

1 **1-088.1. Peremptory excusal of a district judge; recusal; procedure for exercising.**

2 A. **Limit on excusals or challenges.** No party shall excuse more than one judge. A
3 party may not excuse a judge after the party has attended a hearing or requested that judge to
4 perform any act other than an order for free process or a determination of indigency. For the
5 purpose of peremptory excusals, the term “party” shall include all members of a group of parties
6 when aligned as co-plaintiffs or co-defendants in any of the following situations:

- 7 (1) the parties are represented by the same lawyer or law firm;
8 (2) the parties have filed joint pleadings;
9 (3) the parties are related to each other as spouse, parent, child, or sibling;
10 (4) the parties consist of a business entity or other organization and its owners,
11 parents, subsidiaries, officers, directors, or major shareholders; or
12 (5) the parties consist of a government agency and its subordinate agencies,
13 commissions, boards, or personnel. If the interests of any parties grouped together as one party
14 under this rule are found to be sufficiently diverse from one another, the assigned judge may grant
15 a motion to allow separate peremptory excusals for the party or parties whose interests are shown
16 to differ.

17 B. **Mass reassignment.** A mass reassignment occurs when one hundred (100) or more
18 pending cases are reassigned contemporaneously.

19 C. **Procedure for exercising peremptory excusal of a district judge.** A party may
20 exercise the statutory right to excuse the district judge before whom the case is pending by filing
21 a peremptory excusal as follows:

- 22 (1) A plaintiff may file a peremptory excusal within ten (10) days after service
23 of notice of assignment of the first judge in the case. A defendant may file a peremptory excusal

1 within ten (10) days after the defendant files the first pleading or motion [~~pursuant to~~] under
2 Rule 1-012 NMRA.

3 (2) Any party may file a peremptory excusal within ten (10) days after the clerk
4 serves notice of reassignment on the parties or completes publication of a notice of a mass
5 reassignment.

6 (3) In situations involving motions to reopen a case to enforce, modify, or set
7 aside a judgment or order, if the case has been reassigned to a different judge since entry of the
8 judgment or order at issue, the movant may file a peremptory excusal within ten (10) days after
9 filing the motion to reopen and service of the notice of reassignment, and the non-movant may file
10 a peremptory excusal within ten (10) days after service of the motion to reopen.

11 (4) In addition to the other limits contained in this rule, no peremptory excusal
12 may be filed by any original or later-added party more than one hundred twenty (120) days after
13 the judge sought to be excused was assigned to a case.

14 D. **Notice of reassignment.** After the filing of the complaint, if the case is reassigned
15 to a different judge, the clerk shall serve notice of the reassignment to all parties. When a mass
16 reassignment occurs, the clerk shall serve notice of the reassignments to all parties by [~~publication~~
17 ~~in the New Mexico Bar Bulletin for four (4) consecutive weeks~~] publishing the notice for four (4)
18 consecutive weeks on the State Bar web site and in two (2) consecutive New Mexico Bar Bulletins.
19 Service of notice by publication is complete on the date printed on the [~~fourth~~] second issue of the
20 Bar Bulletin.

21 E. **Service of excusal.** Any party excusing a judge shall serve notice of [~~such~~] the
22 excusal on all parties.

1 F. **Misuse of peremptory excusal procedure.** Peremptory excusals without cause
2 are intended to allow litigants an expeditious method of avoiding assignment of a judge whom the
3 party has a good faith basis for believing will be unfair to one side or the other, and they are not to
4 be exercised to hinder, delay, or obstruct the administration of justice. If it appears that an attorney
5 or group of attorneys may be using peremptory excusals for improper purposes or with such
6 frequency as to impede the administration of justice, the Chief Judge of the district shall send a
7 written notice to the Chief Justice of the Supreme Court and shall send a copy of the written notice
8 to the attorney or group of attorneys believed to be improperly using peremptory excusals. The
9 Chief Justice may take appropriate action to address any misuse, including issuance of an order
10 providing that the attorney or attorneys or any party they represent may not file peremptory
11 excusals for a specified period of time or until further order of the Chief Justice.

12 G. **Recusal.** Nothing in this rule precludes the right of any party to move to recuse a
13 judge for cause. No district judge shall sit in any action in which the judge's impartiality may
14 reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of
15 Judicial Conduct, and the judge shall file a recusal in any such action. Upon receipt of notification
16 of recusal from a district judge, the clerk of the court shall give written notice to each party.

17 H. **Objections to the validity of a peremptory excusal; excused judge to**
18 **rule.** An objection to the timeliness or validity of a peremptory excusal may be raised by any
19 party or by the court on its own motion. The excused judge shall rule on the timeliness or validity
20 of any such objection. If the excused judge determines that the excusal has met the applicable
21 procedural and legal requirements in this rule, the judge shall proceed no further. If the excused
22 judge determines that the excusal has not met the applicable procedural and legal requirements in
23 this rule, the judge may proceed to preside over the case.

1 [As amended, effective August 1, 1988; January 1, 1995; as amended by Supreme Court Order
2 No. 07-8300-001, effective March 15, 2007; by Supreme Court Order No. 08-8300-038, effective
3 December 15, 2008; as amended by Supreme Court Order No. 12-8300-031, effective for all cases
4 filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 15-8300-
5 019, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme
6 Court Order No. 18-8300-003, effective March 1, 2018; as amended by Supreme Court Order No.
7 19-8300-008, effective for all cases pending or filed on or after July 1, 2019.]

8 **Committee commentary.** — The March 2018 amendment to Rule 1-088.1(C)((4) NMRA
9 corrects a conflict between two subparagraphs of the rule that resulted in a failure of the rule to
10 accomplish the purposes underlying the two subparagraphs. Amendments in December 2015
11 added Subparagraph (C)(4) to provide the following: “Regardless of the other limits contained in
12 this rule, no peremptory excusal may be filed by any original party or later-added party more than
13 one hundred twenty (120) days after the first judge has been assigned to the case.”

14 The commentary to an earlier draft of the new subparagraph published for comment in
15 2013 to add a time limitation on excusals of judges who had actually been presiding over a case
16 for the prescribed period of time clearly stated the intent of the provision as follows:

17 [The] time limit on exercise of peremptories requires their exercise at the outset of
18 a case, before the judge has gotten involved in learning about the case and making
19 rulings. If the original parties do not perceive the need at the outset of the case to
20 peremptorily excuse the judge, there is little justification for allowing later-added
21 parties to review the judge’s rulings and remove the judge who has been presiding
22 over the case, especially since the constitutional right to disqualify a judge for cause
23 is always available.

24
25 But the wording of various parts of the 2013 proposals were amended for unrelated reasons
26 before their eventual promulgation in 2015, including an amendment that substituted “the first
27 judge has been assigned to the case” for “the case has been at issue before the judge sought to be

1 excused.” The result was a clear textual conflict between the intended limitation of the right to
2 excuse a judge who had already been presiding over a case for a period of time, and the intent of
3 the provisions in Subparagraphs (C)(2) and (C)(3) allowing any party to excuse a new judge within
4 ten (10) days of a mass reassignment or a reopening of the case.

5 The March 2018 amendment by its limitation on the excusal of a judge who has been
6 assigned to a case for at least one hundred twenty (120) days clarifies that Subparagraph (C)(4)
7 neither expands nor reduces the right of a party to file an excusal within ten (10) days of
8 reassignment in the situations described in Subparagraphs (C)(2) and (C)(3).

9 Reassignment of a judge usually occurs in individual cases in which a party has excused
10 the judge or the judge recuses himself or herself. When this happens, the clerk easily can and does
11 serve individual notice of the reassignment to the parties by mail or electronic
12 transmission. Whether served by mail or electronic transmission, [~~recently proposed amendments~~
13 ~~to~~] Rule 1-006 NMRA [~~would give~~] gives the parties an additional three (3) days to file a
14 peremptory excusal under this rule.

15 When a judge retires, dies, is disabled, or the judge assumes responsibility for different
16 types of cases (e.g., from a criminal to a civil docket), large numbers of cases are reassigned and
17 parties who have not previously exercised a peremptory excusal may choose to excuse the
18 successor judge. Providing individual notice to every party in each such case is administratively
19 difficult, expensive and time consuming. Clerks sometimes serve notice of reassignment in an
20 alternative manner—usually through publication in the New Mexico Bar Bulletin, on the State
21 Bar’s web site, or both.

22 The 2008 amendment formally incorporates into Rule 1-088.1 NMRA the use of notice by
23 publication in such a situation — now identified as a "mass reassignment."[-] The amended rule

1 requires that the specified notice be published on the State Bar’s web site for four (4) consecutive
2 weeks and in [four (4)] two (2) consecutive issues of the New Mexico Bar Bulletin and provides
3 that a party who has not yet exercised a peremptory excusal may do so within ten (10) days after
4 the [~~fourth and final publication~~] date of the second Bar Bulletin. When a judge’s entire caseload
5 is reassigned, the publication notice need not contain the caption of each affected case, but must
6 contain the names of the initially-assigned judge and the successor judge.

7 There may be occasions when many, but not all, of a judge’s cases are reassigned; for
8 example when an additional judge is appointed in a judicial district and a portion of other judges’
9 cases are assigned to the new judge. When this occurs, if the number of pending cases collectively
10 reassigned exceeds one hundred (100), the 2008 amendment authorizes notice by publication. To
11 assure that the parties have notice of which cases were reassigned, the court should either make a
12 list available containing the title of the action and file number of each case reassigned, or not
13 reassigned, whichever is less. The court may [~~either~~] publish such a list in the Bar Bulletin, [~~or~~]
14 publish a notice in the Bar [~~Bulletin~~] Bulletin that directs the reader to the court’s web site where
15 the [~~such a~~] list will be posted, or post notice on the State Bar’s web site.

16 Substituting publication for individual notice increases the chance that a party will not
17 receive actual notice of a reassignment. Where actual notice is not achieved through publication,
18 the trial court has ample authority to accept a late excusal. *See* Rule 1-006(B)(2) NMRA
19 (providing that the court may permit act to be done after deadline has passed if excusable neglect
20 is shown).

21 As with any other pleading filed in court, a peremptory excusal of a judge must be signed
22 by the party’s attorney or, if the party is not represented by counsel, it must be signed by the

1 party. *See* Rule 1-011 NMRA. All of the procedures for excusing a judge in Paragraph C are
2 subject to the limitations in Paragraph A.

3 [Adopted by Supreme Court Order No. 08-8300-038, effective December 15, 2008; as amended
4 by Supreme Court Order No. 12-8300-031, effective for all cases filed or pending on or after
5 January 7, 2013; as amended by Supreme Court Order No. 15-8300-019, effective for all cases
6 pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 18-
7 8300-003, effective March 1, 2018; as amended by Supreme Court Order No. 19-8300-008,
8 effective for all cases pending or filed on or after July 1,2019.]