COMMONLY USED MOTIONS & FORMS

Magistrate 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 A MOTION?

Many situations arise during a lawsuit where the Judge is asked to make a decision. A ***Motion*** is a written request filed with the Court asking the Judge to take a certain type of action.

WHAT IS INCLUDED IN A MOTION?

- ✓ The **Plaintiff's** name, **Defendant's** name, case number and signature, address and phone number of the party filing the **Motion;**
- ✓ Title of the **Motion;** for example, "Motion to Continue;"
- ✓ A short description of what you are requesting from the Judge;
- ✓ A Certificate of Service indicating that you mailed a copy of the **Motion** to all other parties named in the lawsuit.

You are required to send a copy of any and all documents that you file with the Court to each party named in the lawsuit.

WHERE CAN I PICK-UP AN EXAMPLE OF A MOTION?

Although a ***Motion*** can be filed by any party requesting virtually anything, several examples of motions can be found at www.nmcourts.gov or any public library.

THE FOLLOWING ARE SOME OF THE MORE COMMON TYPES OF MOTIONS:

MOTION TO AMEND: This is a request to change documents that previously have been filed with the Court.

MOTION FOR JUDGMENT ON THE PLEADINGS: This is a request that a ***Judgment*** be entered against a party based only on the documents filed with the Court and without a trial.

MOTION FOR DEFAULT JUDGMENT: This is a request that a ***Judgment*** be entered against a **Defendant** for not answering the ***Complaint*** or for failing to appear at a final hearing or trial. The party requesting the **Default Judgment** also must have filed proper return of service, which confirms that the **Defendant** was served and failed to ***Answer***.

When a ***Motion for Default Judgment*** is filed, the party requesting the default may be required to submit a notarized **Soldiers and Sailors Relief Act Affidavit**, indicating whether or not the party being defaulted is in the military. The party requesting the **Default Judgment** also may be required to submit a notarized affidavit that itemizes the damages being claimed.

MOTION TO DISMISS: This is a request that the lawsuit be dismissed. The party making this type of request must specify the reasons why that party believes the case should be dismissed. The Judge will decide whether the law permits a dismissal. If both the **Plaintiff** and the **Defendant** agree to the dismissal of the lawsuit, then a **Stipulated Dismissal**, which is signed by both the **Plaintiff** and the **Defendant,** needs to be filed instead of a **Motion to Dismiss**.

MOTION TO JOIN PARTIES: This ***Motion*** requests that other parties who are necessary or indispensable to the lawsuit be joined in order to have all of the issues fully decided.

MOTION TO CONSOLIDATE: This is a request to combine two or more cases that involve the same legal or factual issue, the same parties, and/or arose from the same transaction or incident.

MOTION FOR DISCOVERY: This is a request to be permitted to gather information or documents, from another party, person or business, which are necessary or relevant to the pending case.

MOTION TO VACATE / MOTION FOR CONTINUANCE: These are requests that a court date be rescheduled because, for example, a party cannot appear. The party making the request must provide a good reason for asking that a date be rescheduled.

MOTION TO SET ASIDE DEFAULT JUDGMENT: This is a request to set aside a **Default Judgment** that already has been entered by the Court.
In order to set aside a **Default Judgment**, the **Defendant** must provide a good reason why he or she failed to ***Answer*** or appear at a hearing and must be filed within 30 days of the entry of the judgment. The **Defendant** is also required to provide a defense to the lawsuit.

MOTION FOR DEFAULT JUDGMENT AGAINST GARNISHEE: This is a request that the Court enter a **Judgment** against the **Garnishee** for not responding to a **Writ of Garnishment**.

The party requesting the **Default Judgment Against Garnishee** must complete an **Affidavit of Service**, which states that a copy of the **Motion** was mailed to the **Garnishee**.

MOTION FOR SUPPLEMENTARY PROCEEDING: This is a request by a **Judgment Creditor** that a hearing be held in order to gather information about a **Judgment Debtor** in order to collect on a **Judgment**. The types of information sought by this ***Motion*** include information on the **Judgment Debtor's** property, finances and/or employment.

MOTION TO SATISFY JUDGMENT: This is a request by a **Judgment Debtor** that an **Order** be entered indicating that the **Judgment Debtor** has paid the **Judgment** in full.