminary hearing. NMRA 6-202B.

L. After preliminary hearing - if the defendant is not bound over.

1. When the examination is completed and it appears to the court that there is no probable cause to believe that the defendant has committed an offense, the court shall discharge the defendant from the felony charge. Misdemeanor charges, if any, shall be set for trial.
2. If the defendant is discharged, the court prepares Final Order for judge's signature and notes "defendant discharged" on NMRA 9-603.
3. If charges are dismissed by prosecution, clerk prepares the "Notice of Dismissal on Criminal Complaint," NMRA 9-415A, to be used as a final order and has the notice signed by the prosecutor and judge.
4. If bond was posted, the bond must be returned to surety. Refer to Chapter 11 for Financial Procedures. Refer to Chapter 11, Financial Management, Section 11.3 for Bonding.
5. The clerk enters all pertinent information in the Case Management Application.
6. The case file is filed numerically by fiscal year in the year the case was closed.

M. If the Defendant Is Indicted by Grand Jury.

1. The district attorney shall notify the magistrate if the defendant is indicted on the offense and the magistrate shall take no further action. Conditions of release set by the magistrate court shall continue unless amended by the district court. NMRA 6-202.
2. The court should receive a copy of the grand jury indictment. The court file is closed upon filing of the bind-over order or checking the box entitled "grand jury indictment." The case and bond posted in the magistrate court is automatically transferred to district court.

3. The clerk enters all pertinent information into the Case Management Application--case transferred due to grand jury indictment or preliminary hearing.
4. The case file is filed numerically in the fiscal year the case was closed.

5.5 Special Criminal Proceedings

5.5.1 Bench Warrant. NMRA 6-207.

A bench warrant is a form is issued by the magistrate for the arrest of a person who has violated an order or requirement of the court.

Upon issuance of a bench warrant, a magistrate court shall assess a fee of \$100 against the individual whose arrest is commanded by the bench warrant. NMSA 1978, §35-6-5, Magistrate court warrant enforcement fund.

Refer to Chapter 15, Supreme Court Policy Directive #7, Relating to Acceptance of Partial Payments of Fines and Costs.

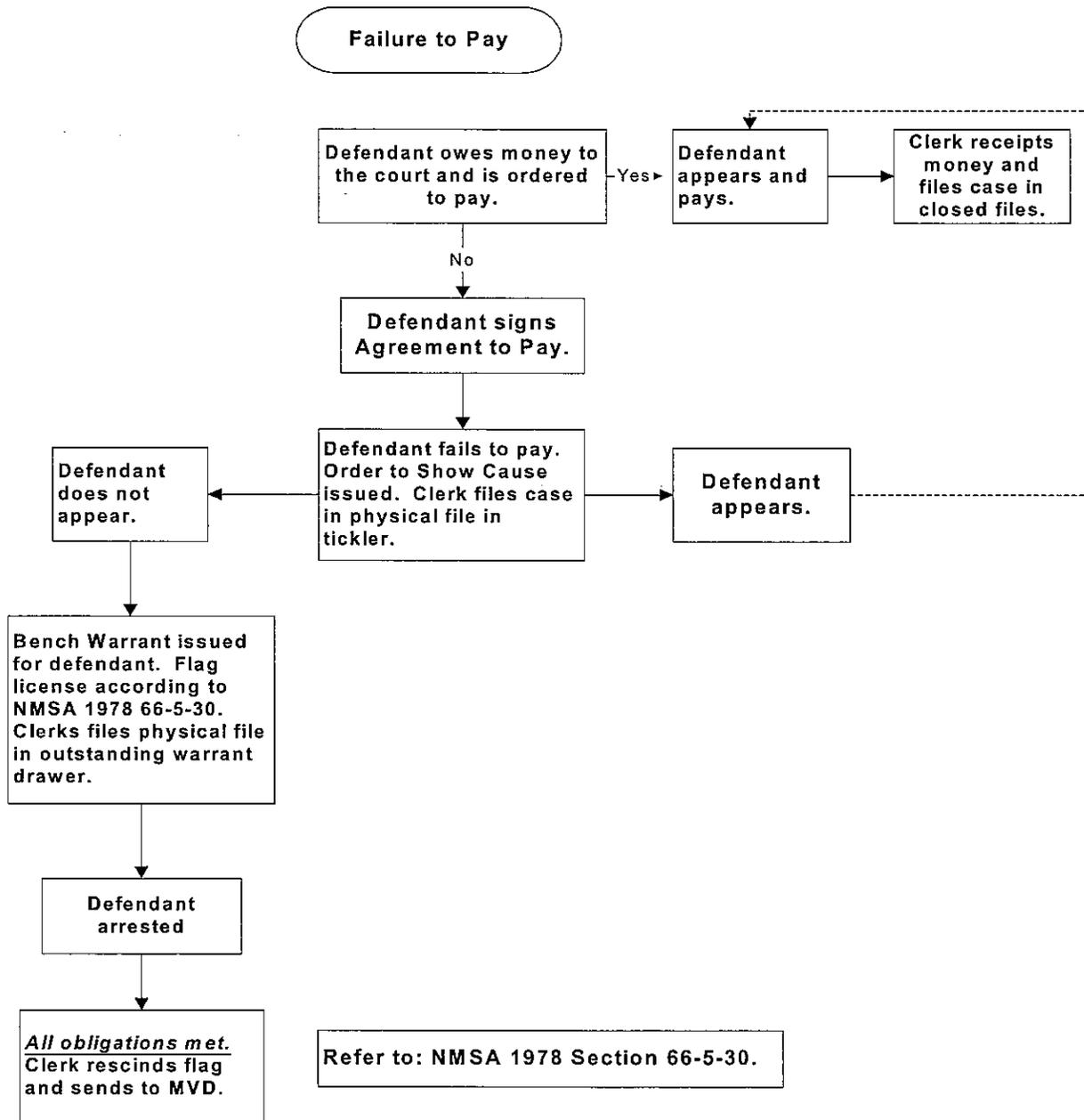
A. Failure to Pay.

1. If a defendant fails to make payments of fines or fees a judge may issue an order to show cause why he/she should not be held in contempt for violating the order to pay. If the judge determines that the failure to pay was wilful, the judge shall immediately issue a bench warrant. NMRA 9-212A or 9-212B.
2. If the defendant owes money to the court on an agreement to pay and a bench warrant is issued for failure to pay a bond shall not be set. The judge marks the portion of the bench warrant which states, the defendant failed to pay fines and costs and the defendant may be released upon payment of the outstanding fine and court costs in the amount of a judge-ordered fine plus a \$100.00 bench warrant fee. The \$100.00 bench warrant fee is added to amount owing.
3. The clerk shall issue flag MVD 10079 to suspend driver's license if it is a traffic or MVD violation.
4. The clerk gives the original and one (1) copy of the bench warrant to a law enforcement agency for service of process upon defendant. One copy stays in file.
5. The case should be placed in open case files according to next event.

Refer to Appendix 35, Affidavit for Duplicate State Warrant to submit to Fiscal Services.

Refer to Appendix 29, Warrant Cancellation Form to submit to Fiscal Services.

Failure to Pay Flow Chart



5.5.2 Extraditions. NMSA 1978, §§31-4-1 through 31-4-31, NMRA 6-811 and 6-812.

Extradition is the process in which one state, surrenders to another state, a person wanted in the other state. Extradition involves persons who are charged with crimes in other states and who fled from justice, were convicted and escaped or who broke probation. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into in the extradition proceeding. If a criminal prosecution has been instituted against the person in this state the governor may surrender or hold the defendant.

A. During First Appearance.

1. The complaint is filed, with appropriate documents from the requesting state -- fugitive from justice stated on complaint by the New Mexico law enforcement agency. NMSA 1978, §31-4-3.
2. The judge will advise the defendant of his right to waive extradition and if the defendant waives extradition, the clerk files "Waiver of Extradition," NMRA 9-803, to be signed by the defendant and the judge. NMSA 1978, §31-4-22. The defendant is held without bond NMRA 6-811C. The defendant shall be held in the county jail for a time not to exceed 30 days. NMSA 1978, 31-4-15 . If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may commit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, but within a period not to exceed 60 days after the date of such new bond. NMSA 1978, §34-4-17.

When a defendant is not arrested under warrant of the governor, if the defendant has been charged with a crime in this state, the defendant shall not be released until a bond is posted for the crime in this state.

3. The clerk prepares "Order for Extradition On Waiver," NMRA 9-804A, for the judge's signature and distributes the original to the district attorney to deliver to the governor, two copies for the sheriff's office; and one copy for court file.
4. If the defendant does not waive extradition, the defendant remains incarcerated unless bail is posted. NMSA 1978, §31-4-16; NMRA 6-401.
5. If the judge decides to set a bond or release the defendant on his own recognizance, "Order Setting Conditions of Release," NMRA 9-302 or 9-303, is filed by the clerk pursuant to instructions from the judge.
6. If the judge sets bond and the defendant posts bond, the clerk files the appropriate bond form according to the specifications of the judges.

7. If the defendant or his counsel state that they desire to test the legality of the arrest, the judge of such court of record shall fix a reasonable time to be allowed to apply for a writ of habeas corpus. The judge signs an order transferring the defendant to the district court for further proceedings. The case is transferred to the district court for a hearing. The clerk sends a copy of the file with NMRA 9-608, title page of transcript of criminal proceedings to the district court. NMSA 1978, § 31-4-10.

Refer to NMRA 6-812, Transfer of fugitive actions after issuance of a governor's rendition warrant.

5.5.3 Dismissal by Prosecution or Dismissal for Lack of Probable Cause

1. “Notice of Dismissal of Criminal Complaint,” NMRA 9-415. The Notice of Dismissal is used when the prosecution wishes to dismiss a criminal complaint or a specific charge or count in the complaint, or when the court dismisses the complaint for lack of probable cause.

Note: If the judge finds lack of probable cause before the complaint is docketed, the judge indicates on the face of the complaint that the complaint is dismissed for lack of probable cause.

2. The defendant's appearance is not required when the charges are dismissed by the prosecution or when the court dismisses the complaint for lack of probable cause.
3. The clerk closes file after Notice of Dismissal of Criminal complaint filed.

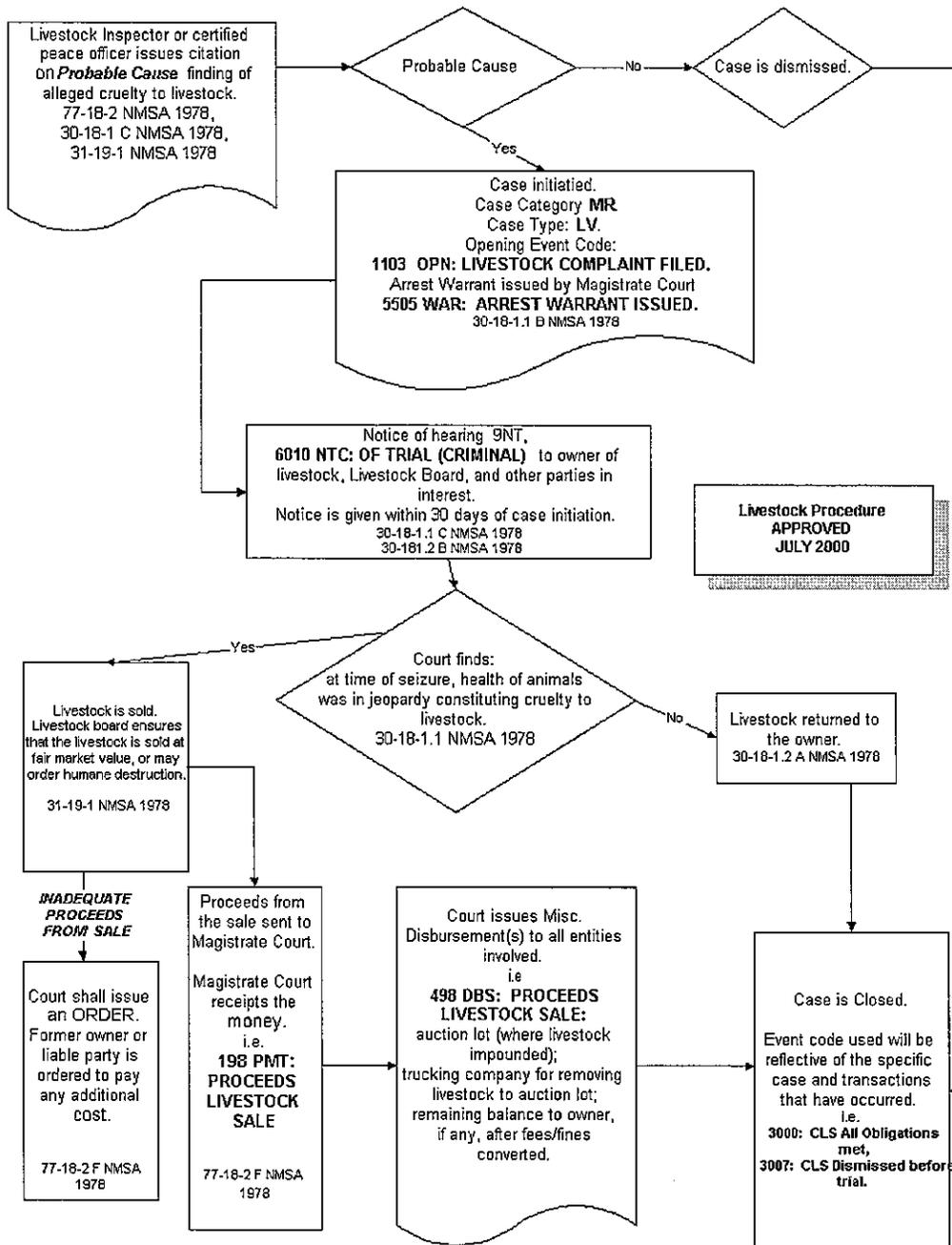
5.5.4 Uncollectable Cases

UNDER CONSTRUCTION

5.5.5 Livestock Procedure

1. Seizure and disposition of cruelty treated livestock. NMSA 1978, §77-18-2.

Approved by Case Management Application User Group:



5.5.6 Transfer of Cases to District Court

- A. Whenever there is a question of the defendant's competence to stand trial or the defendant's plea includes an issue of insanity, the case is transferred to district court immediately. NMRA 6-507.
- B. Clerk files a "Transfer Order," NMRA 9-404, and prepares transcript of criminal proceedings. The transcript shall include: a copy of all proceedings, including complaint; warrants issued; appearance or bail bond; order specifying conditions of release; all pleadings, including any record of proceedings made by the court; and any exhibits.

5.5.7 Warrants - NMRA 6-206.

- A. Issuance of Arrest Warrant.
 - 1. The "Warrant for Arrest," NMRA 9-210, is issued by the judge after the criminal complaint has been filed. It directs a law enforcement officer to arrest the defendant.
 - 2. The arrest warrant is usually issued at the time the complaint is filed and at the request of the district attorney or a law enforcement officer.
 - 3. The arrest warrant is prepared by the district attorney or a law enforcement officer and brought to the court for the judge's signature.
 - 4. If the judge determines that the criminal complaint does not contain sufficient basis for issuing an arrest warrant, an "Affidavit for Arrest," NMRA 9-209, may be required. The affidavit is completed by the person who filed the complaint.
 - 5. At the time the arrest warrant is issued, the criminal complaint is attached to the arrest warrant and given to the district attorney or law enforcement agency, along with the original of the arrest warrant. A copy of the arrest warrant is placed in the case file.
 - 6. When the defendant is arrested, the arresting officer completes the return portion on the original arrest warrant and returns it to the court. The clerk files the original of the arrest warrant in the case file.
 - 7. If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court cancels or quashes the warrant, the court shall cause the warrant to be removed from the warrant information system.

Refer to Appendix 29, Warrant Cancellation Form Submitted to Fiscal Services.

Refer to Appendix 35, Affidavit for Duplicate State Warrant submitted to Fiscal Services.

B. Issuance of Search Warrant. NMRA 6-208.

1. Search and seizure is the name for the process by which a law enforcement officer gathers evidence of a criminal offense by searching for it and taking it into custody. A "Search Warrant," NMRA 9-214, is issued by the court and provides the officer the authority to conduct the search.
2. A special file should be kept for search warrants for each fiscal year. Search warrants are filed by date of issuance. The clerk is not required to open case file.
3. An "Affidavit for Search Warrant," NMRA 9-213, must be filed before a search warrant is issued. The affidavit is filed by the district attorney or law enforcement officer. Often search warrants, and accompanying affidavit(s) contain confidential information. Prior to filing, clerk should ask law enforcement whether warrant or affidavit contains confidential information. If so, law enforcement should request that the documents be sealed. If documents are sealed, documents are placed in a separate envelope within the search warrant file with identifying information, such as date of issuance, name of officer signing affidavit, general locality where premises located (Cerrillos Road - no street address). Envelope is then sealed and marked confidential.
4. The search warrant is issued by the judge at the time the affidavit is filed and at the request of the district attorney or a law enforcement officer.
5. The original of the search warrant is given to the officer who will conduct the search. The officer must complete the return portion of the search warrant form and return it to the court. The return shall be accompanied by a written inventory of any property. Clerk places a copy of the search warrant in file marked "search warrants."
6. If the search is followed by the filing of a criminal complaint, the pleadings/papers are transferred from the search warrant file to the official file for the case.

5.5.8 Time Limitations - Criminal. NMSA 1978, §30-1-8.

- A. The time limitations for bringing a criminal action (filing a criminal complaint) are as follows:
1. misdemeanor--within two years from the time the crime was committed;
 2. petty misdemeanor--within one year from the time the crime was committed;

3. any crime against or violation of NMSA 1978, §51-1-38 or for any other crime not in the Criminal Code or if a limitation is not otherwise provided--within three years from the time the crime was committed. NMSA 1978, §30-1-8.
 4. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime.
- B. When computing the time limitations, the following periods of time are not included in the calculations: NMSA 1978, §30-1-9.
1. when the defendant hides or leaves the state after the alleged crime has been committed;
 2. when an indictment, information or complaint is lost, mislaid or destroyed;
 3. when an indictment, information or complaint is quashed, for any defect or reason; or
 4. when the prosecution is dismissed because of a variance between the allegations of the complaint and the evidence; and a new complaint is thereafter presented; or
 5. judgment is arrested.

5.5.9 Non-Resident Violators Compact

- A. NRVC applies to all violators of Non-Resident Violators Compact as covered in NMSA 1978, §66-5-49 for penalty assessment misdemeanor citations issue on or after January 1, 1985, and only applies to residents of participating states. The NRVC is a reciprocal agreement between party states that assures nonresident motorists receiving citations for minor traffic violations the same treatment accorded resident motorists.
- B. The clerk mails NRVC abstracts separate from the flagging and rescinded abstracts, to:

MOTOR VEHICLE DIVISION
NONRESIDENT VIOLATORS COMPACT
PENALTY ASSESSMENT SECTION
P.O. BOX 1028
SANTA FE, NEW MEXICO 87504-1028

- C. The clerk files the case in open case files.

- D. When the clerk receives payment from the nonresident, the clerk notifies the Motor Vehicle Division by completing form MVD-10079, "Notice of Compliance for Failure to Appear in Court." The Motor Vehicle Division will clear the record and notify the home state of compliance.
- E. The clerk closes file.

VI. CIVIL

6.0 General Civil

What is a civil action? Refer to Appendix 38, Civil Flow Chart.

- A. A civil action is an issue brought before the court for the enforcement of private rights or for satisfaction (usually in the form of money damages) arising out of an injury to a person or a person's property.
- B. In a civil action, an individual, business or government agency seeks damages or relief from another individual, business or government agency.
- C. A civil action is different from a criminal action in which the government charges a person with committing a crime. For example:
 - 1. A person whose vehicle was damaged in an automobile accident might bring an action against the driver of the other car for money to cover the cost of making repairs. This would be a civil action.
 - 2. The driver of the other vehicle might be charged by the police officer with reckless driving. This would be a criminal action since it involves a violation of a criminal law of the state.
- D. In magistrate court, the most common types of civil actions are breach of contract and torts. They are defined as follows:
 - 1. Breach of contract involves the failure of a person to abide by the terms of a written or oral contract or agreement (for example, a suit involving the failure of a person to pay a loan or a bill).
 - 2. Torts involve private wrongs or injury to a person or the person's property (for example, a suit to recover damages resulting from an automobile accident).
- E. Other types of civil actions in magistrate courts involve forcible entry and detainer, replevin, and the owner-resident relations and Mobile Home Park Act. In dealing with worthless checks, the court should refer to NMSA 1978, §56-14-1.
- F. Computation. In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions

have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's day, Martin Luther King, Jr.'s birthday, Presidents' day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day and any other day designated as a state or judicial holiday. For calculating time relating to appeals, see NMRA 2-705A.

- G. A civil complaint for interpleader is appropriate when two or more persons claim the same thing (or funds) of a third person who is disclaiming the property or has no interest or right to the property, the third party demands the claimants litigate between themselves and relieve the third person of any liability or responsibility.
- H. Replevin is an action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully taken, or who wrongfully detains such goods or chattels. For example, if a person fails to pay for an appliance bought on the installment plan, the appliance store may bring a replevin action to obtain return of the appliance. Replevin actions are processed the same as general civil case processing. The civil complaint must contain the description of the property to be recovered. NMSA 1978, §35-11-2, replevin; special provisions, NMSA 1978, §35-11-3, judgment.
- I. What is the civil jurisdiction of magistrate court? NMSA 1978, §35-3-3.

Civil jurisdiction in the magistrate court is \$10,000, not including interest and attorney fees. Civil jurisdiction extends to actions in contract, quasi-contract and tort and where expressly conferred by law. A magistrate has no jurisdiction in any civil action:

1. For malicious prosecution, libel or slander
2. Against public officers for misconduct in office
3. For specific performance of contracts for the sale of real property
4. In which the title or boundaries of land may be in dispute or drawn into question
5. Affecting domestic relations; including divorce, annulment, separation, custody, support, guardianship, adoption or dependency of children
6. To grant writs of injunction, habeas corpus, or extraordinary writs; or
7. Where jurisdiction is vested exclusively in another court

8. A magistrate has jurisdiction to sit in any action arising in any other magistrate district when designated for a specific period of time by any district judge because of the unavailability of a magistrate in that magistrate district. Any magistrate acting in another magistrate district by designation under this subsection shall include the cases heard by designation in his own reports to the Administrative Office of the Courts, indicating on the reports that his jurisdiction is by designation. No costs or fees shall be collected by a court for any filing or proceeding under this subsection. In any civil action arising within the magistrate's territorial jurisdiction, the court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant where that person resides or may be found within the state. The territorial limitations of magistrate court jurisdiction shall not apply to actions to enforce judgments entered in the magistrate district and writs issued in aid of those actions. NMSA 1978, §35-3-6.

J. How does a civil action get into magistrate court?

1. A person who believes he or she has been injured or wronged by another person may file a complaint in magistrate court. The person filing the complaint is the plaintiff. The burden of proof is on the plaintiff to prove their case. NMRA 2-201, Commencement of Action.
2. The defendant (the person against whom the complaint is filed) is served with a copy of the complaint, answer and summons. The defendant is required to file an answer with the court. In the answer, the defendant responds to the charges in the complaint. A trial is held, and the judge or jury decides the case.

K. Who represents the parties (plaintiff and defendant)?

In magistrate court, the parties may represent themselves or may hire attorneys to represent them. It is up to each party to decide whether he or she wishes to be represented by an attorney. The fact that one party has an attorney does not mean that the other party must also have an attorney.

L. Who may file pro se and when is an attorney appearance required? NMRA 2-107.

1. Pro se appearance by an individual. A party to any civil action may appear, prosecute, defend and appeal any proceeding:
 - a. If the party is an individual party, in person; or
 - b. If the property is community property, one spouse may appear for both spouses

2. Other authorized appearances. A party to any civil action may appear, prosecute and defend any proceeding:
 - a. If the party is brought into the suit by a writ of garnishment or attachment, and such party is a partnership, one of its general partners may appear.
 - b. If the party is brought into the suit by writ of garnishment or attachment and such party is a corporation, or limited liability company, the corporation or limited liability company may be represented by an officer, director or general manager of the corporation upon the filing of a notarized certificate to act on behalf of the corporation.
3. A party may appear pro se if the action is brought pursuant to the provisions of the Uniform Owner-Resident Relations Act and the appearance is by:
 - a. The "owner," as defined by the provisions of the Uniform Owner-Resident Relations Act
 - b. A licensed real estate agent authorized by such owner; or
 - c. The person authorized to manage the premises
4. A party may appear pro se if the party is a corporation or limited liability company whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business and the appearance is by an officer or general manager who has been authorized to appear on behalf of the corporation.
5. If the party is a general partnership which meets all of the following qualifications:
 - a. The partnership has less than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose
 - b. All partners, whether limited or general, are natural persons; and
 - c. The appearance is by a general partner who has been authorized to appear by the general partners
6. A party may appear pro se if the party is a governmental entity and the appearance is by an employee of the governmental entity authorized by the entity to institute or cause to be instituted an action on behalf of the governmental entity.

7. If the party is a wage claimant, the Director of the labor and industrial division of the Labor Department, as assignee, may appear on behalf of the claimant pursuant to NMSA 1978, §§50-4-11 and 50-4-12.

8. Attorneys. NMRA 2-107C

Note: Attorney fees may be awarded when authorized by the statute. NMSA 1978, §§39-2-1 through 39-2-2-1 and other statutes relevant to the case before the court. The amount of the attorney fee is discretionary with the court, except as provided by law.

9. Collection agencies may take assignments of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own names, but the collection agency must be represented by a licensed attorney-at-law.

6.1 General Civil

A. Jurisdiction - NMSA 1978, §§35-3-1 through 35-3-10.

B. Case Initiation

1. The clerk accepts the complaint for filing from individuals and businesses. Refer to NMRA 4-201. NO LEGAL ADVICE IS GIVEN. Refer to Supreme Court Order 98-8500. The clerk may not refuse to accept a complaint for filing. Persons filing insufficient complaints or complaints which may not be within magistrate court jurisdiction run the risk that the judge will dismiss the complaint and they will lose their filing fee. The judge may order the filing fee refunded only in rare and exceptional cases.

All persons who want to join in one action as plaintiffs or defendants must comply with NMRA 2-301C.

2. The clerk notifies the plaintiff of the \$67 filing fee, as required under NMSA 1978, §§35-6-1 through 35-6-3.

3. If the plaintiff claims they are entitled to free process, the clerk/judge prepares "Eligibility Determination for Indigent Defense Services," NMRA 9-403 .

Refer to Chapter 5, Section 5.1 for Indigency Determination Guideline.

The judge will make the determination before the complaint is filed.
NMSA 1978, §35-6-3(A).

4. If the indigency determination is made, the \$67 filing fee is waived. The \$67 fee is to be paid if the determination is denied. The clerk issues a receipt to the plaintiff.
5. The clerk prepares a purple file folder with the docket number and case name on the label.

Refer to Chapter 4 for label instructions.

6. The clerk enters the information into the Case Management Application.

C. Jury Demand.

NMSA 1978, §35-8-7 requires the party who requested a civil jury trial pay costs of the jury, in addition to the \$25 fee. The costs of the jury are not assessed against the losing party, but against the party who requested the civil jury. No costs shall be charged against the state.

1. Either party to a civil action in the magistrate court within magistrate trial jurisdiction may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff, and in the answer, if made by the defendant. If demand is not made, or if the jury fee is not paid at the time the demand is made, trial by jury is considered waived.
2. A jury fee of \$25 is collected by the clerk from the party demanding a jury trial at the time the demand is made. NMSA 1978, §35-6-1.
3. Individuals requesting a jury will be required to pay an additional \$50 jury deposit. The deposit must be collected at the time the request is made. NMRA 2-602, refer to Chapter 11 for the Receipting Procedure.
4. The deposit will be receipted through the bond screen. Refer to Chapter 11, Financial Management, Section 11.12, "Receipting Jury Fee/Juror Costs in Civil Cases."
5. There can be no jury trial for Petition for Restitution, but there could be a jury trial on the issue of damages.
6. The judgment shall assess costs of the jury to the requesting party. Refer to Chapter 11, Financial Management, for more information and collection procedures.
7. The clerk enters information into the Case Management Application.

Refer to Chapter 10, Jury Management.

D. Summons and Service of Pleadings

1. The clerk shall issue a “Civil Summons,” NMRA 4-204.
2. The clerk attaches the defendant’s copy of the civil summons, and the form for answer, to the civil complaint and provides documents to plaintiff or plaintiff’s attorney to serve on each defendant. The plaintiff shall furnish the person making service with the necessary copies. NMRA 2-202C.
3. Summons; Service by mail to the defendant NMRA 2-202E. Service can be made by first-class mail, postage prepaid to the defendant and a return envelope, postage prepaid, addressed to the sender. Two copies of NMRA 4-208, the “Notice of Acknowledgment of Receipt of Summons and Complaint,” must be served along with the summons, complaint, and form answer.

If there is not acknowledgment of service by the sender within 23 days after the date of the mailing, service must be made to the defendant by the sheriff or any other person, not a party to the action, who is over the age of 18. If the service is a writ of attachment or writ of replevin the person serving the writ must be over the age of 18 and designated by the court to serve the process. The person who failed to acknowledge the service by mail shall be ordered by the court to pay the cost of personal service unless good cause is shown for not signing and filing the acknowledgment within 20 days.

4. Personal Service; Summons; how served - NMRA 2-202F. Personal service shall be made as provided by law as follows:
 - a. Individuals - upon an individual other than a minor or an incapacitated person by delivering a copy of the summons and the complaint to him personally; or if the defendant refuses to receive such, by leaving same at the location where he has been found; and if the defendant refuses to receive such copies or permit them to be left, such action shall constitute valid service. If the defendant is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years; and if there is no such person available or willing to accept delivery, then service may be made by posting such copies in the most public part of the defendant’s premises, and by mailing to the defendant at his last know mailing address copies of the process.
 - b. Corporations - upon a domestic or foreign corporation by delivering a copy of the summons and of the complaint to an officer, a managing or a general agent, or to any other agent authorized by appointment or by law to receive

service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

- c. Partnerships - upon a partnership by delivering a copy of the summons and of the complaint to any general partner.
- d. Unincorporated Association - upon unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association.
- e. The State of New Mexico - writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau, department, commission or institution.
- f. Counties - by delivering a copy of the summons and of the complaint to the county clerk, who shall forthwith notify the district attorney of the judicial district in which the county sued is situated.
- g. Municipal Corporation - by delivering a copy of the summons and of the complaint to the city clerk, town clerk or village clerk, who in turn shall forthwith notify the head of the commission or other form of governing body.
- h. Board of Trustees for a Land Grant - the board of trustees of any land grant referred to in NMSA 1978, §§49-1-1 through 49-10-6, process shall be served upon the president or in his absence upon the secretary of such board.
- i. Minors - whenever there shall be a conservator of the estate or guardian of the person of such minor, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of process so made shall be considered as service upon the minor. In all other cases process shall be served by delivering a copy of the summons and of the complaint to the minor, and if the minor is living with an adult a copy of the summons and of the complaint shall also be delivered to the adult residing in the same household. In all cases where a guardian ad litem has been appointed, a copy of the summons and of the complaint shall be delivered to such representative, in addition to serving the minor as herein provided.
- j. Incapacitated Person - whenever there shall be a conservator of the estate or guardian of the person of such incapacitated person, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of

process so made shall be considered as service upon the ward. In all other cases process shall be served upon the ward in the same manner as upon competent persons.

5. Service; when required - NMRA 2-203A.

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint, every order not entered in open court, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

6. Service; when not required - NMRA 2-203A.

Service on a party is not required if:

- a. the party is in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in NMRA 2-202.
- b. the party unconditionally admits to all of the allegations of the complaint prior to entry of a judgment on the pleadings.

7. Service of the pleadings can be done in the following manner:

- a. To an attorney: NMRA 2-203B - When service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing it to the attorney or party at the attorney's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

"Delivery of a copy" means:

- (1) handing it to the attorney or to the party;
- (2) sending a copy by facsimile or electronic transmission;
- (3) leaving it at the attorney's or party's office with a clerk or other person in charge, or, if there is no one in charge, leaving it in a conspicuous place in the office;

- (4) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there; or
- (5) placing a copy in a box maintained by the attorney for purposes of serving the attorney.

Note: The court is not to collect money for service of process fees.

E. Defense Answer to Complaint. NMRA 2-302.

1. An answer must be filed within 20 days of service of complaint and summons, and within 23 days if service was by mail. NMRA 2-202B.
2. Any defendant may file a third-party complaint, within 10 days of filing the answer, upon a person not a party to the action who is or may be liable for all or part of the plaintiff's claim. Refer to NMRA 2-301D, pleadings allowed; form of motions; third party practice.
3. Procedures to be followed when the defendant answers in the following ways:
 - a. If the defendant files an answer confirming the allegations in the complaint, not contesting the complaint:
 - (1) If requested by the judge, the clerk may schedule a trial date and mail "Notice of Trial," NMRA 4-401 to all parties.
 - (2) The judge may render a judgment on the pleadings if the party seeking a claim or counterclaim files and serves a motion by mail at least five (5) days before the hearing and the judge finds that there is no genuine issue as to any material fact and the party is entitled to a judgment as a matter of law. NMRA 2-303. If the judge grants the Motion for Judgment on the Pleadings, the clerk prepares "Default Judgment; Judgment on the Pleading," NMRA 4-703, for the judge's signature. NMRA 2-702. A judgment by default or a judgment on the pleading shall not be different in kind and exceed the amount claimed in the complaint. NMRA 2-701D.
 - (3) If the parties stipulate to a judgment, the clerk may prepare stipulated judgment, NMRA 4-701, at request of the judge.
 - (4) The clerk mails appropriate copies of judgment to all parties.

- (5) If a hearing was scheduled, the clerk vacates the scheduled date.
 - (6) For enforcement of the judgment. Refer to NMRA 2-801, refer to Chapter 6, Sections 6.6.2 Garnishment and 6.6.3 Execution.
 - (7) If the judgment is satisfied:
 - (a) The judgment creditor files "Satisfaction of Judgment," NMRA 4-706.
 - (b) the clerk enters information into The Case Management Application system.
 - (c) The case file is filed numerically in the fiscal year the case was closed.
- b. If the Defendant Files an Answer Denying the Allegations In the Complaint:
- (1) The clerk mails a copy of the answer to the parties involved. The defendant may raise a counterclaim in answer. NMRA 2-302. If a jury trial is requested, refer to Chapter 6.1, Section C, "Civil Jury Trial," for procedures. NMRA 2-603.
 - (2) The clerk schedules the trial date and mails "Notice of Trial," NMRA 4-401, to all parties.
 - (3) Upon request of either party, the clerk may issue subpoenas, in blank, for witnesses. The party will complete the subpoenas and serve. The judge or the clerk may issue subpoenas signed and sealed. The judge or clerk may issue subpoena duces tecum to a party only if the subpoena duces tecum is completed by the party prior to issuance by the judge or clerk. NMRA 2-502. The clerk should instruct parties to return proof of service to the court after delivery of subpoenas and file original completed subpoena with the court.
 - (4) Refer to Chapter 6, Jury Demand.
 - (5) Refer to Chapter 6, Answer to Third Party Complaint.
 - (6) After a hearing is held, the clerk prepares "Judgment," NMRA 4-701, for the judge's signature. NMRA 2-701 The party wishing to appeal has fifteen (15) days from entry of judgment to file an appeal in district court. NMRA 2-705. The judge should set an appeal or

supersedeas bond in the amount of the judgment. The proceedings for the judgment creditors to collect the judgment are not stayed unless the bond is posted. NMRA 2-705G.

- (7) If the judge decides after trial that no party is to be awarded damages or costs, the judge should enter a judgment in favor of defendant with \$0 awarded. DO NOT USE the form "Order Dismissing Action." If such a judgment is entered, it is appealable, whereas the dismissal could lead to the case being refiled which is inappropriate when the judge has heard the facts of the case and has made a decision. After such a judgment is entered, the case may be closed as soon as the time for appeal has run.
- (8) The winning party has 14 years from the date of the judgment to enforce the judgment. NMSA 1978, §37-1-2.
- (9) The clerk mails appropriate copies of judgment to all parties.
- (10) "Writ of Execution," NMRA 4-801, may be issued immediately upon request, after entry of judgment.

Refer to Chapter 6, Writ of Execution instructions and 6.6.3(B) for claims of exemptions. NMRA 2-801.

- (11) The clerk shall not accept or transfer money paid on any judgments.
- (12) If the judgment is satisfied:
 - (a) The judgment creditor files "Full Satisfaction of Judgment," NMRA 4-706.
 - (b) The clerk enters the information into the Case Management Application System;
 - (c) The case file is filed numerically in the fiscal year the case was closed.
- (13) If judgment is not satisfied, refer to NMRA 2-801 for Execution procedures. See NMRA 2-802.
- (14) If judgment is appealed, see Chapter 8 for Appeal Procedures. NMRA 2-705.

c. If the Defendant Does Not File An Answer:

- (1) The plaintiff files "Motion for Default Judgment," NMRA 4-702, and the clerk attests to the plaintiff's signature. NMRA 2-702.
- (2) At the judge's discretion, the clerk sets a hearing on the motion or prepares "Default Judgment; judgment on pleadings," NMRA 4-703, for the judge's signature. The clerk notifies the parties of the hearing or mails the default judgment to the parties. A judgment by default shall not be different in kind from or exceed in amount that was claimed in the complaint.
- (3) The defendant may file "Motion to Set Aside Default Judgment," NMRA 4-704, within 30 days after entry of judgment. NMRA 2-702C. Refer to Chapter 13, Administrative Form 1.14, Motion for Stay of Proceedings. If the defendant wishes to stay proceedings based on being a member of the military service.
- (4) If the defendant files a Motion to Set Aside Default Judgment, the clerk sets hearing on the motion and mails "Notice of Hearing" to all parties.

Note: "Notice of Trial," NMRA 4-401, should be modified to "Notice of Hearing."

- (5) If the default judgment is set aside:
 - (a) The clerk prepares "Order Setting Aside Default Judgment and giving Notice of Trial Date," NMRA 4-705, and mails to all parties.
- (6) If the motion to set aside default judgment is denied, the plaintiff pursues execution of default judgment. Refer to Chapter 6, Section 6.63 for Execution procedures.

F. Relief from Judgment.

Note: If no satisfaction of judgment has been filed and the prevailing party has not filed the judgment in district court pursuant to NMRA 2-804E, the losing party can seek relief or can satisfy judgment as follows: NMSA 1978, §39-1-6.

1. Relief from judgment - NMRA 2-703B and C.
 - a. The losing party can seek relief by motion filed within one year of entry of judgment if the defendant claims: mistake, inadvertence, surprise or excusable neglect; or claims that judgment was procured by opposing party's fraud, misrepresentation or misconduct.
 - b. The losing party can seek relief by motion if the losing party claims that: judgment is void; judgment is satisfied, released or discharged; or, judgment is based on another judgment that is no longer valid.
 - c. The clerk files the motion and prepares "Notice of Hearing," which is adjusted from "Notice of Trial," NMRA 4-401, and mails to all parties involved.
 - d. After the hearing, the judge can order relief through "Order Setting Aside Judgment, Order or Writ of this Court," NMRA 4-710. If the order is filed, the clerk gives copy to all parties involved.
 - e. The clerk enters all relevant information into The Case Management Application.
 - f. The case file is filed numerically in the fiscal year the case was closed.
2. Satisfaction of judgment as relief when the defendant cannot locate the creditor. NMRA 2-703C.
 - a. The defendant files a motion for an order declaring the judgment satisfied, and attempts to serve the creditor.
 - b. The clerk prepares a "Notice of Hearing," which is edited from "Notice of Trial," NMRA 4-401, and mail copies to all parties involved.
 - c. If the judgment creditor fails to appear at hearing, the defendant must prove that the creditor received service or provide to the court an affidavit that creditor could not be located after a "diligent search." Diligent search includes: attempts to locate creditor at last-known residential or business

address stated in case file, search of telephone and city directories of the county where creditor was last known to be located, without success. NMRA 2-703 C1.

- (1) The judgment debtor must provide the court proof of payment of the full amount including interest or if the judgment has not been paid the defendant tenders to the court the amount of judgment, interest to date, and post-judgment costs that the creditor incurred, as demonstrated in the record.
 - (2) To satisfy provisions of the Uniform Unclaimed Property Act, NMSA 1978, §§7-8A-1 through 7-8-A-31 and NMRA 2-703C1, the defendant's payment must be made by cashier's check or money order payable to the Administrative Office of the Courts. The court should not receipt but should make a copy of the instrument for the file.
 - (3) Upon payment, the judge enters "Order Declaring Judgment Satisfied in Full," NMRA 4-709.
 - (4) The clerk forwards a copy of the order with a cashier's check or money order to the Administrative Office of the Courts.
 - (5) The clerk enters the information into The Case Management Application
 - (6) The clerk files the case file numerically by fiscal year in closed files.
- d. If the judgment creditor appears at the hearing, and the judgment is satisfied the following occurs:
- (1) The judgment creditor files "Full Satisfaction of Judgment," NMRA 4-706.
 - (2) The clerk enters pertinent information in The Case Management Application.
 - (3) The case file is filed numerically by fiscal year in the closed case files.

6.2 Interpleader. NMRA 2-301E.

A civil complaint for interpleader is appropriate when two or more persons claim the same thing (or funds) of a third person who is disclaiming or has no interest or right to the property and is demanding claimants litigate between themselves and relieve the third person of any liability or responsibility. Interpleader actions are generally processed as other civil cases except for the special provisions noted below.

A. Case Initiation.

1. The clerk receives and files the complaint, "Civil Complaint for Interpleader," NMRA 4-205, from individuals and businesses. All persons who want to join in one action as plaintiffs or defendants must comply with NMRA 2-301B through E.
2. The clerk notifies the interpleader of the \$67 filing fee.
3. The clerk collects the filing fee of \$67 and issues receipt to interpleader.
4. The interpleader submits the "Order to Interplead," NMRA 4-308, to the judge for signing.
5. When the judge signs the "Order to Interplead," the clerk returns the signed copy of the order to the interpleader with a copy of complaint and summons for interpleader to serve on defendants.
6. The interpleader pays the amount in dispute to the court.
7. The interpleader funds are handled like cash deposits for appearance and bail bonds. The clerk receives money and prepares a cash bond receipt for the interpleader. Refer to Chapter 11 for Financial Management Procedures.
8. Service of Civil Complaint for Interpleader.
 - a. The clerk shall issues a "Civil Summons," NMRA 4-204.
 - b. The clerk attaches the defendant's copy of "Civil Summons," "Civil Complaint for Interpleader," NMRA 4-205 and copy of "Order to Interplead," NMRA 4-308 to serve on each defendant.
 - c. Service of the pleadings can be done in the following manner:
 - (1) Service can be made by the sheriff of the county where the defendant may be found, to the defendant, or by leaving it at the person's

dwelling house or usual place of abode with some person of suitable age and discretion residing there.

- (2) Service can be made by regular mail or first-class mail, postage prepaid to defendant. Two copies of "Notice and Amount of Receipt of Summons and Complaint," NMRA 4-208, must be served, along with the summons, complaint, and form answer. NMRA 2-202E.
- (3) Refer to Chapter 6.1, paragraph D, Summons and Service of Pleadings.

9. Return on Summons.

- a. When service is personal, the process server prepares the appropriate return portion of the civil summons. Private process server must have a notarized signature on the return. NMRA 2-202G.
- b. If service is by mail, the interpleader must fill out "Notice and Acknowledgment of Receipt of Summons and Complaint," NMRA 4-208. If the interpleader does not receive acknowledgment after 23 days from mailing, personal service must be made. The court shall order the defendant who did not acknowledge service by mail to pay the costs of subsequent personal service unless good cause for failure to acknowledge is given. NMRA 2-202F1.
- c. When service is made by posting process at the defendant's dwelling, service must also include mailing to the defendant at the last known address. NMRA 2-202F1.

Refer to Chapter 6, Section 6.1.D - Summons

10. The interpleader is relieved of the obligation and is effectively dismissed from the action once service is accomplished.
11. Pertinent information is entered into The Case Management Application.
12. The case file is placed in the tickler system for 20 days pending the defendant's answers.

B. Judgment and Disbursement of Funds.

1. If defendants reach an agreement:
 - a. The defendants notify the court of their agreement. The judge may direct the clerk to prepare an appropriate judgment form for the judge's signature.
 - b. The clerk disburses funds to appropriate party upon order of the court. Refer to The Case Management Application on disbursements.
 - c. The court has control of the funds in dispute. Upon payment, the judgment is deemed satisfied.
 - d. Full satisfaction of judgment may be filed.
 - e. All information is entered into The Case Management Application.
 - f. The case file is filed numerically by fiscal year in closed cases.
2. If the defendants do not reach an agreement:
 - a. At the judge's discretion, the clerk prepares "Notice of Trial," NMRA 4-401, and mails copies to defendants. Refer to The Case Management Application for calendaring.
 - b. The case is placed in the tickler system according to next event scheduled.
 - c. Pertinent information is entered into The Case Management Application.
 - d. At trial the judge shall make the determination for the proper distribution of funds.
 - e. The judge directs the clerk to prepare the appropriate form for the judge's signature. Copies are provided to all parties.

Refer to Financial Management, Chapter 11 for Disbursement of Funds Information.

6.3 Uniform Owner - Resident Relations Act

The Uniform Owner-Resident Relations Act covers the obligations and responsibilities of the owner (landlord) and the resident (tenant) with respect to: non-payment of rent, non-compliance with rental agreements, and termination of rental agreement. NMSA 1978, §§ 47-8-1 to 47-8-52.

Actions for non-payment of rent and other actions under the Uniform Owner-Resident Relations Act must be based on a written rental agreement. Refer to definition of "rental agreement," NMSA 1978, §47-8-3(P). The Act requires the owner to provide a written rental agreement prior to the beginning of occupancy. NMSA 1978, §47-8-20(G).

Forcible entry or unlawful detainer NMSA 1978, §47-8-9 is a separate action that does not apply to actions arising from residential tenancies governed by the Uniform Owner-Resident Relations Act, or from any other tenancy to which the Act applies. Actions that can not be filed under the Uniform Owner-Resident Relations Act and the Mobile Home Act can be filed under forcible entry or unlawful detainer. Examples are landlord-tenant verbal agreements or actions involving mobile home parks with less than 12 parcels of land with occupied mobile homes.

Note: The case must be filed in the county where the rental property is located. NMSA 1978, §47-8-10(A); refer to NMSA 1978, §47-8-9, Exemptions from the Owner-Resident Relations Act; refer to NMSA 1978, §35-3-3, Jurisdiction; Civil Actions.

A. Notice Provision and Case Initiation.

1. SUING FOR PAST DUE RENT: If complainant (owner/landlord) is suing for past due rent only, plaintiff fills out and serves to tenant "Three-Day Notice of Non-Payment of Rent," NMRA 4-901, and waits three days. NMSA 1978, §§47-8-13 and 47-8-33(D).
2. If there is no compliance, plaintiff shows the form to the clerk and files "Petition by Owner for Restitution," NMRA 4-904. Note: The clerk must receive filing fee before filing the petition. The owner can only assess past due rent as a fixed amount up to the date the complaint is filed. The owner may ask for an additional amount equal to the pro-rated daily rent for each day until the date of restitution. If the plaintiff is asking for late fees, the amount of the late fees must be stated in the contract and on the complaint.
3. The clerk issues "Summons and Notice of Trial on Petition for Restitution," NMRA 4-905.
4. Refer to "Three Day Notice of Substantial Violation of Rental Agreement," NMRA 4-901A. If the resident breaches the agreement by committing a substantial violation. see NMSA 1978, 47-8-3(T) for definition of substantial violation) the plaintiff serves a three (3) day notice. NMSA 1978, 47-8-33(I) through (M). The notice may terminate the contract.
5. If the complainant sues because of a material noncompliance breach of the rental agreement, the plaintiff fills out and serves a "Seven-Day Notice of Non-Compliance with Rental Agreement," NMRA 4-902, to the defendant and waits the seven (7)

days. A petition for a material noncompliance may be filed by an owner or a resident. NMSA 1978, §47-8-27.1.

If a seven-day notice has been served for a second time within a six-month period, the landlord may notify the tenant in writing, identifying the noncompliance, and stating that the rental agreement shall terminate in seven days (whether or not the tenant comes into compliance). NMSA 1978, §47-8-33.

- a. If there is no compliance, the plaintiff brings the notice to the clerk and files a petition.
 - b. If the complainant is the owner, the complainant files "Petition by Owner for Restitution," NMRA 4-904.
 - c. If the complainant is the resident, the complainant files "Petition by Resident for Relief," NMRA 4-906
6. The owner or the resident may terminate a week-to-week residency by a written notice given to the other at least seven (7) days prior to the termination date specified in the notice. NMSA 1978, §47-8-37(A).

The owner or the resident may terminate a month-to-month residency by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice. NMSA 1978, §47-8-37(B).

The complainant files NMRA 4-903. This form should be changed to a seven (7) day notice if the residency is week-to-week.

If the complainant is the resident the residency is terminated at the end of the notice period. If the complainant is the owner and if the residency is a week-to-week residency the owner waits seven (7) days from the next date rent is due.

If the residency is a month-to-month residency the owner waits 30 days from the next date the rent is due.

- a. If there is no compliance, a petition is filed.
- b. If the complainant is the owner, the complainant files "Petition by Owner for Restitution," NMRA 4-904.
- c. If complainant is the resident, complainant files "Petition by Resident for Relief," NMRA 4-906.

7. Either party may request separate trials on the issues of restitution and damages. A party can only request a jury trial on the issue of damages when the damages will be heard separately from the restitution issue. There is no right to a trial by jury on restitution.
8. The clerk collects filing fee of \$67 and issues receipt to plaintiff.
9. The Case Management Applications automatically assigns civil docket number to case.
10. The clerk prepares a purple file folder with the docket number and case name on the label.

B. Jury Demand.

Refer to Chapter 6, Section 6.1.C, Jury Demand

C. Summons and Service of Pleadings. NMRA 2-202 .

1. The clerk shall issue a " Summons and Notice of Trial on Petition for Writ of Restitution", NMRA 4-905.
2. The clerk must set a trial date for any matter brought by the owner for possession, not less than 7 or more than 10 days after the service of summons; or for any matter brought by the resident for possession, not less than 3 or more than 5 days after the service of summons. NMSA 1978, § 47-8-43. The summons must contain the appearance (trial) date.

Refer to Chapter 6, Section 6.1D, Summons. Refer to The Case Management Application for calendaring instructions.

3. The clerk provides plaintiff with the following for service of process on the defendant:
 - a. Appropriate summons with notice of trial date.
 - b. Petition.
 - c. Appropriate answer form or "Answer to Petition for Restitution (Uniform Owner Resident Relation Act)" NMRA 4-907. NMSA 1978, § 47-8-43.
4. For non-residents of New Mexico and corporations not authorized to do business in this state may designate an agent upon whom service of process may be made in this

state. The agent shall be a resident of this state or a corporation authorized to do business in this state. Designations are made in writing to the Secretary of State where agent is served.

If no agent is designated, service may be on Secretary of State, accompanied by mailing pleadings to defendant's last known address by registered or certified mail. An affidavit of compliance should then be filed with the clerk. NMSA 1978, §47-8-10(B).

5. When the clerk receives a return on the summons, the clerk files it in the case file. The case is filed in the tickler, according to next scheduled event. Refer to NMRA 2-204. Service and filing of pleadings and other papers by facsimile. Refer to NMRA 2-205. Electronic service and filing of pleadings and other papers.

D. Judgment.

1. If either party fails to appear for the hearing, if the judge determines a default judgment should be entered against the absent party, the procedure is as follows:
 - a. If the absent party is the plaintiff the judge may dismiss the complaint for failure to prosecute. The clerk prepares and files NMRA 4-306B, dismissing the action
 - b. If the absent party is the defendant and if the action is for rent and restitution, or rent, restitution and damages, the clerk prepares NMRA 4-703, Default Judgment on the Pleadings, the clerk also prepares NMRA 4-913, Writ of Restitution (restitution to owner) NMSA 1978, §47-8-46(A).
 - c. If the absent party is the defendant and the action is for damages the clerk prepares NMRA 4-701, Judgment, OR if the action is a damage hearing following a prior hearing for rent and/or restitution, the clerk prepares an amended default judgment with the amount of the damage, using the same form as the original judgment. If the original judgment was a default judgment on NMRA 4-703, the clerk will prepare an Amended Default Judgment, NMRA 4-703. If the original judgment was on NMRA 4-909, the clerk will prepare a "Default Judgment Amended from Judgment for Restitution Issued (Date of original judgment)."
All monetary amounts and other orders from the original judgment shall be included in the amended judgment.
 - d. If the absent defendant is the owner and the action is for restitution to the resident, the clerk prepares NMRA 4-914, Restitution to the Defendant. NMSA 1978, §47-8-46(B).

- e. A judgment by default may not be different in kind from or exceed in amount, that claimed in the complaint. NMRA 2-701D.
 - f. Copy of the judgment shall be hand delivered or mailed to all parties.
 - g. Pertinent information is entered into the Case Management Application.
2. If the rental agreement provides for the charging of a late fee, and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed 10% of the total rent payment for each rental period that the resident is in default. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred. Note: late fees can not exceed the amount allowed by statute. NMSA 1978, §47-8-15(D).
- a. If all parties appear the case is tried on the merits. The judge decides the case and enters a judgment in favor of the plaintiff or the defendant.
 - b. The clerk prepares NMRA 4-909, Judgment for restitution.
 - c. If the judge has ordered restitution, to the owner, upon the owner's request, the Writ of Restitution is issued on the day the judgment states it's execution is effective. The clerk prepares NMRA 4-913. If the judge has ordered restitution to the resident the clerk prepares NMRA 4-914, restitution to the resident.
 - d. Copies are hand delivered or mailed to all parties.
 - e. Pertinent information is entered into the Case Management Application.
3. The type of judgment will depend upon the type of petition filed (e.g., for restitution or relief), and upon whether or not actions for restitution and damages were tried together or separately. If the actions are tried separately, the first hearing is on the issue of rent and restitution, and the second hearing is on the issue of damages. Refer to NMSA 1978, §47-8-46. Late fees can not exceed the amount allowed by statute. The amount of the late fees are required to be stated in the contract and on the complaint.
- a. If a damage hearing is requested subsequent to a judgment for rent and restitution and both parties appear, if the plaintiff prevails the clerk prepares an amended judgment on the same form as the original judgment. An amended judgment shall include all monetary amounts and other orders from the original judgment.

- b. Copies are hand delivered or mailed to all parties.
- c. Pertinent information is entered into the Case Management Application

E. Deposits.

Refer to NMSA 1978, §1978 47-8-18.

- 1. Deposits included in rental agreements which are of duration less than one year shall be no more than an amount equal to one month's rent.
- 2. Upon termination of the residency, deposits may be applied to the payment of rent and the amount of damages done by the resident.
- 3. If any part of the deposit is retained by the owner, the owner shall, within 30 days provide a written itemized list of the deductions to the resident. If the owner fails to provide the written list to the resident, the owner forfeits the right to withhold any of the deposit, to assert a counterclaim in any action brought to recover the deposit, assert an independent action to recover damages and may be held liable for a civil penalty.

F. Appeals. Refer to NMSA 1978, §§47-8-47 and 35-13-1, NMRA 2-705.

- 1. Either party may file an appeal to the district court within fifteen(15) days of the date the judgment is filed in the clerk's office.
- 2. Within fifteen (15) days after the appellant files a copy of the notice of appeal with the magistrate court pursuant to Paragraph B of NMRA 2-705B, the magistrate court shall file with the clerk of the district court the record on appeal taken in the action in the magistrate court. For purposes of this rule, the record on appeal shall consist of:
 - a. a title page containing the caption of the case in the magistrate court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
 - b. a copy of all papers and pleadings filed in the magistrate court;
 - c. a copy of the judgment or order sought to be reviewed with date of filing;
 - d. any exhibits; and

- e. any transcript of the proceedings made by the magistrate court, either stenographically recorded or tape recorded. If the transcript of the proceedings is a tape recording, the magistrate court shall prepare and file with the district court a duplicate of the tape and index log.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost of preparing such copy.

The magistrate court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court. NMRA 2-705E and 4-707A, Appeal Bond and NMRA4-708, Title Page of Transcript of Civil Proceedings.

- 3. An appeal MAY stay the execution under certain conditions. NMSA 1978, §47-8-47.
 - a. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due.
 - b. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.
- 4. Appeals shall be Trial De Novo. The case shall be tried anew on the merits as if no trial had been held, except as otherwise provided by law. NMSA 1978, 39-3-1.

6.3.1 Writ of Restitution for Uniform Owner Resident Relations Act

The writ of restitution, NMRA 4-913 or 4-914, shall, at the request of the prevailing party, direct the sheriff to restore possession of the premises to the plaintiff on a specific date not less than three, nor more than seven days after entry of judgment if the plaintiff is the owner and within twenty-four hours to the resident if the plaintiff is the resident. NMSA 1978, §47-8-46(B).

- A. If the plaintiff's award is for damages only, plaintiff may pursue a writ of execution on the defendant's personal property. Refer to Section 6.6.3 for writ of execution procedures on a

general civil case. NMRA 4-805A, Application for Writ of Execution, NMRA 4-801, Writ of Execution.

- B. If the plaintiff's award is for restitution only, plaintiff may request a writ of restitution from the court.
 - 1. The clerk prepares "Writ of Restitution," NMRA 4-914, if the plaintiff is the resident or NMRA 4-913 if the plaintiff is the owner, for the judge's signature and gives it to the plaintiff for service by the sheriff's office.
 - 2. The return of service on the writ of restitution is received from the sheriff and filed in the case file.
 - 3. The clerk enters pertinent information into The Case Management Application.
 - C. If plaintiff's award is for damages AND possession, he may request a "Writ of Restitution" NMRA 4-909.
 - 1. The clerk prepares a Writ of Restitution for the judge's signature and gives it to the plaintiff for service by sheriff's office.
 - 2. The return of service on the writ is received from the sheriff and filed in the case file.
 - D. If the judgment is satisfied in full:
 - 1. The Judgment Creditor prepares "Full Satisfaction of Judgment," NMRA 4-706, for judgment creditor's signature.
 - 2. The clerk enters pertinent information into The Case Management Application.
 - 3. The case is filed numerically by fiscal year in the closed case file.
 - E. If the judgment is not satisfied, the judgment creditor may pursue Execution (Section 6.6.3) or Garnishment (Section 6.6.2) options.
- 6.4 Mobile Home Park Act. NMSA 1978, §47-10-1 to 47-10-23.
- A. This act covers the obligations and responsibilities of the owner (landlord) and the resident (tenant) with respect to rental occupancy of space in a mobile home park.
 - 1. Actions for termination of space rental are processed the same as the actions under the Uniform Owner-Resident Relations Act. NMSA 1978, §47-10-4, Grounds for

termination must conform to NMSA 1978, §47-10-5 or be founded on nonpayment of rent as set forth in NMSA 1978, §47-10-6. NMRA 4-921 and 4-922.

2. Actions for removal of the mobile home are processed under the provisions for forcible entry and unlawful detainer if the mobile home park or trailer park is exempt from the provisions of the Mobile Home Park Act. NMSA 1978, §47-8-49, Unlawful and Forcible Entry.

The Mobile Home Park Act does not apply to parks that do not provide for the continuous occupation of twelve or more mobile homes. NMSA 1978, 47-10-2(2), Definitions. The Mobile Home park Act does not apply to parks that do not have a written lease. NMSA 1978, 47-10-3(A). Forcible entry and unlawful detainer statutes would apply (for example) when a written tenancy/lease expires without renewal, when the park is sold, or when the tenancy/lease is not in writing.

3. Tenancy; Requirements; Notice to Quit. NMSA 1978, §47-10-3.

The tenant shall be given a period of not less than 30 days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises, but which is automatically extended to 60 days when tenant must remove a multi-section mobile home. In those situations where a multisection mobile home is being leased to or occupied by a person other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day (30) day notice instead of a sixty-day (60) notice. NMSA 1978, §47-10-3.

4. The clerk prepares "Writ of Restitution," NMRA 4-929, for the judge's signature when judgment for possession is granted. The notice of judgment shall state that at a specified time not less than 48 hours from entry of judgment, the sheriff will return to serve a writ of restitution and supervise removal of the mobile home. The mobile home owner is responsible for making the mobile home safe and ready for travel. NMSA 1978, §47-10-9.

Refer to NMSA 1978, §47-8-52, Conflicts; applicability of law.

B. Case Processing.

1. The clerk receives "Petition by Landlord for Term of Tenancy," NMRA 4-923.
2. The clerk accepts filing fee.
3. The clerk shall issue a "Summons and Notice of Trial on Petition for Termination of Tenancy," NMRA 4-924.

4. The clerk must set a trial date not less than seven (7), nor more than ten (10) days after the service of summons.
5. The clerk provides plaintiff with the following for service of process on the defendant (in a packet):
 - a. “Summons and notice of trial on petition for termination of tenancy,” NMRA 4-924.
 - b. “Petition by landlord for termination of tenancy and judgment of possession,” NMRA 4-923.
 - c. Proper copy of notice which has been served—“Three-day notice of non-payment of rent (Mobile Home Park Act),” NMRA 4-921; and “[Thirty-day notice] [Sixty-day notice] to quit (Mobile Home Park Act),” NMRA 4-922.
 - d. Form for the answer to “Petition for Termination of Tenancy,” NMRA 4-925.

Note: A separate summons must be used for each defendant.

6. When the clerk receives the return on the summons, the clerk files it in the case file. The case is filed in the tickler according to the next scheduled event.
7. The plaintiff must show proof of proper service at the time of trial, in the event the defendant fails to appear. If the court finds in favor of the plaintiff, the judge may issue a Writ of Restitution (Mobile Home Park Act),” NMRA 4-929. However, NMSA 1978, §47-10-9 provides that prior to issuance of the Writ of Restitution, the court shall make a finding of fact that the mobile home is, or is not subject to the security interest of a first lienholder. In those cases where the court finds there is a security agreement on the mobile home, the landlord must provide written “Notice to lienholder of mobile home judgment (Mobile Home Park Act),” NMRA 4-928.
8. At the time the Writ of Restitution is issued, the clerk must also prepare a Judgment for Possession, NMRA 4-926 and the “Notice of judgment (Mobile Home Park Act),” NMRA 4-927. The Notice of Judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a Writ of Restitution and superintend the peaceful and orderly removal of the mobile home under the order of the court. If necessary, the clerk sets the trial on the issue of damages. Refer to NMSA 1978, §47-10-4.
9. The clerk files all documents in the case file. The case is filed in the tickler according to the next scheduled event.

10. After the hearing on the issue of damages, the clerk prepares the "Judgment," NMRA 4-701, if the defendant appears. If the defendant fails to appear, the clerk prepares a "Default judgment: judgment on the pleadings," NMRA 4-703.

6.5 Forcible Entry or Unlawful Detainer - NMSA 1978, §§35-10-1 through 35-10-6 and 47-8-49.

Forcible entry or unlawful detainer is a special type of civil action. Forcible entry occurs when the defendant enters and occupies real property against the will and without consent of the owner and refuses to vacate after notice. Unlawful detainer occurs when a person remains in possession after no longer having a right to remain. Forcible entry/unlawful detainer actions most often involve business and commercial property. For example, an unlawful detainer suit might be brought against a businessperson who refused to vacate a store after foreclosure. Except for the special notice provisions, actions in forcible entry and detainer are handled like other civil actions. NMSA 1978, §35-10-3.

Except for a tenant paying rent from month to month or a tenant at will, who is current on rent payments, written notice to vacate the premises occupied or detained by the defendant must be given to the defendant not less than three (3) days before he complaint is filed. If the defendant is a month-to-month tenant or a tenant at will, and if the tenant continues in possession of the premises after thirty (30) days written notice by the owner or his agent or attorney to vacate, a complaint may be filed. A tenant paying rent from month to month or a tenant at will may be served a three (3) day notice if the rent is not paid at the time stipulated for payment. NMSA 1978, 35-10-1(A)(5).

A copy of the written notice must be attached to the complaint at the time of filing. Plaintiff will fill out either a "Three-Day Notice of Nonpayment of Rent," or "Thirty-Day Notice to Terminate Rental Agreement," and serve it on the defendant. Plaintiff must wait until that time period expires (either three (3) or thirty (30) days) before filing the complaint. The clerk should check the notice forms to verify that the time has expired.

Refer to NMSA 1978, §47-10-1.

A. Case Initiation.

1. The clerk receives "Complaint in Forcible Entry or Unlawful Detainer," NMRA 4-203. The complaint must indicate that appropriate notice has been given to tenant.
2. The clerk notifies plaintiff of the \$67 filing fee and the clerk collects the \$67 filing fee and a receipt is issued.
3. The clerk enters the information into The Case Management Application.
4. The clerk prepares a purple file folder with the docket number and case name on label.

B. Service of Process. NMSA 1978, §35-10-3; NMRA 2-202.

1. The clerk shall issue “Summons and Notice of Trial on Petition for Writ of Restitution. NMRA 4-905.

The court date is entered on the summons. NMRA 2-202. The return date of the summons shall not be less than 3 days, nor more than 10 days, from the time of service of the civil complaint and summons. NMSA 1978, §35-10-3(B).

Note: There are no time lines for the time to set the trial. The trial should be set as soon as possible.

If the trial is to be held on the date the summons is returned, the summons form must be modified to state clearly that trial will be held (not merely an answer filed or appearance made) on the date the summons is returned. Written continuances beyond 10 days can only be granted with consent of the parties. NMSA 1978, §35-10-3.

2. The clerk gives the written notice, copy of summons, copy of complaint, and form to answer the civil complaint to the plaintiff for service of process
3. The return is filed in the court file after service of process is made on the defendant.
4. The trial date is calendared and the case file is placed in the tickler system, according to next scheduled event.
5. The clerk enters all relevant information into the Case Management Application.
6. The case file is filed numerically by fiscal year in closed cases.

C. Judgment.

1. The clerk completes the appropriate landlord tenant form of judgment. Since there are no comparable forms for unlawful detainer, use NMRA 4-909 and 2-701.

Refer to Chapter 6, Section 6.62 and 6.63 for Enforcement of Judgment.

2. Copies of the judgment are mailed to all parties.
3. Upon request of the plaintiff, the judge shall order restitution of the premises to plaintiff. NMSA 1978, §§35-10-4 and 47-8-46.

4. If judgment is satisfied:
 - a. The judgment creditor will complete and sign NMRA 4-706, "Satisfaction of Judgment." NMSA 1978, §35-10-4 and NMSA 1978, §47-8-46.
 - b. The clerk enters pertinent information into The Case Management Application.
 - c. Case is filed numerically by fiscal year in the closed case file.

6.5.1 Execution - Forcible Entry and Unlawful Detainer

A. Preparation of Writ of Execution.

1. Upon the judgment creditor's request, the clerk prepares a "Writ of Execution in Forcible Entry or Detainer," NMRA 4-802, for the judge's signature.
2. The plaintiff gives the writ to the sheriff's office for service on judgment debtor. NMRA 2-801.
3. On all civil filings and pleadings, the clerk obtains return of service from the sheriff's office and date stamps and files the service in the case file.
4. The clerk enters the pertinent information in the Case Management Application.

Note: Statutes and Rules frequently change. Please be sure to verify correct statute or rule.

B. If full payment of the debt results from the Writ of Execution:

1. The plaintiff fills out "Satisfaction of Judgment," NMRA 4-706.
2. The clerk enters the pertinent information into the Case Management Application.
3. The case is filed numerically by fiscal year in the closed case file.

C. If judgment and costs have been awarded against the defendant and the return indicates that no personal property of the defendant was found:

1. The clerk or sheriff's department notifies the judgment creditor of the nulla bona return.
2. The judgment creditor may wish to pursue garnishment.

D. Claims of exemption.

Claims of exemption available in execution are available in this cause of action and the creditor must serve the debtor with notice and claim forms before any property is seized. NMRA 4-803. See Claims of Exemptions, Section 6.6.3(B).

E. If judgment is not satisfied, refer to Section 6.6.3 for Execution procedures or Section 6.6.2 for Garnishment Procedures.

6.6 Civil Special Proceedings

6.6.1 Attachment. NMSA 1978, §35-9-1 and NMRA 2-803 through 35-9-8.

An attachment is the taking of personal property of the defendant into legal custody before trial and judgment. In the event judgment is obtained, the property is held in possession by the sheriff and may be sold to satisfy the judgment.

An attachment is a special proceeding in the nature of a civil action. Prejudgment attachment is available only in special circumstances, and must be accompanied by a bond in double the amount claimed in the complaint. NMSA 1978, 35-9-1(A).

Notice of a right to claim exemptions shall be given in all attachment proceedings in the same manner and time as required in execution proceedings NMRA 2-803B and NMSA 1978, §§42-10-1 through 42-10-13.

PROCEED WITH CAUTION! In pre-judgment attachments, the court should be careful to follow proper procedures.

A. Preparation and Filing of Complaint.

1. An attachment is initiated by the plaintiff by filing "Civil Complaint," NMRA 4-201, as in other civil actions.
 - a. The clerk collects the \$67 filing fee and issues a receipt to person who paid.
 - b. The clerk enters the information into the Case Management Application in receipting.
 - c. The clerk prepares purple a file folder with the docket number and case name on the label.

2. The clerk prepares an attachment bond form, which MUST accompany the complaint, in an amount double the sum claimed in the complaint. Refer to NMSA 1978, §35-9-7 for attachment bond form.
 - a. The bond shall have sufficient sureties, conditioned that the plaintiff will diligently prosecute the case to final judgment without delay and will pay the defendant all damages and cost sustained from the attachment if no judgment is recovered against the defendant.
 - b. The sureties must be residents of the State of New Mexico or a bond company authorized to do business in the State of New Mexico.
 - c. Refer to the Case Management Application for the receipting procedure.
3. The complaint MUST also be accompanied by an affidavit of the plaintiff stating one or more of the following to be true:
 - a. The defendant is not a resident of New Mexico;
 - b. The defendant has concealed himself or left his usual place of abode in this state so that ordinary civil process cannot be served on him;
 - c. The defendant is about to remove his personal property out of state or has concealed or disposed of his property fraudulently so as to defraud, hinder or delay his creditors;
 - d. The defendant is about to convey or assign, conceal or dispose of his property fraudulently so as to hinder or delay his creditors;
 - e. The debt that is subject of the action was contracted out of this state, and the defendant has secretly removed his property into this state with the intent to hinder, delay or defraud his creditors;
 - f. The defendant is a corporation whose principal office or place of business is out of this state, and the corporation has not designated an agent in this state for service of process against the corporation;
 - g. The defendant fraudulently contracted the debt or incurred the obligation that is the subject of the action or obtained credit from the plaintiff by false pretenses; or

- h. The debt that is the subject of the action is for labor, for any services rendered by the plaintiff or his assignor at the instance of the defendant or was contracted for the necessities of life.

Note: Follow General Civil Procedure, Section 6.1.D through F.

B. Service.

1. The clerk prepares "Civil Summons," NMRA 4-204.
2. The clerk prepares "Writ of Attachment" for the judge's signature. See NMSA 1978, §35-9-8 for format of writ.
3. The plaintiff is responsible for service of the complaint, summons, notice and claims of exemptions upon the defendant.
4. The defendant may be served the pleadings by a sheriff or by anyone over 18 who is not a party to the action and who is designated by the court, or by sheriff of the county where the property or the defendant may be found. NMRA 2-202. The following pleadings must be served upon the defendant:
 - a. copy of the summons.
 - b. civil complaint.
 - c. answer to civil complaint.
 - d. notice of the right to claim exemptions.
 - e. two copies of the claim of exemption form.
 - f. the writ of attachment must be served by the sheriff or a deputy.

The notice of the right to claim exemptions must be given at the same time and in the same manner as the claim of exemptions in execution. NMRA 2-802. The Writ of Attachment must be served by the sheriff or a deputy sheriff. NMSA 1978, §35-9-2.

5. The attachment order shall order the sheriff or a full-time salaried deputy sheriff to attach personal property of the defendant. The sheriff or deputy will make a return of attachment and inventory to the court at the time specified in the writ, but not less than 5, and not more than 15 days from date writ issued. NMSA 1978, §35-9-2.
6. If the defendant was not served personally but the property was seized, and if the defendant failed to appear as provided in the summons, the sheriff must notify the defendant of the pending sale by publication or by public posting in at least three of the most public places in the county, that his property has been attached and that, unless the defendant appears before the magistrate at a time and place mentioned in the notice, not less than twenty days or more than ninety days from the date of the

notice, judgment will be rendered against the defendant and the property will be sold to pay the debt. NMSA 1978, §35-9-3.

C. Dissolution of Attachment.

1. An attachment may be dissolved at any time before final judgment if the defendant appears and pleads to the action and posts bond to the plaintiff in double the sum claimed in the complaint, or double the value of the property attached, whichever is less, with sufficient sureties, conditioned that the property will be available to satisfy any judgment which might be entered against him in the action.

When an attachment is dissolved, all proceedings touching the property attached are vacated, and the action shall proceed as if the attachment had not been issued. NMSA 1978, §35-9-4.

D. Answer, default, and trial procedures.

1. For answer, default, and trial procedures, follow “General Civil” processing procedures, Refer to Section 6.1.

E. Judgment.

1. At the judge’s discretion, the clerk prepares the appropriate judgment allowing the sale of property to satisfy the debt.

F. Closing. If the judgment is satisfied in full:

1. The judgment creditor files “Satisfaction of Judgment,” NMRA 4-706.
 - a. The clerk enters all pertinent information into the Case Management Application.
 - b. The case is filed numerically by fiscal year in closed case files.
2. If the judgment is not satisfied, refer to Section 6.6.3 Execution or Section, 6.6.2 Garnishment.

6.6.2 Garnishment - NMRA 2-802 and NMSA 1978, §§35-12-1 through 35-12-19.

Garnishment is a special type of civil action which may take place after a judgment has been entered only upon the filing of an affidavit of the plaintiff that the defendant has no property in this state subject to execution to satisfy the judgment.

Garnishment is the process of levying on the property of the judgment debtor when the property is in the possession of a third person. NMRA 2-802. The most common properties garnished are: wages not yet paid by the debtor's employer; bank accounts owned by debtor; cash or personal property of the debtor held by a third party.

The garnishee is the person against whom the garnishment is issued, i.e., the employer, the bank holding the property. If the garnishee is not the employer of the judgment debtor, the defendant may file a claim of exemptions before garnishment.

Refer to Garnishment information for military personnel.
<http://www.dfas.mil/money/garnish/mcdafact.htm>

A. Application and Writ.

1. After judgment has been entered, if the judgment can not be satisfied by an execution on personal property the judgment creditor may file "Application for a Writ of Garnishment and Affidavit," NMRA 4-805, NMSA 1978, §35-12-1. The completed application is signed by the judgment creditor and attested to by the clerk.
2. The clerk prepares the "Writ of Garnishment," NMRA 4-806, for the judge's signature. NMRA 2-802.

Note: If the garnishee is the employer and the exemptions are statutorily based on salary, the judgment can proceed after the answer is filed. If the garnishee is not the employer, the defendant may file a Claim of Exemptions before garnishment.

3. If the plaintiff or defendant is not satisfied with the answer of any garnishee, he may controvert it by stating how he believes it is incorrect, and the issue shall be tried and determined by the magistrate court. If the plaintiff prevails in a garnishment proceeding, he may be awarded either one or both of the following: NMSA 1978, §35-12-5(A).
 - a. the actual costs of the proceeding, not exceeding ten percent of the judgment entered against the garnishee; or a reasonable attorney fee not exceeding ten percent of the judgment entered against the garnishee.
 - b. If the garnishee answers as required by law, the court shall award the garnishee his actual costs and a reasonable attorney fee. The award shall be against the defendant if the plaintiff prevails and against the plaintiff if the garnishee prevails. NMSA 1978, §35-12-16.

B. Right to Claim Exemption.

1. Notice of Right to Claim Exemptions.

- a. The following additional procedures shall be followed upon issuance of the writ of garnishment, only when the judgment debtor is a natural person and the garnishee holds money or property other than wages due the judgment debtor.
- b. For each judgment debtor, the judgment creditor shall serve the garnishee with a copy of the application for the writ of garnishment and the writ of garnishment, and a completed and signed copy of the notice of right to claim exemptions and a completed and signed copy of the claim of exemption form shall be served on the garnishee.

Refer to NMRA 4-808. Notice of Right to Claim Exemptions (garnishment), NMRA 4-805, Application for Writ of Garnishment, NMRA 4-809, Claim of Exemption from Garnishment.

- c. If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment. NMRA 2-802M and 4-812.
- d. On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail to each named judgment debtor or to the judgment debtor's attorney of record, a copy of the forms served on the garnishee. NMRA 2-802F.

2. Claim of Exemptions from Garnishment.

- a. A judgment debtor who is a natural person may claim a statutory exemption from garnishment by filing a copy of the claim of exemption with the court within ten (10) days after service of a copy of the notice of right to claim exemptions (by the garnishee). NMRA 2-802G and 4-809.
- b. If the judgment debtor fails to file a claim of exemption within ten days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right claim a statutory exemption other than wages. NMRA 2-802I.

3. Claim of Exemption Form Filed.

- a. Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor. NMRA 2-802J. If the judgment creditor does not dispute a claimed exemption the clerk does not set a hearing on the claim of exemption.
- b. If the judgment creditor files a notice of dispute and request for a hearing, the court shall give notice to the judgment creditor and judgment debtor of the date and time for the hearing. NMRA 2-801K. The clerk schedules a date for a hearing and mails "Notice of Dispute and Request for Hearing" NMRA 4-810A to all parties. A hearing on the claim of exemption shall be held within ten (10) business days after the clerk's receipt of the completed claim of exemption form. NMRA 2-802L.
- c. At the time set for the hearing the judge shall receive evidence, determine the issues and enter "Judgment on Writ of Garnishment, Claim of Exemption and Order to Pay," NMRA 4-812.
- d. Copies of Judgment on Writ of Garnishment, Claim of Exemption and Order to Pay are mailed to all parties. Pertinent information is entered in the Case Management Application. Order of exemptions are appealable.

C. Service of Writ.

1. Copies of the writ must be served on the garnishee as provided for service of civil summons. NMSA 1978, §35-12-2, NMRA 2-802B.
2. Service is the responsibility of the judgment creditor. The writ may be served upon the garnishee wherever they are located in the state. NMRA 2-802B.

Note: Refer to NMRA 2-802A through C for distribution of papers.

3. For non-employer garnishees, service must include a copy of the Application for Writ of Garnishment, a copy of the writ, a copy of the "Notice of Right To Claim Exemption," NMRA 4-808, and a copy of the "Claim of Exemption," NMRA 4-809,

and for each named debtor, NMRA 2-802. These forms must be completed and signed.

4. If the State of New Mexico is the employer, additional service is made to Department of Finance and Administration, Attorney General, and the head of the employing state agency NMRA 2-202F3.

Note: Attorney General requires personal service.

5. If the garnishee is a federal agency, service must be made on the agency's designated agent for service of process, or the head of the agency if no agent is designated. Federal regulations may provide further direction. Service may be by personal service on the person or by certified or registered mail, return receipt requested.
6. Pertinent information is entered into the Case Management Application.
7. Return on the service of the writ must be made promptly and filed in the case file.

Refer to NMRA 4-809 and 4-808; NMSA 1978, §35-12-2; Attorney General web site www.ago.state.nm.us; Department of Finance web site www.dfafcd.state.nm.us; NMRA 4-401; <http://frwebgate4.access.gpo.gov/> U.S. Code 5USC Sec. 5520a. Garnishment of pay; Refer to Administrative Form 1.14 in Chapter 13.

D. Answer to Writ.

1. The clerk provides a copy of the answer to all parties. NMRA 2-802. The garnishee has 20 days from service of the writ to file an answer, unless it is a federal agency. If the garnishee is a Federal Agency, they have 30 days to file an answer. Refer to <http://frwebgate4.access.gpo.gov/> U.S. Code 5USC Sec. 5520a. Garnishment of pay. Pertinent information is entered into the Case Management Application. Refer to NMSA 1978, §35-12-4, Garnishment; answer by garnishee. NMRA 2-802D.
2. Any party who is not satisfied by the answer of the garnishee may file a motion challenging the answer. If the garnishee answers under oath that he is not at the time of answer, and was not, at the time the garnishment was served on him, indebted to the defendant or in possession of any personal property of the defendant, and if the garnishee's answer is not controverted within twenty (20) days after being made, the magistrate shall enter judgment discharging the garnishee. The clerk provides copies of such motion to all parties. NMRA 2-804.
3. If a notice of dispute and request for a hearing is filed a hearing is scheduled. Copies of the "Notice of Dispute and Request for a Hearing and Notice of Hearing; and the

Answer from the garnishee, are mailed to all parties. Refer to the Case Management Application and calendaring.

4. After hearing, the clerk prepares the appropriate order for the judge's signature and copies are mailed to all parties. NMRA 4-812.

Note: If the garnishee is an employer, no notice of the right to claim exemptions and no claims of exemption are served. Therefore, judgment can proceed after the answer is filed. Refer to NMRA 2-204, Service and filing of pleadings and other papers by facsimile. Garnishment; Refer to NMSA 1978, §35-12-7, garnishments; exemptions.

E. Judgment on Writ of Garnishment.

1. The garnishee does not pay money or deliver property to the judgment creditor until:
 - a. "Judgment on Writ of Garnishment, Claim of Exemption and Order to Pay," NMRA 4-812 is issued;
 - b. If the garnishee fails to answer within twenty (20) days, the Judgment Creditor must file a "Motion for Default Judgment Against the Garnishee," NMRA 4-810. A hearing should be set and the magistrate may render judgment by default against the garnishee for the full amount of any judgment rendered against the defendant, together with all interest and costs. NMSA 1978, §35-12-4(B) and (C), NMRA 4-813.
2. If default is entered against the garnishee, the garnishee's funds are paid to the creditor. The garnishee does not hold the judgment debtor's funds. If default judgment is entered, the garnishee should relinquish hold on the debtor's property or wages unless the default judgment against garnishee is set aside. If the garnishee holds property of the judgment debtor, the judge may order the property to be delivered to the sheriff. If the garnishee fails to deliver the property to the sheriff, upon motion of the plaintiff the garnishee shall be cited for contempt. NMSA 1978, §35-12-4(C).
3. The clerk prepares the appropriate judgment for the judge's signature and mails a copy of judgment to the debtor, creditor and garnishee.
4. Pertinent information is entered into the Case Management Application.
 - a. Interest shall be allowed on judgments and decrees for the payment of money from entry and shall continue to accrue until the application for garnishment is filed in the court, and shall be calculated at the rate of 8.75% per year (if

there is not predetermined interest in the contract). NMSA 1978, §56-8-3, Pre-judgment and NMSA 1978, §56-8-4, Post-judgment.

- b. "Writ of Garnishment," NMRA 4-806, provides space for the balance due upon application for writ, the amount of the interest, and the date the interest became due as of the date the Application for Writ of Garnishment and Affidavit is filed with the magistrate court.
- c. The "balance due" line should not include interest after the application for garnishment is filed. The total interest from the date the judgment is issued through the date of the Application for Writ of Garnishment should be indicated on the line, along with the percentage rate of interest.

Please note: Refer to NMRA 4-812 for child support information.

Calculation for balance due is:

Total judgment amount (NMRA 4-701, 4-703, 4-909 plus Interest at 8.75% from the date of judgment to the date of Application for Writ of Garnishment is filed with the magistrate court, plus any costs incurred from the date of judgment to the date the Application for Writ of Garnishment and Affidavit is filed with the magistrate court, less any payments received.

- d. Payments received on the writ by the judgment creditor should be credited first to interest and then to principal.

Judgment calculation: Refer to Miscellaneous Tables in the Supreme Court Law Library. <http://www.lexislawpublishing.com>

Pre-judgment formula: $\text{Amount} \times \% \text{ of interest} / 365 = \text{pre-judgment}$.

Post-judgment formula: same as pre-judgment except number of days from date interest is allowable.

5. Upon receipt of "Full Satisfaction of Judgment," NMRA 4-706, by the judgment creditor, the clerk prepares the "Release of Garnishment," NMRA 4-814, for the judge's signature and mails it to all parties.
6. It is the judgment creditor's responsibility to notify the court when judgment has been satisfied.
7. The clerk should never act as an "intermediary" for the garnishee and the creditor. All monies handled by the court are public funds. The court shall not accept monies on garnishments.

8. If judgment is satisfied:
 - a. Judgment creditor files "Full Satisfaction of Judgment," NMRA 4-706.
 - b. The clerk enters all pertinent information into the Case Management Application.
 - c. The case is filed numerically by fiscal year in closed case files.
9. If the judgment is not satisfied, refer to Section 6.6.3, Execution or Section 6.6.2 Garnishment.

6.6.3 Execution

Execution is the method of enforcing a judgment. It is only used if the losing party in a case fails to satisfy the judgment. If the losing party complies with the judgment, no execution is involved.

Execution actions upon any judgment in the magistrate courts may generally be brought within fourteen (14) years from the date of the judgment.

A. Issuance of Writ of Execution.

Issuance of Writ of Execution. After filing of the judgment, upon request of the prevailing party, the clerk shall issue "Writ of Execution," NMRA 4-801.

Note: The judge or the clerk should verify the calculations. If the judgment debtor is a natural person, no property may be sold under execution prior to service of a "Notice of Right to Claim Exemptions". NMRA 2-801C.

Definition of a "Natural Person" in Black's Law Dictionary is "a human being". Corporations, government entities and limited-liability partnerships are not natural persons and have no right to exemptions

B. Service of Notice of Right to Claim Exemptions from Execution:

1. If the judgment debtor is a natural person, unless a shorter time is ordered by the court, not later than ten (10) days prior to the date of seizure of property to be sold under a writ of execution, service shall be made by the judgment creditor upon each judgment debtor of the writ of execution; "Notice of right to claim exemptions from execution," NMRA 4-808A; and a copy of the "Claim of exemption form," NMRA 4-803.

2. If the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by NMRA 2-203. If the judgment debtor has not entered an appearance, service shall be made and return of service filed in the same manner provided by NMRA 2-202 for service. NMRA 2-801B1, 2 and 3.

C. Claim of Exemption Hearing.

1. Within 10 days after service of a notice of right to claim exemptions, a judgment debtor may claim a statutory exemption by filing a claim of exemption form with the court. At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor. NMRA 2-801C and D
2. If the judgment debtor fails to file a claim of exemption within ten days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. NMRA 2-801E.
3. If a claim of exemption is filed by the judgment debtor and if the judgment creditor files a dispute, use NMRA 4-810A. A hearing on the claim of exemption shall be held within ten (10) days after the clerk's receipt of the completed claim of exemption form. If no dispute is filed by the judgment creditor within ten (10) days, the property shall be exempt and the judgment creditor may proceed with execution.

NMRA 2-801G and H, Writs of execution; notice of hearing on dispute; hearing on disputed claim of exemptions

If the exemption is disputed,

4. At the time set for the hearing the judge shall receive evidence, determine the issues and if the judgment creditor prevails, enters "Order on Claim of Exemption and Order to Pay in Execution Proceedings," NMRA 4-804.
5. The clerk delivers one copy each of "Order on Claim of Exemption and Order to Pay in Execution Proceedings," "Judgment," and "Writ of Execution" to the judgment creditor for execution by the sheriff.

D. Executions; service and return.

1. The writ of execution shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of

execution issued pursuant to this rule may be served in the manner provided by law. NMRA 2-801I.

2. In a replevin action, the writ of execution must contain the description of the property to be recovered. It should also be listed on the complaint and on the judgment. In replevin actions, courts shall not issue any writs of replevin or any other orders providing for a seizure of property before judgment. In any replevin action in the magistrate court, judgment may be entered for the plaintiff granting the plaintiff the property, or its fair market value in case a delivery can not be made, and damages for the wrongful taking or detention of the property by the defendant. A copy of the judgment may accompany the writ of execution. NMSA 1978, §§35-11-1; 35-11-2; 35-11-3; refer to Section 6.6.4 for replevin instructions.
 3. The clerk files the return of writ of execution in the case file, and the file folder is placed in open case files.
 4. The clerk enters pertinent information into the Case Management Application.
- E. If partial satisfaction of the debt has resulted from execution:
1. Judgment creditor prepares "Satisfaction of Judgment," NMRA 4-706, indicating partial satisfaction.
 2. The clerk shall not accept or transfer money paid on any judgments. NMSA 1978, §35-7-5(A).
 3. The clerk enters pertinent information into the Case Management Application.
 4. The clerk files the file folder in open case files.
- F. If the judge orders the sheriff to levy against personal property a sale shall be conducted in the manner provided by law. Refer to NMRA 2-801I, Writs of Execution and NMSA 1978, §§4-41-14 through 4-41-22 and 39-4-1 through 39-6-4.
- If the judge orders the sheriff to levy against personal property of the defendant and the writ of execution is returned, the clerk shall notify the judgment creditor of the nulla bona return. (NMRA 4-801).
- G. Judgment Supplementary Proceedings:
1. Upon request of the judgment creditor the clerk prepares a certified copy of the judgment and gives it to the judgment creditor to file in district court. If the judgment is filed in the district court pursuant to Rule 2-804, the judgment creditor may enforce

collection of the judgment as if it were a judgment issued in the district court. NMRA 2-804E.

Note: It is not necessary for the creditor to have the writ of execution returned before proceeding to garnishment if creditor signs affidavit on application form indicating that to the best of the creditor's responsibility, debtor has insufficient property in this state to seize for sale in satisfaction of judgment.

Refer to NMSA §39-1-6, Money judgment; docketing; transcript of judgment; lien on real estate; supersedeas.

Note: NMSA 1978, §39-1-6 does not allow a judgment from the magistrate court to be used to file a lien against real estate of the judgment debtor.

6.6.4 Replevin

Replevin is an action to recover personal property wrongfully taken or detained. NMSA 1978, §35-11-1.

The person having the right to immediate possession of personal property wrongfully taken or detained may bring a civil action of replevin by filing a complaint for:

- * Recover of the property; and
- * Damages sustained by the wrongful taking of detention.

The judge may not issue any writs of replevin or any other orders providing for a seizure of property before judgment.

The procedure in a replevin action should be handled similarly to any other civil complaint. The laws applicable to jurisdiction, venue and other statutes governing the magistrate also apply to replevin actions.

A. Case Processing.

1. The clerk accepts for filing the civil complaint and processes it as a regular civil complaint. The complaint must have a description of the property that is in question and also a monetary amount listed on the property value.
2. At the time a judgment is issued and recovery of the property is granted, the clerk issues "Judgment," NMRA 4-701 or "Default judgment; judgment on the pleadings,". The bottom of the form specifies a listing of all personal property and description NMRA 4-703 on judgment. The clerk should ensure that this section is completed.

3. If the plaintiff files a “Petition for Post-Judgment writ of Replevin,” NMRA 4-915, at any time after the judgment, the clerk should then prepare the Post-Judgment Writ of Replevin, NMRA 4-916 for judge’s signature.
 4. The sheriff serves the writ and releases the property to the Plaintiff.
- B. If the property is not recovered:

If the property could not be found or recovered: The case should be handled on the monetary amount and Execution and/or Garnishment procedures could be pursued upon request of the plaintiff. Refer to Chapter 6, Section 6.6.3 for Execution and Section 6.6.2 for Garnishment Procedures.

Refer to NMRA 4-701.

6.65 Judgment and Supplementary Proceedings

Supplementary proceedings are necessary when the judgment creditor needs more information to execute on judgment.

- A. The judgment creditor may request the clerk to issue “Subpoena,” NMRA 4-503, directing the defendant to appear in court and respond to any questions relating to any knowledge the defendant may have which would aid in enforcement of, or execution on the judgment. The judgment creditor may also subpoena the defendant or any other person with knowledge ordering them to bring documents required in the subpoena. Refer to the Case Management Application for calendaring. NMRA 2-804.
- B. The subpoena shall be served not less than three days prior to the date therein stated when the examination is to be conducted. Return should be filed promptly. NMRA 2-804A. For other rules regarding service of subpoenas. See NMRA 2-502.
- C. In the alternative, the judgment creditor may take depositions at some other location. NMRA 2-804C. The judgment creditor may serve interrogatories upon or take the deposition of the person whom the judgment creditor desires to examine in the manner provided by the rules of civil procedure for the district courts.
- D. Failure to Appear by any Person. NMRA 2-502E, failure to appear may be deemed contempt of court.
- E. The magistrate court shall not act as an intermediary for civil judgments. Payment to the prevailing party in civil cases shall be paid directly by the losing party or representative. The magistrate court shall not collect or transfer any money for a civil judgment. NMSA 1978, §35-7-5(A).

Refer to NMRA 4-503 and 4-502.

6.66 Time Limits for Bringing Actions

A. Computation of Time Limits. Refer to NMSA 1978, §37-1-1, General Index.

1. Suits or actions may be brought in the court within the time limits specified by law after the cause of action accrues.
2. Generally, a cause of action accrues:
 - a. at the time at which something was to have been accomplished; or
 - b. at the time of the event upon which the plaintiff is suing.
3. The statute of limitations is computed from the date of the event upon which the plaintiff is suing, to the date the complaint is filed.

B. Time Limits in General.

1. Actions founded upon any written contract must be brought within six years. NMSA 1978, §37-1-3.
2. Actions founded upon accounts and unwritten contracts must be brought within four years. NMSA 1978, §37-1-4.
3. Actions from injuries to property or for the conversion of personal property or for relief upon the ground of fraud within four years. NMSA 1978, §37-1-4.
4. Actions founded upon an injury to the person or reputation of any person must be brought within three years. NMSA 1978, §37-1-8.
5. When there is an open current account the cause of action shall be deemed to have accrued upon the date of the last item therein as proved on the trial. NMSA 1978, 37-1-6.
6. In actions for relief, on the ground of fraud or mistake, and in actions for injuries to, or conversion of property, the cause of action shall not be deemed to have accrued until the fraud, mistake, injury or conversion complained of, shall have been discovered by the party aggrieved. NMSA 1978, 37-1-7.
7. If at any time after the incurring of an indebtedness or liability or the accrual of a cause of action against him or the entry of judgment against him in this state, a debtor

shall have been or shall be absent from or out of the state or concealed within the state, the time during which he may have been or may be out of or absent from the state or may have concealed or may conceal himself within the state shall not be included in computing any of the periods of limitation above provided. NMSA 1978, 37-1-9.

8. If, after the commencement of an action, the plaintiff fails therein for any cause, except negligence in its prosecution, and a new suit be commenced within six (6) months thereafter, the second suit shall, for the purposes herein contemplated, be deemed a continuation of the first. NMSA 1978, 37-1-14.
9. Causes of action founded upon contract shall be revived by the making of any partial or installment payment thereon or by an admission that the debt is unpaid, as well as by a new promise to pay the same; but such admission or new promise must be in writing, signed by the party to be charged therewith. Such a cause of action shall be deemed to have accrued upon the date of such partial or installment payment, admission of indebtedness or promise to pay. NMSA 1978, 37-1-16.

C. Other Time Limits.

The above-referenced list is not a complete list of the time limits within which actions must be brought. Refer to the General Index to the New Mexico Statutes under Limitations of Actions for specific topics (found in Michie, Law on Disk)

6.6.7 Mediation

- A. The Magistrate Court has implemented a mediation program. For information about implementing a mediation program, call the Administrative Office of the Courts.
 1. Mediation is a process in which a mediator:
 - a. facilitates communication and negotiation between mediation parties to assist them in reaching an agreement regarding their dispute; or
 - b. promotes reconciliation, settlement or understanding between and among parties.
 2. The Mediation Procedures Act applies to all mediators, non-party participants, mediation partner and a mediation in which the mediation parties are required to mediate by statute or court rule or who are referred to mediation by a court and when there is a written agreement to mediate signed by the mediation parties and the mediator.

3. The mediation act does not apply to a mediation conducted by a judge who might make a ruling in the case.
4. Except as provided by law, mediation communications are confidential and are not subject to disclosure and shall not be used in evidence in any proceeding.
5. If the mediation parties reach a settlement agreement evidenced by a record signed by the mediation parties, the agreement is enforceable in the same manner as any other written contract. The agreement shall not affect any outstanding court order unless the terms or the agreement are incorporated into a subsequent order.

A court, administrative agency or arbitrator, in its discretion, may incorporate the terms of the agreement in the order or other document disposing of the matter.

6. Probate judges may have authority to mediate in the magistrate court if approved by the Administrative Office of the Courts. NMSA 1978, 35-2-7.

VII. DISMISSALS

7.1 Civil Dismissals

Dismissal occurs when the judge ends the court's consideration of a case before there has been a full trial of the issues of the case. NMRA 2-305.

A. There are Four Types of Dismissals:

1. Dismissal with prejudice: The claim which is dismissed may not be brought again in any court.
2. Dismissal without prejudice: The party is not prevented from suing or filing criminal charges again on the same causes of action.
3. Voluntary Dismissal: The case is dismissed at the request of the plaintiff. It may be dismissed either with or without prejudice. For criminal cases see NMRA 6-506A. Unless otherwise stated, a voluntary dismissal is a dismissal without prejudice. An exception in civil cases is that a Notice of Dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed an action based on or including the same claim, and the dismissal must be with prejudice. NMRA 2-305A,1,b. In civil cases, if there is a counterclaim or third party claim in the case which was filed prior to service of the Motion to Dismiss, the action shall not be dismissed over a party's objection unless the counterclaim or third party claim can remain pending for independent adjudication. NMRA 2-305A2.

4. Involuntary Dismissal:

The case is dismissed on order of the court without any request from the plaintiff having been made.

- a. Involuntary dismissals may include a dismissal on motion from the defendant or upon an order of the court for failure to prosecute pursuant to NMRA 2-305D.
- b. In an action tried without a jury, after the plaintiff has presented all evidence and the plaintiff has rested, the defendant may move to dismiss on the grounds that upon the facts and the law the plaintiff has shown no right to relief. This motion may be called "Motion for Directed Verdict," although technically this type of motion is only made in jury cases. If the judge grants the motion the complaint is dismissed, and unless otherwise specified, shall operate as an adjudication upon the merits. NMRA 2-305B.

B. Dismissal Forms:

Four types of dismissal forms are used. The original of the dismissal form must be filed in the case file. The clerk must ensure that all parties receive copies of any dismissal form.

1. "Stipulation of Dismissal," NMRA 4-304. The stipulation of dismissal is used when both parties (plaintiff and defendant) agree to dismiss the case. A stipulation of dismissal may be filed with the court at any point in the proceedings, including during the trial.
2. "Notice of Dismissal of Complaint," NMRA 4-305. This form is used when the plaintiff wishes to have the case dismissed at any time prior to the filing of an answer by the defendant.
3. "Order Dismissing Action," NMRA 4-306B. The form is used when the matter comes before the judge on the motion of the plaintiff or defendant, or upon a joint stipulation by the plaintiff and defendant, to have the cause of action dismissed. The judge must sign an Order of Dismissal before the case can be closed.
4. "Order Dismissing Action for Failure to Prosecute," NMRA 4-306. This form is used by the judge to dismiss a case which has been pending for six months from the date the complaint was filed if the plaintiff (or a defendant on a counterclaim or set off) has failed to take any steps to bring the matter to trial. NMRA 2-305D.

C. The original of the dismissal form must be filed in the case file. The clerk must ensure that all parties receive copies of any dismissal forms.

7.2 Criminal Dismissals

A. Dismissal for Failure to Prosecute.

1. Order Dismissing Criminal Complaint with Prejudice, NMRA 9-414. This form is used if the judge dismisses a complaint because the prosecution has failed to prosecute the case within 182 days, unless the time has been extended pursuant to NMRA 6-506B and C.
2. The clerk closes the file after the order is filed if there are no outstanding obligations.

B. Voluntary Dismissal by the Prosecution or Dismissal by the Judge for Lack of Probable Cause.

1. The Notice of Dismissal for a non-felony case is used when the prosecution wishes to dismiss a criminal complaint or a specific charge or count in the complaint, or when

the court dismisses the complaint for lack of probable cause. Refer to NMRA 9-415, Notice of Dismissal, Non-Felony Case.

2. The Notice of Dismissal of a felony case NMRA 9-415A is used when the state dismisses a felony case or the judge does not find probable cause to bind the case over to the district court after a preliminary hearing. The dismissal is always without prejudice.
 3. The defendant's appearance is not required when the charges are dismissed by the prosecution.
 4. The clerk closes the file after notice of dismissal of the criminal complaint is filed.
 5. A voluntary dismissal shall be filed prior to the commencement of the trial if the charges are within magistrate court trial jurisdiction; or prior to the commencement of a preliminary examination in the magistrate court, if the charges are not within magistrate court trial jurisdiction NMRA 6-506 A1 and 2. If the state or the defendant moves to dismiss after a trial or preliminary hearing has commenced, the judge may grant or deny the motion.
 6. Unless otherwise stated in the order, voluntary dismissals are dismissed without prejudice.
 7. If the state re-files the charge in the district court, the magistrate court shall transfer all bond to the district court. NMRA 6-506A and B.
- C. The original of the dismissal form must be filed in the case file. The clerk must ensure that all parties receive copies of any dismissal forms.
- D. Refiled Complaints; cases within magistrate trial court jurisdiction. NMRA 6-506A, C, and D.
1. If a citation or complaint is dismissed without prejudice and the charges are later refiled, the refiled complaint shall be clearly captioned "Refiled Complaint" and shall include the following:
 - a. the court in which the original charges were filed;
 - b. the case file number of the dismissed charges;
 - c. the name of the assigned judge at the time the charges were dismissed; and
 - d. the reason the charges were dismissed.
 2. Procedure after refile: If a citation or complaint is dismissed without prejudice and the charges are later refiled, the case shall be treated as a continuation of the same case,

and the trial on the refiled charges shall be commenced within the unexpired time for trial pursuant to NMRA 6-506A and D, unless the court, after notice and a hearing finds the refiled complaint should not be treated as a continuation of the same case.

VIII. APPEALS

Refer to Appendix 39, Appeal Checklist.

8.10 Civil Appeals

If a party is aggrieved by the final judgment or order in a civil action, the person may appeal to the district court of the county within which the magistrate court is located. The notice of appeal shall be filed in the district court within fifteen (15) days after entry of the judgment or final order. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date of which the first notice of appeal was served. NMRA 2-705 and NMSA 1978, §35-13-1.

A. Notice of Appeal. NMRA 2-705B and C.

An appeal from the magistrate court is taken by:

1. Filing with the clerk of the district court a notice of appeal with proof of service. NMRA 4-707.
2. Promptly filing with the magistrate court: (a) copy of the notice of appeal which has been endorsed by the clerk of the district court; and (b) a copy of the receipt of payment of the docket fee.
3. The notice of appeal shall be substantially in a form approved by the Supreme Court. A copy of the magistrate court judgment or final order appealed from, showing the date of the judgment or final order shall be attached to the notice of appeal.

Refer to NMRA 1-005.1, Service & Filing of Pleadings & Other Papers, Rules of Civil Procedure for the District Court.

Refer to NMRA 4-707A, Appeal Bond Form.

Refer to NMRA 4-708.

B. Record on Appeal. NMRA 2-705E.

1. Within fifteen (15) days after the appellant files a copy of the notice of appeal in the magistrate court, the magistrate shall file with the clerk of the district court the record on appeal taken in the action in the magistrate court. The record on appeal shall consist of:
 - a. Title Page of Transcript of Civil Proceedings,” NMRA 4-708, containing caption of the case in the magistrate court and names and mailing addresses

of each party or, if the party is represented by counsel, the name and address of the attorney;

- b. A copy of all papers and other pleading filed in the magistrate court;
 - c. A copy of the judgment or order sought to be reviewed with the date of filing;
 - d. any exhibits that cannot be easily photocopied;
 - e. any transcripts or tapes of the proceeding;
 - f. corrections to or modification of the record; and
 - g. copy of supersedeas bond (if posted) receipt.
2. If the transcript is a tape recording, the clerk shall prepare and file with the district court, a duplicate of the tape and index log. Any party desiring a copy of the transcript of the proceeding shall be responsible for paying the costs. The clerk shall give prompt notice to all parties of the filing of the record on appeal.
 3. If anything material to either party is omitted from the record on appeal by error or accident, the parties by stipulation, or the magistrate court or the district court, on proper suggestion or on its own initiative, may direct that the omission be corrected and a supplemental record transmitted to the district court.
 4. If the magistrate court returns the exhibits after the hearing to the party, the court must advise the party of the duty to preserve the exhibits pending expiration of time for appeal. Exhibits must be returned to court within 10 days of filing of notice of appeal. The party returning the exhibits must make a list of exhibits, which will serve as the receipt for the exhibits. When the clerk receives the exhibits, the clerk must sign the receipt and file a copy of the receipt in the file.

C. Stay of Proceedings to Enforce a Judgment. NMRA 2-705G.

1. When an appeal is taken, the appellant (the party who appeals from one court to another), may obtain a stay of the proceedings to enforce the judgment by posting a supersedeas bond (or an appeal bond) with the clerk of the magistrate court and the stay shall continue in effect until final disposition of the appeal. The clerk does not transfer the "Appeal Bond" to the district court. NMRA 4-707A. When an appeal is taken from an action covered by the Owner-Resident Relations Act, if the resident is the appellant, the execution of the Writ of Restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental

amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due.

2. When the judgment is for the recovery of money, the amount of the bond shall be the sum that will cover the whole amount of the judgment remaining unsatisfied, together with costs, attorneys' fees and interest (if any). The bond remains in magistrate court to satisfy the judgment if the judgment is affirmed on appeal. The stay is effective when the supersedeas bond is approved by the magistrate court and shall continue in effect until final disposition of the appeal. The bond shall be conditioned for the satisfaction of and compliance with the judgment in full, as may be modified by an appellate court, together with costs, attorneys' fees and interest, if any. The bond shall be enforceable upon dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void. The surety, sureties or collateral securing such bond amount must be approved by the magistrate court. If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth of at least double the amount of the bond.
3. When an appeal is taken by the state, by any political subdivision or institution of the state, or by any municipal corporation, the taking of an appeal shall operate as a stay. The posting of a bond is not required to stay the proceedings.
4. In all actions brought by the Director of the Labor and Industrial Division of the Labor Department as assignee under the provisions of NMSA 1978, §50-4-11, the Director shall be entitled to free process and shall not be obligated or required to give any bond or other security for costs.

In the event the cause is appealed by the Director, no bond or other security shall be required or fees charged the Director for court costs or sheriff's fees in serving process. NMSA 1978, §50-4-12.

5. Once the appeal bond is posted, no further action for enforcement is taken until the case is remanded back to the magistrate court.

Refer to Bonds, Chapter 5, General Criminal Procedure Section 5.1.C.

D. District Court Review of Supersedeas Bond or Stay.

After an appeal is taken, the district court may, upon motion and notice, review any action of, or any failure or refusal to act by the magistrate court, with regard to supersedeas or stay. Any changes ordered by the district court shall be certified by the clerk of the district court, and filed with

the magistrate court clerk by the party seeking the review. NMRA 2-705H; refer to Chapter 4, Section 4.2, for tickler information.

E. Procedure and Disposal of Appeal by the District Court.

The rules of civil procedure for the district court shall govern the procedure on appeal from the magistrate court. NMRA 2-705I.

The district court shall dispose of appeals by entry of an appropriate order disposing of the appeal. The magistrate court clerk shall place the physical case file in the tickler for six (6) months from the date of filing the notice of appeal. If no disposition has been received from the district court, the clerk shall request a case status from the district court.

F. Remand and Enforcement of Mandate.

1. The district court may issue process in the form of a mandate, judgment or order at any time after expiration of fifteen (15) days after entry of the order disposing of the appeal.
2. If the case is appealed from the district court, the mandate shall not be issued until final disposition from the appellate court.
3. Upon the remand of the case by the district court to the magistrate court, the magistrate court shall enforce the mandate of the district court. NMRA 2-705J.

G. Return of Record.

After the final determination of the appeal, the clerk of the district court shall return the record on appeal to the magistrate court clerk.

8.20 Criminal Appeals

A. Right of Appeal by the Defendant. Refer to NMRA 6-702 and 6-703 and NMSA 1978, §§35-13-1 and 35-13-2, NMRA 9-607.

1. Upon conviction, the judge must notify the defendant of the right to appeal to the district court for a new trial. NMRA 6-702. The trial in district court will be a trial de novo.
2. A party who is aggrieved by any final order or judgment rendered by the magistrate court may appeal "as permitted by law" to the district court of the county in which the magistrate court is located within fifteen (15) days after entry of judgment or final order. The date of entry of the final order is determined by the date of the file stamp

on the order. The 3-day extension of time for mailing does not apply to appeals. NMRA 6-703A.

3. The district court shall try a trial de novo appeal within six (6) months after the filing of the notice of appeal. Unless an extension is granted by the Supreme Court, any appeal pending in district court six (6) months after the filing of the notice of appeal without disposition shall be dismissed and the cause remanded to the magistrate court for enforcement of its judgment. One extension, not to exceed ninety (90) days, may be granted for good cause shown to a Supreme Court Justice. NMRA 6-703L and M.
4. For an offense with a citation, if an appeal is filed and bond is posted after the citation abstract has been mailed to MVD, the clerk must notify MVD of the appeal and advise them not to take action on the driver's license. Refer to NMSA 1978, §66-8-135, Record of Traffic Cases. After remand, if the magistrate court judgment is upheld, the clerk shall notify MVD to proceed with the action on the license. If the disposition after appeal is different from the original citation submitted to MVD, the clerk must inform MVD by sending a copy of the Judgment and Sentence or amended abstract to MVD.

B. Notice of Appeal.

1. The notice of appeal must be filed with the clerk of the district court within 15 days of the judgment or final order. The clerk of the district court receives and files the copy of the "Notice of Appeal." NMRA 9-607. A copy of the notice of appeal which has been endorsed by the district court clerk must be promptly filed in the magistrate court.

C. Stay/Bond/Conditions of Release. NMRA 6-703H.

1. An appeal from conviction and sentence shall have the effect of a stay of execution of the judgment of the magistrate court until final determination of the appeal, subject to the defendant being allowed such credit as may be provided by law for time spent in official confinement while awaiting the outcome of the appeal.
2. At the time of the entry of the judgment and sentence, if the defendant notifies the court that the defendant intends to appeal, the magistrate court shall review the conditions of release pending appeal to assure the conditions are sufficient to secure the appearance of the defendant and the judgment of the magistrate court. The magistrate court may utilize the criteria and may also consider the fact of defendant's conviction and the length of sentence imposed. If the magistrate court receives notice that defendant has appealed to district court, and the district court has not set conditions of release, the magistrate court shall after notice and hearing issue a revised judgment and sentence including conditions of release. NMRA 6-401B.

3. A defendant released pending trial shall continue on release pending an appeal to the district court under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions are necessary to assure the defendant's appearance or to assure that the defendant's conduct will not obstruct the orderly administration of justice. In the event the court requires a bail bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the court.
4. If the court determines that the previously imposed conditions are not sufficient to assure the appearance of the defendant or the orderly administration of justice, the court may increase the amount of the bond on appeal or terminate the conditions of release to assure the appearance of the defendant or the orderly administration of justice.
5. Upon filing of the notice of appeal, the bond shall be transferred to the district court pending disposition of the appeal. The magistrate court retains jurisdiction over the bond and release conditions until the criminal information is filed in the district court.
6. After the criminal information is filed in the district court, the district court shall dispose of all matters relating to the bond. NMRA 6-703H.
7. If the magistrate court has refused release pending appeal or has imposed conditions of release which the defendant cannot meet, the defendant may file a petition for release with the clerk of the district court at any time after the filing of the notice of appeal. A copy of the petition for release which has been endorsed by the clerk of the district court shall be filed with the magistrate court. If the district court releases the defendant on appeal, a copy of the order of release shall be filed in the magistrate court. NMRA 6-703B.

D. Service of Notice of Appeal.

At the time the notice of appeal is filed with the district court, the appellant shall serve each party or their attorney with a copy of the notice and file proof of service with the clerk of the district court. NMRA 6-703D.

E. Docketing the Appeal. NMRA 6-703E.

Upon the filing of the notice of appeal and proof of service and payment of the docket fee, if required, the clerk of the district court shall docket the appeal in the district court.

F. Record on Appeal. NMRA 9-608 and 6-703F.

Within fifteen (15) days after the appellant files a copy of the notice of appeal in the magistrate court pursuant to Paragraph B of this rule, the magistrate court shall file with the clerk of the district court the record on appeal taken in the action in the magistrate court. For purposes of this rule, the record on appeal shall consist of:

1. a title page containing the caption of the case in the magistrate court and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney.
2. the complaint.
3. a copy of all papers and pleadings filed in the magistrate court.
4. a copy of the judgment or final order sought to be reviewed with date of filing (If the traffic citation serves as the final order, the clerk shall copy the citation.).
5. any record of proceeding made by the magistrate court.
6. any exhibits that cannot be easily photocopied.

The magistrate court clerk shall give prompt notice to all parties of the filing of the record on appeal with the district court. Any party desiring a copy of the record on appeal shall be responsible for paying the cost of preparing the copy.

G. Maintenance of File Pending Disposition.

The magistrate clerk shall tickle the case file six (6) months from date of filing "Notice of Appeal." If no disposition has been received from the district court, the clerk shall request a case status from the district court.

H. Final Order; Disposal of Appeals, Remand to Magistrate Court. NMRA 6-703O and P.

1. Upon final disposition of the appeal, the district court shall issue an order disposing of the case on appeal.
2. If a timely appeal is not taken from the order of the district court disposing of the case, the district court clerk shall remand the case to the magistrate court for enforcement of the disposition ordered by the district court. The district court order disposing of the case shall serve as the mandate.

3. The district court, in its discretion, may accompany the judgment or order with a written opinion. Opinions shall not be published and shall not be used as binding precedent in subsequent cases.

IX. EXCUSALS/RECUSALS

9.0 Excusal/Recusal Defined - NMRA 2-106 and 6-106, NMSA 1978, §§35-3-7 and 35-3-8 and New Mexico Constitution Article VI, 18.

A. Disqualification, excusal and recusal are terms used to refer to the termination of a judge's involvement in a particular case. Recusal is the process by which a judge disqualifies himself or herself from hearing a lawsuit because of conflict of interest, bias or prejudice. Statutory excusal is the process by which a judge is disqualified on objection of either party. The party exercising the right of excusal is not required to state a reason for the excusal. Another magistrate is either assigned, appointed by the district court, or selected by agreement of all parties in the case.

Whenever a party to any criminal or civil action files a lawful excusal or when a judge files a recusal, the jurisdiction terminates immediately. The judge shall take no further action, directly or indirectly.

B. The rules provide specific guidance to a party who believes recusal is required by the New Mexico Constitution or the Judicial Code of Conduct. NMRA 2-106F and G and 6-106G and H.

Refer to NMRA 9-101, Notice of excusal (Constitution or Code of Conduct).

9.1 Excusal/Recusal Procedure

A. Excusal/Recusal Filed.

When a "Notice of Excusal" (NMRA 4-103) (NMRA 9-103) or "Notice of Recusal," NMRA 4-104 and 9-105, is filed and a judge has been designated by the presiding judge or district judge, the designation shall be noted in FACTs. A copy of the order of designation shall be filed in the physical case file. The clerk shall follow case management procedures.

B. Case Processing for Excusals/Recusals.

1. Time for filing Notice of Excusal.

a. Civil. NMRA 2-106C.

(1) The plaintiff has ten (10) days from the later, of the filing date of the complaint or service by the court of notice of assignment or reassignment of the case to a judge.

- (2) Any other party has ten (10) days from the later, of the filing date of the answer or service by the court of notice of assignment or re-assignment of the case to a judge; or
- (3) In a restitution case, including an action in forcible entry or detainer, each party, plaintiff and defendant, has three (3) days after service to file a notice of excusal.

Refer to NMRA 4-102, 4-103 and 4-104.

b. Criminal. NMRA 1986, 6-106D.

A party may exercise the statutory right to excuse the judge before whom the case is pending by filing with the clerk of the court a notice of excusal. The notice of excusal must be signed by a party and filed within ten (10) days after the later of:

- (1) arraignment or the filing of a waiver of arraignment; or
- (2) service on the parties by the court of notice of assignment or re-assignment of the case to a judge.

Refer to NMRA 9-105.

- c. No party can excuse more than one judge. A party may not excuse a judge after the party has requested that judge to perform any discretionary act other than conducting an arraignment or first appearance, setting initial conditions of release or a determination of indigency. No judge may be excused from conducting an arraignment or first appearance or setting initial conditions of release. Any excusal of a judge scheduled to hear a preliminary hearing must be filed at least four (4) days prior to the hearing.

2. Time for Filing a Recusal.

A judge may file a recusal anytime, pre or post judgment. No magistrate shall sit in any action in which the judge's impartiality may be reasonably questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct. However, judges have a duty to hear cases assigned to them and should not recuse themselves solely because the case may be complicated or difficult or because the case was assigned to a different judge who was excused, has recused or is otherwise unavailable. If it becomes apparent as the case progresses that the judge's impartiality may be reasonably questioned, the judge should recuse himself or herself.

No justice, judge or magistrate of any court shall, except by consent of all parties, sit in any cause in which either of the parties are related to him by affinity or consanguinity within the degree of first cousin, or in which he was counsel, or in the trial of which he presided in any inferior court, or in which he has an interest.
New Mexico Constitution, Article VI, §18.

3. The clerk's procedures and responsibilities in replacing an excused or recused judge (in both civil and criminal cases):

- a. The clerk assigns the original magistrate to the case when the complaint or citation is filed and the case is docketed.
- b. When a party files "Notice of Excusal," or a judge files a "Notice of Recusal," NMRA 4-103, 4-104, 4-101 or 9-105 or Administrative Form 1.12, the clerk files the notice and prepares the case for reassignment and gives notice to all parties. In addition, the party electing to excuse a judge shall serve notice of such election on all parties. NMRA 6-106E and 2-106D.

If the notice is for statutory excusal, the clerk presents it to the assigned judge, for the judge's determination regarding the excusal conforming to the rule. The judge notes in writing, an acceptance or rejection on the excusal document.

c. Reassignment - Initial Process.

- (1) The parties have ten (10) days from the filing of the notice of excusal or recusal to stipulate to a judge to hear the case. NMRA 6-105E and 2-105A.
- (2) The clerk counts ten (10) calendar days from the day the notice is filed to the date when the stipulation is due and files the case according to the next critical event.

d. Reassignment:

The clerk pulls the file and performs the following procedures:

- (1) For courts with Presiding Judges:
 - (a) The clerk prepares a Notice of Reassignment. The presiding judge shall, by random selections, assign another magistrate to try the case. NMRA 2-106D and 6-105A. The clerk mails a

copy of the notice of reassignment to all parties, in addition to giving notice to the judge who has been assigned to the case.

- (b) When all available judges in the court having jurisdiction have been excused or have been recused, the clerk prepares "Certificate of Excusal/Recusal," NMRA 4-102, dates certificate and presents the file and certificate to the judge to sign.

(2) Courts without Presiding Judges.

In single-division courts, the clerk prepares "Certificate of Excusal/Recusal," NMRA 4-102, dates certificate and presents the file and certificate to the judge to sign. The district judge shall designate another magistrate to try the case. NMRA 2-105A and 6-105A.

- (3) "Certificates of Excusal/Recusal," NMRA 4-102, is used when the district court must designate a judge. Once a judge is designated, the clerk must send the designated judge a copy of all proceedings within five (5) days of designation. NMRA 2-105 and 6-105.

- e. No cases designated or reassigned shall be re-docketed and all cases must be heard in the district (county) where docketed.
- f. The clerk of the magistrate court of the original magistrate district shall continue to be responsible for the court file and shall perform such further duties as may be required in cases.
- g. Bonds:

The original clerk is also responsible for the bond and any subsequent actions regarding the case (transfers to district court, conversions, etc.).

X. JURY, WITNESS, INTERPRETER AND COURT MONITOR PROCEDURES

10.1 Jury

- A. Except for contempt of court, the right to a trial by jury exists in all actions in the magistrate court which are within magistrate trial jurisdiction. NMSA 1978, §35-8-1.
- B. Juries in the magistrate court shall hear the evidence in the action which shall be delivered in public in the presence of the jury. After hearing the evidence and being duly charged by the magistrate, the members of the jury shall be kept together until:
 - 1. in civil actions, five members shall agree upon a verdict;
 - 2. in criminal actions, the members unanimously agree upon a verdict; or
 - 3. the members are discharged by the magistrate. The magistrate shall give judgment upon any verdict. NMSA 1978, §35-8-4.

10.11 Jury Trial

- A. Criminal Jury Trial. NMRA 6-602 and NMSA 1978, §35-8-4.

Unless the defendant waives the right to a jury trial, the defendant shall be tried by a jury if the defendant is charged with more than one petty misdemeanor and the potential period of the imprisonment for all charges exceeds six months. Jury fees shall not be collected in any criminal case. Jury costs cannot be added to a conviction.

- 1. If the offense is a petty misdemeanor, or an offense punishable by no more than 6 months in jail: NMRA 6-602A.
 - a. Either party may demand a trial by jury. State v. Padilla, 98 N.M. 349, 353 (Ct. App. 1982).
 - b. The demand shall be made orally to the court at or before the time of entering a plea or in writing to the court within 10 days after the time of entering a plea. State v. Ayola, 95 N.M. 464 (Ct. App. 1981).
 - c. If demand is not made in this manner, trial by jury is deemed waived.
- 2. Misdemeanor. NMRA 6-602B.

If the offense is a misdemeanor, or other offense, or combination of offenses where the potential or aggregate penalty includes imprisonment in excess of six (6) months,

the case shall be tried by a jury unless the defendant waives a jury trial. The court must approve and the prosecution must consent to the waiver of trial by jury.

B. Civil Jury Trial. NMRA 2-602 and NMSA 1978, §35-8-4.

1. Either party to an action in the magistrate court, within magistrate trial jurisdiction, may demand trial by jury. NMRA 2-602B.

If demand is not made as provided in NMRA 2-602B, or if the jury fee is not paid, trial by jury is deemed waived. NMRA 2-602C; NMSA 1978, §35-8-2(A)(B).

2. A jury fee of \$25 is collected by the clerk from the party demanding a jury trial at the time the demand is made. NMSA 1978, §35-6-1(A). The \$25 jury fee is not refundable.

The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the defendant. The magistrate shall collect the jury fee established by law from the demanding party.

3. NMSA 1978, §35-8-7 requires the party who requested a civil jury trial to pay the costs of the jury, in addition to the \$25 jury fee. The cost of the jury is not assessed against the losing party, but against the party who requested the civil jury. No costs shall be charged against the State. All costs collected by the magistrate shall be remitted to the Administrative Office of the Courts, and all jurors shall be paid by the state treasurer in the same manner as criminal jurors are paid.
4. In addition to the \$25 fee required by NMSA 1978, §35-8-7 those individuals requesting a civil jury will be required to pay a \$50 jury deposit. The deposit must be collected at the time the request is made. If the parties to a law suit settle before the trial, the \$50 jury deposit is refundable. If a trial is held and only a portion of the deposit is used to pay jury expenses, the remainder is refunded.
5. The deposit will be treated as a "civil juror bond". Refer to Chapter 11, "Financial Management," for procedures in handling civil juror bonds.
6. The total amount owed and unpaid in jury fees shall be recorded on the judgment and sentence, along with the party who requested the jury. This will occur regardless of the outcome of the judgment entered.

10.12 Jury Management, Civil and Criminal

Empanelling the Jury - NMSA 1978, §35-8-3; NMSA 1978, §§38-5-1 through 38-5-19; NMRA 2-603 and 6-605.

- A. A jury in the magistrate court consists of six jurors with the same qualifications as jurors in the district court.
- B. **The following is a summary only. Courts should refer to the automated jury software manual for more information.**
 - 1. The magistrate shall direct the clerk of the district court to supply an order for download of juror names.
 - 2. The Judicial Information Division shall download the appropriate juror information.
 - 3. The magistrate clerk reviews newly downloaded juror information and supplies information to the Administrative Office of the Courts contractor. The contractor mails out the juror summons package, including:
 - a. jury summons
 - b. juror information sheet
 - c. juror qualification form
 - d. juror questionnaire
 - e. request for excuse/postponement
 - 4. The jury shall appear as summoned.
- C. Juror Qualifications.

A juror must be at least 18 years of age, a United States citizen, a resident of New Mexico residing in the county for which a jury may be convened.

The jurors may request a jury service postponement or to be excused for service because of mental or physical illness, infirmity, or undue or extreme physical or financial hardship. All requests will be reviewed by the judge and the judge will grant or deny the excuse/postponement. A person with a felony conviction may be summoned for jury service if the person has successfully completed all conditions of the sentence, including conditions of probation or parole. The clerk will notify the jurors of the decision. NMSA 1978, §38-5-1; also see NMSA 1978, §38-5-2, for additional information about who may be excused from jury service.

- D. The juror must call the court during business hours one day before trial to confirm that the trial has not been canceled, unless an answering machine is provided.
- E. On the day the jurors report to court, roll call is taken by the clerk. The clerk will note on the jury list if a juror is absent and has not been excused.
- F. The judge may issue a bench warrant or subpoena for a prospective juror who fails to appear.
- G. Challenges for Cause.

At the time of the trial, the parties, their attorneys or the magistrate may examine the jurors who have been summoned to determine whether they should be disqualified for cause. Jurors shall be excused for cause if the examination discloses bias, relationship to a party or other grounds of actual or probable partiality. If examination of any juror discloses any basis for his disqualification, he shall be excused. NMRA 6-605B and 2-603B.

- H. Peremptory Challenges. NMRA 2-603C and 6-605C.
 - 1. Criminal - In petty misdemeanor cases each party shall be entitled to one peremptory challenge. If the offense charged is a misdemeanor or combination of charges where the potential or aggregate penalty includes imprisonment in excess of six (6) months each party shall be entitled to two peremptory challenges.
 - 2. Civil - Each party shall be entitled to one peremptory challenge.

- I. Selection of Jury.
 - 1. The magistrate shall cause the name of each juror present to be placed on a separate slip of paper which shall be placed in a box. Alternatively, the magistrate may request random names from the electronic application. A list of the names of the jurors present shall be prepared by the magistrate or at his direction, and a copy of the list provided each party or his attorney.
 - 2. The jurors may be examined by the parties, their attorneys or the magistrate by questioning all of the jurors present, as a group, or individually.

Additional slips with jurors' names thereon shall be drawn from the box to replace those excused for cause or by peremptory challenge who may then be questioned by the parties, their attorneys or the magistrate.

- 3. When six qualified jurors have been selected, they shall constitute the jury for the case to be tried.

4. One alternate juror may be selected, if the magistrate at his discretion so elects. The parties may exercise their peremptory challenges in the selection of the alternate juror, if their peremptory challenges have not been exhausted in the selection of the other jurors. NMRA 2-603D, 6-605D and NMSA 1978, §§38-5-13 and 38-5-14.
- J. If a jury is left incomplete because of a failure of jurors to appear, excused absences or disqualifications, the magistrate shall direct the sheriff to summons others to complete the jury. NMSA 1978, §35-8-3(C) and NMRA 6-605E, 2-603E.
- K. Jurors are notified of canceled hearings by letter or jury recording. If the case has been reset or canceled at the last minute, the clerk informs the jurors of the cancellation by phone.

10.13 Juror Fees - NMSA 1978, §§38-5-15 and 34-9-11.

- A. Persons summoned for jury service and jurors shall be reimbursed for travel from their place of actual residence to the courthouse when their attendance is ordered, at the rate allowed public officers and employees per mile of necessary travel. Persons summoned for jury service shall be compensated for their time in travel, attendance and service at the highest prevailing state minimum wage rate. NMSA 1978, §38-5-15. Jurors shall be asked if they wish to be compensated; if they answer in the negative, they shall not be paid.
- B. Jurors are paid in accordance with the Administrative Office of the Courts Guidelines on Juror Payments approved by the Supreme Court. Refer to Appendix 41, refer to NMSA 1978, §34-9-11, Jury and witness fee fund created; administration; distribution.

The Administrative Office of the Courts will not pay for the appearance of any person who is excused from jury duty at his/her own request.

- C. Processing juror payments:
 1. The clerk keeps a record of each juror's hours for each day the juror serves.
 2. Process payment for the jurors through the automated system.
 3. Jurors should be paid for jury service every two weeks or at the expiration of the term of service, whichever is appropriate. The payment will be mailed directly to the juror.

10.2 Witness Fees - NMSA 1978, §§38-6-4 and 34-9-11.

Witnesses are paid in accordance with Administrative Office of the Courts Guidelines for the Payment of Witness Fees as approved by the Supreme Court. Refer to Appendix 47.

A. Criminal and civil cases in which the witness is called by the State.

1. "Certification of Witness," Appendix 49, is filled out by the witness. The party who called the witness will assist in the preparation of the form. A copy of the subpoena must be attached to the certification and sent to the Administrative Office of the Courts.
2. The Administrative Office of the Courts will mail payment directly to the witness. A copy of the subpoena must be submitted to the Administrative Office of the Courts. Refer to NMRA 6-606, Subpoenas.
3. The jury and witness fund covers allowable expenses during trial only for state witnesses and for defense witnesses where indigency has been determined for the defendant.
4. The person or agency that calls the witness shall be responsible for notifying the witness of trial cancellations, continuances, resettings or settlements. If the witness is not notified, the person or agency that called the witness shall be responsible for the per diem and mileage expenses of the witness. Under those circumstances, the Administrative Office of the Courts will not pay the witness fee. In determining payment responsibility, the person who called the witness must show that he/she was unable to contact the witness despite good faith efforts to do so. A sworn statement must accompany the request for payment.

Note: Arrangements must be made at least two (2) weeks prior to payment, if payment is required in advance.

5. Witness payments in civil cases are limited to four (4) witnesses per side unless the judge certifies the necessity for more witnesses. NMSA 1997, §§39-2-9 and 39-2-10.
6. Witnesses who are prison inmates do not receive per diem or mileage.

B. Civil Cases and Criminal Cases in which the witness is called by a private party.

Any party other than the State, and defense witnesses when the defendant is not indigent who subpoenas a witness for a proceeding must pay for service, the mileage at the rate specified in NMSA 1978, §10-8-4(D) and the per diem at the rate specified in NMSA 1978, §10-8-4(A) for non-salaried

public officers attending a board or committee meeting. Refer to NMSA 1978, §10-8-4 for current per diem and mileage rates.

C. Witness Fees.

A Certification of Witness form filled out and signed by the witness and the public defender, district attorney or attorney must accompany the reimbursement request with a copy of the subpoena attached. If reimbursing a traveler for airfare, bus ticket, etc. one of the ticket slips must be attached. The Administrative Office of the Courts will not accept travel agency invoices or credit card slips without the ticket slip attached. Reimbursement for hotels and travel agencies must include a copy of the relevant subpoena or the Certificate of Witness form.

E. Processing of Voucher.

1. The Certification of Witness form, Appendix 49, is filled out by the witness. If the form is incomplete, it will be returned to the appropriate court for completion.
2. The state agency that requested the witness shall prepare the voucher; if a private attorney requested the witness, he may provide the necessary information to the court for preparation of the voucher. Court personnel shall review for completeness and accuracy and forward the form, a copy of the indigency determination form, the Order of Appointment, if applicable, all necessary receipts and prepared state voucher for each witness to Administrative Office of the Courts for payment. The court shall retain a copy for its files. Distribution vouchers will not be accepted by the Administrative Office of the Courts.
3. The judge or his designee shall reject a voucher requesting payment from the fund for expenses that are not allowable expenses pursuant to these guidelines. The judge or his designee certify to the accuracy of the form by signing the Certification Witness form or voucher.

Refer to Appendix 47, Witness Fee Payment Guidelines.

10.3 Expert Witness Fees - Criminal and Civil

Expert witnesses are paid in accordance with Administrative Office of the Courts' Guidelines for the Payment of Expert Witness Fees as approved by the Supreme Court. Refer to Appendix 48 in this chapter. Whoever calls an expert witness shall pay the fees of that witness (regardless if it is a civil or criminal case).

The use of experts in magistrate court is infrequent. Prior budgetary approval must be obtained from the Administrative Office of the Courts before the court calls the expert witness. If the

magistrate court calls an expert witness, the payment shall be limited to \$100, plus per diem and mileage.

Processing of expert witness fee payments:

- A. "Certification of Witness," Appendix 49, is filled out by the expert witness. Since the purpose of a preliminary hearing is to determine probable cause, and not to determine guilt or innocence, the need for expert witnesses in criminal cases should be minimal.
- B. If the court called the expert witness, clerk attaches expert's bill for services to the certification form and submits to the Administrative Office of the Courts for payment, with copy of subpoena. The Administrative Office of the Courts will mail payment directly to the expert witness.

10.4 Interpreter Fees

- A. Interpreter fees are allowable only when the interpreter is appointed by the court. Appendix 51, New Mexico Interpreter Fee Payment Guidelines.
- B. Refer to fee schedule for certified and non-certified interpreters. The rates are in accordance with Administrative Office of the Courts' Guidelines on Interpreter Fees as approved by the Supreme Court. Refer to Appendix 51.
- C. "Certification of Interpreter," Appendix 50, is filled out by the interpreter and signed. The clerk must mail a copy of the signed certification form to the Administrative Office of the Courts accounting staff in order for the interpreter to receive payment. The Administrative Office of the Courts will process the payment request and pay the interpreter directly. NMSA 1978, §38-10-5.

Refer to NMSA 1978, §§38-10-1 through 8, Court Interpreters Act.

10.5 Bailiff Fees

- A. The fee in magistrate court is the federal minimum hourly wage.
- B. The clerk fills out all information required on the "Certification of Bailiff," Appendix 54.
- C. The rates are in accordance with Administrative Office of the Courts Guidelines on Bailiff Fees as approved by the Supreme Court. Refer to Appendix 53.

10.6 Court Monitor

Refer to Appendix 55, Tape Log. Note: All recordings shall be logged on forms approved by the Administrative Office of the Courts.

A. Record

1. A party may request that a record of trial or court proceedings be made in criminal and in civil cases. The record shall be made at the expense of the person making the request. The court retains the record and the record is transferred to the district court if necessary. NMRA 6-601D and 2-109.
2. Preliminary hearings must be recorded. NMRA 6-202B. Either party may request a duplicate of the recording within six (6) months following the preliminary.

If the defendant is bound over to district court, the record shall be filed with the bind-over order. The clerk transfers the recording to the clerk of the district court. NMRA 6-202B. If the defendant is not bound over, the court can erase the recording six (6) months after the preliminary hearing.

3. Request for Duplication. If any party requests a copy or copies of recordings of a magistrate court proceeding, the court shall comply if it has the proper equipment to copy the recording. The party requesting the recording shall pay a fee of \$5 per tape or CD. If the magistrate court does not have the capability of duplicating the recordings, the clerk shall forward the original recording and log to the district court clerk for proper duplication. It is the responsibility of the district court clerk to collect the duplication fee in this case.

B. Procedure for recording with a tape recorder:

Prior to Recording, the clerk should ensure the following:

1. The top half of the "Tape Log" is filled out prior to the start of the proceedings.
2. Ensure a sufficient supply of tapes at your recording station to cover the time span allotted for the proceeding.
3. Make sure you are using blank tapes. Check the label to ensure that the tape does not contain previously recorded testimony.
4. Ensure that the timing of the machine is properly set every time the machine is turned on.

5. Check tape prior to recording to ensure it has been rewound.
6. Check the recorder to make sure it is functioning properly.
7. Reset the index counter numbers to zero.
8. Label the tape with the appropriate information.

C. During Recording.

1. The first entry on the log should contain the notation "Tape #1." New tapes should be numbered chronologically and the tape number noted on the log. The log acts as a detailed guide to the sequence of events as they occurred on the recording. It is crucial that the log be as complete as possible because judges and attorneys may have to rely on the log as a guide to a particular portion of testimony when they prepare written documents on the case.
2. Counter numbers should be entered at every 100 intervals or whenever there is a change in speaker or topic.
3. The subject matter and speaker should be entered on the log under the "comment" section, across from the log number.
4. Monitor the proceedings continuously through the earpiece.
5. If the recorder malfunctions or does not appear to be recording sufficiently to capture a record, NOTIFY THE JUDGE IMMEDIATELY.

D. Procedure for recording with a FTR Reporter Deck.

FTR Reporter Deck Recording Procedures

Recording / Pausing / Stopping / Archiving / Ejecting / Log Notes / Spell Check
Procedures are for District and Magistrate Courts

1. Turn on equipment.
 - a. Receivers
 - b. Amplifiers
 - c. Mixer
 - d. Microphones
 - e. ReporterDeck (Allow several minutes for it to startup).
 - f. PC, monitor, printer

2. Setup the ReporterDeck.
When the ReporterDeck is fully powered on:
 - a. Check that the time on the PC and ReporterDeck are synchronized. Change the time on the ReporterDeck to match the PC time if needed.
 - b. Listen through the headset to ensure you are receiving sound from all microphones.

3. Create the log sheet(s).
Repeat the following for each log sheet:
 - a. Open a new log sheet in Log Notes.
 - b. Enter the courtroom Location. Select the location from the drop down list. The log sheet location must exactly match the ReporterDeck location.
 - c. Enter the Description. [Include all header information: Case Number, Proceeding, Prosecuting Attorney, Defense Attorney, Judge Name, Monitor, Legend.]
 - d. Optional: Save the file with a meaningful file name. [If you save the log sheet with a new file name, you must manually close the original log sheet and open the new one.]

4. Record the hearing.
 - a. Verify the ReporterDeck time left to archive is 0h 00m. [If time remains for a previous CD, you must complete archiving before starting a new CD].
 - b. Place a new blank CD in the CD drive and close the CD drive drawer.
 - c. Wait for the ReporterDeck to recognize and prepare the CD [until the display shows "Not archiving"].
 - d. Press the Archive button to turn on archiving.
 - e. Press the Record button to turn on recording.
 - f. Enter log notes. Time stamps will be automatically generated for each new note. [You do not need to manually save the log sheet. FTR automatically saves log sheets whenever you make a change and move to a new notes row or 60 seconds after making a change if you haven't moved to a new row.]
 - g. Listen through the headset to perform confidence monitoring.
 - h. If you need to pause recording: Press and hold the Record button for about 2 seconds to stop recording. When ready to resume recording, press the Record button to turn on recording.

5. Stop recording and remove the CD.
 - a. Press and hold the Record button for about 2 seconds to stop recording.
 - b. Verify that time left to archive shows 0h 00m.
 - c. Press the Archive button to turn off archiving.
 - d. Press the Eject button to eject the CD.
 - e. Press the down arrow button to show "Eject without write protecting".
 - f. Press the Select button.

- g. When the CD drawer opens, remove the CD from the tray.
 - h. Label the CD using a solvent free CD pen.
6. Verify the archive CD audio.
- a. Insert the CD into the computer CD drive.
 - b. Open the CD audio in FTR Player Plus.
 - c. Check the beginning and ending times to assure all audio was recorded and archived.
 - d. Listen briefly at the beginning, middle and end to verify audio quality.
7. Verify and edit the log sheet(s), and save as HTML.
Repeat the following for each FTR log sheet:
- a. Open the log sheet in Log Notes.
 - b. Complete all required entries and edits to the log sheet [other than spell check].
 - c. Click the first time stamp and verify synchronization with the audio. If there is a significant difference [more than about 30 seconds], synchronize the log sheet with the audio.
 - d. Click the diskette icon on the Log Notes toolbar to open the *Save Copy As* window.
 - e. For Save in: Select the location where you want save the log sheet. [This may be either the Desktop or a folder where you save your log sheets.]
 - f. For Save as type: Select *For use with a Web Browser [* .htm]*.
 - g. For File name: Either accept the FTR file name or enter a new file name [Def. First Name - Def. Last Name - Docket # - Date is recommended.].
 - h. Click the Save button.
 - i. Close the log sheet.
8. Spell check the log sheet(s) using WordPerfect.
Open WordPerfect and repeat the following for each HTML log sheet:
- a. Click the Open icon or select File, Open from the WordPerfect menu.
 - b. Browse to locate the HTML version of the log sheet and open the file.
 - c. Run spell check.
 - d. Save the file as an HTML document.
 - e. Display the file as a WordPerfect document. [From the WordPerfect menu select either: View, Page OR File, Internet Publisher, Format as a WP Document.]
 - f. Format the file as needed for printing: Set margins, page orientation, headers, footers, etc.
 - g. Print the document.
 - h. Optional: Select File, Save As to save a copy of the formatted file as a WordPerfect document. Be sure to save the file using a new name or file extension to prevent overwriting the HTML file with WordPerfect file.

9. Embed the FTR and HTML log sheet(s) on the archive CD.
 - a. Insert the archive CD into the computer CDRW drive.
 - b. If log sheets are not stored on the Desktop, open the folder where the log sheets are stored.
 - c. Select all the FTR and HTML log sheets to embed on the CD. [To select a file, hold the CTRL key and Left-Click on the file name.]
 - d. Drag the selected files to the Drag-to-Disc icon.
 - e. Do not eject the archive CD until it has been verified

10. Verify the archive CD.
 - a. View the CD contents from Drag-to-Disc, Windows Explorer or My Computer.
 - b. Verify that the correct log sheets are embedded on the CD and that all the required FTR and HTML log sheets are listed.

11. Eject the CD with Write Protection.
 - a. Press the CD drive button or click the Drag-to-Disc Eject button to show the eject options:
 - b. Check the box: Make this disc readable on any CD or DVD drive.
 - c. Check the Box: Protect disc so that it cannot be written to again.
 - d. Click the Eject button.
 - e. Wait while Drag-to-Disc prepares the CD to be ejected.
 - f. When the drive opens, remove the CD from the tray.
 - g. Write "Verified" and your initials on the CD.
 - h. Store the CD in a protective jacket.

12. Fill out the Receipt for Disc and Log form.

Record the following for each hearing on the CD:

 - a. Cause #
 - b. Case Caption
 - c. Start Time
 - d. End Time

Troubleshooting Tips when using the ReporterDeck equipment:

- A. The unit will continue to operate, recording normally, when there is a CD error. Replace the CD with another, non formatted CD .

- B. If the unit does not appear on the Network, review the setting under the Menu, under Advanced Settings- Network, to insure connectivity. Please advise your IT department of such incidents.

- C. Ensure that a set of speakers are connected to the unit for playback mode, if the unit is not on a network. Adjust the volume appropriately.
- D. Archiving can be done, regardless of whether the unit is recording or not.
- E. In the event no sound is heard from the unit, press the record button to stop recording, and then press again to restart the recording process.
- F. If it appears that FTR did not save all the log notes entries, it is likely the log sheet was saved with a new file name, but the new file was not opened before entering notes. Check the original FTR file.
- G. If you have trouble finding a log sheet, you can use the search function from the FTR open window to locate the file.
- H. You can use glossaries and pick lists to insert standard phrases into log sheets.
- I. If a CD is bad when you verify the CD, you can copy the audio from the ReporterDeck to a new CD.
- J. If a log sheet will not link to the audio on the archive CD, check the Location. Linking requires that the log sheet Date and Location fields match the date and location for the audio. If the log sheet Location is wrong, you can open the log sheet and change the location. When you do this, FTR creates a new log sheet based on the original.

XI. FINANCIAL MANAGEMENT

11.1 Fees

The Administrative Office of the Courts provides each magistrate court with a cost schedule. NMSA 1978, §35-6-2. Each court must keep the cost schedule posted in a conspicuous place in the courtroom and in the lobby. A brief explanation of each fee is given in the following paragraphs. Refer to Supreme Court Order 99-8500, Policy Directive #7 for Collection Scheme for Fines, Fees, and Costs Assessed in Criminal Proceedings.

- A. A \$1 docket fee shall be collected on all criminal actions under NMSA 1978, §§29-5-1 and 35-6-1(A).
- B. A \$20 docket fee shall be collected for all criminal actions filed on a citizen's complaint unless the complaint is co-signed a by law enforcement officer or is a complaint alleging domestic violence. The docket fee is collected from the complainant. The docket fee is not collected from those agencies who are exempt according to statute. The agency is required to advise the magistrate of its exemption for the docket fee. This fee is deposited into the court facilities fund. NMSA 1978, §§ 35-6-1(A) and 35-6-3.
- C. Court Costs shall be collected from those convicted in any criminal action. If the defendant chooses not to contest a penalty assessment misdemeanor, the magistrate shall not collect the docket fee, but shall collect other costs. NMSA 1978, §35-6-4(B). **THE MAGISTRATE HAS NO DISCRETION TO WAIVE COURT COSTS, with the exception of the bench warrant fee. TIME SERVED BEFORE ADJUDICATION MAY NOT BE APPLIED IN LIEU OF EITHER COURT COSTS OR FINES.**
- D. A \$67 docket fee shall be collected prior to filing a civil action, unless the agency is exempt from paying the docket fee or unless the complainant is indigent. The agency is required to advise the magistrate of its exemption for the docket fee.

In order for proceedings to begin, this fee must be paid pursuant to NMSA 1978, §50-4-12. Ten dollars (\$10) of the civil docket fee shall be deposited in the Court Automation Fund. Fifteen dollars (\$15) shall be deposited in the Civil Legal Service Fund, five dollars (\$5) shall be deposited in the Magistrate Court Mediation Fund. NMSA 1978, §§35-6-8 and 35-6-9.

In all actions brought by the Director of the Labor and Industrial Division of the Labor Department as assignee under the provisions of NMSA 1978, §50-4-11, the Director shall be entitled to free process and shall not be obligated or required to give any bond or other security for costs.

Any sheriff, constable or other officer requested by the Director to serve any summons, writ, complaint or order shall do so without requiring the Director of the Labor Department to pay any fees or furnish any security or bond.

Where all claims joined together do not exceed, in the aggregate, the jurisdictional limit of the magistrate or metropolitan court, the Director of the Labor Department may institute an action against the employer in any magistrate or metropolitan court having jurisdiction, without referring the claim to the district attorney. In the event that during the course of the proceedings, representation by an attorney at law becomes necessary or, in the Director's judgment, advisable, the Director shall so notify the district attorney, and it shall then be the duty of the district attorney or the district attorney's assistant to appear for the Director in the cause.

In the event the cause is appealed by the Director, no bond or other security shall be required or fees charged the Director of the Labor Dept., for court costs or sheriff's fees in serving process. NMSA 1978, §§35-6-1(A) and 35-6-3.

- E. A \$25 jury fee shall be collected from the plaintiff at the time of filing any civil action if a trial by jury is demanded. NMSA 1978, §35-6-1(A). In addition, the \$50 jury bond must be posted with payment of the jury demand fee.
- F. Jury costs are to be charged against the party requesting the jury in a civil action in accordance with NMSA 1978, §35-8-7(C).
- G. A \$.50 charge shall be assessed for each page of records or forms copied by photographic process at the court. NMSA 1978, §35-6-1(A).
- H. A \$1 copying fee shall be assessed for computer-generated or electronically transferred copies, per page. NMSA 1978, §35-6-1(A).
- I. A \$20 corrections fee shall be collected from persons convicted of violating any provision of the Motor Vehicle Code, NMSA 1978, §§66-1-1 through 66-8-139, involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance which may be enforced by the imposition of a term of imprisonment. NMSA 1978, §35-6-1(D).
- J. A \$10 court automation fee shall be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance which may be enforced by the imposition of a term of imprisonment. NMSA 1978, §35-6-1(D).

- K. A \$3 traffic safety fee shall be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle. NMSA 1978, §35-6-1(D).
- L. A \$65 lab fee shall be collected from persons convicted of a violation of NMSA 1978, §66-8-102, as provided in NMSA 1978, §31-12-7.
- M. A \$75 DWI prevention fee shall be collected upon conviction from persons convicted of a violation of NMSA 1978, §66-8-102, as provided in NMSA 1978, §31-12-7.
- N. A \$75 lab fee shall be collected from persons convicted of a misdemeanor or a petty misdemeanor for a violation of the provisions of the Controlled Substances Act, as provided in NMSA 1978, §31-12-8.
- O. A \$2 judicial education fee, as provided in NMSA 1978, §35-6-1, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment.
- P. A \$5 brain injury services fee, as provided in NMSA 1978, §35-6-1, shall be collected upon conviction from persons convicted of violating any provision of the motor vehicle code involving the operation of a motor vehicle.
- Q. A \$10 court facilities fee (\$24 for Metro Court) shall be collected from persons convicted of violating any provision of the Motor Vehicle Code, NMSA 1978, §§66-1-1 through 66-8-139, involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance which may be enforced by the imposition of a term of imprisonment. NMSA 1978, §35-6-1(D).
- R. A \$100 bench warrant fee shall be assessed upon issuance of a bench warrant by a magistrate pursuant to NMSA 1978, §35-6-5.
- S. A \$50 drug court fee shall be assessed to participants of drug court programs if the magistrate court has an adult drug court program. The \$50 shall be deposited in the Magistrate Drug Court Fund. NMSA 1978, 35-6-7.
- T. Except as provided in the Notice to Public, NMSA 1978, §35-6-1, or statewide court rule, no other costs or fees shall be charged or collected in the magistrate court.
- U. Procedure to Correct Erroneous Assessment of Fees.
 - 1. The sentencing document (J & S) must be amended to reflect the appropriate fee assessments.

2. If a payment has already been collected on erroneous fees, void the original receipt.
3. Update the Sentencing Record.
 - a. Go to Criminal Defendant Menu > Sentencing Update
 - (1) Enter Case Number, Party Type and Party Number.
 - (2) Tab, or Enter through the rest of the fields, until cursor is on the first charge that has been sentenced with financial assessments.
 - b. Use the shortcut key of F2, or go to the Menu Bar at the top of your screen and click on Options > Financial Assessment, to bring up the Sentencing Update: Financial Assessments screen.

Enter the Count and Sequence of the first charge that was assessed incorrectly. Tab to the first incorrect assessment and enter the amount assessed that reflects the fee structure at the time of the offense.
 - c. Steps B.1. and B.2. must be repeated on each incorrectly assessed count of each case.
 - d. Save the Sentencing Update: Financial Assessments screen.
 - e. Save the Sentencing Update screen.
4. Re-receipt the payment using Automatic Allocation.
 - a. Enter the full amount of the original payment collected. This amount will be more than what will now show as being assessed.
 - b. On the Accept Automatic Allocation screen, enter "N" to "Accept Automatic Allocation?"
 - c. The cursor will go to the center of the screen.
 - (1) Enter the case number.
 - (2) Enter the Pay Event of 172 PMT: OVERPAYMENT
 - (3) Enter the overpayment amount in the Amount Being Paid field.
 - (4) Read Status Bar. Enter "F2" for Done Adding.
 - (5) Enter "Y" to Accept Automatic Allocation.

- d. Complete remainder of Automatic Allocation screen.
 - e. Go to: Money Management > Disbursements > Disbursements Journal > Miscellaneous Disburse the overpayment using Event Code 472 DBS: OVERPAYMENT.
5. If there is a balance due after all corrections are made, notify defendant in writing of the balance due. The letter shall state that defendant must pay the balance due within thirty (30) days of the date of the letter or contact the court to make arrangements for payments.
6. If you have questions or concerns, contact your Administrative Office of the Courts Fiscal Services Division representative. As with any voided receipt, the court must include a copy of the voided receipt and the reissued receipt in its monthly report.

11.2 Court Cash Handling

A. Purpose

The purpose of this policy is to establish uniform guidelines for Magistrate Court employees to use in receiving and accounting for payments from the public in the form of fees, fines, forfeitures, penalties, restitution and assessments resulting from court orders.

B. Policy

It is the policy of the Magistrate Court to collect and process payments received from the public in the form of fines, fees, penalties, restitution, forfeitures and assessments in a manner that protects the integrity of the court and its employees and promotes public confidence. The magistrate court shall institute procedures and internal controls that assure the safe, secure collection, and accurate accounting of all payments.

C. Applicability

This policy applies to all Magistrate Court officials and all employees whose official job responsibilities involve any aspect of collecting or processing revenue received from the public either in-person or by mail.

D. Procedures

1. Safekeeping of Money

The primary cause of shortages or overages is carelessness in handling money. To reduce the potential for losses due to errors or irregularities, court employees involved in collection activities (cashiers and supervisors) will observe the guidelines provided in this section.

2. Acceptable Forms of Payment

- a. The Magistrate Court can accept the following forms of payment for fines, fees, penalties, restitution, forfeitures, and assessments:

- (1) Cash
- (2) Money orders
- (3) Cashiers checks
- (4) Business checks from attorney firms, bondsmen, correctional facilities and other courts
- (5) Travelers checks

3. Beginning Daily Balance

- a. At the beginning of each day, cashiers receive a nominal amount of money (e.g., \$50 in currency and coin) to enable them to return change on cash transactions. These funds are secured in individually locked cash boxes. Cashiers must verify their beginning cash balance with their supervisor. Any cash discrepancies (i.e., cash box does not contain \$50) must be resolved before the cashier starts their daily cash collection duties.
- (1) Check with the Accounting Department to verify if an overage or shortage occurred in the previous working day's deposit.
 - (2) If the discrepancy is not found, the supervisor must fill out the appropriate Financial Control Form.
- b. If change from the bank is needed, the employee should fill out the change envelope, include the appropriate cash amount equal to the change request and notify the runner that change is needed. After the runner returns with the change, the employee should verify all of the change including opening the coin wrappers.
- c. Additionally, a separate "Change Fund" (e.g., \$150) will be maintained for the exclusive purpose of providing small denomination currency and coins

(change) to cashiers in exchange for large denomination currency they receive throughout the day (this is not a petty cash fund). At the end of the business day, the “Change Fund” custodian, in the presence of the Judicial Manager, should verify that the “Change Fund” monies balance.

4. Cash Handling Procedures

Cash control procedures are of primary importance to court management and aide in avoiding losses. The fundamental rules for controlling cash receipts include the following:

a. Organizationally:

- (1) Designate specific responsibility for custody of cash funds during the workday and for securing cash in a safe, vault, or other secure storage place overnight.
- (2) Limit responsibility for receiving cash to as few people as possible.
- (3) Separate cash handling from record keeping. Responsibilities for collection and deposit preparation should be segregated from those involving the recording of cash receipts into court accounting records and permanent court record entries.
- (4) Have bank reconciliation prepared by persons not responsible for handling daily cash transactions.

b. Receiving Payment

- (1) When cash is received at the public windows, count it out loud in the presence of the customer.
- (2) Any cash transactions exceeding \$200 must be verified by a supervisor.
- (3) Employees must utilize their cash boxes for change.
- (4) When change is needed beyond the amount in the employee’s cash box, the employee should request a change transaction through a supervisor from the “Change Fund” drawer.
- (5) Cash receipts should be recorded into FACTS immediately using the Receipting Calculator.

- (6) Money must not be put in the cash box until after a receipt is issued and the correct change is given to the customer.
- (7) If a customer disputes the amount of change tendered at the counter, the cashier shall ask a supervisor for assistance immediately.
- (8) Cashiers shall not return a disputed amount without a supervisor's approval.
- (9) Payments involving relatives, other employees, or personal friends shall be given to the supervisor for re-assignment.

c. Depositing Revenue

Prior to deposit, cash receipts should be secured in a cash box, vault, safe or locked cabinet to which only specifically authorized personnel have access. Cash boxes should be used for official court business only (i.e., the collection of fees, fines and penalties, etc.), never to make change for personal use.

5. Check/Money Order/Cashier Check Handling Procedures

- a. When a check, money order or cashier's check is received at the public window or in the U.S. mail, the following shall be verified before accepting payment:
 - (1) The name of the customer must be imprinted on the check.
 - (2) Numeric and written dollar amounts must match.
 - (3) Checks must be signed by the customer.
 - (4) Checks must be dated for the day they are written. Post-dated checks are not accepted.
 - (5) Two party checks are not accepted.
 - (6) Checks must be written for the exact amount due. No change shall be made on payments made by check.
 - (7) Checks must be made out to the Magistrate Court.
 - (8) Receipt number(s) shall be written on checks.
 - (9) Corrections made by the customer must be initialed by customer, not just crossed out and rewritten by the clerk.
 - (10) All checks must be restrictively endorsed immediately upon receipt (e.g., Use the "For Deposit" stamp).
- b. Checks received by the court for which the payee line is blank or that are made payable to another state agency may be stamped, endorsed and deposited by

the court when they are verified by a supervisor to be a proper payment to the court, otherwise they must be returned to sender.

6. Dishonored Payments (checks returned to the court)

- a. The court has no authority to add a charge to fines and fees owed by any person submitting a check that is returned by a bank, nor may the court pass on fees charged to the court by the bank or financial institution.
- b. The judge may decide that the court will refuse to take personal checks from a person whose check has been returned for insufficient funds and may prescribe a different method of payment.

7. Receipts

- a. All payments to the court must be acknowledged by a sequentially numbered receipt. Receipts issued by the court should provide information sufficient to create an adequate audit trail that ensures proper distribution of the monies received including:
 - (1) Receipt number.
 - (2) Date of payment.
 - (3) Case number.
 - (4) Amount received.
 - (5) Received from.
- b. The court shall keep a record of all receipts issued.
- c. Receipts for payments received in the mail shall be sent to the customer only if a stamped, self-addressed envelope is included with the payment.

8. Void Transactions

Transactions that must be voided require the approval of a supervisor. When notified by a cashier, the supervisor is responsible for reviewing and approving the void transaction. All void receipts should be retained, not destroyed, and forwarded to the Accounting Department.

9. Backup Procedure for Automated Systems Downtime

- a. In the case of a failure of the automated accounting system, pre-numbered receipt books will be issued by the supervisor or designated employee. A handwritten receipt shall be given to the customer and a copy of the receipt is clipped to the payment, and a copy shall be retained by the court.

- b. Payments processed during down time shall be kept separate from money processed through the system. Money, receipts and case files will be kept together in a designated secure place.
 - c. Handwritten receipt transactions must be processed as soon as possible after the automated system is restored. The transactions must be recreated in the system from the handwritten receipts before the money can be transferred to the cash box.
10. Daily Balancing and Closeout by Supervisor
- a. At the end of the workday, all cashiers must have their supervisor balance their cash box to the Banking Report and Daily Cash Receipt Log. Cashiers may not leave the premises nor transact new business until daily balancing and closeout are complete.
 - b. Balancing and closeout includes completing and signing the Daily Cash Receipt Log, turning in the Banking Report with the money collected, and any necessary Financial Control Form(s) to the Accounting Department.
 - c. If the Accounting Department is not accessible, the daily collections must be locked in a safe, vault, or secure cabinet overnight.
11. Shortages and Overages
- a. A supervisor should verify cash boxes and report overages or shortages to the Judicial Manager and the Accounting Department immediately. Overages and shortages must be handled separately, never combined or netted together to balance. A Financial Control Form must be completed and signed by the responsible cashier explaining the events that occurred and turned in to the appropriate supervisor with the Daily Cash Receipt Log and Banking Report.
 - b. If overages or shortages occur employees or supervisors are not allowed to supplement the shortage with cash or remove the overages to force balance.
 - c. All overages or shortages should be recorded into a separate log to maintain an audit trail of these amounts.
 - d. Supervisors will monitor all reports of overages and shortages to determine if there is a pattern meriting further investigation, modification of collection procedures, retraining of personnel, or disciplinary action.

12. Payments Received Through the Mail

- a. Checks and money orders received through the mail should be processed on the day they are received. Any exceptions are to be brought to the attention of a supervisor, placed in a locked area and processed on the next business day.
- b. The following steps should be followed in the opening the mail and processing the payments received:
 - (1) Checks and money orders received through the mail should be processed on the day they are received and listed on a cash receipts log sheet.
 - (2) The Daily Cash Receipts Log sheet should include the following information:
 - (a) Receipt number.
 - (b) Regular/escrow.
 - (c) Check amount.
 - (d) Check number.
 - (e) Date received.
 - (f) Name of the person handling the check.
- c. Receipts for payments received in the mail shall only be sent to the customer if a stamped, self-addressed envelope is included with the payment.

13. Handling Counterfeit Currency

The following procedures are to be followed for the handling of counterfeit currency.

14. Training

As soon as practicable after hiring all cashiering staff and their supervisors shall be trained in the handling of counterfeit currency.

15. Identification

At a minimum, cashiering staff must test all \$20, \$50 and \$100 bills for possible forgery. Testing will be done by observation, and by applying water to the thumb or forefinger and rubbing across the bills. Every member of the cashiering staff should be provided with a counterfeit detection pen, which should be used to test for counterfeit bills. If the ink changes color, this indicates a potential counterfeit.

16. Confiscation

Each cashier who receives currency suspected of being counterfeit should contact his or her supervisor immediately. The supervisor will then assume all responsibility associated with completing the transaction.

17. An employee's failure to comply with these procedures can result in disciplinary action up to and including termination and/or criminal prosecution.

FINANCIAL CONTROL FORM

TO: ACCOUNTING DEPARTMENT

FROM: _____

DATE: _____

SUBJECT: CASH DRAWER OVERAGE OR SHORTAGE

On _____, _____ and _____
(Balancing Date) (Supervisor #1 Signature) (Supervisor #2 Signature)
attempted to balance my drawer for transactions run on _____, and
(Transaction Date)

discovered that there was an: (Please check the appropriate box)

Overage; or

Shortage

of \$ _____. Below is a description of what I remember on that day:

FOR THE ACCOUNTING DIVISION ONLY

- The above listed overage was confirmed.
- The above listed shortage was confirmed.
- The above listed overage or shortage was found and the drawer is deemed to be in balance.

Certifying Accounting Employee

Date

cc: Accounting
Judicial Manager
(Original is placed with the Deposit)

11.3 Daily Deposits: Segregation of Duties - NMSA 1978, §35-7-3.

A. At the close of each business day, the Magistrate Court clerk(s) are required to:

1. Balance the banking report to the distribution report and note any discrepancy (total deposit for each banking report should agree with the grand total for each distribution report, less surety bonds, bond conversions and forfeitures.)
2. Account for all receipts by number sequence. An explanation for any receipt missing from the day's sequence should be attached to the daily deposit with a supervisor's signature or the signature of the chief clerk.
3. The cash drawer assigned to each clerk shall be balanced by that clerk. The monies and the daily report for each clerk's assigned drawer shall be balanced and given to the chief clerk or the designee of the chief clerk to verify the deposit.
4. The chief clerk or the designee of the chief clerk shall prepare the daily deposit and the daily financial report.

The Daily Report should include:

- a. Daily FACTs Report Cover Sheet (including a statement identifying any overages or shortages for that day)
 - b. Banking Report with explanations of voided or receipts out of sequence
 - c. Event Distribution
 - d. Receipt Edit Report
 - e. Allocate and Print Fees Report
 - f. Voided Receipts
 - g. Validated deposit slip received from the bank
5. All daily reports shall be submitted as part of the monthly report.

B. Requirements for the handling of incoming mail (Chapter 11, Section 11.2, D.12):

1. The incoming mail function shall be separated from the cash receipting function.
2. A clerk of the court should be assigned to open the mail. All mail shall be opened, date stamped and filed daily.
3. Money received in the court via the mail shall be logged on a Mail Receipt Log identifying the date, the clerk opening the mail, the case number the money is to be applied to, the check and/or money order number and the amount of money received.

4. The clerk opening the mail shall total the amount of money received in the mail for the particular day and initial the amount. A copy of the mail log shall be given to a different clerk to receipt the money into the FACTs™ Case Management System. The receipting clerk shall initial the log verifying the total amount of money received from the mail clerk to be receipted for that particular day.
 5. The court shall keep copies of its mail logs in a file by fiscal year, separated by month. In addition, the court shall include the original mail log in the monthly report.
- 11.4 Daily Deposits: Substitute Procedures for Segregation of Duties in Courts with Less Than Two Full-Time Clerks
- A. Several courts have only one or one and one-half clerks assigned to the court. Without a minimum of two full-time clerks working in the court each day, it is not possible to segregate all financial responsibilities. To the extent two clerks are present in the court (for example, one full-time and one half-time clerk), the court should follow the procedures in Section 11.2. If it is not possible to follow the procedures in Section 11.2, these procedures should be utilized.
 - B. To minimize the potential for theft and fraud, and to segregate the daily deposit responsibility, any court that finds themselves in a position of limited staff, meaning only one (1) clerk is present at the end of the work day, will be required to utilize the Magistrate Court Daily Deposit Verification Worksheet, Appendix 57.
 - C. The Magistrate Court Daily Deposit Verification Worksheet is designed to assist the courts with the verification of the daily deposit.
 1. The Originating court will be required to complete the following when preparing the daily deposit:
 - a. Run the daily balancing report.
 - b. Prepare the deposit slip.
 - c. Fill out the Segregation of Duties - Daily Deposit/Mail Log Verification portion of the form.
 - d. Fax the Magistrate Court Daily Deposit Verification Worksheet, the mail log, the banking report, and the prepared deposit slip to a second court for verification - prior to depositing.

2. The Verifying court will be required to complete the following:
 - a. Review the originating court's banking report, mail log, and deposit slip to ensure the deposit is accurate. Also, be sure to note if any incoming payments received in the mail are not listed on the banking report or the deposit slip.
 - b. Fill out the verification portion of the Segregation of Duties - Daily Deposit/Mail Log Verification form to confirm the deposit accurately reflects the receipting activity on the banking report. If the deposit slip is not accurate, the verifying court is required to note any shortages/overages or make any necessary comments to the originating court for correction.
 - c. Fax the worksheet back to the originating court in a timely manner to ensure the originating court can make its daily deposit within the required 24 hour time period.

After the Originating court has corrected all errors and receives final verification, court staff may proceed to the bank to make the daily deposit. If the person making the deposit is not the verifier or preparer, the person shall count the money again before making the deposit.

- D. Upon return to the court, the originating court will be required to fill out the Deposit Slip Receipt Verification portion of the worksheet and fax it with the daily deposit receipt from the bank to the verifying court to confirm the correct amount was deposited.
- E. The Verifying court will be required to:
 1. Review the faxed bank deposit receipt from the bank and confirm that it matches the amount on the original deposit slip.
 2. Fill out the verification portion of the worksheet and fax back to originating court.
- F. Both the originating court and the verifying court will be required to maintain the fully completed worksheet and fax confirmations sheets. Be sure to staple the confirmation sheets to the appropriate worksheet.
- G. Originating courts will attach the fully completed worksheet and fax confirmation sheets to their daily deposit. These daily deposits (with all attachments) are to be included in the monthly report.
- H. Verifying courts will maintain a file of their fully completed worksheets and fax confirmation sheets on a monthly basis. These files are to be kept separate from their own court's monthly report, but shall be mailed to the Administrative Office of the Courts/Fiscal Division on a monthly basis.

Magistrate Court - Daily Deposit Verification Worksheet

Originating Clerk (Please Print Name)

Verifying Clerk (Please Print Name)

Originating Court:

Verifying Court:

Step #1: Run Daily Balancing Reports	Step #1: Review Banking Report and Mail Log. Match to Deposit Slip.
Step #2: Prepare Deposit Slip	Step #2: Fill out worksheet below. Be sure to note any problems or comments.
Step #3: Fill out the worksheet below and fax with Banking Report, Deposit Slip and Mail Log	Step #3: Fax confirmation back to court.
Step #4: Attach fax confirmation to this worksheet	Step #4: Attach fax confirmation to this worksheet.
Step #5: After you receive final confirmation, take deposit to the bank.	

Repeat Steps 1-4 as many times as needed.

SEGREGATION OF DUTIES - DAILY DEPOSIT/MAIL LOG VERIFICATION

Daily Deposit Date:	Verification Date:
Daily Deposit Amount:	Amount Verified:
Shortage/Overage:	Shortage/Overage:
Comments:	Comments:
Signature:	Signature:

AFTER YOU OBTAIN A DEPOSIT RECEIPT FROM THE BANK

Step #6: Fill out the bottom portion of the form. Fax worksheet and the deposit receipt from the bank to the verifying court	Step #5: Review faxed bank deposit receipt and confirm it matches the original banking report and deposit slip.
Step #7: Attach fax confirmation to worksheet.	Step #6: Fax completed worksheet to originating court and attach fax confirmation to completed worksheet.
Step #8: Attach completed worksheet and fax confirmation sheets to daily deposit.	Step #7: Mail all verification worksheets/fax confirmation sheets monthly to AOC/Fiscal Division.
Step #9: Mail all verification worksheets/fax confirmation sheets with your monthly report.	

Confirm Amount Deposited:	Date Deposit Receipt Received:
Signature: _____	Deposit Amount Verified:
	Signature: _____

11.5 Deposit of Monies

- A. In order to safeguard against loss or theft, courts shall deposit all monies within 24 hours. If overnight deposits are available at your banking facility, make a deposit at the end of the business day. Courts unable to reach a banking facility at the end of the business day are excepted from this requirement. Please contact the Administrative Office of the Courts to determine if your court is exempt from this procedure. NMSA 1978, §35-7-5(B).

If the money cannot be deposited until the following day, make a note on the bank deposit slip. In the event the money or change fund is held at the court over night, it must be secured in the safe. The safe must be in a secure place and kept locked at all times.

- B. Monies not Readily Identifiable.

Any money received in the mail, which is not readily identifiable (as to defendant or docket number), must be receipted and deposited in the regular course of business. The unidentified funds should be deposited into “miscellaneous” and a short explanatory note must be sent with a copy of the deposit to the Administrative Office of the Courts Fiscal Services Division. The Fiscal Services Division staff will need all available information pertaining to the money that cannot be identified (social security number, address, telephone number, etc.). If possible, provide the Fiscal Services Division staff with a photocopy of the check or money order. A copy must be kept at the court in a file for “unidentifiable monies received.” When the payment is identified contact fiscal services at the Administrative Office of the Courts for further instructions. Refer to Supreme Court Policy Directive #1.

Money received in the mail which is owed to the court but is payable to an agency other than the magistrate court shall be sent back to the defendant (accompanied by a letter requesting the defendant to issue a new check to the magistrate court).

If the defendant pays monies owed the magistrate court to another agency, the court should contact the agency and request that the agency transfer to the court those monies owed. The case shall remain open until all obligations ordered by the court are fulfilled.

- C. Overages. Chapter 15, Supreme Court Policy Directive #3, Relating to Overages/Shortages in Monies Collected.
1. Whenever overages occur, the overages amount collected must be receipted and deposited with regular daily receipts. Any excess money received shall be receipted and deposited in the regular course of business. A letter explaining the overage from the magistrate judge must accompany the next regular report to the Administrative Office of the Courts Fiscal Services Division and the Administrative Office of the Courts Internal Auditor.

2. Overages that the court cannot link to a specific case must be receipted as a miscellaneous over payment, FACTs event code 172.

D. Shortages.

1. The court shall notify Administrative Office of the Courts Fiscal Services Division immediately in the case of any single shortage of five dollars (\$5) or more or repeated shortages of any amount. All shortages, whatever the amount, shall be identified in the monthly report.
2. A letter from the clerk whose cash drawer was short and a letter from the magistrate judge describing the circumstances surrounding any shortage must be filed with the Administrative Office of the Courts Fiscal Services Division and the Administrative Office of the Courts Internal Auditor.
3. Magistrate court staff shall not utilize personal cash to balance the daily deposit shortages. Generally Accepted Accounting Standards (GAAS) considers this practice unethical. This practice is strictly prohibited by the Administrative Office of the Courts. Personal cash or checks shall at no time be commingled with Administrative Office of the Courts monies. Commingling personal funds with funds of the magistrate court is a misdemeanor. NMSA 1978, §35-7-5(A).
4. If the aggregate total of all shortages for any magistrate court exceeds fifty dollars (\$50) during any one fiscal year, or if the number of recorded shortages during a fiscal year exceeds five (5) shortages even though the fifty dollar (\$50) limit is not breached, the Director of the Administrative Office of the Courts may request that the Administrative Office of the Courts internal auditors perform an audit of the financial records of the court. A formal response to all audit findings will be required from the presiding magistrate.

E. When preparing deposit slips, document cash total and list individual checks by payor name. Reconcile the daily Banking Report to the daily deposit slip, total cash and individual checks.

F. The clerk making the deposit shall obtain a deposit slip that has been validated by the bank. The slip shall be attached to the daily banking report.

11.6 Cash Bonds

A. Criminal Bail Receipt and Cash Bond Conversion Receipt Book.

The Criminal Bail Receipt and Cash bond conversion receipt book must be used when cash bonds are posted. The bond receipt book shall be used by the Adult Detention Center when

accepting cash bonds. If your Adult Detention Center accepts bond the court shall supply the Detention Center with the bond receipt books. It is the responsibility of the Chief Clerk to keep track of the bond receipt books and verify the numerical sequence.

1. When receipting cash bonds (cash, cashier's check or money order) the Criminal Bail Receipt and Cash Bond Conversion book shall be used to receipt the bond. This bond receipting book shall be used to receipt ANY BOND i.e. cash bond, appeal bond, supersedeas bond, out of county bond, bond forfeiture etc. The bond receipt shall be completed, in its entirety. The clerk completing the bond receipt shall ask the individual posting the bond and the defendant for a TELEPHONE NUMBER. A mailing and physical address and a copy of a drivers license shall be obtained from the individual posting the bond.
 - a. The person paying the bond should designate whether he/she agrees to permit the bond money to be converted to pay any fines, fees or costs the Court may order the defendant to pay after defendant's release from custody
 - b. If the defendant was arrested on a bench warrant for failure to appear or failure to pay, the defendant may post bond and enter a plea of guilty or no contest (if a plea is required) and request the court to convert the bond in lieu of a court appearance. If the bond is not sufficient to cover the maximum fine and cost, the defendant should be advised the court may mail them an agreement to pay, which they will be required to sign and return to the court.
 - c. The white copy of the receipt shall be given to the defendant. The Yellow copy of the receipt shall be retained in the defendant's court file and the pink copy should remain in the Bond Receipt Book.
 - d. The Bond Receipt Book shall be used to receipt all magistrate or metropolitan court bonds, and not just bonds for the county in which the detention center is located.
2. All magistrate courts shall accept out of county magistrate or metropolitan court bonds, or bonds from another magistrate court in the same county, and forward them to the appropriate magistrate court. The Criminal Bail Receipt and Cash bond conversion receipt book should be used by the Court when receipting an out of county bond. The white copy shall be given to the defendant and the yellow copy of the receipt is forwarded to the court along with the bond check.

If a money order or cashier's check is used, the clerk should require the money order or cashier's check be made payable to the court with jurisdiction and mail the check or money order to that court. Also attach a copy of the release order.

3. The Criminal Bail Receipt and Cash bond conversion receipt book should be used by the court when a Surety bond has been forfeited and the Bonding Company pays on the Default Judgment on Cash Bond. The white copy shall be given to the Surety Bonding company and the yellow copy is retained in the court file.
- B. The court shall review its outstanding Cash Bond Report on a monthly basis to ensure that appropriate action is being taken on the cases. For example, outstanding bonds should be refunded, converted or forfeited.
1. Action to remove bonds from the cash bond record should be timely. Generally, bonds should be removed from the cash bond record within six months. However, the judge has discretion to order that a bond shall be retained after six months. If the crime is a felony, and no changes have been filed in district court, the bond should be removed from the cash bond record after twelve (12) months. NMRA 6-406A.
 2. The chief clerk shall briefly summarize on the monthly report why each bond older than six months still appears on the list.
 3. The judge's signature on the cover sheet of the monthly report will verify that the judge has reviewed the outstanding bond list and the list correctly states the status of each bond.
- C. After the court has determined that a cash bond is to be returned to the payor, the court shall return the bond by issuing the check out of the Trust Account in the amount of the bond. Every attempt should be made to refund the bond immediately. This can be done in person or by mail, to the current address. To avoid audit findings, the court shall obtain copies of the bond receipts from the detention center or jail and verify the name, address and correct amount of the bond. In all cases, the money shall be refunded to the payor (the person who paid the money).
- If the court's check to the payor is returned in the mail, the clerk writes "void" across the face of the check. The clerk also stops payment in FACTs. If the court's check to the payor is mailed out, and not returned, but not cashed within six months, payment must be stopped at the bank and in FACTs on the refund check. In either case, the money shall be transferred to the Administrative Office of the Courts Suspense Fund by separate check using the Stale Dated Suspense Transfer form. A separate check must be submitted for each bond.
- D. If the person who posted the bond dies, and there is no conversion or assignment, the person requesting the refund must provide sufficient proof of heirship or of appointment as personal representative of the decedent. Proof may include Affidavit as Successor in Interest or Order of Appointment as Personal Representative. NMSA 1978, §§45-1-201, 45-1-187, 45-3-103 and 45-3-1201.

- E. Any person seeking to recover a bond that has been transferred to the Magistrate Suspense Fund must contact the Administrative Office of the Courts Fiscal Services Division and provide adequate information to identify the bond. The courts shall not write checks out of the Magistrate Trust Account for bonds that have been transferred to the Magistrate Suspense Fund.
- F. Procedures for Reporting Cash Bonds over \$10,000.

Federal and State Courts are required to report to the IRS cash bonds over \$10,000 received as bail for an individual charged with certain criminal offenses. Such offenses include: Controlled Substances, Racketeering, Money Laundering and other similar state crimes. Cash Payments may be a single transaction over \$10,000 or multiple payments that total more than \$ 10,000 that are applied to the same case for the same individual. Cash Payments include: U.S. Currency, Cashiers Checks, Certified Checks, and Money Orders. (The Magistrate Courts are not to accept personal or company checks from individuals posting a bond - Supreme Court Policy Directive #1.)

The court must follow the procedures below:

1. File IRS Form 8300 by the 15th day after receipt of the payment that causes the amount to exceed \$10,000 in cash. Refer to Appendix 91 for IRS Form 8300.
2. If bond is posted at the court, obtain a copy of the Drivers License of the person posting the bond.
3. You must obtain the correct TIN (Taxpayer Identification Number) of the person who posted the cash bond and the person for whom the post was posted (defendant).
4. File the form with the IRS at:
Internal Revenue Service:
Detroit Computing Center
P.O. Box 32621
Detroit, MI 48232
5. Mail a copy of the IRS Form 8300 to each person posting the cash bond payment by January 31 of the year following the calendar year in which the cash bond payment is received.
6. Mail a copy of the IRS Form 8300 to the Internal Auditor at the Administrative Office of the Courts and retain a copy at the court.

11.7 Agreement to Pay Court Costs and Fines

- A. The clerk prepares an "Agreement to Pay the Fine (and Court Costs)," after judgment. If the defendant is unable to pay in full the fines and other costs, an agreement must be signed advising if payment will be in community service or in money. NMRA 9-605, NMSA 1978, §31-12-3.

Payment shall be receipted in accordance with the receipting procedures.

- B. Community service is regarded as an amount due to the court. Community service is considered as a receivable. Upon completion of community service, an "Adjustment of Fines Order," Administrative Form 1.10, must be submitted to the Administrative Office of the Courts accounting staff in order to apply a noncash adjustment to the account. When the court adjusts the fines and fees, or allows community service to be performed in lieu of costs and fees, or if the court allows jail in lieu of fines and fees, the court must use the Adjustment of Fines Order, and a copy must be placed in the physical case file.

Note: Case Management Application tracks adjustments on Community Service.

Refer to Chapter 15, Supreme Court Policy Directive #7, Relating to Acceptance of Partial Payments of Fines and Costs (Federal minimum wage is paid for community service).

Refer to Chapter 13, Administrative Form 1.10, Adjustment of Fines Order.

- C. Policy Relating to Acceptance of Partial Payments of Fines and Costs.

State Law prohibits a magistrate's suspension or waiver of any fee or cost, other than the warrant enforcement fee. State law also imposes a number of mandatory fines, which may not be suspended or waived. All fees, costs, and mandatory fines must be collected or converted to community service or jail time.

Although there is statutory authority that allows a convicted criminal defendant to pay all fines, fees, or costs assessed in partial payments, an Agreement to Pay imposes significant additional administrative and accounting burdens on the court system. Consequently, the circumstances under which Agreements to Pay may be allowed are limited as follows:

A defendant owing \$100 or less is not eligible for an Agreement to Pay; the magistrate may not extend the time for full payment beyond thirty (30) days from the date of sentence or from the date defendant is released from jail, if jail time is part of the sentence.

A defendant owing more than \$100 may be allowed to pay through an Agreement to Pay; however, the magistrate may not allow for payment at a rate less than \$50 per month.

If the defendant fails to make a payment pursuant to the Agreement to Pay, an Order to Show Cause shall be issued requiring the defendant to appear before the court to determine the reason the defendant failed to pay as agreed. If a defendant fails to appear at the scheduled Order to Show Cause hearing, or satisfy the delinquent payments, a bench warrant shall be issued. If a defendant appears at the scheduled Order to Show Cause hearing and the court finds that the defendant is financially unable to pay the assessed fines, fees, or costs, the defendant shall be ordered to perform community service to be performed at a rate of at least 40 hours per month.

Note: The exception will be for deceased persons. Refer to Chapter 5.

There may be cases where the defendant performs only a portion of the community service or is in jail for a period of time and then decides to pay the remainder in full. In this situation, the portion of community service performed or jail time served and the money received shall be computed pursuant to Chapter 15, Supreme Court Order 99-8500, Policy Directive #7. An adjustment of fines and fees order must be signed by the judge and filed in the case file.

D. Jail Time in Lieu of Fines/Fees

1. Per the Supreme Court Amended Order, dated June 18th, 2003, when jail time served is performed in lieu of payment, it shall be applied to the assessed fines/fees in reverse order of actual monetary payment to the courts.
2. **USE THIS PROCEDURE-** After a defendant has been sentenced to financial assessment and the judge has ordered that jail time has been served in lieu of all or part of their obligation.

a. Go to **CASE DOCKET SCREEN-**

From the Case Docket screen enter event code 5799 JAIL IN LIEU OF , and enter descriptive text that specifically states what the Judge has ordered , i.e., that the defendant may perform X number of days in jail in lieu of the fines/fees and/or has served X number of days in jail in lieu of fines/fees.

b. When the court receives notification that the jail time has been served:

c. On the **CASE DOCKET SCREEN-**

Docket event code 5800 JAIL COMPLETED IN LIEU OF

d. On the **CASE FINANCIAL DOCKET SCREEN - -**

Docket adjustment events (event code range 300 ADJ:) to offset the assessment of the fines and fees that the defendant was sentenced to pay, calculating the adjustment amounts at the current minimum wage rate of

\$5.15 per hour of jail time served (maximum per day is 8 hours/ 8 X \$5.15= \$41.20 per day, amount is rounded for 8 hours or one day to the nearest dollar = \$42.00). Adjustment against assessments should be made in the following order:

- (1) 337 ADJ: FINE
- (2) 314 ADJ: BENCH WARRANT FEE
- (3) 82 ADJ: DOMESTIC VIOLENCE TREATMENT FEE
- (4) 390 ADJ: BRAIN INJURY FEE
- (5) 331 ADJ: JUDICIAL EDUCATION FEE
- (6) 329 ADJ: DUI PREVENTION FEE
- (7) 334 ADJ: TRAFFIC SAFETY FEE
- (8) 328 ADJ: CORRECTIONS FEE
- (9) 333 ADJ: SUBSTANCE ABUSE LAB FEE
- (10) 332 ADJ: DUI LAB FEE
- (11) 306 ADJ: MAG FACILITIES FEE
- (12) 330 ADJ: AUTOMATION FEE
- (13) 327 ADJ: CRIMINAL COURT COSTS

e. on the Case Financial screen enter the appropriate adjustment event code in the Action Code field, FI to look up-Select P (Allocation Adjustment) in the Action Date field, enter the date you are making the adjustment in the Party field, enter the correct party type and number.

- (1) in the Adjustment field, enter a Y for (yes to adjust)
- (2) in the Amount field, enter the amount of the adjustment (enter amount in a negative dollar amount)
- (3) enter descriptive text
- (4) Click on SAVE

Note: If a person serves part of a day the person is still credited eight (8) hours. As long as the person was booked before midnight, he or she should get credit for that day. So, if a person is in jail at 11:59 p.m. on December 31st, he or she receives credit of eight (8) hours \$42 for the night of December 31st. You need to give credit per calendar day and not per hour. Maximum amount per calendar day is eight (8) hours or \$42. This amount will change each time the federal minimum wage law changes.

Example:

JAIL TIME IN LIEU OF FINES/FEES

A defendant is sentenced and owes \$200 in fine and \$80 in fees. The defendant completes three (3) days of jail time in lieu of monetary payment. When notification is received that three (3) calendar

days of jail time has been served (three (3) days of jail time or 3 X \$42 per day=\$126), docket the following events:

CASE DOCKET

5800 JAIL COMPLETED IN LIEU OF

CASE FINANCIAL DOCKET

337 ADJ: FINE in the amount of -\$126 (add descriptive text stating jail time was served in lieu of the \$126 fine)

Note: For the order in which the adjustments are done, refer to NMSA 1978, §31-12-3(A) . The defendant still owes a balance of \$74 towards the fine and \$80 towards the fees.

E. Community Service in Lieu of Fines/Fees, Magistrate Court Procedure.

Note: Per the Supreme Court Amended Order, dated June 18th, 2003, when community service is performed in lieu of payment, it shall be applied to the assessed fines/fees in reverse order of actual monetary payment to the courts.

1. USE THIS PROCEDURE- After a defendant has been sentenced to financial assessment and the judge has ordered that community service may be or has been performed in lieu of all or part of their obligation.
 - a. Go to CASE DOCKET SCREEN- -
From the Case Docket screen enter event code 5712 COMMUNITY SERVICE IN LIEU OF, and enter descriptive text that specifically states what the Judge has ordered , i.e., that the defendant may perform X number of community service hours in lieu of the fines/fees.
 - b. When the court receives notification that the community service has been completed:
 - c. On the CASE DOCKET SCREEN- -
Docket event code 5706 COMMUNITY SERVICE COMPLETED
 - d. On the CASE FINANCIAL DOCKET SCREEN - -

Docket adjustment events (event code range 300 ADJ:) to offset the assessment of the fines and fees that the defendant was sentenced to pay, calculating the adjustment amounts at the current minimum wage rate of \$5.15 per hour of community service (rounding the amount to the nearest

dollar). Adjustment against assessments should be made in the following order:

- (1) 337 ADJ: FINE
- (2) 314 ADJ: BENCH WARRANT FEE
- (3) 82 ADJ: DOMESTIC VIOLENCE TREATMENT FEE
- (4) 390 ADJ: BRIAN INJURY FEE
- (5) 331 ADJ: JUDICIAL EDUCATION FEE
- (6) 329 ADJ: DUI PREVENTION FEE
- (7) 334 ADJ: TRAFFIC SAFETY FEE
- (8) 328 ADJ: CORRECTIONS FEE
- (9) 333 ADJ: SUBSTANCE ABUSE LAB FEE
- (10) 332 ADJ: DUI LAB FEE K. 306 ADJ:
- (11) MAG FACILITIES FEE L. 330 ADJ:
- (12) AUTOMATION FEE M. 327 ADJ:
- (13) CRIMINAL COURT COSTS

on the Case Financial screen enter the appropriate adjustment event code in the Action Code field, Fl to look up-Select P (Allocation Adjustment) in the Action Date field, enter the date you are making the adjustment in the Party field, enter the correct party type and number in the Adjustment field, enter a Y for (yes to adjust) in the Amount field, enter the amount of the adjustment (enter amount in a negative dollar amount) enter descriptive text
Click on Save

e. **Example:**

COMMUNITY SERVICE IN LIEU OF FINES/FEES

A defendant is sentenced and owes \$139 in fines and fee. The fine is \$100, the brain injury fee is \$5, the automation fee is \$10, the correction fee is \$10, the traffic safety fee is \$3, the mag facilities fee is \$10 and the judicial ed fee is \$1. Then, because of hardship, the Judge says they can complete twenty-one (21) hours of community service in lieu of monetary payment. Docket event code 5712 COMMUNITY SERVICE IN LIEU OF on the Case Docket screen, add descriptive text that specifically states what the Judge has ordered. When notification is received that twenty-one (21) hours of community service was performed (twenty-one (21) hours of community service X \$5.15= \$108.15 this is rounded to the nearest dollar \$109), docket the following events:

f. CASE DOCKET

5706 COMMUNITY SERVICE COMPLETED

g. CASE FINANCIAL DOCKET

337 ADJ: FINE in the amount of -\$100 (add descriptive text stating community service was performed in lieu of the \$100 fine) .

390 ADJ: BRAIN INJURY FEE in the amount of -\$5 (add descriptive text stating community service was performed in lieu of the \$5 brain injury fee).

331 ADJ: JUDICIAL EDUCATION FEE in the amount of -\$2 (add descriptive text stating community service was performed in lieu of the \$2 judicial education fee).

334 ADJ: TRAFFIC SAFETY FEE in the amount of -\$2 (add descriptive text stating community service was performed in lieu of the \$2 traffic safety fee).

F. The clerk must maintain a tickler system in order to determine when a payment is due. Refer to Chapter 4, Section 4.2 for information on the “tickler”.

G. If the defendant fails to pay, the judge will direct the clerk regarding further enforcement options. Refer to Chapter 5, Section 5.51 for Failure to Pay instructions.

H. Refer to Supreme Court Order, Appendix 21 for order of payment.

Refer to Chapter 15, Supreme Court Policy Directive #7, Relating to Acceptance of Partial Payments of Fines and Costs.

11.8 Monthly Reporting

Refer to Appendix 58, Monthly Report checklist.

A. The chief clerk or the chief clerk’s designee shall submit the following to Administrative Office of the Courts each month as the court’s monthly report:

1. Allocate & Print Fees Reports;
2. Event Distribution
3. Bank Deposits (bank reconciliation report in FACTs)
4. Cash Bond Account Retrieval (1st to end of month)
5. Cash Bond Account Retrieval (from 1/1/1995 to end of the month) (with an explanation for every bond over six months)

6. Disbursements for the month
7. Checks Written
8. Mail Log
9. Daily Reports with attached validated deposit slip
10. (If any) Daily_Deposit Verification Worksheet(s) from other courts
11. Completed monthly report checklist

**BEFORE SENDING THE MONTHLY REPORT
VERIFY THAT IT BALANCES**

- B. The court shall mail all documents pertaining to the standardized monthly report to the Administrative Office of the Courts within five business days after the close of the month. The court may fax the following portions of the monthly report to the Fiscal Services Division:

1. Allocate & Print Fees Report
2. Distribution Report
3. Outstanding Bond List - (From 1/1/96-6/30/07) (with an explanation for every bond over six (6) months)

Do NOT fax the entire report. The Fiscal Services Division will record the date the fax is received or the date the mailed report is postmarked, whichever is earlier, as the date of submittal of the report.

Each magistrate court shall file a standardized monthly report with the Administrative Office of the Courts not later than the date each month established by regulation of the Director of the Administrative Office of the Courts. The report shall itemize all fines, forfeitures and costs imposed, received and disbursed by the magistrate during the previous month or indicate that none were imposed, received or disbursed. One copy of the report shall be retained by the magistrate. The Administrative Office of the Courts shall audit and adjust each report in accordance with the facts and file the reports in its office for a period of five years. NMSA 1978, §35-7-3.

- C. The Fiscal Services Division of the Administrative Office of the Courts shall prepare the monthly remittance report. The magistrate will then review and certify this report within five working days of receipt of the report. The certified remittance report shall be forwarded to the Administrative Office of the Courts along with the court's monthly remittance check. If the magistrate is unavailable, the clerk shall submit to the Fiscal Services Division an unsigned remittance check to be signed by a duly authorized employee of the Administrative Office of the Courts. If the clerk is sending such an unsigned check, the clerk shall notify the Fiscal Services Division so that the Division may get the check signed promptly. Upon the return of the magistrate to the court, the magistrate will review and certify the report to the Administrative Office of the Courts.

- D. Payments should be postmarked within five working days of the receipt of the remittance report.

Each magistrate court shall pay to the Administrative Office of the Courts, not later than the date each month established by regulation of the Director of the Administrative Office of the Courts, the amount of all fines, forfeitures and costs collected by him during the previous month, except for amounts disbursed in accordance with law. The administrative office shall deposit the amount of all fines and forfeitures with the state treasurer for credit to the current school fund. NMSA 1978, §35-7-4.

11.9 Trust Accounts

- A. In compliance with regulations set forth by the State Cash Manager, magistrate courts cannot open or close trust checking accounts without prior approval of the Administrative Office of the Courts and the Office of the State Cash Manager. The magistrate shall open a trust checking account in one convenient bank insured by the Federal Deposit Insurance Corporation and it shall be opened in the name of:

"Magistrate Trust Account" and shall include the county name, tax I.D. No. 85-6000565, and division number (or numbers for consolidated courts), e.g., _____ County, Division(s) _____ Magistrate Trust Account.

The account shall not contain the judge's name.

- B. The only person authorized to sign checks or other forms related to the trust account is the judge. If the judge is unavailable, the Director of the Administrative Office of the Courts should sign. In single judge courts, an additional Administrative Office of the Courts Division Director may be authorized to sign checks at the discretion of the Administrative Office of the Courts Director. Refer to Supreme Court Order 8000-8500, Appendix 62 for the Supreme Court ruling addressing this issue.

Clerks are not permitted to sign checks, or use the judge's signature stamp on checks, under any circumstance.

11.10 Magistrate Administration; Public Money; Commingling; Trust Fund Bank Account. Refer to NMSA 1978, §35-7-5.

- A. All money collected by a magistrate court in connection with civil and criminal actions is public money of the state held in trust by the magistrate until received by the Administrative Office of the Courts or disbursed in accordance with law. Public money shall not be commingled with personal funds of the magistrate or any other funds.

- B. Every magistrate court shall open a special trust fund checking account in a convenient bank insured by the federal deposit insurance corporation, shall deposit all public money into the account within four banking days after its receipt and shall make all remittances to the administrative office, as required by law, by check on this account.
- C. Any magistrate who violates any provision of this section, or who is the maker of a check representing an amount required by law to be remitted to the administrative office, which check is not honored by the bank upon which it is drawn when first presented for payment for reason of lack of funds, is guilty of misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or both. Any conviction under this section operates as an automatic removal from office and forfeiture of the right to hold any public office for a period of four years from the date of conviction.

11.11 General Requirements Regarding Receipts

If you encounter a situation not covered in this manual, please call the Fiscal Services Division prior to the preparation and disbursement of the receipt.

This section of the manual establishes the guidelines which should be used in the receipting all monies received by the courts. The procedures established in this manual shall be the only method acceptable in the preparation of receipts.

When cash bond receipt books are mailed to a court, the clerk shall verify that the receipt books have been received in good condition. The Administrative Office of the Courts keeps a log of all receipt books issued to the courts. Please notify Administrative Office of the Courts immediately if receipts are lost, destroyed or transferred to another court.

For all monies received, including but not limited to monies received for bonds, Official Receipts are computer generated by the Case Management Application, except when the system goes down. If the system goes down, use the manual receipts provided by the Administrative Office of the Courts. The manual receipts should be secured in the court safe at all times. All courts should have manual receipts in stock for backup. The court should keep track of manual receipts with the Manual Receipts Log. See Appendix 65.

It is generally accepted General Accounting Practice to cross-reference the handling of monies in all possible cases. Have a paper trail to backup your electronic record.

A. Receipting Recommendations.

The following procedures apply to courts with more than one clerk.

1. Incoming mail function should be separated from the cash receipting function.
2. Each clerk shall be allocated a change fund.
3. Each cashier is responsible for balancing their own cash drawer (refer to daily deposit procedures).
4. The payor's name must be on the receipt and a copy must be given to the payor. (The person paying the money is the payor.)
5. If a money order, cashier's check, or any other check is tendered for payment, the clerk shall write the receipt number on the front of the money order or the check.
6. Refer to Case Management Application for proper receipting procedure– Money Management→Receipting.

B. Receipting Bonds.

1. The Administrative Office of the Courts provides bond receipts books to the jail for bond transfers. The documents transferred to the court shall contain the following information:
 - a. Bond amount transferred to the court;
 - b. Signature of the clerk and the detention center employee who conducted the transfer.
2. The court shall establish a procedure which includes one of the following:
 - a. The court shall only accept cashier's checks or money orders for bonds; or
 - b. Two different people shall be involved in receipting bonds—the person who picks up the cash bonds from the jail, and the other person who receipts/verifies the amount received from the jail. It is up to each court to establish a procedure within these parameters.

Note: Courts with only one clerk present are required to follow these procedures only insofar as it is possible to do so.

3. Receipt information shall be entered into the Case Management Application, along with the bond information for each defendant.
4. A copy of the jail receipt, along with Case Management Application receipt, shall be filed in the case file.

C. Voiding Receipts.

1. Only supervisors or supervisor's designee(s) are allowed to void a receipt.
2. All voided receipts shall have an explanation and supervisor or supervisor designee's signature.
3. Voided receipts shall be initialed by the person voiding the receipt.
4. A copy of the voided receipt shall be placed in the defendant's file and a 2nd copy attached to the daily deposit.
5. Once the receipt is voided, issue a new receipt using the original receipt date with the corrected information. On the memo line, record the number of the voided receipt which the new receipt is replacing.
6. Attach the voided receipt and new receipt to the daily deposit and place a copy in the physical case file.
7. When voiding a receipt involves a bond in any way, please contact the Fiscal Services Division.

D. Non-sufficient Funds (NSF).

1. When a check has been returned NSF from the bank, enter the information into the Case Management Application which will void the receipt. Enter the date the bank refused payment on the check. Refer to Case Management Application "NSF" procedures. Money Management → Disbursements → Receipting → Dishonored Payments. (Normally NSF checks will be sent directly to the Fiscal Services Division, who will direct them to the court. If the bank returns NSF checks to the court, the court shall immediately notify the Fiscal Services Division.)
2. The court shall notify the payor by mail of insufficient funds. The court shall require the defendant in writing to bring cash, money order or cashier's check for the amount owed within fifteen days from the date of the court's letter. The court will not re-deposit the check.
3. The clerk files the physical case file in the tickler.

4. When the defendant brings cash or money order, the clerk shall issue a new receipt. Refer to Case Management Application for receipting.
5. If the NSF check is not paid, follow non-compliance procedures in Chapter 5, Section 5.1.

F. Tax Intercept Receipting.

1. Refer to Tax Intercept receipting procedures in Chapter 5, Section 5.1.4.

11.12 Receipting Jury Fee/Juror Costs in Civil Cases

A. Jury Fee.

Either party may demand a trial by jury. The demand shall be made on the complaint if made by the plaintiff and on the answer if made by the defendant, and the court shall collect the jury fee of \$25.00 from the demanding party. Jury fees are only collected for civil cases. In receipting jury fees, refer to Case Management Application for receipting procedures.

The \$25 jury demand fee is **not** refundable.

B. Juror Costs. Refer to NMRA 2-602, Jury Trial.

1. NMSA 1978, §35-8-7(C) requires the party who requests a civil jury trial to pay the costs of the jury, in addition to the \$25.00 jury fee. The juror costs are not assessed against the losing party. All costs collected by the magistrate shall be remitted to the Administrative Office of the Courts, and all jurors shall be paid by the state treasurer in the same manner as other magistrate court expenses are paid. Send to the Administrative Office of the Courts the jury pay sheets and distribution payment vouchers so that Administrative Office of the Courts can process payment for the jurors.
2. Those individuals requesting a jury will be required to pay a \$50 juror deposit at the time that the jury demand fee is paid. The \$50 is receipted through the bond screen. There must be separate receipts for the jury bond deposit and the jury demand fee. The deposit must be collected at the time the request is made. If posted correctly this shall appear on the outstanding bond report until the case has been adjudicated and the monies properly disbursed.
3. If the parties to a lawsuit settle before the trial, the \$50 juror deposit is refunded. The deposit shall be refunded as a "DBS - Civil Jury Deposit" through the bond screen.

4. Usually, juror costs will exceed the \$50 juror deposit. In this situation, the judgment shall indicate on the judgment the additional amount owed to the court based on the juror pay sheet, which party owes the amount, and a date by which payment must be received. A record of the jury pay sheet shall be placed in the case file. Every attempt shall be made to collect the juror costs at the end of the trial. If payment is not received at the end of the trial, set a date for payment and place the file in the tickler system. The \$50 jury deposit shall be transferred to the Administrative Office of the Courts Jury Fund. The Administrative Office of the Courts will continue to make payment to the jurors regardless whether the court collects payment. At the end of trial, use the jury software to request appropriate payment.

11.13 Disbursements - Issuing Checks Through FACTs - Version 5

A. Chief Clerk Responsibility.

The Administrative Office of the Courts has implemented the process of issuing checks through the FACTs Case Management System for the Magistrate Court Division. Courts will no longer process manual checks to refund bonds, overpayments, or submit monthly remittances. To better control the check writing process, chief clerks will be responsible for completing the disbursement process. Shall the chief clerk be unavailable, courts will limit the responsibility of issuing checks through the disbursement process to supervisors and/or lead workers only. Monitoring of the disbursement process will occur and failure to comply with this procedure will be reflected on chief clerk evaluations.

Each court has been provided with a laser printer to facilitate this process. The printer shall be located in or near the chief clerk's office (workstation) and shall not be used as a "community" printer. With limited access to this printer, chief clerks can ensure only checks will be printed on blank check stock and reports, receipts, correspondence, etc. will be printed only on plain paper. If you do inadvertently print a check on plain paper or print a report, receipt, etc. on blank check stock, please follow the appropriate procedures found later in this chapter. Mark the physical check that shall have been used as VOID and mail it with the plain sheet of paper that the check was accidentally printed on. Keep a copy of both sheets in your court for your records.

The chief clerk (or the designee) will be responsible for monitoring the number of checks and deposit slips in stock. Please be sure to reorder checks and deposit slips in a timely fashion by contacting the Fiscal Division in advance to avoid any problems or delays that might occur if you completely run out of checks or deposit slips. The cost of a "rush" order is approximately double the cost of a regular order and please be aware that all charges for checks and deposit slips will be deducted from your court's supply budget.

Chief Clerks are also responsible for the safekeeping of blank checks during business hours and shall ensure all checks are locked in the safe overnight. To account for all used and unused checks, be sure to review check sequence numbers at the beginning and ending of each day to ensure

all checks are accounted for on a daily basis. Any break in check sequence shall be investigated and reported immediately.

B. Printing Checks through FACTs.

Chief Clerks (or designees) shall be the only clerks responsible for printing checks through FACTs. Each check will be an 8 ½ x 11 sheet separated into 3 sections: (1) The check is the very top portion of the sheet; (2) The defendant/payer's check stub is the middle portion of the sheet; (3) The court's copy of the check stub is the very bottom portion of the sheet. After printing the check, the chief clerk shall tear off the very bottom portion of the sheet (court's copy) and place it into the case file for court record. Mail the very top and middle portions of the sheet to the person the disbursement was intended for.

To ensure all financial information is recorded properly in FACTs, you must complete all four (4) disbursement steps on the same day.

1. Do not begin printing checks on one day then return at a later date to post the checks. Doing so will increase the potential for error. Complete all four steps at the same time.
2. You shall always use the current date when printing or posting checks. DO NOT BACKDATE a disbursement.
3. All information entered in the Memo Field will print on the physical check, the check stub, and the court's copy of the check stub. Do not enter social security numbers or any other personal information or case related information that shall be kept confidential.
4. The case number (if applicable) will automatically print on the physical check. Please do not re-enter the case number in the memo fields.
5. When placing checks into the printer, be sure the printed side of the check is facing upward and the top of the check is placed in first.

C. When the Default Check Number Does Not Match the Physical Check Number.

The default check number in FACTs **MUST** match the physical check number.

DO NOT CHANGE THE DEFAULT CHECK NUMBER OR USE CHECKS OUT OF SEQUENCE. IF THE DEFAULT CHECK NUMBER DOES NOT MATCH THE NEXT UNUSED CHECK FROM YOUR CHECK STOCK, STOP HERE. REVIEW YOUR CHECK STOCK AND CHECKS WRITTEN REPORT TO IDENTIFY ANY

DISCREPANCIES. YOU MUST BE ABLE TO ACCOUNT FOR ALL USED AND UNUSED CHECKS. DO NOT CHANGE THE DEFAULT CHECK NUMBER IN FACTS.

D. Stopping Payment on Disbursements While the Check is Still in the Possession of the Court.

1. There are certain instances when the STOP PAYMENT procedure shall be performed on a check that has been disbursed, but is still in the possession of the court; e.g. wrong person, wrong case, wrong amount, created on the wrong screen, system check number and physical check number do not match, etc.

Whatever the situation, the STOP PAYMENT procedure is to be performed only after the final step (POST PRINTED CHECKS) of a disbursement.

If the STOP PAYMENT procedure is performed after the check was printed but before it was posted, the disbursement record will not be written correctly to the database. The disbursement will not appear on the Register of Actions, the Checks Written Report, or the Disbursements Retrieval (Posted) screen, and will seem to be lost in the system.

Other indicators that a STOP PAYMENT procedure occurred out of sequence are:

- a. The STOP PAYMENT DBS and MFN events will appear on the Register of Action but the original disbursement event does not;
 - b. The disbursement can only be viewed by entering the Bank and the Control Number on the View/Release Authorized Disbursements screen.
2. This issue must be resolved, but cannot be corrected solely by the Court. The pertinent information must be provided to JID for research and, when warranted, correction of the disbursement record.

It is strongly recommended that the Court not attempt to re-disburse the funds on the case in question until the initial disbursement issue is resolved.

3. Steps of a disbursement:
 - a. Create the Disbursement; e.g. cash bond refund, miscellaneous, etc.
 - b. Post Authorized Disbursement
 - c. Print Checks
 - d. Post Printed Checks

Note: See Chapter 11, Section 11.13, Paragraph D, for the procedure on stopping payment on checks that have been posted.

E. Procedure when a document or receipt is accidentally written on a check.

1. If the chief clerk (designee) accidentally prints a receipt, report, correspondence, etc. on a blank check instead of plain paper, please follow the procedure below:
 - a. You must create a disbursement in FACTs to account for the check.
 - b. Use the Miscellaneous Disbursement procedure and event code below. Remember to complete all four (4) steps of the disbursement procedure.
 - c. You do not need to enter a case number, only enter the court type and court number.
Example: (M-00).
 - d. On the Payee field, write "Check Processed In Error".
 - e. You will be required to enter a dollar amount to complete the process. Enter only \$1 (one dollar).
 - f. Next complete the Stop Payment procedure below. Mark the check VOID and send it to the Fiscal Services Division with your monthly reports. Be sure to keep a copy for your records. This step shall cancel out the \$1 you entered above.

F. Void Disbursement Procedure.

1. When creating a disbursement (cash bond refund, monthly remittance check, overpayment, etc.), the FACTs Case Management System will issue a unique, sequential Control Number for each transaction. The Control Number is used throughout the disbursement process to post a specific disbursement and to print a check.

The four steps to creating a disbursement are:

- a. Create the Disbursement
- b. Post Authorized Payments
- c. Print Checks
- d. Post Printed Checks

2. If errors are detected during Step 1 or Step 2 of the disbursement process, you can VOID the Control Number by using the Void Disbursement. This means you do not have to complete the 4 step process or issue a check knowing that the information that will print on the check is not correct.

Note: If you have completed Step 3, you must complete Step 4 and issue a STOP PAYMENT on the check number created. You will then need to repeat the 4 step disbursement process.

3. To use the Void Disbursement to VOID a Control Number, go to:

Money Management>Disbursements>DisbursementsJournal>Void Disbursement
Enter the appropriate Bank Number - The same bank number used to create the disbursement.
Enter the Control Number of the transaction you want to void.

Note: Review the information on the screen. Verify this is the control number you want to void. If the payee or the dollar amount is not what you want to appear on the check, answer YES when it asks if you are sure you want to void the transaction. This will void the control number and you will then need to repeat the 4 step disbursement process. However, if the information on the screen is what you want to appear on the check, answer NO and continue with remaining steps of the disbursement process.

ONLY use Void Disbursement on current transactions created on or after October 1 2005.

4. The Print Edit Report can be found in the Disbursements Journal Screen. This report will show you all the transactions / Control Numbers that have been created and are outstanding and all transactions / Control Numbers that have been created and voided.

Note: If you complete Step 1 creating a transaction and it's control number, but you do not void the control number or you do not complete Steps 2, 3 and 4, the control number will still be active in FACTS and must be addressed by the court at least on a monthly basis.

Corrections may require the assistance of JID staff. Prior to voiding any outstanding control number, please review the case file and contact the Help Desk at (505) 476-6911 for assistance.

5. View / Release Authorized Disbursements - Control Number Select

Control Numbers that are outstanding or voided can be seen on the View / Release Authorized disbursements screen by entering the appropriate bank number and F1 in the control number field. Once the disbursement process for an outstanding transaction / Control Number is completed, meaning all disbursement steps have been completed, the Control Number will be removed from the View / Release

Authorized disbursements screen. However, if the Control Number is VOIDED, it will remain indefinitely on the View / Release Authorized Disbursements screen. Please use the View / Release Authorized Disbursements screen in conjunction with the Print Edit Report to track and monitor outstanding control numbers.

G. Stale Dated Refund Checks.

1. Refund checks are issued from Magistrate Courts for the following:
 - a. Cash bond refunds.
 - b. Monthly remittances of fines and fees collected sent to the Administrative Office of the Courts.
 - c. Submission of unredeemed monies sent to the Administrative Office of the Courts Suspense Fund.
2. Submission of Stale Dated Checks to Administrative Office of the Courts Suspense Fund.
 - a. Courts shall review all Outstanding Cash Bond Reports monthly to ensure that appropriate action is taken on the related cases. Outstanding Bonds shall be refunded, converted, forfeited or sent to the Administrative Office of the Courts suspense fund. All bonds over six (6) months shall be reviewed for disposition.
 - b. When a refund check has been issued and is returned to the court due to a wrong address or outdated address, every reasonable attempt to locate the payee shall be made by the court and the check forward to the most current address found. If none is available, after six (6) months of an outstanding status of the check, the refund check shall be sent to the Administrative Office of the Courts suspense fund. This process shall occur during the seventh (7) month of the check's outstanding status.
 - c. If a bond refund check has been issued and is found to be unredeemable by the payee, i.e. the payee has not cashed the refund check within a six (6) month time period, the refund check shall be sent to the Administrative Office of the Courts suspense fund during the seventh (7) month of its outstanding check status.
 - d. Any check issued by the Magistrate Courts which is outstanding for longer than a six (6) month period is considered stale dated and must be remitted to the Administrative Office of the Courts Suspense

3. The following steps must take place by those courts who do not print refund checks directly from FACTs™ when stale dating a refund check and sending it to the suspense fund.
 - a. If the court does not have possession of the physical check issued, place a stop payment at the court's financial institution on the current physical check issued. If the court does have possession of the actual check written, begin the suspense process with step 2.
 - b. Place a stop payment on the check issued in the FACTs™ Case Management System.
 - c. Re-issue the FACTs™ Case Management Check to the Administrative Office of the Courts through the bond transfer process.
 - d. Write a new physical check to the Administrative Office of the Courts for the monies being sent to the suspense fund.
4. Placing a Stop Payment on a Refund Check in FACTs™
 - a. From the Main Menu in FACTs™, click on
MONEY MANAGEMENT
DISBURSEMENTS
STOP PAYMENT (POSTED)
 - b. A STOP PAYMENT screen will open. Fill out the screen in the following manner:
 - (1) ENTER the bank number from which the check was written.
 - (2) ENTER the FACTs™ check number. (This will be different from the physical check number issued.)
 - (3) ENTER Event Code 11 (MFN: STOP PAYMENT). This is the only even code that may be used.
 - c. A message box will pop up on the screen. Verify that the stop payment information is correct. If it is correct, click on "YES". If the information is incorrect, click on "NO" and go back and enter the correct information before proceeding.
 - d. Review the stop payment on the REGISTER OF ACTIONS for the particular case number. Note that the Register of Actions shall reflect the following:

- (1) The original disbursement of the cash bond.
11-18-200201 DBS:CASHBOND \$2500
DISBURSED \$2,500 TO D-1 CK#2549
- (2) A second entry of the cash bond disbursed now reflecting a negative amount of the cash bond.
11-18-2002 02DBS: CASH BOND \$-2500.
STOP PAYMENT FOR BANK 1 CK#002549
ON 11-18-2002 AMOUNT \$2,500 TO D-1
- (3) A new entry showing the stop payment with no dollar amount.
11-18-200203 MFN: STOP PAYMENT \$
STOP PAYMENT FOR BANK 1 CK#002549
ON 11-18-2002 AMOUNT \$2,500
- (4) At this point the first disbursement (Seq. 01 DBS:) of the cash bond has been stopped (Seq. 03 MFN:) and the application has credited the bond money (Seq.02 DBS:) back to the case so that the cash bond money can now be disbursed to the suspense fund.
- (5) The FACTs™ application credits the cash bond money back to the case, the CASH BOND REFUND screen now indicates that the funds are available to be disbursed.

5. Transferring Money to the Administrative Office of the Courts Suspense Fund in FACTs™.

After the Stop Payment has been completed in the FACTs™ Case Management System, the money must now be transferred to the Administrative Office of the Courts Suspense Fund in the FACTs™ Case Management System. This process is done through the bond transfer procedures.

- a. From the Main Menu in FACTs™, click on
CASE MANAGEMENT
PARTY NAME SCREEN

When the money is to be transferred, create a Party on the case called "Bond Transfer" with a Party Type of "BT". The application will assign the party number as the first unused sequential number, usually "1". This will allow the court to transfer the money to another Party, the Administrative Office of the Courts Suspense Fund, other than the defendant or securer.

b. The PARTY NAMES screen will open. Fill out the screen in the following manner:

- (1) ENTER the case number which needs to have the money transferred.
- (2) ENTER the Party Type of "BT". The cursor will move to the number field and default the first unsecured sequential number - usually "1".
- (3) ENTER a "C" in the Party Status field to reflect a closed status. (Tills is not an active party on the case.)
- (4) TAB through the Status Date field. The current date will default.
- (5) PRESS F1 in the Participant ID field. Perform a search to locate the participant id # for the ADMINISTRATIVE OFFICE OF THE COURTS agency.
- (6) TAB twice to see the agency which the money is being transferred to default into the Full Name field.
- (7) ENTER past the Full Name field.
- (8) CLICK on the Save button and minimize or close the Party Name screen.

c. From the Main Menu in FACTs™, click on
MONEY MANAGEMENT
DISBURSEMENT
DISBURSEMENTS JOURNAL
CASH BOND REFUND

Disburse the money to the new BT party that was just created.

d. THE CASH BOND REFUND screen will open. Fill out the screen in the following manner: (On the Cash Bond Refund screen note the two DATE fields. These two DATE fields shall be kept consistent.)

- (1) ENTER the Event Code 482 for DBS: BOND TRANSFER.
- (2) ENTER the Case Number on which the money was posted.

- (3) ENTER the Party Type and number for whom the bond originally posted. Generally this will be D-1. (This is different from the party created to send the money to the suspense fund.)
- (4) ENTER the correct date. The current date will default in this field.
- (5) ENTER the full amount of the cash bond that is to be sent to the Suspense Fund.
- (6) TAB to the next DATE field and enter the correct date. The current date will default in this field.
- (7) ENTER the Participant ID# for the BT Party created in Section A steps 1-9 above on the Party Names screen. This is the party to send the money to the Suspense Fund.
- (8) TAB to the Address field. Enter the address for the Administrative Office of the Courts if it does not default into the fields.
- (9) The Bond Balance field will display the current outstanding bond balance. This balance shall be sent to suspense.
- (10) ENTER the text regarding the money being sent to the Suspense Fund. The physical check number used MUST be included in this text.
- (11) ENTER the Bank Number for the appropriate bank or select the correct bank through the F1 search.
- (12) WRITE down the Control Number issued for this transfer and keep a record of it in the physical case file.
- (13) COMPLETE the disbursement process in the FACTs™ which includes:
 - (a) Posting the Authorized Payment
 - (b) Print the Checks
 - (c) Post the Printed Checks

******* REMEMBER these three steps must be done and must be done in this sequence in order to fully and correctly complete the disbursement of sending the money to the Suspense Fund.**

- e. From the Main Menu in FACTs™, click on

CASE MANAGEMENT
CASE DOCKET

When the Bond Transfer to send the stale dated money to the Suspense Fund is completed, the disbursement is written to the Register of Actions, The default text written on register for this event identifies that the amount was disbursed to D-1 because D-1 is the party for whom the bond was posted. To keep a correct audit trail, the text **MUST BE UPDATED** to correctly reflect the transfer of money to the Suspense Fund.

- f. The EVENT DESCRIPTION window will open. Fill out the screen in the following manner:

- (1) ENTER the Case Number.
- (2) ENTER the Date the transfer was done.
- (3) ENTER the Event Sequence of the money transfer. F1 will allow a search on the docketed events to select the transfer date.
- (4) When the correct Event Sequence is selected, the Event Code 482 DBS: BOND TRANSFER will default in. If not, go back to step 3 and select the correct transfer date.
- (5) TAB through to the Descriptive Data field. A "Y" will be in this field and the cursor will move to the EDIT button. Hit Enter.
- (6) The Event Description window will open. The text in this window will reflect that the transfer was done to D-1. Correct this information by reflecting the money was sent to the Administrative Office of the Courts Suspense Fund.
- (7) CNTL T to save the updated text.
- (8) CLICK on the Save button to save the updated screen.

6. Issuing the check to the Administrative Office of the Courts for monies being sent to the Suspense Fund.

After the Stop Payment has been completed in the FACTs™ Case Management System and the money has >->pen transferred to the Administrative Office of the

Courts Suspense Fund in the FACTs™ Case Management System, the court must write the physical check to go to the Administrative Office of the Courts and complete the Stale Dated Suspense Transfer Form.

- a. Fill out the Stale Dated Suspense Transfer Form, Identify the following information on this form:
 - (1) The Court Name submitting the form
 - (2) The Date the form is completed
 - (3) The physical Check Number and Check Amount being remitted.
 - (4) List each defendant/payee whose money is being sent to the Suspense Fund. Include Address, Date of Birth or Social Security Number, the Case Docket Number, the Number of the Check being Stale Dated and the Stale Dated Check Amount.
 - (5) Once the form is completed, total the amount of money from the defendants/payees listed and fill in the Total Box. This total shall be the amount of the check being remitted to the Administrative Office of the Courts.
 - (6) Make a copy of the Stale Dated Suspense Form for the court's records.
- b. Write the actual check to the Administrative Office of the Courts and mail the check with the Stale Dated Suspense Form to the Administrative Office of the Courts Fiscal Division.

H. Miscellaneous Disbursements - Not Applicable for Bond Refunds.

The MISCELLANEOUS screen is used to disburse a court's monthly remittance check to the Administrative Office of the Courts. The screen can also be used to distribute money due to a Tax Intercept Error, when a Civil Filing Fee is to be refunded, or when fines and fees have previously been paid to the case but it is later determined that they shall be refunded because the case was won on appeal or were not required to be paid initially.

Note: This option creates the refund disbursement. The disbursement type always defaults to Miscellaneous. You may need to change the DSB code to reflect the type of refund you are creating.

1. Main Menu > Money Management > Disbursements > Disbursements Journal > Miscellaneous

2. The first section of this screen, the check "STUB", is to enter descriptive data for each transaction.
 - a. The event code 471 DBS: Miscellaneous will default. (Change as needed)

The Court prefix "M" and Court Location will default. If not, enter the Court and Location and press ENTER.
 - b. If this disbursement is associated with a case, complete the case number field and press ENTER. A lookup table of valid locations and case categories is available by pressing Fl.
 - c. If a case number is entered, type in the party type and number and press ENTER. A lookup table of party codes is available by pressing Fl. The system-assigned participant ID number will be displayed.
 - d. The current date will default. Press ENTER to retain the current date as the transaction date. You can change the date, but you must notify your Field Services Representative of any disbursements that are backdated.
 - e. Enter the amount being disbursed for this event and press ENTER.
3. The second section of this screen, the "CHECK", provides the data to produce a check using an established format.
 - a. Suspense fields: These fields are not currently used in New Mexico, so at this time, please disregard.

TAB or ENTER through the "Hold" field.
 - b. The current date defaults. Press ENTER to retain the current date as the transaction date. You can change the date, but you must notify your Field Services Representative of any disbursements that are backdated.

CAUTION: Be sure to use the SAME date in both the Stub and the Check portions of the disbursement screen.

Key in the name and address of the agency or person that is to receive the disbursement and press ENTER.

- c. Memo Field: You can add up to 25 characters per line of data to describe the purpose for the check. If this check relates to a case, enter the case number in this field. Press ENTER to move the cursor to the next field.

- d. Input the bank code that identifies from which bank the funds are to be drawn and press ENTER. To find a valid bank code, press F1 when the cursor is on the bank field.

Note: The system assigns and displays the next sequential control number for the disbursement. Write this number down for future reference.

TO COMPLETE ANY DISBURSEMENT, THE FOLLOWING STEPS MUST ALSO BE COMPLETED: (Step 2) POST AUTHORIZED DISBURSEMENT, (Step 3) PRINT CHECK, (Step 4) POST PRINTED CHECK. IF YOU DO NOT COMPLETE ALL 4 STEPS, YOUR BANK WILL NOT BALANCE.

4. Post Authorized Payments.

The *Post Authorized Payments* process is the second step in creating a complete disbursement record. Disbursements that are printed, voided, or previously posted are not included in the posting process.

- a. Main Menu > Money Management > Disbursements > Disbursements Journal > Post Authorized Payments
- b. To Post Authorized Payments
 - (1) Type in the appropriate bank code and press ENTER. A lookup table and Field Help are available for valid bank codes. To access, press F1 when the cursor is on the field in question.
 - (2) Enter the disbursement type or leave the field blank to include all types and press ENTER.
 - (3) Input the responsible deputy code or leave the field blank to include all deputies and press ENTER. A lookup table and Field Help are available for valid codes. To access, press F1 when the cursor is on the field in question.
 - (4) Type in a beginning and ending control number and press ENTER.

A message will be displayed at the bottom of the screen to indicate the number of authorizations posted.

5. Print Checks.

The Print Checks process is the third step in creating a complete disbursement record.

Note: Checks shall be placed into the printer with the printed side facing upward and the top of the check in first.

Main Menu >Money Management >Disbursements>Disbursements Journal>Print Checks

To print checks:

- a. Type in the appropriate bank code. A lookup table for valid bank codes is available by pressing F1.

Note: The system displays the next unused check number.

- b. The check number defaults. This check number shall match the next unused check from your stock of checks.

Note: DO NOT CHANGE THE CHECK NUMBER OR USE CHECKS OUT OF SEQUENCE. IF THE DEFAULT CHECK NUMBER DOES NOT MATCH THE NEXT UNUSED CHECK FROM YOUR CHECK STOCK, STOP HERE. REVIEW YOUR CHECK STOCK AND CHECKS WRITTEN REPORT TO IDENTIFY ANY DISCREPANCIES. YOU MUST BE ABLE TO ACCOUNT FOR ALL USED AND UNUSED CHECKS.

- c. Enter a date to be printed on the checks. This date **MUST** match the date that was entered on the disbursement screen.
- d. Type in the appropriate deputy code and disbursement type. A lookup table is available for valid deputy or disbursement type codes. To access, press F1 when the cursor is on the field in question.
- e. Type in a beginning and ending control number and press ENTER to complete the transaction.

Note: The printer dialog box will be displayed.

- f. Select VIEW to view the report before printing checks. Review all information for accuracy before printing.

- g. Select PRINT to begin the printing process. Selecting PRINT will generate another printer box. Select OK to print the checks, CANCEL to terminate, or SETUP to change printers.
- h. The system will ask if you, "Do you want to print an alignment check? (Y/N). Answer NO.

Note: When the printing is complete, a message will display stating the number of checks primed and the total dollar amount of the checks printed.

6. Post Printed Checks.

The Post Printed Checks process is the fourth and final step of creating a complete disbursement record. If the disbursement is tied to a case number, this step will post the disbursement to the Register of Actions.

- a. Main Menu > Money Management > Disbursements > Disbursements Journal > Post Printed Checks
- b. To Post the printed checks
 - (1) Type in the bank code and press ENTER. To access a lookup table of bank codes, press F1 in the field in question.
 - (2) When the posting is complete, a message displays stating that the check(s) have been posted.
 - (3) You have now completed ALL necessary steps.

I. Overpayment Refunds - Not Applicable for Bond Refunds.

The OVERPAYMENT REFUND screen allows the user to disburse refunds for overpayments of a defendant's account to the appropriate party.

Note: This option creates the refund disbursement. The disbursement type always displays "Overpayment Refund".

- 1. Main Menu > Money Management > Disbursements > Disbursements Journal > Overpayment Refund

2. The first section of this screen, the check "STUB", is to enter descriptive data for each transaction.
 - a. The event code 472 DBS: OVERPAYMENT will default. Press ENTER.
 - b. Enter the case number and press ENTER. A lookup table of valid event codes, locations, and case category codes can be accessed by pressing F1 when the cursor is in the field in question.
 - c. The current date will default. Press ENTER to retain the current date as the transaction date. You can change the date, but you must notify your Field Services Representative of any disbursements that are backdated.

CAUTION: Be sure to use the SAME date in both the Stub and the Check portions of the disbursement screen.

- d. Enter the amount being disbursed for this event code and press ENTER.
3. The second section of this screen, the "Check", provides the data to produce a check using an established format.
 - a. Press ENTER through the Hold field, as this is currently not used in New Mexico.

The current date defaults. Press ENTER to retain the current date as the transaction date. You can change the date, but you must notify your Field Services Representative of any disbursements that are backdated.
 - b. Enter the party type and party number of the person to whom the overpayment is to be refunded and press ENTER. To access the lookup table for a valid party code, press F1 . If necessary, change the payee name and/or address by adding that payee as a party.

Add or change the address for the party if necessary.
 - c. Memo Field: You can add up to 25 characters per line of data to describe the purpose for the check. Enter a description and the case number in this field. Press ENTER to move the cursor to the next field.
 - d. Input the bank code that identifies from which bank the funds are to be drawn and press ENTER. To find valid bank codes, press F1 when the cursor is on the field in question.

Note: The system assigns and displays the next sequential control number for the disbursement. Write this number down for future reference.

TO COMPLETE ANY DISBURSEMENT, THE FOLLOWING STEPS MUST ALSO BE COMPLETED: (Step 2) POST AUTHORIZED DISBURSEMENT, (Step 3) PRINT CHECK, (Step 4) POST PRINTED CHECK. IF YOU DO NOT COMPLETE ALL 4 STEPS, YOUR BANK WILL NOT BALANCE.

4. Post Authorized Payments.

- a. The Post Authorized Payments process is the second step in creating a complete disbursement record. Disbursements that are printed, voided, or previously posted are not included in the posting process.

Main Menu > Money Management > Disbursements > Disbursements Journal
> Post Authorized Payments

- b. Post Authorized Payments:

- (1) Type in the appropriate bank code and press ENTER. A lookup table and Field Help are available for valid bank codes. To access, press F1 when the cursor is on the field in question.
- (2) Enter the disbursement type or leave the field blank to include all types and press ENTER.
- (3) Input the responsible deputy code or leave the field blank to include all deputies and press ENTER. A lookup table and Field Help are available for valid codes. To access, press F1 when the cursor is on the field in question.
- (4) Type in a beginning and ending control number and press ENTER.

A message will be displayed at the bottom of the screen to indicate the number of authorizations posted.

5. Print Checks.

The Print Checks process is the third step in creating a complete disbursement record.

a. Main Menu > Money Management > Disbursements > Disbursements Journal
> Print Checks

- (1) To print checks
- (2) Type in the appropriate bank code. A lookup table for valid bank codes is available by pressing F1.

Note: The system displays the next unused check number.

- (3) The check number defaults. This check number shall match the next unused check from your stock of checks.

Note: DO NOT CHANGE THE CHECK NUMBER OR USE CHECKS OUT OF SEQUENCE. IF THE DEFAULT CHECK NUMBER DOES NOT MATCH THE NEXT UNUSED CHECK FROM YOUR CHECK STOCK, STOP HERE. REVIEW YOUR CHECK STOCK AND CHECKS WRITTEN REPORT TO IDENTIFY ANY DISCREPANCIES. YOU MUST BE ABLE TO ACCOUNT FOR ALL USED AND UNUSED CHECKS.

- (4) Enter a date to be printed on the checks. This date MUST match the date that was entered on the disbursement screen.
- (5) Type in the appropriate deputy code and disbursement type. A lookup table is available for valid deputy or disbursement type codes. To access, press F1 when the cursor is on the field in question.
- (6) Type in a beginning and ending control number and press ENTER to complete the transaction.

Note: The printer dialog box will be displayed.

- (7) Select VIEW to view the report before printing checks. Review all information for accuracy before printing.
- (8) Select PRINT to begin the printing process. Selecting PRINT will generate another printer box. Select OK to print the checks, CANCEL to terminate, or SETUP to change printers.

- (9) The system will ask if you, "Do you want to print an alignment check? (Y/N). Answer NO.

Note: When the printing is complete, a message will display stating the number of checks printed and the total dollar amount of the checks printed.

6. Post Printed Checks.

The Post Printed Checks process is the fourth and final step of creating a complete disbursement record. If the disbursement is tied to a case number, this step will post the disbursement to the Register of Actions.

- a. Main Menu > Money Management > Disbursements > Disbursements Journal > Post Printed Checks
- b. To Post the printed checks
 - (1) Type in the bank code and press ENTER. To access a lookup table of bank codes, press F1 in the field in question.
 - (2) When the posting is complete, a message displays stating that the check(s) have been posted.
 - (3) You have now completed ALL necessary steps.

J. Stop Payment (Posted)

1. The STOP PAYMENT (POSTED) screen stops payment on a check that has been posted in FACTS. The docket updates with a stop payment event code on all posted checks. The original check that has the stop payment placed on it must be voided and submitted with your monthly reports to the Fiscal Division. A copy shall be kept with the court's records. DO NOT VOID CHECKS - USE THE STOP PAYMENT PROCEDURE.

Note: If the original check has not been returned to the court, a stop payment must also be placed on that check with your financial institution.

- a. Main Menu > Money Management > Disbursements > Stop Payment (Posted)
- b. To Stop Payment on a check

Type in the appropriate bank code and press ENTER. If you need help finding a valid bank code, press F1 to access the lookup table. Enter the check number of the check you wish to place the stop payment on and press ENTER.

Note: The name of the payee, the amount of the check, and the date the check was created will be displayed. The bank code and check number entered must fit the criteria required for this screen. (This means you cannot place a stop payment on a check that has been redeemed or voided).

- c. The current date will default. Press ENTER to accept the default date as the date stopped. DO NOT change the date. The "Date Stopped" date shall be the actual day you are placing the stop payment. Completing the "Date Stopped" field will finalize the stop payment process.
- d. A message will appear asking "Are you sure you want to stop payment on this check?" Yes / No. Enter the appropriate response after you have verified the information is correct.

Note: The system requires verification to stop payment on the check number entered.

- e. A stop payment will be indicated on the Checks Written Report by a "V" next to the Void Flag section of the report: (Void Flag: V)
- f. A stop payment will be indicated on Disbursements Retrieval (Posted) by the Status: Check Voided
- g. A stop payment will be indicated on the Register of Actions by the following:

9-19-2003	01	DBS: Overpayment Disbursed \$240 Ck #3038 to D-1	\$240
9-21-2003	01	DBS: Overpayment Stop Payment for Bank 1 Ck #3038 On 9-21-2003 Amount \$240 to D-1	\$-240
9-21-200	02	MFN: Stop Payment Stop Payment for Bank 1 Ck #3038 On 9-21-2003 Amount \$240	\$

K. View/Release Authorized Disbursements.

1. The VIEW/RELEASE AUTHORIZED DISBURSEMENTS screen allows the user to view disbursements entered into the system. This option locates and displays disbursement information on the screen. You can locate a disbursement by the bank and control number or by the payee name. The system defaults to locate by bank and control number.

Note: This is a good screen to use as a beginning point when troubleshooting disbursements.

- a. Main Menu > Money Management > Disbursements > Disbursements Journal > View/Release Authorized Disbursements
- b. To View/Release Authorized Disbursements
 - (1) Enter the bank code and press ENTER. To find a valid bank code, press F1 to access the lookup table.

Type in the control number and press ENTER. To find a control number, press F1 to access the lookup table.

OR
 - (2) Press F6 to locate by payee name.
 - (3) Type the name exactly as it was originally entered.

Note: Because this option is case sensitive, you must also type the name in the same upper and/or lowercase as the original. For more help in locating the correct spelling for a record, you can press CTRL F8 to activate the Name Index Retrieval. This screen has the ability to search using either a phonetic or a key word (character string) entry. The "Payee Name" option cannot separate multiple entries for a single name and only locates and displays one entry.

The screen displays disbursement data: Bank, court and location, control number, disbursement type, and the responsible deputy. The screen also displays the payee's name, address, identification number (if entered), and the amount of the disbursement. The system displays a message box if the disbursement has already been processed and there is a number in the check number field. Any memo notations entered will be displayed.

The lower portion of the screen lists the case number, if applicable, with each listed event assigned a different sequence number. Also, the name and location of the disbursing court, reference identification (if

available), event code and description, dollar amount, and transaction date will be displayed.

The View/Release Authorized Disbursements screen before the disbursement is complete will not reveal a message box stating the disbursement was processed and will not indicate a check number in the "Check No." field. The View/Release Authorized Disbursement screen after the disbursement is complete will display a message box stating "Disbursement Already Processed" and a check number will be displayed in the Check No. field.

2. The CONTROL NUMBER SELECT SCREEN can be accessed by pressing F1 in the Control No.: field.
 - a. Control numbers that display on the Control Number Select screen are attached to disbursements on which all four steps of a disbursement have not been completed.

Note: It is strongly recommended that items remaining on this screen be resolved. All control numbers listed are on the Print Edit Report. Once all 4 steps of a disbursement have been completed, the corresponding control number for that disbursement is automatically removed from the Control Number Select screen.

L. Disbursements Retrieval (Posted).

1. The DISBURSEMENTS RETRIEVAL (POSTED) screen allows the user to quickly view any posted disbursements. A disbursement record is located by bank code and check number. The disbursement check must be printed and posted before it can be retrieved using this screen.
2. Main Menu > Money Management > Disbursements > Disbursements Retrieval (Posted).
 - a. This screen displays the bank code, court and location, check number, disbursement type, and the responsible deputy. The information also indicates the payee's name and address, the date the check was created, the check amount, and any memo entries from the original document.
 - b. The lower portion of this screen lists the case number, the payer's name and identification number, event code and description, the amount, and the transaction date by sequence number assigned to each event on the check.

3. To View a Disbursement.
 - a. Enter the code of the appropriate bank and press ENTER. Press F1 to view a lookup table to find a valid bank code.
 - b. Enter the check number and press ENTER.

Note: From this screen, continue to browse through the checks written on this bank by typing in different check numbers and pressing ENTER.

M. Print Edit Report.

1. The PRINT EDIT REPORT screen provides a printed copy of the data entered for each disbursement transaction that is currently waiting to be printed. Transactions that are voided, posted, or previously printed are not included on this report.
2. The upper portion of the report, the "Check", displays the bank number, the name, disbursement type, control number, responsible deputy, and the court and location of each in-process disbursement. Also, the payee's name, date printed on the check, payee identification number, address, check amount, and any memo notations will be displayed.
3. The lower portion of the report, the "Stub", indicates each sequence number, the case number, the payer's identification and name, any reference identification, event code, event amount, and the transaction date.
 - a. Main Menu > Money Management > Disbursements > Disbursements Journal > Print Edit Report
 - b. To Generate the Report
 - (1) Type in the code for the appropriate bank and press ENTER. Press F1 to access the lookup table for valid bank codes.
 - (2) Input the disbursement type to retrieve only that specified type of disbursement or leave the field blank to draw on all disbursement types that are entered. Press ENTER.

Type in the deputy code to request transactions entered by a specific deputy or leave blank to include all deputies. Press ENTER. Press F1 to access a lookup table for valid deputy codes.

(3) Input a beginning and/or ending control number to further define the range of documents or leave the field blank for all control numbers waiting to be printed. Press ENTER.

(4) The Printer Dialog Box will be displayed.

Select VIEW to view the report before printing or select CANCEL. Selecting PRINT generates another printer box. Select OK to print the report, CANCEL to terminate, or SETUP to change printers.

N. Checks Written Report.

1. The CHECKS WRITTEN REPORT screen generates reports based on checks that have been written. This listing is created for a specific bank. Users may specify a date range for the checks to narrow the scope of the report.

a. Main Menu > Money Management > Disbursements > Disbursements Reports

b. To Print a Checks Written Report

Type in the appropriate bank code and press ENTER. Press F1 to access a lookup table of valid bank codes.

Type in the check date range and press ENTER.

(1) The printer dialog box will be displayed.

(2) Select VIEW to view the report before printing or instead of printing, select CANCEL. Selecting PRINT generates another printer box. Select OK to print the report, CANCEL to terminate, or SETUP to change printers.

O. Checks Voided Report.

1. The CHECKS VOIDED REPORT screen generates a report based on checks that have been voided. This listing is created for a specific bank. Users may specify a date range for the checks to narrow the scope of the report.

a. Main Menu > Money Management > Disbursements > Disbursements Reports > Checks Voided

b. To Print Report

- (1) Enter the appropriate bank code and press ENTER. Press F1 to access a lookup table to obtain valid bank codes.
- (2) Type in the check date range and press ENTER. One or both of the date fields may be left blank; however, this may produce a large report and may take some time to run.
- (3) The printer dialog box will be displayed.
- (4) Select VIEW to view the report before printing or instead of printing, select CANCEL. Selecting PRINT generates another printer box. Select OK to print the report, CANCEL to terminate, or SETUP to change printers.

XII. JUVENILE

12.0 Juveniles.

12.1 Juvenile Jurisdiction.

A. Jurisdiction. NMSA 1978, §§32A-2-29 and 32A-2-13.

1. Motor Vehicle Code Violation.

The magistrate court shall have original exclusive jurisdiction over all Motor Vehicle Code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph 1 of Subsection A of NMSA 1978, §32A-2-3 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of NMSA 1978, §32A-2-29.

If the children's court acquired jurisdiction over a child pursuant to any of the Motor Vehicle Code violations contained in paragraph 1 of Subsection A of NMSA 1978, §32A-2-3, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence. All traffic offenses which the child is found to have committed by the magistrate court or for which the child is adjudicated delinquent by the children's court, shall be subject to the reporting requirements and the suspension revocation provisions of the Motor Vehicle Code and shall not be subject to the confidentiality provisions of the Delinquency Act.

Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code violation unless the magistrate secures the approval of the children's court.

2. Probable Cause Determinations. NMSA 1978, §32A-2-13(A)(1).

When a child who has been taken into custody is not released but is detained: a judicial determination of probable cause shall be made by a judge or special master or magistrate within forty-eight (48) hours, including Saturdays, Sundays and legal holidays, except for children taken into custody under an arrest warrant pursuant to the Children's Court Rules. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be non-adversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released. Children's Court Forms 10-430 and 10-431.

3. Bench Warrants.

A magistrate judge may issue a bench warrant for a juvenile, NMRA 9-212B, for failure to appear or failure to follow orders of the court. The judge shall check “Restriction on Warrant” unless the children’s court judge has authorized that the juvenile be arrested and incarcerated. If the children’s court judge has authorized arrest and incarceration the magistrate judge checks “Unrestricted Warrant” on NMRA 9-212B. Use a motion and order to request authorization from a children’s court judge to issue an “Unrestricted Warrant”.

4. A children’s court judge may appoint a magistrate judge to serve as a special master for the purpose of holding detention hearings. NMSA 1978, §32A-2-13(B).

5. Children’s Court/Transfer. NMSA 1978, §32A-1-5.

a. There is established in the district court for each county a division to be known as the children’s court. The district court of each judicial district shall designate one or more district judges to sit as a judge of the children’s court.

b. If, in a criminal action, it appears to a court other than the children’s court division of the district court that jurisdiction is properly within the children’s court division the other court shall transfer the matter to the children’s court division. Upon transfer, the children’s court division obtains jurisdiction over the matter for proceedings in accordance with the provisions of the Children’s Code.

6. Procedure when the juvenile becomes an adult. NMSA 1978, §32A-1-8.

a. The children’s court has exclusive original jurisdiction of all proceedings under the Children’s Code, NMSA 1978, §32A-1-1, in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

- (1) a delinquent child
- (2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Services Act. NMSA 1978, §32A-3A-1.
- (3) a neglected child;
- (4) an abused child;
- (5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

b. When a person who is eighteen years of age or older is taken into custody and transported to an adult facility on a juvenile warrant or an adult warrant or other adult charges and an outstanding juvenile warrant exists, notice shall be given to the children's court attorney and the juvenile probation and parole office in the jurisdiction where the juvenile warrant was issued within one (1) day of the person being taken into custody. The juvenile probation and parole office shall give notice that the person has been taken into custody to the children's court judge and the attorney who represented the person in the juvenile proceeding. NMSA 1978, §32A-2-12(F).

B. Detention/Transfer.

1. If a juvenile is detained the judge orders that the minor be taken promptly to the children's court or a designated place of detention, or that the minor be released to a parent, guardian, or other custodian pending appearance before the children's court.
2. If the case is transferred to the children's court the judge transfers a copy of the entire file to the children's court and takes steps to insure that documents in the court record are treated as confidential in the same manner and to the same extent as if charges had first been filed in children's court.
3. See JID website for the proper procedure to record juvenile detention hearings in the Case Management System.

Refer to NMSA 1978, §32A-1-9, Venue and transfer.

Refer to NMSA 1978, §32A-1-6, Children's Court Attorney.

Refer to NMSA 1978, §32A-2-3, Delinquency Act; definitions.

Refer to Chapter 5, Section 5.5 for Bench Warrant instructions.

Refer to NMRA 9-212B, Juvenile Bench Warrant.

XIII. REQUIRED FORMS

13.0

Required forms are to be used by the clerk of the magistrate court in carrying out administrative functions for court matters as described in other chapters of this manual.

13.1 Administrative Forms.

- 1.05 Tape Log
- 1.06 Certification of Interpreter
- 1.07 Certification of Witness
- 1.08 Certification of Bailiff
- 1.09 Magistrate Court Jury Pay Sheet
- 1.10 Adjustment of Fines Order
- 1.11 Community Service Work Program
- 1.12 Notice of Reassignment
- 1.13 Notice of Transfer for Change of Venue - **Refer to NMRA 9-404**
- 1.14 Motion for Stay of Proceeding
- 1.15 Order Regarding Military Service
- 1.19 Notice of Failure to Attend DWI School
- 1.20 Cash Bond Assignment and/or Conversion - **Refer to NMRA 9-312**
- 1.21 Response to Written Request for Inspection of Public Records - **Refer to Chapter 15, Supreme Court Policy Directive #9**
- 1.22 Tax Refund Intercept Program Letter
- 1.23 Motion for Competency Determination
- 1.24 Appearance, Plea and Waiver - **Refer to Case Management Application**
- 1.25 Juror Summons Packet
- 1.26 Motion Requesting an Unrestricted Juvenile Bench Warrant
- 1.27 Order for an Unrestricted Juvenile Bench Warrant

XIV. RETENTION SCHEDULE

14.1 Letter of Notification.

At the end of each fiscal year, the Administrative Office of the Court will notify the magistrate courts of the most current released audit report and request the court to identify records which may be destroyed pursuant to the Retention and Disposition Schedule.

Refer to NMSA 1978, §37-1-16, Revival of causes of action.

Refer to Supreme Court Order 94-8400, In the Matter of the Records Retention and Disposition Schedule for Magistrate Courts.

14.2 Letter Requesting Record Destruction.

After the records to be destroyed have been identified, the court shall write the Administrative Office of the Courts for authorization to destroy the records. Refer to Appendix 86.

The person preparing the letter to request destruction authorization must pay close attention to the retention period as outlined in the schedule. For example, all case files must be closed, or the audit report released, before destruction is requested. This responsibility lies with the court.

First, please contact the Fiscal Services Division Field Services Supervisor, to obtain a written status report of outstanding bonds, balanced bank and outstanding checks for the time period you are requesting destruction of records. (Be sure the status report is in writing, no verbal confirmations will be accepted.)

Once a written status report is received, please notify the Fiscal Services Division Assistant Director of your request for destruction by submitting a copy of the destruction request letter and the written status report from Fiscal Services Division Field Services Supervisor.

It will then be determined if approval for destruction will be granted.

REMINDER: For those Courts that have been approved to have files destroyed and are seeking to contract out a shredding company, please the contact the Fiscal Services Procurement Specialist. They will be able to assist you with obtaining a purchase order and contacting the appropriate shredding company. Please call the Fiscal Services Procurement Specialist at 827-4830.

Refer to Appendix 86, Letter of Request to Destroy Records and Appendix 88, Letter Authorizing the Destruction of Records and, in some cases the Release of the Audit Report.

14.3 Letter of Authorization

- A. The Administrative Office of the Court will review the court's letter requesting record destruction and authorization for compliance with the retention schedule.
- B. After compliance is verified, the Administrative Office of the Courts will send the court a letter of authorization to destroy the identified records.
- C. Record destruction must not take place until the authorization letter is received.

14.4 Method of Destruction

Authorized records shall be destroyed in one of five ways:

- A. Witnessed incineration;
- B. Witnessed dump site burial;
- C. Witnessed shredding; or
- D. Recycling through bonded recycler; or
- E. Destruction by a Contractor.

The Administrative Office of the Courts may contract with a company to pick up and destroy records from the magistrate courts. If you wish this type of destruction, you must so specify in your destruction request.

Please DO NOT contact the contractor on your own. Authorization to destroy records and a Purchase Order must be obtained prior to destruction. The Fiscal Services Division is responsible for coordinating the destruction process for the courts.

Regardless if you choose to destroy records in-house or use the contractor, courts are required to do the following before proceeding to destroy records:

1. Submit a written request to destroy records indication the item numbers you wish to destroy. Any requests submitted with invalid item numbers will be rejected.
2. Ensure records have been properly closed and there is no money left in the case file or on the case in FACTs.
3. After destruction has been completed, return the Notice of Destruction or Collection of Records for Destruction Form to the Fiscal Services Division.

The Fiscal Services Division will respond in writing to each request to destroy records. Once you have received authorization, you may proceed with destroying your records.

If you choose to utilize the contractor for your records destruction, your authorization letter will include the Purchase Order number and the date of the scheduled pick-up.

Court personnel must witness the action to assure that the task is properly carried out.

- 14.5 Refer to the New Mexico State Records Center and Archives; Commission of Public Records; Records Retention and Management Division; Agency Records; 1 NMAC 3.2.92 Judicial Retention and Disposition Schedules website. **TO ACCESS THE WEBSITE: Refer to: http://www.state.nm.us/cpr/records_top.htm** (1 NMAC 3.2.92) Judicial Retention and Disposition Schedules.
- 14.6 Courts shall follow the disposition schedule set forth above, **EXCEPT THAT ALL DWI FILES AND ALL DOMESTIC VIOLENCE FILES SHALL BE RETAINED AT THE COURT UNTIL FURTHER NOTICE FROM THE Administrative Office of the Courts.**

SAMPLE

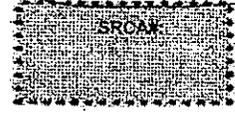
REQUEST FOR DISPOSITION

(To be used for destruction of Public Records/ non-records and/or for requests to transfer to Archives)

CURRENT DATE

DATE: / /

AGENCY CODE: 21800
AGENCY: Administrative Office of the Courts
DIVISION: YOUR MAGISTRATE COURT NAME HERE
CONTACT: CHIEF CLERK NAME HERE
ADDRESS: YOUR COURT ADDRESS HERE
E-MAIL: CHIEF CLERK'S EMAIL ADDRESS HERE
PHONE: CHIEF CLERK'S PHONE NUMBER HERE
FAX: YOUR FAX NUMBER HERE



We hereby request permission to destroy the public records and/or non-records described below. The records retention period as established by the appropriate Record Retention and Disposition Schedule (RRDS) has expired, and these records are to be destroyed immediately.

- INSTRUCTIONS:
• Please complete in duplicate.
• Use the exact record title, part and section number as given in the Record Retention and Disposition Schedule.
• Forward to NM State Records and Archives - 1205 Camino Carlos Rey - Santa Fe, NM 87505.
• Yellow copy will be given back to the agency as receipt when boxes are delivered to SRCA.

DESTRUCTION:
• On-site X
• Records Center (circle one: Albuquerque Record Center or Santa Fe Record Center)

Table with 5 columns: RECORDS TITLE AND DESCRIPTION, DISPOSITION TRIGGER DATE, QUANTITY OF BOXES OR BUNDLES, RRDS PART AND SECTION NUMBER, and SRCA USE ONLY TRANSFER TO ARCHIVES. Rows include Bank Statements and Criminal Case File.

(Leave blank for AOC signature)

Signed: Printed Name:

(Records Liaison Officer or Agency Head)

**JUDGE/CLERK SIGN HERE - Your signature here (w/ date)

Summary table with columns: Analyst Received, RMO Director's Review, Transfer to Archives, Delivered to SRC, Received, Delivered to Archives, Received.

SRC-2 4/2000

White = SRCA Copy Yellow = Agency Copy

STATE OF NEW MEXICO MAGISTRATE COURT

1000 XYZ STREET • NEW MEXICO 88000
(505) 555-1234 FAX (505) 555-5678

July 12, 2004

Administrative Office of the Courts
Supreme Court Building
237 Don Gaspar, Room 25
Santa Fe, New Mexico 87501-2178

DRAFT

Attn: Fiscal Services Division
Re: Destruction of Records

Dear Fiscal Services Division:

Please be advised that the following records need to be destroyed in compliance with the schedule for Record Retention and Disposition:

1.17.218.121	Criminal Case Files (Including Traffic) (Excluding DWI Files)	Through June 30, 2003
1.17.218.131	Civil Case Files	Through June 30, 2003
1.17.218.121.1	Search Warrants	Through June 30, 2003
1.17.218.107	Monthly Report (Excluding Bank Statements)	Through June 30, 2000
1.17.218.106	Juror Document File	Through June 30, 2003
1.17.218.101	Court Calendar	Through December 31, 2002

Thank you for your attention to this matter, I look forward to hearing from you soon.

Sincerely,
Chief Clerk

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director
Jeff A. Varela, Deputy Director
Karen S. Janes, Director
Magistrate Court Division



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)
www.nmncourts.com

March 24, 2009

Chief Clerk
Magistrate Court
1234 ABC Street
Somewhere, New Mexico 88000

RE: NOTE: To be Used if INSERT COMPANY NAME is Destroying the Records

Dear Chief Clerk:

Per notification from Field Services Staff in the Fiscal Division regarding the status of your court bonds and outstanding checks, you are hereby authorized to destroy all records listed below for the Magistrate Court in Somewhere, New Mexico. Please make sure the following conditions have been met before destroying the records. All audit reports thru Fiscal Year 2004 have been released.

Under the *Records Retention and Disposition Schedule for the New Mexico Magistrate Court, SRC Rule 93-08*, the following records may be destroyed:

Item 1.17.218.121, Criminal Case Files (excluding DWI files), may be destroyed for inclusive dates thru June 30, 2004. Please check your cash bond record for outstanding bonds. Retention for these records is one (1) year after case dismissed, entry of judgement or final order, provided audit report has been released and all conditions of judgement have been met. Criminal case files with outstanding bonds are considered pending cases and cannot be destroyed. Verify that a dismissal, entry of judgement or final order has been entered, and all conditions of judgement have been met. If a complaint has been filed, issuance of a search warrant requires the creation of a case file and docket card. If no complaint filed, search warrant shall be destroyed one year after the date the warrant was issued. If citations are filed, a docket number shall be issued and a case file created. DWI files cannot be destroyed.

Item 1.17.218.131, Civil Case Files, may be destroyed for inclusive dates thru June 30, 2004. Retention for these records is one (1) year after case dismissed or until satisfaction of judgement, provided audit report has been released. Please verify that a dismissal or satisfaction of judgement has been entered, and the case has been closed. If no satisfaction has been filed, the civil case file must be kept open fourteen (14) years from the judgement date unless judgement is revived; then seven (7) years after the revival date. If no action has been taken within fourteen (14) years after the judgement, you may proceed to destroy for inclusive dates thru June 30, 1991.

Permission is hereby granted to destroy all the above mentioned records for the Magistrate Court.

Additionally, note that destruction of the above approved items should take place within 90-days from the date of this authorization letter, August 18, 2005. The enclosed Notice of Destruction Form should be returned to this office within 30-days from the date of your actual destruction of records.

Sincerely,

Lydia Romero, Assistant Director
Fiscal Services Division

STATE OF NEW MEXICO MAGISTRATE COURT

1000 XYZ STREET • NEW MEXICO 88000
(505) 555-1234 FAX (505) 555-5678

Current Date

Administrative Office of the Courts
Fiscal Services Division
237 Don Gaspar, Room 25
Santa Fe, New Mexico 87501

RE: Notice of Destruction

The attached listing of records authorized by the Administrative Office of the Courts on _____ were physically destroyed on _____.

The method of witnessed destruction was:

_____ Destruction by _____, a state contractor

_____ Witnessed Incineration Witnessed Dump Site Burial

_____ Witnessed Shredding

_____ Recycling through Bonded Recycler

_____ Other Witnessed: _____

Presiding Judge/Chief Clerk: _____

Date: _____

Witnessed By: _____

Date: _____

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director
Jeff A. Varela, Deputy Director
Karen S. Janes, Director
Magistrate Court Division



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)
www.nmcourts.com

March 24, 2009

Dear Sirs:

Enclosed please find State of New Mexico Purchase Document # 06-692-000000 to be used for records destruction services at the Magistrate Court in Somewhere, New Mexico. The Magistrate Court is located at 1234 ABC Street, Somewhere, New Mexico, 88000. Their telephone number is (505) 555-1234. Your contact at the court will be the chief clerk, Ms. Chief Clerk.

Currently, the court has a 64 gallon bin ready for collection and destruction and would like to have a 64 gallon bin left at the court for future destruction.

Please contact me at your earliest convenience at (505) 827-4830 or via e-mail at aocdgp@nmcourts.com to confirm the approximate date and time you will be arriving in Somewhere so I can notify the court. When destruction has been completed, please forward the Certification of Destruction to my attention at:

Administrative Office of the Courts
Attn: David Pacheco
237 Don Caspar, Room 25
Santa Fe, New Mexico 87501-2178

Please be advised that all requests for records destruction will come from my office and all certifications of destruction completion must be returned to my office. If at anytime you are contacted directly by a court to schedule destruction, please refer them to the Administrative Office of the Courts so we can obtain a valid purchase document prior to utilizing your services. Destruction services will only be authorized after you receive a written request and purchase document from this office.

If you should have any questions regarding our request for records destruction services, please contact my office at (505) 827-4830.

Thank you.

David Pacheco
Fiscal Services Division

STATE OF NEW MEXICO MAGISTRATE COURT

1000 XYZ STREET • NEW MEXICO 88000
(505) 555-1234 FAX (505) 555-5678

Current Date

Administrative Office of the Courts
Fiscal Services Division
237 Don Gaspar, Room 25
Santa Fe, New Mexico 87501

RE: Collection of Records for Destruction

The attached listing of records authorized by the Administrative Office of the Courts on _____ were physically collected by _____, on _____.

Presiding Judge/Chief Clerk: _____

Date: _____

Witnessed By: _____

Date: _____

XV. POLICY DIRECTIVES AND FILING MAGISTRATE COURT COMPLAINTS

15.0 Policy Directives.

Supreme Court Order 99-8500 In the Matter of Superintending Control over Magistrate Courts.

Policy Directives: (See Appendices List, Chapter 15)

- Number 1: Policy Relating to Acceptance of Personal Checks, Receipting of Monies Not Readily Identifiable, and the Receipting of Bail
- Number 2: Policy Relating to Audit Exceptions
- Number 3: Policy Relating to Overages/Shortages in Monies Collected
- Number 4: Policy Relating to Reporting of Leave Taken by Magistrates
- Number 5: Policy Establishing Presiding Judge Responsibilities
- Number 6: Policy Establishing Mandatory Training Requirements for Magistrate Court Clerks and Judges
- Number 7: Policy Relating to Acceptance of Partial Payments of Fines and Costs
- Number 8: Policy Relating to Leases for Office Space for Magistrate Courts
- Number 9: Policy Relating to Records Inspection Requests
- Number 10: Policy Relating to the Use of Volunteers or Community Service Participants in the Magistrate Court.

15.1 Court Information on How to File a Complaint or Make a Suggestion

- A. All Magistrate Courts shall post in their court information on how to file a suggestion or complaint or make a suggestion pertaining to the court. The court shall post a copy of the complaint brochure in a conspicuous place in the court house.
- B. All Magistrate Courts shall have and shall make available Administrative Office of the Courts contact information and Magistrate Court Complaint Forms at a citizen's request.
- C. Complaint forms should be available to all courts from the Magistrate Court Division and is available on the internal website.

15.2 Complaints Handled by the Administrative Office of the Courts

- A. Citizens may contact the Administrative Office of the Courts with concerns regarding: Court Personnel or Court Procedures.
- B. If a complaint involves a judge, the citizen will be given a Judicial Standards Complaint form and contact information.

15.3 Complaints NOT Handled by the Administrative Office of the Courts.

The Administrative Office of the Courts has no authority and cannot do any of the following for you:

- A. Intervene in your court case.
- B. Change the judgment, decision or outcome of your court case, your sole remedy is to appeal.
- C. Remove or change the Judge assigned to your case.
- D. Give you an opinion about specific judicial actions or conduct.
- E. Give legal advice.

15.4 Complaint Procedure.

- A. Contact Information.
 - 1. A citizen may contact the Administrative Office of the Courts at:
Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, New Mexico 87501
Attn: Deputy Director
Or at (505) 827-4800
 - 2. Complaint and contact information may be obtained from the Magistrate Court.
Web page at: (www.nmcourts.com)
 - 3. A citizen may also request information about how to contact an Internal Auditor from any court staff personnel.

B. Complaint Process.

1. The Deputy Director will review the complaint and may request additional information, if needed, from both the citizen and Magistrate Court Chief Clerk of the court involved.
2. An investigation will be conducted. The scope of the investigation done will depend on the severity of the complaint.
3. The Deputy Director will inform the citizen, the Magistrate Court Division Director, the Presiding Judge and Chief Clerk of the resolution of the complaint.

MAGISTRATE COURT COMPLAINT CONTACT SHEET

Please complete the following and either fax or mail to:

Magistrate Court Division/Attn: Staff Attorney
237 Don Gaspar, Room 25
Santa Fe, NM 87501
Fax: (505) 827-4824

PLEASE PRINT

Today's Date: _____

Your name: _____

Address: _____

Daytime phone number: _____

All complaints are kept confidential. You will be contacted if further information is needed. Please allow two to four weeks for a response.

Date of occurrence: _____

Court: _____

Case number (if applicable): _____

Please attach copy of case if available.

On the attached form, please explain your concern with the above mentioned court. You may attach additional pages if needed.

Signature: _____

APPENDIX

**The Appendix documents are located on the
inside Supreme Court Website.**