

How to File a Civil Lawsuit



Metropolitan 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 METROPOLITAN COURT?

The Metropolitan 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 Metropolitan Court **CANNOT** consider any civil case related to:

- Domestic relations (e.g. 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 greater than \$10,000.

Metropolitan Court is limited to hearing cases where:

1. The action happened in Bernalillo County; and
2. The **Defendant** is served [given notice of the lawsuit] in New Mexico; and
3. Either the **Plaintiff** or the **Defendant** lives in Bernalillo County.

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

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

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:

- ❖ **Customer Service** on the 1st floor of the Courthouse;
- ❖ The **Self-Help Center**; or
- ❖ The **Metropolitan Court website**. (<http://metro.nmcourts.gov/>)

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 **Customer Service** to have the *Complaint* filed. The current fee to file a *Complaint* **\$77.00**. After filing, a **Service Packet** will be prepared and given to you.

CAN I REQUEST A JURY TRIAL?

Either party may request a jury trial. The **Plaintiff must** make the request when the *Complaint* is filed. The **Defendant must** make the request when the *Answer* 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. The **Defendant** may disqualify the Judge within **10 days** after an *Answer* 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.

RECORD OF HEARINGS/TRIAL

If you would like a hearing or trial to be recorded, you will need to request it **in writing at least 10 days before** your Court date. A recording may be important if your case is appealed. A copy of the CD will be available up to **90 days** after the **Judgment** is filed in your case. You may obtain a copy of the CD if you request it in writing and pay the fee of **\$5.00** per CD.

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 Metropolitan 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**. However, 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 three (3) 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).

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.

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 or may mediate their dispute. (See *Mediation* pamphlet.) If they proceed to 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 the public library or the UNM Law School Library.

OTHER PAMPHLETS AND FORMS ARE AVAILABLE IN CUSTOMER SERVICE ON THE 1ST FLOOR OF THE COURT, IN THE SELF-HELP CENTER, OR ON THE COURT'S WEBSITE.

Metropolitan Court
401 Lomas, NW
Albuquerque, NM 87102
(505) 841-8151
<http://metro.nmcourts.gov/>

