

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.

WHAT IS A PRETRIAL CONFERENCE?

A pretrial conference is a short hearing where the judge informs the parties of the steps necessary to get ready for trial. The pretrial conference is not a trial. The court does not accept testimony or evidence. The parties do not have to bring witnesses or exhibits to the pretrial conference.

WHAT OCCURS AT THE CONFERENCE?

During the pretrial conference the judge usually discusses rules the parties must follow and sets deadlines for the exchange of information between the parties.

Each party may be given a Pretrial Scheduling Order that describes the rules and deadlines. Each party should know how many witnesses and exhibits he or she will use at the trial. The judge will probably ask for this information.

The judge may also refer the case to mediation, in districts where such programs are available. This is a process that gives the parties an opportunity to work out a settlement without going to trial.

If a jury trial has been requested, the judge will discuss how and when a jury will be selected and the deadline for the parties to submit jury instructions to the court and to each other.

Jury instructions are written instructions about the law in New Mexico that each party can request the judge to give to the jury. New Mexico has many pre-approved jury instructions. A copy of the New Mexico Uniform Jury Instructions for civil cases can be obtained from the University of New Mexico School of Law, the Supreme Court law library, and most public libraries.

SCHEDULING THE PRETRIAL CONFERENCE AND TRIAL

Although pretrial conferences are not scheduled in every case, when one is scheduled, it will be set after an Answer has been filed with the court.

The court will set a date for trial. The judge or clerk will either hand-deliver a Notice of Hearing, setting the date and time of the trial, to the parties at the pretrial conference or mail it to them.

To change a court date, a party must file a Motion for Continuance (postponement) with the court before the scheduled hearing. The judge will decide whether to change the date.

WITNESSES

There are two types of witnesses, lay and expert. A lay witness is anyone with personal knowledge of the facts in the case. A lay witness is generally not permitted to give an opinion, or guess or speculate.

An expert witness is someone who, as a result of training and experience, is knowledgeable in a specialized field and can give an opinion that will assist the judge or jury to understand the evidence or determine a fact in dispute.

Each party must identify by name, address, telephone number, and expected testimony, all witnesses that the party may call to testify at trial. Unless the Pretrial Scheduling Order sets different deadlines, the Plaintiff is required to file with the court and give the other parties a Witness List at least 20 days before trial. The Defendant must file with the court and give the other parties a Witness List at least 15 days before trial.

A written statement from a witness, such as a police report or estimate of repair, is generally considered hearsay, which is not admissible as evidence. Therefore, the judge may not allow a party to use a written statement unless the individual who prepared the statement is present at trial to testify in person and identify the document.

If a witness does not want to appear voluntarily at a hearing or trial, the party may serve a Subpoena on the witness. Parties are strongly advised to subpoena witnesses even when they volunteer to appear. If a witness has been subpoenaed but fails to appear, the party calling the witness can ask the court for a postponement (called a “continuance”) and an order requiring the witness to appear. If a witness has not been subpoenaed, the case will go on as scheduled even if the witness fails to appear as promised. All parties have the duty of ensuring their witnesses appear.

WHAT IS A SUBPOENA?

A Subpoena is an order by the court for a witness to appear at a hearing or trial. A Subpoena Duces Tecum is an order by the court for the witness to bring specific documents.

Subpoenas can be obtained from the Clerk’s Office. To get a Subpoena Duces Tecum a party must provide the Court Clerk the name and address of the witness and a description of the requested documents.

If a party subpoenas a witness, the party must pay the witness a \$75.00 fee and a mileage fee. If the fee is not paid, or at least offered, the witness does not have to appear to testify.

EXHIBITS

Exhibits are documents or objects that a party uses in support of claims and/or defenses. Exhibits can include photographs, contracts, business or medical records, or any other item that may be important in the lawsuit.

Unless the Pretrial Scheduling Order sets different deadlines, the Plaintiff is required to file with the court and give the other parties an Exhibit List at least 20 days before the trial. The Defendant must file with the court and give the other parties an Exhibit List at least 15 days before trial. An Exhibit List form can be picked up from the Court Clerk’s Office.

At trial, a party using a document as an exhibit must establish that the document is valid. This requires a witness who can testify to the creation or authenticity of the document, along with the original or a clear copy of the document. During trial, each party must ask the judge to accept each exhibit as evidence before the judge or jury can consider the exhibit.

EVIDENCE

Evidence can be anything that is helpful to the judge or jury in forming their decision. Cases are decided based on the evidence presented to the judge or jury at the time of trial. Parties are responsible for providing evidence at trial to support their claims or defenses and the amount of their damages. The most common forms of evidence are witness testimony, documents, or any other items that are relevant to the lawsuit.

Each party may agree or object to the evidence presented by other parties. When an objection is made, the judge will determine if the evidence can be considered based on the Rules of Evidence. Each party is obligated to know these rules. A copy of the Rules of Evidence can be obtained from the University of New Mexico School of Law, the Supreme Court Law Library, and most public libraries.

WHO DECIDES THE CASE?

Either party may request a jury trial. The Plaintiff must make the request when the Complaint is filed. The Defendant must request a jury trial when filing the Answer. There are additional fees for a jury trial. All jury fees must be paid for at the time of the filing of the Complaint or Answer form.

If a jury trial is not requested, then the assigned judge will make the decision(s) in the case.

WHAT HAPPENS AT TRIAL?

At the beginning of trial, both parties generally have an opportunity to give an opening statement to the judge or jury. An opening statement is a summary or outline of the case explaining what the party hopes to prove at trial. The opening statement is not evidence and should not include legal arguments.

After opening statements, the Plaintiff presents his or her case by calling witnesses to testify and/or by presenting exhibits. The Plaintiff asks each witness questions. This is called direct-examination. When the Plaintiff finishes, the Defendant may ask the witness questions. This is called cross-examination.

After all of the Plaintiff's witnesses have testified, the Defendant may call and question his or her own witnesses and/or present exhibits. The Plaintiff can cross-examine the Defendant's witnesses. After the Defendant's witnesses testify, the Plaintiff has another chance to present rebuttal evidence. This is evidence given to explain or disprove facts presented by the Defendant.

When all of the parties have presented their evidence, the judge may allow the parties to make a closing argument. A closing argument is a chance for the parties to summarize the facts and law established during the trial and show strengths and/or weaknesses in the case.

After the 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 the case and the amount of damages, attorney's fees and/or court costs awarded, if any.

APPEAL OF THE JUDGMENT

A party that does not agree with the decision of the judge or jury has the right to appeal the Judgment. To appeal, a party is required to file a Notice of Appeal with the District Court Clerk's Office within 15 days after the Judgment is filed.

Other pamphlets are available at the Clerk's Office.