

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



**ATTORNEY INFORMATION
MANUAL**

NORMAN H. MEYER, JR.
ACTING CLERK OF COURT
REVISED APRIL 2003
(AS AMENDED TO JUNE 1, 2004)

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DIRECTORY

EXECUTIVE DIVISION

ACTING CLERK OF COURT:
Norman H. Meyer, Jr. 348-2001

HUMAN RESOURCES/PERSONNEL

DIVISION CHIEF:
Trinnie Mandell 348-2001

ATTORNEY COURT IDENTIFICATION CARDS:
Lisa Sandoval 348-2001

JUDICIAL OPERATIONS

PRIMARY CONTACT NUMBERS:
Telephone 348-2000
Facsimile 348-2028

DIVISION CHIEF:
Marte Adams 348-2012
ASSISTANT DIVISION MANAGER:
Phyllis Rael 348-2013

INTAKE SECTION: 348-2112
PRO SE SECTION: 348-2036

INFORMATION SERVICES

DIVISION CHIEF:
Mitch Elfers 348-2082

DIRECTORY

(CONTINUED)

ADMINISTRATIVE SERVICES

ACTING DIVISION CHIEF:

Mitch Elfers 348-2082

JURY ADMINISTRATION: 348-2070

RECORDS SECTION: 348-2020

CJA SECTION (VOUCHER PROCESSING): 348-2065

CERTIFIED COURT INTERPRETERS:

Juan José Peña, Spanish 348-2092

Esther Yazzie-Lewis, Navajo 348-2091

LAS CRUCES DIVISIONAL OFFICE

PRIMARY CONTACT NUMBERS:

Telephone 528-1400

Facsimile 528-1425

DIVISION CHIEF:

David Borkoski 528-1414

ASSISTANT DIVISION MANAGER:

Marty Silva 528-1410

MAGISTRATE SECTION:

Telephone 528-1435

Facsimile 528-1415

INTAKE SECTION: 528-1400

RECORDS SECTION: 528-1409

CERTIFIED COURT INTERPRETER:

Chandler Thompson, Spanish 528-1420

DIRECTORY

(CONTINUED)

SANTA FE DIVISIONAL OFFICE

PRIMARY CONTACT NUMBERS:

Telephone 988-6481

Facsimile 988-6473

DIVISION CHIEF:

Joycelyn Gonzalez 992-3811

ASSISTANT DIVISION MANAGER:

Michael Romero 992-3814

ATTORNEY DATABASE:

Theresa Delgado 992-3812

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 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 cases are available at the Clerk's offices and at our web site.

ADMINISTRATIVE ORDERS

Administrative Orders are available at our 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 and telephone number 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. There is no cost for this service at this time, but users must have an ACE user name and password.

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.

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.

AUTOMATED NOTICING

IN GENERAL

The Court has implemented a noticing application which allows parties and counsel of record to choose to be noticed: (1) electronically through the ACE server, (2) by facsimile transmission, or (3) by mail.

(1) ELECTRONICALLY THROUGH THE ACE SERVER. If you have an attorney-level ACE account, each time a document is electronically filed in a case in which you have entered your appearance, the document will be electronically sent to your ACE electronic mailbox, after the document has been entered on the Court's docket. Also, if you have signed and returned an Authorization to Send Notices, Orders and Judgments by Facsimile Transmission and have not elected to receive notice only through the ACE electronic mailbox, any Court generated document will be faxed to you; otherwise, the document will be mailed.

(2) BY FACSIMILE TRANSMISSION. Even if you are not participating in electronic filing, you may elect to receive Court generated documents by fax. To receive Court generated documents by fax, you must sign and return an Authorization to Send Notices, Orders and Judgments by Facsimile Transmission.

(3) BY MAIL. If you are not participating in electronic filing and do not choose to receive Court generated documents by fax transmission, notice by the Court will be by the United States Postal Service.

ELECTRONIC FILING

IN GENERAL

In 1997, the District of New Mexico successfully launched its electronic filing project named "Advanced Court Engineering" or "ACE." To file documents electronically, an attorney must be in good standing and admitted to practice in the United States District Court for the District of New Mexico. Along with the convenience of opening cases and filing documents electronically, ACE provides enhanced case tracking, easy access to court records (such as docket sheets, pleadings, opinions, and calendars), auto-noticing, and e-mail alerts. At this time, there is no fee for any of these services; however the Administrative Office of the U. S. Courts may require us to implement a fee schedule in the future. Users will be notified before any fees are implemented.

ACE ACCESS AND AVAILABILITY

ACE is available via our web site, www.nmcourt.fed.us. An ACE user name and password are required. ACE is normally available 23 hours a day, 7 days a week. Maintenance typically occurs at 11 o'clock each night and as needed during other hours. To minimize down time, we make every effort to recognize and remedy problems before they occur.

FOR MORE INFORMATION

Detailed information, an online tutorial, the ACE Handbook, and the ACE Training Manual can be found on our web site. The handbook provides information on setting up the necessary hardware and software to electronically file, and the training manual includes step-by-step instructions on electronic filing. (The online tutorial requires an Internet browser; both manuals require Adobe Acrobat Reader, available at no charge from www.adobe.com.) CLE training is also available by contacting the Court at 348-2088.

FILING A CIVIL ACTION

FEE

A filing fee of \$150 is required.

COMPLAINT/NUMBER OF COPIES REQUIRED

The original complaint with two copies for the Court, plus one copy for each named defendant, must be submitted with the filing fee.

CIVIL COVER SHEET

A civil cover sheet is also required. (*See* section entitled "Civil Cover Sheet.")

SUMMONS

An original summons is required for each named defendant. (*See* section entitled "Service of Process.")

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 your complaint ensures that the action is accurately classified for statistical purposes and correctly opened on the Court's case management system. If opening your case electronically, 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 \$150 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 may be obtained by any person who submits a completed "Financial Affidavit, Application to Proceed In Forma Pauperis," which states the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1).

In addition to the affidavit or application 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).

APPLICATION PRESENTED BY AN ATTORNEY

When an attorney presents an application to proceed *in forma pauperis*, the Clerk will provisionally file the action pending the Court's ruling on the application. The provisional filing date will become the filing date if the application is granted, or the application is denied but the attorney pays the filing fee within 20 calendar days of the denial. If the attorney fails to pay the fee, the Clerk will return all pleadings unfiled. D.N.M.LR-Civ. 5.3(b).

DIRECT ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES

IN GENERAL

Due to the increasing number of criminal cases filed in recent years, trials of civil cases may be delayed as district judges must give priority by law to the criminal docket. To address this situation, the Judicial Conference of the United States has encouraged 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 every Social Security appeal, and every other civil case, excluding prisoner cases and bankruptcy appeals, to a magistrate judge, who acts as the presider upon consent of the parties. Each magistrate judge is assigned cases on an equal and random rotation. D.N.M.LR-Civ. 73.1(a).

CONSENT TO PROCEED BEFORE A U. S. MAGISTRATE JUDGE

In a case assigned to a presiding magistrate judge, the Clerk will provide each party and/or attorney a "Consent to Proceed Before a U. S. Magistrate Judge" form, which will be used by the Clerk to determine the consent of the parties. Each party is to return the completed consent form to the Clerk within 20 days after service. D.N.M.LR-Civ. 73.1(b). A party's failure to return the completed consent form within 20 days will be considered that party's refusal of consent to proceed before the assigned presiding magistrate judge.

REFUSAL OF CONSENT

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).

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 Order of Reference-Exercise of Jurisdiction by a United Magistrate Judge," must be completed and signed by all counsel and *pro se* parties and returned to the Clerk's Office for processing and approval by the district judge to whom your case is assigned.

MOTION/APPLICATION FOR A TEMPORARY RESTRAINING ORDER

PROCEDURE FOR PENDING CASES

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

After the TRO Information Sheet 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 original and two copies of the completed TRO Information Sheet, complaint, motion for TRO, proposed TRO, and notice of hearing are required. The copies will be provided to the assigned judge's chambers; you will not be required to supply additional copies.

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

INITIAL PRETRIAL REPORT

The Initial Pretrial Report guides the course of the litigation and sets forth the case management schedule. *See* D.N.M.LR-Civ. 16.1 for detailed requirements. One form of the Initial Pretrial 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

Documents ordered sealed must be submitted for filing under seal in an envelope which provides the case caption and case number, the title of the document, and the name of the filing party. An original and one copy must be submitted in separate envelopes--one envelope marked "original" and the other marked "copy." At this time, sealed or *ex parte* documents are not filed electronically nor are they scanned. However, the electronic filing system will soon be modified to accept documents of this nature.

FILING DOCUMENTS IN SEALED CASES

Pleadings or documents submitted for filing in a case that has been sealed should indicate on the face of the document, "Case Sealed."

REQUESTING COPIES OF 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.

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 as officer of the court may also issue and sign a subpoena on behalf of

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

(B) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

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 QUESTIONNAIRES

Jury lists and juror questionnaires are available to counsel one week prior to the scheduled jury selection and can be obtained by calling the Jury Department 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 fact is made to appear by affidavit or otherwise, the clerk shall 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; (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 which can by computation be made certain, the clerk, upon request of the plaintiff and upon affidavit of the amount due, shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or 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 50 cents per page for copying the judgment.

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 shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry" (FED. R. CIV. P. 62(a)), and 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

Contact a deputy clerk (348-2000) to determine if the transcript has been filed with the court. If the transcript is on file, you may order a copy by contacting the Records Department (348-2020). If the transcript has not been filed, you must contact the court reporter who recorded the proceeding. The name of the court reporter is available on the docket sheet accessible via the Court's web site. If you do not have electronic access to docket sheets, contact a deputy clerk (348-2000); the case number and date of hearing will be required.

FEES FOR COPIES OF TRANSCRIPTS

Copies obtained from the Records Department are 50 cents per page. The court reporter may charge whoever requests a copy a fee at a rate no greater than the rate approved by the Judicial Conference. Without charge, anyone may read, but not reproduce, the copy of a transcript delivered by the court reporter to the Clerk for the public records of the Court, as required by 28 U.S.C. § 753(f).

IF TAPED PROCEEDING

Proceedings before magistrate judges in criminal matters (except for felony change of plea hearings) are tape recorded. To acquire a copy of a tape, you must first contact a deputy clerk (348-2000) for the tape number, the date of hearing, and the name of the magistrate judge hearing the matter. You may then contact the Records Department (348-2020) with the required information and request that the tape be copied. The fee for this service is \$26.

TO OBTAIN TRANSCRIPT OF A TAPED PROCEEDING

Contact a certified court reporter and provide the following information: the name of the magistrate judge who heard the proceeding, the date of the hearing, the case caption and the case number. The court reporter will check out the tape from the Records Department and transcribe it. Payment is made by the requesting party directly to the court reporter.

ELECTRONIC COURT REPORTING ("ECRO") LAS CRUCES DIVISION

IN GENERAL

Electronic court reporting, rather than stenographic machine reporting, is used to record most preliminary criminal proceedings conducted before the magistrate judges in our Las Cruces Division. In electronic court reporting, proceedings are recorded on cassette tapes.

TO OBTAIN COPIES OF TAPES

Complete form AO 436; tape orders cannot be processed unless this form is completed. The cost is \$26 per tape. CJA attorneys and government agencies may obtain tapes at no cost.

TO OBTAIN COPIES OF TRANSCRIPTS

If you are a CJA attorney or a Federal Public Defender, complete form AO 435; a letter of justification and a CJA 24 must accompany this form. After the transcript order is approved by a judicial officer, the Clerk will forward the transcript order to the transcriber.

If you have been retained as counsel, complete form AO 435; no letter of justification is required. The Clerk's Office will contact the transcriber; however, payment by retained counsel is made directly to the transcriber.

When the transcript is complete, a copy will be filed with the Clerk's Office by the transcriber.

COPY REQUESTS

IN GENERAL

Copies from the Court's public records are available from the Court's web site and through a mailed, faxed, or in person request.

FROM THE COURT'S WEB SITE

To obtain copies from the Court's web site, you must first have an ACE user name and password. To obtain an ACE user name and password, visit our web site and click on "Electronic Services," then "Request an ACE Account," then follow the instructions. To view electronically filed or scanned documents from the web site, you must have Adobe Acrobat Reader which can be downloaded free of charge from Adobe.com.

If you already have an ACE user name and password, go to our web site and click on "ACE," enter your user name and password, then click on "Docket" (found under "Reports"). Any pleading with the title appearing in color can be viewed and then printed by clicking on the title.

MAIL, FAX, AND IN PERSON REQUESTS

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, New Mexico, 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 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

IN GENERAL

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 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. § 844(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 Sandra Hardwick at 348-2054. Inquiries regarding Las Cruces petty offenses should be directed to Jessica Chavez at 528-1435.

APPEALS PROCEDURES

CIVIL ACTIONS

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

Payment of a \$105 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 \$105 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 thereafter without leave of the appellate court. 10th Cir. R. 46.3.1.

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).

FEES AND COMPENSATION

As of May 1, 2002, appointed counsel are compensated at the rate of \$90 per hour for both in-court time and for out-of-court time. Counsel

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

in Las Cruces cases are also compensated at the rate of \$90 per hour for both in-court and out-of-court time; travel time is also compensated at the rate of \$90 per hour.

As of November, 2001, total compensation (exclusive of allowable expenses) is limited to \$5,200 for each attorney when one or more felonies is charged, to \$1,500 for each attorney when only misdemeanors or petty offenses are charged, and to \$1,200 in connection with a post-trial motion after entry of judgment, in a probation or parole revocation, or for any other required representation. Payments in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation--such as death penalty cases--when so certified by a district or magistrate judge and approved by the Chief Judge of the Tenth Circuit, United States Court of Appeals.

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 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.

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.