

# 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**.

### THE DEADLINE TO FILE AN APPEAL

In Landlord-Tenant cases:

To stop an eviction, an **Appeal** must be filed in the **Second Judicial District Court** within **15 days** of the **Judgment for Restitution**.

In all other civil cases:

An **Appeal** to the **Court of Appeals** must be filed with the **Metropolitan Court** within **30 days** from the date of the entry of the final Order or Judgment.



*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?

Landlord-Tenant cases:

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.

In all other civil cases:

To *Appeal* a final **Order** or **Judgment** made by a Metropolitan Court Judge or Jury to the **Court of Appeals**, 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 Metropolitan Court. Within 30 days of filing the appeal, the docketing statement provided by Rule 12-208 NMRA shall be filed with the clerk of the **Court of Appeals**. The *Notice of Appeal* must be the form approved by the Supreme Court.

The party filing an **Appeal** is called “**Appellant**.” The party responding to an **Appeal** is called the “**Appellee**.” For appeals of Landlord-Tenant cases, 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 the receipt for the filing fee from the Court where the Appeal was filed.

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 Court where the Appeal was filed.

Within **14 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 **Court** where the Appeal was filed. The file will include all pleadings, exhibits and recordings of the proceedings, if any.

#### 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 or the Rules of Appellate Procedure for the Court of Appeals** that must be followed by the parties. Any party involved in an *Appeal*, whether as the **Appellant** or as the **Appellee** should be very familiar with all of the applicable 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** or the **Court of Appeals** finally decides the *Appeal*.

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

However, in an eviction lawsuit, if the **Tenant** wants to stay the eviction while the appeal is pending, then the **Tenant** shall be required in the **Judgment for Restitution** to continue to pay rent to the **Landlord** or into an escrow account rent as required by NMSA 1978, Section 47-8-47.

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

After the *Appeal* has been decided by the Court where the appeal was filed, that Court usually will decide what happens to the *Appeal Bond*. Typically, if the **Metropolitan Court's Judgment** is reversed or satisfied, then Court where the Appeal was filed 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, then upon an order of the **Court where the Appeal was filed**, the *Appeal Bond* may be released to the **Judgment Creditor** to pay the **Judgment**.

### CONSULT AN ATTORNEY

*This Pamphlet is just a brief overview on appeals as 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 the Metropolitan Court, the Second Judicial District Court, or the Court of Appeals, 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:

**UNM Law Library (505) 277-6236**

**Modest Means Helpline (505) 797-6013**

**NM Legal Aid 1-833-545-4357**

**Second Judicial District Court, Self Help Center (505) 841-6702**

**NM Court of Appeals (505) 841-4618**

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.

NEW MEXICO LAWS, RULES, AND FORMS CAN BE FOUND AT [HTTPS://WWW.NMONESOURCE.COM/](https://www.nmonesource.com/)

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

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