

GUIDE FOR PRO SE LITIGANTS



**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
MATTHEW J. DYKMAN, CLERK**

DECEMBER 2009

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INTRODUCTION

Parties or litigants who are not represented by a licensed attorney and are representing themselves are referred to as *pro se* parties, *pro se* litigants, or appearing *pro se*. These instructions are designed to provide *pro se* litigants with general information about filing a civil action, or participating in a civil action, in federal court.

These instructions do not cover all circumstances or all types of cases. Special forms and instructions are available from the Clerk's Office if you are filing a prisoner civil rights action under 42 U.S.C. § 1983, a habeas corpus petition under 28 U.S.C. § 2241 or § 2254, or a motion to vacate or set aside sentence under 28 U.S.C. § 2255.

Court staff will provide general assistance with the filing of necessary papers and pleadings. However, under no circumstances can any type of legal advice be given as to what should or should not be done in any particular case. **Any legal advice by a member of the court's staff is strictly prohibited.**

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the "Local Rules"). These rules set forth the general procedural requirements for litigating cases in federal court. Federal laws and statutes are located in the *United States Code* ("U.S.C."). The *Federal Rules of Civil Procedure* and the *United States Code* are available for review at local law libraries. The Local Rules are available from the Clerk's Office and this court's website (<http://www.nmcourt.fed.us>).

INFORMATION ABOUT THE COURT

The U.S. District Court for the District of New Mexico is a general trial court that is part of the federal judicial system comprising 94 judicial districts. The District of New Mexico has offices in Albuquerque, Santa Fe, and Las Cruces. At this time, the court has ten District Judges and eleven Magistrate Judges. The Honorable Martha Vázquez is the Chief District Judge and the Honorable Lorenzo F. Garcia is the Chief Magistrate Judge.

In 2004, Matthew J. Dykman became the Clerk of Court for the District of New Mexico. The role of the Clerk of Court is to serve the court. Our clerk is also committed to quality service to all patrons of the court and strives to provide efficient, easy access to court information and services whenever possible.

The Clerk's Office is open Monday through Friday, 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m. It is closed on all federal holidays.

As mentioned above, the District of New Mexico has offices in three locations. The main office

is in Albuquerque, with divisional offices in Santa Fe and Las Cruces. Unless otherwise directed, all communication to the court should be addressed to the Clerk of Court, United States District Court, District of New Mexico, using the address for the division where the subject case has been assigned. The three addresses are:

Albuquerque	Pete V. Domenici United States Courthouse 333 Lomas Blvd NW Suite 270 Albuquerque, NM 87102-9843
Las Cruces	United States Courthouse 200 East Griggs Avenue Las Cruces, NM 88001
Santa Fe	Santiago E. Campos United States Courthouse South Federal Place P.O. Box 2384 Santa Fe, NM 87504

The forms referred to in this guide are available from the Clerk’s Office. Many of the forms can also be downloaded from the court’s website at <http://www.nmcourt.fed.us>. Additional information about the federal courts can be found at:

Understanding the Federal Courts <http://www.uscourts.gov/understand02/>
 Inside the Federal Courts <http://www.fjc.gov/federal/courts.nsf>

LAW LIBRARY RESOURCES

The following is a list of the law libraries available to the public.

Albuquerque	Santa Fe	Las Cruces
University of New Mexico School of Law 1117 Stanford NE	New Mexico Supreme Court 237 Don Gaspar	Third Judicial District Court for Dona Ana County 201 West Picacho

RESOURCES FOR LEGAL REPRESENTATION

If you can afford to hire an attorney but cannot locate one, many local bar associations have lawyer referral services. Some of these services offer consultations with attorneys at reduced rates. There are also a number of organizations which may provide legal assistance at no cost – or *pro bono*. Most of these organizations have income eligibility requirements and many only provide assistance with specific types of cases. **Court staff cannot recommend individual attorneys.** Below is a listing of some of the lawyer referral services in New Mexico.

Resource	Contact Information
American Civil Liberties Union of New Mexico	505-266-5915, 800-773-5706
Client/Attorney Assistance Program	505-797-6068, 800-876-6227
Lawyers Assistance Hotline	505-228-1948, 800-860-4914
Lawyers Care Referral Program	505-797-6066, 800-876-6227
Lawyer Referral for the Elderly Program (Serves all counties with limited services in Bernalillo County)	505-797-6005, 800-876-6657
Legal Facs (Volunteer Lawyers) (Mostly civil/domestic matters; serves Bernalillo County)	505-256-0417
Native American Protection & Advocacy Project	800-862-7271
NM Legal Aid/Albuquerque Office	505-243-7871
NM Legal Aid/Gallup Office	505-722-4417, 800-524-4417
NM Legal Aid/Las Cruces Office	575-541-4800, 866-515-7667
NM Legal Aid/Santa Fe Office	505-982-9886, 800-373-9881
San Juan County Legal Services, Inc. (Serves San Juan County)	505-325-8886, 800-789-7997
Senior Citizens' Law Office, Inc. (Serves Bernalillo County)	505-265-2300

JURISDICTION OF THIS COURT

Federal courts can only hear certain types of cases. Like all other federal trial courts, this court is only authorized to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal, as opposed to state, law;
3. Those that involve the United States of America as a party, whether plaintiff or defendant; and
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

FORM OF PAPERS

A paper presented for filing with the court must be on 8½" by 11" white, opaque, unglazed paper of good quality and be typewritten or legibly printed on one side. Except for footnotes and quotations, the text of all papers must be double spaced. The first page of each paper must have the names of the parties, case file number, and except the complaint, must have the initials of the assigned judge.

The title of a paper must clearly identify what it is – like a complaint, motion, or a response. The title of a response or a reply must identify, by title and approximate date of filing, the paper to which it responds.

The Clerk will not refuse to file any paper because it is not in proper form. However, any paper filed without a signature will be stricken unless it is signed within 14 days after the omission is called to the party's attention. Also, the Clerk will give to the submitting party written notice of any other deficiency and a deadline for correcting the deficiency. The Clerk will also provide any applicable forms and instruction sheets. Failure to remedy a deficiency or to show good cause for noncompliance within the deadline may result in a dismissal of the action.

All attorneys of record and parties appearing *pro se* have a continuing duty to notify the Clerk, in writing, of any change in their mailing address and telephone number.

FILING FEES

The Clerk will file a civil action only if a filing fee is paid or an application to proceed *in forma pauperis* is filed. The filing fee is **\$350.00** for most types of civil lawsuits. The fee must be paid at the time the complaint is filed. If the fee is paid by check or money order, the check or money order should be made payable to “Clerk, U.S. District Court.” The court also accepts cash (exact amount only) or payment made with Visa or MasterCard.

If the filing fee cannot be paid, a motion for leave to proceed *in forma pauperis* (“IFP”) may be filed (see Attachment 1). IFP forms are also available from the Clerk’s Office and the court’s website. When completing the forms, all questions relating to income, assets, and liabilities must be answered. If complete and accurate information is not provided, the request may be denied, or additional information may be required before a decision can be made. If the court grants the request, the filing fee will not have to be paid at the time the complaint is filed. If the request is denied, a reasonable opportunity to pay the fee will be allowed. Summons will not be issued until the Court has screened the complaint under U.S.C. §1915 (e)(2) and ruled on the motion to proceed IFP.

PREPARING A COMPLAINT

Generally, the first step in filing a lawsuit is to prepare a complaint. The person who is bringing the lawsuit to court and filing the complaint is called the “plaintiff.” The person who is being sued is called the “defendant.” If the lawsuit is about a violation of civil rights, the court has complaint forms available (see Attachment 2). The court does not require that these forms be used, but they are helpful.

Rule 11 of the *Federal Rules of Civil Procedure* prohibits the filing of lawsuits that state facts that are not true or have no evidentiary support, that are clearly frivolous or filed merely to harass someone. If, after reviewing the complaint, the court determines that the lawsuit was filed for an improper or clearly unnecessary purpose, sanctions against the person filing the lawsuit may be imposed. Sanctions include, but are not limited to, payment of a fine and/or payment of the legal fees of the person or persons against whom the lawsuit was filed.

The complaint begins with the case caption. The case caption includes the name of the court, the full names of all the parties (the plaintiff[s] and the defendant[s]), and a blank space for the case number. When the complaint is filed, a court staff member will assign a case number and two judges: the presiding judge and the referral magistrate judge. All subsequent papers filed with the court will contain the same case caption, the case number, and the initials of both judges. Everything from the court about the case will have the case number on it. On pleadings, motions, and papers other than the complaint, a shortened version of the caption, *i.e.*, only the names of the first plaintiff and first defendant, may be used.

The body of the complaint consists of numbered paragraphs. The numbered paragraphs state the legal basis for the claim, why this court has jurisdiction (or authority) to decide the claim, the facts of the claim or reasons for the lawsuit, and what relief is being sought. It is not necessary to cite specific case law. At the end, the complaint is signed and dated. The complaint, and each paper filed with the court, will legibly state the mailing address and telephone number below the plaintiff's signature.

FILING A COMPLAINT

The complaint can be filed by hand-delivering it or mailing it to the Clerk's Office. Whether the complaint is hand-delivered or mailed, the original, with two copies for the court and one copy for each named defendant, must be submitted with the **\$350.00** filing fee or the completed application to proceed *in forma pauperis*. If the defendant is an agency of the United States, an officer or employee of the United States who is being sued for acts or omissions related to his or her employment, five copies of the complaint must be submitted. Any copies needed for personal records should also be submitted. All copies must be identical to the original.

PREPARING THE SUMMONS

Upon or after the complaint is filed, the plaintiff must prepare a summons on a form available from the Clerk's Office (see Attachment 3). The form is also available on the court's website. A separate summons form, with one copy, is submitted for every named defendant. However, if more than one defendant is named and the time for each defendant to file an answer is the same, the defendants can be listed on one summons as long as a copy for each defendant is provided.

The form of the summons will identify the court and the parties, be directed to the defendant, and state the name and address of the *pro se* plaintiff. It will also state the number of days within which the defendant must appear and defend, and notify the defendant that failure to appear and defend may result in a judgment by default against the defendant for the relief demanded in the complaint. The number of days a defendant has to respond to the complaint can be found in Rule 12 of the *Federal Rules of Civil Procedure*. After the summons form is properly completed and, a filing fee has been paid or the Court grants the motion to proceed IFP, a court staff member will issue the summons, meaning it will be signed and embossed with the court seal, for service on the defendant.

If leave to proceed *in forma pauperis* is granted, officers of the court will serve process (summons and complaint). The court will provide forms to the plaintiff, and the plaintiff must return the forms with an address where service can be made on each defendant. The United States Marshal does not serve summonses and complaints in cases where the motion to proceed *in forma pauperis* has been denied. However, a litigant may pay to have the United States Marshal perform service. Forms for service by the United States Marshal are available from the Clerk's Office.

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

Half of all new civil cases, excluding inmate cases, Social Security appeals, and bankruptcy appeals, are randomly assigned to a Magistrate Judge, rather than a District Judge, to conduct all dispositive proceedings, including trial, upon consent of the parties. This Magistrate Judge is called the “presiding Magistrate Judge.” For each such case, another Magistrate Judge will be assigned to hear and decide all non-dispositive pretrial and discovery matters. This Magistrate Judge is called the “discovery Magistrate Judge.”

At the time the complaint is filed, if the case is assigned to a Magistrate Judge to act as the presider, the Clerk will provide a form entitled, “Consent to Proceed Before a U.S. Magistrate Judge” (see Attachment 4). It is the responsibility of the case filer to serve, with the summons and the complaint, a copy of the consent form upon all parties. Counsel and *pro se* parties are required to return the consent form to the Clerk’s Office within 21 days of service to indicate whether they consent to proceed before a Magistrate Judge instead of a District Judge.

SERVING THE SUMMONS AND COMPLAINT

The plaintiff is responsible for making sure the summons and complaint are served on every defendant within 120 days of the filing of the complaint. This is called “service of process,” and it is the method used to notify the defendant that a lawsuit is pending. Detailed instructions on how to serve a summons and complaint can be found in Rule 4 of the *Federal Rules of Civil Procedure*.

If these instructions are not followed correctly, the case can be dismissed for failure to comply with the rule.

The person who serves the summons and complaint is expected to file with the court a “return of service.” The return of service is a statement, made under oath, explaining when and how service was made.

After the defendant is served with the summons and complaint, the defendant has a period of time, specified in the summons, within which to answer or respond to the complaint. The time for filing an answer runs from the date the complaint and summons are served, not the date the summons is issued.

REQUEST FOR APPOINTMENT OF COUNSEL

A *pro se* litigant has no right to be represented by court-appointed counsel, and the court has no obligation to appoint counsel. However, the court may appoint an attorney who agrees to appear in an exceptional case. To request that the court appoint counsel, a “motion for appointment of counsel” may be filed with the complaint.

In the alternative, the Court has a Pro Bono program which includes a panel of attorneys who volunteer to accept certain cases on behalf of the court and serve without charge to the *pro se* litigant. To ask that the court refer a matter to the program’s selection committee, a letter explaining the need for counsel and what previous efforts have been made to retain counsel may be sent to:

Clerk of Court
Pete V. Domenici United States Courthouse
Pro Se Division, Suite 270
333 Lomas Blvd NW
Albuquerque, NM, 87102

For the request to be considered, it must involve a case already existing on the court’s docket.

OBTAINING INFORMATION ABOUT A CASE

The Clerk’s Office maintains an automated record, or docket, for every case that is filed with this court. The docket is a chronological summary of all significant events in the history of the case. For example, each time a pleading or paper is filed or a hearing is held, an entry summarizing the event is added to the case docket. The docket can be reviewed for free on the public-access terminals located in the Clerk’s Office in Albuquerque, Santa Fe, and Las Cruces.

Alternatively, the public can access case information via the internet by obtaining an account through the Public Access to Court Electronic Records (PACER) Service Center. The PACER Service Center hours are 8:00 a.m. to 5:00 p.m. (CST), Monday through Friday. The PACER Service Center can be reached via phone at (800) 676-6856, via email at pacer@psc.uscourts.gov or via postal mail at P.O. Box 780549, San Antonio, TX, 78278.

The staff of the Clerk’s Office does not know, and cannot provide you with, the reasons for a judge’s decision. Nor is the Clerk’s Office in a position to know when a judge will respond to a motion or issue a ruling in a case. The judge’s courtroom deputy can respond to specific questions regarding scheduling.

Attorneys and *pro se* parties are prohibited from all *ex parte* communication with the judge or judge’s staff. *Ex parte* communication occurs when one of the parties to a lawsuit exchanges

information with the assigned judge (1) without the opposing party being present, or (2) without the knowledge and consent of the opposing party.

Any communication between the assigned judge and a *pro se* litigant should be in writing, and a copy of the communication should be sent to the opposing party or, if represented, to that party's attorney. The letter to the judge should indicate that a copy has been sent to the opposing party. Telephone or personal contact with the judge's staff should be limited to specific scheduling inquiries.

FILING MOTIONS

Any party to the lawsuit may file a motion, if there is a request for the court to take specific action related to the case. A motion must be in writing and must specifically state the grounds for the motion and the relief sought. The party filing the motion (the "movant") must request concurrence of each party at least three working days before filing the motion. The movant must recite that concurrence was refused or explain why concurrence could not be obtained. A motion that omits recitation of a good-faith request for concurrence may be denied.

For opposed motions, the movant must file and serve on all parties copies of the motion, supporting brief or memorandum (a summary of the law supporting the motion) and affidavits and other papers related to the motion. The motion must include a statement indicating when and to whom service was made. The response and reply must also be filed and served on all parties. Timing of the response and reply must conform with Rule 7.6 of this court's local rules.

Failure to serve and file a response in opposition to any motion constitutes consent to grant the motion.

The combined length of a motion and supporting brief must not exceed 27 double-spaced pages. A response brief must not exceed 24 double-spaced pages; a reply brief must not exceed 12 double-spaced pages.

A motion will be decided on the briefs unless the court sets it for hearing. If the court sets the motion for hearing, a notice of hearing will be sent to all attorneys and *pro se* parties. When a decision has been made on a motion, the court will issue a written order that either grants, denies, or partially grants and denies the motion.

SUBPOENAS

The Clerk cannot give blank subpoenas to persons representing themselves and proceeding *in forma pauperis*. If subpoenas are needed, a motion explaining who is being subpoenaed and why must be filed at least two weeks before the subpoenas are needed.

APPEALS

A final decision of this court may be appealed to the United States Court of Appeals for the Tenth Circuit in Denver. To file an appeal, a notice of appeal must be filed with the Clerk of this court, with one copy for the court and one copy for each attorney or *pro se* party in the case. The filing fee of **\$455.00** or a motion for leave to proceed *in forma pauperis* must also be submitted to the Clerk of this court. The notice of appeal should be legibly handwritten or typed and filed with the Clerk of this court within thirty (30) days after the judgment or order appealed from is entered. When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within sixty (60) days after the judgment or order appealed from is entered. How to appeal a final judgment or order of a district court is explained further in Rules 3 and 4 of the *Federal Rules of Appellate Procedure*.

Like the trial court, litigation in the appeals court is a complex process. It is the responsibility of the *pro se* litigant to follow the *Federal Rules of Appellate Procedure* and the local rules of the circuit court.

ELECTRONIC FILING

A *pro se* litigant may register for a Case Management/Electronic Case Files (CM/ECF) electronic filing account. Once an account has been approved and established, the *pro se* litigant will have the ability to electronically file documents and receive notices electronically in their cases (with a valid email address). However, approval to electronically file documents within a case must be granted by the presiding judge for each case in which the *pro se* litigant wishes to file using their CM/ECF account. CM/ECF account registration forms, procedure manuals, and other information can be obtained at the court's website (<http://www.nmcourt.fed.us>).

ATTACHMENTS

1. Motion to Proceed In Forma Pauperis
2. Civil Rights Complaint Form
3. Summons Form
4. Consent to Proceed Before a U.S. Magistrate Judge Form