

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**



**ATTORNEY INFORMATION
MANUAL**

**MATTHEW J. DYKMAN, CLERK OF COURT
MAY 2009**

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DIRECTORY

■ EXECUTIVE DIVISION

ATTORNEY COURT IDENTIFICATION CARDS: 348-2001

■ JUDICIAL OPERATIONS

INTAKE SECTION: 348-2000

RECORDS SECTION: 348-2020

FACSIMILE: 348-2028

JURY DIVISION: 348-2070

■ FINANCIAL SERVICES

CJA SECTION (VOUCHER PROCESSING): 348-2146

■ SANTA FE DIVISIONAL OFFICE

INTAKE SECTION: 988-6481

FACSIMILE: 988-6473

■ LAS CRUCES DIVISIONAL OFFICE (AREA CODE 575)

INTAKE SECTION: 528-1400

RECORDS SECTION: 528-1409

FACSIMILE: 528-1425

MAGISTRATE JUDGE SECTION: 528-1435

FACSIMILE: 528-1415

GENERAL INFORMATION

■ LOCATIONS

Albuquerque Division: 333 Lomas Boulevard NW
Las Cruces Division: 200 East Griggs Avenue
Santa Fe Division: South Federal Place

■ BUSINESS HOURS

The Clerk's Offices are open for business between the hours of 8:30 a.m. and 4:30 p.m. (excluding the noon hour), Monday through Friday. The Clerk's Offices are closed on Saturday and Sunday and on all federal legal holidays. Telephone inquiries are accepted Monday through Friday between the hours of 8:00 a.m. and 12:00 p.m., and between 1:00 p.m. and 5:00 p.m.

■ BUILDING HOURS

Albuquerque Division: 8:00 a.m. to 5:00 p.m.
Santa Fe Division: 8:00 a.m. to 5:00 p.m.
Las Cruces Division: 8:00 a.m. to 5:00 p.m.

■ WEB SITE ADDRESS

All Divisions: www.nmcourt.fed.us

■ FORMS AND APPLICATIONS

Unless otherwise stated, all referenced forms and applications are available at the Court's web site and at the Clerk's Offices.

■ FEES

The Judicial Conference of the United States has adopted a schedule of fees to be charged for services performed by clerks of district courts pursuant to 28 U.S.C. §§ 1914(b), 1926 and 1930. Fees are due at the time the service is performed and are payable in cash, by check (payable to "Clerk of Court"), or credit card.

GENERAL INFORMATION

(CONTINUED)

Inquiries regarding fees for service of process by the United States Marshals Service should be directed to that agency at 346-6400.

- **LOCAL RULES**

The latest approved versions of the Court's local rules for civil and criminal procedure are available at the Clerk's Offices and at the Court's web site.

- **ADMINISTRATIVE ORDERS**

Administrative Orders are available at the Court's web site.

- **SIGNATURE AND PARTY REPRESENTATION**

The complaint and all other original pleadings, motions, and other papers of a party represented by counsel shall be signed by at least one attorney of record, whose name, law firm, address, telephone number, facsimile number, and e-mail address shall be stated. It is requested that counsel always designate the party represented on all pleadings or papers filed.

A party appearing without counsel shall sign his or her name, and include an address and telephone number which shall also be stated in any complaint or original pleading, and in any motion or other paper filed.

- **COURT CALENDAR**

Real-time court calendar information regarding hearings scheduled in Albuquerque, Santa Fe, Las Cruces, and Roswell is available at the Court's web site. Access to this information is restricted to court related agencies and to attorneys admitted to practice in this Court (a CM/ECF account is required).

ADMISSION TO PRACTICE IN FEDERAL COURT

■ **IN GENERAL**

Attorneys must be admitted to practice in the United States District Court for the District of New Mexico, or associate with attorneys who are. D.N.M.LR-Civ. 83.2 and D.N.M.LR-Civ. 83.3.

■ **PROCEDURE AND FEES**

A completed application and a one-time admission fee of \$150 are required (checks should be payable to “Clerk of Court” or “U. S. District Court”). Thereafter, an annual fee of \$25 is due on or before January 31 of each year following admission. Individual reminder notices will not be issued.

The one-time admission fee will be deposited in the Treasury of the United States as mandated by the Judicial Conference. The \$25 annual fee will be deposited in the Federal Bench and Bar Fund. Expenditure of these monies is governed by the *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 7, Part M, Section 2. The Administrative Order, adopted January 25, 1991 (Misc. No. 91-09), establishes the administration and operation of the Federal Bench and Bar Fund.

FEDERAL BAR ASSOCIATION

- **IN GENERAL**

The Bar Association of the United States District Court for the District of New Mexico was established on November 17, 1995. Its purpose is to encourage communication among members in order to identify and resolve problems causing unreasonable delays and costs for litigants; to seek equal justice for all litigants; and to engage in other activities which promote, encourage, establish and maintain timely and equal justice in this Court at the lowest practical cost.

- **TO BECOME A MEMBER**

A completed application for membership is required. There is no fee for membership, but applicants must be admitted to practice in this Court.

MANDATORY ELECTRONIC FILING

■ **IN GENERAL**

On January 2, 2007, the U. S. District Court for the District of New Mexico implemented CM/ECF, the federal judiciary's national case management and electronic court filing system. CM/ECF replaced ICMS and ACE, the Court's previous case management and e-filing systems. To support the implementation of CM/ECF, the CM/ECF Administrative Procedures Manual for the United States District Court for the District of New Mexico ("Procedures Manual") was adopted as the official policy for the district. (*See* Administrative Order, effective August 28, 2006, Misc. No. 06-95.)

Unless otherwise permitted by the Procedures Manual or authorized by the Court, all documents submitted for filing in this district must be filed electronically. Attorneys filing in paper, without prior authorization of the Court, will receive a Notice of Deficiency for Failure to E-File.

■ **EXEMPTIONS**

The Court recognizes that individual filers may encounter situations or circumstances that hinder their ability to electronically file documents. In these exceptional circumstances, the filer may petition the Court for permission to file documents in paper format. (*See* Procedures Manual, § 1(a)(2) Exemption to Mandatory E-Filing Requirement.)

AUTOMATED NOTICING (CM/ECF)

- **IN GENERAL**

Whenever a pleading or other document is filed electronically, CM/ECF will generate a Notice of Electronic Filing (“NEF”) which is an e-mail verification that the Court received the e-filed document. The NEF is the official notice of the filing to all parties and includes the text of the docket entry, as well as a link to the filed document.

If the recipient is a Participant in CM/ECF, e-mailing of the NEF is the equivalent of service by first class mail. If the recipient is not a Participant in CM/ECF, service must be made under the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

- **NOTICING IN SEALED CASES OR RESTRICTED ACCESS DOCUMENTS**

Whenever a document is e-filed in a sealed case, service must be effected outside of CM/ECF.

FILING A CIVIL ACTION

- **FEE**
A filing fee of \$350 is required and may be paid on-line (pay.gov).
- **COMPLAINT**
The complaint must be submitted electronically to the Court with the filing fee.
- **CIVIL COVER SHEET**
A civil cover sheet is also required and should be filed as an attachment to the complaint. (*See* section entitled “Civil Cover Sheet.”)
- **SUMMONS**
A Summons is required for each named defendant. (*See* section entitled “Service of Process.”) Completed summonses should be e-mailed to Summons@nmcourt.fed.us in PDF format; upon receipt, the Clerk will electronically issue each summons. Issued summonses will then be returned to the submitting party via e-mail.

CIVIL COVER SHEET

- **IN GENERAL**

A civil cover sheet (Form JS 44) is required with the filing of every complaint, petition and removal in federal court. Submission of a civil cover sheet with a complaint ensures that the action is accurately classified for statistical purposes and correctly opened on the Court's case management system. The civil cover sheet is completed automatically as part of the e-filing process.

- **CAUSE OF ACTION**

Section VI of the civil cover sheet, entitled "Cause of Action," requires citation of a United States civil statute and a brief statement of the cause of action consistent with the citation. To assist you in completing that portion of the civil cover sheet, cause of action codes are available at the Court's web site and at the Clerk's Offices.

SERVICE OF PROCESS

- **SUMMONS**

When a complaint is filed, the Clerk shall issue a summons for each defendant. The plaintiff is responsible for serving the summons with a copy of the complaint on each defendant. FED. R. CIV. P. 4(c)(1).

- **WAIVER OF SERVICE**

To avoid costs, the plaintiff may notify each defendant of the action and request that the defendant waive service of the summons. *See* FED. R. CIV. P. 4(d) for requirements and details.

- **SERVICE BY UNITED STATES MARSHAL**

Service by a United States marshal or deputy marshal is authorized in certain limited circumstances. *See* FED. R. CIV. P. 4(c).

- **PROOF OF SERVICE**

If service is not waived under FED. R. CIV. P. 4(d), proof of service must be made to the Court under FED. R. CIV. P. 4(l).

- **TIME LIMIT FOR SERVICE**

Service of the summons and complaint must be made within 120 days after the filing of the complaint. The Court may extend the time for service provided that the plaintiff shows good cause for an extension. FED. R. CIV. P. 4(m).

REMOVAL OF CIVIL ACTIONS

- **PROCEDURE**

The defendant or defendants shall file a notice of removal “containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.” 28 U.S.C. § 1446(a). Timing for the filing of the notice of removal is described in 28 U.S.C. § 1446(b). A civil cover sheet must also be filed.

- **FEE**

A filing fee of \$350 is required.

PROCEEDING *IN FORMA PAUPERIS*

■ IN GENERAL

Authorization for commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs can be requested by any person who submits a completed “Motion to Proceed In Forma Pauperis with Financial Affidavit Pursuant to 28 U.S.C. § 1915” which states the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1).

In addition to the motion and affidavit mentioned above, a prisoner seeking authorization for commencement, prosecution or defense of any suit without prepayment of fees and costs shall submit a certified copy of the trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the complaint or notice of appeal. 28 U.S.C. § 1915(a)(2). However, if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall still be required to pay the full amount of a filing fee. 28 U.S.C. § 1915(b)(1).

DIRECT ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES

■ **IN GENERAL**

The Judicial Conference of the United States encourages the designation of magistrate judges to conduct all dispositive proceedings in civil cases, including both jury and non-jury trials. This district now randomly assigns civil cases, including every Social Security appeal, but excluding prisoner cases and bankruptcy appeals, to a magistrate judge pool. For each case in that pool, a presiding magistrate judge will be assigned to conduct all dispositive proceedings, including trial, upon consent of the parties. D.N.M.LR-Civ. 73.1(a).

■ **CONSENT TO PROCEED BEFORE A U. S. MAGISTRATE JUDGE**

Notice of a party's consent must be made within 20 days after service of the notice of assignment. Consent is by a text-only notice ("Consent to Proceed Before a U. S. Magistrate Judge") filed by a party's attorney in CM/ECF. If consent by each party is not received within 20 days, the matter will be reassigned to a district judge who will serve as the presiding judge.

■ **REFUSAL TO CONSENT**

If a party chooses not to consent before the expiration of the 20-day period, the party's attorney will file a text-only notice of "Refusal to Consent to Proceed before a U. S. Magistrate Judge" in CM/ECF.

In a civil case, if a party explicitly or implicitly refuses consent, the presiding magistrate judge will be replaced by a randomly assigned district judge and the assigned discovery magistrate judge will remain the same. In a Social Security appeal, the presiding magistrate judge will be replaced by a randomly assigned district judge and a randomly assigned magistrate judge. D.N.M.LR-Civ. 73.1(c)(1) and (2).

Detailed information and instructions are posted on the Court's web site (under CM/ECF, CM/ECF Manuals and Procedures, Attorney Consent Procedures).

CONSENT TO EXERCISE CIVIL JURISDICTION BY A MAGISTRATE JUDGE

- **IN GENERAL**

In accordance with the provisions of 28 U.S.C. § 636(c) and FED. R. CIV. P. 73, the United States Magistrate Judges of this district may, upon the consent of all parties, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment.

- **PROCEDURE**

A consent form, entitled “Notice, Consent, and Reference of a Civil Action to a Magistrate Judge” (AO Form 85), must be completed and signed by all counsel and *pro se* parties. The completed form should be submitted via e-mail to the district judge who is to review and approve the reference order.

MOTION/APPLICATION FOR A TEMPORARY RESTRAINING ORDER

- **PROCEDURE FOR PENDING CASES**

Complete the “Information Sheet for TRO,” then fax it to the attention of the TRO Intake Clerk; the fax number is 348-2028. The Information Sheet for TRO will identify the parties and attorneys involved in the matter.

After the Information Sheet for TRO has been completed and faxed, please call the TRO Intake Clerk at 348-2112. The clerk will ask you for the earliest and latest dates on which a hearing must occur and for the estimated length of the hearing.

- **PROCEDURE FOR NEW CASE**

When applying for a temporary restraining order in a new case, a civil cover sheet with the completed Information Sheet for TRO, complaint, motion for TRO, proposed TRO, and notice of hearing are required.

- **IN ALL CASES**

A designated TRO liaison from the Judicial Operations Division of the Clerk's Office will supply all necessary documents to the assigned judge's staff. The TRO liaison will communicate with the assigned judge's staff and will transmit any instructions from Chambers to movant's counsel.

In most instances, the TRO application process will proceed more smoothly and quickly, the earlier in the day the request is made.

STANDARDIZED FORMS

- **JOINT STATUS REPORT**

The Joint Status Report is used to set the course of the litigation and the case management schedule. *See* D.N.M.LR-Civ. 16.1 for detailed requirements. After the filing of the Joint Status Report, the Court will enter a notice of trial setting and a scheduling order setting all pretrial case management deadlines. One form of the Joint Status Report is used by all district and magistrate judges.

- **PRETRIAL ORDER**

The Pretrial Order summarizes the course of the litigation and sets forth the trial plan and deadlines. One form of Pretrial Order is used by all district and magistrate judges.

SEALED DOCUMENTS AND CASES

■ **FILING SEALED DOCUMENTS**

Filers may select from the following options when sealed or restricted access documents are filed with the Court:

1. Available to the Court, case participants and the public only
2. Available to the Court and case participants only
3. Available to the Court and the filer only

■ **FILING DOCUMENTS IN SEALED CASES**

Pleadings or documents submitted for filing in a case that has been sealed will automatically be treated with access level 2.

■ **REQUESTING COPIES OF SEALED DOCUMENTS**

Only counsel of record may gain access or request a copy of a sealed document. Counsel must make the request in person and provide proof of identity upon demand. Access to or copies of *ex parte* motions or orders issued on *ex parte* motions when sealed, may be requested only by the party who submitted the motion. Otherwise, copies of sealed documents are provided only upon motion and order of the Court.

SUBPOENAS

- **IN GENERAL**

It is no longer necessary that subpoenas in civil cases be issued by the Clerk. Although the Clerk still has that authority,

[a]n attorney also may issue and sign a subpoena as an officer of:

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district where a deposition or production is to be made, if the attorney is authorized to practice in the court where the action is pending.

FED. R. CIV. P. 45(a)(3).

- **COURT SEAL NO LONGER NECESSARY**

The provisions of FED. R. CIV. P. 45(a)(1) no longer require that an appropriate seal be affixed to a subpoena.

- **FILING**

Executed subpoenas need not be filed with the Court.

JURY INSTRUCTIONS

- **IN GENERAL**

This Court usually follows the 5th Circuit Pattern Instructions; however, the preparation of jury instructions may vary from judge to judge.

- **PREPARATION**

Procedures for preparing jury instructions for each judge are available at the Clerk's Offices and at the Court's web site. (If visiting the Court's web site, click on "Judges," then click on the appropriate judge's name.)

JURY

- **IN GENERAL**

The jury system for the District of New Mexico operates pursuant to the rules set forth in the local jury plan. Usually, eight jurors are selected for a civil jury trial, and twelve jurors and two alternates are selected for a criminal trial.

- **JURY LISTS AND JUROR VOIR DIRE QUESTIONNAIRES**

Jury lists and juror voir dire questionnaires are available to counsel one week prior to the scheduled jury selection and can be obtained by calling the Jury Division at 348-2070. Payment of any copy charges will be required.

- **TRIAL SETTINGS AND VOIR DIRE**

Inquiries regarding trial settings and voir dire should be directed to the courtroom deputy of the assigned trial judge.

CLERK'S ENTRY OF DEFAULT

■ IN GENERAL

Under FED. R. CIV. P. 55, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”

■ TO OBTAIN CLERK'S ENTRY OF DEFAULT

If a Clerk’s Entry of Default is needed, the following should be filed: (1) Request for Clerk’s Entry of Default (a/k/a a Praecipe); (2) an Affidavit of Nonmilitary Service as provided for in the Soldiers’ and Sailors’ Civil Relief Act of 1940, 50 U.S.C. §§ 501, *et seq.*; and (3) an Affidavit of Amount Due.

When the Clerk’s Office receives the request, a determination will be made if proper service has been perfected. If it has, the Clerk will issue the Clerk’s Entry of Default using the Court’s form. Distribution of this form will be made by the Clerk’s Office to all counsel and *pro se* litigants of record.

■ TO OBTAIN DEFAULT JUDGMENT

If entry of default judgment is sought after the Clerk’s Entry of Default, the following should be filed: (1) a Motion for Entry of Default Judgment, and (2) a proposed form of default judgment.

If the motion for default judgment “is for a sum certain or for a sum that can be made certain by computation, the clerk--on the plaintiff’s request with an affidavit showing the amount due--must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.” FED. R. CIV. P. 55(b)(1). All other applications for entry of default judgment will be submitted to the Court for ruling.

The Request for Clerk’s Entry of Default and the Motion for Entry of Default Judgment, with supporting documents, may be filed together.

REGISTRATION OF JUDGMENTS FOR ENFORCEMENT IN OTHER DISTRICTS

■ **IN GENERAL**

A judgment in an action for recovery of money or property which has been entered in any United States District Court and which has become final by appeal or expiration of time for appeal, or when ordered by the court that entered the judgment for good cause shown, may be registered by filing a certified copy of the judgment in any other district. 28 U.S.C. § 1963.

■ **PROCEDURES**

If the judgment was entered in this district but is being registered in another district, the Clerk will prepare a Certification of Judgment for Registration in Another District (form AO 451). The fee for this service is \$9, plus copying charges for the judgment (an online document is 10 cents per page; a paper document is 50 cents per page).

If the judgment was entered in another district but is being registered in this district, file the completed Certification of Judgment for Registration in Another District (form AO 451) with a certified copy of the judgment attached. A miscellaneous case number will be assigned. The fee for this service is \$39.

WRIT OF EXECUTION

- **IN GENERAL**

“Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise.” FED. R. CIV. P. 69(a).

- **PROCEDURE**

The procedure “shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.” FED. R. CIV. P. 69(a). No fee is required. Service of the writ of execution may be accomplished by a United States marshal, a sheriff of any county of the state, or by anyone expressly appointed by the Court.

- **STAY OF ENFORCEMENT PROCEEDINGS**

Rule 62 of the FEDERAL RULES OF CIVIL PROCEDURE sets forth the details regarding stays of enforcement proceedings, such as: “[N]o execution may issue upon a judgment, nor may proceedings be taken to enforce it, until 10 days have passed after its entry.” (FED. R. CIV. P. 62(a)). If an appeal is taken, execution can be stayed upon the filing of a supersedeas bond. (FED. R. CIV. P. 62(d)).

GARNISHMENT

- **IN GENERAL**

Garnishment is a remedy for the purpose of securing satisfaction of judgment subject to specific qualifications. The qualifications and available remedies are cited in FED. R. CIV. P. 64.

- **PROCEDURE**

An Application for Writ of Garnishment is filed with the Clerk with a proposed Writ of Garnishment. No fee is required.

- **SERVICE OF WRIT**

Once a writ is issued, service may be made by a United States marshal, by a person expressly appointed by the Court, or by any person over the age of 18 years who is not a party to the action.

TRANSCRIPTS OF PROCEEDINGS

- **TO OBTAIN COPIES OF TRANSCRIPTS OF PROCEEDINGS**

To obtain a transcript of a court proceeding, arrangements should be made with the court reporter present at the hearing. More detailed information is posted on the Court's web site (under General Attorney Information, Transcripts of Proceedings).

- **FEEES FOR COPIES OF TRANSCRIPTS**

Copies of any transcripts on file in the Clerk's Office which are available to the public can be obtained from the court reporter present at the hearing at 50 cents per page. Copies can also be obtained from the Records Department if the court reporter is not able to satisfy the request.

- **TO OBTAIN TRANSCRIPT OF DIGITALLY RECORDED PROCEEDING**

Proceedings before magistrate judges in criminal matters are digitally recorded. To obtain a transcript of a digitally recorded hearing, arrangements should be made with a certified court reporter or transcriber. More detailed information is posted on the Court's web site (under General Attorney Information, Transcripts of Proceedings).

- **TO OBTAIN COPY OF DIGITAL FILE**

To obtain a copy of a tape or digital file, contact the records section of the Clerk's Office--(505) 348-2020 in Albuquerque; (575) 528-1409 in Las Cruces-- and complete AO Form 436; the cost is \$26 regardless of the medium. CJA attorneys and government agencies may obtain tapes or CDs at no cost.

COPY REQUESTS

- **IN GENERAL**

Online access to the electronic docket is available during regular business hours at public computer terminals located at each Clerk's Office. PACER services are available online at any time from any computer, but a fee will be charged for viewing docket sheets and documents.

- **CLERK'S OFFICE COPYING SERVICE AND CHARGES**

Conventional copies of electronically filed documents may be obtained at the Office of the Clerk. The fees for such copying are governed by 28 U.S.C. § 1914 and 28 U.S.C. § 1930. Refer to the Court's Fee Schedule (on the Court's web site) for costs associated with copies.

Your request can be made via mail, fax, or in person to the Records Department. Mailed requests should be sent to:

United States District Court
Records Department
333 Lomas NW, Room 270
Albuquerque, NM 87102

In person requests can be made at the same address. Faxed requests should be sent to 348-2028.

All requests must in writing and should include the case number, case caption, and the docket number of the document/pleading you need copied. If you do not have the case or docket number, please contact Judicial Operations at 348-2000 or use the public terminal located in the Records Department. The cost for copies of an online document is 10 cents per page; a paper document is 50 cents per page.

Most copy requests are completed within 24 hours. Requests can take more time if the request is for multiple documents, the case file has multiple volumes, or the case file has been archived.

COPY REQUESTS

(CONTINUED)

■ **CERTIFIED COPIES**

If you are requesting certified copies, you must follow the same instructions as listed above. Certified copy requests are processed by the Records Department usually within 24 hours. However, payment must be remitted to the Clerk's Office before any request will be processed. The charge is \$9 per certification plus 50 cents per page for the copies. The Records Department will notify you of the total cost of your request. Your copies can be mailed or picked up at the Clerk's Office.

■ **SEALED DOCUMENTS**

Only counsel of record may request a copy of a sealed document. Counsel must make the request in person and provide proof of identity upon demand. Copies of *ex parte* motions or orders issued on *ex parte* motions when sealed, may be requested only by the party who submitted the motion. Otherwise, copies of sealed documents are provided only upon motion and order of the Court.

RECORDS SEARCHES

- **PACER**

Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain online case and docket information from federal appellate, district and bankruptcy courts, and the U.S. Party/Case Index at any time.

Electronic access is available by registering with the PACER Service Center (pacer.psc.uscourts.gov), the judiciary's centralized registration, billing, and technical support center.

- **RECORDS SEARCHES AT CLERK'S OFFICES**

Records searches will be conducted by the Records Department upon a request made in writing or in person. The request must include the nature of the search (*i.e.*, criminal search and/or civil search) and the name of the party. You will receive written notice from the Records Department when your search has been completed.

- **FEE**

The fee for each records search by Clerk's Office staff is \$26.

FEDERAL RECORDS CENTER

- **IN GENERAL**

Case files are retained by the Court for five years. If the file is closed and more than five-years old, it is catalogued and archived at the Federal Records Center in Denver, Colorado.

- **RETRIEVAL OF COURT FILES**

To retrieve a closed case file that is older than five years, a written request, which includes the case number, must be submitted by mail or in person to the Records Department. There is a \$45 fee for each file retrieved; the fee must be submitted prior to retrieval of the file. The Records Department will contact you upon receipt of the file, usually within two weeks of the request.

- **REQUESTS FOR PHOTOCOPIES**

Photocopies may be requested at the time the file is ordered; you will be notified when the requested copies are ready. The cost for photocopies is 50 cents per page in addition to the retrieval fee. If you wish to review the file prior to it being copied, you may do so. However, the Records Department will keep the file no longer than two weeks.

- **REQUESTS FOR FILES PREDATING 1971**

If you are requesting a file which was opened in 1971 or earlier, the request must be sent directly to the Federal Records Center, Archives Division, Denver, Colorado. However, you must first contact the Records Department to obtain certain information that the Federal Records Center will require, such as the box number, location number, and case number.

EXPUNGEMENT OF RECORD

- **IN GENERAL**

Expungement of record is governed by several federal statutes and case law. Expungement of record may occur for offenses involving the possession of a controlled substance and in juvenile delinquency proceedings. The court has inherent, discretionary authority to order expungement in other cases, but that authority is rarely utilized absent extreme circumstances.

- **PROCEDURE**

The filing of an application for expungement is required. *See* 21 U.S.C. § 844a(j) and 18 U.S.C. § 3607(c).

PETTY OFFENSE PROCEDURES

■ IN GENERAL

Individuals who are cited on federal property in New Mexico (such as, Kirtland Air Force Base, the Veterans Administration, the General Services Administration, and the United States forests) receive notice from the Central Violations Bureau in San Antonio, Texas, to appear in federal court for arraignment in Albuquerque or Las Cruces.

■ ARRAIGNMENTS AND TRIALS

In Albuquerque, arraignments are normally held every other Tuesday, and trials are held every other Wednesday before a magistrate judge. For Las Cruces matters, arraignments and trials are held on the second Thursday of each month at the United States Courthouse in Las Cruces and on the third Thursday of each month at Holloman Air Force Base.

At arraignment, the defendant is informed of the charges and the maximum possible penalty that could be imposed. Defendants who plead “guilty” are generally sentenced the same day. Trials are scheduled at a later date for those defendants pleading “not guilty.”

■ REPRESENTATION BY AN ATTORNEY

Should a defendant elect to be represented by an attorney, an entry of appearance by the attorney should be filed as soon as possible using the citation number as the case number. A notice of pretrial conference and trial date will be sent by the Court to the attorney and to the defendant.

■ PAYMENT OF FINES

Payment of fines imposed by the Court should be mailed directly to:

United States Courts – CVB (S.A.)
Post Office Box 740026
Atlanta, GA 30374-0026

■ INQUIRIES

Inquiries regarding Albuquerque petty offenses should be directed to the CVB Clerk at (505) 348-2054. Inquiries regarding Las Cruces petty offenses should be directed to the Magistrate Judge Section at (575) 528-1435.

APPEALS PROCEDURES

■ **CIVIL ACTIONS**

Notice of Appeal must be filed within 30 days after the judgment or order appealed from is entered. FED. R. APP. P. 4(a)(1)(A).

When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered. FED. R. APP. P. 4(a)(1)(B).

Payment of a \$455 filing and docketing fee is required. 28 U.S.C. §§ 1913 and 1917.

■ **CRIMINAL ACTIONS**

A defendant's notice of appeal must be filed within 10 days after the later of the entry of either the judgment or order being appealed, or the filing of the government's notice of appeal. FED. R. APP. P. 4(b)(1)(A).

When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of the entry of the judgment or order being appealed, or the filing of a notice of appeal by any defendant. FED. R. APP. P. 4(b)(1)(B).

If counsel is retained, payment of a \$455 filing and docketing fee is required. 28 U.S.C. §§ 1913 and 1917. No fee is required if counsel is a Federal Public Defender or CJA appointed.

If a defendant wishes to appeal from a judgment or conviction after trial, or a guilty plea, or from a sentence, trial counsel is responsible for continuing representation of the defendant until relieved by the Court of Appeals. Any attorney who files a notice of appeal on behalf of a defendant in a criminal case or a petitioner or moving party in a post-conviction proceeding under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 will be deemed to have entered an appearance in the appellate court and may not withdraw without the appellate court's permission. 10th Cir. R. 46.3(A).

CRIMINAL JUSTICE ACT (“CJA”) APPOINTMENT OF COUNSEL

■ **IN GENERAL**

The Criminal Justice Act of 1964 provides for appointment of counsel for any financially eligible person who:

(A) is charged with a felony or Class A misdemeanor;

(B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;

(C) is charged with a violation of probation;

(D) is under arrest, when such representation is required by law;

(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

(F) is subject to a mental condition hearing under chapter 313 of this title;

(G) is in custody as a material witness;

(H) is entitled to appointment of counsel under the sixth amendment to the Constitution.

(I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or

(J) is entitled to the appointment of counsel under section 4109 of this title.

18 U.S.C. § 3006A(a)(1).

■ **DESIGNATION TO CJA PANEL**

To improve the overall quality of representation for indigents in this Court, the judges have established a Criminal Justice Act Panel Committee whose duties are to screen applications by attorneys for

**CRIMINAL JUSTICE ACT ("CJA")
APPOINTMENT OF COUNSEL
(CONTINUED)**

designation to a rotating Criminal Justice Act Panel. Once assigned to a panel, an attorney is then available for appointment under the Criminal Justice Act. Such designations are made only after the qualifications and experience of an applicant are thoroughly reviewed and evaluated by the committee.

- **CJA INFORMATION CENTER**
More detailed information about CJA matters (including fees and compensation) is posted on the Court's web site.

CIVIL PRO BONO PANEL

- **IN GENERAL**

By Order dated October 18, 1995, a plan was implemented which provides for appointment of counsel in those *pro se* civil actions where the Court finds such appointment is warranted.

- **REIMBURSEMENT OF COSTS**

The plan allows, within specified guidelines, for reimbursement of costs up to \$2,500. Application for additional costs may be approved upon a showing of good cause. Additionally, attorneys may receive training and CLE credit in selected areas of law without cost.

- **APPLICATION FOR MEMBERSHIP**

If you are interested in becoming a member, an application for membership must be completed and submitted to the Clerk.

NATURALIZATION

■ APPLICATIONS FOR CITIZENSHIP

All applications for citizenship are processed by the Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS). The application forms may be obtained at the following offices:

Bureau of Citizenship and Immigration Services
1720 Randolph SE
Albuquerque, NM 87106

Bureau of Citizenship and Immigration Services
1545 Hawkins, Suite 167
El Paso, TX 79925

The application forms are not available at the Clerk's Offices or at our web site.

■ NATURALIZATION CEREMONY

The final step to becoming a naturalized citizen is the hearing and admission to citizenship. The Court is responsible for all of the ceremonial arrangements--name change forms, programs, and monthly reports to the El Paso office of the BCIS. Our Court is very proud to schedule, conduct and prepare for these important ceremonies.