

9-705. Procedural order on petition for writ of habeas corpus.

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____,
Petitioner,

No. _____

v.

_____,
Respondent.

PROCEDURAL ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

This matter having come before the court on petitioner's petition for a writ of habeas corpus or other pleading pursuant to Rule 5-802 NMRA of the Rules of Criminal Procedure for the District Courts, the court having reviewed the record and being otherwise fully advised in the premises, FINDS AND ORDERS THAT:

1. SUMMARY DISMISSAL/TRANSFER OF VENUE¹

This matter is transferred because of improper venue to the _____ Judicial District Court.

This matter is summarily dismissed because as a matter of law petitioner is not entitled to relief based on a review of the files, pleadings, and records which show that:

(statement of reasons required)

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2. RETURN OF PETITION FOR FURTHER INFORMATION:

The petition is returned to petitioner for additional information on the following issues/claims:

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Pursuant to Rule 5-802(G) NMRA, a revised petition shall be filed within forty-five (45) days after service of this order.

3. **FREE PROCESS AND APPOINTMENT OF COUNSEL:**

Petitioner is granted permission to proceed in *forma pauperis* based on Form 9-403 NMRA or because petitioner is an inmate of a correctional facility.

Petitioner is not granted permission to proceed in *forma pauperis*.

The Public Defender Department is appointed to represent petitioner based on the court's finding that this is a proceeding which a reasonable person would bring at that person's own expense. Upon being properly appointed, the Public Defender Department shall either file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of this appointment.²

4. **RESPONSE³:**

The respondent is directed to file a response within one-hundred and twenty (120) days after the service of an amended petition or a notice that no amended petition will be filed.

The court, having received an amended petition or a notice that no amended petition will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby summarily dismisses the petition. (*statement of reasons required*)

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 The court, having received an amended petition or a notice that no amended petitioner will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby dismisses the following claims:
(statement of reasons required)

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AND
orders a response from respondent on the following claims:

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5. HEARING SCHEDULE:

- A status conference will be held on _____ (date), at _____ (time).
- A preliminary disposition hearing will be held on _____ (date), at _____ (time).
- An evidentiary hearing will be held on _____ (date), at _____ (time).
- An evidentiary hearing is not required, but legal argument will be heard on _____

this matter on _____ (date), at _____
(time).

(District Judge)

USE NOTES

1. Paragraph 1 should only be used prior to the appointment of counsel and before the filing of any amended petition.
 2. See NMSA 1978, § 31-16-3(B)(3) (1968).
 3. After receiving the amended petition or notice that no amended petition will be filed, the court will then decide if a response will be ordered, and whether a status conference, a preliminary disposition hearing, or evidentiary hearing are required, and will send the parties notice. Paragraph 5 should be used when ordering a response at the time of appointment of counsel or after reviewing the amended petition or notice that no amended petition will be filed.
- [Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014.]