CIVIL PRETRIAL/TRIAL PROCESS

This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet for your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A PRETRIAL CONFERENCE?

A **Pretrial Conference** is a short hearing where the Judge informs the parties of the steps necessary to get ready for **Trial**. The **Pretrial Conference** is **not** a **Trial**. The Court does **not** accept testimony or evidence. Therefore, the parties do **not** have to bring **Witnesses** or **Exhibits** to the **Pretrial Conference**. Witnesses may not be subpoenaed for a Pretrial Conference unless ordered by the Court.

WHEN IS A PRETRIAL CONFERENCE SCHEDULED?

Pretrial Conferences are not scheduled in every case. However, when one is scheduled, it may be set after an Answer has been filed with the Court, and if the case is not settled through mediation or other negotiations.

WHAT HAPPENS AT THE PRETRIAL CONFERENCE?

During the **Pretrial Conference**, the Judge usually discusses rules that the parties must follow and sets deadlines for the exchange of information between the parties, which is referred to as discovery. Discovery is a process by which one party gets access to documents which are in the possession of the opposing party. During Discovery, the **Plaintiff** and **Defendant** must disclose to each other and the Court, any documents and/or witnesses that are relevant to the case and that may potentially be used at **Trial**, including a *Witness List* and an *Exhibit List*. During the **Pretrial Conference**, the Judge may set the deadlines for these disclosures in a *Pretrial Scheduling Order*.

At any stage of the proceeding, for good cause shown, the judge may order a party to produce for inspection and copying to another party in the lawsuit, any records, papers, documents or other tangible evidence in the possession of or available to that party. This is accomplished by filing a *Motion for Production*, which describes what information is being requested. The Judge will review the *Motion* and either grant or deny it, or schedule a hearing with the parties to discuss it.

If additional discovery is required, the Court may, for good cause shown, order further discovery as permitted by the Rules of Civil Procedure for the Magistrate Courts.

Trial Note:	**All discovery must be completed well in advance of the trial date. Late discovery or surprise documents, generally, will not be allowed as evidence at trial.**

If a Jury **Trial** has been requested, then at the **Pretrial Conference**, the Judge also will discuss how and when a jury will be selected and when the parties will be required to submit their Jury Instructions.

Jury Instructions are written instructions about the law in New Mexico that each party can request be given to the jury. New Mexico has many pre-approved *Jury Instructions.* The court may give the jury any other applicable instructions contained in the New Mexico Uniform Jury Instructions (UJI) Civil. A copy of the New Mexico *Uniform Jury Instructions* ("UJI") - Civil may be obtained from https://nmonesource.com/ (search for "Rule Set 13 - Uniform Jury Instructions - Civil" in the "Current New Mexico Rules Annotated" category), the Supreme Court Law Library, or the UNM Law School Library.

CAN A COURT DATE BE CHANGED?

Only the judge may decide whether or not to change the court date. To request a court date change, a party must file a written *Motion for Continuance* with the Court before the scheduled hearing or **Trial**. The party making the request must provide a good reason for asking that a court hearing or **Trial** date be rescheduled. The party seeking a continuance must attempt to contact the opposing party or the opposing party's attorney for the opposing party's position on the *Motion for Continuance*. The written motion must state the opposing party's position, or indicate that the opposing party or their attorney did not respond.

WHEN WILL A TRIAL BE SCHEDULED?

After the Answer is filed by the **Defendant**, a **Notice of Hearing**, setting the date and time of the **Trial**, either will be distributed to the parties at the **Pretrial Conference** or mailed to the parties by the Court.

WITNESSES

Each party must identify by name, address, telephone number and summary of expected testimony, any and all Witnesses that the party may call to testify at **Trial**. Unless the *Pretrial Scheduling Order* entered by the judge sets different deadlines, the **Plaintiff** is required to file with the Court and give the other parties a *Witness List* at least twenty (20) days before the **Trial**. The **Defendant** must file with the Court and give the other parties a *Witness List* at least fifteen (15) days before the **Trial**.

A written statement from a Witness (including a police report or estimate of repair) is generally considered hearsay. Therefore, the Judge may not allow a party to use the written statement as evidence, unless the individual who prepared the statement, report, or estimate is present at **Trial** to testify in person.

If the case involves proof of mismanaged, faulty, or defective work or skill, an **expert** witness is probably needed to prove the case. Whether technical, professional, or otherwise, an expert is a person **having special skill or knowledge** gained from **training or experience**.

Trial Note:	**If the case depends on expert testimony, and the Plaintiff fails to have the expert(s) present at trial, the case may be dismissed.**

Trial Note:	**Estimates of repair work are generally considered hearsay. Usually, an estimate cannot be used as evidence without the person who made the estimate being present at trial. However, if the other side agrees, estimates, without the witness, may be used at trial.**

Trial Note:	**Letters, notes, affidavits or statements (even if notarized) generally will not be accepted by the court without the person, who made them, being present at trial. This also applies to estimates of repair work.**

It is the duty of the parties to make sure that each of their witnesses are at the Trial. All parties and witnesses to the trial are expected to be present five (5) minutes prior to the time set for Trial, fully prepared to proceed. If a Witness does not want to appear voluntarily at a hearing or **Trial**, the party may serve a *Subpoena* on the Witness.

WHAT IS A SUBPOENA?

A *Subpoena* is an order by the Court for a **Witness** (age eighteen (18 or older) to appear at a hearing or **Trial** to either testify or provide certain documents. *Subpoena* may be signed by an attorney or may be obtained from

the Clerk's office. To get a *Subpoena,* the Court Clerk must be provided the name and address of the witness and a description of the requested documents, if any. If a party *Subpoenas* a Witness, the party must also pay the Witness a $95.00 fee plus mileage for each day their attendance is required. If the fee is not paid, the Witness does not have to appear at the hearing or **Trial**.

EXHIBITS

Exhibits are any papers, documents, records, or tangible objects that a party has in support of claims and/or defenses a party intends to use in evidence at the **Trial**. Exhibits may include photographs, contracts, business or medical records, and/or any item that may be important in the lawsuit.

The **Plaintiff** is required to file with the Court and give the other parties an *Exhibit List* at least twenty (20) days before the **Trial**. The **Defendant** must file with the Court and give the other parties an *Exhibit List* at least fifteen (15) days before **Trial**.

At **Trial**, a party using a document as an Exhibit must establish that the document is valid. As such, the original document and the individual who prepared the document may be required to be present and testify at the **Trial**. During the **Trial**, each party must ask the Judge to accept each Exhibit as evidence before the Judge or Jury may consider the Exhibit.

EVIDENCE

Evidence may be anything that is helpful to the Judge or Jury in forming their decision. Cases are decided based on the evidence presented to the Judge or Jury only at the time of **Trial**. Each party is responsible for providing evidence supporting their claims or defenses at the time of **Trial**. The most common forms of evidence are Witness testimony, papers, documents, records, photographs, video recordings, voice recordings, or tangible objects that are relevant to the lawsuit.

Each party may agree or object to the evidence being presented by other parties. If a party does not agree, they object to the evidence. When an objection is made, the Judge will determine if the evidence may be considered by the Court, based on the Rules of Evidence. A copy of the Rules of Evidence may be obtained at https://nmonesource.com/ (search for "Rule Set 11 - Rules of Evidence" in the "Current New Mexico Rules Annotated" category), the Supreme Court Law Library, or the UNM Law School Library.

WHAT MUST BE PROVEN AT TRAIL?

During trial, the Rules of Civil Procedure for the Magistrate Courts and Rules of Evidence must be followed.

The **Plaintiff** must prove, by a greater weight of evidence, the following:

- That they have been injured by the acts or omissions of the **Defendant**. (Liability)
- That the **Defendant** caused such injury.
- The money amount of the damages because of such injury, and the **Plaintiff's** right to any other relief sought.

The **Defendant** must, in like manner, prove all allegations made in any counterclaim or setoff claimed.

- Proof must be by reliable evidence properly introduced at trial. The opposing party has the right to cross-examine all witnesses and object to the admission of all documents not properly introduced or substantiated.

WHAT HAPPENS AT TRIAL?

When you are at Court you should dress and behave in a manner that shows your respect for the Court and the

Judge. You should only speak with the Judge's permission and should always stand when speaking to the Judge and the jury for jury trials. At the beginning of the **Trial**, both parties usually have a chance to give an *Opening Statement* (a summary or outline of the case and the facts each party hopes to prove by the evidence presented at **Trial,** and cannot include arguments) to the Judge or Jury. The *Opening Statement* is not evidence.

After *Opening Statements*, the **Plaintiff** presents its case by calling **Witnesses** to testify, asking them questions, and/or presenting evidence as Exhibits. This type of witness testimony is called *Direct-Examination*. When the **Plaintiff** finishes its questions, the **Defendant** may ask the **Witnesses** questions. This is called *Cross-Examination*.

After all of the **Plaintiff's Witnesses** have testified, the **Defendant** may call and question their own Witnesses and present their Exhibits. Then the **Plaintiff** may cross-examine the **Defendant's Witnesses**. After the **Defendant's Witnesses** have testified, the **Plaintiff** has a chance to present rebuttal witness or evidence. Rebuttal evidence is new evidence not presented earlier, given to explain or disprove any facts presented by the **Defendant** or a new witness who contradicts the **Defendant's** witnesses.

When all parties have presented their evidence, the Judge may allow each party to give a *Closing Argument*. A *Closing Argument* is a chance for the parties to summarize the facts and law established during the **Trial**, and to show the strengths and/or weaknesses in each other's cases. The **Plaintiff** usually goes first, followed by the **Defendant's** *Closing Argument*. Because the **Plaintiff** has the burden of proof, after the **Defendant** gives their *Closing Argument*, the **Plaintiff** is then entitled to make a concluding argument, sometimes called a rebuttal. This is a chance to respond to the **Defendant's** points and make one final appeal to the Judge or Jury.

WHO DECIDES THE CASE?

If a Jury is requested, then the Jury will decide the case. If a Jury is not requested, then the assigned Judge will make all of the decisions in the case. After the **Trial**, the Judge or Jury will make a decision. The Judge will provide the parties with a written decision called a *Judgment*, which states who won or lost and the amount of damages, attorney's fees, and/or court costs awarded, if any. If a *setoff* or a *counterclaim* is established by the **Defendant**, the amount will be offset against any sum owed to the **Plaintiff** in the *Judgment*.

APPEAL TO DISTRICT COURT

If a party does not agree with the decision of the Judge or Jury, that party has the right to appeal the *Judgment* to the District Court within fifteen (15) days of the entry of the *Judgment*. An appeal from the Magistrate Court is taken by filing with the clerk of the District Court a Notice of Appeal with proof of service; and filing with the Magistrate Court a copy of the Notice of Appeal which has been endorsed by the Clerk of the District Court; and a copy of the receipt of payment of the docket fee. The party who files the Notice of Appeal is called the appellant.

In order to stay the execution of a *Judgment* (a court order to temporarily suspend collection of the *Judgment*) the Magistrate Court may require an appellant to deposit with the Court Clerk the amount of the *Judgment* and costs in full or to give a supersedeas bond (a bond required to obtain a stay of execution of a *Judgment* that continues in effect until final disposition of the appeal) in the amount of the *Judgment* and costs with or without a surety (i.e., a third-party guarantor). The bond or deposit is not refundable during the pendency of an appeal. The bond shall be enforceable on dismissal of the appeal or affirmance of the judgment. If the judgment is reversed or satisfied, the bond is void.

Other Pamphlets and Forms are available at the Magistrate Court or the New Mexico's Judiciary website (www.nmcourts.gov).