

COMMONLY USED MOTIONS

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 MOTION?

Many situations arise during a lawsuit where the Judge is asked to make a decision. A Motion is a written request filed with the Court asking the Judge to take a certain type of action.

WHAT IS INCLUDED IN A MOTION?

- The **Plaintiff's** name, **Defendant's** name, case number and signature, address and phone number of the party filing the *Motion*;
- Title of the *Motion*; for example, "*Motion to Continue*;"
- A short description of what you are requesting from the Judge;
- A *Certificate of Service* indicating that you served a copy of the *Motion* to all other parties named in the lawsuit.

The party making the request must provide a good reason(s) for asking that a court for the requested relief. The party seeking the requested relief must attempt to contact the opposing party or the opposing party's attorney for the opposing party's position on their *Motion*. The written *Motion* must state the opposing party's position, or indicate that the opposing party or their attorney did not respond.

You are required to send a copy of any and all documents that you file with the Court to each party named in the lawsuit.

WHERE CAN I PICK-UP AN EXAMPLE OF A MOTION?

Although a Motion may be filed by any party requesting virtually anything, several examples of motions may be found at the Magistrate Court or New Mexico's Judiciary Website (www.nmcourts.gov).

COMMON TYPES OF MOTIONS:

Motion to Amend: This is a request by a party to change documents that previously have been filed with the Court. A *Motion to Amend* generally includes the requested changes. The **Plaintiff** may file a *Motion to Amend Complaint*. If the judge grants the *Motion* and the *Complaint* is amended, the *Amended Complaint* must be served on the **Defendant**. The **Defendant** must file another *Answer*, indicating that it is an *Answer* to the *Amended Complaint*.

Motion for Judgment on the Pleadings: This is a request that the Court enter a *Judgment* against a party, based only on the documents filed with the Court without a trial. A **Plaintiff** for a claim or a counterclaim may file a *Motion for Judgment on the Pleadings* at any time after an *Answer* or other responsive pleading was filed by the **Defendant** or adverse party. A **Defendant** for a claim or counterclaim may file a *Motion for Judgment on the Pleadings* at any time.

Motion for Default Judgment: This is a request that the Court enter a *Judgment* against a **Defendant** for not answering the *Complaint* or for failing to appear at a final hearing or trial. The party requesting the *Default Judgment* must have filed the Return of Service, which confirms that the **Defendant** was served with the, *Summons*, *Complaint* and the *Answer* form. In the *Motion for Default Judgment*, the **Plaintiff** alleges that the **Defendant** failed to appear or file an *Answer* or other responsive pleading to the *Complaint* within twenty (20)

days of service of the *Summons*. When a *Motion for Default Judgment* is filed, the party requesting the Default Judgment is required to submit an *Affidavit* or *Affirmation of Plaintiff in Support of Application for Default Judgment* indicating whether or not the party alleged to be in default is in the military, pursuant to the Soldiers and Sailors Relief Act. The party requesting the *Default Judgment* may be required to submit a notarized *Affidavit* that itemizes the damages claimed, and is affirmed under penalty of perjury as being true and correct.

Motion to Dismiss: This is a request that the lawsuit be dismissed. The party making this type of request must specify the reasons why that party believes the case should be dismissed. The Judge will decide whether the law permits a dismissal. If both the **Plaintiff** and the **Defendant** agree to the dismissal of the lawsuit (such as when the case has been settled), then a *Stipulated Dismissal*, which is signed by both the **Plaintiff** and the **Defendant**, should be filed instead of a *Motion to Dismiss*. Such a dismissal is without prejudice. (i.e., the lawsuit can be brought again). The parties may also stipulate to dismissal with prejudice (i.e. the lawsuit cannot be brought before the Court again).

Voluntary Dismissal by the Plaintiff: The **Plaintiff** may dismiss the lawsuit without an order of the Court by:

- filing a *Notice of Dismissal* at any time before service by the adverse party of an *Answer* or other responsive pleading; or
- filing a *Stipulated Dismissal* signed by all parties who have filed an *Answer* or other responsive pleading.

Note that the filing of a *Notice of Dismissal* or *Stipulated Dismissal* may affect the **Plaintiff's** rights and ability to proceed if the **Plaintiff** re-files the lawsuit based on or including the same claim. A counterclaim can only be dismissed by the **Defendant**.

Motion to Join Parties: This is a request that other parties who are necessary or indispensable to the lawsuit be joined as parties in order to have all of the issues fully decided by the Court; or other parties claim an interest related to the subject of the lawsuit and they are in a position that the resolution of the lawsuit in their absence would impair or impede their ability to protect their interest.

Motion to Consolidate: This is a request to combine two (2) or more cases pending before the Court that involve the same legal or factual issue, the same parties, and/or arose from the same transaction or incident to avoid unnecessary costs or delay.

Motion for Discovery/Production: This is a request to be permitted to gather information or documents, from another party, person or business, which are necessary or relevant to the pending case. The most common form of this *Motion* is a *Motion for Production*. The *Motion for Production* asks the Court to order that the other party produce for inspection and copying specific items of evidence necessary for trial of the lawsuit and explains why this is necessary. The *Motion for Production* can also be used to inform the Court that the other party has failed to produce the evidence after it was requested and to ask the Court to order the other party to comply.

Motion to Vacate/Motion for Continuance: These are requests that a court hearing or trial be rescheduled because, for example, a party will not be able to be present at the scheduled hearing in-person or remotely. The party making the request must provide a good reason for asking that a court hearing or trial be rescheduled in the *Motion to Vacate* or *Motion to Continue*.

Motion to Set Aside Default Judgment: This is a request to set aside a *Default Judgment* that already has been entered by the Court. In order to set aside a *Default Judgment*, the **Defendant** must provide a good reason why he or she failed to *Answer* or appear at a hearing and must be filed within thirty (30) days of the entry of the *Default Judgment*. The **Defendant** is still required to file an *Answer* or other responsive pleading providing a defense to the *Complaint*, but may need to request permission from the Court to file it late.

Motion for Default Judgment against Garnishee: This is a request that the Court enter a *Judgment* against the **Garnishee** for not responding to a *Writ of Garnishment* within twenty (20) days of being served. The party requesting the *Default Judgment against Garnishee* must complete an *Affidavit of Service*, which states that a copy of the *Motion for Default Judgment against Garnishee* was served on the **Garnishee**. An *Affidavit of Service* is included in the *Motion for Default Judgment against Garnishee* form towards the end of the form.

Motion for Supplementary Proceeding: This is a request by a **Judgment Creditor** that a hearing be held in order to gather information about a *Judgment Debtor* to assist the **Judgment Creditor** with collection on a *Judgment*. The types of information sought in the *Motion for Supplementary Proceeding* include information on the *Judgment Debtor*'s property, finances and/or employment. The Court Clerk's Office may issue a subpoena directing any person with knowledge that will aid in enforcement of or execution on the judgment to appear before the Court to respond to questions relating to their knowledge.

Motion to Satisfy Judgment: This is a request by a *Judgment Debtor* that an *Order* be entered indicating that the *Judgment Debtor* has paid the *Judgment* in full to the *Judgment Creditor*. The **Judgment Creditor** must be given notice of the *Motion to Satisfy Judgment* the way a *Summons and Complaint* are served on a **Defendant**. A hearing on the *Motion* will be held and if the **Judgment Creditor** fails to show up at the hearing, a *Default Satisfaction of Judgment* may be entered if the **Judgment Debtor:** 1) files the *Return of Service* or an *Affidavit* that after a diligent search the judgment creditor could not be located; and 2) provides proof of payment of the full amount of the *Judgment* with interest plus post-judgment costs incurred by the **Judgment Creditor**.

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