

## **JURISDICTION AND LOCAL RULES**

Federal district courts have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. 28 U.S.C.A. § 1331. This is called “federal question” jurisdiction.

As a general statement, diversity original jurisdiction exists in federal district courts when the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C.A. § 1332. This is called “diversity” jurisdiction.

Supplemental jurisdiction is provided by 28 U.S.C.A. § 1367. The federal district court has “jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy. . . .” Additional parties can be joined. However, the federal district court can decline to exercise supplemental jurisdiction over a claim if:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction,  
or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

The requirements for removal of an action pending in state court are set forth in 28 U.S.C.A. § 1441. They are, generally:

- (1) Complete diversity between plaintiffs and defendants (the citizenship of fictitious defendants is disregarded), or

- (2) The action includes a “federal question”.

The procedure for removal is set forth in 28 U.S.C.A. § 1446. It is, generally:

- (1) File a notice of removal in federal court within 30 days of receipt by the defendant of a copy of the complaint.
- (2) All defendants served must join in or consent to the removal.
- (3) Removal must usually be within one year from commencement of the action.
- (4) Give notice to adverse parties and state court.

The clarifications to diversity jurisdiction and removal made by Public Law 112-63 are:

- (1) Each defendant has 30 days from service on that defendant within which to file removal pleadings.
- (2) If the plaintiff does not plead the amount in issue, a removing defendant can state in the removal papers that more than \$75,000 is at issue. A defendant can also use discovery in state court to determine if more than \$75,000 is at issue and if it is determined to be so, then remove within 30 days.
- (3) If a citizen of the state is a defendant and is not served, the action is removable.  
Question: What happens if a resident defendant is served after removal?
- (4) All defendants served must join or consent to removal for the removal to be effective.

Note: The consent must be written and filed within the removal time.

Note: Removal of class actions is different.

- (5) There is a one year time limit from commencement of the action within which to remove, except:
  - a. If the plaintiff has acted in bad faith to prevent removal, or

- b. The plaintiff deliberately failed to disclose the true amount of damages claimed.
- (6) The provision that permitted alien persons who are lawfully admitted residents to be considered as citizens for diversity jurisdiction purposes was removed.
- (7) All foreign and domestic corporations will be considered a citizen of each state (foreign or domestic) where it is incorporated and where it has its principal place of business.

Public Law 112-63 also redefines venue. New Mexico has only one federal judicial district, so this provision will not be of significance to New Mexico federal court litigation. However, many of the more populated states have multiple federal districts and the venue provisions should be reviewed for federal court litigation there.

The Civil Justice Expense And Delay Reduction Plan addresses the local rules and establishes a case differential and management plan. It establishes four different tracks for civil cases. Each case will be assigned to one of the tracks, which are:

- (1) Expedited Cases
  - (a) A disposition time of within 9 months, after case is at issue, is the goal for such cases.
  - (b) Initial conferences with parties present or available will be set with magistrate or district judges within 60 days after such cases are at issue for scheduling and management plans and setting of early trial dates.
  - (c) Discovery cut-off dates will be set no later than 100 days after the filing of the scheduling order.

(d) Periodic conferences and status reports thereafter will be required as determined by the assigned magistrate and/or district judge.

(2) Standard Cases

(a) Disposition goal will be within 12 months or less after such cases are at issue.

(b) Initial conferences with parties present are set with magistrate or district judges within 60 days after such cases are at issue for scheduling and management plan and setting of early trial dates.

(c) Discovery cut-off dates are set no later than 200 days after filing of the scheduling order.

(d) Periodic conferences held and status reports required thereafter as determined by the assigned magistrate and/or district judge.

(3) Complex Cases

(a) Disposition goal will be within 18 months after cases is at issue.

(b) Within 30 days after a case is at issue, the assigned magistrate or district judge holds an initial conference with parties present where the judicial officer:

[1] Explores the receptivity of settlement or proceeding with the litigation;

[2] Identifies and formulates the principal issues in contention, provides for staged resolution or bifurcation of issues consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

[3] Prepares a discovery schedule and plan consistent with the time limits set by the court for completion of discovery and with any procedures the court develops as to (1) discovery and (2) phase discovery into two or more stages, and,

[4] Sets earliest practicable motions timing and as early a trial date as practical.

(4) Administrative Cases

- (a) These are cases which based on the court's prior experience are likely to result in default or consent judgment, resolved or dismissed on the pleadings or by motion.
- (b) Such cases are referred directly by the Clerk's Office to a magistrate judge for preparation of a report and recommendation unless the matter deals with a temporary restraining order or temporary injunctive relief in which occasion, the Clerk shall refer such matters immediately to the assigned district judge.
- (c) Generally, there will be no discovery for this track without prior leave of Court.

Rule 7 of the Local Rules of Civil Procedure deals with motion practice. A movant must determine whether a motion is opposed and a motion that omits recitation of a good faith request for concurrence may be summarily denied. An unopposed motion should be accompanied by a proposed order approved by each party. With regard to opposed motions, a response must be served and filed within 14 calendar days after service of the motion. A reply must be served and filed within 14 calendar days after service of the response. If service is made by email on a party

that has consented to such service, an additional 3 days are added after the period would otherwise expire under Rule 6(a). The movant's brief must not exceed 27 double spaced pages, a response brief must not exceed 24 double spaced pages and a reply brief must not exceed 12 double spaced pages. There is a 50 page limit for exhibits to a motion, response or reply.

Under local Rule 16.1 the parties must file a joint status report following a FRCP 26(f) meet and confer conference. After filing of that report, the Court will enter a Scheduling Order setting all pretrial case management deadlines.

Local Rule 26.6 provides that motions to compel must be filed within 21 days of service of an objection to discovery, or the objection can be deemed accepted.

One of the most important civil law aspects of federal court is that settlement conferences are mandated. They are usually conducted by a federal magistrate judge. They can be quite effective and cost efficient.

Under local Rule 73, cases will be initially assigned to two federal magistrate judges. One is to be the trial judge, if the parties consent. The other acts as a discovery and motions judge. Cases to be tried by a Magistrate Judge usually move to a quicker resolution.

The local federal rules also contain numerous forms for convenience. They include a Civil Cover Sheet, Authorization To Disclose Protected Health Information, Joint Status Report, Consent and Order of Reference to U.S. Magistrate Judge, and Pretrial Order.

The federal judicial district is divided into three jury divisions. They are referred to as the northern jury division, the central jury division, and the southern jury division. The northern division is generally the northeast third of the state, the central division is generally the northwest third of the state and the southern division is generally the southern third of the state. A map of those divisions is enclosed in the materials.