

HOW TO FILE A LAWSUIT

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 THE MAGISTRATE COURT?

The Magistrate Court is a small claims court or a court of limited jurisdiction. This means that the Court can consider only certain types of cases. A civil action is a lawsuit brought before the court for the enforcement of private rights; among these are Contract rights and Tort rights. Usually a civil action asks for money damages. A Tort right is a breach of duty owed to you which caused a harm or injury to you or to your property. Your contract rights are the rights you have to expect someone else to abide by, or act in accordance with, the terms of a written or spoken agreement or promise. Although a variety of cases may be filed at the Magistrate Court, the most common types of civil cases are as follows:

- Landlord/Tenant disputes
- Unsettled debts
- Auto accidents
- Personal injury claims
- Property damage claims
- Contract disputes

By law, the Magistrate Court **CANNOT** consider any civil case related to:

- Domestic relations (e.g. orders of protection, divorce, annulment, separation, custody, support, guardianship, dependency of children, or adoption)
- Malicious prosecution, libel, or slander
- Title to land or boundary disputes (e.g. real estate disputes)
- Specific performance for the sale of land
- Misconduct by public officers
- Restraining orders, habeas corpus
- Extraordinary writs or injunctions

The Court also **CANNOT** consider any case where the amount of money claimed by a party is more than \$10,000.

Magistrate Court's jurisdiction is limited to hearing cases where one of the following **must** be true:

- ▶ **The Plaintiff** lives in the county in which the case is filed;
- ▶ **The Defendant** lives in the county in which the case is filed; or ▶ The action happened in the county in which the case is filed.

If your case is the type of case that Magistrate Court can consider, then you may file your lawsuit here.

However, the Magistrate Court only has jurisdiction over the **Defendant** if the **Defendant** is served (given notice of the lawsuit) in New Mexico.

WHAT KIND OF DAMAGES CAN I SEEK?

A. Compensatory – Out-of-pocket expenses due to action or inaction of the **Defendant**.

B. Punitive – Damages claimed with the intent of punishing the **Defendant**. These damages can only be obtained if the court awards compensatory damages. **THESE DAMAGES ARE NOT USUAL AND ARE**

RARELY ORDERED BY THE COURT.

HOW DO I BEGIN A LAWSUIT?

To file a lawsuit you should know that the one filing the lawsuit is called the **Plaintiff** and the one being sued is called the **Defendant**.

A **Plaintiff** or a **Defendant** must be:

- A person at least eighteen (18) years old, a parent of a minor, a guardian, “next friend,” trustee, executor; or
- A business entity, such as a corporation, partnership, or a limited liability company. A corporation must be sued in its corporate name.

If the **Plaintiff** or the **Defendant** is a legal entity such as a corporation or limited liability company, the entity may be required by law to hire an attorney to represent the entity in a lawsuit.

To file a lawsuit you must fill out a **Civil Complaint** form, which may be obtained from:

- ❖ The Judicial website. (www.nmcourts.gov); or
- ❖ The Magistrate Court Clerk’s Office.

In the **Civil Complaint**, the **Plaintiff** must at a minimum provide:

- ▶ The correct name and physical address of the **Plaintiff(s)** and the **Defendant(s)**;
- ▶ The dollar amount being claimed; and
- ▶ A brief description of the **Plaintiff’s** claim.

COURT EMPLOYEES ARE NOT PERMITTED TO FILL OUT FORMS OR GIVE LEGAL ADVICE.

Trial Note:	Please, remember that neither court staff nor a judge can give you legal advice and that at the time of trial the Judge cannot assist you in presenting your case.
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When you have completed the **Civil Complaint** form, take it to the court to have the **Civil Complaint** filed. The current fee to file a **Civil Complaint** is **\$77.00**. After filing, a **Service Packet** may be prepared and given to you. The **Service Packet** is explained below.

CAN I REQUEST A JURY TRIAL?

Either party may request a jury trial by six (6) – person jury. The **Plaintiff** must make the request at the same time the **Civil Complaint** is filed. The **Defendant** must make the request at the same time the **Answer to Civil Complaint** form is filed. There are additional fees for a jury trial. If a jury trial request is not made in the **Civil Complaint** or **Answer to Civil Complaint** form, trial by jury is considered to be waived.

WHAT ARE THE COURT AND JURY FEES AND COSTS?

The fee to file a **Civil Complaint** is a Court Cost. In addition, if a party requests a jury, the Court charges a **\$25.00** non-refundable jury fee and also a **\$75.00** jury deposit. The jury fee and jury deposit must be paid separately at the time of filing a jury request. The jury deposit may be all or partially refundable. If you need to obtain copies of any Court documents, the charge is **\$0.50** per page, for copies.

METHODS OF PAYMENT

Personal checks are not accepted. Acceptable forms of payment are: Cash (\$20 are the largest bills accepted), Money Orders, Cashier's Checks, and Debit/Credit cards (with a 2.4% surcharge). Make money orders and checks payable to "Dona Ana County Magistrate Court". Attorneys may pay fees by official business firm checks.

WHO WILL BE THE JUDGE?

A Judge is randomly assigned to a case when the *Civil Complaint* is filed. Each party may excuse one (1) Judge. In a civil case, the Plaintiff may disqualify/excuse the Judge within **ten (10) days** after the *Civil Complaint* is filed. The **Defendant** may excuse the Judge within **ten (10) days** after the *Answer to Civil Complaint* form is filed or service of notice of assignment of the case to a judge by the court, whichever is later. If a Judge is excused, a new Judge will be randomly assigned to the case. Unless a jury is requested, the Judge will make all of the decisions in the case.

HOW IS THE DEFENDANT NOTIFIED OF THE LAWSUIT?

The law requires that the **Defendant** MUST be given notice that a lawsuit has been filed. It is the responsibility of the **Plaintiff** to make sure that the **Defendant** receives proper notice.

When a *Civil Complaint* is filed in the Magistrate Court, the Clerk may prepare a *Service Packet*. The *Service Packet* contains a copy of the *Civil Complaint*, *Summons*, and an *Answer* form.

The **Plaintiff** is prohibited by law from delivering the *Service Packet* to the **Defendant**. Instead, the **Plaintiff** must have one of the following persons deliver the *Service Packet* to the **Defendant** at the **Plaintiff's** additional expense (the **Plaintiff** is responsible for providing extra copies, as required, by the person who serves the documents):

- **The Sheriff of the county where the Defendant may be found; or**
- **A private process server; or**
- **Any person eighteen (18) years of age or older who is not a party in the lawsuit.**

There are specific rules that must be followed to give proper notice of the lawsuit to the **Defendant**. If the **Defendant** is a person, the two (2) basic ways to serve the **Defendant** properly are by:

1. **MAIL:** Mailing copies of the *Civil Complaint*, *Summons*, an *Answer* form, two (2) copies of an *Acknowledgment of Service* form, and a return, prepaid envelope to the **Defendant**. If no *Acknowledgment of Service* form is received by the **Plaintiff** within twenty (20) days after the date of mailing plus three (3) days as provided by Rule 2-104, service of the *Summons*, *Civil Complaint* and *Answer* form shall be made by a person as described above, by Personal Service. A **Defendant** does not have to sign the *Acknowledgment of Service*, but may have to pay the costs of personal service if the *Acknowledgment of Service* is not completed and returned to the sender within twenty-three (23) days after it was mailed, even if the **Defendant** wins the lawsuit.
2. **PERSONAL SERVICE:** a) Delivering a copy of the *Civil Complaint*, *Summons*, and *Answer* form directly to the **Defendant**; b) If the **Defendant** refuses to accept service, it can be left at the location where **Defendant** has been found, and service shall be considered valid; c) If the **Defendant** is not present, service can be made by delivering a copy of the process to some person residing at the usual abode of the **Defendant** who is over the age of fifteen (15); and d) If no person is present or willing to accept service, it can be posted in the most public part of the **Defendant's** premises, and then mailed to the **Defendant** at their last known mailing address.

If the **Defendant** is a legal business entity, such as a corporation, limited liability company, or a partnership, the *Service Packet* must be given to the Registered Agent, an officer, managing agent, general partner, , or other person in charge of the entity. A copy of the *Service Packet* must also be mailed to the **Defendant**.

After the *Service Packet* is properly served on the **Defendant**, the *Return of Service* located on the backside of the *Summons* must be completed by the person who delivered the *Service Packet* to the **Defendant** and filed with the Court. If the *Return of Service* is not returned to and filed with the Court, the Judge may not take any action and the case may be delayed and could be dismissed.

OTHER IMPORTANT FACTS:

If the **Defendant** does not file an *Answer* or other appropriate responsive pleading within twenty (20) days after service of the *Civil Complaint*, the **Plaintiff** may request that the Court enter a *Default Judgment* against the **Defendant** in favor of the **Plaintiff** without a hearing. However, the Defendant may file a request for the Court to set aside a *Default Judgment* by providing a good reason why they failed to file an *Answer* or appear at the trial within thirty (30) days of the entry of the *Default Judgment*. (See *Motions* pamphlet.)

If the **Defendant** files an *Answer*, the parties may proceed to prepare for trial. The **Plaintiff** is required to give the **Defendant** a *Witness List* and an *Exhibit List* at least twenty (20) **days before** the trial or as ordered by the Judge. The **Defendant** is also required to give the **Plaintiff** a *Witness and an Exhibit List* at least fifteen (15) **days** before trial, or as ordered by the Judge. (See *Pre-Trial/Trial* pamphlet.)

Note that if no action is taken by the **Plaintiff** to bring the case to trial within six (6) months from the filing date of the *Civil Complaint*, the lawsuit may be dismissed by the Court for failure to prosecute. The Court will notify each party who has entered an appearance in the lawsuit that it has been dismissed.

There are laws that limit how long a **Plaintiff** has to file a lawsuit after an incident has occurred. These laws are called Statutes of Limitations and may be found at: <https://nmonesource.com/>; a public library, the Supreme Court Law Library, or the University of New Mexico Law School Library. Generally, the time limits range from two (2) to six (6) years, depending on the type of legal claim being pursued in the lawsuit. If you are not sure how long you have, consult a lawyer.

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