**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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, No. \_\_\_\_\_\_\_\_\_\_

Petitioner,

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*).

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(*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.]