

CIVIL APPEAL IN DISTRICT COURT FROM A MAGISTRATE COURT JUDGMENT

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. In addition, 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 AN APPEAL?

At the conclusion of a trial, the judge or jury will decide a case. The judge will provide the parties with a written decision called a judgment. The judgment states who won or lost and the amount of damages, attorney's fees, or court costs awarded, if any. A party aggrieved by the judgment or final order in a civil action in the Magistrate Court may appeal, as permitted by law, to the District Court of the county where the Magistrate Court is located.

When a party appeals a judgment, the party asks a higher court to reconsider the case. A party who appeals from the judgment of the Magistrate Court has a right to a new trial (trial de novo) in the District Court.

DEADLINE TO FILE AN APPEAL

An appeal must be filed within fifteen (15) days after the Magistrate Court files the final decision or judgment in the Magistrate Court Clerk's Office. A Notice of Appeal filed after the announcement of a decision or return of the verdict but before the judgment or order is filed in the Magistrate Court Clerk's Office, shall be treated as timely filed.

If a party files a timely Notice of Appeal, any other party may file a Notice of Appeal within ten (10) days after the date the first Notice of Appeal was served. However, to stop an eviction in landlord/tenant cases, the tenant must file an appeal on or before the effective date of the Writ of Restitution set forth in the judgment. The date a final decision or judgment was filed may not be the same as when the hearing or trial was held. The decision or judgment will have a date stamp that indicates the date it was filed with the Magistrate Court.

HOW IS AN APPEAL FROM THE MAGISTRATE COURT FILED?

To appeal a final decision or judgment made by a Magistrate Court judge or jury, a party must file a Notice of Appeal with proof of service, along with a copy of the final decision or judgment, with the District Court for the county in which the Magistrate Court is located. The party who files the Notice of Appeal is called the appellant.

Immediately after the Notice of Appeal is filed in the appropriate District Court, the party who filed the appeal must provide the Magistrate Court Clerk with an endorsed copy (with a court stamp or seal of the court and the signature of the clerk or judge who issued it) of the Notice of Appeal and a copy of the receipt of payment of the District Court filing fee (receipt of payment of the docket fee).

The party who filed the appeal (appellant) must serve in accordance with NMRA Rule 1-005, an endorsed copy of the Notice of Appeal to all parties named in the Magistrate Court lawsuit (by mail or by handing it to the other parties in the case) pursuant to NMRA Rule 1-005). If an attorney represents a party, the service shall be made upon the attorney unless service upon the party is ordered by the District Court. A Certificate of Service indicating the date the Notice of Appeal was served must be filed with the District Court.

After an endorsed copy of the Notice of Appeal has been filed with the Magistrate Court, the Magistrate Court Clerk's Office will transfer a copy of the entire file (the record on appeal taken in the case in the Magistrate Court) to the District Court within fifteen (15) days. The file will include a copy of all papers and pleadings filed in the Magistrate Court, a copy of the judgment or order sought to be reviewed, any exhibits in the case, and any transcript of the proceedings made by the Magistrate Court.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost of preparing such a copy. The Magistrate Court Clerk will notify all parties of the filing of the record on appeal with the District Court.

The filing fee for a civil case in the District Court appealed from a Magistrate Court case is \$132.00. If the appealing party is unable to pay the filing fee, they must submit an Application for Free Process and Affidavit of Indigency, Form 4-222 NMRA, to the District Court Clerk's Office at the time the Notice of Appeal is filed.

Except in very limited circumstances, after a Notice of Appeal is filed, the Magistrate Court loses jurisdiction (the power or authority that a court has to hear and decide cases related to a specific subject matter or a specific geographical area) of the case, and the District Court will have jurisdiction over the case.

WHAT HAPPENS AFTER THE APPEAL IS FILED?

After the appeal is filed, the case will be tried all over again in District Court, as if the Magistrate Court case had never occurred (trial de novo). The case proceeds according to NMRA Rules 1-001 through 1-106 Rules of Civil Procedure for the District Courts.

The complaint and other pleadings filed in the Magistrate Court will be the complaint and pleadings in the District Court. However, an amended complaint may be filed in the District Court within thirty (30) days after service of the Notice of Appeal. An amended complaint must be served in the manner provided by NMRA Rule 1-004, which includes serving a summons issued by the District Court Clerk's Office and a copy of the amended complaint on the opposing parties. If an amended complaint is filed, a responsive pleading (i.e., an answer to the amended complaint) shall be filed in the District Court within thirty (30) days and served as provided by NMRA Rule 1-005.

WHAT HAPPENS AFTER THE DISTRICT COURT DECIDES THE APPEAL?

A motion for reconsideration may be filed within ten (10) days after filing of the District Court's final order or judgment in the appeal proceeding from the Magistrate Court. The motion shall state briefly and with particularity, but without argument, the points of law or fact that, in the movant's opinion, the District Court has overlooked or misapprehended. No response to a motion for rehearing will be filed unless a response from the opposing parties is requested by the District Court.

Any aggrieved person may appeal from a judgment of the District Court to the New Mexico Supreme Court or Court of Appeals in accordance with the Rules of Appellate Procedure. Any appeal bond approved by the Magistrate Court or modified by the District Court will continue in effect pending appeal to the Supreme Court or Court of Appeals unless modified pursuant to NMRA Rule 12-207 of the Rules of Appellate Procedure.

After the time for appeal from the District Court's judgment or final order, if the relief granted is within the jurisdiction of the Magistrate Court, the District Court will remand the case to the Magistrate Court for enforcement of the District Court's judgment. On remand of the case by the District Court to the Magistrate Court, the Magistrate Court will enforce the mandate of the District Court. After final determination of the appeal by the District Court, the District Court Clerk's Office will return the record on appeal to the Magistrate Court Clerk's Office.

COLLECTION OF JUDGMENT WHILE THE APPEAL IS PENDING

The Judgment Creditor (a party who is declared by the Magistrate Court to be entitled to money from the other party) can try to collect the money owed according to the judgment, even if a Notice of Appeal has been filed. The Judgment Debtor (the person who owes the money under the judgment) may, however, hold off these attempts at collection by posting an appeal bond known as a "supersedeas bond" (a type of surety bond required to obtain a stay of execution of a judgment that continues in effect until final disposition of the appeal) with the clerk of the Magistrate Court. The Magistrate Court judge will determine the amount of the appeal bond, which is in the amount of the judgment and costs with or without a surety (i.e., a third-party guarantor). If a judgment

debtor posts the required appeal bond with the Magistrate Court, all collection action stays (stopped) until the District Court decides the appeal. The bond or deposit is not refundable during the pendency of an appeal.

Note that if both parties to a Magistrate Court case appeal, either because neither is satisfied with the outcome or because the parties filed unsuccessful claims against each other, the Magistrate Court may require bonds of both parties if they each want to appeal.

An appeal by the tenant may stay (stop temporarily) the execution of any Writ of Restitution if, within five (5)-days of filing the Notice of Appeal, the tenant pays to the owner or into an escrow account with a professional escrow agent the balance of the rent owed from the day after the judgment through the end of that rental period. The tenant must continue to pay the monthly rent on the day rent would normally be due in the amount established by the Lease or Rental Agreement when the Petition for Restitution by Owner was filed. Payments made by a tenant receiving rent subsidies need to be the actual amount of the monthly rent paid by the tenant. If the tenant pays into an escrow account, the tenant must have the escrow agent pay the amount to the landlord immediately unless the Magistrate Court orders something different.

If the tenant or the escrow agent does not make a monthly rental payment on the day rent is due, the landlord may serve the tenant a three (3)-day written notice. If the tenant or the tenant's escrow agent fails to pay the rent within three (3) days, a hearing will be scheduled within ten (10) days from the day the Magistrate Court is notified of the failure of the tenant to pay rent. However, after a Notice of Appeal is filed with the District Court, a hearing will be set in the District Court where the judgment was appealed. If the District Court finds that rent was not paid, the District Court may immediately lift the stay and issue the Writ of Restitution unless the tenant demonstrates to the District Court legal justification for their failing to comply with the rent payment requirement.

WHAT HAPPENS TO THE APPEAL BOND AFTER THE APPEAL IS DECIDED?

The District Court will decide what happens to the appeal bond. Generally, if the judgment of the District Court is the same as that of the Magistrate Court (affirmance) or the appeal is dismissed, the District Court will order the District Court Clerk's Office to pay the appeal bond to the judgment creditor as payment of the judgment.

If the judgment of the District Court is different from that of the Magistrate Court (reversed or satisfied), the appeal bond will be released to the party who appealed according to the District Court's decision (the bond is void).

FORMS FOR THE APPEAL PROCESS

Blank forms are available for filing a Notice of Appeal. The Notice of Appeal for civil cases (Form 4-707) is available from the Magistrate Court Clerk, from the New Mexico Compilation Commission's website (<https://nmonesource.com>), or the New Mexico's Judiciary website (<https://www.nmcourts.gov/>).

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