

# HOW TO FILE A LAWSUIT 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, you should consult an attorney for legal advice about what to do.

## WHAT IS MAGISTRATE COURT?

Magistrate Court is a small claims court, also known as a court of limited jurisdiction. This means that the magistrate judge can consider only certain types of cases. Although a variety of cases can be filed in Magistrate Court, the most common types of cases are:

- Landlord/tenant disputes
- Unpaid debts
- Auto accidents
- Personal injury claims
- Property damage claims
- Contract disputes

By law, Magistrate Court cannot consider any case related to:

- Domestic relations, such as divorce, custody, support or adoption
- Malicious prosecution
- Libel or slander
- Title to land or boundary disputes
- Misconduct by public officers
- Restraining orders or injunctions

Magistrate Court is also limited by the amount in dispute. Magistrate Court cannot hear any case where the amount of money claimed by any one party is more than \$10,000.

In addition, Magistrate Court can only hear cases where at least one of the following requirements is met:

- ▶ The Plaintiff lives in the county where the court is located; or
- ▶ The Defendant lives in the county where the court is located; or
- ▶ The action happened in the county where the court is located.

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

## 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 the Defendant. Both the Plaintiff and the Defendant are a "party" to the lawsuit.

The Plaintiff can be a person at least 18 years old, an adult guardian or parent of a minor, a business partnership, a company or a corporation.

The Defendant can be any person, business or corporation.

If the Plaintiff or the Defendant is a corporation, the corporation may be required by law to hire an attorney.

To file your lawsuit you must fill out a Civil Complaint form, which can be obtained from the Magistrate Court Clerk's Office.

In the Complaint, the Plaintiff must provide:

- ▶ the correct name and physical address of the Plaintiff(s) and Defendant(s);
- ▶ the amount being claimed; and
- ▶ a brief description of the claim.

Note: 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 Clerk's Office to have the Complaint filed. After filing, a Service Packet will be prepared and given to you. The next column explains what to do with this packet.

### **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 (response to the Complaint) is filed. There are additional fees for a jury trial (see below). If a jury is not requested, the assigned judge will make all the decisions in the case.

### **WHAT ARE THE COSTS TO FILE A LAWSUIT?**

The current filing fee is \$67.00. For copies, the cost is \$.50 per page. If a jury is requested, a \$25.00 non-refundable jury fee is charged along with a \$50.00 jury bond. The jury fee and jury bond must be paid separately. The jury bond may be refundable.

### **WHO WILL BE THE JUDGE?**

Judges in Magistrate Courts that have more than one judge are randomly assigned to a case when the Complaint is filed. Each party may disqualify one judge. The Plaintiff may disqualify 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.

### **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 Magistrate Court, the clerk will prepare a Service Packet. The Service Packet contains a copy of the Complaint, a Summons and an Answer form.

The Plaintiff him or herself is not permitted by law to deliver the Service Packet to the Defendant. However, the following persons can deliver the Service Packet:

- 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.

The Sheriff and private process servers charge a fee for their service.

There are specific rules that must be followed to give proper notice to the Defendant. If the Defendant is not a corporation, the three basic ways to serve properly are:

- 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 and mailing); or
- giving the Service Packet to someone who resides at the Defendant's residence and is 15 years of age or older (substitute service).

If the Defendant is a corporation, the Service Packet must be given to the registered agent, officer, manager or other person in charge of the corporation.

After the Service Packet is properly served to the Defendant, the Return of Service on the back of the original Summons (the one with the court seal) needs to be completed by the person who delivered the Service Packet.

It is very important that the Return of Service be returned to the Court Clerk's Office for filing. If the Return of Service is not returned to the Magistrate Court, the judge will not take any action and the case will be delayed.

### **OTHER IMPORTANT FACTS**

If the Defendant does not file an Answer within 20 days after service, the Plaintiff can request the court to enter a Default Judgment against the Defendant.

If the Defendant files an Answer, the Plaintiff is required to give the Defendant a Witness List and Exhibit List at least 20 days before the trial. The Defendant is required to give the Plaintiff a Witness List and Exhibit List at least 15 days before the trial.

If no action is taken on the case for six months, the case will be dismissed.

There are laws that limit how long you have to file a lawsuit after the incident occurred. These laws are called Statutes of Limitations and can be found at the public library, the Supreme Court Law Library, or the UNM Law School Library.

**Other pamphlets are available at the Magistrate Court Clerk's Office.**