

APPEAL IN MAGISTRATE COURT

This pamphlet is not designed to give legal advice; it simply describes a small portion of the court's procedures. If you have filed a lawsuit or one has been filed against you, you should consult an attorney for legal advice about what to do.

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.

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 in the District Court. Every party in a lawsuit has the right to appeal the trial court's judgment or final decision.

DEADLINE TO FILE AN APPEAL

An appeal must be filed within 15 days after the court files the final decision or judgment. 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 the date when the hearing or trial was held. The decision or judgment will have a date stamped on it that indicates the date it was filed.

HOW IS AN APPEAL FILED?

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

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 of the Notice of Appeal and a copy of the District Court filing fee receipt.

An endorsed copy of the Notice of Appeal also must be mailed to all parties named in the lawsuit and a Certificate of Service indicating the date the Notice of Appeal was mailed must be filed with the District Court.

When the Notice of Appeal has been filed at the Magistrate Court, the clerk will transfer a copy of the entire file to District Court within 15 days. The file will include all pleadings and exhibits, if any.

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

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. The case proceeds according to the Rules of Civil Procedure for the District Courts, Rules 1-001 through 1-127.

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 an appeal is 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 with the clerk of the Magistrate Court. The judge of the Magistrate Court will determine the amount of the appeal bond. If a Judgment Debtor posts the required appeal bond, then all collection action is stayed (stopped) until the District Court decides the appeal.

The filing of an appeal bond also stays the eviction of the tenant in a restitution (eviction) lawsuit. However, in an eviction lawsuit, if an appeal bond is posted, the judge will sign an additional order giving the parties directions on what to do while the appeal is pending. The order usually decides who gets possession of the property and requires the tenant to continue paying monthly rent by either depositing the rent into an escrow account or by paying it directly to the landlord.

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

The District Court will decide what happens to the bond. Generally, if the judgment of the District Court is the same as that of the Magistrate Court, then the court will order the clerk 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, the appeal bond will be released to the party who appealed according to the District Court's decision.

Note that if both parties to a dispute 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 want to appeal.

FORMS FOR THE APPEAL PROCESS

Blank forms are available for filing a Notice of Appeal. The Notice of Appeal for criminal cases (Crim. Form 9-607) and the Notice of Appeal for civil cases (Civ. Form 4-707) are available from the Magistrate Court Clerk.

Community Legal Resources

Law Library/UNM School of Law
(505) 277-6236

Lawyers Care Referral Program
(505) 797-6066 or 1-800-876-6227

Lawyer Referral for the Elderly

(505) 797-6005 or 1-800-876-6657

Lawyer Referral Service

(505) 243-2615

NM Supreme Court Law Library

(505) 827-4850

Legal Aid Society of Albuquerque

(505) 243-7871