



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

An *Appeal* must be filed in the **District Court** within **15 days** after the final **Order** or **Judgment** is filed with the **Magistrate 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 Magistrate Court Rules of Civil Procedure.

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. If a party wants to appeal, it is that party's responsibility to find out when the judgment was filed.


HOW IS AN APPEAL FILED?

To *Appeal* a final **Order** or **Judgment** made by a Magistrate 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 **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 **District Court**, the **Appellant** must provide the Magistrate 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 **Magistrate 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 Magistrate Court Clerk will transfer a copy of the entire case file to the **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 case will be set for trial by the District Court. The **Rules of Civil Procedure** for the **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 Magistrate Court. The Judge of the Magistrate 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 **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 **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 **District Court** that Court usually will decide what happens to the *Appeal Bond*. If the **Magistrate Court’s Judgment** is reversed or if the judgment is reversed or satisfied the bond is void.

Alternatively, it is usually the case that if the *Appeal* is dismissed or the **Magistrate Court's Judgment** is affirmed, meaning that the Magistrate 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 Magistrate Court or the 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 neither the Administrative Office of the Courts or any magistrate court endorses any particular legal services program:

Legal FACS 256-0417

Law Access New Mexico 998-4529

NM State Bar Attorney Referral Program
797-6066

Legal Service Corporation has local offices that provide free legal services in many areas of the state. You can find a local number at nmlegalaid.org or in your local telephone directory.