

How to File a Lawsuit



Magistrate Court - Civil Division

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 or that it meets 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. Although a variety of cases can be filed at the Metropolitan 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 is limited to hearing cases where one of the following **must** be true:

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

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

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

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 18 years old or parent of a minor; the guardian, “next friend,” or
- A business entity, such as a corporation, partnership or company.

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 any lawsuit.

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

- ❖ The **Magistrate Court website**. (www.nmcourts.gov); or
- ❖ A public library.

In the **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.



When you have completed the **Complaint** form, take it to the court to have the **Complaint** filed. The current fee to file a **Complaint** is **\$72.00 plus \$5.00 magistrate fee for a total of \$77.00**. After filing, a **Service Packet** will 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. The **Plaintiff must** make the request at the same time the **Complaint** is filed. **There are additional fees for a jury trial.**

WHAT ARE COURT & JURY COSTS?

The fee to file a **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. The jury deposit may be refundable. If you need to obtain copies of any Court documents, the charge is **\$0.50** per page, for copies.

WHO WILL BE THE JUDGE?

A Judge is randomly assigned to a case when the **Complaint** is filed. Each party may disqualify one Judge. In a civil case, the **Plaintiff** may disqualify/excuse the Judge within **10 days** after the **Complaint** is filed. If a Judge is disqualified, 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 **Complaint** is filed in the Magistrate Court, the Clerk will prepare a **Service Packet**. The **Service Packet** contains a copy of the **Complaint**, **Summons** and an **Answer** form.

The **Plaintiff** **is prohibited by law** from delivering the **Service Packet** to the **Defendant**. Instead, the following persons can deliver the **Service Packet** to the **Defendant**:

- ☐ **The County Sheriff; or**
- ☐ **A private process server; or**
- **Any person 18 years of age or older who is not a party in the lawsuit.**

Note: The Sheriff's office and private process servers charge a fee for their services.

There are specific rules that **must** be followed to give proper notice of a lawsuit to the **Defendant**. If the **Defendant** is a person, the four (4) basic ways to properly serve are by:

- ☐ Giving the **Service Packet** directly to the Defendant (personal service); or
- Posting the **Service Packet** on the front door of the Defendant's residence. If posted, a complete copy of the **Service Packet** also must be mailed to the **Defendant** (posting & mailing); or
- Giving the **Service Packet** to someone who lives at Defendant's residence and is 15 years of age or older (substitute service).
- ☐ Mailing the **Service Packet**, plus two Acknowledgment of Receipt Forms, to the Defendant. (This only works if the Defendant agrees to sign the Acknowledgement.)

If the **Defendant** is a legal business entity, such as a corporation, the **Service Packet** **must** be given to the **Registered Agent**, an officer, manager, or other person in charge of the entity, or by mailing to a corporation's registered agent.

After the **Service Packet** is properly served on the **Defendant**, the **Return of Service** on the back of the **original Summons** (the one with the court seal) **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 will not take any action and the case will be delayed and could be dismissed.

OTHER IMPORTANT FACTS:

If the **Defendant** does not file an **Answer** or other appropriate responsive pleading within **20 days** after service of the **Complaint**, the **Plaintiff** can request the Court to enter a **Default Judgment** against the **Defendant** in favor of the **Plaintiff** without a hearing. (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 **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 **15 days** before trial or as ordered by the Judge. (See *Pre-Trial/Trial* pamphlet.)

Please note that if no action is taken on the case for 6 months, the case will be 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 can be found at: www.nmcourts.gov; the public library or the UNM Law School Library.