

Criminal Forms

ARTICLE 1 General Provisions

9-101. Notice of [excusal] facts requiring recusal (*constitution or code of conduct*).

[For use with District Court Rule 5-106 NMRA,
Magistrate Court Rule 6-106 NMRA,
Metropolitan Court Rule 7-106 NMRA and
Municipal Court Rule 8-106 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

NOTICE OF [EXCUSAL] FACTS REQUIRING RECUSAL (*CONSTITUTION OR CODE OF CONDUCT*)

The undersigned believes that the impartiality of the Honorable
_____ may reasonably be questioned because:
_____ (set
forth specific facts which prohibit the judge from presiding. The facts must be grounds
for excusal under the New Mexico Constitution or the Code of Judicial Conduct.)

The undersigned believes that participation of the above-named judge would be in
violation of _____ of the Code of Judicial Conduct.

Signature of party

USE NOTES

Each party must be served with a copy of this notice. See Rules 6-209, 7-209 and 8-208 NMRA. See Criminal Form 9-221 for the certificate of service and affidavit of service.

[As amended, effective November 1, 1995; May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, inserted "Facts Requiring Recusal" in the form heading and added the Use Note.

The 1995 amendment, effective November 1, 1995, rewrote the form.

9-102. Certificate of excusal or recusal.

[For use with District Court Rule 5-106 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant.

CERTIFICATE OF EXCUSAL OR RECUSAL

I hereby certify that I have [been excused] [recused myself] from presiding in the above case and ten (10) days have passed since the parties were notified of such recusal or excusal and that the parties were notified and the parties have not filed a stipulation agreeing to another judge of the district to hear the case.

It is requested that another judge be designated according to law.

Date

Judge

USE NOTES

Each party must be served with a copy of this notice.

[As amended, effective September 1, 1989; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 07-8300-34, effective January 22, 2008; by Supreme Court Order No. 09-8300-027, effective September 10, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-027, effective September 10, 2009, after the number and title, in the brackets, deleted "and Magistrate Court Rule 7-106 NMRA"; deleted "CITY OF _____" and "_____ COURT" and added "IN THE DISTRICT COURT".

The 2007 amendment, approved by Supreme Court Order 07-8300-34 effective January 22, 2008, limited the use of this form to the district and metropolitan courts.

The 2002 amendment, effective May 1, 2002, inserted "were notified and the parties" in the first paragraph of the form, deleted the division designation following the judge's signature line, and added the Use Note.

The 1995 amendment, effective November 1, 1995, rewrote the form.

Cross references. For constitutional right to disqualify judges, see N.M. Const., art. 6, § 18.

For the statutory right to excuse a magistrate court judge, see Section 35-3-7 NMSA 1978.

For statutory right to excuse a district court judge, see Section 38-3-9 NMSA 1978.

For peremptory disqualification of a district court judge, see Rule 1-088.1 NMRA.

For disqualification pursuant to the Code of Judicial Conduct, see Rule 21-400 NMRA.

9-102A. Certificate of excusal or recusal.

[For use with Magistrate Court Rule 6-106 NMRA and Metropolitan Court Rule 7-106 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ COURT

STATE OF NEW MEXICO

COUNTY OF _____

v.

No. _____

_____, Defendant.

CERTIFICATE OF EXCUSAL OR RECUSAL

I hereby certify that I have [recused myself] [been excused without an accompanying stipulation from the parties requesting a specific judge be assigned to the case] from presiding in the above case.

I request that another judge be designated according to law.

_____,
Date

Judge

USE NOTES

Each party must be served with a copy of this notice. See Rules 6-209 and 7-209 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008; as amended by Supreme Court Order No. 09-8300-027, effective September 10, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-027, effective September 10, 2009, after the number and title, in the brackets, deleted "and Magistrate Court Rule 7-106 NMRA".

Cross references. — For constitutional right to disqualify judges, see N.M. Const., art. 6, § 18.

For the statutory right to excuse a magistrate court judge, see Section 35-3-7 NMSA 1978.

For disqualification pursuant to the Code of Judicial Conduct, see Rule 21-400 NMRA.

9-102B. Certificate of recusal.

[For use with Municipal Court Rule 8-106 NMRA]

STATE OF NEW MEXICO

CITY OF _____

_____ COURT

[STATE OF NEW MEXICO]

[CITY OF _____]

v.

No. _____

_____, Defendant.

CERTIFICATE OF RECUSAL

I hereby certify that I have recused myself from presiding in the above case.

I request that another judge be designated according to law.

_____,
Date

Judge

USE NOTES

1. Each party must be served with a copy of this notice. See Rule 8-208 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

2. This form is to be used when there is no alternate judge to whom the case may be reassigned or when the alternate [judge] [judges] [is] [are] unable to hear the case.

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008; as amended by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-037, effective November 16, 2009, in the Use Note, designated the former Use Note as Paragraph 1 and added Paragraph 2.

Cross references. — For recusal of municipal judges, see Rule 8-106 NMRA.

For disqualification pursuant to the Code of Judicial Conduct, see Rule 21-400 NMRA.

9-103. Notice of excusal.

[For use with District Court Rule 5-106 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

NOTICE OF EXCUSAL

The undersigned hereby notifies the court that the Honorable
_____ is excused from presiding over the above-captioned case.

Dated this ____ day of _____, _____.

Party or attorney for the party

USE NOTES

Each party must be served with a copy of this notice. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[As amended, effective May 1, 1986; November 1, 1995; May 1, 2001; as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-034 effective January 22, 2008, limited the use of this form to the district courts.

The 2002 amendment, effective May 1, 2002, added the Use Note.

The 1995 amendment, effective November 1, 1995, deleted "he is exercising his right to excuse" preceding "the Honorable" and inserted "is excused".

Cross references. — For constitutional right to disqualify judges, see N.M. Const., art. 6, § 18.

For disqualification pursuant to the Code of Judicial Conduct, see Rule 21-400 NMRA.

For statutory right to excuse a district judge, see Section 38-3-9 NMSA 1978.

For peremptory disqualification of a district court judge in civil cases, see Rule 1-088.1 NMRA.

9-103A. Notice of excusal.

[For use with Magistrate Court Rule 6-106 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO
COUNTY OF _____

v.

_____, Defendant

NOTICE OF EXCUSAL¹

The undersigned hereby notifies the court that the Honorable _____ is excused from presiding over the above-captioned case.

Dated this ____ day of _____, _____.

Party or attorney for the party

OPTIONAL STIPULATION

By our signatures below we stipulate that the Honorable _____ be assigned to preside over the above captioned case.

Dated this _____ day of _____, _____.

Party or attorney for the party

Dated this _____ day of _____, _____.

Party or attorney for the party

USE NOTES

1. The parties must stipulate to a statutorily authorized judge.
2. If the parties agree to request a different judge, the court must be informed of the agreement when the notice of excusal is filed. See Rule 6-105 NMRA.
3. Each party must be served with a copy of this notice. See Rule 6-209 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[Approved by Supreme Court Order No. 07-8300-34, effective January 22, 2008.]

ANNOTATIONS

Cross references. — For constitutional right to disqualify judges, see N.M. Const., art. 6, § 18.

For the statutory right to excuse a magistrate court judge, see Section 35-3-7 NMSA 1978.

For disqualification pursuant to the Code of Judicial Conduct, see Rule 21-400 NMRA.

9-103B. Notice of recusal.

[For use with Magistrate Court Rule 6-106 NMRA and Municipal Court Rule 8-106 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

v.

No. _____

_____, Defendant.

NOTICE OF RECUSAL

The Honorable _____ has recused [himself][herself] from presiding over the above-captioned case.

[] You will be notified when another judge is designated according to law.

[] Judge _____ has been assigned to the case.

Dated _____, _____.

Clerk

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-103C. Notice of assignment.

[For use with Magistrate Court Rules 6-105 and 6-106 NMRA, and
Municipal Court Rules 8-105 and 8-106 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

NOTICE OF ASSIGNMENT

The Honorable _____ has been assigned to preside over the
above-captioned case.

Dated this _____ day of _____, _____.

Clerk

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-104. Waiver of appearance.

[For use with District Court Rule 5-612 NMRA;
Magistrate Court Rule 6-109 NMRA,
Metropolitan Court Rule 7-109 NMRA and
Municipal Court Rule 8-108 NMRA.]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

WAIVER OF APPEARANCE

I understand that I am charged with the following criminal offense or offenses under the law of the [State of New Mexico] [City of _____]:
_____ (*list all offenses charged*).

I understand that I am entitled to personally appear before the court at every stage of the criminal proceedings.

I have received and read a copy of the complaint or citation or had the complaint or citation read to me. I understand the offense or offenses charged and the penalty provided by law if I am convicted.

After reading and understanding the above, I request that the court permit me to waive a personal appearance in court for the following proceedings:

(*check applicable boxes*)

- all proceedings in this case;
- all pretrial proceedings;
- arraignment;
- plea;
- bail or conditions of release;
- trial;
- imposition of sentence.
- _____ (*other*).

I plead to all of the charges in the complaint or citation:

(*check one, if applicable*)

- guilty.

- not guilty.
- no contest.

Signature of defendant

CERTIFICATE OF DEFENSE COUNSEL

(To be completed if the defendant is represented by counsel)

I have explained to the defendant the right to personally appear before the court at all stages of the criminal proceedings and the defendant's right, if any, to a trial by jury and I am satisfied that the defendant understands the waiver of rights.

Defense counsel

Date

APPROVAL OF JUDGE

Permission to waive appearance is

granted under the following conditions _____ *(list any conditions)*.

denied.

Judge

Date

USE NOTES

This form has been prepared for the district, magistrate, metropolitan and municipal courts. It may be modified to delete parts which are inapplicable in municipal court proceedings or petty misdemeanors.

[As amended, effective November 1, 1996; November 1, 2000; May 15, 2003; as amended by Supreme Court Order No. 06-8300-008, effective May 1, 2006.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order No. 06-8300-008, effective May 1, 2006, approved this form for use in the district court.

The 2003 amendment, effective May 15, 2003, inserted "all pretrial proceedings", and the corresponding check box, to the list of proceedings in the fourth paragraph.

The 2000 amendment, effective November 1, 2000, expanded the list of options following the fourth paragraph, added the plea options following the fourth paragraph, and added the provisions relating to the approval of the judge near the end.

The 1996 amendment, effective October 1, 1996, substituted "signature of defendant" for "name of defendant" under the signature line, inserted "and the defendant's right to a trial by jury" and substituted "(this) (these) rights" for "this right" and made gender neutral changes in the Certificate of Defense Counsel portion, added the Approval of Judge portion, and added the Use Note.

9-104A. Request for audio or audio-visual appearance.

[For use with Magistrate Court Rule 6-110A NMRA,
Metropolitan Court Rule 7-110A NMRA and
Municipal Court Rule 8-109A NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

REQUEST FOR AUDIO OR AUDIO-VISUAL APPEARANCE

I understand that I am charged with the following criminal offense or offenses under the law of the [State of New Mexico] [City of _____]: *(list all offenses charged)* _____.

I understand that I am entitled to personally appear before the court at every stage of the criminal proceedings.

I request that the court permit me to appear in court by:

(check applicable alternative)

- telephone or other audio communication
- simultaneous audio-visual communication

for the following proceedings:

(check applicable boxes)

- all proceedings in this case;
- all pretrial proceedings in this case;
- entry of a plea; [and]
- setting or amending bail or conditions of release; [and]
- trial; [and]
- imposition of sentence.

Signature of defendant

CERTIFICATE OF DEFENSE COUNSEL

(To be completed if the defendant is represented by counsel.)

I have explained to the defendant the right to personally appear before the court at all stages of the criminal proceedings and the defendant's right, if any, to a trial by jury and I am satisfied that the defendant understands the waiver of rights.

Defense counsel

Date

APPROVAL OR DENIAL OF JUDGE

The request of the defendant to appear by audio or audio-visual communication is denied.

The request of the defendant to appear by audio or audio-visual means is granted. The defendant shall arrange and pay for the actual costs of all audio or audio-visual appearances. An [audio] [audio-visual] appearance is scheduled for _____ (a.m.) (p.m.) on the _____ day of _____, _____ (date). [The (state) (county) (city) shall participate at (_____) _____ (telephone number) and the court will participate at (_____) _____ (telephone number)].

Judge

Date

USE NOTES

This form has been prepared for the magistrate, metropolitan and municipal courts. It may be modified to delete parts which are inapplicable in municipal court proceedings or petty misdemeanors.

[Approved, effective November 1, 2000; as amended, effective May 15, 2003.]

ANNOTATIONS

The 2003 amendment, effective May 15, 2003, inserted "all pretrial proceedings in this case", and the corresponding check box, to the list of proceedings in the third paragraph.

9-104B. Appearance, plea, and waiver.

[For use with Magistrate Court Rule 6-503 NMRA, Metropolitan Court Rule 7-503 NMRA and Municipal Court Rule 8-503 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

APPEARANCE, PLEA, AND WAIVER

I acknowledge that I have been charged with a violation(s) of the following traffic offense(s) with maximum fines as follows:

(List offenses and maximum fines.)

I further confirm that I have received a copy of the complaint or citation(s), and I have read and understand the crime(s) charged.

I have been informed of my rights, as follows:

1. The right to personally appear before the court at every stage of these proceedings;
2. The right to a trial before the judge;
3. The right to present witnesses on my behalf and to confront and cross-examine witnesses;
4. The right to remain silent and that any statement made by me may be used against me;
5. The right to hire a lawyer.

I further understand that there is a penalty, as reflected above, provided by law for the offense or offenses for which I am charged. In addition, I must pay court fees of \$_____. I understand I may also have points assessed against my driver's license.

If I plead guilty or no contest, I will be required to pay the fine and fees as set by state law or local rule. If I plead not guilty, a trial will be set for a later date. If I plead not guilty, the Judge is not allowed to discuss the case until the time of the hearing or trial.

I understand that if I plead guilty or no contest, I may discharge my obligations to the court in this matter by returning this signed document and remitting \$_____ payable to the _____ court.

After reading and understanding the above, I hereby give up my right to personally appear before the _____ court for an arraignment, and voluntarily enter my plea of:

- Not Guilty to one or more charges (*Trial will be set.*)
- Guilty to all charges

No Contest to all charges (*A plea of No Contest means that you neither admit nor deny the charge or charges, but that you are not contesting the charge or charges and do not want a trial.*)

Date

Defendant signature

Date of Birth

Social Security No.

Name (*print*)

Mailing Address (*print*)

Physical Address (*print*)

City, State and Zip Code (*print*)

City, State and Zip Code (*print*)

Daytime Phone

Cell Phone

RETURN BY _____ TO:

(Insert court name and address.)

[Approved, effective May 15, 2001; as amended by Supreme Court Order No. 11-8300-051, effective for cases filed on or after January 31, 2012.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-051, effective January 31, 2012, completely rewrote the form; restricted the use of the form to traffic offenses that may be disposed of without a hearing; eliminated the use of the form in connection with Rules 6-109, 7-109, and 8-108 NMRA; eliminated the application of the form to game and fish and other non-traffic offenses; required that the maximum fine for each offense be listed; listed the defendant's constitutional rights and the consequences of a plea of no contest or guilty; permitted the defendant to plead not guilty, guilty, or no contest; required the entry of the defendant's personal identification information; and deleted the former use note, which provided that the form could be used only to enter a plea of guilty within thirty days after issuance of a penalty assessment misdemeanor citation.

Cross references. — For game and fish penalty assessment misdemeanors, see Section 17-2-10.2 NMSA 1978.

For traffic offenses, see Section 66-8-117 NMSA 1978.

9-104C. Waiver of appearance.

[For use with Magistrate Court Rule 6-109 NMRA,
Metropolitan Court Rule 7-109 NMRA,
and Municipal Court Rule 8-108 NMRA.]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

IN THE _____ COURT

[STATE OF NEW MEXICO]

[CITY OF _____]

v.

No. _____

WAIVER OF APPEARANCE

I understand that I am charged with the following criminal offense or offenses under the law of the [State of New Mexico] [City of _____]:

_____ (*list all offenses charged*).

I understand that I am entitled to personally appear before the court at every stage of the criminal proceedings.

I have received and read a copy of the complaint or citation or had the complaint or citation read to me. I understand the offense or offenses charged and the penalty provided by law if I am convicted.

After reading and understanding the above, I request that the court permit me to waive a personal appearance in court for the following proceedings:

(*check applicable boxes*)

all pretrial proceedings;

first appearance;

arraignment;

- entry of a plea of not guilty;
- bail or conditions of release;
- trial;
- imposition of sentence;
- _____ (other).

(check, if applicable)

- I plead not guilty to all of the charges in the complaint or citation.

Signature of defendant

CERTIFICATE OF DEFENSE COUNSEL

(To be completed if the defendant is represented by counsel)

I have explained to the defendant the right to personally appear before the court at all stages of the criminal proceedings and the defendant's right, if any, to a trial by jury and I am satisfied that the defendant understands the waiver of rights.

Defense counsel

Date

APPROVAL OF JUDGE

Permission to waive appearance is

- granted under the following conditions _____ *(list any conditions)*.

- denied.

Judge

Date

USE NOTES

1. This form has been prepared for the magistrate, metropolitan, and municipal courts. It may be modified to delete parts which are inapplicable in municipal court proceedings or petty misdemeanors.

[Adopted by Supreme Court Order No. 15-8300-009, effective for all cases filed or pending on or after December 31, 2015.]

9-105. Notice of recusal.

[For use with Magistrate Court Rule 6-106 NMRA,
Metropolitan Court Rule 7-106 NMRA and
Municipal Court Rule 8-106 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

NOTICE OF RECUSAL

You are notified that I have recused myself from presiding over the above-captioned case. The parties are further notified that if within ten (10) days they do not file with the court a stipulation agreeing to another judge to hear the case, another judge will be assigned to hear the case.

_____ , _____

Judge

Division

[Adopted, effective October 1, 1987; as amended, effective November 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective November 1, 1995, substituted "You are notified that I have recused myself" for "The undersigned hereby notifies the parties that he is recusing himself", "file with the court a stipulation agreeing to" for "agree upon", and "another judge will be assigned to hear the case" for "the clerk will request the district court to assign".

9-107. Request to withdraw as counsel and order approving substitution of counsel.

[For use with Magistrate Court Rule 6-107 NMRA,
Metropolitan Court Rule 7-107 NMRA and
Municipal Court Rule 8-107 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

**REQUEST TO WITHDRAW AS COUNSEL
AND
ORDER APPROVING SUBSTITUTION OF COUNSEL**

_____ (*name of withdrawing attorney*) requests permission
of the court to withdraw as counsel for the [defendant] [state].

_____ (*name of attorney*) is entering an appearance to
represent the [defendant] [state].

Withdrawing attorney

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

Attorney entering appearance

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

CERTIFICATE OF SERVICE ON OPPOSING PARTY

I hereby certify that on this ____ day of _____, _____ this motion was

[mailed by United States mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____

[faxed by _____ (*name of person who faxed*) to the above named person. The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

[e-mailed by _____ (*name of person who transmitted*) to _____ at _____ (*electronic address of recipient*) which address is on file with the clerk of the Supreme Court. The transmission was successful. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

Signature of attorney or party

Date of signature

CERTIFICATE OF SERVICE ON DEFENDANT

I hereby certify that on this ____ day of _____, _____ this motion was
[mailed by United States mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[faxed by _____ (*name of person who faxed*) to the defendant. The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

Signature of attorney

Date of signature

WITHDRAWAL AND SUBSTITUTION OF ATTORNEY [APPROVED] [DENIED]:

Judge

Date

USE NOTES

This form may be used for substitution of counsel if the defendant is represented by private counsel.

[Approved, effective February 16, 2004.]

9-108. Notice of substitution of counsel for legal representation.

[For use with Magistrate Court Rule 6-107 NMRA,
Metropolitan Court Rule 7-108 NMRA and
Municipal Court Rule 8-107 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

**NOTICE OF SUBSTITUTION OF COUNSEL
FOR LEGAL REPRESENTATION OF _____**

_____ (*name of attorney*) has agreed to appear on behalf of _____ (*name of party*).
_____ (*name of withdrawing attorney*) is withdrawing as attorney of record for this party.

Dated: _____

Withdrawing attorney

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

Attorney entering appearance

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

APPROVED:

Judge

Date

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this notice to _____ (*name of party*), at the address indicated.

Date of Mailing: _____, _____.

By: _____

USE NOTES

This form may only be used by the public defender. If an entry of appearance has been made by private counsel, Criminal Form 9-106 NMRA is used.

[Approved, effective February 16, 2004.]

9-109. Suggested questions for assessing qualifications of proposed court interpreter.

[For use with District Court Rule 5-122, Magistrate Court Rule 6-115, Metropolitan Court Rule 7-114, Municipal Court Rule 8-113, and Evidence Rule 11-604 NMRA]

SUGGESTED QUESTIONS FOR PROPOSED COURT INTERPRETERS

1. Do you have any particular training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. How did you learn [the foreign language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study either language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?
10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?
13. Do you have any other potential conflicts of interests?
14. Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems?
15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
16. Are you able to interpret simultaneously without leaving out or changing anything that is said?
17. Are you able to interpret consecutively?

USE NOTES

This list of proposed question is taken from Court Interpretation: Model Guides for Policy and Practice in the State Courts; Chapter 6, Judges Guide to Standards for

Interpreted Proceedings; NCSC, 9/4/2002. The list of questions is not mandatory nor exclusive, and the judge retains the discretion to inquire into any subject matter necessary to determine whether the proposed court interpreter is qualified to serve.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

9-110. Request for court interpreter.

[For use with District Court Rule 5-122, Magistrate Court Rule 6-115, Metropolitan Court Rule 7-114, Municipal Court Rule 8-113, and Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

[STATE OF NEW MEXICO]

[CITY OF _____]

v. _____ No. _____

_____, Defendant.

REQUEST FOR COURT INTERPRETER

PERSON NEEDING INTERPRETER: Party _____ Witness for _____

NAME OF PERSON NEEDING INTERPRETER: _____

SPECIFIC MATTERS TO BE HEARD: _____

DATE: _____ TIME: _____ LOCATION: _____

JUDGE: _____ TIME REQUIRED: _____

LANGUAGE NEEDED: Spanish _____ Sign _____ Other _____

REQUESTED BY: _____
Signature of party or party's attorney

[BELOW FOR CLERK'S USE ONLY]

NAME OF INTERPRETER: _____

DATE INTERPRETER CONTACTED: _____

DATE/TIME VERIFIED WITH INTERPRETER: _____

BY _____
Deputy Clerk

USE NOTES

The party requesting the interpreter is responsible for notifying the court clerk's office if cancellation of the interpreter services is required. If the requesting party fails to do so in a timely manner, that party may be responsible for the fees and mileage expenses of the interpreter in accordance with the Administrative Office of the Courts Court Interpreter Standards of Practice and Payment Policies.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

9-111. Cancellation of court interpreter.

[For use with District Court Rule 5-122, Magistrate Court Rule 6-115, Metropolitan Court Rule 7-114, Municipal Court Rule 8-113, and Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

[STATE OF NEW MEXICO]

[CITY OF _____]

v. No. _____

_____, Defendant.

CANCELLATION OF COURT INTERPRETER

The court interpreter previously requested is no longer needed. Please cancel the court interpreter scheduled for

DATE: _____ **TIME:** _____ **LOCATION:**

JUDGE: _____

REQUESTED BY: _____

Signature of party or party's attorney

[BELOW FOR CLERK'S USE ONLY]

NAME OF INTERPRETER: _____

DATE INTERPRETER CONTACTED FOR CANCELLATION: _____

BY _____

Deputy Clerk

USE NOTES

The party requesting the interpreter is responsible for notifying the court clerk's office if cancellation of the interpreter services is required. If the requesting party fails to do so in a timely manner, that party may be responsible for the fees and mileage expenses of the interpreter in accordance with the Administrative Office of the Courts Court Interpreter Standards of Practice and Payment Policies.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

9-112. Notice of non-availability of certified court interpreter or justice system interpreter.

[For use with District Court Rule 5-122, Magistrate Court Rule 6-115, Metropolitan Court Rule 7-114, Municipal Court Rule 8-113, and Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

[STATE OF NEW MEXICO]

[CITY OF _____]

v.

No. _____

_____, Defendant.

**NOTICE OF NON-AVAILABILITY OF CERTIFIED COURT
INTERPRETER OR JUSTICE SYSTEM INTERPRETER**

Notice is hereby given that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter to provide requested court interpretation services in this proceeding but none is reasonably available. After evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding, the court concludes that an accurate and complete interpretation of the proceeding can be accomplished with a non-certified court interpreter. The court therefore will make arrangements to provide interpretation services by a qualified non-certified court interpreter.

Signature of Judge

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

9-113. Order on motion to seal court records.

[For use with Magistrate Court Rule 6-114 NMRA, Metropolitan Court Rule 7-113 NMRA, and Municipal Court Rule 8-112 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER ON MOTION TO SEAL COURT RECORDS

THIS MATTER having come before the Court upon a motion to seal court records, and the Court being otherwise fully advised, FINDS:

[] That the motion is well-taken and is GRANTED because:

1. There exists an overriding interest that overcomes the right of public access to the court record and supports sealing the court record;
2. There is a substantial probability that the overriding interest will be prejudiced if the court record is not sealed;
3. The proposed sealing is narrowly tailored; and
4. There are no less restrictive means to achieve the overriding interest.
5. _____

(Insert detailed facts that support each finding above. Note: This paragraph will need to be sealed from public access as it may reveal too much about what is being sealed. Delete these instructions in the final order.)

That the motion is not well-taken and is DENIED. The court clerk is instructed to return any lodged pleadings to the pro se party or counsel of record who filed the motion.

(Complete the following only if motion is GRANTED.)

IT IS THEREFORE ORDERED THAT:

The following court records are sealed from public access:

- Motion to seal
- Brief in support of motion to seal
- Response to motion to seal
- Reply to response to motion to seal
- Lodged pleading now named _____ (e.g., *Sealed Affidavit or Sealed Pleading*)
- Individual docket entries for each of the court records sealed above shall also be sealed and titled:
 _____.

Entire court case file shall be sealed and the case shall now be referred to as, "*In the Matter of a Sealed Case*," but the court case number shall remain the same.

Register of actions

_____ (*other*)

Only the following individuals shall be authorized to have access to the sealed court records:

Judge

Court personnel

Prosecutor

Defendant

Counsel of record

Local, state, tribal, and federal agencies authorized by law to collect or use the information (*criminal justice agencies*)

_____ (*other*)

The Movant is hereby ordered to prepare redacted copies of the sealed court records that may be made available for public access.

This order shall remain in effect until _____ (*date*) or until further order of the court.

Notice will be given to the following upon any future motions to unseal this order or modify this sealing order:

Name and address of Prosecutor:

Name and address of Defendant:

Name and address of non-party entitled to notice:

Name and address of non-party entitled to notice:

[Email addresses should also be provided above, if available. Service by email is limited under Rules 6-211, 7-211, and 8-210 NMRA.]

Judge

[Adopted by Supreme Court Order No. 13-8300-035, effective for all cases pending or filed on or after December 31, 2013.]

9-114. Order on motion to unseal court records.

[For use with Magistrate Court Rule 6-114 NMRA, Metropolitan Court Rule 7-113 NMRA, and Municipal Court Rule 8-112 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER ON MOTION TO UNSEAL COURT RECORDS

THIS MATTER having come before the Court upon a motion to unseal court records, and the Court being otherwise fully advised, FINDS:

[] That the motion is well-taken and is GRANTED because:

1. There is no longer an overriding interest that overcomes the right of public access to the court record or supports sealing the court record;
2. There is no interest that will be prejudiced if the court record is no longer sealed;
3. The current sealing is no longer narrowly tailored; and
4. There are less restrictive means to achieve the overriding interest that prompted the original order to seal.
5. _____

(Insert detailed facts that support each finding above. Note: This paragraph will not need to be sealed from public access. Delete these instructions in the final order.)

[] That the motion is not well-taken and is DENIED because:

1. There continues to exist an overriding interest that overcomes the right of public access to the court record and supports the continued sealing of the court record;
2. There is a substantial probability that the overriding interest will be prejudiced if the court record does not remain sealed;
3. The existing sealing is narrowly tailored; and
4. There are no less restrictive means to achieve the overriding interest.
5. _____

(Insert detailed facts that support each finding above. Note: This paragraph will need to be sealed from public access as it may reveal too much about what is being sealed. Delete these instructions in the final order.)

IT IS THEREFORE ORDERED THAT the motion to unseal is DENIED and the court clerk is instructed that all court records previously sealed by order of this court are to remain sealed.

(Complete the following only if motion is GRANTED.)

IT IS THEREFORE ORDERED THAT:

The following court records are unsealed and are now available for public access:

- Motion to seal
- Brief in support of motion to seal
- Response to motion to seal
- Reply to response to motion to seal
- Lodged pleading named _____ *(List specific pleading or portions of pleadings that are to be unsealed.)*
- Individual docket entries for each of the court records unsealed above shall also be unsealed and shall be titled as they would have been if they had not been sealed.
- Register of actions
- All records
- _____ *(other)*

The court records that are hereby unsealed as set forth above are subject to public access.

This order shall remain in effect until _____ *(date)* or until further order of the court.

Notice will be given to the following upon any future motions to seal this order or to modify this unsealing order:

Name and address of Prosecutor:

Name and address of Defendant:

Name and address of non-party entitled to notice:

Name and address of non-party entitled to notice:

[Email addresses should also be provided above, if available. Service by email is limited under Rules 6-211, 7-211, and 8-210 NMRA.]

Judge

[Adopted by Supreme Court Order No. 13-8300-035, effective for all cases pending or filed on or after December 31, 2013.]

ARTICLE 2

Initiation of Proceedings

9-200. Citizen petition to convene a grand jury.

[For use with District Court Rule 5-302B NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant.

CITIZEN PETITION TO CONVENE GRAND JURY

I, the undersigned, a registered voter of New Mexico, who resides in the county of _____, New Mexico, hereby request that the district court order a grand jury to convene to investigate _____, for the crime or crimes of _____,

and I declare that I am a registered voter of the state and county where the grand jury is to convene.

- 1. _____
 (usual signature) (name printed
 as registered) (address
 as registered) (city or
 zip code)
- 2. _____
 (usual signature) (name printed
 as registered) (address
 as registered) (city or
 zip code)

USE NOTES

Under Article II, Section 14 of the New Mexico Constitution, a grand jury shall be ordered to convene by “a judge of a court empowered to try and determine cases of capital, felonious or infamous crimes . . . upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county. . .”.

[Adopted by Supreme Court Order No. 15-8300-010, effective for all cases pending or filed on or after December 31, 2015.]

9-201. Criminal complaint.

[For use with District Court Rule 5-201 NMRA,
Magistrate Court Rule 6-201 NMRA,
Metropolitan Court Rule 7-201 NMRA and
Municipal Court Rule 8-201 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

CRIMINAL COMPLAINT

CRIME: _____
(common name of offense or offenses)

The undersigned, under penalty of perjury, complains and says that on or about the _____ day of _____, _____, in the County of _____, State of New Mexico, the above-named defendant(s) did: _____

_____ (here state the essential facts) contrary to Sections(s) _____ [NMSA 1978] (set forth applicable section number of New Mexico statute, municipal code, or ordinance, and date of adoption).

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

Complainant

Title (if any)

Approved:

Title

(Optional: Criminal Form 9-207A NMRA is available in lieu of completing this section of Criminal Form 9-201 NMRA.)

If Probable Cause Determination Required:

- Probable Cause Found
- Probable Cause Not Found and Defendant Released from Custody
- Complaint Dismissed Without Prejudice

Judge: _____

Date: _____

Time: _____

[As amended, effective September 1, 1990; April 1, 1991; November 1, 1991; as amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-020, effective December 31, 2013, required the completion of a checklist if a probable cause determination is required or the optional completion of Criminal Form 9-207A NMRA; at the end of the complaint before the affirmation, after "Sections(s) ____ [NMSA 1978]", added the sentence in parenthesis; after the signature lines, added the sentence in parenthesis; added the section of the form entitled "If Probable Cause Determination Required"; and deleted the Use Note.

The second 1991 amendment, effective for cases filed on or after November 1, 1991, substituted "under penalty of perjury" for "being duly sworn, upon oath," near the beginning, and, near the end, added the oath and deleted the former notary signature language.

The first 1991 amendment, effective for cases filed on or after April 1, 1991, rewrote this form.

The 1990 amendment, effective for cases filed on or after September 1, 1990, rewrote this form, which formerly provided that the complainant take an oath before a notary, judge, or other officer.

9-202. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 13-8300-020, Form 9-202 NMRA, relating to criminal complaints, was withdrawn effective December 31, 2013. For provisions of former rule, see the 2013 NMRA on *NMOneSource.com*.

9-203. Criminal information.

[For use with District Court Rules 5-201 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

Crime: _____
(common name of offense)

CRIMINAL INFORMATION

The district attorney of _____ County, State of New Mexico, states that on or about the _____ day of _____, _____, in said County and State, the above-named defendant(s) did: _____
(here state the essential facts)

contrary to Section(s) _____ NMSA 1978.

The names of the witnesses upon whose testimony this information is based are as follows:

District Attorney

9-204. Grand jury indictment.

[For use with District Court Rule 5-201 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

No. _____
Crime: _____
(common name of offense)

STATE OF NEW MEXICO

v.

_____, Defendant

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

On or about the _____ day of _____, _____, in
_____ County, State of New Mexico, the above-named defendant(s) did:
(here state the essential facts)

contrary to Section(s) _____ NMSA 1978.

The names of the witnesses upon whose testimony this indictment is based are as follows:

I hereby certify that the foregoing indictment is a _____ Bill.

Foreperson
Dated: _____

APPROVED:

District Attorney

9-205. Waiver of preliminary hearing and presentation of grand jury.

[For use with District Court Rule 5-201 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

**WAIVER OF PRELIMINARY HEARING AND
PRESENTATION OF GRAND JURY**

I have been informed of the criminal charges against me, and of my right to have a preliminary hearing or presentation to a grand jury upon those charges.

I do hereby freely and voluntarily waive my right to a preliminary hearing and presentation to a grand jury.

Acknowledged by:

Attorney for Defendant

Defendant

9-206. Notice of preliminary examination.

[For use with Magistrate Court Rule 6-202 NMRA and
Metropolitan Court Rule 7-202 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

**NOTICE OF PRELIMINARY
EXAMINATION**

TO: _____
(Defendant's attorney or if no attorney, defendant)

(Address)

(District Attorney)

(Address)

You are ordered to appear for a preliminary examination on the _____ day of _____, _____, at _____ [a.m.] [p.m.], at the _____ court located at _____.

If you fail to appear, a warrant may be issued for your arrest.

Date

(Judge) (Clerk)

USE NOTES

Each party must be served with a copy of this notice. See Rules 6-209, 7-209 and 8-208 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[As amended, effective January 1, 1995; May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, rewrote the text of the paragraph under the rule heading and deleted the certificate of mailing requirement from the form and added the Use Note.

The 1995 amendment, effective January 1, 1995, added the lines for the district attorney and the address of the district attorney near the beginning of the notice.

9-206A. Order for extension of time for preliminary examination.

[For use with District Court Rule 5-302 NMRA,
Magistrate Court Rule 6-202 NMRA, and
Metropolitan Court Rule 7-202 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE _____ COURT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant.

**ORDER FOR EXTENSION OF TIME FOR
PRELIMINARY EXAMINATION**

The court orders the following:

[] With the defendant's consent and upon a showing of good cause, the court extends the time within which to hold the preliminary examination for _____ days.

[] Although the defendant does not consent to a time extension, the court finds that extraordinary circumstances exist and justice requires a delay, for the following reasons:

The court therefore extends the time within which to hold the preliminary examination for _____ days.

Judge

APPROVED:

Defendant or counsel

Prosecutor

USE NOTES

1. With the defendant's consent and for good cause shown, the court may extend the time limits for holding the preliminary examination for a period not to exceed sixty (60) days.

2. If the defendant does not consent to a time extension, the court may extend the time only upon a showing that extraordinary circumstances exist and justice requires the delay. Any such circumstances should be explained in this order.

[Adopted by Supreme Court Order No. 14-8300-020, effective for all cases filed or pending on or after December 31, 2014.]

9-207. Order on preliminary examination.

[For use with District Court Rule 5-302 NMRA, Magistrate Court Rule 6-202 NMRA, and Metropolitan Court Rule 7-202 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE _____ COURT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant.

**ORDER
ON PRELIMINARY EXAMINATION**

On _____ (date),

(check one)

A preliminary examination on the offense(s) set forth in the complaint was waived.

A preliminary examination was held on the offense(s) listed below. The state appeared through _____ (name of counsel). The defendant appeared in person and through counsel, _____ (name of counsel).

(check all that apply)¹

[] As to the following **count(s)**, the court FINDS there is probable cause to believe that the charged offense was committed and that the defendant committed the offense. It is hereby ORDERED that the defendant is BOUND OVER FOR TRIAL in the district court as to the following **count(s)**: _____

_____ (list all counts for which the court finds probable cause).

[] As to the following **count(s)**, the court FINDS there is no probable cause to believe that the charged offense was committed and that the defendant committed the offense. It is hereby ORDERED that the defendant is DISCHARGED as to the following **count(s)**: _____

_____ (list all counts for which the court finds NO probable cause).

[] As to the following **additional charge(s)**, the court FINDS there is probable cause to believe that the offense was committed and that the defendant committed the offense. It is hereby ORDERED that the defendant is BOUND OVER FOR TRIAL in the district court as to the following **additional charge(s)**: _____

_____ (list each additional charge for which the court finds probable cause).

[] As to the following **additional charge(s)**, the court FINDS there is no probable cause to believe that the offense was committed and that the defendant committed the offense. It is hereby ORDERED that the defendant is DISCHARGED as to the following **additional charge(s)**: _____

_____ (list each additional charge for which the court finds NO probable cause).

[] It is hereby ORDERED that the defendant is bound over for all misdemeanor charges listed in the complaint.²

IT IS SO ORDERED.

Judge

USE NOTES

1. Every count listed in the complaint must be accounted for in this bind-over order.

2. If the court finds probable cause for any felony offense, all misdemeanor charges in the complaint must be included in this bind-over order.

3. Attach copy of Complaint, any Warrants issued, Appearance Bond or Bail Bond, and Order Specifying Conditions of Release.

[As amended by Supreme Court Order No. 14-8300-020, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases pending or filed on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in the heading and title of the form, changed “Bind-over order” to “Order”.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-020, effective December 31, 2014, completely rewrote the form; in the title of the rule and form, added “on preliminary examination”; deleted the former language which ordered that the defendant be bound over for trial in district court on offenses charged in the complaint or on charges in the complaint and additional charges listed by common name and statutory references, language which provided that a preliminary examination was waived or held on the offenses charged in the complaint, and a statement that the judge found that there was probable cause to believe that the defendant committed the offenses; added the current language of the form; and in the Use Note, added Paragraphs 1 and 2.

9-207A. Probable cause determination.

[For use with District Court Rule 5-301 NMRA,
Magistrate Court Rule 6-203 NMRA,
Metropolitan Court Rule 7-203 NMRA, and
Municipal Court Rule 8-202 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

PROBABLE CAUSE DETERMINATION

*(For use only if the defendant
has been arrested without a warrant
and has not been released)*

Finding of Probable Cause

I find that there is a written showing of probable cause to believe that a crime has been committed and that the above named defendant committed it.

It is ordered that the defendant shall be released:

on personal recognizance.

on the conditions of release set forth in the release order.

only upon entry of a release order after the defendant has appeared before a judge.

Failure to Make Showing of Probable Cause

I find that probable cause has not been shown that a crime has been committed and that the above named defendant committed it. It is ordered that the defendant be released on personal recognizance.

A probable cause determination has not been made within forty-eight (48) hours of the defendant's arrest. It is ordered that the defendant be released on personal recognizance.

Judge

Date

Time

USE NOTES

A court should not dismiss the criminal complaint against the defendant merely because the court has found no probable cause for pretrial detention. If the court finds

no probable cause, the only required action is the defendant's immediate release from custody pending further proceedings.

Unless the defendant has been released on personal recognizance, the amount of bail set and any conditions of release prescribed by a designee must also be reviewed.

This form is not necessary if the finding of probable cause is endorsed by the judge on the criminal complaint or on a statement of probable cause.

[Approved effective September 1, 1990; as amended by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 17-8300-016, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-0016, effective December 31, 2017, and under "Failure to Make a Showing of Probable Cause", added the second provision.

The 2013 amendment, approved by Supreme Court Order No. 13-8300-041, effective December 31, 2013, provided for the personal recognizance release of the defendant if no probable cause is found; under the heading "Failure to Make Showing of Probable Cause", deleted the former second sentence, which required that the complaint be dismissed without prejudice if no probable cause was found and added the second sentence; and added the first paragraph of the Use Note.

9-208. Criminal summons.

[For use with District Court Rules 5-208, 5-209 NMRA, Magistrate Court Rules 6-204, 6-205 NMRA, Metropolitan Court Rules 7-204, 7-205 NMRA and Municipal Court Rules 8-203, 8-204 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

CRIMINAL SUMMONS

To: _____ (Defendant)

_____ (Address)

You are notified that a Complaint, a copy of which is attached hereto, has been filed in this court charging that you committed the offense of

_____ (common name and description of offense charged).

You are ordered to appear before the undersigned on the _____ day of _____, _____, at _____ m. at _____ in the (County of) (City of) _____ State of New Mexico, to plead to the above charge(s).

If you fail to appear at the time and place specified, a warrant will be issued for your arrest.

Service of this summons shall be by: (personal service) (mail).

Judge or Clerk

Name of the Law Enforcement Entity
Filing the Criminal Complaint

BY: _____
Prosecuting Attorney
Law Enforcement Officer

Address

CERTIFICATE OF MAILING

I certify that I mailed a copy of the Summons and a copy of the Complaint in the above-styled cause to the defendant at the above address on the _____ day of _____, _____.

Signature

Title (if any)

of Person Making Service

Title (if any)

* Subscribed and sworn to before me
this _____ day of _____, _____.

Judge, Notary Public or Other Officer
Authorized to Administer Oaths

Official Title

If Notary Public:

My commission expires: _____

* If service is made by a full-time salaried law-enforcement officer, the signature of such officer need not be notarized.

[As amended, effective July 1, 1988; January 1, 1990.]

ANNOTATIONS

The 1989 amendment, effective for cases filed on or after January 1, 1990, in the "Criminal Summons" form, substituted "the above charge(s)" for "said charges(s)" in the second paragraph, inserted "or Clerk" below a signature line near the end, and added the lines at the end of that form regarding the law enforcement entity and prosecuting attorney; rewrote the former "Certificate of Service" form and redesignated it as "Return"; and deleted the former form designated "Affidavit of Service by Person Making Service".

Cross references. — For service of warrants by police officers, see Section 3-13-2 NMSA 1978.

For duty of sheriff to execute process and orders of magistrate and municipal courts, see Section 4-41-14 NMSA 1978.

For directing of warrant to a law enforcement officer, see Section 31-1-4 NMSA 1978.

9-209. Affidavit for arrest warrant.

[For use with District Court Rule 5-208 NMRA,
Magistrate Court Rule 6-204 NMRA,
Metropolitan Court Rule 7-204 NMRA and
Municipal Court Rule 8-203 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

AFFIDAVIT FOR ARREST WARRANT

The undersigned, being duly sworn, on his oath, states that he has reason to believe that on or about the _____ day of _____, _____, in the (County) (City) of _____, State of New Mexico, the above-named defendant(s) did commit the crime of: _____

_____, (state common name of offense or offenses) contrary to law of the State of New Mexico.

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named defendant(s) committed the crime charged: ____

_____ (include facts in support of the credibility of any hearsay relied upon)

(print/type) Affiant's Name

Signature of Affiant

Official Title (if any)

Judge, Magistrate, Notary or other
Officer Authorized to Administer Oaths

Subscribed and sworn to
before me in the above-named
(county) (city) of the State

of New Mexico this _____
day of _____, _____.

NOTE: Article II, Section 10 of the New Mexico Constitution provides that an Arrest Warrant may issue on a sworn written statement of facts showing probable cause. This Affidavit is to be used only when the Complaint does not set forth sufficient facts to establish probable cause.

9-210. Warrant for arrest.

[For use with Magistrate Court Rule 6-206 NMRA,
Metropolitan Court Rule 7-206 NMRA, and
Municipal Court Rule 8-806 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

WARRANT FOR ARREST

THE [STATE OF NEW MEXICO] [CITY OF _____]

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT¹:

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE COMMANDED to arrest the above-named defendant and bring the defendant without unnecessary delay before this court²: to answer the charge of *(here state common name and description of offense charged)*:

contrary to Section(s) _____ (NMSA 1978) (OF THE MUNICIPAL ORDINANCE OF THIS MUNICIPALITY) THIS WARRANT MAY BE EXECUTED:

[] in any jurisdiction;

- anywhere in this state;
- anywhere in this county;
- anywhere in this city.

The person obtaining this warrant shall cause it to be entered into a law enforcement information system³:

- maintained by the state police.
- _____ (*identify other law enforcement information system*).

Dated this _____ day of _____, _____.

Judge

RETURN WHERE DEFENDANT IS FOUND

I arrested the above-named defendant on the _____ day of _____, _____, and served a copy of this warrant on the _____ day of _____, _____ and caused this warrant to be removed from the warrant information system identified in this warrant.

Signature

Title

USE NOTES

1. An arrest warrant may be directed to a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, or an Indian tribal or pueblo law enforcement officer.
2. If the judge is unavailable, defendant must be brought before designee for setting of conditions of release. A defendant accused of a bailable offense may not be held without the setting of conditions of release. (Rules 6-401, 8-401 NMRA.)
3. All district court, metropolitan court and magistrate court felony, misdemeanor and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.

[As amended, effective July 1, 1999; March 1, 2000.]

ANNOTATIONS

The 2000 amendment, effective March 1, 2000, revised this form to be consistent with Rules 6-206, 7-206 and 8-205 NMRA by having the person who arrested the defendant enter the warrant into a law enforcement information system, not a court clerk.

The 1999 amendment, effective July 1, 1999, deleted "5-210" from the authority bracket at the top of the form, made stylistic changes in the first paragraph, added the heading which reads "THIS WARRANT MAY BE EXECUTED" and the following alternatives, throughout the form and in the Use Notes, added information requiring warrants to be entered into and removed from the the law enforcement information system, and in Use Note 2, deleted "forthwith" following "must be brought."

9-210A. Warrant for arrest; return where defendant is found.

[For use with District Court Criminal Rule 5-210 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____
Warrant No. _____
Judge _____

STATE OF NEW MEXICO

v.

_____, Defendant

WARRANT FOR ARREST

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT¹:

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE COMMANDED to arrest the above-named defendant and bring the defendant without unnecessary delay before this court² to answer the charge of *(here state common name and description of offense charged)*:

contrary to Section(s) _____ NMSA 1978.

Bond provisions:

Bond is set in the amount of \$ _____ *(cash bond 10% of bond) (surety)*

(property bond).

Dated this _____ day of _____, _____

Judge

Description of defendant:

Name _____

Alias _____

Date of birth _____

Social Security No. _____

Address _____

Sex (*male*) (*female*) Height _____ Weight _____

Hair color _____ Eyes _____

Scars, marks and tattoos:

Vehicle (*make, model, year and color, if known*)

Extradition information:

The State will extradite the defendant: (*check and complete*)

from any contiguous state

from anywhere in the continental United States

from any other State

from anywhere

Prosecuting attorney: _____

By: _____

Date: _____

Originating officer _____

Originating agency _____

RETURN WHERE DEFENDANT IS FOUND

I arrested the above-named defendant on the _____ day of _____,
_____, and served a copy of this warrant on the _____ day of
_____, _____ and caused this warrant to be removed from the
warrant information system identified in this warrant.

Signature

Title

USE NOTES

1. An arrest warrant may be directed to a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, or an Indian tribal or pueblo law enforcement officer.

2. If the judge is unavailable, defendant must be brought before designee for setting of conditions of release. A defendant accused of a bailable offense may not be held without the setting of conditions of release.

[Approved, effective June 1, 1999.]

9-211. Affidavit for bench warrant.

[For use with District Court Rule 5-209 NMRA,
Magistrate Court Rule 6-207 NMRA,
Metropolitan Court Rule 7-207 NMRA and
Municipal Court Rule 8-206 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

AFFIDAVIT FOR BENCH WARRANT

The undersigned, being duly sworn, on his oath, states that he has reason to believe that on or about the _____ day of _____, _____, in the (County) (City) of _____, State of New Mexico, the above-named person:

(check appropriate box or boxes)

- failed to appear at the time and place ordered by this court
- failed to appear as required by a subpoena issued by this court
- failed to appear in accordance with the conditions of release imposed by this court
- should appear for review of conditions of release previously imposed
- failed to pay fines or costs previously imposed

[] failed to comply with conditions of probation
[] _____ (describe contempt)

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named person: _____

(set forth facts in support of affidavit including any hearsay relied upon)

Affiant's name (print/type)

Signature of affiant

Official title (if any)

Subscribed and sworn to
before me in the above-named
(county) (city) of the
State of New Mexico this _____
day of _____, _____

Judge, Notary or Other Officer
Authorized to Administer Oaths

NOTE: This form is needed only if the judge does not have personal knowledge of the failure to appear or do the thing ordered.

[As amended, effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, deleted the former fifth alternative which read "is in contempt of this court", and added the last alternative.

9-212. Bench warrant.

[For use with District Court Criminal Rule 5-209 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

BENCH WARRANT

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

YOU ARE HEREBY COMMANDED to arrest _____ and bring (him) (her) forthwith before this court to answer the following charges: (check appropriate box or boxes)

- grand jury indictment filed on _____ (date) on the following charges: _____.
- failure to appear at the time and place ordered by this court.
- failure to appear as required by a subpoena issued by this court.
- failure to appear in accordance with the conditions of release imposed by this court.
- conditions of release previously imposed should be revoked or reviewed.
- contempt of court.
- failure to pay fines or costs previously imposed.
- failure to comply with conditions of probation.
- other: _____.

Bond provisions:

Bond is set in the amount of \$_____ (cash bond 10% of bond) (surety) (property bond).

Judge

Description of defendant:

Name _____

Alias _____

Date of birth _____

Social Security No. _____
Address _____
Sex (*male*) (*female*) Height _____ Weight _____
Hair color _____ Eyes _____
Scars, marks and tattoos: _____

Vehicle (*make, model, year and color, if known*)

Extradition Information:

The State will extradite the defendant from:

(*check and complete*)

- any contiguous state.
- anywhere in the continental United States.
- any other state.
- anywhere.

Prosecuting attorney: _____
By: _____
Date: _____
Originating officer: _____
Originating agency: _____

RETURN

I arrested the above-named person on the _____ day of _____,
_____, by taking such person into custody.

Signature

Title

[As amended, effective January 1, 1996; October 7, 1999.]

ANNOTATIONS

The 1999 amendment, effective on and after October 7, 1999, deleted "(CITY OF _____)" in two places, and deleted "IN THE _____ COURT" and substituted "Defendant" for "John Doe" near the beginning of the form; under the heading "Bench Warrant", deleted "(MUNICIPALITY OF _____)" following "New Mexico" in the first undesignated statement and added the first and last charges; and added "Description of defendant" and "Extradition Information" near the end of the form.

The 1996 amendment, effective January 1, 1996, deleted blanks relating to municipal courts throughout the rule, and substituted "IN THE DISTRICT COURT" for "IN THE ... COURT" in the caption.

Cross references. — For bench warrant in courts of limited jurisdiction, see Rule 9-212A NMRA.

9-212A. Bench warrant.

[For use with Metropolitan Court Rule 7-207 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE METROPOLITAN COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

DOB: _____

Address: _____

S.S.# _____

BENCH WARRANT

THE [STATE OF NEW MEXICO] [MUNICIPALITY OF _____]

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

YOU ARE HEREBY COMMANDED to arrest the above-named defendant and bring the defendant before this court to answer the following charges checked below unless released as indicated in the return:

(check applicable box and describe facts below)

[] failure to appear as ordered by this court on _____;

[] failure to appear as required by a subpoena issued by this court for _____;

failure to appear in accordance with the conditions of release imposed by this court for _____;

conditions of release previously imposed should be revoked or reviewed;

contempt of court for _____;

failure to pay fines or costs previously imposed by order entered _____ (date);

failure to comply with conditions of probation as set forth in an order entered _____ (date);

failure to appear at first offender program on _____;

other _____ (set forth any additional essential facts underlying issuance of this warrant).

(check and complete, if applicable)

The defendant failed to appear either on a traffic citation other than a citation issued for a violation listed in Section 66-8-122 or 66-8-125 NMSA 1978 or a citation issued by an official authorized by law and may be released on a plea of guilty and payment of \$_____ plus a \$100 bench warrant fee;¹

OR

The defendant failed to pay fines and costs and the defendant may be released upon payment of the outstanding fine and court costs in the amount of \$_____ plus a \$100 bench warrant fee;¹

OR

The defendant may be released on bond in the amount of \$_____. The bench warrant fee will be collected on appearance.

THIS WARRANT MAY BE EXECUTED:

in any jurisdiction;

anywhere in this state;

anywhere in this county;

anywhere in this city.

The clerk of this court shall cause this warrant to be entered into a law enforcement information system²:

maintained by the state police.

_____ (*identify other law enforcement information system*).

Date

Judge

RETURN

The defendant was arrested and taken into custody on the _____ day of _____, _____.

The defendant was released on bond in the amount set forth above.

The defendant was released upon receipt of the fine and court costs set forth above.

I have caused this warrant to be removed from the law enforcement information system identified in this warrant.

Signature

Title

USE NOTES

1. A \$100 bench warrant fee is assessed in the metropolitan court pursuant to Section 34-8A-12 NMSA 1978.

2. All metropolitan court felony misdemeanor and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.

[Effective, January 1, 1993; as amended, effective January 1, 1995; January 1, 1996; July 1, 1999; as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008, limited the use of this form to the Metropolitan Court.

The 1999 amendment, effective July 1, 1999, substituted "citation issued by an official authorized by law" for "game and fish citation" in the first alternative following the italicized parenthetical which reads "check and complete, if applicable," added the heading "THIS WARRANT MAY BE EXECUTED" and the following alternatives, added the information relating to the law enforcement information system throughout the form and in the Use Notes, and made the form gender neutral.

The 1996 amendment, effective January 1, 1996, added the parenthetical "check applicable box and describe facts below" near the beginning, added lines for describing the facts in each of the first set of alternatives, and added the blanks for additional facts following the first set of alternatives.

The 1995 amendment, effective January 1, 1995, added "plus a \$100 bench warrant fee" in two places near the end of the form, added "The bench warrant fee will be collected upon appearance" in the last alternative, and added the explanatory note.

Cross references. — For the uniform crime reporting system, see Section 29-3-11 NMSA 1978.

9-212B. Juvenile traffic bench warrant.

[For use with Magistrate Court Rule 6-207 NMRA,
Metropolitan Court Rule 7-207 NMRA and
Municipal Court Rule 8-206 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

DOB: _____

Address: _____

S.S.# _____

JUVENILE TRAFFIC BENCH WARRANT¹

(check applicable box)

RESTRICTION ON WARRANT.² The defendant is a juvenile. Arrest the defendant only during court hours after confirming a judge is available for immediate appearance. Do not incarcerate this defendant.

UNRESTRICTED WARRANT.³ A children's court judge has approved the arrest and incarceration of this juvenile.

THE (STATE OF NEW MEXICO) (MUNICIPALITY OF _____)
TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:
YOU ARE COMMANDED to arrest the above-named defendant and bring the defendant before this court to answer the following charges checked below unless released as indicated in the return:
(check applicable box and describe facts below)

failure to appear as ordered by this court on _____;

failure to appear as required by a subpoena issued by this court for _____;

failure to appear in accordance with the conditions of release imposed by this court for _____;

conditions of release previously imposed should be revoked or reviewed;

contempt of court for _____

failure to pay fines or costs previously imposed by order entered _____ (date);

failure to comply with conditions of probation as set forth in an order entered _____ (date);

failure to appear at first offender program on _____;

other _____.

(set forth any additional essential facts underlying issuance of this warrant.)

(check and complete, if applicable)

The defendant failed to appear either on a traffic citation (*other than a citation issued for a violation listed in Section 66-8-122 or 66-8-125 NMSA 1978*) or a citation

issued by an official authorized by law and may be released on a plea of guilty and payment of \$_____ plus a \$100 bench warrant fee⁴;

OR

The defendant failed to pay fines and costs and defendant may be released upon payment of the outstanding fine and court costs in the amount of \$_____ plus a \$100 bench warrant fee⁴;

OR

The defendant may be released on bond in the amount of \$_____. The bench warrant fee will be collected upon appearance.

THIS WARRANT MAY BE EXECUTED:

- in any jurisdiction;
- anywhere in this state;
- anywhere in this county;
- anywhere in this city.

The clerk of this court shall cause this warrant to be entered into a law enforcement information system⁵:

- maintained by the state police.
- _____ (*identify other law enforcement information system*).

Date

Judge

RETURN

The defendant was arrested and taken into custody on the _____ day of _____, _____.

- The defendant was released on bond in the amount set forth above;
- The defendant was released upon receipt of the fine and court costs set forth above.

I have caused this warrant to be removed from the law enforcement information system identified in this warrant.

Signature

Title

USE NOTES

- 1. This form may be used in municipal, magistrate or metropolitan court traffic cases.
- 2. Check this alternative unless a children's court judge has authorized the incarceration of the juvenile. See Section 32A-2-29 NMSA 1978 for the procedure to be followed when a child is to be incarcerated.
- 3. Check this alternative if a children's court judge has authorized that the juvenile be arrested and incarcerated pursuant to Section 32A-2-29 NMSA 1978.
- 4. A \$100 bench warrant fee is assessed in the metropolitan court pursuant to Section 34-8A-12 NMSA 1978 and in the magistrate court pursuant to Section 35-6-5 NMSA 1978.
- 5. All metropolitan court and magistrate court felony, misdemeanor and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.

[Approved, effective March 1, 2000.]

9-212C. Bench warrant.

[For use with Magistrate Court Rule 6-207 NMRA and Municipal Court Rule 8-206 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

DOB: _____
Address: _____
S.S.#: _____
Charging Police Department _____
Charges _____

BENCH WARRANT

THE (STATE OF NEW MEXICO) (MUNICIPALITY OF _____)

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

YOU ARE HEREBY COMMANDED to arrest the above-named defendant and bring the defendant before this court to answer the following charges checked below unless released as indicated in the return:

(check applicable box and describe facts below)

- failure to appear as ordered by this court on _____;
- failure to appear as required by a subpoena issued by this court for _____;
- failure to appear in accordance with the conditions of release imposed by this court for _____;
- conditions of release previously imposed should be revoked or reviewed;
- contempt of court for _____;
- failure to pay fines or costs previously imposed by order entered _____ (date);
- failure to comply with conditions of probation as set forth in an order entered _____ (date);
- failure to appear at first offender program on _____;
- other _____

(set forth any additional essential facts underlying issuance of this warrant).

(check and complete, if applicable)

1. BOND: The defendant may be released on **bond** in the amount of \$_____. The bench warrant fee will be collected upon appearance.

OR

2. PAYMENT: The defendant failed to appear either on a traffic citation (*other than a citation issued for a violation listed in Section 66-8-122 or 66-8-125 NMSA 1978, or similar municipal ordinance*) or a citation issued by an official authorized by law and may be released on a plea of guilty and **payment** of \$_____, which includes a \$100 bench warrant fee¹.

OR

3. PAYMENT: The defendant failed to pay fines and costs as ordered by the court and defendant may be released upon **payment** of the outstanding fine and court costs in the amount of \$_____, which includes a \$100 bench warrant fee¹.

IT IS HEREBY ORDERED THAT UPON SERVICE OF OR SURRENDER PURSUANT TO THIS WARRANT, DEFENDANT IS TO PAY THE \$100 BENCH WARRANT FEE, as reflected above.¹

THIS WARRANT MAY BE EXECUTED:

- in any jurisdiction;
- anywhere in this state;
- anywhere in this county;
- anywhere in this city.

The clerk of this court shall cause this warrant to be entered into a law enforcement information system²:

- maintained by the state police.
- _____ (*identify other law enforcement information system*).

Date

Judge

RETURN

The defendant was arrested and taken into custody on the _____ day of _____, _____.

The defendant was released on bond in the amount set forth above.

The defendant was released upon receipt of the fine and court costs set forth above.

I have caused this warrant to be removed from the law enforcement information system identified in this warrant.

Signature

Title

USE NOTES

1. A \$100 bench warrant fee is assessed in the magistrate court pursuant to Section 35-6-5 NMSA 1978. Municipal courts not authorized to assess the bench warrant fee must modify this form accordingly.

2. All magistrate court felony, misdemeanor, and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.

3. The warrant may be executed in "any jurisdiction" only if it is a felony warrant.

4. If the court checks alternative 2, it must also check alternative 1.

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008; as amended by Supreme Court Order No. 13-8300-005, effective for all cases pending or filed on or after May 5, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-005, effective May 5, 2013, required the name of the charging police department and the charges; provided that the bench warrant fee is included in the amount of the payment due from the defendant; between the caption of the case and the title of the form, added "Charging Police Department" and the word "Charges", together with corresponding blanks for the required information; in Paragraph 2, which is labeled "PAYMENT", in the parenthesis, after "NMSA 1978", added "or similar municipal ordinance", and after "payment of \$____", deleted "plus" and added "which includes"; in Paragraph 3, which is labeled "PAYMENT", after "amount of \$____", deleted "plus" and added "which includes"; between Paragraph 3, which is labeled "PAYMENT" and "THIS WARRANT

MAY BE EXECUTED", added the sentence in bold letters; and in the Use Notes, in Paragraph 1, added the second sentence and in Paragraph 4, deleted the former second sentence, which provided that if the court checked alternative 3, the court could, but was not required to, check alternative 1.

Cross references. — For the uniform crime reporting system, see Section 29-3-11 NMSA 1978.

9-213. Affidavit for search warrant.

[For use with District Court Rule 5-211 NMRA,
Magistrate Court Rule 6-208 NMRA,
Metropolitan Court Rule 7-208 NMRA and
Municipal Court Rule 8-207 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

AFFIDAVIT FOR SEARCH WARRANT

Affiant, being duly sworn, upon his oath, states that I have reason to believe that on the following described premises or person of _____

_____ (*here name person and/or describe premises*)
in the city or county designated above there is now being concealed

_____ (*set forth name of person or describe property as particularly as possible*) and that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

(include facts in support of the credibility of any hearsay relied upon; if necessary, continue on reverse side of this form or on a separate page or pages)

Signature of Affiant

Official Title (if any)

Subscribed and sworn to or declared and affirmed to before me in the above-named county of the State of New Mexico this _____ day of _____, _____.

Judge, Notary or Other Officer
Authorized to Administer Oaths

Official Title

NOTE: This affidavit shall be filed in the same file as the search warrant. If no criminal proceedings are filed, the affidavit and warrant shall be filed in a miscellaneous file.

9-214. Search warrant.

[For use with District Court Rule 5-211 NMRA,
Magistrate Court Rule 6-208 NMRA,
Metropolitan Court Rule 7-208 NMRA and
Municipal Court Rule 8-207 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

SEARCH WARRANT

THE [STATE OF NEW MEXICO] [CITY OF _____]
TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

Proof by Affidavit for Search Warrant, having been submitted to me, I am satisfied that there is probable cause that the person named or property described in the Affidavit is located where alleged in the Affidavit and I find that grounds exist for the issuance of the Search Warrant. A copy of the Affidavit is attached and made a part of this Warrant.

YOU ARE HEREBY COMMANDED to search forthwith the person or place described in the Affidavit between the hours of 6:00 a.m. and 10:00 p.m., unless I have specifically authorized a nighttime search, for the person or property described in the Affidavit, serving this Warrant together with a copy of the Affidavit, and making the search and if the person or property be found there, to seize the person or the property and hold for safekeeping until further order of the court.

You are further directed to prepare a written inventory of any person or property seized. You are further directed to file the return and written inventory with the Court promptly after its execution.

Dated this _____ day of _____, _____.

Judge

AUTHORIZATION FOR NIGHTTIME SEARCH

I further find that reasonable cause has been shown for nighttime execution of this Warrant. I authorize execution of this Warrant at any time of the day or night for the following reasons: _____
_____ (set forth reasons why a nighttime search is necessary)

Judge

RETURN AND INVENTORY

I received the attached Search Warrant on _____, _____, and executed it on _____, _____, at _____ o'clock [a.m.] [p.m.]. I searched the person or premises described in the Warrant and I left a copy of the Warrant with

(name the person searched or owner at the place of search) together with a copy of the inventory for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

(attach separate inventory if necessary)

This inventory was made in the presence of _____
_____ (name of applicant for the search warrant)
and _____

(name of owner of premises or property. If not available, name of other credible person
witnessing the inventory.)

This inventory is a true and detailed account of all the property taken pursuant to the
Warrant.

Signature of Officer

Signature of Owner of Property or Other
Witness

Return made this _____ day of _____, _____, at
_____ [a.m.] [p.m.].

(Judge) (Clerk)

After careful search, I could not find at the place, or on the person described, the
property described in this warrant.

Officer

Date

9-215. Statement of probable cause.

[For use with District Court Rule 5-301 NMRA,
Magistrate Court Rule 6-203 NMRA,
Metropolitan Court Rule 7-203 NMRA and
Municipal Court Rule 8-202 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

STATEMENT OF PROBABLE CAUSE

The above defendant has been arrested without a warrant for the following reasons (*set forth a plain, concise and definitive statement of facts establishing probable cause*):

_____ (*continued on attached sheet*)

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT UNDER OATH.

(Date)

(Signature)

(This form is to be used only if the defendant was arrested without a warrant and the complaint and any attachments to the complaint do not make a written showing of probable cause.)

[Approved effective September 1, 1990; as amended, effective April 1, 1991; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, added the bold paragraph near the end containing the oath or affirmation, and deleted a notary acknowledgment form from the end of the form.

The 1991 amendment, effective for cases filed on or after April 1, 1991, added the references to city in the caption, deleted "I do solemnly declare and affirm under penalty of perjury that the matters and facts set forth in this statement are true to the best of my knowledge, information and belief" preceding the signature line for the arresting officer,

and added the statement and signature line for judge, notary, or other officer authorized to administer oaths, at the end of the form.

9-216. Criminal summons failure to appear or comply with court rules.

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

CRIMINAL SUMMONS

FAILURE TO APPEAR OR COMPLY WITH COURT ORDERS

To: _____ (Defendant)
_____ (Address)

You are notified that you have _____
_____ (set forth reason defendant is being ordered to appear).

You are ordered to appear before the undersigned on the _____ day of _____, _____, at [a.m.] [p.m.] at _____ in the [County of _____] [City of _____] State of New Mexico, to answer why you have failed to [comply with the court's orders] [appear as required].

If you fail to appear at the time and place specified, a warrant may be issued for your arrest.

BRING THIS SUMMONS WITH YOU WHEN YOU APPEAR.

Judge or Clerk

CERTIFICATE OF MAILING

I certify that I mailed a copy of the summons to the defendant at the above address on the _____ day of _____, _____.

(Signature)

(Title)

(Date)

USE NOTES

(Do not print use note on pre-printed forms)

This form may be used prior to the issuance of an order to show cause or bench warrant. This form was designed to be printed on one page.

[Adopted, effective January 1, 1995.]

9-217. Subpoena.

[For use with District Court Rule 5-511 NMRA]

STATE OF NEW MEXICO

_____ COUNTY

_____ JUDICIAL DISTRICT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

SUBPOENA

SUBPOENA FOR¹

APPEARANCE OF PERSON FOR
 STATEMENT DEPOSITION TRIAL

SUBPOENA FOR DOCUMENTS OR OBJECTS²

INSPECTION OF PREMISES²

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

PLACE: _____

DATE: _____, _____ TIME: _____ [a.m.] [p.m.]

to:

testify at the taking of a deposition in the above case

testify at trial

permit inspection of the following described documents or objects

permit the inspection of the premises located at: _____ (address)

give a statement.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s)

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

_____, _____.

Judge, clerk or attorney

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, [a witness fee in the amount of \$_____ and mileage in the amount of \$_____]³.

Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____, _____, in _____ County, I served this subpoena on

_____ by delivering to the person named a copy of the subpoena, [a witness fee in the amount of \$_____ and mileage as provided by law in the amount of \$_____]³.

Person making service

SUBSCRIBED AND SWORN to before me this _____ day of _____,
_____ (date).

Judge, notary or other officer
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

Name of attorney of party

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY⁴

I certify that I caused a copy of this subpoena to be served on the following persons or entities by *(delivery)* *(mail)* on this _____ day of _____, _____:

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Attorney

Signature

Date of signature

TO BE PRINTED ON EACH SUBPOENA

1. *A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.*
2. *A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.*
3. *Payment of per diem and mileage for subpoenas issued by the district attorney, attorney general, public defender or an attorney appointed by the court, district attorney, attorney general or public defender is made pursuant to regulations of the Administrative Office of the Courts. The bracketed language should be deleted if the subpoena is issued by the state or the public defender.*

A subpoena by a private party or corporation must be accompanied by the payment of one full day's per diem. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act.

4. *To be completed only if the subpoena is commanding production of documents and things or inspection of premises before trial. If the subpoena is commanding production of documents and things or inspection of premises before trial, it must be served on each party in the manner provided by Rule 5-103, 5-103.1 or 5-103.2 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.*

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of

the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Approved, effective May 15, 2000.]

9-218. Target notice.¹

You are the target of a grand jury investigation in _____ County. The crimes being investigated are:

(Include the name, date and applicable statutory citation for each offense the prosecutor intends to present to the grand jury)²: which are alleged to have occurred on _____ (date) in _____ County, New Mexico. Other possible charges may arise from the grand jury investigation.

You have the following rights with respect to this investigation:

(1) You have a right to counsel to assist you in this matter. If you cannot afford an attorney, one will be appointed for you.

(2) You have a right to testify before the grand jury if you desire.

(3) You have a right not to testify.

(4) You have a right to submit proposed questions and exhibits to the prosecution³.

(5) You have a right to alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecution³.

This case will be presented to the grand jury on _____ (date) at _____ (a.m.) (p.m.) at the _____ (court) located at _____ (address) in room _____.⁴ If you wish to testify at this proceeding, you may appear at that time and place. For further information on the time and date the grand jury will consider evidence relating to the above charges, you may call _____ (name of person to be notified) at _____ (telephone number).

You or your attorney may submit proposed questions and exhibits to the district attorney at least forty-eight (48) hours prior to the grand jury proceeding. If you or your attorney wishes to submit proposed questions or exhibits, call _____ (person to be notified) at _____ (telephone number).

Date issued: _____

Signature of attorney

Title

I certify that a copy of this notice was [mailed] [faxed] [delivered] to _____ (name of target) on _____ (date) at the following address _____ (street address) _____ (city).

(Signature of person providing notice)

(Title)

USE NOTES

1. This form may be used for a grand jury target notice. See Sections 31-6-4 and 31-6-11 NMSA 1978.
2. Include each offense the district attorney or attorney general intends to present to the grand jury.
3. Section 31-6-4 NMSA 1978 provides that, at least twenty-four (24) hours before grand jury proceedings begin, a target's attorney may submit proposed questions and exhibits to the district attorney or attorney general. Section 31-6-11 NMSA 1978 provides that, at least twenty-four (24) hours before grand jury proceedings begin, the target or his counsel may alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence. However, Rule 5-302A NMRA expands the deadline to forty-eight (48) hours.
4. Section 31-6-11 NMSA 1978 provides that unless otherwise ordered by the presiding judge or unless the target agrees to testify earlier, a target has a right to testify no earlier than:
 - (a) four (4) days after receiving the target notice, if the target is in custody; or

(b) ten (10) days after receiving the target notice, if the target is not in custody.

[Approved, effective June 1, 2004; as amended by Supreme Court Order No. 10-8300-015, effective for target notices filed on or after May 14, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-015, effective May 14, 2010, in the second paragraph of the form, in Subparagraph (4), after "right to submit", deleted the word "evidence" and added "proposed questions and exhibits"; and added Subparagraph (5).

9-219. Grand jury evidence alert letter.

[For use with District Court Rule 5-302A NMRA]

INVESTIGATION RE: _____ (*name of target*)

Hearing Date: _____ **DA File No.** _____

Dear Grand Jurors:

In accordance with the rights and obligations of the grand jury under New Mexico law, the above-noted target of the grand jury proceeding in this case requests the grand jury consider the following evidence:

Tangible Evidence/Exhibits¹: _____

Witness No. 1: _____ (*name*)

Contact Information: _____ (*address*)
_____ (*telephone number*)

Substance of Potential Testimony of Suggested Witness²: _____

Witness No. 2: _____ (*name*)

Contact Information: _____ (*address*)
_____ (*telephone number*)

Substance of Potential Testimony of Suggested Witness²: _____

Witness No. 3: _____ (name)

Contact Information: _____ (address)

_____ (telephone number)

Substance of Potential Testimony of Suggested Witness?: _____

Respectfully submitted,

_____ (Signature)

(Printed name of attorney or target)

(Address)

(Telephone number)

Date Submitted: _____

USE NOTES

1. List the tangible evidence or exhibits submitted for the grand jury's consideration. If necessary to provide context for the submission, provide a brief factual, non-argumentative, non-speculative description of the tangible evidence or exhibits and contact information for the person or entity in possession of the tangible evidence or exhibits.

2. Provide a brief factual, non-argumentative, non-speculative statement of the anticipated testimony from the suggested witness.

[Adopted by Supreme Court Order No. 10-8300-015, effective for target notices filed on or after May 14, 2010.]

9-221. Certificate of service.

[For use with Metropolitan Court Rules 7-209, 7-210, and 7-211 NMRA]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this notice was

[mailed by United States first class mail, postage prepaid, and addressed to]

Name: _____

Address: _____

City, State
and zip code: _____

[faxed by _____ (*name of person who faxed document*) to
_____ (*name of recipient*). The transmission was reported as
complete and without error. The time and date of the transmission was _____
[a.m.] [p.m.] on _____ (*date*).]

[e-mailed to _____ (*name of party or attorney*)
at _____ (*electronic mail address of recipient*) which is on file
with the clerk of the Supreme Court for service by electronic mail. The transmission was
successful. The time and date of the transmission was _____ [a.m.] [p.m.] on
_____ (*date*).]

[delivered to _____. (*Specify how service by delivery was made.*
See Use Note for the methods service may be made using this alternative.)]

Signature of attorney

Date of signature

If this notice was served by a person

other than an attorney, the following

must also be completed and filed with the court:

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a copy of this paper was served by [mail] [fax]
[electronic transmission] as described above on this _____ day of _____,
_____.

Signature of person who made service

Subscribed and sworn to before me this _____ day of _____,
_____.

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

This form may be used in the metropolitan court to prepare a certificate or affidavit of service. Only the applicable parts should be used. If a paper is served by an attorney, a certificate of service is attached to the paper filed with the court. If a paper is served by any other party, an affidavit of service must be attached to the paper. See Rule 7-209 NMRA for service of papers after the citation or complaint.

[Approved, effective May 1, 2002; as amended by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-037, effective November 16, 2009, in the brackets at the beginning of the form, deleted "Magistrate Court Rules 6-209, 6-210, 6-211" and "Municipal Court Rules 8-8-208, 8-209, 8-210"; in the Use Note after "This form may be used in the", deleted "magistrate and"; and in the last sentence, after "See", changed "Rules 2-203, 7-209 and 8-208" to "Rule 7-209".

9-221A. Party's certificate of service.

[For use by parties in the Magistrate and Municipal Courts]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this notice was

[mailed by United States first class mail and addressed to]

Name: _____

Address: _____

City, State
and zip code: _____

[faxed by _____ (*name of person who faxed document*) to _____ (*name of recipient*). The transmission was reported as complete and without error. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ (*date*).]

[e-mailed to _____ (*name of party or attorney*) who has agreed to receive e-mail at _____ (*electronic mail address of recipient*) which is on file with the clerk of the Supreme Court for service by electronic mail. The transmission was successful. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ (*date*).]

[delivered to _____. (*Specify how service by delivery was made. See Use Note for the methods service may be made using this alternative.*)
_____]

Signature of attorney

Date of signature

If this notice was served by a person other than an attorney, the following must also be completed and filed with the court:

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a copy of this paper was served by [mail] [fax] [electronic transmission] as described above on this _____ day of _____, _____.

Signature of person who made service

Subscribed and sworn to before me

this _____ day of _____, _____.

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

This form may be used in the magistrate and municipal courts to prepare a certificate or affidavit of service. Only the applicable parts should be used. If a paper is served by an attorney, a certificate of service is attached to the paper filed with the court. If a paper is served by any other party, an affidavit of service must be attached to

the paper. See Rules 6-209 and 8-208 NMRA for service of papers after the citation or complaint.

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-222. Court's certificate of service.

[For use by Magistrate Court and Municipal Court staff]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ that notice was served on all parties and counsel.

Signature

Title

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

ARTICLE 3 Release Provisions

9-301. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated March 7, 1990, this form, relating to record of responses to questions at release hearing, was withdrawn for cases filed on or after September 1, 1990.

9-301A. Pretrial release financial affidavit.

[For use with District Court Rule 5-401 NMRA, Magistrate Court Rule 6-401 NMRA, Metropolitan Court Rule 7-401 NMRA, and Municipal Court Rule 8-401 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

PRETRIAL RELEASE FINANCIAL AFFIDAVIT

(This form may be used to gather the available information concerning the defendant's employment status, employment history, and financial resources available to secure a bond.)

INCOME & ASSETS

A. EMPLOYMENT

Are you now employed? Yes ___ No ___

If yes, please provide the name and address of employer.

How much do you earn per month? _____

If no, give month and year of last employment. _____

How much did you earn per month? _____

Do you receive unemployment benefits? Yes ___ No ___

If yes, how much do you receive per month? _____

If married, is your spouse employed? Yes ___ No ___

If yes, how much does your spouse earn per month? _____

B. PUBLIC ASSISTANCE

Do you receive public assistance? Yes ___ No ___

If yes, please check the applicable programs and list how much you receive per month.

Department of Health Case Management Service (DHMS) _____

Temporary Assistance for Needy Families (TANF) _____

General Assistance (GA) _____

Food Stamps _____

Medicaid _____

Public Housing _____
Social Security Income/Social Security Disability Income _____

VA Disability _____

C. OTHER INCOME

Have you received within the past 12 months any income from other sources?

Yes ___ No ___

If yes, give value and description for each.

D. ASSETS

Do you have any cash on hand or money in savings or checking accounts?

Yes ___ No ___

If yes, total amount? _____

Do you own any real estate, automobiles, or other valuable property (excluding ordinary household furnishings)? Yes ___ No ___

If yes, give value and description for each.

OBLIGATIONS & DEBTS

A. DEPENDENTS

List persons you actually support and your relationship to them.

B. MONTHLY EXPENSES

House payment/rent _____

Utilities _____
Groceries (after food stamps) _____
Car payment _____
Gas _____
Insurance _____
Child care _____
Student and consumer loans _____
Court-ordered family support obligations _____
Other court-ordered payments _____
Medical expenses _____
Other _____

I hereby swear or affirm that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies.

Defendant's Signature

Date

Defendant's Printed Name

USE NOTES

Use of this form is optional. A defendant may use this form to support a motion or petition for pretrial release under Rule 5-401(H) or (K) NMRA, Rule 6-401(H) or (J) NMRA, Rule 7-401 (H) or (J) NMRA, or Rule 8-401(G) or (I) NMRA.

[Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

9-302. Order for release on recognizance by designee.

[For use with District Court Rule 5-408 NMRA,
Magistrate Court Rule 6-408 NMRA,
Metropolitan Court Rule 7-408 NMRA, and
Municipal Court Rule 8-408 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

v.

No. _____

_____, Defendant.

**ORDER FOR RELEASE ON
RECOGNIZANCE BY DESIGNEE**

IT IS ORDERED that the defendant be released on personal recognizance on the defendant's promise to appear and subject to the following standard conditions of release.

The defendant shall not violate any federal, state, or local criminal law.

The defendant shall notify the court of any change of address.

The defendant shall appear before the court as directed.

The defendant shall not possess firearms or dangerous weapons.

The defendant shall not consume alcohol.

The defendant shall not buy, sell, consume, or possess illegal drugs.

The defendant shall avoid all contact with the alleged victim or anyone who may testify in this case.

Defendant's acceptance of conditions and promise to appear:

I understand the above conditions of release and agree to them.

I understand that the court may review and amend these conditions, and may have me arrested anytime, with or without notice, to do so.

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim, or an informant, or if I otherwise obstruct justice.

I further understand that my conditions of release may be revoked if I violate a federal, state, or local criminal law.

I agree to appear before the court on _____, at _____ (a.m.) (p.m.) located at _____ and thereafter at such times and places required in this case by any court.

I understand, that if I fail to appear as required, I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change the address indicated below.

Defendant's signature

Date of signature

Date of release

Time of release

Cell phone number

Alternate phone number

Email address

Mailing address (*include city, state, and zip code*)

Physical address (*include city, state, and zip code*)

Designee's Order for Release:

The above conditions of release are hereby approved. The defendant shall be released from custody upon the execution of this agreement.

Designee (*signature*)

Designee (*printed name*)

Date

[As withdrawn and approved, effective September 1, 1990; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-005, effective July 1, 2017, changed the title of the form from "Order setting conditions of release and appearance bond" to "Order for release on recognizance by designee", and completely rewrote the form.

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised the last paragraph of the "Appearance Bond" to delete "or comply with the additional conditions checked below".

The 1990 amendment withdrew the former order setting conditions of release and approved a new order.

Compiler's notes. — Pursuant to a court order dated March 7, 1990, the former form, relating to order setting conditions of release, is withdrawn for cases filed on or after September 1, 1990, and the above form is adopted effective for cases filed on or after September 1, 1990.

A bond may not be forfeited for violations of conditions of release other than failure to appear. *State v. Romero*, 2007-NMSC-030, 141 N.M. 733, 160 P.3d 914.

9-303. Order setting conditions of release.

[For use with District Court Rule 5-401 NMRA,
Magistrate Court Rule 6-401 NMRA,
Metropolitan Court Rule 7-401 NMRA and
Municipal Court Rule 8-401 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER SETTING CONDITIONS OF RELEASE

Release on recognizance or unsecured bond:

It is ordered that the defendant be released from custody upon:

(check and complete applicable alternatives)

- Personal recognizance.
- Unsecured appearance bond of \$_____.
- Third-party custody release to: _____ (individual or organization).

I/We agree to supervise the defendant; to use every effort to assure the defendant's appearance at all scheduled hearings; and to notify the court immediately in the event that the defendant violates any conditions of release.

Signature of Custodian	Address (city/zip)	Area Code/Telephone #
------------------------	--------------------	-----------------------

Defendant's conditions of release:

The court **FINDS** that the following conditions of release are the least restrictive conditions necessary to reasonably assure the appearance of the defendant as required and the safety of any other person and the community. The defendant shall not violate any federal, state, or local criminal law and shall:

(complete and check only applicable conditions prior to signature by defendant)

- not possess firearms or dangerous weapons;
- not return to the location of the alleged incident;
- not consume alcohol;
- not buy, sell, consume, or possess illegal drugs;
- notify the court of any change of address;
- not leave the (county of _____) (State of _____) without prior permission of the court;
- maintain contact with the defendant's attorney/seek and consult with an attorney;
- avoid all contact with the alleged victim or anyone who may testify in this case;

have an ignition interlock device installed on any vehicle the defendant may drive; (camera capable ignition interlock device);

be on pretrial supervision and abide by all conditions set by the court and by pretrial services;

reside at _____(address) unless otherwise agreed to by the court;

submit to drug or alcohol testing upon the request of _____;

not leave the defendant's residence between the hours of _____p.m. and _____a.m. without prior permission of the court;

maintain employment, or, if unemployed, actively seek employment;

maintain or commence an educational program;

(other conditions)

Release on secured bond:

The court **FINDS** that release on non-monetary conditions will not reasonably assure the appearance of the defendant. In making this determination, the court finds the following particularized factors require imposition of a secured bond in the amount set forth below:

Secured bond of \$_____, secured by:

cash at 10 % of total bond.

real property bond executed on Form 9-304 NMRA.

either 100% cash or a surety bond executed on Form 9-304 NMRA.

Defendant's acceptance of conditions and promise to appear:

I understand the above conditions of release and agree to them.

I understand that the court may have me arrested at any time, without notice, to review and reconsider these conditions.

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim, or an informant, or if I otherwise obstruct justice.

I further understand that my conditions of release may be revoked if I violate a federal, state, or local criminal law.

I agree to appear before the court on _____, at _____ (a.m.) (p.m.) located at _____ and thereafter at such times and places required in this case by any court.

I understand, that if I fail to appear as required, my bond, if any, may be forfeited, and I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change the address indicated below.

Defendant's signature

Date of signature

Date of release

Time of release

Cell phone number

Alternate phone number

Email address

Mailing address (include city, state, and zip code)

Physical address (include city, state, and zip code)

Judicial approval of conditions:

Judge's signature

USE NOTES

(Do not print use notes on pre-printed forms)

This form was revised in 2017 in conjunction with amendments to Rules 5-401, 6-401, 7-401, and 8-401 NMRA. These rules require the court to file written findings of the individualized facts justifying any secured bond as soon as possible, but no later than two (2) days after the conclusion of the pretrial release hearing. Judges are encouraged to enter their written findings on this order at the conclusion of the hearing. If more detailed findings are necessary, the judge should make such supplemental findings in a separate document within two days of the conclusion of the hearing.

If a surety provides bond for the defendant, Form 9-304 NMRA must also be completed. If a third party custodian is named, the third-party custodian agreement must also be completed and signed.

[Approved, effective September 1, 1990; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-005, effective July 1, 2017, changed the title of the form from "Order setting conditions of release bail bond" to Order setting conditions of release", completely rewrote the form, and added the Use Note.

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised the last paragraph of the "Defendant's Bond" to delete "or comply with the additional conditions checked below".

Compiler's notes. — Pursuant to a court order dated March 7, 1990, the former form, relating to appearance bond, is withdrawn and the above form is adopted, effective for cases filed on or after September 1, 1990.

A bail bond may not be forfeited for violations of conditions of release other than failure to appear. *State v. Romero*, 2007-NMSC-030, 141 N.M. 733, 160 P.3d 914.

9-303A. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 17-8300-005, 9-303A NMRA, relating to release order and bond, was withdrawn effective for all cases pending or filed on or after July 1, 2017. For provisions of former rule, see the 2017 NMRA on *NMOneSource.com*.

9-304. Bail bond.

[For use with District Court Rule 5-401 NMRA,
Magistrate Court Rule 6-401 NMRA,
Metropolitan Court Rule 7-401 NMRA and
Municipal Court Rule 8-401 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

BAIL BOND

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the [State of New Mexico] [City of _____] the sum of _____ dollars (\$_____).

The conditions of this bond are that the above-named defendant is to appear as required in accordance with any and all orders and directions relating to the defendant's appearance in the above-entitled matter as may be given or issued by the court or in any other district or appellate court to which the defendant may be removed or the cause transferred, including any bind-over or subsequent indictment of the defendant in the District Court for offenses arising out of the transaction or event for which this bond is given.

If the defendant appears as ordered, then this bond is to be void, but if the defendant fails to appear as required by this bond, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any court having cognizance of the above-entitled matter at the time of such breach;

and if the bond is forfeited and if the forfeiture is not set aside, upon motion judgment may be entered against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by law.

By executing this bail bond the sureties submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom papers affecting their liability may be served.

IT IS AGREED AND UNDERSTOOD THAT THIS IS A CONTINUING BOND WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS THE DEFENDANT IS FOUND GUILTY OR NOT GUILTY. THE BOND GUARANTEES THE APPEARANCE OF THE DEFENDANT.

This bond is signed on this _____ day of _____, _____, at _____

Signature of defendant

Address

Signature of surety

Address

Signature of surety

Address

JUSTIFICATION OF SURETIES

(Not to be completed if surety is a corporate surety licensed to do business in the State of New Mexico)

We, the undersigned sureties on oath say that we, _____ of _____ and _____ of _____, each own [real] [personal] property in the state having an unpledged and unencumbered net value in excess of the sum of _____ dollars (\$_____). We further say _____

_____.

Signature of surety

Signature of surety

On this _____ day of _____, _____, personally appeared before me in the above-named [county] [city] of the State of New Mexico _____ and _____, known to me to be the persons described in and

who on their oath executed the above and foregoing justification and acknowledged to me that they executed the bond as their free act and deed.

Notary public
Approved:

Judge or authorized person

USE NOTES

If the surety is married, both spouses must sign the bond unless it is demonstrated to the court that the property is not community property. See Section 40-3-4 NMSA 1978.)

[As amended, effective May 15, 1991; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, deleted the last sentence of the first paragraph of the conditions of release providing that the defendant is not to depart from the State and requiring the defendant to surrender himself after any judgment and revised the bond to eliminate the bond from continuing on appeal after a finding of guilty or not guilty.

The 1991 amendment, effective for cases filed on or after May 15, 1991, in the capitalized paragraph, inserted "and discharged by the court" and deleted "at all times up to the final disposition of all charges including imposition of sentence and any appeal or new trial" from the end of that paragraph.

Purpose of bail bond. — A bail bond is a type of bond to obtain the release of a person from imprisonment and to secure his appearance before the court. *State v. Valles*, 2004-NMCA-118, 136 N.M. 429, 99 P.3d 1164.

Use of this form is required by the Supreme Court rules. *State v. Valles*, 2004-NMCA-118, 136 N.M. 429, 99 P.3d 1164.

Statute governs. — Because the bail bond form which the Supreme Court requires sureties to sign when posting bail for a criminal defendant and a statute conflict on when the surety's obligation under the bond terminates, the statute governs. *State v. Valles*, 2004-NMCA-118, 136 N.M. 429, 99 P.3d 1164.

Section 31-3-10 NMSA 1978 governs over the inconsistent terms of the form prescribed by the Supreme Court. *State v. Valles*, 2004-NMCA-118, 136 N.M. 429, 99 P.3d 1164.

9-305. List of outstanding bonds, encumbrances and claims.

[For use with District Court Rule 5-401 NMRA,
Magistrate Court Rule 6-401 NMRA,
Metropolitan Court Rule 7-401 NMRA and
Municipal Court Rule 8-401 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

**LIST OF OUTSTANDING BONDS,
ENCUMBRANCES AND CLAIMS**

Note: This list must be kept current and submitted when any bond is filed in District, Magistrate, Metropolitan and Municipal Courts.

1. Property bondsman's name: _____

2. License number: _____

3. Bondsman's business address: _____

(Street, City, State, zip code)

4. Date of this list: _____

5. Legal description of property securing bond *(may be attached)*:

6. Outstanding encumbrances and claims, other than bonds, against property:

7. Current outstanding bonds written against property.

Amount of Bond	Name and Location of Court	Date Posted	Case Number	Name of Defendant

I HEREBY CERTIFY UNDER PENALTY OF PERJURY that the above information is true and correct as of the above date.

Property Bondsman

9-306. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 13-8300-036, Form 9-306 NMRA, relating to commitment for preliminary hearings, was withdrawn effective December 31, 2013. For provisions of former rule, see the 2013 NMRA on *NMOneSource.com*.

9-307. Notice of forfeiture and hearing.

[For use with District Court Rule 5-406 NMRA,
Magistrate Court Rule 6-406 NMRA,
Metropolitan Court Rule 7-406 NMRA and
Municipal Court Rule 8-406 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

[and

_____, (surety)

_____, (surety)]

**NOTICE OF FORFEITURE AND
HEARING**

TO:

defendant

address

surety

address

surety

address

You and each of you are hereby notified that the bond in this case has been forfeited because of a failure of the defendant to appear before the court as required.

IT IS ORDERED that you appear on the ____ day of _____, _____, at _____ [a.m.] [p.m.], before this court at _____, New Mexico, for a hearing to determine whether a judgment of default should be entered against you, jointly and severally, for the amount of the bond or bonds executed in this case.

YOU ARE HEREBY NOTIFIED that if you fail to appear as required by this order, a judgment of default will be entered against you, and if the judgment of default is not paid within ten (10) days, action may be taken to collect the full amount of the bond.

IT IS FURTHER ORDERED that this Notice of Forfeiture and Hearing be forthwith mailed by the clerk of the court to each of the persons named above at their last known addresses and to all attorneys of record.

Judge

[Adopted, effective October 1, 1987; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-005, effective July 1, 2017, in the rule heading, after “forfeiture and”, deleted “order to show cause” and added “hearing”; in the title of the form, after “FORFEITURE AND”, deleted “ORDER TO SHOW CAUSE” and added “HEARING”, replaced each occurrence of “order to show cause” with “hearing” throughout the form, in the last paragraph, after “known addresses and to”, deleted “district attorney” and added “all attorneys of record”, and after the last paragraph, deleted the line provided for the date.

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, deleted the provision of the notice providing for a notice of forfeiture if the defendant violates a condition of release.

9-308. Order setting aside bond forfeiture.

[For use with District Court Rule 5-406 NMRA,
Magistrate Court Rule 6-406 NMRA,
Metropolitan Court Rule 7-406 NMRA and
Municipal Court Rule 8-406 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant

[and

_____, (surety)

_____, (surety)]

**ORDER SETTING ASIDE
BOND FORFEITURE**

The court held a hearing on _____ (*date*) to determine whether a judgment of default should be entered on the defendant's bond(s).

The court finds that the defendant failed to appear as required.

The court further finds that the following good cause has been shown why the defendant failed to appear:

(check appropriate alternative)

the defendant was incarcerated in _____ located at _____.

the defendant was hospitalized at the time of the hearing in _____ hospital located at _____.

the defendant failed to appear because: *(set forth other good cause)*

_____.

The court further finds that the defendant has been brought before this court and is now available for further proceedings in the above case.

The court further finds that a judgment of default on the bond(s) has not been entered in the above case.

IT IS ORDERED that the forfeiture previously entered by this court is set aside.

Judge

[Adopted, effective, October 1, 1987; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-005, effective July 1, 2017, in the rule heading, after “aside”, deleted “bail”, in the title of the form, after “ASIDE”, deleted “BAIL”, deleted “A hearing having been held by the” and added “The”, after “court”, deleted “upon the order to show cause why” and added “held a hearing on _____ (*date*) to determine whether”, after “should”, deleted “not”, and after “defendant’s”, deleted “bail bond:” and added “bond(s).”, and deleted the line provided for the date.

9-309. Judgment of default on bond.

[For use with District Court Rule 5-406 NMRA,
Magistrate Court Rule 6-406 NMRA,
Metropolitan Court Rule 7-406 NMRA and
Municipal Court Rule 8-406 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant

[and

_____, (surety)]

JUDGMENT OF DEFAULT ON BOND

This matter having come before this court for a hearing,

THE COURT FINDS:

(check applicable alternative)

The defendant previously signed an unsecured appearance bond, agreeing to appear in court as required and promising to pay \$_____ to the court for a failure to appear;

The defendant previously signed a secured appearance bond in the full amount of \$_____, secured by a deposit in cash of 10% of the full amount, agreeing to appear in court as required, and promising to forfeit the cash deposit and pay the remaining 90% of the bond to the court for a failure to appear;

The defendant or the defendant's unpaid surety previously signed a secured appearance bond in the full amount of \$_____, secured by the pledging of real property, agreeing that the defendant will appear in court as required, and promising to forfeit the full amount of the bond to the court for a failure to appear;

The defendant previously signed a secured appearance bond in the full amount of \$_____, secured by a deposit in cash of 100% of the full amount, agreeing to appear in court as required, and promising to forfeit the full amount of the bond to the court for a failure to appear.

The defendant's surety, a licensed bail bondsman, previously signed a surety bond in the full amount of \$_____, agreeing to ensure the defendant's appearance in court as required, and promising to forfeit the full amount of the bond to the court for a failure to appear;

The defendant failed to appear in the _____ Court on _____ (date) at _____ (time), as required;

This court served a Notice of Forfeiture and Hearing on the clerk of the court, forfeiting the defendant's bond more than thirty (30) days prior to this hearing;

The clerk of the court mailed to the defendant and the above named surety, if any, the Notice of Forfeiture and Hearing regarding whether a judgment of default should be entered on the forfeited bond;

The forfeited bond has not been set aside, the defendant has not been surrendered into custody, and good cause has not been shown why a judgment of default should not be entered.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that judgment in the following amount is hereby entered against the defendant and the above named surety, if any:

\$_____, which is the full amount of the bond.

\$_____, which is a percentage of the full amount of the bond.

IT IS FURTHER ORDERED that if the defendant has a surety, the defendant and the surety are jointly and severally liable for the payment of this judgment.

IT IS FURTHER ORDERED that if the full amount of this judgment is not paid into this court within ten (10) days after entry of this order, action may be taken to enforce this judgment against the defendant and the above named surety, if any.

IT IS FURTHER ORDERED that if this judgment is not paid within ten (10) days, the above named surety, if any, shall not execute any new bonds until the full amount of this judgment is paid.

IT IS FURTHER ORDERED that if this judgment is entered against a licensed bail bondsman and this judgment is not paid within ten (10) days, a copy of the judgment shall be mailed by the clerk of the court to the superintendent of insurance.

Judge

USE NOTES

1. If the court is entering a judgment of default on more than one bond, the court should issue a separate judgment form for each bond.

[Effective October 1, 1987; as amended, effective August 1, 1989; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; as amended by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-005, effective July 1, 2017, changed the title of the form from “Default judgment on bond.” to “Judgment of default on bond.”, rewrote the form, and added the Use Note.

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, deleted the provision of the default judgment on a bail bond upon a finding that the defendant violated a condition of release.

The 1989 amendment, effective for cases filed on or after August 1, 1989, added "[Not to be used for Cash Bonds]" near the top of the form.

9-310. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 17-8300-005, 9-310 NMRA, relating to default judgment on bond, was withdrawn effective for all cases pending or filed on or after July 1, 2017. For provisions of former rule, see the 2017 NMRA on *NMOneSource.com*.

9-311. Irrevocable letter of credit.

[For use with District Court Rule 5-401B NMRA,
Magistrate Court Rule 6-401B NMRA,
Metropolitan Court Rule 7-401B NMRA and
Municipal Court Rule 8-401B NMRA]

IRREVOCABLE LETTER OF CREDIT

To: _____ (judge, clerk, court administrator)
_____ (address)

_____ (*financial institution*) hereby opens its irrevocable letter of credit in your favor by order of _____ (*bondsman*).

This letter of credit is for the account of the _____ Court of the [State]
[County of _____] [City of _____].

The total amount of credit is \$_____.

Drafts will be honored at _____ (*address*) payable on sight.

This irrevocable letter of credit will expire on _____ (*date*).

(Any specifications the financial institution may have concerning the description of the draft to be presented by the court against the letter)

_____ (*financial institution*) hereby agrees with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this irrevocable letter of credit that the letter will be duly honored upon presentation and delivery to drawee of all documents as specified.

Financial institution

By _____

Signature

Its _____

Title

[Approved, effective September 1, 1990.]

9-312. Cash bond receipt and conversion after arrest on bench warrant.

[For use in the Metropolitan Court]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE METROPOLITAN COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

**CASH BOND RECEIPT AND
CONVERSION AFTER ARREST ON BENCH WARRANT**

Defendant information:

Arrest date: _____

Date of birth: _____

Social security number: _____

Mailing address: _____

City, state & zip code: _____

Address (*physical*): _____

City, state & zip code: _____

Bond information:

Date bond posted: _____

Amount posted: _____
Bond posted by¹: _____
Date of birth: _____
Social security number¹: _____
Person paying bond's
mailing address¹: _____
City, state & zip code¹: _____

PERSON OTHER THAN DEFENDANT PAYING BOND:

(check applicable alternative and sign)

- I agree
 I do not agree

that the cash I have posted may be used to pay any fines, fees or costs that the court may order the defendant to pay after the defendant's release from custody.

Signature of person posting cash

DEFENDANT: *(check applicable alternative and sign)*

- I agree to appear in the _____ court on _____,
_____ *(date)* at _____ *(a.m.) (p.m.)*.

(This alternative may be used only when authorized by the bench warrant and by the person posting the bond.)

- I plead guilty to the charges. I ask the court to use the bond for payment of fines, fees and costs instead of requiring me to appear before the court.

Signature of defendant

BOND RECEIVED BY:

Signature of clerk or bail designee

Title

Date

COURT EMPLOYEE RECEIVING PAYMENT:

Signature

Title

Date

USE NOTES

- 1. Complete if person posting bond is not the defendant.

[Approved, effective August 1, 1999; as amended by Supreme Court Order No. 07-8300-034, effective January 22, 2008.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008, limited the use of this form to the Metropolitan Court.

Cross references. — For bench warrants issued by the metropolitan court, see Rule 7-207 NMRA.

For cash receipts issued by the magistrate and municipal courts, see Criminal Form 9-312A NMRA.

9-312A. Receipt for cash, money order, or cashier's check.

[For use in the magistrate and municipal courts]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

IN THE _____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

RECEIPT FOR CASH, MONEY ORDER, OR CASHIER'S CHECK

Defendant information:

Arrest date: _____

Date of birth: _____

Mailing address: _____

City, state & zip code: _____

Address (*physical*) (*if different from mailing address*): _____

City, state & zip code: _____

Telephone number: _____

(Include current telephone number or contact information in case a refund is due.)

(Fill in only if \$10,000 or more is paid.)

Tax ID number or Social Security number of Defendant: _____

Occupation, profession or business: _____

Payment information: _____

Date of payment: _____

Amount paid: _____

Number of money order or cashier's check: _____

Issuer: _____

Payment made by: _____

(*print name*)

Mailing address of person paying cash, money order, or cashier's check if person paying is not defendant: _____

City, state & zip code: _____

Telephone number: _____

(Include current telephone number or contact information in case a refund is due.)

(Fill in only if \$10,000 or more is paid.)

Tax ID number or social security
number of person paying: _____

Occupation, profession or business: _____

**PERSON OTHER THAN DEFENDANT PAYING CASH, MONEY ORDER, OR
CASHIER'S CHECK:**

I understand that the cash I have posted will be used to pay any fines, fees, or costs that the defendant owes if the court has ordered that the defendant may only be released upon the payment of such fines, fees, and costs and that if this is so I will not be entitled to a refund.

If the court has not ordered that the defendant will only be released upon payment of fines, fees, and costs,

I agree

I do not agree

that the cash I have posted may be used to pay any fines, fees, or costs that the court may order the defendant to pay after the defendant's release from custody.

Signature of person posting cash
(required)

DEFENDANT: *(If the defendant has been arrested on a failure to pay warrant, the defendant's signature is not required.)*

(This alternative may be used only when the defendant has failed to appear, the bench warrant authorizes release on payment of fines and fees, and the person posting the cash has checked the "I agree" box above.)

I plead guilty to the charges. I ask the court to use the cash for payment of fines, fees, and costs instead of requiring me to appear before the court.

(This alternative may be used only when the bench warrant authorizes release of the defendant on bond, instead of payment of fines and fees.)

I agree to appear in the _____ court on _____,
(date) at _____ [a.m.] [p.m.].

Signature of defendant

PAYMENT RECEIVED BY:

Signature of clerk or bail designee

Date

COURT EMPLOYEE RECEIVING PAYMENT:

Signature of clerk or bail designee

Date

[Approved by Supreme Court Order No. 07-8300-034, effective January 22, 2008; as amended by Supreme Court Order No. 13-8300-037, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-037, effective December 31, 2013, provided for payment in cash, money order, or cashier's check; added blanks for payment information, including information about the form of payment and the person making the payment; deleted the former title "Cash receipt" and added the current title; in the title of the first subdivision of the form, changed "CASH RECEIPT", to the current title; under "Defendant information", added "Telephone number" and the blank line, in the first parenthesis after the blank for "Telephone number", after "Include current", deleted "mailing address" and added "telephone number or contact information", in the second parenthesis, added "Fill" and deleted "to be filled", and after "or more is", added "paid" and deleted "tendered in case; required by Internal Revenue Service", after the second parenthesis, at the beginning of the first blank, added "Tax ID number or" and added the second blank for "Occupation, profession or business", after the blank for "Occupation, profession or business", deleted the former headings "Complete if person posting cash amount is not Defendant" and "Cash information" and deleted the former blanks for "Date cash posted", "Amount posted", "Cash posted by", "Mailing address of person paying cash", and "City, state & zip code", and deleted the former parenthesis, which required a telephone number or contact information if a refund was due; added the heading and blanks for "Payment information", including the last parenthesis "Fill in only if \$10,00 or more is paid" and the blank; in the title of the second division of the form, after "CASH", added the remainder of the title, and in the first paragraph, after "entitled to a refund", deleted "regardless of what I have checked below" and in the title of the third division of the form for signature by the clerk or bail designee, changed "CASH" to "PAYMENT".

Cross references. — For bench warrants issued by the Magistrate Court, see Rule 6-207 NMRA.

For bench warrants issued by the Municipal Court, see Rule 8-206 NMRA.

For cash bond receipts issued by the Metropolitan Court, see Criminal Form 9-312 NMRA.

ARTICLE 4

Arrest and Preparation for Trial

9-401. Waiver of counsel.

[For use with District Court Rule 5-301 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

WAIVER OF COUNSEL

(To be used only if, upon conviction, the defendant may be deprived of liberty)

I understand that I am charged with the following offense(s):

_____ which *(strike inapplicable words or parts)* (is) (are) misdemeanors under the law and that if I am found guilty I can be given a severe punishment, including imprisonment in (the New Mexico state penitentiary) (in the _____ *(city)* *(county)* jail) and a fine.

I understand that under the Constitutions of the United States and the State of New Mexico, I have the right to be represented by a lawyer at all stages of the criminal case — before trial, at the trial itself, during proceedings to determine what sentence should be imposed if I am found guilty, and any appeal. I understand that if I am unable, without undue hardship, to pay for all or a part of the expense of legal representation

from available present income and assets, a lawyer will be furnished for me free of charge.

After reading and understanding all of the above, I hereby give up my rights to a lawyer in this case, and to have a lawyer furnished for me free of charge if I cannot afford one.

DO NOT SIGN THIS FORM IF YOU WANT AN ATTORNEY. DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT AND UNDERSTAND IT.

Defendant

I find that the defendant, knowingly, voluntarily and intelligently with full awareness of the right to counsel, has waived the right to counsel.

Judge

Date: _____

[As amended, effective January 1, 1999.]

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "misdemeanors" for "(misdemeanor(s)) (felony(ies))" near the beginning, made gender neutral and stylistic changes near the end, and deleted the signature lines for approval by the district public defender at the end; and made minor stylistic changes.

9-401A. Waiver of counsel.

[For use with Magistrate Court Rule 6-501 NMRA, Metropolitan Court Rule 7-501 NMRA and Municipal Court Rule 8-501 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

WAIVER OF COUNSEL

(To be used only if, upon conviction, the defendant may be deprived of liberty)

I understand that I am charged with the following offense(s):

_____ which
(strike inapplicable words or parts) [is] [are] [misdemeanor(s)] under the law and that if I am found guilty I can be given a severe punishment, including imprisonment in the [New Mexico state penitentiary] [_____ [city] [county] jail] and a fine.

I understand that under the constitutions of the United States and the State of New Mexico, I have the right to be represented by a lawyer at all stages of the criminal case — before trial, at the trial itself, during proceedings to determine what sentence should be imposed if I am found guilty, and any appeal.

I understand that if I am unable, without undue hardship, to pay for all or a part of the expense of legal representation from available present income and assets, a lawyer will be furnished for me free of charge.

After reading and understanding all of the above, I hereby give up my rights to a lawyer in this case.

DO NOT SIGN THIS FORM IF YOU WANT AN ATTORNEY. DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT AND UNDERSTAND IT.

Defendant

I find that the defendant, knowingly, voluntarily and intelligently with full awareness of the right to counsel has waived this right.

Judge

Date: _____

[Adopted, effective September 15, 1997.]

ANNOTATIONS

Compiler's notes. — See *State v. Pino*, 1997-NMCA-001, 122 N.M. 789, 932 P.2d 13, cert. denied, 122 N.M. 589, 929 P.2d 981.

9-402. Withdrawn.

ANNOTATIONS

Withdrawals. — This form, relating to the record of responses to questions at hearing to determine indigency and for the affidavit of the defendant, was withdrawn, effective for cases filed on or after July 1, 1988, by a Supreme Court order dated March 16, 1988.

9-403. Eligibility determination for indigent defense services.

[For use in the District Court, Magistrate Court
and Metropolitan Court]
[Section 31-15-7 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **COURT**

KEY _____

[STATE OF NEW MEXICO]

[COUNTY OF _____]

v. _____ **No.** _____

_____, **Defendant**

ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES

Name: _____ DOB: _____ Age: _____

AKA: _____ Sex: Male Female SSN: _____

Address: _____ Phone: _____

Charges: _____

Lives alone: _____ Lives with: Spouse _____ Children _____ Parent _____ Friend _____
Other _____

Marital status: Single _____ Married _____ Divorced _____ Separated _____ Widowed _____

Number of dependents in household: _____

Defendant is in jail. Defendant is not in jail.

PRESUMPTIVE ELIGIBILITY:

_____ I currently DO NOT receive public assistance.

_____ I currently receive the following type of public assistance in _____
County:

DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS) \$ _____

TANF/GA \$ _____ Food Stamps \$ _____ Medicaid \$ _____

Public Housing \$ _____ SSI/SSDI \$ _____

VA Disability _____

_____ Unable to complete application because of possible Mental
Health/Developmental Issue of applicant.

NET INCOME:

SELF

SPOUSE

Employer's Name

Employer's Phone

Pay Period (*weekly, every
second week, twice
monthly, monthly*)

Net take home pay (*salary
wages minus deductions
required by law*)

\$ _____

\$ _____

Other income sources
(*please specify*)

\$ _____

\$ _____

SCREENING USE ONLY

TOTAL ANNUAL INCOME

\$ _____ +

_____ = ____ / ____ / ____ **A**

ASSETS:

institutions, employers, relatives, the federal internal revenue service and other state agencies.

Date

Signature of applicant

STATE OF NEW MEXICO)

)

) ss

COUNTY OF _____)

)

Signed and sworn to (or affirmed) before me on _____ (date) by
_____ (name of applicant).

Notary

(Seal, if any)

My commission expires: _____

COLUMN "A" (net income) plus COLUMN "B" (assets) SCREENING USE ONLY

minus COLUMN "C" (exceptional expenses) AVAILABLE FUNDS

equals AVAILABLE FUNDS =/_____

____ The applicant is indigent.

____ The applicant is not indigent.

____ The applicant [has] [has not] paid the \$10.00 application fee.

Receipt number: _____

Based on the above answers and information, I find that the applicant [is] [is not] indigent.

Signature of Screening Agent

Title

(Complete the following only if the court has determined that the applicant is unable to pay the \$10.00 application fee).

____ I find that the applicant is unable to pay the \$10.00 indigency application fee, due to the following reason

_____ and I therefore

waive the payment of the \$10.00 application fee.

Signature of Screening Agent

GUIDELINES FOR DETERMINING ELIGIBILITY

Pursuant to Section 31-15-7 NMSA 1978, the following guidelines are established for determination of indigency and eligibility for public defender services.

I. APPLICATION FEE

A person shall pay a non-refundable application fee for each case in the amount set in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender for representation. *The interviewer will determine if the financial circumstances of the applicant are such that the fee would pose an exceptional hardship, and will recommend to the District office Administrator or Eligibility Supervisor if the fee should be waived. The interviewer will document on the application the reason for the fee waiver.*

II. PRESUMPTION OF INDIGENCY

An applicant is presumed indigent if the applicant is a current recipient of state or federally administered public assistance programs for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), Veteran's disability benefits (VA) if the benefit is the sole source of income, food stamps, medicaid, public assisted housing or Department of Health, Case Management Services (DHMS). Proof of assistance must be attached to the application and no further inquiry is necessary. The document submitted as proof must clearly identify the applicant as currently receiving the qualifying benefit. Benefit cards without other supporting documents will not be accepted as proof of benefit. If the applicant is not receiving Medicaid benefits, but has dependants in the household for whom Medicaid eligibility has been determined, the applicant will be presumed indigent. Home equity, etc. is not to be taken into account if the applicant is a current recipient of one of the six programs described above.

If the interviewer is unable to complete the indigency application or believes the information to be unreliable because of communication or other problems associated with a mental or developmental disability of the applicant, indigency will be presumed. When this is the case the *Mental Health/Communication* section of the application should be checked. Where available, the designated attorney for mental health issues is to be immediately notified, and if that person is not available the duty attorney is to be immediately notified.

III. FINANCIAL RESOURCES

If the applicant is not presumptively indigent, the screening agent shall examine the financial resources of the applicant with consideration given to:

Net Income, Paragraph A;

Assets, Paragraph B; and

Exceptional Expenses, Paragraph C.

A. **Net Income.** The screening agent shall include total salary and wages for the applicant and the applicant's spouse minus deductions required by law (*FICA, state and federal withholding*). Child support deductions and *medical* insurance deductions will also be considered if already deducted from salary, but will not be recounted in the *Exceptional Expenses* section if counted here. Savings deductions and non-mandatory retirement deductions will be added to the net income. In order to calculate the salary of an individual, the screening agent shall use one of the two methods:

(1) if the individual is presently unemployed, the screening agent shall ask about employment during the twelve (12) months preceding the interview date and calculate the amount of money earned during such twelve (12) months. Proof of this income must be attached to the application; or

(2) if the individual is presently employed, the screening agent shall project the current income for twelve (12) months into the future. Proof of this income must be attached to the application. If the applicant is unemployed and has no income, the screening agent shall inquire as to how the applicant "gets by". Proof of income is not required but responses must be documented on the eligibility form (*i.e. eats on soup line, street person, sleeps in car, etc.*) and some proof of how the individual lives must be provided if available, *i.e., lives with someone providing support, lives on the street (must provide some proof of assistance from homeless shelters or other street assistance providers)*. If the applicant gets by on "odd jobs", the income from the odd jobs must be verified. Zeros will not be accepted for income. If there is no income, an explanation is needed as to why there is no income and documentation is needed that sets forth the reason for no income.

(3) Any person that has been incarcerated for six (6) months or more is also presumed to be indigent. Proof must be provided, *i.e., proof of incarceration, jail release form*. An individual incarcerated in a Department of Corrections facility in any state automatically qualifies.

Net income shall include, but is not limited to social security payments, union funds, veteran's benefits, worker's compensation, unemployment benefits, regular support from any absent family member, public or private employee pensions, or income from dividends, interests, rents, estates, trusts or gifts. If the applicant lives alone but receives rent from a family member, the rent shall be considered as regular support from the applicant's family and shall be included as income.

The income of a spouse must be included in the calculation of income even though the applicant and the applicant's spouse are not living in the same household unless:

(a) the applicant and the spouse are legally separated (*must provide proof of legal separation*);

(b) the applicant and the spouse have not resided together within the last 12 months and the applicant can provide a notarized statement from an adult family member verifying that fact; or

(c) the spouse is an alleged victim of the applicant or complaining witness against the applicant.

B. Assets. The screening agent shall consider all assets of the applicant and the applicant's spouse that are readily convertible into cash within a reasonable period of time. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit and tax refunds. Real estate other than the primary residence shall be valued at the current full valuation on the county property tax rolls less any outstanding obligations against the property. Written documentation of both the value and the outstanding obligations will be attached to the application.

C. Exceptional Expenses. The screening agent shall consider any unusual expenses of the applicant and the applicant's legal dependents that would, in all probability, prohibit the applicant from being able to secure private counsel. The following expenses are not exceptional expenses: rent, food, utilities, gas money, consumer loans and student loans. Exceptional expenses shall include, but not be limited to, costs for medical care or medical insurance, family support obligations and child care payments.

In order to be included as an exceptional expense:

(1) the cost of medical care cannot be covered by insurance;

(2) family support expense obligations must be verified by court order or a notarized statement from the person to whom the support is paid. The support must actually be paid on a regular basis; and must be verified by written documentation such as receipts or cancelled checks;

(3) child care must be paid on a regular basis. If the applicant says that child support is paid when the applicant can, the payments do not qualify as exceptional expenses.

The applicant must provide proof of the exceptional expense incurred and proof that payment is being made on a regular basis. If proof is provided, the regular monthly payment for the exceptional expense is multiplied by twelve (12) months and the calculated amount can be deducted from total income.

Other exceptional expenses shall include: payroll garnishments, internal revenue service claims, court ordered attorney fees or other court ordered payments and funeral expenses not covered by insurance.

An approved filing from a pending bankruptcy proceeding of a potential client can be considered in determining indigency.

IV. INDIGENCY FORMULA

An applicant is indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

The screening agent shall calculate the amount of available funds by adding the total for net income for the household (Column A) together with the total for assets for the household (Column B) and subtracting the total for exceptional expenses (Column C). If the available funds exceed one hundred fifty percent (150%) of the applicable federal poverty level guideline, the applicant is not indigent.

If the applicant does not know the applicant's spouse's income or assets the applicant is presumed not indigent and is not eligible for free representation unless the applicant produces the necessary information within two (2) working days after the interview.

V. APPEAL

If the applicant is found by the screening agent or the court not to be indigent, the applicant may appeal the decision to the district defender in those districts with public defender offices. If the applicant wishes to appeal the decision of the district defender, the applicant shall appeal to the district court. In those districts without public defender offices, the applicant may appeal directly to the court. If the applicant wishes to appeal a finding that the applicant is not indigent:

(1) in those districts with district public defender offices, the screening agent shall notify the public defender of the appeal;

(2) in those districts without public defender offices, the screening agent shall notify the court of the appeal.

All appeals shall be filed within ten (10) working days after the date of the decision.

VI. REIMBURSEMENT

Any applicant who is ineligible for free representation but is unable to hire private counsel may sign a contract for public defender representation on a reimbursement basis. The reimbursement cost shall cover all charges for legal fees, expert witness,

and private investigation costs. Reimbursement fees shall be governed by the schedule adopted by the Public Defender Department.

First payment under a reimbursement contract shall be due thirty (30) days from the date of execution of the contract. If the applicant is incarcerated on the date of execution of the contract, the date of payment shall be thirty (30) days from the date of the applicant's release from incarceration.

If a court enters an order appointing the Public Defender Department to represent a defendant and ordering the defendant to reimburse the state for representation, the defendant shall execute a contract for reimbursement in the appropriate amount under the department's schedule. If the defendant fails to execute a reimbursement contract, the order of appointment shall be forwarded to Public Defender administration for collection along with the documentation stating the amount owing for representation. If the defendant refuses to provide information necessary to determine net income or eligibility, the reimbursement fee shall be the maximum contract rate allowable for the crimes charged under the schedule set by the department.

VII. NEW CHARGES

If an applicant has applied for public defender services within six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is not necessary, but the applicant shall be required to pay the application fee. A printout of the CDMS entry for the original application with the new referral should be placed in the new file being opened. If an applicant has applied for public defender services and been found eligible more than six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is necessary. An applicant must pay the application fee for each case for which the applicant seeks representation regardless of whether completion of a new eligibility documentation form is required, unless the fee has been waived.

[Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1, 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No. 09-8300-039, effective October 26, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-039, effective October 26, 2009, in the style of the case, added the blank for "KEY"; in the first paragraph after the title of the form, deleted the blanks for "DC#" and "MC#"; in the section labeled "Presumptive Eligibility", in the fourth line, changed "AFDC" to "TANF/GA", in the fifth line, deleted the blank for "DSI\$" and changed "SSI" to "SSI/SSDI", in the sixth line, added the blank for "VA Disability", and added the seventh line for "Unable to complete application because of possible Mental Health/Developmental Issue of applicant"; in the section labeled "Exceptional Expenses", added the second line for "Medical Insurance Payments (receipts

required)"; under the paragraph partially labeled "Column A plus Column B", in the third line, after "applicant [has] [has not] paid the", deleted "statutory" and inserted "\$10.00"; in the paragraph following the first signature line for the screening agent, in the parentheses, after "applicant is unable to pay the", deleted "statutory indigency" and inserted "\$10.00", in the sentence following the parentheses, between "the applicant is unable to pay the" and "\$10.00", deletes "statutory", after "\$10.00 indigency application fee", added "due to the following reason _____", and after "waive the payment of the", deleted "indigency" and added "\$10.00"; and deleted the signature line for the "Judge or authorized designee"; in the section labeled "Guidelines For Determining Eligibility", in Section I, Application Fee, deleted the former second sentence which provided for waiver of the application fee if the applicant is homeless or incarcerated and unable to pay the fee, and added the second and third sentences; in Section II, Presumption of Indigency, in the first paragraph after "social security disability income (SSDI)", added "Veteran's disability benefits (VA) if the benefit is the sole source of income", after "food stamps, medicaid", deleted "disability security income (DSI)", and added the third, fourth and fifth sentences; in Section II, Presumption of Indigency, in the second paragraph after "other problems associated with a mental", added "or developmental", deleted the former second sentence which provided that if the application cannot be completed because of the mental disability of the applicant or because the information is unreliable, the Department of Health, Case Management Services should be consulted, and added the second and third sentences; in Section III, Financial Resources, in Paragraph A, in the first paragraph, added the second and third sentences, and added Item (b) of Subparagraph (3) of Paragraph A; in Section III, Financial Resources, in Paragraph B after "Real estate", added "other than the primary residence" and after "shall be valued at", deleted "fair market value" and added "the current full valuation on the county property tax rolls"; in Section III, Financial Resources, in Paragraph C, in the first paragraph after "costs for medical care", added "or medical insurance", in the second paragraph, in Subparagraph (2), after "family support expense obligations must be", deleted "court ordered" and added "verified by court order or a notarized statement from the person to whom the support is paid", and in the second sentence, at the beginning of the sentence, added "The support must", after "actually", added "be", and after "on a regular basis", added the remainder of the sentence, and in the last paragraph, before "bankruptcy", added "pending"; and in Section VII, New Charges, in the second sentence, changed "A copy of the last eligibility determination form" to "A printout of the CDMS entry for the original application with the new referral."

The 2004 amendment, effective November 1, 2004, relocated the oath formerly following "Total Exceptional Expenses" to follow the time limit to appeal if not indigent language; replaced the Indigency Table with the Indigency Formula Part IV; and provided "statutory" for "\$10.00" and added "Receipt number: _____" in the language preceding the signature line of the screening agent, and substituted "statutory indigency" for "\$10.00", "statutory" for "\$10.00" and "indigency" for "\$10.00" in the language preceding the judge or authorized designee signature line. The amendment also, in the Guidelines for Determining Eligibility, added present Guideline I, redesignated former Guidelines I through VI as present Guidelines II through VII, substituted "temporary assistance for needy families (TANF), general assistance (GA),

supplemental security income (SSI), social security disability income (SSDI)” for “aid to families of dependent children (AFDC)” in the first sentence of the first paragraph and deleted “until the applicant’s competency to stand trial and indigency is determined by the public defender or court” following “presumed” at the end of the first sentence in the second paragraph of Guideline II, added “Paragraph A”, “Paragraph B” and “(Paragraph C)” in the introductory paragraph and rewrote former Paragraph A(2) so as to create present Paragraphs A(2) and (3) in Guideline III, substituted “that are readily” for “which are” in the first sentence and rewrote the last sentence of Paragraph B of that guideline, and, in Paragraph C of that guideline, substituted “that” for “which” in the first sentence of the first paragraph, deleted “or child care” following “support” in Subparagraph (3) of the second paragraph, and added the last paragraph. The amendment further added the first paragraph and substituted the present last sentence for the former last two sentences in the second paragraph of Guideline IV, substituted the present first paragraph for the former first four paragraphs and the present last paragraph for the former last paragraph in Guideline VI, and, in the second paragraph of that guideline, inserted “under a reimbursement contract” in the first sentence and “the applicant’s” in the second sentence and substituted “execution” for “completion” and deleted “and note” following “contract” in each sentence, and, in Guideline VII, added “but the applicant shall be required to pay the application fee” in the first sentence, rewrote the third sentence and added the last sentence.

The 1997 amendment, effective February 14, 1997, revised the Indigency Table and added the second sentence in the italicized instruction following the Indigency Table.

The 1993 amendment, effective December 1, 1993, rewrote the form and guidelines.

The 1989 amendment, effective for cases filed on or after August 1, 1989, rewrote this form.

Cross references. — For duty of public defender to adopt indigency standard, see Section 31-15-7 NMSA 1978.

For indigency determination, see Section 35-15-12 NMSA 1978.

9-403A. Conditional order of appointment.

[Sections 34-6-46, 34-8A-11
and 35-5-8 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ COURT

STATE OF NEW MEXICO

COUNTY OF _____,

v.

No. _____

_____, Defendant.

CONDITIONAL ORDER OF APPOINTMENT

This matter having come before the court, the court finds:

(please check appropriate box or boxes)

THE COURT FINDS THAT:

- The defendant is incarcerated.
- The defendant is not incarcerated.

THE COURT FURTHER FINDS THAT the defendant is unable to obtain counsel and desires representation by the Law Offices of the Public Defender.

IT IS THEREFORE ORDERED THAT the defendant shall make application to the Law Offices of the Public Defender for representation within _____ days of the issuance of this Order. If the defendant is determined not to be indigent under the Law Offices of the Public Defender's indigency guidelines as approved by the New Mexico Supreme Court, the defendant shall execute a contract to reimburse the State of New Mexico for legal representation and related expenses in the amount determined in accordance with the Law Offices of the Public Defender's guidelines.

IT IS FURTHER ORDERED THAT the Law Offices of the Public Defender is hereby appointed to represent the defendant in the above-entitled cause contingent upon the defendant making application to the Law Offices of the Public Defender for representation as set forth herein.

IT IS FURTHER ORDERED THAT:

- the application fee is waived.
- the application fee is not waived.

Judge

CERTIFICATE OF MAILING

I certify that I mailed a copy of this order to the above-named defendant at _____ (set forth address), and to the public defender on the _____ day of _____, _____.

(Judge) (Clerk)

Date

[Adopted, effective July 1, 1988; as amended, effective January 1, 1996; as amended by Supreme Court Order No. 12-8300-028, effective for all cases filed on or after January 7, 2013; as amended by Supreme Court Order No. 15-8300-006, effective for all cases pending or filed on or after December 31, 2015.]

Committee commentary. — Form 9-403A NMRA was amended in 2012 to clarify that the Law Offices of the Public Defender cannot be appointed without the defendant completing the indigency application required by the Law Offices of the Public Defender. If not otherwise specified in the Order, the Defendant should submit the application to the Law Offices of the Public Defender within twenty-five (25) days from date the Conditional Order of Appointment is filed. If the Defendant fails to comply with the Order, the court may issue an Order to Show cause and initiate contempt proceedings.

[As adopted by Supreme Court Order No. 12-8300-028, effective for all cases filed on or after January 7, 2013; as amended by Supreme Court Order No. 15-8300-006, effective for all cases pending or filed on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-006, effective December 31, 2015, throughout the form and the committee commentary, changed “Public Defender Department” or “Department” to “Law Offices of the Public Defender”; and under the first signature line, deleted “Magistrate Judge”, “Metropolitan Judge” and “District Judge”, and added “Judge”.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-028, effective January 7, 2013, made the order of appointment contingent upon the determination that defendant is indigent; required the defendant to reimburse the State for legal representation and expenses if the defendant is not indigent; in the title of the rule, deleted "Order" and added "Conditional order"; in the title of the form, added "conditional"; in the second finding, deleted the first paragraph which found that the defendant was indigent, and in the second finding, deleted "the defendant is not indigent, but is unable to obtain counsel" and added the remainder of the paragraph; in the first order, deleted the first paragraph which appointed the Public Defender Department to represent the defendant, deleted the second paragraph which ordered a named contract attorney to represent the defendant, and in the third paragraph, deleted "the defendant shall reimburse the State of New Mexico in an amount of no less than

\$_____ for legal representation and related expenses" and added the remainder of the paragraph; added the second order; and in the last order, in the second paragraph, after "application fee is", deleted "required" and added "not waived".

The 1996 amendment, effective January 1, 1996, added "THE COURT FINDS THAT" heading and added the alternatives under that heading; added "THE COURT FURTHER FINDS THAT:" heading and deleted "desires counsel" following "indigent" in the second alternative under that heading; substituted "the Public Defender Department is appointed to represent" for "Public Defender shall represent" in the first alternative of the order; substituted "no less than" for "not less than" in the third alternative in the order; and added the "IT IS FURTHER ORDERED THAT" heading and added the alternatives under that heading.

9-403B. Conditional order of appointment; contract defense counsel.

[Section 35-5-8 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ COURT

STATE OF NEW MEXICO

COUNTY OF _____,

v.

No. _____

_____, Defendant.

**CONDITIONAL ORDER OF APPOINTMENT¹
CONTRACT DEFENSE COUNSEL**

This matter having come before the court, the court finds:

(please check appropriate box or boxes)

THE COURT FINDS THAT:

The defendant is incarcerated.

The defendant is not incarcerated.

THE COURT FURTHER FINDS THAT:

The defendant is indigent and unable to obtain counsel.

The defendant is not indigent, but is unable to obtain counsel.

IT IS THEREFORE ORDERED THAT:

The Law Offices of the Public Defender is appointed to represent the defendant in the above-entitled case.

_____, an attorney on contract with the [Law Offices of the Public Defender] [City of _____], shall represent the defendant in the above-entitled case.

The defendant shall reimburse the [State of New Mexico] [City of _____] in an amount of no less than \$ _____ for legal representation and related expenses.

IT IS FURTHER ORDERED THAT:

The application fee is waived.

The application fee is required.

Judge

CERTIFICATE OF MAILING

I certify that I mailed a copy of this order to the above-named defendant at _____ (set forth address), and to the Law Offices of the Public Defender on the _____ day of _____, _____.

Date

(Judge) (Clerk)

USE NOTES

1. This form may be used in municipal courts and in magistrate court jurisdictions where the Law Offices of the Public Defender does not have a physical office and relies on appointed contract attorneys to represent indigent defendants. In jurisdictions where the Law Offices of the Public Defender has a physical office, magistrate courts should use Form 9-403A NMRA.

[Adopted by Supreme Court Order No. 15-8300-006, effective for all cases pending or filed on or after December 31, 2015.]

9-404. Transfer order; insanity defense.

[For use with Magistrate Court Rule 6-501(C) NMRA,
Metropolitan Court Rule 7-501(C) NMRA, and
Municipal Court Rule 8-501(C) NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

TRANSFER ORDER: INSANITY DEFENSE

The defendant has raised the defense of not guilty by reason of insanity at the time of commission of an offense.

I hereby ORDER that the defendant be transferred to the district court for further proceedings.

Judge

(Attach copy of Complaint; any Warrants issued; any Appearance Bond or Bail Bond; Order Specifying Conditions of Release; all pleadings, including any record of proceedings made by the Court; and any exhibits.)

[As amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-023, effective February 1, 2019, removed the provision related to the mental competency of the

defendant to stand trial, and made citation revisions to conform with amendments to related rules; in the heading, added "insanity defense"; in the "for use with" language, changed "6-507" to "6-501(C)", changed "7-507" to "7-501(C)", and changed "8-507" to "8-501(C)"; in the form title, added "INSANITY DEFENSE"; after "defendant", deleted "having entered a plea" and added "has raised the defense" and "at the time of commission of an offense"; and deleted "An issue having been raised as to the mental competency of the defendant to stand trial."

9-404A. Order on motion for competency evaluation; transfer.

[For use with Magistrate Court Rule 6-507.1 NMRA and Municipal Court Rule 8-507.1 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

**ORDER ON MOTION FOR COMPETENCY EVALUATION
[AND TRANSFERRING CASE]**

The Court, having considered the motion for competency evaluation [and the response in opposition] and being otherwise fully advised in the premises, FINDS and CONCLUDES:

1. An issue as to the defendant's competency to stand trial has been raised by motion of:

the defense.

the prosecution.

the court.

2. A hearing on the motion:

was held.

was not held.

3. The parties:

stipulate that this case should be transferred to the district court for a competency determination.

do not stipulate that this case should be transferred to the district court for a competency determination.

4. The motion:

is based on a good faith belief that the defendant may not be competent to stand trial.

is not based on a good faith belief that the defendant may not be competent to stand trial.

5. The motion:

is not advanced for purposes of delay.

is advanced for purposes of delay.

6. The court FINDS:

The motion IS supported by a reasonable belief that the defendant may not be competent to stand trial based upon the following:

The facts alleged in the motion for a competency evaluation, which are

set forth in the written motion and incorporated herein;
or

described as follows:

_____;

The court's observations of the defendant, described as follows: _____

_____;

Other:

_____.

OR

The motion IS NOT supported by a reasonable belief that the defendant may not be competent to stand trial.

7. It is ORDERED that the proceedings in this case:

shall be suspended, and this case shall be transferred to the district court for a determination of competency; or

shall not be transferred to the district court because the allegations are insufficient to demonstrate a reasonable belief that the defendant may not be competent to stand trial.

Judge

Attorney for the State

Attorney for the defendant

USE NOTES

1. Although the ultimate determination of the defendant's competency to stand trial is made by the district court, the magistrate or municipal court should determine, prior to transferring a case to district court, whether the factual allegations of incompetency are sufficient to demonstrate a reasonable belief that the defendant may not be competent to stand trial. See Rule 6-507.1 NMRA; Rule 8-507.1 NMRA.

2. A defendant is competent to stand trial if the defendant (1) has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding, (2) has a rational as well as factual understanding of the proceedings against him or her, and (3) has the capacity to assist in his or her own defense and to comprehend the reasons for punishment See *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691; see also UJI 14-5104 NMRA.

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

9-405. Waiver of arraignment - Entry of plea of not guilty.

[For use with District Court Rule 5-303 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

WAIVER OF ARRAIGNMENT¹

ENTRY OF PLEA OF NOT GUILTY

I understand that I am charged with the following criminal offense or offenses under the law of the State of New Mexico: _____ (*list all offenses charged*).

I understand that I am entitled to personally appear before the district court and enter my plea to the crime or crimes charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I further understand that: I have a right to trial by jury; I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the state compel witnesses of my choosing to appear and testify; I have a right to remain silent and that any statement made by me may be used against me; I have a right to trial by jury and that all jurors must agree on my guilt of the crime charged beyond a reasonable doubt for me to be found guilty.

After reading and understanding the above, I hereby give up my right to personally appear before the district court for arraignment and I hereby enter a plea of not guilty to all criminal offenses charged in the above-styled cause.

I understand that any conditions of release previously imposed remain in effect.

I further understand that the district court may impose additional conditions of release, and, if no conditions of release have been previously set, the district court may impose conditions of release and may require me to attend a hearing to address conditions of release.

Date

Name of Defendant

I have explained to the defendant the defendant's right to personally appear before the district court to enter a plea of not guilty and to have the defendant's rights explained to the defendant by the judge and I am satisfied that the defendant understands the waiver of this right.

I certify that I served a copy of this waiver on opposing counsel. I also certify that:

if conditions of release were previously imposed, a copy of the order imposing those conditions of release is attached to this waiver; or

the parties have entered into a stipulated order setting conditions of release, which is attached to this waiver for the court's approval; or

the parties request a hearing to consider conditions of release.

Date

Defense counsel

ADDITIONAL PROVISIONS²

- Defendant shall appear on _____ to review conditions of release.
- Release on personal recognizance. It is ordered that the defendant be released without bail on the defendant's promise to appear and subject to the conditions checked below.
- Third party custody release to:_____.
- Bond is continued as set in Magistrate Court and shall be transferred to District Court.
- Bond is set in the sum of: _____dollars (\$), and the defendant and their sureties will execute a bond binding them to pay the State of New Mexico the amount set in the event that the defendant fails to appear as required. The bond shall be posted in the manner indicated below:
 - Secured by signature – by the defendant and their sureties.
 - Cash only - the posting of the entire amount of the bond set.
 - Corporate surety – the posting of a security for the full amount by a certified and approved bonding company.
 - 10% cash deposit – the deposit of not more than 10% of the bond in cash into the court registry.
 - Property – the posting of unencumbered real estate to cover the amount of the bond.
 - Defendant must contact their attorney _____ (*frequency, e.g., weekly*).
- Pre-trial conference date is: _____.
- Docket call date is: _____.
- Trial date is: _____.
- Defendant must sign Waiver of Extradition.
- Defendant is not to leave the jurisdiction of the court.
- Defendant is not to consume any alcoholic beverages or non-prescription drugs.

- Defendant is not to have contact with any co-defendants, victims or any witnesses.
- Defendant is to obey all law of the United States and the State of New Mexico.
- Defendant is to be booked at _____ county detention center and released.
- Other:_____.

Date

District Judge

USE NOTES

1. This waiver must be served on the state in time for the state to notify victims and others that an arraignment will not be held. This waiver shall not be filed and is not effective unless signed by the district court judge.

2. If the court decides to impose new or additional conditions of release prior to accepting the waiver of arraignment, the court shall issue a notice of hearing to all parties to address conditions of release.

[As amended, effective September 1, 2005; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, added the certificate of service by defense counsel, the additional certificate of defense counsel and added the court order at the end of the form that has been designated as "Additional Provisions²".

The 2005 amendment, approved by Supreme Court Order No. 05-8300-012, effective September 1, 2005, deleted the requirement that a district judge approve a waiver of arraignment by the defendant.

9-405A. Waiver of first appearance.

[For use with Magistrate Court Rule 6-501 NMRA, and Metropolitan Court Rule 7-501 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]

v.

_____, Defendant

WAIVER OF FIRST APPEARANCE

*(For cases not within magistrate or
metropolitan court trial jurisdiction)*

I understand that I am charged with the following criminal offense or offenses under the law of the State of New Mexico: *(list all offenses charged)* _____

I understand that I am entitled to personally appear before the [magistrate]
[metropolitan] court to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I understand that entry of a plea agreement may have an effect upon my immigration or naturalization status, as well as my legal rights and personal opportunities, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of a plea agreement.

(Domestic violence or felony cases only) I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978], and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I further understand that: I have a right to bail; I have a right to trial by jury; I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have the right to remain silent and understand that any statement made by me may be used against me; and I have a right to a preliminary hearing.

After reading and understanding the above, I hereby give up my right to personally appear before the above court for a first appearance to have my rights explained and bail set or reviewed.

Name of Defendant

Date

I have explained to the defendant his right to personally appear before the above court and have his rights explained to him by the judge and I am satisfied that he understands the waiver of this right.

Defense Counsel

Date

[Approved effective September 1, 1990; as amended by Supreme Court Order No. 07-8300-030, effective December 15, 2007.]

ANNOTATIONS

The 2007 amendment, approved by Supreme Court Order No. 07-8300-030, effective December 15, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, See Civil Form 4-970 NMRA.

9-405B. Waiver of arraignment; entry of plea of not guilty.

[For use with Magistrate Court Rule 6-501 NMRA and Municipal Court Rule 8-501 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

v.

No. _____

_____, Defendant.

**WAIVER OF ARRAIGNMENT¹
ENTRY OF PLEA OF NOT GUILTY**

*(For cases within magistrate or
municipal court trial jurisdiction)*

I understand that I am charged with the following criminal offense or offenses under the law of the State of New Mexico: _____ (*list all offenses charged*).

I understand that I am entitled to personally appear before the court and enter my plea to the crime or crimes charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint or citation, which I have read and had explained to me by defense counsel, if any. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I further understand that: I have a right to bail; I have a right to the assistance of an attorney at all stages of the proceeding, and that I may be entitled to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the prosecution compel witnesses of my choosing to appear and testify; I have a right to remain silent and that any statement made by me may be used against me; I have a right to trial before a judge or jury; and that the prosecution must prove my guilt of the crime charged beyond a reasonable doubt for me to be found guilty.

After reading and understanding the above, I hereby give up my right to personally appear before the court for arraignment and I hereby enter a plea of not guilty to all criminal offenses charged in the above-styled cause.

I understand that any conditions of release previously imposed remain in effect.

I further understand that the court may impose additional conditions of release, and, if no conditions of release have been previously set, the court may impose conditions of release and may require me to attend a hearing to address conditions of release.

Date

Name of Defendant

(To be completed by the defendant's attorney, if any)

I have explained to the defendant the defendant's right to personally appear before the court to enter a plea of not guilty and to have the defendant's rights explained to the defendant by the judge, and I am satisfied that the defendant understands the waiver of this right.

I certify that I served a copy of this waiver on opposing counsel. I also certify that:

[] if conditions of release were previously imposed, a copy of the order imposing those conditions of release is attached to this waiver; or

[] the parties have entered into a stipulated order setting conditions of release, which is attached to this waiver for the court's approval; or

[] the parties request a hearing to consider conditions of release.

Date

Defense counsel

Date

Judge

USE NOTES

This waiver must be served on the state in time for the state to notify victims and others that an arraignment will not be held. This waiver shall not be filed and is not effective unless signed by the judge.

[Adopted by Supreme Court Order No. 15-8300-006, effective for all cases pending or filed on or after December 31, 2015.]

9-406. Guilty plea proceeding.

[For use with District Court Rule 5-303 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant.

GUILTY PLEA PROCEEDING

The defendant personally appearing before me, I have ascertained the following facts, noting each by initialing it.

*Judge's
Initial*

- _____ 1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
- _____ 2. That the defendant understands the range of possible sentences for the offenses charged, including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows:_____.
- _____ 3. That the defendant understands the following constitutional rights which the defendant gives up by pleading guilty:
 - _____ (a) the right to trial by jury, if any;
 - _____ (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
 - _____ (c) the right to confront the witnesses against him and to cross-examine them as to the truthfulness of their testimony;
 - _____ (d) the right to present evidence on his own behalf, and to have the state compel witnesses of his choosing to appear and testify;
 - _____ (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.
- _____ 4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.
- _____ 5. That there exists a basis in fact for believing the defendant is guilty of the offenses charged and that an independent record for such factual basis has been made.
- _____ 6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms. (*Indicate "NONE" if a plea agreement has not been signed.*)
- _____ 7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
- _____ 8. That under the circumstances, it is reasonable that the defendant plead guilty.
- _____ 9. That the defendant understands that a plea of guilty or no contest may have an effect upon the defendant's immigration or naturalization status, and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.
- _____ 10. (*Domestic violence or felony cases only.*) That the defendant understands that a plea of guilty or no contest for a crime of domestic violence or felony will affect the defendant's constitutional right to bear arms, including shipping, receiving,

possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

- _____ 11. That, if the defendant is represented by counsel and the defendant has entered a plea of guilty or no contest to a crime for which registration as a sex offender is or may be required, the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act [Section 29-11A-1 NMSA 1978].

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads guilty to the above charges and accept such plea. A copy of this affidavit shall be made a part of the record in the above-styled case.

District Judge

Date

CERTIFICATE BY DEFENDANT

I certify that the judge personally advised me of the matters noted above, that I understand the constitutional rights that I am giving up by pleading guilty and that I desire to plead guilty to the charges stated.

Defendant

I have conferred with my client with reference to the execution of this certificate and I have explained to my client its contents in detail.

Defense Counsel

USE NOTES

For use in the district court when there is no plea and disposition agreement.

[As amended, effective September 1, 1990; withdrawn, effective May 1, 1998; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in Paragraph 2, after "sentences for the offenses charged", added "including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows" and deleted "from a suspended sentence to a maximum of"; and deleted all references to "guilty but mentally ill".

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised paragraph 9 relating to immigration and added paragraphs 10 and 11.

The 1998 amendment, effective May 1, 1998, deleted "6-502, 7-502, 8-502" following "5-303" in the caption of the form; substituted "trial" for "all stages of the proceeding" in item 3(b); and rewrote the defense counsel certification.

The 1990 amendment, effective for cases filed on or after September 1, 1990, substituted "the defendant" for "he" in Facts 3, 3(b), and 4; substituted "the right" for "his right" in Facts 3(a) through 3(e); inserted "is" preceding "(guilty)" in Fact 5; added Fact 9; and substituted "such plea" for "his plea" at the end of the next-to-last sentence.

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, see Civil Form 4-970 NMRA.

Retroactive application of *State v. Paredaz*. — The holding of *State v. Paredaz*, 2004-NMSC-036, 136 N.M. 533, 101 P.3d 799, that a criminal defense attorney who represents a noncitizen client must advise that client of the specific immigration consequences of pleading guilty to pending charges and that an attorney's failure to do so will be ineffective assistance of counsel if the client was prejudiced applies retroactively to 1990 when New Mexico rules and forms were amended to require attorneys to advise their client about the possible immigration consequences of a guilty plea. *Ramirez v. State*, 2014-NMSC-023, *aff'g* 2012-NMCA-057, 278 P.3d 569.

Where in 1997, petitioner pleaded guilty to misdemeanors; in 2009, petitioner learned that the guilty pleas rendered petitioner inadmissible to the United States; petitioner's attorney never advised petitioner about any immigration consequences of petitioner's guilty pleas; had petitioner known about the immigration consequences of petitioner's guilty pleas, petitioner would not have pleaded guilty; and petitioner sought to vacate the guilty pleas on the basis of ineffective assistance of counsel, petitioner had a viable claim for withdrawal of petitioner's 1997 guilty pleas based on ineffective assistance of counsel. *Ramirez v. State*, 2014-NMSC-023, *aff'g* 2012-NMCA-057, 278 P.3d 569.

Judicial inquiry of potential immigration consequences. — An effective judicial inquiry into a defendant's actual understanding of immigration consequences may require more than asking the defendant whether he understands the potential immigration consequences, but should inquire of the defendant and his attorney, on the record, whether the two discussed the potential immigration consequences and what defendant's actual understanding of those consequences is. *State v. Favela*, 2015-NMSC-005, *aff'g* 2013-NMCA-102, 311 P.3d 1213.

Where defense attorney failed to advise defendant, who was a Mexican national, of the specific immigration consequences of pleading guilty to aggravated battery and driving under the influence of alcohol, the New Mexico supreme court held that the advisement

by the judge of the immigration consequences of the defendant's guilty plea cannot, by itself, cure the prejudice created by the defense attorney's deficient performance, and therefore defense attorney provided ineffective assistance of counsel. *State v. Favela*, 2015-NMSC-005, *aff'g* 2013-NMCA-102, 311 P.3d 1213.

No mention is made of conditional discharge or deferred sentencing in this form. *Vigil v. New Mexico Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

9-406A. Guilty plea or no contest plea proceeding.

[For use with Magistrate Court Rule 6-502 NMRA, Metropolitan Court Rule 7-502 NMRA and Municipal Court Rule 8-502 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

GUILTY PLEA OR NO CONTEST PLEA PROCEEDING¹

The defendant personally appearing before me, I have ascertained the following facts:

1. That the defendant understands the charges set forth in the complaint and agrees to plead [guilty] [no contest] to the following charges:

_____.

2. That the defendant understands the range of possible sentences for the offense charged, including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows:

_____.

3. That, if pleading no contest, the defendant has been advised and understands that a plea of no contest has the same effect as a plea of guilty in this court.

4. That the defendant has been advised and understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:

- (a) the right to trial;
- (b) the right to trial by jury, if any²;
- (c) the right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
- (d) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
- (e) the right to present evidence and to have the court compel witnesses to appear and testify;
- (f) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt;
- (g) the right to appeal the conviction.

5. That the defendant wishes to give up those constitutional rights of which the defendant has been advised.

6. That there is a factual basis for the plea.

7. That the plea is voluntary and not the result of force, threats or promises (*other than a plea agreement*).

8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].

9. That the defendant understands that a plea of guilty or no contest may have an effect upon the defendant's immigration or naturalization status, as well as the defendant's legal rights and personal opportunities, and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.

(For use only in Magistrate and Metropolitan Court.)

10. (*Domestic violence cases only.*) That the defendant understands that a plea of guilty or no contest for a crime of domestic violence will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

(For use only in Magistrate and Metropolitan Court.)

11. That, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978].

The judge advised me of the matters noted above. I understand the constitutional rights that I am giving up and plead [guilty] [no contest] to the charges specified above.

Date

Defendant

I certify that prior to the defendant's entry of a plea of guilty or no contest in this case³:

I have discussed this case with my client in detail and I have advised my client of my client's constitutional rights and all possible defenses.

I explained the consequences of a plea of guilty or a plea of no contest.

In my opinion the plea of [guilty] [no contest] was voluntarily and understandingly made.

Date

Attorney for defendant

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the specified charges and accept such plea.

Date

Judge

USE NOTES

1. This form is to be used if the defendant may be incarcerated in jail. This form may be used in all cases in which the defendant is charged with a domestic violence offense, a battery, a violation of substance abuse laws, driving while under the influence or with an offense which has a mandatory minimum jail term.

2. 4(b) is not applicable to municipal court and may be eliminated because there is no right to a trial by jury in municipal court.

3. To be completed if the defendant has not signed a written waiver of counsel.

[Adopted, effective September 1, 1990; May 1, 1997; May 15, 2003; as amended by Supreme Court Order No. 07-8300-030, effective December 15, 2007; as amended by Supreme Court Order No. 08-8300-048, effective December 31, 2008; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in Paragraph 2, after "sentences for the offense charged", deleted "a mandatory minimum of _____ and up to a maximum of _____", and added "including any mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements as follows".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-048, effective December 31, 2008, added the phrase "or no contest plea" to the title of the rule; added the phrase "OR NO CONTEST PLEA" to the title; in Paragraph 10, deleted the phrase "or felony" following the phrase "domestic violence"; and in Paragraph 11, changed the citation to the Sex Offender Registration and Notification Act from "29-11A-1 NMSA" to "Sections 29-11A-1 through 29-11A-10 NMSA 1978".

The 2007 amendment, approved by Supreme Court Order No. 07-8300-030, effective December 15, 2007, added paragraph 3 relating to no contest pleas; renumbered paragraphs 3 through 8 as paragraphs 4 through 9; revised paragraph 9 relating to the consequences of a plea on the defendant's immigration status; added paragraphs 10 and 11 relating to the consequences of a plea in domestic violence and sex offender cases; and deleted the last sentence of use note 1 that prohibited the use of this form when there is a written plea agreement.

The 2003 amendment, effective May 15, 2003, deleted "(jail sentence to be imposed)" following the title of the form; in the second numbered paragraph, inserted "a mandatory minimum of _____ and" following "the offense charged"; in the eighth numbered paragraph, substituted "including immigration or naturalization, and the defendant's legal rights and personal opportunities" for "or rights" following "legal status"; following the eighth numbered paragraph, deleted language concerning the alternatives of plea agreements and conditional pleas; transferred the sentence concerning the judge's conclusion from above the attorney's certification to below it, and rewrote the first use note.

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, see Civil Form 4-970 NMRA.

No mention is made of conditional discharge or deferred sentencing in this form. *Vigil v. New Mexico Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

9-407. Plea of no contest.

[For use in the Magistrate Court,
Metropolitan Court and Municipal Court]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

PLEA OF NO CONTEST

The defendant in the above-styled cause hereby enters an appearance in the above-styled cause and enters a plea of no contest on the following understandings, terms and conditions:

1. that he has a right to trial and gives up this right;
2. that he has a right to be represented by an attorney and gives up this right;
3. that he has a right to present evidence in his own behalf and have the City compel witnesses of his choosing to appear and testify and gives up this right;

The defendant understands that a plea of NO CONTEST has the same effect as a plea of guilty in this court.

The defendant hereby enters a plea of NO CONTEST and agrees to pay a fine of _____ (\$_____).

Defendant

9-408. Plea and disposition agreement.

[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO

_____ COUNTY

_____ JUDICIAL DISTRICT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant.

DOB: _____

SSN: _____

PLEA AND DISPOSITION AGREEMENT¹

The State of New Mexico and the defendant hereby agree to the following disposition of this case:

Plea:

The defendant agrees to plead [guilty] [no contest] to the following offenses: _____
_____.

Terms:

This agreement is made subject to the following conditions:

[1. **Agreement as to sentence.** That the following disposition will be made of the charges: _____]²

[1. **No agreement as to sentence.** There are no agreements as to sentencing. The mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements are as follows: _____

(set forth possible penalties).]

2. **Additional charges.** The following charges will be dismissed, or if not yet filed, shall not be brought against the defendant³: _____
_____.

[3. **Restitution.** The defendant agrees to pay restitution as follows: _____

- 4. **Effect on charging document.** That this agreement, unless rejected or withdrawn, serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

- 5. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, the defendant gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement. The defendant waives the right to appeal the conviction that results from the entry of this plea agreement.

- 6. **Withdrawal permitted if agreement rejected.** If after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(Domestic violence or felony cases only.) I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register. [] *(check here if inapplicable)*

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury, to confront, cross-examine and compel the attendance of witnesses and my privilege against self-incrimination.

I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

Date

Defendant

DEFENSE COUNSEL REVIEW

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and possible defenses.

Defense counsel

Date

PROSECUTOR REVIEW

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor

Date

DISTRICT COURT APPROVAL

The defendant personally appearing before me and I have concluded as follows:

1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
2. That the defendant understands the range of possible sentences for the offenses charged, from probation to a maximum of _____.

3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:

- (a) the right to trial by jury, if any;
- (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
- (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
- (d) the right to present evidence on the defendant's own behalf, and to have the state compel witnesses of the defendant's choosing to appear and testify;
- (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.

4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.
5. That there exists a basis in fact for believing the defendant [is guilty of] [committed] the offenses charged and that an independent record for such factual basis has been made.
6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.
7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].
9. That the defendant understands that a conviction may have an effect upon the defendant's immigration or naturalization status and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.
10. That the defendant understands that a conviction may require the defendant to register as a sex offender under the Sex Offender Registration and Notification Act and that if the defendant is represented by counsel, the defendant has been advised by counsel of the requirement to register.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.

District Judge

Date

USE NOTES

1. This form is used instead of Form 9-406 NMRA if there is a plea agreement. This form is not used for conditional plea. See Criminal Form 9-408C NMRA if there is a conditional plea.

2. If the plea agreement is not made in exchange for a guaranteed, specific sentence, this paragraph should state as follows: "The State agrees to recommend the following sentence _____ – or agrees not to oppose the defendant's request for a particular sentence, and the defendant understands that the court is not bound to those recommendations or requests and may sentence the defendant to a more unfavorable disposition."

3. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

[As amended, effective September 1, 1990; May 1, 1998; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in the part of the pleading entitled "Plea and Disposition Agreement", in the subdivision entitled "Plea", in the sentence, after "plead [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; in the subdivision entitled "Terms" in the first paragraph, in Paragraph 1, entitled "No agreement as to sentence", in the second sentence, deleted "maximum penalties for these charges" and added "mandatory minimum penalties, maximum possible penalties, and possible sentence enhancement", after "are", added "as follows", and at the end of the second sentence, in the parentheses after "set forth", deleted "maximum" and added "possible", in the fourth paragraph, at the end of the paragraph, added "[] (check here if applicable)", and in the fifth paragraph, in the second sentence, after "pleading [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; in the part of the form entitled "District Court Approval", in Paragraph 3, in the introductory sentence, after "pleading [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]", in Paragraph 8, after "plead [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]", and in the last unnumbered paragraph, after "pleads [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; and in the Use Note, in Paragraph 2, deleted the former sentence which stated "Use appropriate alternative" and added the current sentence, deleted former Paragraph 3 which provided an example of a description of maximum penalties, and renumbered former Paragraph 4 as Paragraph 3.

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised the form to include in the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

The 1998 amendment, effective May 1, 1998, rewrote the form.

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, see Civil Form 4-970 NMRA.

Plea agreements will be specifically enforced. — Where defendant entered into three plea agreements in which the state agreed that defendant would serve zero to nine years of incarceration, supervised probation, treatment program, or a combination thereof and that the sentences in each case would be served concurrently with each other; and the district court accepted the plea agreements and sentenced defendant to

twenty-one years in prison, with sixteen years suspended, for an actual prison term of five year, plus five years of supervised probation, the sentence violated the terms of the plea agreements, because the suspended sentence allowed for the possibility that defendant could actually serve more than nine years in prison and defendant was entitled to specific performance of the plea agreements. *State v. Gomez*, 2011-NMCA-120, 267 P.3d 831.

Plea agreement provided for a specific sentence. – Where the plea agreement provided for a maximum sentence of forty years and the court accepted the plea, the plea agreement constituted a promise, not a recommendation, for a sentence within a particular range that the court was bound to enforce and the imposition of a forty-two year sentence, nine of which were suspended, violated the sentence cap in the plea agreement. *State v. Miller*, 2012-NMCA-051, 278 P.3d 561, cert. granted, 2012-NMCERT-005.

Plea agreement for a maximum sentence "at initial sentencing". — Where the plea agreement provided for a maximum sentence of forty years "at initial sentencing", the phrase "at initial sentencing" did not transform the limit on sentencing into a limit on the initial period of incarceration because the sentence could not be increased at a later date and the court's sentence of forty-two years imprisonment, nine of which were suspended, violated the plea agreement. *State v. Miller*, 2012-NMCA-051, 278 P.3d 561, cert. granted, 2012-NMCERT-005.

Strict adherence to form not required. — Failure to utilize the form set out in this rule did not invalidate a guilty plea where there were adequate indicia that the plea was knowing and voluntary. *State v. Jonathan B.*, 1998-NMSC-003, 124 N.M. 620, 954 P.2d 52, cert. denied, 525 U.S. 865, 119 S. Ct. 155, 142 L. Ed. 2d 127 (1998).

Judicial inquiry of potential immigration consequences. — An effective judicial inquiry into a defendant's actual understanding of immigration consequences may require more than asking the defendant whether he understands the potential immigration consequences, but should inquire of the defendant and his attorney, on the record, whether the two discussed the potential immigration consequences and what defendant's actual understanding of those consequences is. *State v. Favela*, 2015-NMSC-005, *aff'g* 2013-NMCA-102, 311 P.3d 1213.

Where defense attorney failed to advise defendant, who was a Mexican national, of the specific immigration consequences of pleading guilty to aggravated battery and driving under the influence of alcohol, the New Mexico supreme court held that the advisement by the judge of the immigration consequences of the defendant's guilty plea cannot, by itself, cure the prejudice created by the defense attorney's deficient performance, and therefore defense attorney provided ineffective assistance of counsel. *State v. Favela*, 2015-NMSC-005, *aff'g* 2013-NMCA-102, 311 P.3d 1213.

9-408A. Plea and disposition agreement.

[For use with Magistrate Court Rule 6-502 NMRA,
Metropolitan Court Rule 7-502 NMRA, and
Municipal Court Rule 8-502 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

DOB: _____

S.S.#: _____

PLEA AND DISPOSITION AGREEMENT

The prosecution and the defendant hereby agree to the following disposition of this case:

Plea:

The defendant agrees to plead [guilty] [no contest] to the following offenses: _____

Terms:

On the following understandings, terms, and conditions:

[1. **Agreement as to sentence.** That the following disposition will be made of the charges: _____] ¹

[1. **No agreement as to sentence.** There are no agreements as to sentencing. The mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements are as follows: _____

(set forth possible penalties).]

2. **Dismissed or additional charges.** That the prosecution will dismiss the following charges: _____

The following charges are not yet filed and will not be filed against the defendant:

_____ ²

3. **New charges.** The complaint is hereby amended to add the following charges against defendant: _____

4. **Effect on charging document.** That this agreement, unless rejected or withdrawn, serves to amend the complaint to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

5. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, that the defendant hereby gives up any and all motions, defenses, objections, or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement.

6. **Withdrawal permitted if agreement rejected.** That, if after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement shall be null and void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury if I am entitled to a jury,³ to confront, cross-examine, and compel the attendance of witnesses, my privilege against self-

incrimination, and my right to appeal my conviction. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this agreement, I am granted probation, a suspended sentence, or a deferred sentence by the court, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, as well as my legal rights and personal opportunities, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(For use only in Magistrate and Metropolitan Court.)

(Domestic violence cases only.) I understand that an entry of a plea for a crime of domestic violence will affect my constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

(For use only in Magistrate and Metropolitan Court.)

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act (Sections 29-11A-1 through 29-11A-10 NMSA 1978), and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

(Check and complete if applicable.)

Conditional plea

[] I understand that the plea of guilty that I have entered is conditioned upon my appeal. If I file an appeal on the issue of _____ (*describe pre-trial motion upon which appeal will be based*) and I win my appeal on this issue I may withdraw my plea.

Date

Defendant

I have discussed this case with my client in detail and I have advised my client of my client's constitutional rights and all possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date

Defense Counsel

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date

Prosecutor

Approved: _____

Judge

USE NOTES

1. If the plea agreement is not made in exchange for a guaranteed, specific sentence, this paragraph should state as follows: "The State agrees to recommend the following sentence _____ – or agrees not to oppose the defendant's request for a particular sentence, and the defendant understands that the court is not bound to those recommendations or requests and may sentence the defendant to a more unfavorable disposition."

2. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

3. The list of rights the defendant is giving up may exclude the right to a trial by jury in municipal court.

[Adopted, effective May 1, 1997; as amended May 15, 2003; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; by Supreme Court Order No. 08-8300-048, effective December 31, 2008; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010; as amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-020, effective December 31, 2013, changed the form into a generic form for state, county, and city prosecutions; restated in a new sentence the former provision that charges not yet filed will not be filed; provided for the amendment of the complaint to add new charges; in the first sentence of the form, after "The", deleted "[state] [county] [city]" and added "prosecution"; in Paragraph 2, in the title, added "Dismissed or", in the first sentence, after "That", deleted "the following charges will be dismissed, or if not yet filed, shall not be brought against the defendant" and added "the prosecution will dismiss the following charges", and added the second sentence; added Paragraph 3; in the third sentence of the last unnumbered paragraph, after "my right to a trial by jury", added "if I am entitled to a jury"; and deleted the former date line next to the signature line for the judge.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in the subdivision entitled "Terms", added the paragraph headings in Paragraphs 1 through 5, and added Paragraph 1 entitled "No agreement as to sentence"; and in the Use Note, added Paragraphs 1 through 2 and renumbered former Paragraph 1 as Paragraph 3.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-048, effective December 31, 2008, in the first provision for use only in Magistrate or Metropolitan Court, deleted the phrase "or felony" following the phrase "domestic violence"; in the second provision for use only in Magistrate or Metropolitan Court, changed the citation to the Sex Offender Registration and Notification Act from "29-11A-1 NMSA" to "Sections 29-11A-1 through 29-11A-10 NMSA 1978"; and at the end of the second provision for use only in Magistrate or Metropolitan Court, deleted the phrase "For use only in on the record cases in the Metropolitan Court".

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

The 2003 amendment, effective May 15, 2003, following the fifth numbered paragraph, deleted the two statements concerning conditional pleas; substituted the present sentence concerning immigration or naturalization for the former sentence which read "I understand that a conviction may have an effect upon my immigration or naturalization status" and deleted the use note that read "plea and disposition agreements should not be used to close the original case and to open another case".

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, see Civil Form 4-970 NMRA.

9-408C. Conditional plea.

[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant.

CONDITIONAL PLEA

I, _____ (*name of defendant*), with the approval of the court, am entering a plea of [guilty] [no contest] to _____.

The maximum penalties for the above charges are (*set forth offense and statutory sentence*):

Count 1. _____

Count 2. _____

Count 3. _____

I understand my plea is conditioned upon the filing of an appeal on the issue of _____ (*describe pretrial motion upon which appeal will be based*).

I understand that, if the judge approves my plea of [guilty] [no contest], a judgment and sentence will be entered and that I may appeal on the issue specified above in the manner provided by the Rules of Appellate Procedure.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest].

I understand that a conviction may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(Domestic violence or felony cases only.)

I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that a conviction may require me to register as a sex offender under the Sex Offender Registration and Notification Act [Sections 29-11A-1 to -10 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine,

and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

Date

Defendant

DEFENSE COUNSEL REVIEW

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and possible defenses.

Defense counsel

Date

PROSECUTOR APPROVAL

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor

Date

Approved:

District Judge

[Adopted, effective January 15, 1998; as amended by Supreme Court Order No. 07-8300-029, effective December 10, 2007; by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in the first paragraph, after "plea of [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; in the fourth paragraph, after "plea of [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; in the fifth paragraph, after "plea of [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]"; and in the last paragraph, in the second sentence, after "pleading [guilty] [no contest]", deleted the brackets and "[guilty but mentally ill]".

The 2007 amendment, approved by Supreme Court Order No. 07-8300-029, effective December 10, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

Cross references. — For a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922, see Civil Form 4-970 NMRA.

Preferred procedure for appeal to Court of Appeals after conditional plea is entered in magistrate court is for the district court to issue a final and appealable order dismissing the appeal or to issue an order granting the motion to suppress. *State v. Celusniak*, 2004-NMCA-070, 135 N.M. 728, 93 P.3d 10.

9-409. Motion for production.

[For use with Magistrate Court Rule 6-504,
Metropolitan Court Rule 7-504 and
Municipal Court Rule 8-504]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

MOTION FOR PRODUCTION

_____ (*Prosecutor*) (*Defendant*) asks the Court to order that the other party produce for inspection and copying the following items of evidence:

Request has been made of the other party and the other party has failed to produce the evidence.

This inspection and copying is necessary in the preparation for trial of this case because

_____, _____
(Prosecutor) (Defendant)

(A copy of this must be mailed or delivered to the other party or attorney for the other party.)

9-409A. Motion to compel discovery.

[For use with Magistrate Court Rule 6-504 NMRA
and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

MOTION TO COMPEL DISCOVERY

The [defendant] [prosecution] has previously requested the following discovery
_____ *(provide description)* and the [defendant] [prosecution] failed to
provide the discovery.

The [defendant] [prosecution] requests the court to:

order the [defendant] [prosecution] to produce the discovery or inspection of
materials not previously disclosed.

grant a continuance of the trial setting on _____ *(date)* to allow
the completion of discovery;

_____ *(describe other relief)*.

I acknowledge that the filing of this motion does not diminish my continuing duty to fully
comply with the pretrial scheduling order or rules of procedure.

Date: _____

[Prosecutor] [Defendant]

[Approved by Supreme Court Order No. 07-8300-025, effective November 1, 2007.]

ANNOTATIONS

Cross references. — For subpoenas in the Metropolitan Court, see Rule 7-606 NMRA.

For order of production, see Criminal Form 9-410 NMRA.

9-410. Order for production.

[For use with Magistrate Court Rule 6-504 NMRA,
Metropolitan Court Rule 7-504 NMRA and
Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

ORDER FOR PRODUCTION

It appearing to the court that the defendant has requested production of certain tangible evidence in the possession of or available to the prosecution and that good cause exists therefor;

IT IS ORDERED that the prosecution produce for inspection and copying at _____ (address) at _____ (a.m.) (p.m.) on _____, _____, the following records, papers, documents or other tangible evidence in its possession or available to it:

_____ (describe briefly)

Judge

(If you fail to obey this order you may be held in contempt of this court and punished by fine and imprisonment.)

[As amended, effective January 1, 1996; as amended by Supreme Court Order No. 07-8300-025, effective November 1, 2007.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, substituted the parenthetical at the end for "Failure to obey this order may constitute a contempt of court".

Cross references. — For motion to compel discovery, see Criminal Form 9-409A NMRA.

9-411. Notice of pretrial conference.

[For use with Magistrate Court Rule 6-505 NMRA, Metropolitan Court Rule 7-505 NMRA and Municipal Court Rule 8-505 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

NOTICE OF PRETRIAL CONFERENCE

TO: _____

(Names of parties ordered to appear)

You are ordered to appear for a pretrial conference on the _____ day of _____, _____, at _____ (a.m.) (p.m.), at the _____ court located at _____, at which time the court will consider such matters that may expedite the disposition of the case.

Date

[Judge] [Clerk]

USE NOTES

Each party must be served with a copy of this notice. See Rules 6-209, 7-209 and 8-208 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[As amended, effective January 1, 1995; December 17, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 17, 2001, in the first paragraph under the heading "NOTICE OF PRETRIAL CONFERENCE" substituted "You are ordered to appear for a pretrial conference" for "Please take notice that a pretrial conference will be held in the above entitled action" and deleted "attempt to clarify the pleadings and will" following "court will" and substituted "such matters that may expedite" for "such other matters as may aid in"; and deleted the second paragraph which read "You are hereby ordered to appear at the above time and place"; deleted the "Certificate of Mailing" part of the form; and added the Use Note.

The 1995 amendment, effective January 1, 1995, added the certificate of mailing.

9-412. Certificate of disclosure of information.

[For use with District Court Rules 5-501 and 5-502 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

CERTIFICATE OF DISCLOSURE OF INFORMATION

I hereby certify that all information required to be produced pursuant to Rule 5-501 or 5-502 NMRA has been produced except for the following:¹

I acknowledge that I have a continuing duty to disclose any additional information to which the (*defendant*) (*prosecution*) is entitled under Rule 5-501 or 5-502.

Dated this _____ day of _____, _____

[Prosecutor] [Defendant]

USE NOTES

1. If information is not disclosed pursuant to Paragraph E of Rules 5-501 NMRA, the reason for the failure to disclose such information shall be given by the prosecutor.

9-412A. Certificate of disclosure of information.

[For use with Magistrate Court Rule 6-504 NMRA
and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
_____ COURT

No. _____

STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

CERTIFICATE OF DISCLOSURE OF INFORMATION

I hereby certify that all information required to be produced pursuant to Rule [6-504 NMRA] [7-504 NMRA] [8-504 NMRA] has been produced except for the following:

I hereby certify I have disclosed the witnesses the [prosecution] [defendant] may call to testify at trial and that the status of interviews is as follows:

- no interview requested
- all interviews requested by and scheduled by [defendant] [prosecution]
- all interviews completed
- other _____ (describe).

I acknowledge that I have a continuing duty to disclose any additional information which the [defendant] [prosecution] is entitled to receive under Rule [6-504 NMRA] [7-504 NMRA] [8-504 NMRA].

Date: _____

[Prosecutor] [Defendant]

[Approved by Supreme Court Order No. 07-8300-025, effective November 1, 2007.]

9-412B. Motion to sanction for non-compliance.

[For use with Magistrate Court Rule 6-504 NMRA and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

MOTION TO SANCTION FOR NON-COMPLIANCE

I certify that the [defendant] [prosecution] failed to comply with this court's pretrial scheduling order in a timely manner as follows:

_____.

A motion to compel was filed on _____ (date) with the following results:
_____ (describe results).

Because of the failure to comply the [defendant] [prosecution] requests the court to:

- order the party to provide discovery as requested
- grant a continuance until _____ (date) to allow for the completion of discovery
- prohibit introduction into evidence of the material not disclosed
- enter an order holding _____ (attorney or party) in contempt of court
- _____ (other).

I acknowledge that the filing of this certificate does not diminish my continuing duty to fully comply with the pretrial scheduling order.

Date: _____

[Prosecutor] [Defendant]

[Approved by Supreme Court Order No. 07-8300-025, effective November 1, 2007.]

9-413. Supplemental certificate of disclosure of information.

[For use with District Court Rules 5-501 and 5-502 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

SUPPLEMENTAL CERTIFICATE OF DISCLOSURE OF INFORMATION

I certify that the following information specifically excepted from the original certificate of disclosure of information has been furnished to the [defendant] [prosecution]:

I acknowledge that the filing of this supplemental certificate does not diminish my continuing duty to disclose additional information.

Dated this _____ day of _____, _____

[Prosecutor] [Defendant]

9-414. Order dismissing criminal complaint.

[For use with Magistrate Court Rule 6-506 NMRA,
Metropolitan Court Rule 7-506 NMRA and
Municipal Court Rule 8-506 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

IN THE _____ COURT

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER DISMISSING CRIMINAL COMPLAINT

This matter has come before the Court

[] upon the motion of the defendant that the above-styled cause be dismissed [with prejudice] for failure of the [(state) (city)] [state] [city] to prosecute, and the Court

[finding] finds that the defendant was not responsible for the failure to complete the disposition of the criminal proceeding.

upon the defendant's fulfillment of requirements specified in statute or by court order.

upon oral motion of the prosecution for dismissal of the complaint.

upon _____.

The complaint charges Defendant with _____

_____.

It is hereby ordered that all the charges in the complaint filed in the above-styled cause be dismissed

with prejudice. The complaint may not be refiled.

without prejudice. The complaint may be refiled. If the complaint is refiled, Defendant shall promptly respond to any further communications from the court concerning the refiled charges.

Judge

APPROVED:

Defendant or counsel

Prosecutor

(This form must be signed by the prosecutor if the case is dismissed upon oral motion of the prosecution.)

USE NOTES

1. This form is to be used only when all charges against Defendant are being dismissed. If some are dismissed and others are adjudicated, the court should use a judgment and sentence.

2. If the prosecution files a notice of dismissal, such as Form 9-415 NMRA, the court need not file an order of dismissal. The court may use this form if the prosecution orally moves for dismissal.

3. If the court has granted a motion to suppress, it is “an improper act” to also dismiss the case even when the court anticipates that the prosecution cannot prove its case. *State v. Montoya*, 2008-NMSC-043, ¶ 18, 144 N.M. 458, 188 P.3d 1209. This is “because once some evidence is suppressed, the [prosecution] is entitled to determine, for example, whether to pursue its case with its remaining evidence, dismiss its case with prejudice, or dismiss its case and refile it in district court.” *Id.*

[As amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-020, effective December 31, 2013, changed the form into a generic form for dismissal with or without prejudice; added a checklist of the events that bring the matter to the attention of the court; required a statement of the charges; provided for the dismissal of the complaint with or without prejudice; required the prosecutor to sign the form if the case is dismissed upon oral motion of the prosecution; revised the caption of the case; in the title, after “complaint”, deleted “with prejudice”, in the first sentence of the form, after “This matter”, deleted “having been regularly brought on for hearing” and added “has come before the court”; in the first item in the checklist, after “above-styled cause be dismissed”, deleted “with prejudice” and added the second, third and fourth items in the checklist; added the second sentence, which requires a statement of the charges; added the third sentence, which provides for dismissal with or without prejudice; deleted the former fourth sentence, which provided that the charges were dismissed with prejudice; deleted the former date line next to the signature line for the judge; added the approval signature lines for the defense and prosecution; added the last sentence in parenthesis, which requires the signature of the prosecution when the case is dismissed upon oral motion of the prosecution; and added the Use Note.

9-415. Notice of dismissal – felony and non-felony cases.

[For use with Magistrate Court Rule 6-506 NMRA, Metropolitan Court Rule 7-506 NMRA and Municipal Court Rule 8-506 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

IN THE _____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

NOTICE OF DISMISSAL

The above-captioned case is a

(check applicable alternative)

FELONY CASE

NON-FELONY CASE

The complaint filed in this case is dismissed without prejudice pending further investigation. Criminal charges may be refiled at a later time.

Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this notice was

[mailed by United States mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[faxed by _____ *(name of person who faxed)* to the defendant. The transmission was reported as complete and without error. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ *(date)*.]

[e-mailed by _____ *(name of person who transmitted)* to _____ at _____ *(electronic address of recipient)* which address is on file with the clerk of the Supreme Court. The transmission was successful. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ *(date)*.]

Signature of attorney

Date of signature

If this notice was served by a person other than an attorney, the following must also be completed and filed with the court.

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a copy of this notice of dismissal was served by [mail] [fax] [electronic transmission] as described above on this _____ day of _____, _____.

Signature of person who made service

Subscribed and sworn to before me
this _____ day of _____, _____.

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

This form may be used to dismiss or *nolle prosequi* a felony or non-felony case without prejudice.

[As amended, effective August 1, 1999; as amended by Supreme Court Order No. 13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-020, effective December 31, 2013, changed the form to a generic form for felony and non-felony cases; permitted only a prosecutor to sign the form; revised the caption of the case; after the title of the form, added the checklist for designating the case as a felony or a non-felony case; in the first sentence of the first paragraph, after “without prejudice”, added “pending further investigation” and added the second sentence; under the signature line, after “Prosecutor”, deleted “or complainant”; and in the Use Note, after “nolle prosequi a”, added “felony or” and deleted the former last sentence, which directed the user to use Criminal Form 9-415A NMRA for felony cases.

The 1999 amendment, effective on and after August 1, 1999, rewrote the form, adding the certificate of service and affidavit of service in which notice can be given by fax, email or postage prepaid mail.

9-415A. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 13-8300-020, Form 9-415A NMRA, relating to notice of dismissal for felony cases, was withdrawn effective December 31, 2013. For provisions of former rule, see the 2013 NMRA on *NMOneSource.com*.

9-416. Stipulated discovery order.

[For use with Magistrate Court Rule 6-603 NMRA,
Metropolitan Court Rule 7-603 NMRA and
Municipal Court Rule 8-603 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

STIPULATED DISCOVERY ORDER

The *(state) (city)* and the defendant stipulate to the following order:

1. That should the materials discovered under this order reasonably be calculated to lead to other material which is discoverable evidence, the *(state) (city)* will assist the defendant in obtaining such evidence.
2. All disputed matters not covered by this order will be decided by the court.
3. The *(state) (city)*, through the _____, is ordered to produce:
[] a complete copy of the police report and officer's statement;

a list of all witnesses to be called whose names and addresses do not appear on the police report;

the BAT card;

the defendant's record;

4. The *(state) (city) (police) (county sheriff)* is ordered to produce:

the calibration and maintenance records of the machine used to test defendant's breath for a period of _____ days before and _____ after the date of the offense;

the name and address of the manufacturer of the machine;

the conversion ratio used by the machine;

the date of purchase and the date of initial certification of the machine;

the instrument log for the machine used in defendant's test covering the shift during which the test was given;

any information known about radio frequency testing involving this machine.

IT IS ORDERED THAT:

1. The *(district) (city)* attorney's office send an endorsed copy of this order to the *(state) (city) (police) (county sheriff)* and to defendant's attorney.

2. The *(state) (city) (police) (county sheriff)* schedule an appointment with defendant's attorney within fifteen (15) days after the date of service of this stipulated discovery order.

3. Defendant's attorney shall attend the scheduled appointment or reschedule within three (3) days of notification of the appointment.

4. The *(state) (city)*, through its agencies, is ordered to make available the following items for inspection with copying at defendant's expense.

5. For purpose of the six-month rule, time will run against the party which causes the appointment to be later than three (3) days before the trial setting.

6. The parties comply with the terms of the stipulated discovery order as set forth above.

Judge

The above stipulation and order is hereby agreed to:

(District) (City) Attorney

Attorney for Defendant

Information needed to expedite compliance:

Date of offense: _____

Approximate time: _____

Police report number: _____

BAT instrument no.: _____

Trial setting date: _____

Time: _____

Judge: _____

[Adopted, effective October 1, 1987.]

9-417. Witness list.

[For use with Magistrate Court Rule 6-504, Metropolitan Court Rule 7-504 and Municipal Court Rule 8-504]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

No. _____

[STATE OF NEW MEXICO]

[CITY OF _____]

v.

_____, Defendant

WITNESS LIST

The [prosecution] [defendant] notifies the opposing party that the following potential witnesses may be called to testify at trial.

Name	Address ¹	Tel. No. ¹	Statement ²	
			(yes)	(no)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

EXHIBIT LIST

The [prosecution] [defendant] notifies the opposing party that the following exhibits may be used at trial.

Exhibit ²	Location of exhibit
_____	_____
_____	_____
_____	_____

Signature

Title

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this notice was

[mailed by United States first class mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[faxed by _____ (*name of person who faxed*) document to _____ (*name of recipient*). The transmission was reported as complete and without error. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ (*date*).]

[e-mailed by _____ (*name*) at _____ (*electronic address of recipient*) which address is on file with the clerk of the Supreme Court for

service by electronic mail. The transmission was successful. The time and date of the transmission was _____ [a.m.] [p.m.] on _____ (date).]

[delivered to _____. (If delivered to someone other than the party, describe how service was made.) _____.]⁴

Signature of attorney

Date of signature

If this notice was served by a person other than an attorney, the following must also be completed and filed with the court:

AFFIDAVIT OF SERVICE³

I declare under penalty of perjury that a copy of this paper was served by [mail] [fax] [electronic transmission] as described above on this _____ day of _____, _____.

Signature of person who made service

Subscribed and sworn to before me
this _____ day of _____, _____.

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Provide the address and telephone number to be used to contact the witness. This address may be the address and telephone number of the district attorney or defense counsel.

2. All witness statements and exhibits shall be disclosed and made available for inspection and copying as provided by the rules of criminal procedure. Statements and exhibits are not filed with the court unless entered into evidence.

3. The certificate of service information must also be completed except for the signature lines.

4. In addition to service by mail, fax and e-mail, Rules 2-203 and 3-303 NMRA permit service by delivery to a party by any of the following means:

- (a) handing it to the attorney or to the party;
- (b) leaving it at the attorney's or party's office with a clerk or other person in charge, or, if there is no one in charge, leaving it in a conspicuous place in the office;
- (c) if the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there; or
- (d) placing a copy in a box maintained by the attorney for purposes of serving the attorney.

[Approved, effective December 17, 2001.]

9-418. Scheduling order.

[For use with Magistrate Court Rule 6-505 NMRA, Metropolitan Court Rule 7-505 NMRA and Municipal Court Rule 8-505 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

SCHEDULING ORDER¹

The parties shall comply with the following scheduling order:

1. Motions must be filed by _____ (date)².
2. Discovery must be **completed** by _____ (date).

3. The prosecution shall disclose to the defendant its witnesses and the names, addresses and telephone numbers of its witnesses by _____ (date).
4. The defendant shall disclose to the prosecution the names, addresses and telephone numbers of the defendant's witnesses by _____ (date).
5. The prosecution shall disclose and make available for inspection, copying and photographing its exhibits to defendant no later than _____ (date).
6. The defendant shall disclose and make available for inspection, copying and photographing its exhibits to the prosecution no later than _____ (date).
7. [The parties shall submit their proposed initial jury instructions to the court by _____ (date).]³
8. Any party may request a pretrial conference by filing a written request stating the purpose of the conference.
9. If this case is dismissed or if the parties have agreed on a plea or proposed disposition, the parties shall promptly advise the court.
10. A pretrial conference is scheduled for this case on _____ (date).
11. A motion hearing will be held on _____ (date).
- [12. This matter is set for [jury] [non-jury] trial on _____ (date).]⁴

When this order states that a document shall be disclosed by a certain date, that means that it must be received by the recipient by that date.

If it is brought to the attention of the court that a party has failed to comply with this order, the court may: order such party to permit the discovery or inspection of materials not previously disclosed; grant a continuance; prohibit the party from calling a witness not disclosed; prohibit the party from introducing in evidence the material not disclosed; or enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

Failure to comply with any provision of this order may result in a finding of contempt of court and punished by fine or imprisonment.

Judge

Date of Signature

USE NOTES

1. Use of this form is in the discretion of the judge. This form may be modified as appropriate by the judge. For example, the court may want to require settlement conferences or pretrial conferences or may schedule docket calls. Dates should be in consecutive order.

2. Dates should be calendar dates, not " _____ days after entry of this order", or " _____ days before trial".

3. This paragraph may be used only if a party is represented by an attorney. The parties may submit additional instructions at the close of the evidence.

4. This paragraph and Paragraph 7 have been included for use in the magistrate and metropolitan court if the trial is by jury.

[Approved, effective December 17, 2001.]

ANNOTATIONS

Cross references. — For the disclosure of witnesses, records, papers and documents by the prosecution and defendant, see Rules 6-504, 7-504 and 8-504 NMRA.

For instructions to the jury, see Rules 6-609 and 7-609 NMRA.

ARTICLE 5 Trials

9-501. Notice of [trial] [hearing].

[For use in the Magistrate,
Metropolitan and Municipal Courts]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]
v.

_____, Defendant

NOTICE OF [TRIAL] [HEARING]

TO: _____ Prosecution
_____ Defendant

YOU ARE ordered to appear for [trial] [a hearing] before the Honorable
_____, at the _____ court located at
_____ on the _____ day of _____, _____, at
_____ (a.m) (p.m.).

If you fail to appear a warrant may be issued for your arrest.

Date of this notice:

_____, _____
Date

(Judge) (clerk)

USE NOTES

Each party must be served with a copy of this notice. See Rules 6-209, 7-209 and 8-208 NMRA. See Criminal Form 9-221 NMRA for the certificate of service and affidavit of service.

[As amended, effective January 1, 1995; May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, inserted "[Hearing]" in the form heading and changed the requirement from being notified for trial to ordering to appear for trial or hearing, added the sentence concerning the failure to appear and added the Use Note.

The 1995 amendment, effective January 1, 1995, added the certificate of mailing.

9-502. Waiver of trial by jury - Misdemeanor offenses.

[For use with District Court Rule 5-605 NMRA,
Magistrate Court Rule 6-602 NMRA and
Metropolitan Court Rule 7-602 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

WAIVER OF TRIAL BY JURY — MISDEMEANOR OFFENSES

Instructions:

The purpose of this form is to advise you of your right to trial by jury and to allow you to give up that right if you so choose.

READ THE ENTIRE FORM CAREFULLY BEFORE SIGNING IT.

RIGHT TO TRIAL BY JURY

I understand that I am charged with the crime of _____,
_____ which is a misdemeanor under the law of New Mexico, and that if I am found guilty I can be punished by imprisonment, fine or other penalty.

I understand that I have a right to trial by jury and that all jurors must agree on my guilt of the crime beyond a reasonable doubt for me to be found guilty.

I understand that once I have made the decision to give up my right to jury trial, I may change my mind *only* with the permission of the court.

CERTIFICATION AND WAIVER

After reading and understanding the above, I hereby give up my right to trial by jury and consent to have my guilt or innocence determined by a judge.

Date

Defendant

I have explained to the defendant his right to trial by jury and I am satisfied that the defendant understands the waiver of this right.

Defense Counsel

I consent to waiver of trial by jury in this case.

Prosecutor

Approved:

Judge

9-503. Subpoena.

[For use with Magistrate Court Rule 6-606 NMRA
Metropolitan Court Rule 7-606 NMRA and
Municipal Court Rule 8-602 NMRA]

[STATE OF NEW MEXICO]
[CITY OF _____]
[COUNTY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

_____, Defendant

SUBPOENA

- FOR APPEARANCE OF PERSON:
- FOR TRIAL
- FOR HEARING
- TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL

TO: _____

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

PLACE: _____

BEFORE JUDGE: _____

DATE: _____, _____ TIME: _____ (a.m.) (p.m.) to:

testify at trial

produce for trial or hearing the following described books, documents or tangible things
_____.

YOU ARE ALSO COMMANDED to bring with you the following (*describe document or objects to be produced*)

IF YOU DO NOT COMPLY WITH THIS SUBPOENA, you may be held in contempt of court and punished by fine or imprisonment.

_____, _____.

(Judge) (Clerk) (Attorney)

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _____, _____, in said (county) (city), I served this subpoena on _____ by delivering to the person named a copy of the subpoena, a witness fee in the amount of _____ and mileage in the amount of \$_____¹.

Name of law enforcement officer

Title

**RETURN FOR COMPLETION BY OTHER PERSON
MAKING SERVICE²**

CERTIFICATE OF SERVICE

I certify that I served the above subpoena on _____ (name of person served) on the _____ day of _____, _____, by delivering a copy to the person named a copy of the subpoena, a witness fee in the amount of _____ and mileage in the amount of \$_____¹.

Person making service

Title (if any)

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

Judge, Notary or Other Officer
Authorized to Administer Oaths

Fees: _____

THIS SUBPOENA issued at request of:

Name

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this subpoena to be served on the following persons or entities by *(delivery)* *(mail)* on this _____ day of _____, _____:

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Attorney

Signature

Date of signature

USE NOTES

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts.

2. If service is by someone other than an attorney, an affidavit of service must be used instead of a certificate of service.

[As amended, effective May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, rewrote the form by deleting the "Greetings" section of the form and added "Return for Completion by Sheriff or Deputy", "Certificate of Service", and "Certificate of Service by Attorney" to the form and added the Use Notes.

9-504. Order for production.

[For use with Magistrate Court Rule 6-504 NMRA
Metropolitan Court Rule 7-504 NMRA and
Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

ORDER FOR PRODUCTION

TO: _____

GREETINGS:

You are hereby commanded to appear in the _____ Court for the
(County of _____) (City of _____) located at
_____ (address of court) on the _____ day of
_____, _____, at _____ [a.m.] [p.m.] and bring with you
and produce at the time and place set forth in this subpoena the following:

(describe document or object to be produced) then and there to testify on the part of the
_____, and this you must do under penalty of law.

Witness my hand this _____ day of _____, _____.

(Judge) (Clerk)

[As amended, effective May 1, 2002.]

ANNOTATIONS

The **2002 amendment**, effective May 1, 2002, substituted "[6-504, 7-504, 8-504]" for "[6-606, 7-606, 8-602]" in the reference line and substituted "Order for Production" for "Subpoena to Produce Document or Object" in the form heading.

9-505. Report of blood alcohol analysis.

[For use with Magistrate Court Rule 6-607 NMRA,
Metropolitan Court Rule 7-607 NMRA and
Municipal Court Rule 8-603 NMRA]

(Insert name of laboratory)

REPORT OF BLOOD ALCOHOL ANALYSIS

Laboratory number: _____

Date received: _____

Time received: _____

PART A

INFORMATION IN THIS BLOCK TO BE FILLED IN BY ARRESTING OFFICER

SEND LAB ANALYSIS REPORT TO:

Name: _____
(Complete name of your agency)

Address: _____
(Street or P.O. box) _____
(City, state and zip code)

SEND COPY TO DONOR:

Donor's identification:

Name: _____

(Last) (first) (middle)
Address: _____
(Street or post office box number)

(City, state and zip code)

Social security number: _____
Driver's license number: _____
Date of birth: _____
Sex: _____ Weight: _____

BLOOD DRAW INFORMATION

Date blood drawn: _____
Time blood drawn: _____ (a.m.) (p.m.)
Place drawn: _____
Blood drawn by:

Print name

Signature

Blood draw witnessed by:

Print name

Signature

Remarks: _____

ARREST INFORMATION

Reason for law enforcement contact:

- Erratic driving _____
- Accident: Fatal Great bodily injury
- (other) _____
- Other _____

Investigated or witnessed by:

Print name

Signature

Arresting officer's identification:

Department: _____

Date of arrest: _____

Place of arrest: _____

County: _____

Arrest time: _____ (a.m.) (p.m.)

Arresting officer:

Print name

Signature

INFORMATION BELOW IS TO BE FILLED IN BY DRAWER OF ANY BLOOD SAMPLE

I certify that on the date, time and place indicated above, I drew blood samples from the above named donor and that I marked and sealed the samples with the donor's name.
(For use in implied consent cases)

_____ *(initials)* I certify that the blood was collected using the entire contents of a state scientific laboratory division approved blood collection kit in accordance with scientific laboratory division's approved instructions.

Signature of blood drawer

Date

Title

Employer name

PART B

----- **LABORATORY USE ONLY** -----

CERTIFICATE OF RECEIVING EMPLOYEE

Specimen of Blood Other _____

Received from

Print name

Signature

In person via mail other _____
Seal intact: Yes No . If No, explain: _____

Other Remarks: _____

I certify that on the date shown in the "date received" blank above, I received the sample which accompanied this report and followed the procedures set out on the reverse of this report, and that the statements in this block are correct.

Receiving employee

Print name

Signature

CERTIFICATE OF ANALYST

The seal of this sample was received intact and was broken in the laboratory:

Yes

No

If No, explain: _____

RESULT OF ANALYSIS

Blood Sample: _____ gms/100 ml alcohol
concentration in sample.

REMARKS: _____

I certify that I followed the procedures set out on the reverse of this report, and that the statements in this block are correct. The concentration of alcohol in the sample is based on the grams of alcohol in one hundred milliliters of blood.

Date of analysis: _____

Analyzed by:

Print name of analyst

Signature of analyst

CERTIFICATE OF REVIEWER

I certify that the analyst who conducted the analysis in this case meets the qualifications required by the director of this laboratory to properly conduct such analyses; the supervisor of analysts is also qualified to conduct such analyses; and that the established procedure has been followed in the handling and analysis of the sample in this case.

Date

Reviewer:

Print name

Signature

CERTIFICATE OF MAILING

I certify that on this date I mailed a legible copy of this report to the donor, in accordance with the mailing procedure set out on the reverse of this report.

Date

Laboratory employee:

Print name

Signature

PROCEDURE

(To be printed on the reverse side of report)

1. The laboratory named on the front of this report is a laboratory authorized or certified by the scientific laboratory division of the health department to perform blood and alcohol tests. The agency has established formal procedures for receipt, handling and testing of blood samples to assure integrity of the sample, a formal procedure for conduct and report of the chemical analysis of the samples by the gas chromatographic method (_____) (*specify, if other method used*) and quality control procedures to validate the analyses. The quality control procedures include semi-annual proficiency testing by an independent agency. The procedures have the general acceptance and approval of the scientific community, including the medical profession, and of the courts, as a means of assuring a chemical analysis of a blood sample that accurately discloses the concentration of alcohol in the blood. The same procedures are applicable for samples other than blood if submitted for alcohol analysis. The analyst who conducts the analysis in this must meet the qualifications required by the director of this laboratory to properly conduct such analyses. The supervisor of analysts must also be qualified to conduct such analyses.

2. When a blood sample is received at the laboratory, the receiving employee examines the sample container and:

(a) determines that it is a standard container of a kit approved by the director of the laboratory;

(b) determines that the container is accompanied by this report, with Part A completed;

(c) determines that the donor's name and the date that the sample was taken have already been entered on this report and on the container and that they correspond;

(d) makes a log entry of the receipt of the sample and of any irregularity in the condition of the container or its seals;

(e) places a laboratory number and the date of receipt on the log, on the container, and on this report, so that each has the same laboratory number and date of receipt;

(f) completes and signs the Certificate of Receiving Employee, making specific notations as to any unusual circumstances, discrepancies, or irregularities in the condition or handling of the sample up to the time that the container and report are delivered to the analysis laboratory;

(g) personally places the container with this report attached in a designated secure cabinet for the analyst or delivers it to the analyst.

3. When the blood sample is received by the analyst, the analyst:

(a) makes sure the laboratory number on the container corresponds with the laboratory number on this report;

(b) makes sure the analysis is conducted on the sample which accompanied this report at the time the report was received by the analyst;

(c) conducts a chemical analysis of the sample and enters the results on this report;

(d) retains the sample container and the raw data from the analysis;

(e) completes and signs the Certificate of Analyst, noting any circumstance or condition which might affect the integrity of the sample or otherwise affect the validity of the analysis;

(f) delivers this report to the reviewer.

4. The reviewer checks the calculations of the analysis, examines this report, signs the Certificate of Reviewer, and delivers the report to a laboratory employee for distribution.

5. An employee of the agency mails a copy of this report to the donor at the address shown on this report, by depositing it in an outgoing mail container which is maintained in the usual and ordinary course of business of the laboratory. The employee signs the certificate of mailing to the donor, and mails the original of this report to the submitting law enforcement agency.

6. The biological sample will be retained by the testing laboratory for a period of at least six (6) months pursuant to regulations of the scientific laboratory division.

USE NOTES

This form, after appropriate modifications, may also be used for controlled substance and other test reports.

[As amended, effective October 1, 1991; July 1, 1999; November 1, 2004.]

ANNOTATIONS

The 2004 amendment, effective November 1, 2004, in Part A, required the middle name of the donor under identification, deleted certain information regarding the arrest under donor's identification, inserted "Blood Draw Information" heading, deleted "sample" twice preceding "drawn", inserted "blood" and required the name be printed of the person drawing the blood and witnessing the blood draw under that heading, inserted "Arrest Information" heading, substituted "for law enforcement contact" for "suspect stopped", added "Investigated or" and required the name be printed under that heading, inserted "Arresting officer's identification" heading and all the information lines thereunder, and inserted all the language for use in implied consent cases. The amendment also, in Part B, required the printed name and signature twice under the Certificate of Receiving Employee heading, required the printed name of the analyst under the Result of Analysis heading, required the printed name and signature under the Certificate of Reviewer heading, and required the printed name and signature under the Certificate of Mailing heading, added Paragraph 6 under Procedure, and inserted "and other" in the Use Note.

The 1999 amendment, effective July 1, 1999, rewrote this form.

Cross references. — For Implied Consent Law, see Sections 66-8-105 to 66-8-112 NMSA 1978.

For sample blood collection regulations, see Rule 7.33.2.12 NMAC.

9-506. Office of the Medical Investigator - Case disposition and report certification.

[For use with Magistrate Court Rule 6-608 NMRA and Metropolitan Court Rule 7-608 NMRA]

**OFFICE OF THE MEDICAL INVESTIGATOR
CASE DISPOSITION AND REPORT CERTIFICATION**

Remains Received: _____

Received from: _____
Officer _____
Dept. _____

Received by: _____
Medical Investigator

Date received: _____

The remains were held in the exclusive custody and control of the Office of Medical Investigator from the date of receipt through the date of return:

_____ YES _____ NO

Disposition of remains: _____

Returned by: _____
Medical Investigator

Date returned: _____

CERTIFICATION

In accordance with Paragraph A of Rule 11-902 of the Rules of Evidence, the attached report is a record of the Office of the Medical Investigator, is duly authenticated under the seal of such office to be admitted into evidence without extrinsic evidence of authenticity and the contents of the report are true and correct to the best of my knowledge.

Medical Investigator

[SEAL]

9-507. Laboratory - Case disposition and report certification.

[For use with Magistrate Court Rule 6-608 NMRA and Metropolitan Court Rule 7-608 NMRA]

**LABORATORY
CASE DISPOSITION AND REPORT CERTIFICATION**

Evidence received:

Received from:

_____ *(name of person)*

_____ *(title)*

_____ *(name of entity)*

Received by:

_____ *(name of person)*

_____ *(title)*

_____ *(name of laboratory receiving
evidence)*

Date received:

This evidence was held in the exclusive custody and control of the
_____ *(name of laboratory)*.

(Complete only applicable alternative.)

The evidence was retained at the above named laboratory.

The evidence was:

(If this alternative is applicable complete all of the following.)

Returned to:

_____ *(name of person)*

_____ *(title)*

_____ *(name of entity)*

Returned by:

_____ *(name of person)*

_____ (title)

Date returned: _____

CERTIFICATION

The attached report is a record of _____ (name of laboratory), and the contents of the report are true and correct to the best of my knowledge.

Name

Title

Date

[As amended, effective January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, substituted "laboratory" for "NMSP Crime Lab" in the form heading and throughout the form, rewrote the "received by" and "received from" items, added the alternatives relating to retaining or returning the evidence, and rewrote the certification.

9-508. Order declaring mistrial upon jury disagreement.

[For use with District Court Rule 5-611 NRMA,
Magistrate Court Rule 6-610 NMRA and
Metropolitan Court Rule 7-610 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

ORDER DECLARING MISTRIAL UPON JURY DISAGREEMENT

The jury having deliberated a reasonable time and having reported to the court that they are unable to agree upon a verdict herein and the court having polled the jury in accordance with (Rule 5-611 NMRA) (Rule 6-610 NMRA) (Rule 7-610 NMRA) of the Rules of Criminal Procedure;

IT IS THEREFORE ORDERED, as follows:

1. The jury found the defendant not guilty of the charges of _____

_____ and it is adjudged that the defendant is not guilty of these charges.

2. A mistrial based on jury disagreement is declared as to the

_____ (common name of count or highest degree of offense upon which the jury could not agree).

3. The power to retry the charges upon which the mistrial is declared is reserved.

4. The jury is discharged from the further consideration of this cause.

Judge

[As amended, effective October 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective October 1, 1996, added "6-610, 7-610" in the authority bracket at the top of the form and in the body of the form, substituted " _____ Court" for "District Court" in the caption, substituted "jury found the defendant not" for "defendant is not" and "the defendant" for "he" in Paragraph 1, and deleted "District" preceding "Judge" under the signature line.

9-509. Demand for jury trial - Petty misdemeanor offenses.

[For use with Magistrate Court Rule 6-602 NMRA and Metropolitan Court Rule 7-602 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

**DEMAND FOR JURY TRIAL
PETTY MISDEMEANOR OFFENSES**

Pursuant to Section _____ NMSA 1978, I demand a trial by jury in the above-styled cause.

Date

Defendant

Prosecutor

[Approved, effective September 1, 1990.]

9-510. Order permitting transcription of testimony agreement of party to limit use of recording.

[For use with Magistrate Court Rule 6-601 NMRA, Metropolitan Court Rule 7-601 NMRA and Municipal Court Rule 8-601 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

**ORDER PERMITTING TRANSCRIPTION OF TESTIMONY
AGREEMENT OF PARTY TO LIMIT USE OF RECORDING**

Upon request of _____ (*name of person with a claim arising out of same transaction or occurrence giving rise to above criminal proceedings*), this court permits a transcription to be made of the testimony in the above proceeding.

It is ordered that any transcription of testimony in this case be used only in civil proceedings when permitted by Paragraph A of Rule 1-032 NMRA of the Rules of Civil Procedure for the District Courts and criminal proceedings when permitted by Paragraph N of Rule 5-503 NMRA of the Rules of Criminal Procedure for the District Courts. The transcription shall not be broadcast or reproduced except as specifically permitted by this order.

It is further ordered that the person permitted to make a transcription of testimony make the transcription available to all parties in this case.

It is further ordered that any person who receives a transcription of testimony of the proceedings shall not use it or permit its use by others, except as specifically provided by this order.

Date

Judge

AGREEMENT TO LIMIT USE OF TRANSCRIPTION OF PROCEEDINGS

I agree to these terms and I understand that if I violate this order I may be held in contempt of court and punished by fine and imprisonment.

SIGNATURES OF ALL PERSONS REQUESTING COPIES OF TRANSCRIPTION

Signature

Date

Signature

Date

Signature

Date

[Adopted, effective September 2, 1997.]

9-511. Waiver of six month trial rule.

[For use with Magistrate Court Rule 6-506 NMRA and Municipal Court Rule 8-506 NMRA.]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

WAIVER OF SIX MONTH TRIAL RULE

I understand that I have a right to have the trial in this case begin within one hundred eighty-two (182) days after my arraignment. I understand my signature on this form means I give up my right to have the charges in this case dismissed with prejudice if the trial does not begin within one hundred eighty-two (182) days after my arraignment, as provided by rule.

I further understand that I am not giving up any right to a speedy trial under either the United States or New Mexico constitutions.

After reading and understanding all of the above, and consulting with counsel, I knowingly and voluntarily give up my right to have the trial in this case begin within the time limits provided by court rule.

Signature of defendant

CERTIFICATE OF DEFENSE COUNSEL

(To be completed if the defendant is represented by counsel)

I have explained to the defendant the right to trial within one-hundred eighty two (182) days and that this right may be waived by the defendant and I am satisfied that the defendant understands the waiver of the right to trial within the time provided by court rule.

Defense counsel

Date

APPROVAL OF JUDGE

Permission to waive trial within the time limits provided by court rule is:

granted under the following conditions _____ *(list any conditions)*.

denied.

Judge

Date

USE NOTES

This form is to be used when the defendant wishes to permanently waive rights under Rule 6-506 NMRA or Rule 8-506 NMRA.

[Approved by Supreme Court Order No. 07-8300-033, effective November 15, 2007.]

9-512. Extension of time for commencement of trial.

[For use with Magistrate Court Rule 6-506 NMRA and Municipal Court Rule 8-506 NMRA.]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
IN THE _____ COURT

No. _____

[STATE OF NEW MEXICO]
[CITY OF _____]

v.

EXTENSION OF TIME FOR COMMENCEMENT OF TRIAL

The court orders the following:

(check and complete applicable alternative)

____ The court approves the stipulation of the parties to extend the time for commencement of trial for _____ days (*not to exceed sixty (60) days*).

____ The court finds good cause and therefore grants defendant's motion to extend the time for commencement of trial for _____ days (*not to exceed 30 thirty days*).

Trial must be commenced on or before _____, _____ (*date*).

The time for commencement of trial expires on _____, _____ (*date*).

Date

Judge

APPROVED:

Defendant or counsel

Prosecutor¹

USE NOTES

1. Signature of the prosecutor is not necessary for approval by the court of a motion to extend the time for trial for thirty (30) days.

2. This form is to be used when the defendant agrees to a limited extension under Rule 6-506 NMRA or Rule 8-506 NMRA.

[Approved by Supreme Court Order No. 07-8300-033, effective November 15, 2007.]

9-513. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 17-8300-016, 9-513 NMRA, relating to juror summons, qualification and questionnaire form, was withdrawn effective for all cases pending or filed on or after December 31, 2017. For provisions of former form, see the 2017 NMRA on *NMOneSource.com*.

9-513A. Juror summons.

[For use with Rules 5-606, 6-605, 7-605 NMRA]

_____ COURT

[Street Address]
[City, NM, Zip Code]

STATE OF NEW MEXICO
COUNTY OF _____ TO:

[Juror name]
[Street Address]
[City, State, Zip Code]
[USPS Bar Code]

JURY SUMMONS

PLEASE BRING SUMMONS
TO ALL APPEARANCES

FOR QUESTIONS CALL:

[Name]
[Telephone Number]

SUMMONS TO JURY SERVICE

Por favor preste atención a lo siguiente: Si no le es posible leer o llenar estos formularios, llame al número telefónico indicado en la primera página del citatorio para servir como jurado. Estos formularios están disponibles en español en _____ (*insert web address*).

In accordance with the law, Sections 38-5-1 and 38-5-10 NMSA 1978, you have been selected for jury service. Your term of service is from _____ (*date*) through _____ (*date*).

Your Juror Badge Number is: _____

Your Juror Group Number is: _____

In order to comply with this summons you must go to _____ (*insert web address*) to complete and submit your **online Juror Questionnaire and Qualification forms** by _____ (*insert date forms are due*). If you do not have internet access, you must call our office at _____ (*insert telephone number from top of page*) by _____ (*insert date to be determined*).

Any person willfully failing to complete and submit these forms may be punished for contempt of court. Any person willfully failing to appear at the time ordered by the court may be punished under Section 38-5-10 NMSA 1978. Both contempt of court and failure to appear are criminal charges that may result in jail time, a fine, or both.

The court complies with the Americans with Disabilities Act and provides signed and spoken language interpreters at no cost to jurors. The court will make reasonable accommodations for jurors with special needs. Please notify the court at _____ (*insert telephone number from top of page*) of your need for an accommodation for a disability or for a signed or spoken language interpreter by _____ (*insert same date forms are due*).

Witness the Honorable _____ (*Judge's name*) of the _____ (*court name*) and the Seal of the Court, this _____ (*date*).

[SPACE RESERVED FOR A CUSTOMIZED MESSAGE FROM INDIVIDUAL COURTS]

PLEASE READ ALL INSTRUCTIONS AND INFORMATION CAREFULLY. RETAIN THIS PAGE FOR YOUR RECORDS.

General Information and Instructions for Jurors

THE RIGHT TO TRIAL BY JURY IS GUARANTEED TO ALL PERSONS BY BOTH THE UNITED STATES AND NEW MEXICO CONSTITUTIONS. THE SUCCESS OF THE JURY SYSTEM DEPENDS UPON CITIZENS PERFORMING THEIR SOLEMN DUTY TO SERVE AS JURORS, WHILE ACTING WITH INTEGRITY IN DISCHARGING THIS RESPONSIBILITY.

Reporting an Emergency Absence

It is very important that you report as directed for jury service. Only the most urgent, unexpected, and unavoidable emergencies can be considered as valid reasons for your absence. If you **MUST** be absent, you **MUST** call the number at the bottom of this page as soon as possible. If you fail to report or call in, an order to show cause why you should not be held in contempt of court may be issued.

Travel and Medical Appointments

We understand that some jurors may have conflicts that occur during their term of service. We strive to accommodate all jurors. You **ONLY** need to notify the court if your preplanned vacation, work-related travel, or medical appointments **CONFLICT** with the dates you are scheduled to appear. Please send this information in writing to the court including your name, Juror Badge Number, telephone number, and any other information necessary to expedite your request. Telephone calls or messages regarding these types of conflicts **will not** be accepted except in emergencies.

Meals will not be provided by the court, nor will meals be reimbursed, unless jurors are deliberating at the close of the case during the lunch hour or after 5:00 p.m.

Dress

Please dress comfortably but befitting the dignity of the court. **Shorts, hats, sunglasses, tank tops, bare midriffs, sweats, and similar dress are not allowed.** Men are **not** required to wear coats and ties, nor are women required to wear similar business attire. Due to the variable temperature in the courtroom it is recommended that you dress in layers.

Juror Fees and Payments

The court is authorized by Supreme Court order to reimburse for jury service at the rate of \$ _____ per hour (*insert current rate*). In addition, if your round-trip mileage from your home to the courthouse is more than forty (40) miles, you will be paid at \$ _____ per mile (*insert current rate*). Mileage is computed based on the information you provide on

the juror qualification form and your mailing ZIP code. Checks will be mailed to your mailing address. Your payment cannot be split between hourly and mileage reimbursement. Reimbursement payments take about six (6) weeks to process. If you have not received payment within ten (10) weeks of jury service, please call the number at the bottom of this page.

Employers are not required by law to pay employees for time spent in jury service. Contact your employer regarding its policy. The court does not compensate those employed by the public schools, local government, or the State of New Mexico.

NO CITIZEN IS EXEMPT FROM JURY SERVICE BECAUSE OF HIS OR HER JOB, RACE, ETHNICITY, RELIGION, SEX, NATIONAL ORIGIN, SEXUAL ORIENTATION, ECONOMIC STATUS, OR LACK OF ENGLISH PROFICIENCY.

Request for Postponement: If the date scheduled for your service will create a severe hardship for you, you may request a postponement and must complete and submit ALL forms. Please specify your reasons for requesting a postponement and submit the completed forms by the date noted above. Your request will be reviewed by the court, and you will be notified of the decision. Be assured that the court will work with you around scheduled vacations, medical appointments, etc., whenever possible.

Request for Excusal: If you have an extreme mental, physical, or financial hardship that prevents you from serving as a juror, you may request an excusal and must complete and submit ALL forms. See Section 38-5-1(A) NMSA 1978. Please specify your reasons for requesting an excusal and submit the completed forms by the date noted above. You also must submit a letter from a healthcare provider with any request for excusal for medical reasons. Until you have received notification from the court, you are not excused.

Request for Exemption: If you have served on a jury in state or federal court in the past three (3) years or are seventy-five (75) years of age or older, you may request an exemption from jury service and must complete and submit ALL forms. If you are requesting an exemption based on age you must also submit an affidavit form. See Sections 38-5-2(A) and (B) NMSA 1978. Until you have received notification from the court, you are not exempted.

Employment Protections: State law prohibits your employer from penalizing you for your jury service. See Sections 38-5-18 and -19 NMSA 1978.

All Jury Service Statutes Cited in This Summons Can Be Found Online at
_____ (*insert web address*)

First Step to Successful Jury Service

Fill out all forms. Please answer all questions, taking special care to provide the court with contact information. Submit the completed forms by the dates listed under "SUMMONS TO JURY SERVICE."

[Adopted by Supreme Court Order No. 17-8300-016, effective December 31, 2017.]

9-513B. Juror qualification.

[For use with Rules 5-606, 6-605, 7-605 NMRA]

JUROR QUALIFICATION FORM

Juror Badge Number: _____

Dear Prospective Juror:

Please answer each of the following questions completely. The contact information you provide will be used only by court employees and shall not be made available to the attorneys or parties in the cases that you may be selected to hear as juror.

Estos formularios están disponibles en español en _____ (*insert web address*). Si necesita más ayuda en español, llame al número telefónico indicado en la primera página del citatorio para prestar servicio como jurado.

Name as it appears on the summons: _____

Legal name: _____

Mailing address: _____

Home address (if different): _____

City: _____ State: _____ Zip: _____

Phone numbers:

Home: _____

Business: _____ Ext: _____

Cell: _____

E-mail: _____

1. Do you live more than forty (40) round-trip miles from your home to the courthouse?

Yes _____ No _____

If yes, what is your round-trip mileage? _____

Would you like to be compensated for mileage? Yes _____ No _____

2. Are you employed by the public schools, local government, or the State of New Mexico? (Note: these public employees cannot be compensated by the court for their jury service.)

Yes _____ No _____

3. Of which New Mexico county are you a resident? _____

4. Are you a United States citizen? Yes _____ No _____

If no, country of citizenship: _____

5. Will you need an interpreter? Yes _____ No _____

If yes, which language? _____

6. Have you ever been convicted of a felony? Yes _____ No _____

a. If yes, please explain: _____

b. If yes, have you completed all conditions of parole or probation?

Yes _____ No _____

c. If yes, please enclose a copy of one of the following:

_____ Certificate or letter of completion issued by the Department of Corrections of New Mexico, or another state.

_____ Certificate or letter of pardon from the Governor of New Mexico, or another state.

SELECT ONE:

_____ I am available to serve for the dates listed on my summons (*skip to signature, sign and return form*).

_____ I am requesting a postponement for the reasons noted below until the following date:
_____ (*jury service may be postponed for up to six (6) months*).

_____ I am requesting to be excused or exempted for the reasons noted below. I am submitting the required documents.

REQUEST FOR POSTPONEMENT, EXCUSAL, OR EXEMPTION

If your jury service is scheduled for a date that conflicts with your schedule, please request a postponement for a more convenient time.

There are NO AUTOMATIC EXEMPTIONS. All exemptions must be requested, including exemptions based on age or prior jury service.

ALL situations will be considered on a case-by-case basis. Please enclose a detailed explanation for cases of:

- _____ Prior jury service (provide appropriate date(s) of service and court)
- _____ Medical (must submit a current letter on letterhead from healthcare provider)
- _____ Financial hardship (not being compensated by your employer is not grounds for excusal)
- _____ Age: _____ (persons seventy-five (75) and older may contact the court for an affidavit form requesting an exemption)
- _____ Not a resident of the State of New Mexico or _____ County (please submit proof of residency, such as a current driver's license or a voter registration card)
- _____ Caregiver: _____ (must submit a current letter on letterhead from healthcare provider)
- _____ Nursing mother (a current letter on letterhead from healthcare provider required if requesting second postponement)
- _____ Student or teacher (request to be postponed until school breaks - please provide below the dates when your school break begins and ends):

- _____ Other:

PLEASE NOTE: Unless you receive a letter from the court stating you are excused from attending jury service, you **MUST** appear on the date required by the court. Not showing up for jury duty when summoned is called Failure to Appear and can result in a fine of up to five hundred dollars (\$500), up to six (6) months in jail, or both. Section 31-19-1 NMSA 1978. You can call the jury division to check on the status of your excusal or postponement.

I swear or affirm that the information I have provided is true and correct to the best of my knowledge. I am aware that failure to submit required documentation may result in the denial of my request.

Signature of prospective juror

Date

Signature of the person preparing this form,
if different from prospective juror

Date

Please return completed Juror Qualification and Juror Questionnaire forms to the court listed on the summons you received.

[Adopted by Supreme Court Order No. 17-8300-016, effective December 31, 2017.]

9-513C. Juror questionnaire.

[For use with Rules 5-606, 6-605, 7-605 NMRA]

JUROR QUESTIONNAIRE FORM

Juror Badge Number: _____

Please answer all questions, 1-20, and **SIGN**. The Juror Questionnaire will be provided to the attorneys, parties, and judges in all cases you may be selected to hear as a juror. The answers you provide will aid in the process of selecting a jury. If you do not understand a question, please place a question mark (?) next to the question. **If you do not have enough room to answer the question, please use the space provided after question 20 or a separate sheet of paper.** If there is a question you would rather discuss with the judge and attorneys in private, please indicate with an asterisk (*). Thank you for your cooperation.

1. Legal name and former names: _____

2. Gender: _____
3. Birth year: _____
4. What is your race or ethnic background? _____
5. In which neighborhood and/or area do you live? _____
Where else have you lived (*city, state, country*)? _____
6. What is your marital status? single _____ married _____
domestic partner _____ separated _____ divorced _____ widowed _____
7. If you are married or in a domestic partnership, please provide spouse's/partner's full name and occupation. _____
8. Do you have any children or step children? Yes _____ No _____
How many? _____ ages _____ occupations _____

9. Name of current or most recent employer and place of work: _____
Occupation/job title and duties: _____
Dates of employment: _____
10. How many years of schooling have you completed? _____
Highest level completed/degree _____
Major areas of study: _____
11. Do you belong to or participate in any religious, civic, social, union, professional, fraternal, political, or recreational organizations?
Please list all: _____
12. Current political party affiliation: _____
13. Have you or any member of your immediate family been the victim of a crime?
Yes _____ No _____ If yes, who was the victim? _____ What
crime? _____ When? _____ Was an arrest made? Yes
_____ No _____
14. Have you ever served as a juror? Yes _____ No _____
(If yes please check) Grand jury _____ Civil _____ Criminal _____
15. Have you or anyone close to you ever sued anyone or been sued? Yes _____
No _____
If yes, please explain: _____
16. Have you or an immediate family member ever been an agent, employee, or representative of an insurance company? Yes _____ No _____
17. Have you or an immediate family member been a defendant in a criminal case?
Yes _____ No _____
If yes, please explain: _____
18. Have you or any family member ever been employed by a court, law enforcement agency, jail or prison, or any attorney's office?

Yes _____ No _____

If yes, name of employer: _____

19. Do you have a physical or mental disability of which we need to be aware?

Yes _____ No _____

Are you presently taking any medication that may affect your ability to serve as a juror? Yes _____ No _____

If yes, are there any special accommodations, services, or assistance we can provide during your jury service? _____

20. Is there any reason you could not serve as a juror? Yes _____ No _____ *(If you are requesting an excusal or postponement for this reason, you must complete and submit the Request for Postponement, Excusal, or Exemption Form)*

If yes, please explain: _____

Use this space for any additional comments: _____

I SWEAR OR AFFIRM THAT THE INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of prospective juror, or preparer
(if different than prospective juror)

Date

[Approved by Supreme Court Order No. 17-8300-016, effective December 31, 2017; as amended by Supreme Court Order No. 19-8300-022, effective December 31, 2019.]

ANNOTATIONS

The 2019 amendment, approved by Supreme Court Order No. 19-8300-022, effective December 31, 2019, rewrote the form to the extent that a detailed comparison is impracticable.

9-513D. Juror questionnaire privacy and destruction certification.

[For use with Rules 5-606, 6-605, 7-605]

STATE OF NEW MEXICO

_____ COUNTY

_____ COURT

_____, Plaintiff,

v. No. _____

_____, Defendant.

**JUROR QUESTIONNAIRE
PRIVACY AND DESTRUCTION CERTIFICATION**

I, _____, certify and affirm under penalty of perjury under the laws of the State of New Mexico that I have complied with the confidentiality and destruction requirements in Rule [5-606(E)] [6-605(G)] [7-605(G)] NMRA.

Signature of person making certification and affirmation

Printed name of person making certification and affirmation

USE NOTES

1. This form must be filed by all attorneys and parties within one hundred twenty (120) days after final disposition of the proceeding for which the juror or prospective juror was called unless permitted by written order of the court to retain copies for a longer period of time or within the deadline otherwise set by court order.

[Approved by Supreme Court Order No. 18-8300-008, effective December 31, 2018.]

9-514. Order on motion for a competency evaluation.

[For use with Rule 5-602.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ DISTRICT COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

**ORDER ON [TRANSFER] [MOTION]
FOR COMPETENCY EVALUATION**

[] This matter comes before the Court upon transfer from the [magistrate] [municipal] court after a finding of a reasonable belief that the defendant may not be competent to stand trial. The defendant [] is [] is not in custody.

OR

[] The Court, having considered the motion for competency evaluation [and the response in opposition] [and after a hearing] and being otherwise fully advised in the premises, FINDS and CONCLUDES:

[] The motion is well-taken and is GRANTED because there is a reasonable belief that the defendant may not be not competent to stand trial based upon the following:

[] The facts alleged in the motion for a competency evaluation;

[] The court's observations of the defendant, described as follows: _____

_____; and

[] Other: _____

_____.

[] The motion is not well-taken and is DENIED.

(Complete the following only if the case has been transferred or the motion is GRANTED)

The Court therefore ORDERS the following:

1. A competency evaluation shall be performed by _____.
2. The evaluation shall be completed and a written report shall be filed with the court within thirty (30) days of the filing of this order.

3. The report filed under Paragraph 2 of this order shall include the following:

(a) a description of the procedures, tests, and techniques used by the evaluator;

(b) a clear statement of the evaluator's clinical findings and opinions about the defendant's competency;

(c) a description of the sources of information and the factual basis for the evaluator's clinical findings and opinions, provided that the report shall not include information or opinions concerning the defendant's mental condition at the time of the alleged crime or any statements made by the defendant regarding the alleged crime or any other crime; and

(d) the reasoning by which the evaluator utilized the information to reach the clinical findings and opinions.

4. Any party who objects to the conclusion set forth in the report filed under Paragraph 2 of this order shall file that party's objections in writing within seven (7) days of the filing of the report.

5. The parties shall return to court for a hearing on the question of the defendant's competency on _____ (*date—not to exceed forty-five (45) days from the date of this order*) at _____ (*time*), unless the court, upon its own motion or upon the motion of the parties, rules at an earlier time on the defendant's competency without a hearing.

(Optional)

6. The court has considered the defendant's conditions of release and orders the following:

The defendant's conditions of release shall continue until further order of the court; or

A hearing to set or review the defendant's conditions of release shall be held on _____ (*date*).

7. Other:

IT IS SO ORDERED

District Court

Attorney for the State

Attorney for the defendant

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

9-514A. Defendant information sheet.

[For use with Rules 5-602.1, 6-507.1, and 8-507.1 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

DEFENDANT INFORMATION SHEET

(Please provide the following information about the defendant.)

Full name: _____
Date of birth: _____
Sex: _____
SSN: _____
Home address: _____
Phone number(s): _____

Email address: _____

Is the defendant incarcerated? Yes No

If yes, in what facility? _____

Current charge(s): _____

(Select all that apply)

Misdemeanor Felony: 1st degree 2nd degree 3rd degree 4th degree

Submitted by: _____

[Approved by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after February 1, 2019.]

9-515. Notice of federal restriction on right to possess or receive a firearm or ammunition.

[For use with Rule 5-615 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

STATE OF NEW MEXICO,

v. No. _____

_____ ,

Defendant.

**NOTICE OF FEDERAL RESTRICTION ON RIGHT TO
POSSESS OR RECEIVE A FIREARM OR AMMUNITION**

TO: _____

ADDRESS: _____

YOU ARE HEREBY NOTIFIED that as a result of the order entered against you in this proceeding, you are prohibited from possessing or receiving a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

YOU ARE FURTHER NOTIFIED that the Administrative Office of the Courts is required under Section 34-9-19(B) NMSA 1978 to report information about your identity to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System (NICS).

YOU ARE FURTHER NOTIFIED that you may petition the Court as provided in Section 34-9-19 NMSA 1978 to restore your right to possess or receive a firearm or ammunition and to remove your name from the NICS.

DISTRICT COURT

[Provisionally approved by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016; approved by Supreme Court Order No. 17-8300-003, effective for all orders filed on or after March 31, 2017.]

ARTICLE 6
Judgment and Appeal

9-601. Judgment and sentence (Commitment or probation).

[For use with Magistrate Court Rules 6-701 and 6-702 NMRA, Metropolitan Court Rules 7-701 and 7-702 NMRA and Municipal Court Rules 8-701 and 8-702 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

JUDGMENT AND SENTENCE
(COMMITMENT OR PROBATION)¹

On this _____ day of _____, _____, the defendant appeared in person and was represented by attorney _____, (set forth name of attorney). _____ (name of officer or prosecutor) appeared on behalf of the (state) (city).

(Complete one of the following)

1. PLEA

(Plea of not guilty)

The defendant having entered a plea of NOT GUILTY and the (court) (jury)² finding the defendant GUILTY of the following charge(s) _____

(Plea of guilty)

The defendant having entered a plea of:

guilty, the court so finds the defendant guilty of the following charges: _____

no contest, the court accepts the plea as an admission of guilt for the purposes of this action only, of the following charges: _____

2. FINDINGS OF THE COURT DWI CASES

(complete if applicable)

THE COURT FINDS:

This conviction is the defendant's

first second third fourth or more conviction for driving while under the influence.

3. JUDGMENT OF COURT

IT IS ADJUDGED that the defendant is guilty of (such) (the following) charges and convicted. (If the defendant has been found not guilty of one or more charges, set forth crimes defendant has committed)

IT IS ADJUDGED that the defendant is not guilty of the following charges: _____

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that:

(check and complete only applicable boxes)

the defendant be committed to the *(county) (city) (jail) (detention center)*
_____ *(specify any other place)*
for _____ days with _____ days suspended for a jail term of
_____ days for the crime of _____;
for _____ days with _____ days suspended for a jail term of
_____ days for the crime of _____;
such sentences to run *(consecutively) (concurrently)*.

Work release is *(authorized) (not authorized)*.

Work release to be served on weekends.

The defendant is ordered to report to _____
_____ by no later than _____
(a.m.) (p.m.) the _____ day of _____, _____.

The defendant shall pay to the *(magistrate) (metropolitan) (municipal)* court the following fine(s):

\$ _____ for _____

\$ _____ for _____

The defendant shall pay to the *(magistrate) (metropolitan) (municipal)* court the following costs and fees:
(complete applicable costs and fees)³

court costs	\$ _____
automation fee	\$ _____
corrections fee	\$ _____
laboratory fee	\$ _____
traffic safety fee	\$ _____
judicial education fee	\$ _____
DWI prevention fee	\$ _____
screening & treatment costs	\$ _____
brain injury services fee	\$ _____
court facilities fee	\$ _____
other _____	\$ _____
Total fees and costs	\$ _____

(complete applicable parts of the following if the sentence is to be deferred or suspended)

The above sentence is hereby:

deferred

suspended

on the following terms and conditions:

(*supervised*) (*unsupervised*) probation for _____ days with the following special conditions:

the defendant will enter and participate in:

an (*alcohol*) (*drug*) treatment program

(*alcohol*) (*drug*) screening and complete counseling or other treatment as required by the screening program

a first offender program

driver improvement school

petty larceny school

_____ (*other*)

the defendant performs _____ (*hours*) (*days*) of community service as follows: _____

the defendant makes restitution to (*set forth name of person or entity*)

in the amount of \$ _____ on or before the _____ day of _____, _____.

defendant pays all court costs and fees including: laboratory fees; automation fee; traffic safety fee; corrections fee; DWI school fee; alcohol evaluation screen fees; and counseling fees;

IT IS FURTHER ORDERED THAT the defendant's cash bond is to be:

returned to defendant

applied to the payment of court costs, court fees and fines

IT IS FURTHER ORDERED (*other*) _____

THE DEFENDANT IS ORDERED TO REPORT TO

Probation services

Educational services

(specify other) _____
on or before _____ (a.m.) (p.m.) the _____ day of _____,
_____.

(complete if applicable)

COMMITMENT. THE DEFENDANT IS HEREBY COMMITTED to the custody of the (county) (city) in _____ (set forth place of detention) for imprisonment for a period of _____ (days) (months), subject to credit for time spent in confinement while awaiting the outcome of these proceedings. **IT IS ORDERED** that a copy of this judgment and commitment be delivered to an authorized full-time salaried law enforcement officer, and that this copy be the order of commitment of the defendant.

FAILURE TO COMPLY

FAILURE TO REPORT OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.

APPEAL

You are hereby advised that you may have a new trial in the district court by filing a notice of appeal within fifteen (15) days from the date of entry of this judgment and sentence. You are further advised that if you appeal you must obtain a trial date before the district court within six (6) months of the date of the filing of the notice of appeal. If your case is not tried by the district court within six (6) months your appeal will be dismissed and this conviction will be affirmed.

APPEAL BOND \$ _____.

OTHER CONDITIONS OF RELEASE.

If the defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the district court:

Dated _____, _____

Judge

USE NOTES

1. This form may be used in the magistrate, metropolitan and municipal courts. This form, Form 9-602 and Form 9-603 should be modified as appropriate. Provisions in Form 9-603 may be used as part of this form.

2. This form should be modified by municipal courts to eliminate this alternative as there is no right to trial by jury in municipal court.

3. Not all fees and costs are applicable to all courts of limited jurisdiction. See Section 35-14-11 NMSA 1978 for municipal corrections fee; Section 66-8-102 NMSA 1978 for assessment of costs for court ordered alcohol or drug screening and treatment program; Section 31-12-7 NMSA 1978 for magistrate, metropolitan court and municipal court crime laboratory fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee, court automation fee, traffic safety fee, judicial education fee, brain injury services fee, court facilities fee and other fees and costs to be assessed upon conviction.

[As amended, effective September 1, 1989; January 1, 1997; February 1, 1999.]

ANNOTATIONS

The 1999 amendment, effective February 1, 1999, in Item 3, Judgment of Court, in the sixth entry for applicable costs and fees, added "brain injury services fee" and "court facilities fee" as part of the fee schedule; in Use Note 3, substituted "court education fee, traffic safety fee, judicial education fee, brain injury services fee, court facilities fee" for "and automation fee".

The 1997 amendment, effective January 1, 1997, rewrote Paragraph 3 relating to judgment of court, added the provision for appeal bond and other conditions of release, and made stylistic changes throughout the form, and added Use Note 1.

The 1989 amendment, effective for cases filed on or after September 1, 1989, rewrote this form.

9-602. Judgment and sentence.

[For use with District Court Criminal 5-201 NMRA,
Magistrate Court Criminal 6-201 NMRA,
Metropolitan Court Criminal 7-201 NMRA and
Municipal Court 8-202 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

JUDGMENT AND SENTENCE¹

This case came before the court on _____, _____. The defendant appeared:

with an attorney pro se waiver signed

The defendant entered a plea of:

guilty no contest

not guilty and was tried by court jury

jury waived

The court finds the defendant GUILTY of: _____

and NOT GUILTY of: _____

SENTENCE AND COMMITMENT: _____

FEES²: The defendant shall pay the following fees:

docket

judicial education

correction

automation

laboratory

traffic safety

DWI prevention

screening & treatment costs

other _____

Total fees: _____

IF YOU PLED NOT GUILTY AND WERE FOUND GUILTY, YOU MAY APPEAL TO THE DISTRICT COURT BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS FROM THE DATE OF ENTRY OF THIS JUDGMENT.

Appeal bond \$ _____

Dated _____

Judge

USE NOTES

(Do not print use note on pre-printed forms)

1. This form may be used in the magistrate, metropolitan and municipal courts. This form, Form 9-601 NMRA and Form 9-603 NMRA should be modified as appropriate. Provisions in Form 9-603 NMRA may be used as part of this form.

2. Not all fees and costs are applicable to all courts of limited jurisdiction. See: Section 35-14-11 NMSA 1978 for municipal corrections fee; Section 66-8-102 NMSA 1978 for assessment of costs for court ordered alcohol or drug screening and treatment program; Section 31-12-7 NMSA 1978 for magistrate, metropolitan court and municipal court crime laboratory fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee and automation fees and other fees and costs to be assessed upon conviction.

[Adopted, effective January 1, 1995; as amended, effective January 1, 1997; February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted "if you pled not guilty and were found guilty, you may appeal" for "you may appeal this decision" following "total fees."

The 1997 amendment, effective January 1, 1997, added the blank for the screening & treatment costs in the Fees Item.

Withdrawals. — Pursuant to a court order dated April 24, 1989, the former form, relating to judgment and sentence (commitment or probation), is withdrawn for cases filed on or after September 1, 1989.

9-603. Final order on criminal complaint.

[For use with Magistrate Court Rules 6-701 and 6-702 NMRA, Metropolitan Court Rules 7-701 and 7-702 NMRA and Municipal Court Rules 8-701 and 8-702 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

FINAL ORDER ON CRIMINAL COMPLAINT ¹

(If the sentence involves imprisonment or probation, use Criminal Form 9-601)

1. PLEA

(Plea of not guilty)

The defendant having entered a plea of NOT GUILTY, a jury was

- | | | |
|-----------------|--|--|
| (a) (check one) | <input type="checkbox"/> impaneled | <input type="checkbox"/> waived |
| (b) (check one) | <input type="checkbox"/> the jury finding | <input type="checkbox"/> the court finding |
| (c) (check one) | <input type="checkbox"/> the defendant
GUILTY | <input type="checkbox"/> the defendant
NOT GUILTY |

of the following charge(s): _____

(Plea of guilty)

The defendant having entered a plea of guilty, the court so finds the defendant guilty of the following charges: _____

The defendant having entered a plea of nolo contendere, the court accepts the plea as an admission of guilt, for the purposes of this action only, of the following charges: _____

2. JUDGMENT OF COURT

IT IS ADJUDGED THAT the defendant is

- GUILTY
- NOT GUILTY
of such charges.

3. SENTENCE OF COURT

IT IS THE SENTENCE of this court that the defendant pay a fine to the (State of New Mexico) (City of _____) in the sum of _____ dollars (\$_____) as follows:

\$_____ for _____

\$ _____ for _____

\$ _____ for _____

4. COURT COSTS AND FEES

Court costs of _____ dollars (\$ _____) are assessed against the defendant as follows:

court costs \$ _____

automation fee \$ _____

corrections fee \$ _____

other \$ _____²

(complete only if applicable)

IT IS FURTHER ORDERED that the defendant's cash bond is to be:

returned to defendant applied to the payment of court costs, court fees

applied to the payment of court costs, court fees and fines).

THE DEFENDANT IS ORDERED to pay the above fines and costs on or before the _____ day of _____, _____.

FAILURE TO COMPLY

FAILURE TO REPORT OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.

APPEAL BOND \$ _____.

OTHER CONDITIONS OF RELEASE.

If the defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the district court:

Date

Judge

USE NOTES

1. Since there is no right to a trial by jury in the municipal court, this form must be modified for use in the municipal courts.

2. Not all fees and costs are applicable to all courts of limited jurisdiction. See: Section 35-14-11 NMSA 1978 for municipal corrections fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee and automation fees and other fees and costs to be assessed upon conviction. Other fees would include the Metropolitan Court mediation fee (Section 35-6-1 NMSA 1978).

3. It is recommended that this form not be pre-printed by the Administrative Office of the Courts. It may be used as guidance in modifying Form 9-602 NMRA.

[As amended, effective September 1, 1989; January 1, 1995; January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, added the provision for appeal bond and other conditions of release.

The 1995 amendment, effective January 1, 1995, added Use Note 3.

The 1989 amendment, effective for cases filed on or after September 1, 1989, added the Item 4 and Item 4 designations; in Item 3, added the language beginning "(City of "; and, in Item 4, added the language beginning "as follows".

9-603A. Final order on criminal complaint.

[For use with Magistrate Court Rule 6-701 NMRA,
Metropolitan Court Rules 7-701 NMRA and
Municipal Court Rules 8-701 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

FINAL ORDER ON CRIMINAL COMPLAINT

(Deferred Sentence)

This court having previously found the defendant guilty and having deferred sentencing of the defendant on the following charge(s) _____

(set forth only charges for which a deferred sentence was entered)

It now appearing to the court that the defendant has fulfilled all of the terms and conditions of the deferred sentence.

IT IS THEREFORE ORDERED that the criminal charges set forth above be and the same are hereby dismissed.

Date: _____

Judge

[Adopted, effective September 1, 1989.]

9-604. Judgment and sentence.

[For use with District Court Rule 5-701 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant

JUDGMENT AND SENTENCE

This case came before the court on _____, _____.

The defendant appeared:

with an attorney pro se waiver signed

The defendant entered a plea of:

guilty no contest

not guilty and was tried by court jury

jury waived

The court finds the defendant GUILTY of: _____

and NOT GUILTY of: _____

SENTENCE AND COMMITMENT: _____

COSTS AND FEES²: The defendant shall pay the following costs and fees: _____

RESTITUTION: The defendant is ordered to pay restitution as follows: _____

Dated _____

USE NOTES

This form should be modified as appropriate.

[Approved, effective December 1, 1998; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-008, effective May 6, 2009, deleted Paragraph 2 of the "USE NOTES", which governed assessment of costs for court ordered alcohol or drug screening and treatment programs.

Withdrawals. — Pursuant to a court order dated April 24, 1989, a former Criminal Form 9-604 relating to final order on criminal complaint, was withdrawn for cases filed on or after September 1, 1989.

9-605. Agreement to pay.

[For use with Magistrate Court Rule 6-701 NMRA and Metropolitan Court Rule 7-701 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]

v.

_____, Defendant

AGREEMENT TO PAY

I have been convicted of _____ and assessed \$ _____ fine and \$ _____ fees and costs. I am unable to pay the (*fine*), (*fees*) (*and*) (*costs*) at this time. I promise

[to pay in the following manner: _____

_____]

[and] [or]
[in lieu of the above (*finer*) (*fees*) (*and*) (*costs*) to perform _____ hours of
community service].

I fully understand that if I fail to [pay the fine, fees and costs] [or] [perform community
service] in accordance with this agreement:

I may be prosecuted for contempt of court.

If a bench warrant is issued for failure to pay fines or fees or for failure to perform
community service, an additional \$100.00 administrative fee may result.

I may be confined in jail.

Date

Defendant

Witness: _____

USE NOTES

Section 31-12-3 NMSA 1978 authorizes the judge to permit payment of fine, fees or
costs in installments or if the defendant is unable to pay to order community service in
lieu of all or any part of the fine, fees and costs. Credit toward the fine, fees or costs
must be given at the prevailing federal hourly minimum wage rate.

[As amended, effective November 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective November 1, 1995, rewrote the form.

9-605A. Community service work program.

[For use with Magistrate Court Rule 6-701 NMRA,
Metropolitan Court Rule 7-701 NMRA and
Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

COMMUNITY SERVICE WORK PROGRAM

It is hereby ordered that _____ (*name of defendant*) complete
_____ hours of community service. _____

Date

Judge

TO: _____ (*agency*)

After completion of community service, please sign and date this form and return it to the court to indicate that the order has been completed. If the defendant does not successfully complete community service, please contact the court immediately.

Date completed: _____

Signature

Title

[Adopted, effective November 1, 1995.]

9-606. Agreement to pay.

[For use with Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO
CITY OF _____
_____ COURT

No. _____

CITY OF _____

v.

_____, Defendant

AGREEMENT TO PAY

I have been convicted of _____ and assessed \$ _____ fine. I am unable to pay the (*fine*), (*fees*) (*and*) (*costs*) at this time. I promise

to pay in the following manner: _____

[and] [or]
[in lieu of the above (*fin*es) (*fees*) (*and*) (*costs*) to perform _____ hours of community service].

I fully understand that if I fail to [pay the fine, fees and costs] [or] [perform community service] in accordance with this agreement:

I may be held in contempt of this court.

I may be confined in jail.

Dated: _____
Defendant _____

Witness: _____

USE NOTES

Section 31-12-3 NMSA 1978 authorizes the judge to permit payment of fine, fees or costs in installments or if the defendant is unable to pay to order community service in lieu of all or any part of the fine, fees and costs. Credit toward the fine, fees or costs must be given at the prevailing federal hourly minimum wage rate.

[As amended, effective November 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective November 1, 1995, rewrote the form.

9-607. Notice of appeal.

[For use with Magistrate Court Rule 6-703 NMRA,
Metropolitan Court Rule 7-703 NMRA and
Municipal Court Rule 8-703 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant
District Court No. _____
[Magistrate] [Metropolitan] [Municipal] No. _____

NOTICE OF APPEAL

(Defendant) (The state) (The City of _____) appeals to the district court from the *(judgment) (final order)* of the *(magistrate) (metropolitan) (municipal)* court entered in the above cause on the _____ day of _____, _____.

The *(defendant) (state) (city)* requests a trial setting within six months from the date of filing of this notice of appeal.

Signed

Name *(print)*

Address *(print)*

City, state and zip code *(print)*

Telephone number

(The following is to be completed prior to filing with the clerk of the district court. Proof of service is required for each party.)

CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this notice of appeal to be served on the following persons or entities by *(delivery) (mail)* on this _____ day of _____, _____:

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Attorney for appellant

Signature

Date of signature

AFFIDAVIT OF SERVICE OF A PARTY

(To be completed by a party who is not represented by an attorney)

I declare under penalty of perjury that a copy of this notice of appeal was served on the following persons or entities by *(delivery)* *(mail)* on this _____ day of _____, _____:

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Signature of appellant

Date of signature

Subscribed and sworn to
before me this _____ day
of _____, _____.

Judge, notary or other officer

authorized to administer oaths

Official title

USE NOTES

1. A copy of this notice of appeal must be filed with the court from which this appeal is being taken after it has been endorsed by the district court.

2. A copy of the judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to this notice of appeal at the time it is filed in the district court.

[As amended, effective May 1, 1986, October 1, 1991; January 1, 1995; January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, rewrote the form and added the second paragraph of the Use Note.

9-608. Title page of transcript of criminal proceedings.

[For use with Magistrate Court Rule 6-703 NMRA,
Metropolitan Court Rule 7-703 NMRA and
Municipal Court Rule 8-703 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____
District Court No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

TITLE PAGE OF TRANSCRIPT OF CRIMINAL PROCEEDINGS

1. Defendant's name or defendant's attorney's name:

(If defendant represented by an attorney, check applicable):

2. Defendant is represented by an attorney:

Appointed

Retained

Public defender.

3. Address of defendant or defendant's attorney

4. Attached: *(check appropriate boxes.)*

COMPLAINT

OTHER PAPERS AND PLEADINGS

JUDGMENT OR FINAL ORDER *(with date of filing noted thereon)*

EXHIBITS

TRANSCRIPT OF THE PROCEEDINGS *(if appeal on record)*

Dated this _____ day of _____, _____.

Clerk

[As amended, effective January 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective January 1, 1997, deleted "and certificate" from the form heading and rewrote the form.

9-609. Defendant's waiver of appeal.

[For use with District Court Rule 5-702 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

DEFENDANT'S WAIVER OF APPEAL

I, _____, (*defendant*) being duly sworn on my oath, state that I have been advised by my trial attorney that I have the right to appeal and that if I do not have the money to pay for an appeal, I am entitled to proceed with an appeal at state expense, including the services of an attorney to represent me on the appeal. Understanding my rights, I do not desire to appeal the final order of the court and hereby voluntarily, knowingly and intelligently waive my right to appeal.

Date: _____

Defendant

Subscribed and sworn to before me this _____ day of _____,

Witnessed:

Attorney for Defendant

Notary Public, Judge or Other Officer
Authorized to Administer Oaths

9-610. Vehicle immobilization order.

[Section 66-5-39 NMSA 1978]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

VEHICLE IMMOBILIZATION ORDER

This matter coming before the Court pursuant to Section 66-5-39 NMSA 1978 upon the defendant's conviction of driving a motor vehicle with a suspended or revoked driver's license:

IT IS THEREFORE ORDERED that the defendant's vehicle, (State of New Mexico) (_____) license number _____ be immobilized by the (sheriff of this county) (city police) at the defendant's expense for a period of thirty (30) days at such place as may be designated by the (sheriff) (city police).

Vehicle Description:

Dated _____ , _____

Judge

RETURN

The undersigned, being a duly certified law enforcement officer, hereby certifies that the vehicle described in the above order was immobilized for a period of thirty (30) days as follows:

Place and manner of immobilization _____

Beginning date _____

Ending date _____

Signature of officer

Title

Upon good cause shown, this order is rescinded.

Dated _____ , _____

Judge

[Adopted, effective September 1, 1989; as amended, effective November 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective November 1, 1995, rewrote the form.

9-611. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-016, 9-611 NMRA, relating to order to show cause, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former instructions, see the 2016 NMRA on *NMOneSource.com*.

9-612. Order on direct criminal contempt.

[For use with District Court Rules 1-093 and 5-112 NMRA, Magistrate Court Rules 2-110, 6-201 and 6-111 NMRA, Metropolitan Court Rules 3-110, 7-201, and 7-111 NMRA, and Municipal Court Rules 8-201 and 8-110 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER ON DIRECT CRIMINAL CONTEMPT¹

This matter came before the court on _____ (month/day/year).
The defendant, _____, was present [pro se] [represented by attorney _____].

THE COURT FINDS that the defendant, in the presence of this court,

(State the action which constitutes direct criminal contempt.)²

The Honorable _____ (name of judge) personally observed the contemptuous conduct, which was committed in the judge's presence without the need for further fact finding.

It is adjudged that the defendant is guilty of direct criminal contempt of court.

The defendant is sentenced to:

Confinement: Serve at the _____ detention center for _____ day(s), with _____ day(s) suspended;

Probation: [Supervised] [Unsupervised] probation for _____ day(s);

Probation Conditions: _____

Fine: \$_____. with \$_____ suspended, for a total of \$_____;

Total fees: \$_____;³

This sentence shall run [consecutive] [concurrent] with the sentence in _____ (*Cause No.*).

The sentence is deferred on the following conditions:

Total Probation [Supervised] [Unsupervised]: _____ Day(s)

Total Fine Sentenced: \$ _____

Total Fees Sentenced: \$ _____

Itemized Fees:

_____ 3

Bench Warrant Fees Due as of _____ **(date):** \$ _____ (in addition to fines and fees)

Total Due as of _____ **(date):** \$ _____ To be paid in full within 30 days or per signed payment plan filed with the court.

Judge

USE NOTES

1. This order constitutes a judgment and sentence and must be docketed as a separate criminal matter with a new case number.
2. Include a full statement of the facts and describe any warnings given to the defendant.
3. The magistrate and metropolitan courts should assess and collect court costs and fees on a criminal contempt conviction as set forth in NMSA 1978, Section 35-6-1. The municipal court should assess and collect court costs as set forth in NMSA 1978, Section 35-14-11.

[Adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009; as amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-016, effective December 31, 2016, rewrote the form and Use Note, and provided that the form also applies to District Court Rules 1-093 and 5-112 NMRA, Magistrate Court Rules 2-110 NMRA, and Metropolitan Court Rules 3-110, 7-201, and 7-111 NMRA.

9-613. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-016, 9-613 NMRA, relating to judgment and sentence on indirect criminal contempt, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former instructions, see the 2016 NMRA on *NMOneSource.com*.

9-614. Order on direct civil contempt.

[For use with Magistrate Court Rule 2-110 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE MAGISTRATE COURT

v.

No. _____

&

In the Matter of the Direct Civil Contempt of

_____, Contemnor.

ORDER ON DIRECT CIVIL CONTEMPT1

This matter came before the Court on _____ (*month/day/year*).
_____ was represented by _____ (*name and title*). _____ was present [pro se] [represented by _____, Esq.] (*name of attorney*).

THE COURT FINDS that the contemnor, in the presence of this Court

_____ (State the action which constitutes direct civil contempt.)² The Court finds that the contemnor committed direct civil contempt of this Court. Furthermore, this order shall be in effect until such time as the following condition(s) have been met:

THE COURT HEREBY ORDERS: _____

(Specify remedial action required.)

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and court costs:

Date

Judge

USE NOTES

1. See NMSA 1978, § 35-3-9 (1991) on contempt. See *City of Bernalillo v. Aragon*, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See *State v. Diamond*, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See Rule 5-902 NMRA for a discussion of contempt.

2. Include a full statement of the facts, including any warnings given to contemnor.

[As approved by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-615. Order on indirect civil contempt.

[For use with Magistrate Court Rule 2-110 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE MAGISTRATE COURT

v.

No. _____

&

In the Matter of the Indirect Civil Contempt of

_____, Contemnor.

ORDER ON INDIRECT CIVIL CONTEMPT¹

This matter came before the Court on _____ (*month/day/year*).
_____ was represented by _____ (*name and title*). _____ was present [pro se] [represented by _____, Esq.] (*name of attorney*).

A hearing was held and sufficient evidence offered so as to satisfy the conscience of the Court that the contemnor committed indirect contempt by _____

_____ (*State the action which constitutes indirect civil contempt.*)² THE COURT FINDS that the contemnor is guilty of indirect civil contempt of this Court. Furthermore, this order shall be in effect until such time as the following condition(s) have been met:

THE COURT HEREBY ORDERS: _____

(Specify remedial action required.)

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and court costs:

Date

Judge

USE NOTES

1. See NMSA 1978, § 35-3-9 (1991) on contempt. See *State v. Diamond*, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See *City of Bernalillo v. Aragon*, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See Rule 5-902 NMRA for a discussion of contempt.

2. Include a full statement of the facts, including any warnings given to contemnor.

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-616. Conditional discharge order.

[For use with Magistrate Court Rule 6-701 NMRA and Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

CONDITIONAL DISCHARGE ORDER

This matter came before the court

upon the court's acceptance of defendant's plea¹ of guilty or no contest, OR

pursuant to a finding of guilt by a judge or jury²,

to the following charges: _____

It appearing that good cause exists for the entry of a conditional discharge, the court hereby orders a conditional discharge without entering an adjudication of guilt as to the above charges. The court further orders that defendant shall be placed on _____ months supervised unsupervised probation pursuant to Sections 31-20-13 and 31-20-5 NMSA 1978 or Section 30-31-28 NMSA 1978.3

(OPTIONAL)

Probation costs of _____ per day shall be assessed. In addition, pursuant to Section 31-20-6 NMSA 1978, the defendant shall make a _____ contribution of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), to be paid in monthly installments of not less than five dollars (\$5.00), to a local crime stopper program, a local domestic violence prevention or treatment program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court no later than _____ (*month/day/year*) and shall provide proof to this court.

Conditions of probation are as follows: _____

If the defendant successfully completes probation, the defendant shall be discharged and the charges shall be dismissed.

Judge

USE NOTES

1. No plea shall be accepted unless the court has complied with the requirements of Rules 6-502 and 8-502 NMRA, and Form 9-406A NMRA.

2. Municipal court jurisdiction to grant conditional discharges is governed by municipal ordinance. Municipal courts do not have jurisdiction to hold jury trials.

3. The court shall designate whether the conditional discharge is pursuant to Sections 31-20-13 and 31-20-5 NMSA 1978, or Section 30-31-28 NMSA 1978.

4. No conditional discharge may be given for the offense of DWI, in any court. See Subsection C of Section 31-20-13 NMSA 1978.

5. A defendant may only use a conditional discharge once in his or her lifetime. See Subsection A of Section 31-20-13 NMSA 1978.

6. Court costs shall not be collected on conditional discharges. See Subsection D of Section 35-6-1 NMSA 1978.

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-617. Final order of discharge.

[For use with Magistrate Court Rule 6-701 NMRA
and Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

FINAL ORDER OF DISCHARGE

Without entering an adjudication of guilt, the court entered a conditional discharge order in this case. THE COURT FINDS that defendant has successfully met all obligations imposed by the court's order entered _____,
_____.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant is discharged from any further obligations pursuant to this matter and the charges in the case are hereby dismissed.

Judge

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-618. Order finding no violation of probation.

[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER FINDING NO VIOLATION OF PROBATION

This matter came before the court on _____ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (name of counsel). The prosecution was represented by _____ (name and title).

The Court having heard the evidence, **FINDS** that Defendant did not violate probation.

It is hereby ORDERED, ADJUDGED AND DECREED that all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.

Judge

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-619. Order finding probation violation and continuing sentence.

[For use with Magistrate Court Rule 6-802 NMRA
and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER FINDING PROBATION VIOLATION AND CONTINUING SENTENCE

This matter came before the court on _____ (*date*), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (*name of counsel*). The prosecution was represented by _____ (*name and title*).

Defendant having denied the probation violation and a hearing having been held,

Defendant having admitted the probation violation,

the Court **FINDS** that Defendant violated probation.

It is hereby ORDERED, ADJUDGED AND DECREED that all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.

Judge

As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-620. Probation violation, judgment, and sentence.

[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

PROBATION VIOLATION, JUDGMENT, AND SENTENCE

This matter came before the court on _____ (*date*), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (*name of counsel*). The prosecution was represented by _____ (*name and title*).

Defendant having denied the probation violation and a hearing having been held,

Defendant having admitted the probation violation,

the Court **FINDS** that Defendant violated probation.

It is hereby ORDERED, ADJUDGED AND DECREED that Defendant's probation is revoked and the following sentence is imposed:

Count 1: _____ (*name of count*) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on

probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run consecutively concurrently.

Count 2: _____ (name of count) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run consecutively concurrently.

Count 3: _____ (name of count) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run consecutively concurrently.

It is hereby ORDERED, ADJUDGED AND DECREED that

Defendant is to report to the _____ DETENTION CENTER at _____, _____ (location), no later than _____ (date), to serve _____ days.

Work release is authorized.

This sentence shall be served on weekends.

Defendant is to pay a one-hundred dollar (\$100.00) bench warrant fee. Defendant is now ordered to

pay _____ in fines and _____ in fees. Defendant shall receive credit for _____ already paid.

All provisions of the original judgment and sentence not specifically modified herein remain in effect.

Defendant is placed on _____ days [supervised] [unsupervised] probation to begin on _____ (date), with conditions as specified in the attached **Standard Order of Probation Conditions** in effect in the _____ court, which is specifically incorporated herein, and special conditions as follows:

IT IS FURTHER ORDERED THAT Defendant's cash bond is to be

returned to Defendant.

applied to the payment of court costs, court fees, and fines.

Defendant IS HEREBY ORDERED to report to probation services as follows:

_____ DWI Compliance Program,
_____ (address),

_____ (city), New Mexico, _____ (telephone number) with proof of

enrollment to the Court no later than _____ (date).

Adult probation service no later than _____ (date).

_____ county misdemeanor compliance service no later than _____ (date).

IT IS ORDERED that a copy of this judgment and commitment be delivered to the _____ **Detention Center**, and that this copy be the order of commitment of Defendant.

FAILURE TO COMPLY

FAILURE TO REPORT, COMPLY WITH CONDITIONS OF PROBATION, OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR DEFENDANT'S ARREST.

APPEAL

Defendant is hereby advised that this Order and Amended Sentence may be appealed to the district court by filing a notice of appeal in the district court within fifteen (15) days from the date of entry of this Judgment and Sentence. In accordance with Supreme Court Rule 6-802 NMRA, "the only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the magistrate court." Defendant is further advised that if Defendant appeals, Defendant must obtain a hearing date before the district court within six (6) months of the date of the filing of the notice of appeal. If Defendant's case is not heard by the district court within six (6) months, Defendant's appeal will be dismissed and this conviction will be affirmed.

OTHER CONDITIONS OF RELEASE

If Defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the District Court: _____

Appeal bond is set at \$ _____

Judge

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

9-621. Remand order after de novo appeal.

[For use in District Court]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant.

REMAND ORDER AFTER DE NOVO APPEAL

This matter came before the district court on appeal. The matter now being resolved, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this case is remanded to _____ (name of court), in Case No. _____ (enter case number in magistrate, metropolitan, or municipal court), with instructions to that court to:

Enforce the judgment and sentence entered by the lower court because the appeal was dismissed by this district court.

Vacate its disposition and enforce the judgment and sentence or final order entered by this district court.

Vacate its judgment and sentence and dismiss its case because the case was disposed of prior to trial by this district court.

Vacate its judgment and sentence on the ground that the defendant was found not guilty on appeal to this district court.

Other:

District Court Judge

USE NOTES

A district court order remanding a case to a court of limited jurisdiction should substantially follow this form. The district court must attach a copy of its dispositional order to this order and must transmit both orders to the lower court, either electronically or by hard copy.

[Adopted by Supreme Court Order No. 15-8300-010, effective for all cases pending or filed on or after December 31, 2015.]

9-622. Remand order after de novo appeal; probation violation.

[For use in District Court]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

STATE OF NEW MEXICO

v.

No. _____

_____, Defendant.

REMAND ORDER AFTER DE NOVO APPEAL - PROBATION VIOLATION

This matter came before the district court on appeal. The matter now being resolved, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this case is remanded to _____ (name of court), in Case No. _____ (enter case number in magistrate, metropolitan, or municipal court), with instructions to that court to:

- Enforce its order finding a probation violation.
- Vacate its order finding a probation violation.

District Court Judge

USE NOTES

A district court order remanding a case to a court of limited jurisdiction should substantially follow this form. The district court must attach a copy of its dispositional order to this order and must transmit both orders to the lower court, either electronically or by hard copy.

[Adopted by Supreme Court Order No. 15-8300-010, effective for all cases pending or filed on or after December 31, 2015.]

**ARTICLE 7
Special Proceedings**

9-701. Petition for writ of habeas corpus.

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

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

For Official Use Only
No. _____
(To be supplied by the clerk of the court)

_____,
(Full name of prisoner)

Petitioner,

v.

_____,
(Name of warden, jailor
or other person having
power to release the petitioner)

Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. If more space is required, attach additional pages as needed. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. _____ (name of person in custody) is imprisoned or otherwise restrained at _____ (name of facility and county of detention) by _____ (name and title of person having custody).

2. This petition (**SELECT ONLY ONE**. If you wish to raise both types of claims, you must file two separate petitions and submit each petition in the location required by Rule 5-802(E)):

seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, interpretation of the sentence by the institution or other matters relating to the trial or sentence the confined person received). NOTE: If the petition seeks to vacate, set aside or correct the sentence or order of confinement, correct the Corrections Department's interpretation or application of the sentence or order of confinement, or challenge the conviction, it shall be filed in the county of the court in which the matter was adjudicated, or, if the matter has not been adjudicated, it must be

filed in the county of the court that ordered the contested confinement. See Rule 5-802(E)(1) NMRA.)

challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (*This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole.*) *NOTE: If the petition challenges conditions of confinement or matters other than challenges to the sentence or order of confinement (those set forth in the first option), it shall be filed in the county where the petitioner is confined or restrained. See Rule 5-802(E)(2) NMRA.*

3. State concisely the facts upon which the confined person bases the claim:

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

7. Briefly describe the relief requested:

8. State the nature of the court proceeding resulting in the confinement (*i.e.*, *criminal prosecution, civil commitment, etc.*), including:

(a) case name:

(b) docket number:

(c) name of judge:

(d) name and location of the court in which the proceeding was held:

9. State the date of the final judgment, order or decree for confinement:

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

11. Was the conviction the result of:

_____ Guilty plea

_____ No Contest plea (*nolo contendere*)

_____ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

_____ Yes

_____ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

14. Did you appeal your conviction?

_____ Yes (*Go to 15*)

_____ No (*Go to 16*)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

(b) The case name and docket number for each appeal:

(c) The date each appeal was filed and decided: (*Attach a copy of each opinion or order*)

(d) A summary of the grounds upon which each appeal was based:

(e) The result of each appeal:

(f) The name and address of the attorney on appeal:

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

_____ Yes (*Go to 18*)

_____ No (*Go to 19*)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

(b) The name and date of each case:

(c) The docket number:

(d) The court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) The result of each proceeding. (*Attach a copy of each decision.*)

(f) The issues raised in each proceeding:

(g) State whether a hearing was held in connection with each of these proceedings:

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

19. Do you seek the appointment of counsel to represent you?²

_____ Yes

_____ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF _____

I, the undersigned, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. I affirm under penalty of perjury under the laws of the State of New Mexico that on _____, _____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

_____ Court (name of court)
_____ (city), New Mexico, _____ (zip code).

(Signature)

(Address)

PNM No., if applicable

USE NOTES

1. After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2. Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

[Adopted, effective August 1, 1989; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-025, effective December 31, 2017, instructed petitioners that if they wish to challenge both their underlying conviction and their conditions of confinement, they must file two separate petitions, and instructed petitioners of the proper venue where each type of petition must be filed; in Paragraph 2, after “This petition”, added “(SELECT ONLY ONE. If you wish to raise both types of claims, you must file two separate petitions and submit each petition in the location required by Rule 5-802(E)).”, in the first box under Paragraph 2, after “confession”, added “interpretation of the sentence by the institution”, and added the last sentence and citation to Rule 5-802(E)(1) NMRA, in the second box under

Paragraph 2, added the last sentence and citation to Rule 5-802(E)(2) NMRA; in the "VERIFICATION", after "undersigned", deleted "being first duly sworn upon my oath", and after "information and belief.", deleted "On" and added "I affirm under penalty of perjury under the laws of the State of New Mexico that on"; deleted the provisions for a notary public signature and the date the notary public's commission expires; and deleted the "Certificate of Service" provision.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-014, effective December 31, 2014, required a statement of fact upon which the petitioner's claims are based; required a statement as to whether the grounds raised in the petition have been raised in a previous direct appeal or petition; required a description of the petitioner's sentence; required a description of prior direct appeals; moved the title of the form from the caption of the case to the Instructions; in the Instructions, added the third sentence, and in the fourth sentence, after "If you", added "are not incarcerated and"; added Paragraph 3; in Paragraph 5, in the first sentence, after "raised previously in", deleted "any other proceeding" and added "your direct appeal"; added Paragraph 6; in Paragraph 8, added "including"; in Paragraph 9, after "decree for confinement", deleted "and a summary of its terms"; in Paragraph 10, in the second sentence, after "If no", deleted "explain why you are not doing so" and added "describe your sentence"; in Paragraph 13, changed "(10)" to "(12)"; in Paragraph 14, in the first sentence, deleted "Was an appeal taken" and added the current sentence, changed "(Go to 13)" to "(Go to 15)", and changed "(Go to 14)" to "(Go to 16)"; in Paragraph 15, changed "(12)" to "(14)"; in Paragraph 15(b), added "for each appeal"; in Paragraph 15(c), added "each appeal was filed and decided"; in Paragraph 16, changed "(12)" to "(14)"; in Paragraph 17, in the introductory sentence, changed "(13)" to "(15)", changed "(Go to 16)" to "(Go to 18)", and changed "(Go to 17)" to "(Go to 19)"; in Paragraph 19, deleted the former language which required the petitioner to state whether or not the petitioner wanted counsel appointed and whether the petitioner could pay the lawyer appointed to represent the petitioner, and deleted the former language which required the petitioner to complete Form 9-403 if the petitioner was not able to pay the lawyer appointed to represent the petitioner; and in the Use Note, added Paragraph 2.

The 2009 amendment, approved by Supreme Court Order No. 09-8300-008, effective May 6, 2009, under "Instructions – Read Carefully", replaced "You should exercise care to assure" with "Make sure"; in item 12, added "(Go to 13)" after "Yes" and "(Go to 14)" after "No"; in item 14, before "state" at the beginning of the sentence, added "If you answered "no" to (12),"; in item 15, after "Yes", added "(Go to 16)" and after "No", added "(Go to 17)". The amendment, in item 16(b), added "or" before "institutional"; and under "VERIFICATION", added "On _____, _____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address: _____ Court (name of court), _____ (city), New Mexico, _____ (zip code)."

9-702. Petition for writ of certiorari to the district court from denial of habeas corpus.

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Defendant-Petitioner,

S.Ct. No. _____
(leave blank; court will assign)

v.

(Name of Warden)

District Ct. No. _____

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE _____ DISTRICT COURT OF NEW MEXICO**

Defendant-Petitioner pro se

(address information)

**PETITION FOR WRIT OF CERTIORARI
TO THE _____ DISTRICT COURT OF NEW MEXICO**

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

_____ (your name v. Warden's name),

District Court No. _____ filed on

_____.

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

**BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT**

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

POINT 2:

POINT 3:

(Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

- remand to the district court for a full hearing on the petition, **OR**
- reverse the conviction, **OR**
- remand to the district court to correct the sentence, **OR**
- (other) _____ .

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing **only the original copy** of this petition and I have attached the following:

- a copy of my petition for writ of habeas corpus filed in district court, **AND**
- a copy of the state's response, if one was filed, **AND**
- a copy of the district court's order.
- I have not attached the required documents because

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Defendant-Petitioner, pro se

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF _____

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, _____ (*date*), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the New Mexico Supreme Court at the following address:

New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico, 87504-0848.

(Signature)

(Address)

PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____, by

(Name of petitioner)

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this _____ day of _____.

Defendant-Petitioner, pro se

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-025, effective December 31, 2017, added the new "VERIFICATION" section.

9-703. Petition for post-sentence relief.

[For use with District Court Criminal Rule 5-803 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

_____,
(Your full name)

Petitioner,

v.

STATE OF NEW MEXICO,

Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are seeking free process, complete Form 9-403 NMRA.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR POST-SENTENCE RELIEF¹

1. _____ (name of petitioner) completed a sentence of _____ (incarceration, probation, parole) on _____ (date sentence was completed).

2. This petition

seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the petitioner received).

[] (other)

3. State concisely the facts upon which the petitioner bases the claim:

4. State concisely the grounds and law, or other legal authorities on which the petitioner bases the claim:

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

6. Have the grounds raised in this petition been raised previously in a petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

7. Briefly describe the relief requested:

8. State the nature of the court proceeding resulting in the sentence (*i.e., criminal prosecution, civil commitment, etc.*), including:

(a) case name: _____

(b) docket number: _____

(c) name of judge: _____

(d) name and location of the court in which the proceeding was held: _____

9. State the date of the final judgment or order for your sentence: _____

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

11. Was the conviction the result of:

_____ Guilty plea

_____ No Contest plea (*nolo contendere*)

_____ Finding of guilty by judge or jury

12. Was the petitioner represented by an attorney during the proceedings resulting in the sentence?

_____ Yes

_____ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the petitioner:

14. Did you appeal your conviction?

_____ Yes (*Go to 15*)

_____ No (*Go to 16*)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

(b) The case name and docket number for each appeal:

(c) The date each appeal was filed and decided (*attach a copy of each opinion or order*):

(d) A summary of the grounds upon which each appeal was based:

(e) The result of each appeal:

(f) The name and address of the attorney on appeal:

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this sentence?

_____ Yes (*Go to 18*)

_____ No (*Go to 19*)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

(b) The name and date of each case:

(c) the docket number:

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) the result of each proceeding (*attach a copy of each decision*):

(f) The issues raised in each proceeding:

(g) State whether a hearing was held in connection with each of these proceedings:

(h) State whether the petitioner was represented by an attorney in each proceeding and, if so, the attorney's name and address:

19. Do you seek the appointment of counsel to represent you?²

_____ Yes

_____ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF _____

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, _____ (*date*), I deposited this petition in the mail, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

_____ Court (*name of court*)

_____ (city), New Mexico, _____ (zip code).

(Signature)

(Address)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____, by

(Name of petitioner)

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the district attorney in the county in which the petition is filed by _____ (describe manner of service), this _____ day of _____, _____.

(Signature of petitioner)

USE NOTES

1. This form should only be used by individuals who have completed their sentence. Individuals still in custody, on probation, or on parole should use Form 9-701 NMRA.

2. The Public Defender Department cannot be appointed to represent a petitioner in a Rule 5-803 proceeding. However, the district court retains the inherent authority to appoint counsel from among the private bar or pro bono legal service providers who have licensed counsel on staff. See Committee Commentary, Rule 5-803 NMRA.

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014.]

9-704. Order of appointment for habeas corpus proceedings under Rule 5-802 NMRA.

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

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____ ,

No. _____

Petitioner,

v.

_____ ,

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS
UNDER RULE 5-802 NMRA**

This matter having come before the court, and the court being fully advised of the circumstances;

THE COURT FINDS THAT:

the petitioner is incarcerated; or

the petitioner is not incarcerated, and is indigent and unable to obtain counsel;
and

This is a proceeding which a reasonable person would bring at that person's own expense.¹

IT IS THEREFORE ORDERED THAT:

the Public Defender Department is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

the Public Defender Department, shall appoint an attorney on contract with the department represent the petitioner based on the conflict memorandum reviewed by the court or as disclosed at a status conference with the court.

[] petitioner's counsel shall file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.

(District Judge)

USE NOTES

If the Public Defender Department is appointed, the clerk of the district court shall mail a copy of this order and a copy of the pro se petition to the Post-Conviction/Habeas Division, Office of the Public Defender, 505 Marquette NW, Ste. 120, Albuquerque, NM 87102.

1. Under the Indigent Defense Act, a person has the limited right to appointed counsel representation in post-conviction matters "unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense" NMSA 1978, § 31-16-3(B)(3) (1968). Therefore, the Public Defender may not be able to represent a petitioner in all cases.

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014.]

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)

2. RETURN OF PETITION FOR FURTHER INFORMATION:

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

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*.

orders a response from respondent on the following claims:

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.]

ARTICLE 8

Statutory Proceedings

9-801. Application for inspectorial search order.

[For use in the District, Magistrate,
Metropolitan and Municipal Courts]
[Sections 24-1-16 to 24-1-19 NMSA 1978]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

APPLICATION FOR INSPECTORIAL SEARCH ORDER

_____, being duly sworn, on his oath, states that:

1. he is an officer authorized by law to make inspectorial searches;
2. inspection of the following described (*check appropriate box*)

premises: _____

(describe premises to be searched as particularly as possible)

vehicle: _____

(describe vehicle as particularly as possible)

is necessary for the purpose of ascertaining the existence or nonexistence of the following described conditions _____

(set forth purpose or reason for search, and facts)

in accordance with the requirements prescribed by (check appropriate box or boxes)

fire housing sanitation welfare zoning requirements;

(*check if appropriate; complete if checked*)

3. permission to inspect at night is requested for the following reasons:

(set forth reasons search may be reasonably conducted at night)

(check appropriate box)

4. he has been refused consent to make an inspectorial search after having given seven days' notice of the time and purpose of the proposed inspectorial search;

an inspectorial search by consent of the owner of the (premises) (vehicle) is not obtainable within a reasonable period of time;

(check if appropriate and complete)

it is necessary that the applicant be accompanied at the time of any search by one or more law enforcement officers _____
_____ *(set forth reason)*

Subscribed and sworn to before me in the above-named [county] [city] of the State of New Mexico this _____ day of _____, _____

Signature of Affiant

Title

Judge, Notary or Other Officer
Authorized to Administer Oaths

9-802. Inspection order.

[For use in the District, Magistrate,
Metropolitan and Municipal courts]
[Sections 24-1-16 to 24-1-19 NMSA 1978]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

No. _____

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v.

_____, Defendant

INSPECTION ORDER

THE (STATE OF NEW MEXICO) (CITY OF _____)

TO ANY OFFICER AUTHORIZED TO MAKE AN INSPECTORIAL SEARCH OF
PREMISES OR VEHICLES:

An application for an inspectorial search order, which is attached to and hereby made a part of this order, having been submitted to me by _____, who has made a sufficient showing that inspection of the *(check appropriate box)* premises vehicle described in the application is in accordance with reasonable legislative or administrative standards.

(check appropriate box)

I am satisfied that seven (7) days' notice has been given to the owner of the *(premises) (vehicle)* described in the application and consent has not been given to make an inspectorial search.

I am satisfied that an inspectorial search by consent of the owner of the *(premises) (vehicle)* described in the application is not obtainable within a reasonable period of time.

(check if appropriate)

Inspection of the *(premises) (vehicle)* at night is reasonable under the circumstances described in the application.

YOU ARE HEREBY COMMANDED TO SEARCH FORTHWITH:

(check one or both)

the premises the vehicle

described in the application

between the hours of 6:00 a.m. and 10:00 p.m.

at any time of the day or night

(check if appropriate)

[] You are hereby authorized to be accompanied by one or more law enforcement officers.

You are to return this order within three (3) days after the search is completed to make a sworn report of the circumstances of the execution or failure to execute this order.

Judge

RETURN

_____, being duly sworn, on his oath, states that:

he received the attached order on _____, _____, and searched the
(premises) (vehicle) described at _____ o'clock (a.m.) (p.m.) on
_____, _____

The following is a report of the circumstances of execution or failure to execute the order of the court:

(set forth record of proceedings taken subsequent to issuance of order)

Signature of Affiant
Inspection Officer

Title

Subscribed and sworn to before
me in the above-named (City)
(County) of the State of New Mexico
this _____ day of _____, _____

Judge, Notary or Other Officer
Authorized to Administer Oaths

Official Title

9-803. Waiver of extradition.

[Section 31-4-22 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

WAIVER OF EXTRADITION

I, _____, in open court do hereby freely and voluntarily state that I am the identical _____, against whom a criminal proceeding charging me with _____ has been initiated in the county of _____, State of _____, and I further hereby freely, voluntarily without threats or promises of reward agree to return to that county and state, without legal process.

I further acknowledge that I will be held without bond while awaiting the agent of the state of _____ to take me into custody.

I further acknowledge that I have been informed of my rights to legal counsel, to require the issuance and service of a warrant of extradition as provided in Section 31-4-22 NMSA 1978 and my right to contest said warrant of extradition through a writ of habeas corpus as provided in Section 31-4-10 NMSA 1978.

This waiver is not an admission of guilt. I agree to return to the state of _____, with any peace officer who may be sent to take me to that state for trial.

This statement and waiver (*made in quadruplicate*), done at _____, _____ County, New Mexico, this _____ day of _____, _____, in the presence of a judge of the _____ Court of that county.

Attorney for Defendant

Defendant

Assistant District Attorney

I hereby certify that the foregoing was executed in my presence and that I informed the defendant of his rights to require the issuance and service of a warrant of extradition as provided by the laws of New Mexico, and his right to contest said warrant of extradition through a writ of habeas corpus. I do hereby direct the officer having such

person in custody to deliver forthwith such person to the duly accredited agent of the demanding state, together with a copy of this waiver, and that the original hereof shall forthwith be forwarded to the office of the governor of the State of New Mexico for filing.

Judge

Original - Governor
2nd & 3rd - Agent
4th - File

9-804. Order for extradition on waiver.

[Section 31-4-22 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

ORDER FOR EXTRADITION ON WAIVER

THIS MATTER coming before the Court, on the _____ day of _____, _____, pursuant to § 31-4-22, NMSA 1978, the defendant, _____, being present in Court with counsel, _____; the Court having advised the defendant that he is charged with _____ in the County of _____, State of _____; the Court having advised the defendant of his rights pursuant to § 31-4-10 NMSA 1978, and the defendant, with the advice of counsel, having waived each of the rights therein granted; and the Court being fully satisfied in the premises;

IT IS, THEREFORE, ORDERED that the defendant, _____, be, and he is hereby, ordered extradited to the aforesaid County and State, and is remanded to the authorities thereof.

IT IS FURTHER ORDERED that the officer in custody is directed to deliver the defendant to the duly accredited agent of the demanding state, together with a copy of

this order and the waiver of extradition. The authorities of the demanding State take custody of the defendant not later than _____.

Judge

9-804A. Order for extradition on waiver.

[Section 31-4-22 NMSA 1978,
Magistrate Court Rule 6-811 NMRA and
Metropolitan Court Rule 7-811 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

ORDER FOR EXTRADITION ON WAIVER

The defendant appeared before the above court on the _____ day of _____, _____, pursuant to Section 31-4-22 NMSA 1978 and the court advised the defendant that:

1. the defendant has been arrested for having committed _____ (set forth criminal offense) in the County of _____, State of _____;
2. the above county and state have demanded the defendant be returned to that state;
3. the defendant has a right to extradition on an arrest warrant issued by the governor of this state;
4. the defendant has a right to retain the assistance of counsel; and
5. the defendant has a right to appear before the district court on a writ of habeas corpus to test the legality of the defendant's arrest.

The defendant, after being advised of the above rights, consented to return to the demanding state and signed a waiver of extradition.

IT IS, THEREFORE, ORDERED that the above defendant be extradited to the demanding state and ordered held without bond pending delivery to the agent of the demanding state.

IT IS FURTHER ORDERED that the officer in custody of the defendant deliver the defendant to the agent of the demanding state together with a copy of this order and the waiver of extradition. The authorities of the demanding state shall take custody of the defendant not later than _____ (date).

Judge

USE NOTES

A copy of this order and a copy of the defendant's consent to extradition is mailed by the court to the governor.

[Adopted, effective October 1, 1996.]

ANNOTATIONS

Cross references. — For Uniform Criminal Extradition Act, see Section 31-4-1 NMSA 1978 et seq.

9-805. Fugitive complaint.

[For use with Magistrate Court Rule 6-810 NMRA and Metropolitan Court Rule 7-810 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

FUGITIVE COMPLAINT

The State of New Mexico alleges that the above-named defendant is subject to extradition from this state to the State of _____.
(check applicable alternative)

The defendant is charged in the State of _____ with the crime of _____.

The defendant has been convicted in the above state of the crime of _____ and has

escaped from confinement.

violated terms of release or bail.

violated terms of probation.

violated terms of parole.

The reason I believe that the defendant is the person identified in the fugitive warrant is:
(check all that apply)

a copy of an NCIC message, teletype, warrant, indictment, information, affidavit, judgment of conviction or sentence so indicating is attached.

the mode of transportation of the defendant.

the physical description of the defendant.

the date of birth of the defendant.

the name of the defendant.

Other:

(set forth other aspects showing that the defendant is the person sought in the other state)

The crime with which the defendant was charged or convicted is punishable in the above state by death or by imprisonment of more than one year.

The defendant was arrested on _____, _____, at _____ (a.m.) (p.m.) and is confined in the _____ (county) (city) jail.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THIS FUGITIVE COMPLAINT IS TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A FUGITIVE COMPLAINT.

_____, _____
Date

Officer's signature

Title

USE NOTES

This form may be used only if the defendant is charged with a felony. If the defendant is charged with a misdemeanor a complaint and arrest warrant must be used.

[Adopted, effective October 1, 1996.]

ANNOTATIONS

Cross references. — For Uniform Criminal Extradition Act, see Section 31-4-1 NMSA 1978 et seq.

9-806. Motion to extend time.

[For use with District Court Rule 5-821 NMRA, Magistrate Court Rule 6-811 NMRA and Metropolitan Court Rule 7-811 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[_____ COURT]

[_____ JUDICIAL DISTRICT]

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

MOTION TO EXTEND TIME

_____ (*name and title of prosecutor*) moves the court to extend the time for the confinement or conditions of release of Defendant pending arrest on the Governor's rendition warrant for extradition in this case for _____ days after _____ (*date previously granted*) because the demanding state has been unable to perfect its extradition within the time allotted.

Prosecutor

I hereby certify that a copy of

the foregoing pleading was sent

to _____

_____, N.M.

on the ____ day of _____, _____.

Prosecutor

[Adopted, effective October 1, 1996; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in the use note at the beginning of the form, after "For use with", added "District Court Rule 5-821 NMRA"; in the jurisdictional style of the pleading, deleted the blank for the city in which the motion is filed and added a blank for the judicial district in which the motion is filed; and in statement of the motion, after "moves the court to extend the time for", added "the confinement or conditions of release of Defendant pending arrest on the Governor's rendition warrant for".

Cross references. — For Uniform Criminal Extradition Act, see Section 31-4-1 NMSA 1978 et seq.

9-807. Order granting extension of time.

[For use with District Court Rule 5-821 NMRA, Magistrate Court Rule 6-811 NMRA and Metropolitan Court Rule 7-811 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[_____ COURT]

[_____ JUDICIAL DISTRICT]

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER GRANTING EXTENSION OF TIME

This matter coming before the court on the ____ day of _____,
_____ on motion of _____ (*name and title*);

IT IS ORDERED that the time for the confinement of Defendant pending arrest on
the Governor's rendition warrant for completion of extradition in this case be extended
_____ days beyond the time previously granted to
_____ (*date*).

Judge

Approved:

Prosecutor, if any

Attorney for the defendant, if any

[Adopted, effective October 1, 1996; as amended by Supreme Court Order No. 10-8300-028, effective December 3, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-028, effective December 3, 2010, in the use note at the beginning of the form, after "For use with", added "District Court Rule 5-821 NMRA"; in the jurisdictional style of the pleading, added a blank for the judicial district in which the motion is filed; in the style of the case, added blanks for the county and city, and in statement of the order, after "IT IS ORDERED that the time for", added "the confinement of Defendant pending arrest on the Governor's rendition warrant for", and after "extended ____ days", deleted "and shall expire on ____ (date)" and added "beyond the time previously granted to ____ (date)".

Cross references. — For Uniform Criminal Extradition Act, see Section 31-4-1 NMSA 1978 et seq.

9-808. Transfer order extradition proceedings.

[For use with Magistrate Court Rule 6-812 NMRA and Metropolitan Court Rule 7-812 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

TRANSFER ORDER EXTRADITION PROCEEDINGS

The defendant has been arraigned on a fugitive warrant. In response to questioning by the court, the defendant has advised the court that the defendant does not wish to sign a waiver of extradition.

It is ordered that the fugitive action be transferred to the district court for further proceedings.

Judge

Date

(Attach copy of fugitive complaint and other pleadings and papers filed with the court.)

[Adopted, effective October 1, 1996.]

ANNOTATIONS

Cross references. — For Uniform Criminal Extradition Act, see Section 31-4-1 NMSA 1978 et seq.

9-809. Order of transfer to children's court.

[For use in magistrate, metropolitan, and municipal courts]
[Section 32A-2-6 NMSA 1978]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v.

No. _____

_____, Defendant.

ORDER OF TRANSFER TO CHILDREN'S COURT¹

THIS MATTER having come before this Court, and this Court being otherwise fully advised, this Court FINDS:

1. Based on the allegations in the complaint or citation, the above-named defendant was a child under the age of eighteen (18) at the time the crime(s) charged [is] [are] alleged to have been committed; and

2. One or more of the charges against the defendant are for "delinquent acts" as defined in Section 32A-2-3(A) NMSA 1978 of the Children's Code.

IT IS THEREFORE ORDERED that, under Section 32A-2-6 NMSA 1978, this case and jurisdiction of this matter is hereby transferred to the Children's Court, which shall have exclusive jurisdiction over the proceedings and the defendant.

IT IS FURTHER ORDERED that, under Section 32A-2-6(B) NMSA 1978, the defendant shall:

Promptly be taken by law enforcement to the Children's Court;

Remain in the custody of or be remanded to the [_____ juvenile detention center] [_____ detention facility] if the defendant is currently under the age eighteen (18) to be brought before the Children's Court at a time designated by that Court;²

Remain in the custody of or be remanded to the _____ detention facility if the defendant currently is age eighteen (18) or older to be brought before the Children's Court at a time designated by that Court; or

Released to the custody of _____, who is a parent, guardian, custodian, or other person legally responsible for the defendant to be brought before the Children's Court at a time designated by that Court.

Judge

USE NOTES

1. This transfer order should be used by the magistrate, metropolitan, or municipal court to transfer a delinquency case to the children's court. The transferring court must also provide the children's court with a copy of the complaint or citation and any other papers relating to the case. See NMSA 1978, § 32A-2-6.

2. See NMSA 1978, §§ 32A-2-4.1, 32A-2-12 (addressing the temporary detention of a child alleged to be a delinquent child pending a court hearing).

[Adopted by Supreme Court Order No. 17-8300-024, effective for all cases pending or filed on or after December 31, 2017.]

9-810. Motion to restore right to possess or receive a firearm or ammunition.

[For use with Section 34-9-19 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

STATE OF NEW MEXICO,

v.

No. _____

_____,

Defendant.

**MOTION TO RESTORE RIGHT
TO POSSESS OR RECEIVE A FIREARM OR AMMUNITION**

I, _____ (*name*), am the defendant in this proceeding and state as follows:

1. On _____ (*date*), I was notified that I am subject to the firearm and ammunition prohibitions set forth in 18 U.S.C. § 922(g)(4) as a result of the following (*select one*):

Finding of incompetent to stand trial.

Finding of not guilty by reason of insanity at the time of the offense.

2. The Court entered the finding identified in Paragraph 1, above, in this case.

YES (*required*) I have attached a copy of the finding to this motion.

3. I request that this Court restore my right to possess or receive a firearm or ammunition, including my right to be eligible for a concealed handgun license.

4. I have not filed a Motion To Restore Right To Possess or Receive a Firearm or Ammunition within the past two (2) years.

5. I request that this Court schedule a hearing to consider whether my rights should be restored under Section 34-9-19(E) NMSA 1978.¹

WHEREFORE, I ask the Court to grant this motion and for any other relief that the Court deems proper.

Respectfully submitted,

Signature of Defendant

Name of Defendant (*print*)

Mailing address

Telephone number

VERIFICATION

I, the Defendant, affirm under penalty of perjury under the laws of the State of New Mexico the following:

(A) I am the defendant in the above-entitled cause;

(B) I have read the motion to restore right to possess or receive a firearm or ammunition;

(C) The contents of the motion are true and correct to the best of my information and belief; and

(D) I understand the following:

(1) If the Court sets a hearing on the motion, I must offer evidence of the following when I come to Court:

(a) The circumstances regarding the firearm disabilities from which I am seeking relief;

(b) My mental health records and criminal history records, if any (It is my responsibility to provide these records);

(c) My reputation, which must be supported, at the very least, by a person who can come to the hearing to testify about my character; a sworn, written statement by a person familiar with my character; or by other character evidence; and

(d) Changes in my condition or circumstances since the finding identified in Paragraph 1 of this motion was entered;

(2) The evidence described above will be used to determine whether I am likely to act in a manner dangerous to public safety and whether restoring my right to possess or receive a firearm or ammunition is contrary to the public interest; and

(3) After I file this motion with the court, I must mail or hand-deliver a court-stamped copy to the Office of the Attorney General and to all parties to the proceeding that resulted in the order identified in Paragraph 1 of this motion.²

Date

Defendant

USE NOTES

1. You must bring a self-addressed stamped envelope with you when you file your motion. The clerk will use the envelope to notify you by mail of the date and time of your hearing.

2. You should bring the original and at least two copies of the motion with you when you file the motion. The clerk will file the original and will stamp and return the copies to you. You may keep one copy for your records, and you must mail or hand-deliver the other copies to the attorney general and to all parties to this proceeding as required by NMSA 1978, § 34-9-19(D). The court may ask you for proof that you mailed or hand-delivered the other copies.

[Approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017.]

ARTICLE 9 Clinical Law Student Appearances

9-901. Certificate of dean.

[For use with District Court Criminal Rule 5-110.1 NMRA]

CERTIFICATE OF DEAN OF _____ SCHOOL OF LAW

I hereby certify that I am the dean of the _____ School of Law and that this school of law is an American Bar Association accredited law school that complies with the current standards of the American Bar Association regarding field placement programs.

I further certify that _____ (*name of student*) is a regularly enrolled student of the above-named law school who has received a passing grade in law school courses aggregating thirty (30) or more semester hours or their equivalent.

I further certify that the above-named student is participating in a clinical law program and will receive law school credit hours for work performed in the State of New Mexico under the direction or supervision of _____ (*name of supervising attorney or judge*), a member of the State Bar of New Mexico who has been admitted to practice law for a period of five (5) or more years. This law school credit will be earned during the period beginning _____ and ending _____. (*Set forth beginning and ending dates of program not to exceed a four month period.*)

I further certify that the above-named law student meets the academic and moral standards required of a student in good standing at this institution.

_____, _____.

Dean

[Adopted, effective October 1, 1995.]

9-902. Order approving clinical law student appearance.

[For use with District Court Criminal Rule 5-110.1 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT
_____ JUDICIAL DISTRICT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

ORDER APPROVING CLINICAL LAW STUDENT APPEARANCE

_____, a qualified supervising attorney participating in a clinical law program of the _____ School of Law, which meets the requirements of Rule 5-110.1 NMRA of the Rules of Criminal Procedure for the District Courts has requested that _____, a law student enrolled in a qualified clinical law program, be permitted to participate in this matter.

It is hereby ordered that the above-named law student may participate in this case.

Date

District Judge

USE NOTES

If the clinical law student is enrolled in an out-of-state law school, the certificate of the dean of the law school must be filed with this order. See Rule 9-901.

[Adopted, effective October 1, 1995.]