PRETRIAL & TRIAL

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 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. Therefore, the parties do **not** have to bring **Witnesses** or **Exhibits** to the **Pretrial Conference**.

WHEN IS A PRETRIAL SCHEDULED?

Pretrial Conferences are not scheduled in every case. However, when one is scheduled, it will be set after an **Answer** has been filed with the Court.

WHAT HAPPENS AT THE PRETRIAL?

During the **Pretrial Conference**, the Judge usually discusses rules that the parties must follow and sets deadlines for the exchange of information between the parties.

If a **Jury Trial** has been requested, then at the **Pretrial Conference**, the Judge also will discuss how and when a jury will be selected and when the parties will be required to submit **Jury Instructions**.

Jury Instructions are written instructions about the law in New Mexico that each party can request be given to the jury. New Mexico has many pre-approved ***Jury Instructions. (***A copy of the New Mexico **Uniform Jury Instructions** can be obtained from the judicial website (www.nmcourts.gov) and most public libraries.)

WHEN WILL A TRIAL BE SCHEDULED?

A **Notice of Hearing**, setting the date and time of the Trial, either will be hand-delivered to the parties at the **Pretrial Conference** or mailed to the parties by the Court.

WITNESSES

Each party **must** identify by name, address, telephone number and summary of expected testimony, any and all **Witnesses** that the party may call to testify at **Trial**. Unless the ***Pretrial Scheduling Order*** entered by the judge 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** the **Trial**. The **Defendant must** file with the Court and give the other parties a ***Witness List*** at least 15 days **before** the **Trial**.

A written statement from a **Witness** (including a police report or estimate of repair) is generally considered hearsay. Therefore, the Judge may not allow a party to use the written statement as evidence, unless the individual who prepared the statement, report or estimate is present at **Trial** to testify in person.

It is the duty of the parties to make sure that each of their witnesses are at the trial.

If a **Witness** does not want to appear voluntarily at a hearing or **Trial**, the party may serve a ***Subpoena*** on the **Witness.**

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 certain documents. ***Subpoenas*** may be signed by an attorney or can be obtained from the Clerk's Office. To get a ***Subpoena Duces Tecum*** the Court Clerk **must** be provided the name and address of the witness and a description of the requested documents. (See *Discovery* pamphlet.)

If a party ***Subpoenas*** a **Witness**, the party **must** also pay the **Witness** a **$95.00 fee** and a mileage fee. If the fee is not paid, the **Witness** does **not** have to appear at the **Deposition**, hearing or **Trial**.

EXHIBITS

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

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**.

At **Trial**, a party using a document as an **Exhibit must** establish that the document is valid. As such, the original document and the individual who prepared the document may be required. During the **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** only**.** Each party is responsible for providing evidence supporting their claims or defenses at the time of **Trial**. The most common forms of evidence are **Witnesses'** testimony, documents or any other items that are relevant to the lawsuit.

Each party may agree or object to the evidence being presented by other parties. If a party does not agree, he objects to the evidence. When an objection is made, the Judge will determine if the evidence can be considered based on the **Rules of Evidence**. A copy of the **Rules of Evidence** may be obtained at the judicial website (www.nmcourts.gov) or any public library.

WHO DECIDES THE CASE?

If a **Jury** is requested, then the Jury will decide the case. If a **Jury** is not requested, then the assigned Judge will make all of the decisions in the case. Either party may request a **Jury Trial**; however, the **Plaintiff** must make the request when the **Complaint** is filed and the **Defendant** must request a jury trial when filing the ***Answer***. There are additional fees for a **Jury Trial**.

WHAT HAPPENS AT TRIAL?

When you are at Court you should dress and behave in a manner that shows your respect for the Court and the Judge. You should only speak with the Judge's permission and should always stand when speaking to the Judge. At the beginning of the **Trial**, both parties usually have a chance to give an **Opening Statement** (a summary or outline of the case and what each party hopes to prove at **Trial**) to the Judge or Jury. The **Opening Statement** is not evidence.

After **Opening Statements**, the **Plaintiff** presents its case by calling **Witnesses** to testify and/or present **Exhibits** and by asking them questions. This is called **Direct-Examination**. When the **Plaintiff** finishes its questions, the **Defendant** may ask the **Witnesses** questions. This is called **Cross-Examination**.

After all of **Plaintiff's Witnesses** have testified, then the **Defendant** may call and question its own **Witnesses** and present its **Exhibits**. Then the **Plaintiff** can **Cross-examine** the **Defendant's Witnesses**. After the **Defendant's Witnesses** have testified, the **Plaintiff** has another chance to present **rebuttal** evidence. **Rebuttal** evidence is given to explain or disprove any facts presented by the **Defendant**.

When all parties have presented their evidence, the Judge may allow each party 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 the strengths and/or weaknesses in each other's cases. After the **Trial,** the Judge or Jury will make a decision. The Judge will provide the parties with a written decision called a **Judgment**, which states who won or lost and the amount of damages, attorney's fees, and/or court costs awarded, if any.

APPEAL JUDGMENT

If a party does not agree with the decision of the Judge or Jury, that party has the right to appeal the **Judgment** to the District Court. (See *Appeal* Pamphlet for more details.)

CAN A COURT DATE BE CHANGED?

To change a court date, a party **must** file a **Motion for Continuance** with the Court **before** the scheduled hearing or **Trial**. The judge will decide whether or not to change the Court date.