

**1-122. Dissolution of marriage and Section 40-4-3 NMSA 1978 proceedings; interim order allocating income and expenses.**

A. **Interim order allocating income and expenses.** Absent exceptional circumstances, during the pendency of a dissolution of marriage or Section 40-4-3 NMSA 1978 proceeding, community income and expenses shall be equally divided between the parties. Upon motion, separate income and expenses may also be divided if appropriate.

B. **Agreement by parties.** The parties may file a stipulation waiving the entry of an interim order allocating income and expenses.

C. **Allocation of income and expenses.** If the parties have not agreed to or waived entry of an interim order allocating income and expenses, at any time after commencement of the proceeding

(1) a party may file a motion requesting the court to enter an interim order allocating income and expenses; or

(2) the court, on its own motion, may set a hearing to allocate income and expenses.

At least five (5) days prior to the hearing the parties shall be required to exchange the information set out in Domestic Relations Form 4A-212 NMRA.

D. **Modification of interim allocation.** Any party may file a motion to modify or supplement the interim order allocating income and expenses.

E. **Form of statements, orders, and notices.** Interim monthly income and expense statements, interim orders allocating income and expenses, notices of hearing for an interim order dividing income and expenses and orders for production shall be substantially in the form approved by the Supreme Court.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 13-8300-047, effective for all cases filed or pending on or after December 31, 2013.]

**Committee commentary.** — There are two choices available for interim orders allocating income and expenses. A district court may:

(1) provide for an interim allocation of income and expenses upon motion of a party (Domestic Relations Form 4A-111 NMRA); or

(2) unless waived by the parties at the time of the filing of the petition, provide for an interim allocation of community income and expenses in every proceeding by serving a notice in accordance with Domestic Relations Form 4A-121 NMRA. Upon motion of a party, the court may also divide separate income and expenses.

The interim allocation or communication and expenses form, Domestic Relations Form 4A-122 NMRA, uses a fixed percentage of income to determine child support expenses. If the parties have a negative or minimal net spendable income, the court has the discretion to fashion an appropriate order.