

# APPEAL



## 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 AN APPEAL?

At the conclusion of a **Trial**, the Judge or Jury will make a decision. 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.

An **Appeal** is a request that a higher Court review the decision of a lower Court. Every party in a lawsuit has the right to **Appeal** the lower Court's **Judgment** or final **Order**.

An **Appeal** does not give a party the right to a new trial. The higher court does not accept any new evidence and only reviews the decision of the lower court for any abuses or errors.

### THE DEADLINE TO FILE AN APPEAL

An **Appeal** must be filed in the **Second Judicial District Court** within **15 days** after the final **Order** or **Judgment** is filed with the **Metropolitan Court**. However, in Landlord-Tenant cases to stop an eviction, the **Appeal** must be filed *on or before* the effective date of the **Writ of Restitution** set forth in the **Judgment for Restitution**.

Also, if another party in your case has filed an **Appeal** and you decide you also want to file an **Appeal**, your deadline to file an **Appeal** is within **10 days** after the date on which the first **Notice of Appeal** was served or within such other time as prescribed by the Metropolitan Court Rules of Civil Procedure.

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*Note: The date a final Order or Judgment is filed may not be the same date as the hearing or trial. The Order or Judgment will have a date stamped on it that indicates the date that it is filed with the Court.*

### HOW IS AN APPEAL FILED?

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To **Appeal** a final **Order** or **Judgment** made by a Metropolitan Court Judge or Jury, a party must file a **Notice of Appeal**, together with a copy of the final **Order** or **Judgment** (to which the **Appeal** applies) with the **Second Judicial District Court**. The **Notice of Appeal** must be the form approved by the Supreme Court.

The party filing an **Appeal** is called **Appellant**. Immediately after the **Appellant** has filed the *Notice of Appeal* in the **Second Judicial District Court**, the **Appellant** must provide the Metropolitan Court Clerk with an endorsed copy of the *Notice of Appeal* and a copy of **District Court**'s receipt for the filing fee.

The **Appellant** also must mail an endorsed copy of the *Notice of Appeal* to all parties named in the **Metropolitan Court** lawsuit, together with a *Certificate of Service* indicating the date the *Notice of Appeal* was mailed. The **Appellant** then needs to file the *Certificate of Service* with the District Court.

Within **15 days** after the **Metropolitan Court** has received an endorsed copy of the *Notice of Appeal*, the Metropolitan Court Clerk will transfer a copy of the entire case file to the **Second Judicial District Court**. The file will include all pleadings, exhibits and recordings of the proceedings, if any.



*Except in very limited circumstances, after an appeal is filed, the District Court will have jurisdiction (control) over the case.*



## **WHAT HAPPENS AFTER THE NOTICE OF APPEAL IS FILED?**

After the *Notice of Appeal* is filed, the parties are required to file various documents in support of or in opposition to the *Appeal*. Filing an *Appeal* is a very technical process. **Rule 3-706 NMRA of the Metropolitan Rules of Civil Procedure** describes the requirements of the **Metropolitan Court**. However, as an *Appeal* is being filed in another court, it is the **Rules of Civil Procedure** for the **Second Judicial District Court** that must be followed by the parties. Any party involved in an *Appeal*, whether as the **Appellant** or as the party responding to an *Appeal* called the “**Appellee**,” should be very familiar with all of these Rules.

## **COLLECTION OF JUDGMENT WHILE APPEAL IS PENDING**

The party who won the underlying lawsuit (“**Judgment Creditor**”) can still pursue enforcement of a **Judgment** even if an *Appeal* is filed, unless the party who lost the lawsuit (“**Judgment Debtor**”) posts an *Appeal Bond* with the Clerk of the Metropolitan Court. The Judge of the Metropolitan Court will determine the amount of the *Appeal Bond*. If a **Judgment Debtor** posts an *Appeal Bond*, then all actions by the **Judgment Creditor** to enforce the **Judgment** are stopped (“stayed”) until the **Second Judicial District Court** finally decides the *Appeal*.

The filing of an *Appeal Bond* also stays the collection of a **Judgment** or the eviction of the **Tenant** in a **Restitution (Eviction)** lawsuit.

If an *Appeal Bond* is filed, the stay usually will continue until the **Second Judicial District Court** enters its final decision on the *Appeal*.

However, in an eviction lawsuit, if an *Appeal Bond* is posted, typically, the Judge will sign an additional order giving the parties directions on what to do while the *Appeal* is pending. The order usually includes instructions on who gets possession of the property and that monthly rents must continue to be paid by the **Tenant** by either depositing the rent into an escrow account or paying it directly to the **Landlord**.

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

After the *Appeal* has been decided by the **Second Judicial District Court** that Court usually will decide what happens to the *Appeal Bond*. Typically, if the **Metropolitan Court's Judgment** is reversed or satisfied, meaning that the Metropolitan Court Judge's decision was in error, then **District Court** may order that the *Appeal Bond* be voided (cancelled) and released back to the **Appellant**.

Alternatively, it is usually the case that if the *Appeal* is dismissed or the **Metropolitan Court's Judgment** is affirmed, meaning that the Metropolitan Court Judge's decision was valid and/or right, then upon an order of the **District Court**, the *Appeal Bond* may be released to the **Judgment Creditor** to pay the **Judgment**.

### CONSULT AN ATTORNEY

*The procedures required to conduct an Appeal are very complicated. If you miss a deadline or do not file correct or complete papers (pleadings) with either the Metropolitan Court or the Second Judicial District Court or if you do not follow the Rules of those Courts, you may ruin your Appeal or your defense of an Appeal. Therefore, you are strongly encouraged to consult with an attorney.*

### LEGAL SERVICES AND RESOURCES IN THE COMMUNITY

There are a number of legal service programs in our community that also may be able to assist you with an *Appeal*. The following list is provided to you for informational purposes only and the Metropolitan Court does not endorse any particular legal services program:

Law Access New Mexico 998-4529

UNM Law Library 277-6236

NM State Bar Attorney Referral Program  
797-6066

Albuquerque Bar Lawyer Referral Service 243-2615

NM Legal Aid 243-7871

Second Judicial District Court, Self Help Center 841-6702

OTHER PAMPHLETS 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/>