

Civil Forms

ARTICLE 1 General Provisions

4-101. Notice of [excusal] facts requiring recusal (constitution or code of conduct).

[For use with Magistrate Court Rule 2-106 and
Metropolitan Court Rule 3-106]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT
_____, Plaintiff

v.

No. _____

_____, Defendant

NOTICE OF [EXCUSAL] FACTS REQUIRING RECUSAL (CONSTITUTION OR CODE OF CONDUCT)¹

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 _____ the Code of Judicial Conduct.

Signature of party

USE NOTES

1. Each party must be served with a copy of this notice. See Rules 2-203 and 3-303
NMRA. See Civil Form 4-221 for the certificate of service and affidavit of service.

[As amended, effective May 1, 1986; 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.

4-102. Certificate of excusal or recusal.

[For use with Magistrate Court Rule 2-105 NMRA and Metropolitan Court Rule 3-105 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE _____ COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

CERTIFICATE OF EXCUSAL OR RECUSAL

I hereby certify that I have [been excused] [recused myself] from presiding in the above case.

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.

_____, _____.

Judge

Division _____

[As amended, effective May 1, 1986; September 1, 1989; November 1, 1995; as amended by Supreme Court Order No. 10-8300-016, effective May 14, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-016, effective May 14, 2010, at the beginning of the form, deleted the reference to "2-105, 3-105" and added the current use note; deleted the former style of the case and added the current style of the case; and after the title of the form, in the first paragraph, after "certify that I

have", deleted "(been excused)(recused myself)" and added "[been excused][recused myself]"; and after "in the above case", deleted "and ten (10) days have passed since the parties were notified of such recusal or excusal".

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

4-103. Notice of excusal.

[For use with Magistrate Court Rule 2-106 NMRA and Metropolitan Court Rule 3-106 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE _____ COURT

_____, Plaintiff,

v.

No. _____

_____, 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 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 party)

Dated this _____ day of _____, _____.

(Party or attorney for party)

USE NOTES

Each party must be served with a copy of this notice. See Rules 2-203 and 3-303 NMRA. See Civil Form 4-221 NMRA for the certificate of service and affidavit of service.

[As amended, effective May 1, 1986; November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 10-8300-016, effective May 14, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-016, effective May 14, 2010, deleted the former style of the case and added the current style of the case; and added the second part of the form under the title "Optional Stipulation".

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".

4-104. Notice of recusal.

[For use with Magistrate Court Rule 2-106 NMRA and Metropolitan Court Rule 3-106 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE _____ COURT

_____, Plaintiff,

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.

Dated this _____ day of _____, _____.

Clerk

[Approved, effective October 1, 1987; as amended, effective November 1, 1995; May 1, 2002; as amended by Supreme Court Order No. 10-8300-016, effective May 14, 2010.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-016, effective May 14, 2010, deleted the former style of the case and added the current style of the case; after the title of the form, deleted the former language of the form which gave notice that the judge has been recused from presiding in the case and that if within ten days the parties do not file a stipulation agreeing to another judge to hear the case, another judge will be assigned to hear the case; and added the current language of the form.

The 2002 amendment, effective May 1, 2002, deleted the judicial division designation line and added the Use Note.

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", "ten (10) days" for "five (5) days", "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".

4-104B. Notice of assignment.

[For use with Magistrate Court Rules 2-105 and 2-106 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE MAGISTRATE COURT

_____, Plaintiff,

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. 09-8300-036, effective November 16, 2009.]

4-105. Motion to withdraw as counsel; order approving withdrawal.

[For use with Magistrate Court Rule 2-108 NMRA
and Metropolitan Court Rule 3-108 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

[CITY OF _____]

_____ COURT

v.

No. _____

_____, Plaintiff

v.

_____, Defendant

MOTION TO WITHDRAW AS COUNSEL¹ ORDER APPROVING WITHDRAWAL

_____ (*name of withdrawing attorney or firm*) requests permission of the court to withdraw as counsel for the above named party. The reason for the withdrawal is _____ (*set forth reason for the withdrawal*).

[My] [Our] client

(check and complete applicable alternative)

has consented to the withdrawal and has been notified of all pending court dates.

has refused to agree to the withdrawal because _____ (*set forth reason given by client*).

could not be notified after the following attempts:
_____. A return receipt for certified or registered mail to my client's last known address is attached to this motion.

(check and complete applicable alternative)

[] _____ (*name of attorney*) is entering an appearance to represent the above named party¹.

[] _____ (*name of party*) will appear pro se. The last known address of _____ (*name of party*) is:

_____ (*name of party*)

_____ (*mailing address*)

_____ (*city, county and zip code*)

_____ (*telephone number*)

Dated: _____

Withdrawing attorney

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

Entry of appearance by new attorney¹

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

Last known address of pro se party

Address (*print*)

City, state and zip code (*print*)

Telephone number

APPROVED:

Attorney or pro se party

Date

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 to _____ (*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 _____ (p.m.) (a.m.) on _____ (*date*).]

Signature of attorney or party

Date of signature

CERTIFICATE OF SERVICE ON WITHDRAWING ATTORNEY'S CLIENT

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 to _____ (*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

WITHDRAWAL AND SUBSTITUTION OF ATTORNEY

[APPROVED] [DENIED]:

Judge

Date

USE NOTES

1. This form may also be used for the substitution of counsel. Unless there is a new attorney representing the party, insert "none". New counsel must also enter an appearance for the client.

2. Use only applicable alternative.

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

4-110. Request for hearing.

[District Court Civil Rules]¹

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

_____, Plaintiff

v.

_____, Defendant

REQUEST FOR HEARING

Assigned judge: _____

Matters to be heard: _____

Hearings presently set: _____

Time requested by plaintiff: _____

Time requested by defendant: _____

(Provide names and addresses of parties who need to be notified – attach a list if necessary.)²

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I hereby certify that I have caused a copy of the foregoing to be [mailed] [delivered] [faxed] to each of the opposing parties listed above on or before _____ (date of service).

Hearing requested by:

Signature

Printed name: _____

Address: _____

Telephone: _____

USE NOTES

1. A local district court notice of hearing form that has been approved by the Supreme Court may be used instead of this form.

2. This request must be served on all other parties pursuant to Rule 1-005 NMRA. See also Rule 1-007.1 NMRA for how motions are presented to the court.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004.]

ANNOTATIONS

Compiler's notes. — This form was provisionally approved by the Supreme Court effective August 15, 2003 until August 31, 2004. This form was permanently approved by the Supreme Court effective October 14, 2004.

4-111. Notice of hearing.

[For use with District Court Civil Rules]¹

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT

No. _____

_____, Plaintiff

v.

_____, Defendant

NOTICE OF HEARING²

The Honorable _____ will hear _____
(*describe matter to be heard*) in the above matter in the _____
County courthouse located at _____ (*street*) in room _____
on _____ the _____ day of _____, _____ at _____ (a.m.) (p.m.).
_____ (*minutes*) (*hours*) is allotted for the hearing.

Notice [mailed] [delivered] [faxed] on _____ day of _____, _____.

Administrative assistant to the judge

USE NOTES

1. The district court complies with the Americans with Disabilities Act. Please notify the clerk of the court of the nature of any disability at least five (5) days before any hearing, so appropriate accommodations can be made.

2. A local district court notice of hearing form that has been approved by the Supreme Court may be used instead of this form.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004; as amended by Supreme Court Order No. 05-8300-020, effective December 15, 2005.]

ANNOTATIONS

The 2005 amendment, effective December 15, 2005, added a blank space for a description of the matter to be heard.

4-112. Request for hearing.

[For use with Magistrate Court Civil Rule 2-307 NMRA and Metropolitan Court Civil Rule 3-307 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT
_____ COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

REQUEST FOR HEARING

Assigned judge: _____
Matters to be heard: _____
Hearings presently set: _____
Time requested by plaintiff: _____
Time requested by defendant: _____

(Provide names and addresses of parties who need to be notified -- attach a list if necessary.)¹

Hearing requested by:

Signature

Printed name: _____

Address: _____

Telephone: _____

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ this
_____ (*insert paper served, such as "answer" or "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*) at _____ (*telephone
number*). The transmission was reported as complete. 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*) upon agreement of the party
to accept electronic service. The transmission was reported as complete. The time and
date of the transmission was _____ (p.m.) (a.m.) on _____
(*date*).]

[delivered to _____ (*Specify how service by delivery was
made. See Use Note 1 for the methods service may be made using this alternative.*)
_____:]

Signature of person sending paper

Date of signature

USE NOTES

1. This request must be served on all other parties pursuant to Rule 2-203 NMRA or Rule 3-203 NMRA. See *also* Rule 2-307 NMRA for how motions are presented to the court.

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

4-113. Notice of hearing.

[For use with Magistrate Court Civil Rule 2-307 NMRA and Metropolitan Court Civil Rule 3-307 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

_____ COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

NOTICE OF HEARING

The Honorable _____ will hear the above cause in the _____ County courthouse located at _____ (street) in room _____ on _____ the ____ day of _____, _____ at _____ (a.m.) (p.m.)¹.

_____ (minutes) (hours) is allotted for the hearing on _____².

Notice [mailed] [delivered] [faxed] on ____ day of _____, _____.

Judge

USE NOTES

1. Please notify the clerk of the court of the nature of any disability at least five (5) days before any hearing, so appropriate accommodations can be made.
2. Specify the matters to be heard.

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

4-114. Suggested questions for assessing qualifications of proposed court interpreter.

[For use with District Court Rule 1-103,
Magistrate Court Rule 2-113,
Metropolitan Court Rule 3-113,
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.]

4-115. Request for court interpreter.

[For use with District Court Rule 1-103,
Magistrate Court Rule 2-113,
Metropolitan Court Rule 3-113, and
Evidence Rule 11-604 NMRA]

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

_____, Plaintiff,

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.]

4-116. Cancellation of court interpreter.

[For use with District Court Rule 1-103,
Magistrate Court Rule 2-113,
Metropolitan Court Rule 3-113, and
Evidence Rule 11-604 NMRA]

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

_____, Plaintiff,

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.]

4-117. Notice of non-availability of certified court interpreter or justice system interpreter.

[For use with District Court Rule 1-103, Magistrate Court Rule 2-113, Metropolitan Court Rule 3-113, and Evidence Rule 11-604 NMRA]

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

_____, Plaintiff,

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.]

4-118. Order on motion to seal court records.

[For use with Magistrate Court Rule 2-112 NMRA,
Metropolitan Court Rule 3-112 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

_____ COURT

_____, Plaintiff,

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

Plaintiff

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 Plaintiff:

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 2-205 and 3-205 NMRA.]

Judge

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

4-119. Order on motion to unseal court records.

[For use with Magistrate Court Rule 2-112 NMRA,
Metropolitan Court Rule 3-112 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

_____ COURT

_____, Plaintiff,

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 Plaintiff:

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 2-205 and 3-205 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

Commencement of Action

4-201. Civil complaint.

[For use with Rules 2-201 and 3-201 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

No. _____

COUNTY

_____, Plaintiff

against

_____, Defendant

_____, Address

_____, City

CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.

2. Plaintiff claims from Defendant the amount of \$ _____ and also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ _____, which is described as follows:

3. Plaintiff's claim arises from the following event or transaction: _____

4. Trial by jury is (not) demanded. *(If a jury is demanded, an additional cost must be paid upon filing.)*

Date

Signed

Name (print)

Address (print)

City, State and Zip Code (print)

Telephone Number

[As amended, effective January 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective January 1, 1995, added the lines for the address of the defendant in the caption.

4-202. Civil complaint.

[For use with Rule 3-201 NMRA]

STATE OF NEW MEXICO
IN THE _____
COURT

No. _____

_____ COUNTY

_____, Plaintiff

against

_____, Defendant

CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.

2. Plaintiff claims from Defendant the amount of \$ _____. Plaintiff also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ _____, which is described as follows:

_____.

3. Plaintiff's claim arises from the following event or transaction:

_____.

4. Trial by jury is (not) demanded. [*If a jury is demanded, an additional cost must be paid upon filing.*]

5. An audio recording of the trial is (not) demanded. [*If you do not request an audio recording, your right to appeal may be limited.*]

_____, _____

Signed

Name [print]

Address [print]

City, State and Zip Code [print]

Telephone Number

4-203. Complaint in forcible entry or unlawful detainer.

[Magistrate Court - Metropolitan Court]

STATE OF NEW MEXICO
IN THE _____
COURT

No. _____

_____ COUNTY

_____, Plaintiff

against

_____, Defendant

**COMPLAINT IN FORCIBLE ENTRY
OR UNLAWFUL DETAINER**

Plaintiff says: On the _____ day of _____, _____, he was lawfully possessed or lawfully entitled to the possession of the premises or property described as follows: [*describe with reasonable certainty.*]

and on that date the Defendant unlawfully entered or retained possession of the premises or property, as follows:

_____.

WHEREFORE, Plaintiff asks that Defendant be removed and that Plaintiff be granted judgment of \$ _____ and court costs.

_____, _____

Signed

Name [print]

Address [print]

City, State and Zip Code [print]

Telephone Number

4-204. Civil summons.

[For use with Rules 2-202 and 3-202 NMRA]

STATE OF NEW MEXICO

COURT

COUNTY

_____, Plaintiff,

v.

No. _____
Judge assigned: _____

_____, Defendant.

CIVIL SUMMONS

TO: _____, Defendant¹

ADDRESS: _____

GREETINGS: THIS IS A COURT ISSUED SUMMONS.

A LAWSUIT HAS BEEN FILED AGAINST YOU. A copy of the lawsuit (complaint) and a response form (answer form)² are attached.

YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file (in person or by mail) your written response with the court. When you file your response, you must give or mail a copy to the person who signed the complaint.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THE TWENTY (20) DAY PERIOD, NO COURT DATE WILL BE SET, AND THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU FOR THE MONEY OR OTHER RELIEF REQUESTED IN THE COMPLAINT. A DEFAULT JUDGMENT MEANS **YOU LOSE THE CASE AND YOU OWE THE PLAINTIFF.**

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT YOU MAY BE GIVING UP ANY DEFENSES YOU MAY HAVE, FOR EXAMPLE, THAT YOU DO NOT OWE THE PLAINTIFF OR THAT TOO MUCH TIME HAS PASSED.

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written response, and you must pay a jury fee when you file your response.

If you need an interpreter, you must ask the court for one in writing.

(The following paragraph is for use only if summons issued by the Metropolitan Court.)

IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.

Your answer must be filed with the court, which is located at: _____ (street address of court)

by posting a copy of the summons, complaint, and an answer form in the most public part of the usual home of _____ (*name of defendant*) located at _____ (*address*) (*used if no person found at home or usual place of residence*).

(If service is by posting, a copy of the summons, complaint, and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

by delivering a copy of this summons, a copy of the complaint, and an answer form to _____, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons, a copy of the complaint, and an answer form to _____, (*parent*) (*guardian*) (*custodian*) of defendant (*used when defendant is a minor or an incompetent person*).

by delivering a copy of this summons, a copy of the complaint, and an answer form to _____ (*name of person*), _____, (*title of person authorized to receive service*) (*used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).

by service by mail.

Fees: _____

Signature of person making service

Title

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

Judge, notary, or other officer authorized to administer oaths³

Official title

*(To be completed if service is made by posting)*⁴

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

_____ (*name of person served*)

_____ (*address where mailed*)

_____ (*county*)

_____ (*city, state, and zip code*)

Signature of person making service

Title

Place of mailing

Date

Subscribed and sworn to

before me this _____

day of _____, _____

Judge, notary, or other officer authorized to administer oaths³

Official title

(To be completed if service is made by mail)⁵

I, being sworn, state that I am over the age of eighteen (18) years, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form, and two (2) copies of the notice and acknowledgment and a return envelope, postage prepaid, addressed to:

_____ (name of person served)

_____ (address where mailed)

_____ (county)

_____ (city, state, and zip code)

Signature of person making service

Title

Place of mailing

Date

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

Judge, notary, or other officer
authorized to administer oaths³

Official title

USE NOTES

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, see Rules 4-301 and 4-302 NMRA.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. For use if service is by posting.
5. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997; as amended by Supreme

Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 21-8300-012, effective for all cases pending or filed on or after December 31, 2021.]

ANNOTATIONS

The 2021 amendment, approved by Supreme Court Order No. 21-8300-012, effective December 31, 2021, revised contact information for the State Bar of New Mexico for help in finding a lawyer, made changes to conform with applicable rules, made technical changes, and revised the Use Notes; in the "IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT" portion of the form, changed "1-800-876-6657" to "1-800-876-6227"; and in the "RETURN" portion of the form, under the certification to be completed if service is made by mail, after "eighteen (18) years", deleted "and not a party to this lawsuit".

The 2016 amendment, approved by Supreme Court Order No. 16-8300-032, effective December 31, 2016, rewrote the form.

The 1997 amendment, effective September 2, 1997, inserted "Civil" and deleted "The State of New Mexico" in the form heading, substituted "pleading" for "motion" throughout the form, substituted "and an answer form are attached" for "is attached" in the first paragraph, inserted "or responsive pleading" in the fifth paragraph, deleted the former sixth paragraph relating to witness by a magistrate or municipal court judge and substituted "clerk" for "judge" below the signature line at the end of the form, rewrote the return, and made stylistic changes throughout.

The 1994 amendment, effective May 1, 1994, added the present third paragraph relating to tape recordings and the instruction parenthetical relating to the Metropolitan Court.

The 1993 amendment, effective January 1, 1993, in the "Summons", added the second sentence and third and fourth paragraphs, inserted "plaintiff or" near the end, and made stylistic changes.

The 1991 amendment, effective October 1, 1991, added the space for "Judge assigned" near the beginning of the form and for "abode located at" in two places near the middle.

The 1990 amendment, effective July 1, 1990, in the first two paragraphs of the "Return" form substituted "(in said county) (in County)" for "in said county".

4-205. Civil complaint for interpleader.

[For use with Rules 2-301 and 3-301 NMRA]

STATE OF NEW MEXICO
_____ COUNTY

No. _____

IN THE _____ COURT

_____, Interpleader
against

_____, Defendant
and

_____, Defendant

**CIVIL COMPLAINT FOR
INTERPLEADER**

Interpleader hereby complains against defendants,
_____ and
_____ as follows:

1. Interpleader is

(briefly describe the position of interpleader and the relationship to the defendants);

2. Defendants, on information and belief, are residents of
_____ county.

3. Interpleader is presently holding money in the amount of \$ _____. The money held by interpleader belongs to either or both of the defendants.

4. Interpleader is in doubt and cannot safely determine as between the defendants' claims for the money held by interpleader and hereby offers to deliver the money to the court in order that the claims of the defendants may be settled.

WHEREFORE, Interpleader asks that:

1. Defendant _____
and defendant _____ be ordered to interplead and settle between themselves their rights and claims to the money held by interpleader.

2. Interpleader be discharged from any further liability to the defendants on account of _____ *(set forth relationship of interpleader to defendants)*.

3. Interpleader also requests court costs and such other relief as the court deems just and proper.

Signed
Name [print]
Address
City, State and Zip Code
Telephone Number

[Adopted, effective July 1, 1988.]

4-206. Summons.

[For use with District Court Civil Rule 1-004 NMRA]

SUMMONS	
District Court: _____ _____ County, New Mexico Court Address: Court Telephone Number:	Case Number: Judge:
Plaintiff(s): v. Defendant(s):	Defendant Name: Address:

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.

4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.

5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.

6. If you need an interpreter, you must ask for one in writing.

7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at _____, New Mexico, this ____ day of _____, 20____.

CLERK OF COURT

By: _____
Deputy

Attorney for Plaintiff or
Plaintiff pro se
Name:
Address:
Telephone No.:
Fax No.:
Email Address:

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN ¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the ____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

[] to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA
(used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

[] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

[] to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

[] to _____, an agent authorized to receive service of process for defendant _____.

[] to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

[] to _____ (name of person),
_____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____.²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order No. 05-8300-001, effective March 1, 2005; by Supreme Court Order No. 07-8300-016, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-017, effective December 31, 2014, changed the State Bar contact information; and in the Summons, in Paragraph 7, changed “1-800-876-6657” to “1-800-876-6227”.

The 2013 amendment, approved by Supreme Court Order No. 13-8300-022, effective December 31, 2013, deleted the signature line for the attorney for plaintiff; required the name and the contact information of a plaintiff pro se; and after Paragraph 7 of the Summons, deleted the signature line for the attorney for plaintiff, under the former signature line, deleted “Signature of”, and after “Attorney for Plaintiff”, added “or Plaintiff pro se”.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-026, effective January 7, 2013, completely revised the form of the Summons to include the address and telephone number of the court and the name of the assigned judge in the caption of the case; to include detailed instructions to the defendant concerning the filing of the complaint and issuance of the summons, the obligation of the defendant to file an answer to the complaint with the clerk of the court and to serve the answer on the plaintiff within thirty days, the authority of the court to enter judgment against the defendant if the defendant fails to timely file an answer to the complaint, the right of the defendant to request a jury trial, the availability of interpreters if requested by the defendant, and the service offered by the State Bar in helping the defendant find a lawyer; required plaintiff’s attorney to sign the Summons; and added the new caption, Paragraphs 1 through 7 of the Summons, and the signature line for the plaintiff’s attorney.

The 2007 amendment, effective August 1, 2007, deleted "a copy of" after "file" and before "your answer" in the first paragraph.

The 2005 amendment, effective March 1, 2005, deleted "and file the same, all as provided by law" at the end of the first paragraph and inserted after "this summons" "and file a copy of your answer or motion with the court as provided in Rule 1-005 NMRA", replaced the second paragraph and revised the return paragraphs to conform those paragraphs with the amendment of Rule 1-004 NMRA also approved as of March 1, 2005.

4-207. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order, Form 4-209 NMRA, relating to service of a summons and complaint by mail, was withdrawn effective March 1, 2005. For provisions of former form, see the 2004 NMRA on *NMOneSource.com*.

For comparable provisions, see Paragraph F of Rule 1-004 NMRA. For service by mail, see Form 4-206 NMRA.

4-208. Notice and acknowledgment of receipt of summons and complaint.

[For use with Rules 2-202 and 3-202 NMRA]

STATE OF NEW MEXICO

_____ No. _____
COURT

_____ (COUNTY)

_____, Plaintiff

v.

_____, Defendant

NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

TO: _____

ADDRESS: _____

The enclosed summons, complaint, answer form, two copies of this notice and acknowledgment of receipt of summons and a postage prepaid return envelope are served pursuant to the rules of civil procedure.

You must sign and date the receipt. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, you must indicate under your signature your relationship, position or title. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your relationship, position or title.

You must complete and return one copy of the completed form to the sender within twenty (20) days of the date upon which this notice was mailed. This date appears below. If you fail to complete and return this form to the sender within twenty (20) days plus three (3) days for mailing, you may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law. It must be received by the sender within twenty-three (23) days from the date it was mailed to you.

A stamped and addressed envelope has been included with this notice. You may use this envelope to return this form to the sender.

In addition to completing this form and returning it to the sender, you must also answer the complaint and file an answer with the court within twenty-three (23) days from the date this notice was mailed to you. This date appears below. An answer form has been included with this notice for your use. If an answer is not filed with the court a default judgment may be granted for the relief demanded in the complaint.

I declare, under penalty of perjury, that the complaint, an answer form, two copies of this notice and acknowledgment of receipt of summons and complaint and a postage prepaid return envelope were mailed on the _____ day of _____, _____ from _____ (*place of mailing*).

Signature of person mailing

Date of signature

RECEIPT OF SUMMONS AND COMPLAINT

I received a copy of the summons and complaint.

I understand that a judgment may be entered against me (or the party on whose behalf I received service) if I do not file an answer to the complaint with the court within twenty-three (23) days from the date this notice was mailed to me.

Signature of defendant
or defendant's attorney

Position or title

Date of signature

*(To be completed prior to filing
with the clerk of the court.
Proof of service is required for each party.)*

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a copy of the complaint, an answer form, two copies of this notice and acknowledgment of receipt of summons and complaint and a postage prepaid return envelope were served by mail on the following persons or entities on this _____ day of _____, _____:

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Signature of person mailing pleadings

Date of signature

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

Judge, notary or other officer authorized to administer oaths

Official title

[As amended, effective January 1, 1993; September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, inserted "Acknowledgement of" in the form heading, increased the time for return of the answer form from 20 days to 23 days to allow three days for mailing and rewrote the form, rewrote the Receipt of Summons and Complaint, and added the Affidavit of Service.

The 1993 amendment, effective January 1, 1993, rewrote this form to be consistent with the 1992 amendments to Rules 2-202 and 3-202.

4-209. Motion for service by publication.

[For use with District Court Civil Rule 1-004 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Plaintiff

v.

No. _____

_____, Defendant

MOTION FOR SERVICE BY PUBLICATION

_____, the plaintiff states that after diligent inquiry and search efforts, plaintiff has been unable to serve process on the above-named defendant personally and the following diligent efforts were made to locate and serve the above-named defendant personally with a summons and complaint:

(Check each method of service attempted and complete applicable blank spaces.)

personal service;

service at the defendant's last known residential address by
_____ *(name of person attempting service)*;

service by mail or courier service pursuant to Paragraph F of Rule 1-004 NMRA;

service at the defendant's last known business address;

service at the address listed at the motor vehicle division for the defendant's driver's license;

service at the address listed in the last telephone directory listing for the following city or county: _____ *(list cities and counties)*;

[] a search of the records of the following courts _____
(list courts);

[] _____ (describe other attempts to locate
defendant);

[] contacted the post office for the zip code of the last known address of the
defendant and there was no forwarding address;

[] _____ (describe other attempts to locate and
serve the defendant).

I state upon my oath or affirmation that this document and the statements in it are
true and correct to the best of my information and belief.

Date: _____

Signature of plaintiff

STATE OF NEW MEXICO)
) ss
COUNTY)
OF _____)

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

Notary

CERTIFICATE OF SERVICE

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
_____ (defendant or defendant's attorney). 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)
who agreed to service in this manner. 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 motion 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 motion 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

Signature

Date of signature

USE NOTES

This form was prepared for service by publication. It is used in conjunction with Form 4-209A or 4-210B NMRA.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004.]

4-209A. Order for service of process by publication in a newspaper.

[For use with District Court Civil Rule 1-004 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

No. _____

_____, Plaintiff

v.

_____, Defendant

**ORDER FOR SERVICE OF PROCESS¹
BY PUBLICATION IN A NEWSPAPER**

[Plaintiff] [Petitioner] has filed a motion requesting that the court approve service of process upon _____ (*name of each person to be served*) by publication in a newspaper of general circulation.

The court finds that the [plaintiff] [petitioner] has made diligent efforts to make personal service, but has not been able to complete service of process. The last known address of _____ (*name of person to be served*) is _____.

The court further finds that the newspaper of general circulation in this county is _____ (*name of newspaper*) [and that this newspaper is most likely to give the defendant notice of the pendency of the action]¹ [and in the county of _____, State of _____, a newspaper most likely to give notice of the pendency of this proceeding to the person to be served is: _____ (*name of newspaper*)].

THEREFORE, IT IS HEREBY ORDERED that the petitioner serve process on _____ by publication once a week for three consecutive weeks in the _____ (*newspaper*) [and once a week for three consecutive weeks in _____ (*newspaper*) in _____ (*county*)]¹. The [plaintiff] [petitioner] shall file a proof of service with a copy of the affidavit of publication when service has been completed.

Dated this ____ day of _____, _____.

District Judge

USE NOTES

1. Use applicable alternative. Unless the newspaper of general circulation in the county where the action is pending is most likely to give notice of the pendency of the action to the person to be served, the notice must also be published in a newspaper of general circulation in the county where the person to be served is most likely to get notice.

[Approved by Supreme Court Order No. 05-8300-001, effective March 1, 2005.]

4-209B. Order for service of process by publication in a newspaper (guardianship proceedings).

[For use with District Court Civil Rule 1-004 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Plaintiff

v.

No. _____

_____, Defendant

**ORDER FOR SERVICE OF PROCESS
BY PUBLICATION IN A NEWSPAPER
(*guardianship proceedings*)¹**

Petitioner has filed a motion requesting that the court approve service of process upon _____ (*name of each person to be served*) by publication in a newspaper of general circulation.

The court finds that the petitioner has made diligent efforts to make personal service, but has not been able to complete service of process. The last known address of _____ (*name of person to be served*) is _____.

The court further finds that the newspaper of general circulation in this county is _____ (*name of newspaper*) [and that this newspaper is most likely to give the defendant notice of the pendency of the action]² [and in the county of _____, State of _____, a newspaper most likely to give notice of the pendency of this proceeding to the person to be served is: _____ (*name of newspaper*)].

THEREFORE, IT IS HEREBY ORDERED that the petitioner serve process on _____ by publication once a week for three consecutive weeks in the _____ (*newspaper*) [and once a week for three consecutive weeks in _____ (*newspaper*) in

_____ (county)]¹. The [plaintiff] [petitioner] shall file a proof of service with a copy of the affidavit of publication when service has been completed.

The notice shall include a statement that the action involves the guardianship of _____ (name of child), born _____ (date) to _____ (mother's name).

Dated this _____ day of _____, _____.

District Judge

USE NOTES

1. This form is used in guardianship proceedings.

2. Use applicable alternative. Unless the newspaper of general circulation in the county where the action is pending is most likely to give notice of the pendency of the action to the person to be served, the notice must also be published in a newspaper of general circulation in the county where the person to be served is most likely to get notice.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004.]

4-211. Recompiled.

ANNOTATIONS

Recompilations. — Former Form 4-211 NMRA, relating to domestic relations cover sheet, was recompiled as 4A-101 NMRA.

4-212. Recompiled.

ANNOTATIONS

Recompilations. — Former Form 4-212 NMRA, relating to domestic relations information sheet, was recompiled as 4A-102 NMRA.

4-213. Attorney's certificate.

[For use with Rule 1-099 NMRA]

STATE OF NEW MEXICO

_____ COUNTY

_____ JUDICIAL DISTRICT

v.

No. _____

Judge: _____

ATTORNEY'S CERTIFICATE

I, _____, attorney for _____, certify pursuant to Rule 1-011 NMRA that no fee is required by Rule 1-099 NMRA because the attached paper is:

- 1. being filed within ninety (90) days of the disposition;
- 2. requesting action which may be performed by the clerk of the court or seeking to correct a mistake in the judgment or record filed;
- 3. requesting entry of a stipulated order;
- 4. seeking only enforcement of a child support order;
- 5. being filed by an entity exempt by law from paying a docket fee.

Attorney's signature

Attorney's name

Address

Telephone number

IF THE REQUIRED FEE IS NOT PAID, THE CASE WILL BE CLOSED WITHOUT DISPOSITION OF PENDING MATTERS UNTIL PAYMENT IS MADE.

FOR CLERK'S USE ONLY

Fees Paid: Yes No Check Cash

Clerk: _____

[Approved, effective August 1, 2001.]

4-221. Certificate of service.

[For use with Metropolitan Court Rules 3-203, 3-204 and 3-205 NMRA]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____
this _____ (*insert paper served, such as "answer" or "notice"*)
was [mailed by United States first class mail, postage prepaid, and addressed to]

Name: _____
Address: _____
City, State _____
and zip code: _____
Telephone: _____

[faxed by _____ (*name of person who faxed document*) to
_____ (*name of recipient*) at _____ (*telephone
number*). The transmission was reported as complete. 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*) upon agreement of the party
to accept electronic service. The transmission was reported as complete. 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 person sending paper

Date of signature

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. See Rule 3-303 NMRA for service of papers after the complaint.

[As amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005; by Supreme Court Order No. 09-8300-036, effective November 16, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-036, effective November 16, 2009, in the brackets at the beginning of the form, deleted "Magistrate Court Rules 2-203, 2-204, 2-205 and"; in the last paragraph, after "This form may be used in the", deleted "magistrate and"; and in the third sentence, after "See", deleted "Rules 2-203" and inserted "Rule".

The 2005 amendment, effective March 21, 2005, revised this form to be consistent with the March 21, 2005 amendment of Magistrate Court Rules 2-203, 2-204, 2-205 and Metropolitan Court Rules 3-203, 3-204, 3-205 NMRA.

4-221A. Party's certificate of service.

[For use by parties in the Magistrate Courts]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this _____ (insert paper served, such as "answer" or "notice") was [mailed by United States first class mail and addressed to]

Name: _____
Address: _____
City, State _____
and zip code: _____
Telephone: _____

[faxed by _____ (name of person who faxed document) to _____ (name of recipient) at _____ (telephone number). The transmission was reported as complete. 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) upon agreement of the party to accept electronic service. 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 person sending paper

Date of signature

USE NOTES

This form may be used in the magistrate courts to prepare a certificate or affidavit of service. Only the applicable parts should be used. See Rule 2-203 NMRA for service of papers after the complaint.

[As adopted by Supreme Court Order No. 09-8300-036, effective November 16, 2009.]

4-222. Application for free process and affidavit of indigency.

[For use with Supreme Court General Rule 23-114 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____, Petitioner,

v. _____ No. _____

_____, Respondent.

APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY

I request that the court enter an order permitting me to file this case without prepayment of fees and costs and give upon my oath or affirmation the following statement.

My marital status is: Single ____ Married ____ Divorced ____ Separated ____
Widowed ____

I request interpretation services: ____ yes ____ no (If yes, please describe what you need)

INFORMATION ABOUT MY FINANCES (check all that apply to you and fill in the blanks):

A. PUBLIC ASSISTANCE

____ I do not receive public assistance (If you check this blank, go directly to Section B EMPLOYMENT/UNEMPLOYMENT).

____ I currently receive the following public assistance in _____ County (please check all applicable public assistance programs):

- ____ Temporary Assistance for Needy Families (TANF)
- ____ Food Stamps
- ____ Medicaid (for myself)

- General Assistance (GA)
- Supplemental Security Income (SSI)
- Public Housing
- Disability Security Income (DSI)
- Department of Health Case Management Services (DHMS)
- Other (*please describe*
_____)

B. EMPLOYMENT/UNEMPLOYMENT

I am currently unemployed and have been unemployed for ___ months in the past year. I am unemployed because

_____.

I receive unemployment benefits in the amount of \$ _____ per month.

I have no income because I am unemployed.

I am employed. I am paid \$ _____ per hour and work _____ hours per week.

My employer's name, address and phone number is:

I am married, and my spouse is unemployed and has been unemployed for ___ months in the past year because

_____.

My spouse receives unemployment benefits in the amount of \$ _____ per month.

I am married, and my spouse is employed. My spouse is paid \$ _____ per hour and works _____ hours per week.

My spouse's employer's name, address and phone number is:

C. OTHER SOURCES OF INCOME (*check all that apply*)

I have income from another source not mentioned above.

____ Child Support \$ _____
____ Alimony \$ _____
____ Investments \$ _____
____ Community property from my spouse \$ _____
____ Other _____ \$ _____

____ I do not have any other sources of income.

____ I am married, and my spouse has income from another source not mentioned above.

____ Child Support \$ _____
____ Alimony \$ _____
____ Investments \$ _____
____ Other _____ \$ _____
____ Other _____ \$ _____

____ I am married, and my spouse does not have any other sources of income.

____ Another adult contributes to household income in the following amount: \$ _____

D. OTHER ASSETS (Please list other assets owned by you or your spouse that can be turned into cash. Do not include money you have in retirement accounts):

Cash on hand \$ _____
Bank accounts \$ _____
Income tax refund \$ _____
Other assets (*describe below*):
_____ \$ _____
_____ \$ _____

IF YOU DO NOT HAVE ACCESS TO YOUR OWN OR YOUR SPOUSE'S INCOME OR ASSETS, EXPLAIN WHY.

E. MONTHLY EXPENSES

House Payment/Rent	\$ _____
Utilities	\$ _____
Telephone	\$ _____
Groceries (after food stamps)	\$ _____
Car Payment(s)	\$ _____
Gasoline	\$ _____
Insurance	\$ _____
Child Care	\$ _____
Student and Consumer Loans	\$ _____
Court-ordered family support obligations	\$ _____
Other court-ordered payments	\$ _____
Medical expenses	\$ _____
Other _____	\$ _____

F. HOUSEHOLD

I live at _____, and
the head of the household is _____.

Other than myself, the other members of the household are:

Name	Age	Employment	I Support
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()

This statement is made under oath. I hereby state 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. If at any time the Court discovers that information in this application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, the Court may require me to pay for any costs or fees that were waived under an order of free process that was granted based on the information in this application.

(Signature)

(Print Name)

____ Petitioner ____ Respondent
(Pro Se)

(Street Address)

(City, State, Zip Code)

(Telephone)

State of _____)

) ss

County of _____)

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

Notary

My commission expires: _____

IF YOU ARE REPRESENTED BY AN ATTORNEY, YOUR ATTORNEY MUST SIGN THE FOLLOWING CERTIFICATE.

I, _____, hereby certify that I have not received any attorney
(Name of attorney)

fee to represent _____. If any attorney fee is paid to me, I understand
(Name of applicant)

that I shall pay to the court clerk from such attorney fee any court fees and costs that may be waived by the court.

(Attorney signature)

Address

City, State, Zip Code

Telephone/Fax Number

[Adopted by Supreme Court Order No. 07-8300-043, effective February 25, 2008; as amended by Supreme Court Order No. 08-8300-031, effective November 17, 2008; by Supreme Court Order No. 10-8300-044, effective February 9, 2011.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-044, effective February 9, 2011, in Paragraph A, deleted the blank for social security disability income; in Paragraph B, required the applicant to state the applicant's and the applicant's spouse's hourly wages and hours worked per week instead of a statement of their pay periods and net take home pay and required the applicant to state the amount any other person contributes to household income; and after the applicant's signature line, added a statement notifying the applicant that if the applicant is represented by an attorney, the applicant's attorney must sign the certificate.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-31, effective November 17, 2008, added the attorney's certificate below the verification.

4-223. Order for free process.

[For use with Supreme Court General Rule 23-114 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____, Petitioner,

v. No. _____

_____, Respondent.

ORDER ON APPLICATION FOR FREE PROCESS

THIS MATTER having come before the court on Petitioner's application for free process and affidavit of indigency, or on Petitioner's attorney's certificate supporting indigency and free process under Rule 23-114(B)(2) NMRA, and the court being otherwise advised in the premises, **FINDS** that:

the applicant is entitled to free process in accordance with Rule 23-114(B)(2) NMRA.

the applicant receives public assistance and is, therefore, entitled to free process.

the applicant's annual gross income does not exceed _____ of the federal poverty guidelines, and the applicant is, therefore, entitled to free process.

the applicant's annual gross income exceeds _____ of the federal poverty guidelines, but the applicant is not reasonably able to pay fees or costs and is, therefore, entitled to free process.

based on the applicant's available funds or annual gross income, the applicant is not entitled to free process.

THE COURT ORDERS that:

the filing fee is waived.

the filing fee is waived except for the \$ _____ alternative dispute resolution (ADR) fee.

the applicant is granted free service of process by the Sheriff in _____ County, New Mexico for 1 2 3 4 5 or _____ summons(es), if the applicant first attempts service: (1) in district court in accordance with Rule 1-004(E)(3) NMRA; (2) by first class mail in magistrate court under Rule 2-202(E) NMRA; or (3) by first class mail in metropolitan court under Rule 3-202(E) NMRA.

the applicant is granted free service by the Sheriff in _____ County, New Mexico, of a temporary restraining order or _____.

the applicant is to pay the filing fee on _____, 20_____.

interpretation services shall be provided to the applicant.

free process is denied.

Other:

Unless specifically granted above, this order of free process does not include the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this lawsuit and collects money by judgment or settlement, the court may order reimbursement for any waived costs. If the applicant is represented by an attorney who is paid an attorney fee, any fees or costs waived by this order must be deducted from the attorney fee and paid to the court clerk. **This order is subject to revision, modification or rescission by the judge assigned to your case.**

JUDGE

[Adopted by Supreme Court Order No. 07-8300-043, effective February 25, 2008; as amended by Supreme Court Order No. 08-8300-031, effective November 17, 2008; by Supreme Court Order No. 10-8300-044, effective February 9, 2011; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. 21-8300-012, effective for all cases pending or filed on or after December 31, 2021.]

ANNOTATIONS

The 2021 amendment, approved by Supreme Court Order No. 21-8300-012, effective December 31, 2021, amended the existing provision for free service of process for certain summonses in accordance with district court rules to include service of process of certain summonses in accordance with magistrate and metropolitan court rules; in the third section under “THE COURT ORDERS that:”, after “if the applicant first attempts”, deleted “service by certified mail pursuant to” and added “service: (1) in district court in accordance with”, after “Rule 1-004”, added “(E)(3)”, and after the next occurrence of “NMRA”, added “(2) by first class mail in magistrate court under Rule 2-202(E) NMRA; or (3) by first class mail in metropolitan court under Rule 3-202(E) NMRA”.

The 2017 amendment, approved by Supreme Court Order No. 17-8300-022, effective December 31, 2017, changed “recission” to “rescission” at the end of the form.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-044, effective February 9, 2011, required the court to base a finding of indigency with respect to federal poverty guidelines on the applicant’s gross annual income and to state the percentage that the applicant’s gross annual income either does or does not exceed the federal poverty guidelines.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-31, effective November 17, 2008, in the first paragraph, added the alternative recital that the matter came before the court upon the petitioner’s attorney’s certificate supporting indigency

and free process pursuant to Rule 23-114(B)(2) NMRA; added the first and fourth findings; in the last paragraph, changed "is to be reimbursed" to "may order reimbursement"; and added the last sentence requiring that fees and costs that are waived be deducted from any fees paid to the applicant's attorney and paid to the clerk of the court.

4-224. Attorney's certificate supporting indigency and free process.

[For use with Supreme Court General Rule 23-114 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____, Petitioner,

v.

No. _____

_____, Respondent.

ATTORNEY'S CERTIFICATE SUPPORTING INDIGENCY AND FREE PROCESS

I, _____, hereby certify that (*check one*)

(*Attorney name*)

I represent _____, (*Client name*) and that my client is entitled to free process pursuant to Rule 23-114(B)(2) NMRA without the necessity of filing an application for free process or affidavit of indigency, or

_____, (*name of self-represented litigant*) has met the income qualifications of a legal services organization and attended a training program designed and presented by _____ (*name of legal services organization*) to assist self-represented litigants in filing their own action in court and is therefore entitled to free process pursuant to Rule 23-114(B)(2) NMRA without the necessity of filing an application for free process or affidavit of indigency. The filing of this certificate does not constitute an entry of appearance.

I further certify that I have not, nor has any legal services organization under whose auspices I am providing representation or training, received any attorney fee for representing the client named above or providing the training program to the person named above. If any attorney fee is paid to me or said legal services organization, court fees and costs shall be paid to the clerk from such fee.

Respectfully submitted,

(legal services organization or referring local pro bono committee)

Address

City, State, Zip Code

Telephone/Fax Number

[Adopted by Supreme Court Order No. 08-8300-031, effective November 17, 2008; as amended by Supreme Court Order No. 10-8300-044, effective February 9, 2011.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-044, effective February 9, 2011, changed the title of the form; added a certification by an attorney that a named self-represented litigant has satisfied the criteria for free process without the necessity of filing an application for free process or affidavit of indigency and added a certification that the attorney has not received any attorney fee for providing training to the self-represented person.

4-225. Court's certificate of service.

[For use by Magistrate Court staff]

CERTIFICATE OF SERVICE

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

Signature

Title

[As adopted by Supreme Court Order No. 09-8300-036, effective November 16, 2009.]

4-226. Civil complaint provisions; consumer debt claims.

[For use with District Court Rule 1-009(J) NMRA, Magistrate Court Rule 2-201(E) NMRA, and Metropolitan Court Rule 3-201(E) NMRA]

In addition to the requirements set forth in the New Mexico Rules of Civil Procedure, a pleading asserting a claim subject to Rule 1-009(J) NMRA, Rule 2-201(E) NMRA, or Rule 3-201(E) NMRA shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO
COUNTY OF _____

_____, JUDICIAL DISTRICT/MAGISTRATE COURT/
METROPOLITAN COURT

_____, Plaintiff

v.

_____, Defendant

No. _____

CIVIL COMPLAINT

___ (a) The full name and address of the Defendant is as follows: _____

(b) The last two (2) digits of the Defendant's social security number, contained in the original creditor's records are as follows: _____

(c) If the Plaintiff does not provide the social security number above, Plaintiff states, with specificity, that the basis on which it was determined that the named Defendant is the debtor on the debt is as follows: _____

___ [] The Plaintiff in this action IS the original creditor; OR

[] The Plaintiff IS NOT the original creditor and the name and address under which the original creditor did business with the Defendant is as follows: _____

___ The last four (4) digits of the Defendant's account number, used by the original creditor as of the date of default are as follows: _____

___ The balance due at the time of default is as follows: _____

___ (a) The total amount of the debt claimed is \$ _____, itemized as follows:

Principal amount due: _____

Interest: _____

Other charges, fees, and expenses (specified individually):

The itemization of the amount of the debt claimed set forth above does not include attorney fees and court costs.

(b) The basis for each of the itemized charges, fees, or expenses is as follows:

___ The date of last payment made by Defendant is as follows: _____

___ Plaintiff states, consistent with Rule 1-011 NMRA, Rule 2-301 NMRA, or Rule 3-301 NMRA, that the applicable statute of limitations on this claim has not run.

___ The name and address of the current owner of this debt is as follows:

___ Plaintiff IS or IS NOT a collection agency. If the Plaintiff is a collection agency:

(a) the name and address of the collection agency is as follows: _____

(b) The New Mexico license number for the collection agency is as follows:

(c) The specific facts demonstrating that the collection agency is the real party in interest are as follows:

___ The original or copy of any instrument of writing on which the action is founded IS attached as Exhibit A. See Rule 1-009(J)(2) NMRA, Rule 2-201(E)(2) NMRA, or Rule 3-201(E)(2) NMRA.

The original or copy of any instrument of writing on which the action is founded IS NOT attached. The reason the instrument of writing is not attached is as follows:

___ Plaintiff alleges entitlement to enforce the debt but is not the original creditor. Plaintiff has attached an affidavit showing the chain of title or assignment of the debt. See Rule 1-017(E)(2) NMRA, Rule 2-401(D)(2) NMRA, or Rule 3-401(D)(2) NMRA.

___ Plaintiff also seeks court costs and the following additional relief as specified:

WHEREFORE, Plaintiff demands judgment in the amount of \$ _____, and costs [and attorney fees] and such further relief as the court deems proper.

Date

Signature

Name (*print*)

Address (*print*)

City, State, and Zip Code (*print*)

Telephone Number

USE NOTES

Rule 1-008(A)(3) NMRA bars asking for damages in any specific amount “unless it is a necessary allegation of the complaint.” Rule 1-054(C) NMRA bars default judgments exceeding the amount stated in the demand for judgment. Consistent with Rule 1-008(A)(3) and Rule 1-054(C), and in order to provide notice to the defendant of the consequences of a default judgment, the demand for judgment in a specific amount is here made a necessary part of the complaint.

[Adopted by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-005, effective December 31, 2020, made the form applicable to consumer debt collection cases filed in Magistrate Court and in the Metropolitan Court; in the first paragraph, after “Rule 1-009(J)”, added “NMRA, Rule 2-201(E) NMRA, or Rule 3-201(E) NMRA”; after “JUDICIAL DISTRICT/”, added “MAGISTRATE COURT/METROPOLITAN COURT”; after “Rule 1-011 NMRA”, added “Rule 2-301 NMRA, or Rule 3-301 NMRA”, after “Rule 1-009(J)(2) NMRA”, added “Rule 2-201(E)(2) NMRA, or Rule 3-201(E)(2) NMRA”, and after “Rule 1-017(E)(2) NMRA”, added “Rule 2-401(D)(2) NMRA, or Rule 3-401(D)(2) NMRA”.

4-227. Plaintiff’s certification of pre-filing notice; foreclosure actions.

[For use with District Court Rule 1-003.3 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

PLAINTIFF'S CERTIFICATION OF PRE-FILING NOTICE

I, _____ (*name*), _____ (*title*), for Plaintiff certify that on _____ (*date*) Plaintiff provided pre-filing notice to Defendant of the following:

1. A list and brief description of each of the types of loss mitigation options available to Defendant by the owner or assignee of Defendant's mortgage loan and the actions Defendant must take to be evaluated for such loss mitigation options;
2. Notification as to whether the loan is federally backed or a government-sponsored enterprise (GSE) loan, and if so, what federal or GSE-specific relief options are available to Defendant;
3. The name of the entity that holds the loan, and the contact information for the loan servicer;
4. A list of resources, substantially in a form approved by the Supreme Court, that Defendant may contact for assistance; and
5. Notice to Defendant of the New Mexico Homeowner Assistance Fund (HAF) and ability to request a stay while applying for HAF.¹

I further certify that at least one of the following has been met (*check all that apply*):

- Defendant submitted a complete loss mitigation application and the servicer has completed review of the application. Defendant remained delinquent at all times since submitting the application, and was denied for loan modification or did not accept another loss mitigation offer.
- The property securing the mortgage loan is abandoned according to the laws of the State of New Mexico.
- The loan was delinquent for one hundred twenty (120) days prior to the filing of the complaint.
- The statute of limitations applicable to the foreclosure action being taken will expire within one hundred twenty (120) days if the Court does not allow the filing of the Foreclosure Complaint. The statute of limitations will expire on _____.

Signature

Printed Name

Law Firm Name (*if applicable*)

Physical Address

Telephone Number

E-Mail Address

Relationship To Plaintiff

USE NOTES

1. Paragraph 5 shall expire and be withdrawn from this form on September 30, 2025, or upon notification to the Supreme Court of exhaustion of the New Mexico Homeowner Assistance Fund (HAF) program funds, whichever is earlier.

[Adopted by Supreme Court Order No. 21-8300-004, effective for all cases pending or filed on or after September 7, 2021; as amended by Supreme Court Order No. 22-8300-010, effective for all cases pending or filed on or after May 23, 2022.]

ANNOTATIONS

The 2022 amendment, approved by Supreme Court Order No. 22-8300-010, effective May 23, 2022, required a plaintiff in a foreclosure action to certify that prior to filing the foreclosure action, the plaintiff provided notice to the defendant as to what federal or government-sponsored enterprise-specific relief options are available to the defendant, notice of the entity that holds defendant's loan, and notice of the New Mexico Homeowner Assistance Fund (HAF) and defendant's ability to request a stay while applying for homeowner's assistance from HAF, required the plaintiff to certify whether defendant's loan servicer has completed a review of the defendant's loss mitigation application, whether the defendant was denied for a loan modification or did not accept another loss mitigation offer, removed a provision requiring the plaintiff to certify that the loan servicer has not received any communications from the defendant for at least ninety days before the loan servicer made the first filing for foreclosure and all the conditions of certain federal regulations were met, and made certain clarifying

amendments; added the title "PLAINTIFF'S CERTIFICATION OF PRE-FILING NOTICE"; in Item 2, after "and if so," deleted "who holds the loan" and added "what federal or GSE-specific relief options are available to Defendant"; in Item 3, deleted "Contact" and added "The name of the entity that holds the loan, and the contact"; and added new Item 5; in the certification section, after "I further certify that", added "at least", and after "check", deleted "one" and added "all that apply"; in the first item, after "mitigation application", added "and the servicer has completed review of the application. Defendant", after "submitting the application, and", deleted "the servicer has completed review of the application" and added "was denied for loan modification or did not accept another loss mitigation offer"; deleted "The servicer did not receive any communications from Defendant for at least ninety (90) days before the servicer made the first filing for foreclosure and all of the conditions from 12 CFR 1024.41(f)(2) were met."; and in the third item, after "(120) days", deleted "or more prior to March 1, 2020" and added "prior to the filing of the complaint".

4-228. Defendant's motion for Homeowner Assistance Fund stay.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

DEFENDANT'S MOTION FOR HOMEOWNER ASSISTANCE FUND STAY¹

I request that the Court enter an order staying the litigation in this case for ninety (90) days so that I may seek financial assistance from the New Mexico Homeowner Assistance Fund (HAF) program. I state upon my oath or affirmation that all of the following statements are true:

The address of the property involved in this foreclosure case is (*street address, city, state, zip code*): _____.

I hereby provide the Court with the following information about me, the home in foreclosure, and the loan (*check all that apply*):

- I am a borrower on the loan on the property involved in this case.
- I own and live in the property involved in this foreclosure case and it is my main home.
- The property involved in this foreclosure case is a single family home or has one (1) to four (4) residential units.

- I applied or intend to apply to the HAF program to pay past due mortgage loan payments.
- I experienced financial hardship after January 21, 2020, associated with the COVID-19 pandemic.
- I believe I meet the income eligibility criteria for the HAF program.
- I believe my loan meets the loan eligibility criteria for the HAF program.
- I agree to notify the Court, Plaintiff's attorney, and any other named parties in this case of the results of my HAF application within seventy-two (72) hours of my receipt of the results. My notification will disclose whether my HAF application was approved or denied.
- I understand that stay of the foreclosure litigation does not prevent a referral to or participation in any court-ordered mediation or settlement facilitation.

Signature

Printed Name

Street Address

City/State/Zip Code

Phone

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this pleading to Plaintiff's counsel on the ____ day of _____, 20____.

Signature

Printed Name

USE NOTES

1. This form shall expire and be withdrawn on September 30, 2025, or upon notification to the Supreme Court of exhaustion of the New Mexico Homeowner Assistance Fund (HAF) program funds, whichever is earlier.

[Adopted by Supreme Court Order No. 22-8300-010, effective for all cases pending or filed on or after May 23, 2022.]

4-229. Order on Homeowner Assistance Fund stay.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

ORDER ON MOTION FOR HOMEOWNER ASSISTANCE FUND STAY¹

THIS MATTER came before the court on Defendant’s motion to stay this case while Defendant applies for financial assistance from the New Mexico Homeowner Assistance Fund (HAF) program. The court, having considered the motion and being sufficiently advised, orders as follows:

- The motion is well taken and is **GRANTED**. This case is stayed, that is, put on hold, for ninety (90) days from the date of entry of this Order, so that Defendant may seek financial assistance from the HAF program. Plaintiff cannot proceed with litigation, evict, or remove Defendant from the residence while the stay is in place. Further, all deadlines for filing answers, motions, or other pleadings in this case are stayed. The stay of litigation does not prevent referral to and participation in any court-ordered mediation or settlement facilitation. In the absence of any earlier notice of a decision on the HAF application, Plaintiff shall notify the court upon the expiration of the ninety (90)-day stay.
- The motion is not well taken and is **DENIED**. The parties may proceed with foreclosure litigation.

Date

Judge

USE NOTES

1. This form shall expire and be withdrawn on September 30, 2025, or upon notification to the Supreme Court of exhaustion of the New Mexico Homeowner Assistance Fund (HAF) program funds, whichever is earlier.

[Adopted by Supreme Court Order No. 22-8300-010, effective for all cases pending or filed on or after May 23, 2022.]

4-230. Defendant's notice of Homeowner Assistance Fund application results.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**DEFENDANT'S NOTICE OF
HOMEOWNER ASSISTANCE FUND APPLICATION RESULTS¹**

I, _____, am providing notice of the results of my Homeowner Assistance Fund (HAF) application.

- My HAF application was **APPROVED** on _____ (date).
- My HAF application was **DENIED** on _____ (date).

Signature

Printed Name

Street Address

City/State/Zip Code

Phone

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this pleading to Plaintiff's counsel on the ____ day of _____, 20____.

Signature

Printed Name

USE NOTES

1. This form shall expire and be withdrawn on September 30, 2025, or upon notification to the Supreme Court of exhaustion of the New Mexico Homeowner Assistance Fund (HAF) program funds, whichever is earlier.

[Adopted by Supreme Court Order No. 22-8300-010, effective for all cases pending or filed on or after May 23, 2022.]

**ARTICLE 3
Pleadings and Motions**

4-301. Answer to civil complaint.

[For use with Magistrate Court Rule 2-302 NMRA and Metropolitan Court Rule 3-302 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

ANSWER TO CIVIL COMPLAINT¹

1. The Plaintiff is not entitled to the amount claimed because:

_____.

or

1. The personal property claimed by Plaintiff should not be turned over to Plaintiff because:

2. (If applicable) Defendant asserts the following counterclaim or set-off against Plaintiff:

3. Trial by jury is (not) demanded. (If Plaintiff has already demanded trial by jury, as indicated in the complaint, a jury will be provided automatically and you need not fill in this item. If Plaintiff has not demanded trial by jury, you may do so here, but if you do you must pay an additional cost upon filing this answer.)

Dated: _____

Signed

Name (print)

Address (print)

City, state and zip code (print)

Telephone number

CERTIFICATE OF SERVICE²

I hereby certify that on this ____ day of _____, _____ this _____ (insert paper served, such as "answer" or "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) at _____ (telephone

number). The transmission was reported as complete. 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) upon agreement of the party to accept electronic service. The transmission was reported as complete. 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 1 for the methods service may be made using this alternative) _____:]

Signature of person sending paper

Date of signature

USE NOTES

1. This Answer must be filed with the court on or before the date set in the Summons.
2. This request must be served on all other parties pursuant to Rule 2-203 NMRA or Rule 3-203 NMRA. See also Rule 2-307 NMRA for how motions are presented to the court.

[As amended, effective January 1, 1995; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, added the certificate of service at the end of the form and Use Note 2.

The 1995 amendment, effective January 1, 1995, rewrote the first alternative Paragraph 1 in the answer.

4-302. Answer to civil complaint.

[For use with Rule 3-302 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

_____ COUNTY

_____, Plaintiff

against

_____, Defendant

ANSWER TO CIVIL COMPLAINT

1. The amount of damages claimed by Plaintiff is not owed because _____

or

1. The personal property claimed by Plaintiff should not be turned over to Plaintiff because: _____

2. *[If applicable]* Defendant asserts the following counterclaim or set-off against Plaintiff: _____

3. Trial by jury is (not) demanded. *[If Plaintiff has already demanded trial by jury, as indicated in the complaint, a jury will be provided automatically and you need not fill in this item. If Plaintiff has not demanded trial by jury, you may do so here, but if you do you must pay an additional cost upon filing this answer.]*

4. An audio recording of the trial is (not) demanded. *[If you do not request an audio recording, your right to appeal may be limited.]*

_____, _____

Signed

Name [print]

Address [print]

City, State and Zip Code [print]

Telephone number

(This Answer must be filed with the court on or before the date set in the Summons.)

4-303. Motion for judgment on the pleadings.

[For use with Magistrate Court Rule 2-303 NMRA and Metropolitan Court Rule 3-303 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

MOTION FOR JUDGMENT ON THE PLEADINGS

(Plaintiff) (Defendant) asks the court to enter judgment against the other party based on the pleadings on file in this cause for the following damages, costs and fees:

Damages _____	\$ _____
Attorney fee (if allowable) _____	\$ _____
Interest (if allowable) _____	\$ _____
Filing fee _____	\$ _____
Service fee _____	\$ _____
Return fee _____	\$ _____
Witness fees _____	\$ _____
Total Judgment _____	\$ _____

_____, _____ (date)

(Plaintiff) (Defendant)

(A copy of this motion must be served on the other party or the attorney for the other party not less than eight (8) days before the time fixed for the hearing.)

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ a copy of this motion 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*) at _____ (*telephone
number*). 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*). 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 1 for the methods service may be made using this alternative*)
_____.]

Signature of person sending paper

Date of signature

[As amended, effective October 1, 1987; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, added the certificate of service at the end of the form and replaced “mailed to” with “served on” in Use Note 1.

Cross references. — For rule governing computation of time for service of this form, see Rules 2-104 and 3-104 NMRA.

4-303A. Notice of court's intent to render judgment on the pleadings.

[For use with Magistrate Court Rule 2-303 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

MAGISTRATE COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

**NOTICE OF INTENTION TO ENTER JUDGMENT
ON THE PLEADINGS**

The parties are notified that the court intends to enter judgment in favor of _____ (*name of party*) based on the pleadings on file in this cause for the following damages, costs and fees:

Damages _____	\$ _____
Attorney fee (<i>if allowable</i>) _____	\$ _____
Interest (<i>if allowable</i>) _____	\$ _____
Filing fee _____	\$ _____
Service fee _____	\$ _____
Return fee _____	\$ _____
Witness fees _____	\$ _____
Total Judgment _____	\$ _____

Judgment will be entered on _____ (*date at least fifteen days after filing of notice*) unless either party returns a signed objection (*see below*) to the court before that date. If either party objects the court will set the matter for trial.

Judge

Date of signature

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ a copy 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) at _____ (telephone number). 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). 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 Rule 2-203 NMRA for the methods service may be made using this alternative.) _____.]

Signature of person sending paper

Date of signature

OBJECTION

I object to judgment on the pleadings and request that this matter be set for trial.

I object because: _____

Signature of party

Printed name of party

Date of signature

[Approved by Supreme Court Order No. 07-8300-027, effective November 1, 2007.]

4-304. Stipulation of dismissal.

[For use with Rules 2-305 and 3-305 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE _____ COURT

No. _____.

_____, Plaintiff

v.

_____, Defendant

STIPULATION OF DISMISSAL

The parties hereby stipulate that this action be dismissed (*with*) (*without*) prejudice.

Plaintiff or Attorney for Plaintiff

Defendant or Attorney for Defendant

[As amended, effective November 1, 2000.]

ANNOTATIONS

The 2000 amendment, effective November 1, 2000, no longer provides for approval by a judge to a stipulation of dismissal.

4-305. Notice of dismissal of complaint.

[For use with Magistrate Court Rule 2-305 and Metropolitan Court Rule 3-305]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

NOTICE OF DISMISSAL OF COMPLAINT¹

Plaintiff hereby dismisses plaintiff's complaint without prejudice.

Plaintiff or attorney for plaintiff

CERTIFICATE OF SERVICE²

I hereby certify that on this ____ day of _____, _____ this _____ (insert paper served, such as "answer" or "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) at _____ (telephone number). The transmission was reported as complete. 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) upon agreement of the party to accept electronic service. The transmission was reported as complete. 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 1 for the methods service may be made using this alternative) _____:]

Signature of person sending paper

Date of signature

USE NOTES

1. This form may not be used if the defendant has filed an answer or other responsive pleading. Civil Form 4-306A NMRA is used if the defendant has filed an answer or other responsive pleading.

2. This request must be served on all other parties pursuant to Rule 2-203 NMRA or Rule 3-203 NMRA. See also Rule 2-307 NMRA for how motions are presented to the court.

[As amended, effective November 1, 2000; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, added the certificate of service at the end of the form and Use Note 2.

The 2000 amendment, effective November 1, 2000, made a gender neutral change; deleted the entry for approval by the judge for dismissal without prejudice and added the Use Note.

4-306. Order dismissing action for failure to prosecute.

[For use with Rule 3-305 NMRA]

STATE OF NEW MEXICO
_____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

ORDER DISMISSING ACTION FOR FAILURE TO PROSECUTE

This action has remained pending for six (6) months from the date of the complaint and the court, at a hearing pursuant to the rules governing procedure in this court, has found that *(Plaintiff has failed to take all available steps to bring the matter to trial) (Defendant has failed to take all available steps to bring his counterclaim to trial)*.

IT IS ORDERED that this action is dismissed without prejudice.

Judge

[As amended by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-021, effective December 31, 2016, in the “For use with” note, deleted “2-305 and”; and revised the caption of the case, and deleted the blank space for the date on the last line of the form.

4-306A. Motion to dismiss action.

[General Form for use in the Magistrate or Metropolitan Court]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

MOTION TO DISMISS ACTION

[Plaintiff] [Defendant] requests the court to dismiss the above cause of action for the following reason: _____
_____.

(Plaintiff) (Defendant)

USE NOTES

A copy of this motion must be served on the other party or, if represented by an attorney, on the attorney for the other party not less than eight (8) days before the time fixed for the hearing.

[As amended, effective November 1, 2000; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, deleted the "order" part of this form. The prior form included a form order for granting or denying a motion to dismiss.

The 2000 amendment, effective November 1, 2000, changed the form from an order dismissing action to a motion to dismiss action and order and made stylistic changes in the form.

Cross references. — For rule governing computation of time for service of this form, see Rules 2-104 and 3-104 NMRA.

For form order granting or denying a motion to dismiss, see 4-306B NMRA.

4-306B. Order dismissing action.

[General Form for use in Magistrate or Metropolitan Court]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

ORDER DISMISSING ACTION

This matter having come before the court on the motion of the [Plaintiff] [Defendant] and the court having considered the argument presented, finds that:

- the motion should be denied.
- the above cause of action should be dismissed (*with*) (*without*) prejudice.

IT IS ORDERED that:

- the motion to dismiss the action is denied.
- this action is dismissed (*with*) (*without*) prejudice.

_____, _____ (*date*)

Judge

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

4-307. Notice of pretrial conference.

[For use with Rules 2-306 and 3-306 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT

_____,
Plaintiff

v.

No. _____.

Defendant

NOTICE OF PRETRIAL CONFERENCE

TO: _____, Plaintiff; and
_____, Attorney.
_____, Defendant; and
_____, Attorney.

You are ordered to appear for a pretrial conference on _____,
_____, (date) at _____ (a.m.) (p.m.), at the
_____ court located at _____. At this conference the
court will:

(check only applicable alternatives)

- make an order clarifying the pleadings;
- enter such orders as may be desirable to expedite the disposition of the action;
- hold discussions to facilitate the settlement of the case;
- consider the following matters:

_____.

The court will also consider such other matters as may aid in the disposition of the case.

The failure of any party to appear at the time and place specified for the pretrial conference may be grounds for entering a default judgment against such party.

Date

Judge

USE NOTES

Each party must be served with a copy of this notice. See Rules 2-203 and 3-303 NMRA. See Civil Form 4-221 for the certificate of service and affidavit of service.

[As amended, effective September 1, 1989; October 1, 1991; December 17, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 17, 2001, substituted "You are ordered to appear for a pretrial conference" for "A pretrial conference will be held in this case" in the first paragraph under the heading "NOTICE OF PRETRIAL CONFERENCE", made stylistic changes, and added the Use Note.

The 1991 amendment, effective October 1, 1991, near the middle of the form, inserted "(check only applicable alternatives)" and added the last three alternatives.

4-308. Order to interplead.

[For use with Rules 2-301 and 3-301 NMRA]

STATE OF NEW MEXICO

_____ COURT

No. _____

_____ COUNTY

_____, Interpleader
against

_____, Defendant
and

_____, Defendant

ORDER TO INTERPLEAD

The interpleader having filed complaint herein,

IT IS ORDERED that the court take into its trust account \$ _____ which sum represents the total amount interpleader owes the above named defendants;

IT IS FURTHER ORDERED, that the money paid into the court trust account shall be retained until further order of the court;

IT IS FURTHER ORDERED, that the defendants and any other person who has or claims an interest in or to said money in the custody of this court shall, and are directed to, interplead in this action within twenty (20) days from the date this order is served upon them; and

IT IS FURTHER ORDERED that _____ (*name of interpleader*) be and hereby is discharged from all liability to the defendants on account of _____ (*set forth relationship of interpleader to defendants*).

Date

Judge

[Adopted, effective July 1, 1988; as amended, effective July 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "twenty (20) days" for "thirty (30) days" in the fourth paragraph.

4-309. Thirty (30)-day notice of intent to dismiss for failure to prosecute.

[For use with Rule 2-305 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

THIRTY (30)-DAY NOTICE OF INTENT TO DISMISS FOR FAILURE TO PROSECUTE

This action has been pending for six (6) months from the date the complaint was filed. The court finds that [the plaintiff] [the defendant asserting a counterclaim] has failed to take any available steps to have the claims resolved. If the [the plaintiff] [the defendant asserting a counterclaim] fails to take any available steps to bring the case to trial or otherwise prosecute the claims within thirty (30) days after service of this notice, the court shall dismiss the claims without prejudice for failure to prosecute.

Judge

[Adopted by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016.]

4-310. Order of dismissal for failure to prosecute.

[For use with Rule 2-305 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE

The [plaintiff] [defendant asserting a counterclaim] failed for six (6) months from the date the complaint was filed to take any available steps to take this case to trial or otherwise prosecute the claims. On _____ (*date*), the court filed and served a thirty (30)-day notice of intent to dismiss for failure to prosecute. The [plaintiff] [defendant asserting a counterclaim] failed to take any available steps to bring the case to trial or otherwise prosecute the claims within thirty (30) days after service of the notice.

IT IS ORDERED that the [plaintiff's claims] [defendant's counterclaims] are dismissed without prejudice for failure to prosecute.

Judge

[Adopted by Supreme Court Order No. 16-8300-021, effective for all cases pending or filed on or after December 31, 2016.]

ARTICLE 4

Parties

4-401. Notice of trial.

[For use in Magistrate Court and Metropolitan Court]

STATE OF NEW MEXICO
IN THE _____ COURT

No. _____

_____ COUNTY

_____, Plaintiff

against

_____, Defendant

NOTICE OF TRIAL

TO:

_____,
Plaintiff; and

_____, Attorney.

_____,
Defendant; and

_____, Attorney.

This action will come on for trial before Judge _____, at the Magistrate Court located at _____ on _____ the _____ day of _____, _____, at the hour of _____ .m. The failure of any party to appear at the time and place specified for trial will be ground for entering a default judgment against him.

The motion

_____ will be heard by the court (*immediately before trial*) _____, _____, at _____ .m.

_____, _____

Judge or Clerk

4-402. Order appointing guardian *ad litem*.

[For use with District Court Rule 1-053.3 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT

_____,
Petitioner,

v.

No. _____

_____,
Respondent.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER came before the court on _____, 20____. The petitioner was present and was represented by _____. The respondent was present and was represented by _____. The court having reviewed the file and being otherwise advised FINDS:

1. The court has jurisdiction over the parties and subject matter.
2. This action concerns the following minor [child] [children]:

_____, DOB _____, age _____;
_____, DOB _____, age _____;
_____, DOB _____, age _____;
_____, DOB _____, age _____;

3. Good cause exists to appoint a Guardian *Ad Litem* (hereinafter "GAL") pursuant to Section 40-4-8 NMSA 1978 and Rule 1-053.3 NMRA to represent the [child's] [children's] best interests in this case.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Appointment and duties to the court:** _____ is hereby appointed as GAL. The GAL shall perform each of the following duties on behalf of the court:
 - (a) monitor, investigate, and protect the best interests of the [child] [children];
 - (b) interview the [child] [children] face-to-face outside the presence of the parties and counsel if the [child is] [children are] six (6) years of age or older; If the [child is] [children are] under the age of six (6), the GAL may interview the [child] [children] outside the presence of the parties and counsel at the GAL's discretion;
 - (c) interview all available parties in conformity with Rule 16-402 NMRA outside the presence of the [child] [children];

- (d) interview each mental health professional treating the [child] [children];
 - (e) interview any other [person] [persons] and review any relevant records the GAL deems reasonably necessary;
 - (f) determine the [child's] [children's] wishes, if appropriate;
 - (g) submit, but do not file, a written report of investigation and separate written recommendations to all parties and counsel at least eleven (11) days before the recommendations are filed with the court, except in the case of emergency;
 - (h) file the recommendations, but not the report, with the court;
 - (i) perform the duties to the [child] [children] as set forth in Paragraphs H and I of Rule 1-053.3 NMRA; and
 - (j) in addition to the foregoing, the court directs the GAL to:
-
-
-
-

2. Adoption of GAL recommendations:

(a) If the parties are willing to adopt the GAL's recommendations, they shall submit a stipulated order adopting the recommendations within eleven (11) days after the recommendations are filed.

(b) If one or both parties are not willing to adopt the recommendations, such party may file objections to the recommendations within eleven (11) days after the recommendations are filed and a request and notice for hearing on the objections. The objections shall specifically state what recommendations are objected to and the basis for the objection. The court will set a hearing on the objections.

(c) A party's failure to file timely objections to the recommendations of the GAL shall be deemed a waiver of the right to object, and the court shall, without the necessity of a hearing, enter an order adopting the GAL's recommendations.

3. Acceptance of appointment. If the named GAL is willing to serve, the named GAL shall forthwith file an entry of appearance. If the named GAL is unable or unwilling to serve, the named GAL shall promptly advise the court.

4. Expiration of appointment. This appointment shall expire on _____.

5. Immunity of GAL. The GAL serves as an arm of the court and assists the court in discharging its duty to adjudicate the [child's] [children's] best interests.

6. **Duties of parties.** The parties and minor children over the age of fourteen (14) shall assist the GAL in carrying out the duties set forth in this order, including providing information and documents requested by the GAL and signing any releases requested by the GAL.

7. **GAL fees.**

(a) On or before _____, 20____, petitioner shall advance \$_____ and respondent shall advance \$_____ to the GAL as a retainer toward the GAL's fees and expenses. The GAL shall be paid at an hourly rate of _____. When the GAL fees exceed the retainer, petitioner shall pay _____% and respondent shall pay _____% of the additional fees.

(b) The GAL shall submit itemized monthly invoices for professional services to the parties.

(c) The GAL may recommend reallocation of GAL fees and expenses.

(d) Either party or the GAL may request a hearing on the GAL fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed _____.

(e) GAL fees are considered in the nature of support of the child.

(f) The GAL shall not begin work until receiving a copy of the endorsed order appointing the GAL and full payment of the retainer.

8. **Hearings.** The GAL may request an expedited hearing if there is non-compliance with this order.

District court judge

CERTIFICATE OF MAILING

I, _____, certify that I caused an endorsed copy of this order appointing guardian *ad litem* to be served on the following persons by (delivery) (mail) on this _____ day of _____, _____:

(Name of petitioner)

(Name of petitioner's attorney)

(Name of respondent)

(Name of respondent's attorney)

(Name of guardian ad litem)

(Name of person signing certificate)

[4A-342 NMRA; provisionally approved by Supreme Court Order No. 06-8300-029, effective January 15, 2007 until January 15, 2008; approved and recompiled by Supreme Court Order No. 07-8300-021, effective August 21, 2007; as amended by Supreme Court Order No. 17-8300-017, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-017, effective December 31, 2017, provided additional duties for a court-appointed guardian ad litem, enlarged the time within which a guardian ad litem must submit written recommendations to the parties and counsel prior to filing the recommendations with the court, enlarged the time within which a party may object to the guardian ad litem's recommendations, provided that a party's failure to file timely objections to the guardian ad litem's recommendations shall be deemed a waiver of the right to object, and provided additional duties for the parties when a guardian ad litem is appointed by the court; in the form heading, after "Order", deleted "of appointment for" and added "appointing"; under the heading "IT IS HEREBY ORDERED, ADJUDGED AND DECREED", in Paragraph 1, in the introductory clause, after "duties", added "on behalf of the court", added a new Subparagraph 1(a) and redesignated former Subparagraphs 1(a) through 1(i) as Subparagraphs 1(b) through 1(j), respectively, in Subparagraph 1(b), after "outside the presence of", deleted "both parents" and added "the parties", after "age or older", added the remainder of the subparagraph, in Subparagraph 1(c), after "interview all", added "available", after "parties", deleted "and any available parent subject to" and added "in conformity with", and after "Rule 16-402 NMRA", added "outside the presence of the [child] [children]", in Subparagraph 1(d), after "[children]", deleted "after obtaining any necessary authorization", in Subparagraph 1(e), after "reasonably necessary", deleted "after obtaining any necessary authorization", in Subparagraph 1(g), after "at least", deleted "ten" and added "eleven (11)", in Paragraph 2, Subparagraph 2(a), after "recommendations within", deleted "ten (10)" and added "eleven (11)", in Subparagraph 2(b), after "recommendations within", deleted "ten (10)" and added "eleven (11)", in Subparagraph 2(c), deleted "If no party files timely objections, the court shall enter an appropriate order." and added the new language, in Paragraph 6, after "The parties", added "and minor children over the age of fourteen

(14)", after "in this order", added the remainder of the paragraph, in Paragraph 7, Subparagraph 7(d), deleted "guardian ad litem" and added "GAL" in two places, and added Subparagraphs 7(e) and 7(f).

Recompilations. — Pursuant to Supreme Court Order No. 07-8300-021, effective August 21, 2007 former Domestic Relations form 4A-342 NMRA has been recompiled as a new Civil Form.

4-403. Appearance by corporation or limited liability corporation.

[For use with Magistrate Court Rule 2-107 NMRA;
Metropolitan Court Rule 3-107 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

_____, Plaintiff(s)

v.

No. _____

_____, Defendant(s)

CORPORATION OR LIMITED LIABILITY CORPORATION (LLC) AUTHORIZATION OF AGENT TO APPEAR

I, _____ (*insert name and office held –
President, Vice President, Secretary, or Treasurer*), of
_____ (*insert name of corporation or LLC*), state as
follows:

1. I am the sole shareholder of the stock of the above Corporation or LLC; or
 I am one of a closely knit group of shareholders of the above Corporation or LLC, all of whom are:
 natural persons; and
 active in the conduct of the above Corporation or LLC; and
2. I am an officer of the above Corporation or LLC; and
3. Under Subparagraph (B)(1)(b) of Rule 2-107 NMRA or Rule 3-107 NMRA, I authorize _____, a director or general manager; or
 Under Subparagraph (B)(3) of Rule 2-107 NMRA or Rule 3-107 NMRA, I authorize _____, a shareholder or member; to appear on behalf of the above Corporation or LLC.

_____ (Seal, if any)

(Name of Corporation or LLC)

By

: _____
(Signature of President, Vice President, Secretary or Treasurer)

(Printed Name of President, Vice President, Secretary or Treasurer)

(Physical Address of Corporation or LLC)

(Mailing Address of Corporation or LLC, if Different from Physical Address)

(_____) _____

Telephone Number

E-mail Address

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

_____ (Seal)

Notary Public

My commission expires: _____.

[Adopted by Supreme Court Order No. 14-8300-007, effective for all cases filed or pending on or after December 31, 2014.]

4-404. Appearance by partnership.

[For use with Magistrate Court Rule 2-107 NMRA;
Metropolitan Court Rule 3-107 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

_____, Plaintiff(s)

v.

No. _____

_____, Defendant(s)

PARTNERSHIP AUTHORIZATION OF GENERAL PARTNER TO APPEAR

I, _____ (*insert name of general partner*), of _____ (*insert name of partnership*), under Subparagraph (B)(1)(a) or Subparagraph (B)(4) of Rule 2-107 NMRA or Rule 3-107 NMRA, state as follows:

1. The general partnership has less than ten (10) partners who are Limited or General (Husband and Wife treated as one partner);
2. All of the partners (General or Limited) are natural persons; and
3. I authorize _____ (*insert name of general partner*) of _____ (*insert name of partnership*) to appear on behalf of the partnership.

(Name of Partnership)

By: _____
(Signature, General Partner)

(Printed Name, General Partner)

(Physical Address of Partnership)

(Mailing Address of Partnership
Different than Physical Address)

(_____) _____
Telephone Number

E-mail Address

[Adopted by Supreme Court Order No. 14-8300-007, effective for all cases filed or pending on or after December 31, 2014.]

ARTICLE 5

Discovery and Pretrial Matters

4-501. Motion for production.

[For use with Magistrate Court Rule 2-501 NMRA and Metropolitan Court Rule 3-501 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

MOTION FOR PRODUCTION

[Plaintiff] [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

_____.

_____, _____ (date)

(Plaintiff) (Defendant)

CERTIFICATE OF SERVICE¹

I hereby certify that on this ____ day of _____, _____ this _____ (insert paper served, such as "answer" or "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) at _____ (telephone

number). The transmission was reported as complete. 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) upon agreement of the party to accept electronic service. The transmission was reported as complete. 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 1 for the methods service may be made using this alternative) _____:]

Signature of person sending paper

Date of signature

USE NOTES

1. A copy of this motion must be served on the other party or the attorney for the other party not less than eight (8) days before the time fixed for the hearing.

[As amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, added the certificate of service at the end of the form and replaced "mailed to" with "served on" in Use Note 1.

Cross references. — For rule governing computation of time for service of this form, see Rules 2-104 and 3-104 NMRA.

4-502. Order for production.

[For use with Magistrate Court Rule 2-501 NMRA and Metropolitan Court Rule 3-501 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT

Plaintiff

v.

No. _____

Defendant

ORDER FOR PRODUCTION

IT IS ORDERED that _____ (*defendant*) (*plaintiff*) produce for trial or hearing at _____ on _____, _____, at the hour of _____ (a.m.) (p.m.), the following records, papers, documents or other tangible evidence (*describe briefly*):

_____, _____.

Date

Judge

(If you fail to obey this order, you may be held in contempt of this court and punished by fine or imprisonment.)

USE NOTES

This form is to be used when a party fails to comply with Rule 2-501 or 3-501 NMRA.

[As amended, effective January 1, 1996; May 1, 2002.]

ANNOTATIONS

The 2002 amendment, effective May 1, 2002, deleted "The (plaintiff) (defendant) demanded production and the court finds that good cause exists for production;" immediately following the form heading "Order For Production", deleted "in the (defendant) (plaintiff)" following "tangible evidence" in the form, and added the Use Note.

The 1996 amendment, effective January 1, 1996, made gender neutral changes near the end of the form and substituted the parenthetical at the end for "Willful failure to obey this order shall constitute a contempt of court".

4-503. Subpoena.

[For use with Magistrate Court Rule 2-502 NMRA and Metropolitan Court Rule 3-502 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____, COURT
_____, Plaintiff

v.
_____, Defendant

No. _____

SUBPOENA¹

SUBPOENA

FOR APPEARANCE OF PERSON FOR TRIAL HEARING

TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL²

FOR INSPECTION OF PREMISES OF A PARTY²

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place:

Before Judge:

Date: _____, _____. Time: _____ (a.m.) (p.m.)
to:

testify at trial

produce the following described books, documents or tangible things:

_____.

permit the inspection of the premises of a party located at:

_____ (address).

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.

_____, _____ (date).

Judge, clerk or attorney

USE NOTES

TO BE PRINTED ON EACH SUBPOENA

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.
2. If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents, or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.
3. The judge or clerk may issue a *pro se* party a subpoena duces tecum ordering the production of books, documents, or tangible things for trial only if the subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.
4. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
5. 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 on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY⁴

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, the statutory witness fee and mileage in the amount of \$_____.

Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON
MAKING SERVICE⁴**

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, the statutory witness fee and mileage in the amount of \$_____.

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

INFORMATION FOR PERSONS RECEIVING SUBPOENA

Subject to Rules 2-502(D)(2) and 3-502(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve on the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. The 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 outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, the person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held,

(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,

(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 1, 2002; as amended, effective January 20, 2005; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-005, effective December 31, 2020, made certain technical, nonsubstantive changes; and in the Use Notes, completely rewrote the paragraph under the heading "To Be Printed On Each Subpoena", deleted the paragraph under the heading "Protection of Persons Subject to Subpoenas", added a new paragraph under the heading "Information for Persons Receiving Subpoena", and completely rewrote the paragraph under the heading "Duties in Responding to Subpoena".

The 2004 amendment, effective January 20, 2005, substituted "statutory" for "\$75.00" and deleted "as provided by law" following "mileage" under the headings "RETURN FOR COMPLETION BY SHERIFF OR DEPUTY" and "RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE."

Statutory witness fee.— Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for "nonsalaried public officers". Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of \$95.00 for each meeting attended.

4-504. Subpoena.

[For use with Metropolitan Court Rule 3-501.1 NMRA]

STATE OF NEW MEXICO

_____ COUNTY

METROPOLITAN COURT

_____, Plaintiff

v.

_____, Defendant

No. _____

SUBPOENA¹

SUBPOENA FOR APPEARANCE OF PERSON FOR A STATEMENT:

TO: _____

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: _____

Date: _____, _____. Time: _____ (a.m.) (p.m.)

to give a statement in the above case.

Judge² or attorney

USE NOTES

TO BE PRINTED ON EACH SUBPOENA

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.

2. The judge may issue a *pro se* party a subpoena for a statement only if the subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.

3. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

4. 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 on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY³

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, the statutory witness fee and mileage in the amount of \$_____.

Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON
MAKING SERVICE³**

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, the statutory witness fee and mileage in the amount of \$_____.

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 or party

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY³

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

INFORMATION FOR PERSONS RECEIVING SUBPOENA

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 outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, the person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held,

(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,

(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 1, 2002; as amended, effective January 20, 2005; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-005, effective December 31, 2020, made certain technical, nonsubstantive changes; and in the Use Notes, completely rewrote the paragraph under the heading "To Be Printed On Each Subpoena", deleted the paragraph under the heading "Protection of Persons Subject to Subpoenas", added a new paragraph under the heading "Information for Persons Receiving Subpoena", and completely rewrote the paragraph under the heading "Duties in Responding to Subpoena".

The 2004 amendment, effective January 20, 2005, substituted "statutory" for "\$75.00" and deleted "as provided by law" following "mileage" under the headings "RETURN

FOR COMPLETION BY SHERIFF OR DEPUTY” and “RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE.”

Statutory witness fee. — Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for "nonsalaried public officers". Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of \$95.00 for each meeting attended.

4-505. Subpoena.

[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____, JUDICIAL DISTRICT
_____, Plaintiff

v. _____, Defendant

No. _____

SUBPOENA¹

SUBPOENA FOR APPEARANCE OF PERSON FOR²

DEPOSITION TRIAL

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.

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

USE NOTES

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

3. 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. See NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for witnesses. See NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for nonsalaried public officers. 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. See NMSA 1978, Section 34-9-11 (2017) for payments from the jury and witness fee fund.

4. 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 on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

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, the statutory witness fee and mileage 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 or party

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

INFORMATION FOR PERSONS RECEIVING SUBPOENA

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve on the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) miles from the place where that person resides, is employed, or regularly transacts business in person, except as provided below, the person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held,

(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,

(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 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.

[Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20, 2005; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-005, effective December 31, 2020, made certain technical, nonsubstantive changes; and in the Use Notes, completely rewrote the paragraph under the heading “To Be Printed On Each Subpoena”; deleted the heading “Protection of Persons Subject to Subpoenas” and following paragraph; added a new heading “Information for Persons Receiving Subpoena”, and in the first undesignated paragraph, after “Subject to”, deleted “Subparagraph (2) of Paragraph D below” and added “Rule 1-045(D)(2) NMRA”, after “designated in the subpoena”, added “and all parties to the lawsuit identified in the certificate of service by attorney”, after “the subpoena may file”, added “and serve on all parties”, after “quash the subpoena”, deleted “and serve the motion on all parties to the action”, after “filed and served on the parties”, added “and the person responding to the subpoena”, added the last sentence of the paragraph, and completely rewrote the remainder of the section; and completely rewrote the language under the heading “Duties in Responding to Subpoena”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-02, effective March 15, 2008, added the "Certificate of Service by Attorney" at the end of the form.

The 2004 amendment, effective January 20, 2005, substituted “statutory” for “\$75.00” and deleted “as provided by law” following mileage under the heading “RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE.”

The 2002 amendment, effective November 1, 2002, deleted the references for "subpoena for documents or objects" and "inspection of premises" under the heading "Subpoena"; deleted the Certificate of Service by Attorney section in the form; renumbered former Use Note 1 as present Use Note 2, inserted present Use Note 1; in Use Note 3, inserted the second, third and sixth sentences, and deleted Use Note 4 which read "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 1-005. If service is by a party, an affidavit of service must be used instead of a certificate of service"; deleted the second paragraph under the heading "Protection of Persons Subject to Subpoenas" which formerly read "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"; in the third paragraph, inserted "or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action" at the end of the first sentence, and, in the second sentence inserted "an objection is served or a motion to quash is filed and served on the parties".

Statutory witness fee.— Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for "nonsalaried public officers". Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of \$95.00 for each meeting attended.

4-505A. Subpoena for production or inspection.

[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO
 COUNTY OF _____

_____, JUDICIAL DISTRICT
 _____, Plaintiff

v. _____, Defendant

No. _____

SUBPOENA FOR PRODUCTION OR INSPECTION¹

SUBPOENA FOR

[] **DOCUMENTS OR OBJECTS²**

[] **INSPECTION OF PREMISES²**

TO: _____

YOU ARE HEREBY COMMANDED ON:

DATE: _____, _____ TIME: _____ (a.m.) (p.m.)

TO:

permit inspection of the following described books, papers, documents or tangible things:

at _____ (address).

permit the inspection of the premises located at:

_____ (address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

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

USE NOTES

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

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. 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. See NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for witnesses. See NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See NMSA 1978, Section 34-9-11 (2017) for payments from the jury and witness fee fund.

4. 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 on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

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 and a fee of \$_____ (*insert the amount of fee tendered or, if no fee is tendered, "none"*).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 and a fee of \$_____ (*insert the amount of fee tendered or, if no fee is tendered, "none"*).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 or party

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

INFORMATION FOR PERSONS RECEIVING SUBPOENA

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 Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,

(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,

(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 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.

(3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

[As amended, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; by Supreme Court Order No. 09-8300-030, effective October 12, 2009; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-005, effective December 31, 2020, made certain technical, nonsubstantive changes; and in the Use Notes, completely rewrote the section under the heading “To Be Printed On Each Subpoena”; deleted the section under the heading “Protection of Persons Subject to Subpoenas”; added a new heading “Information for Persons Receiving Subpoena”, and in the first undesignated paragraph, after “Subject to”, deleted “Subparagraph (2) of Paragraph D below” and added “Rule 1-045(D)(2) NMRA”, after “designated in the subpoena”, added “and all parties to the lawsuit identified in the certificate of service by attorney”, after “the subpoena may file”, added “and serve on all parties”, after “quash the subpoena”, deleted “and serve the motion on all parties to the action”, after “filed and served on the parties”, added “and the person responding to the subpoena”, added the last sentence of the paragraph, and completely rewrote the remainder of the

section; and completely rewrote the section under the heading "Duties in Responding to Subpoena".

The 2009 amendment, approved by Supreme Court Order No. 09-8300-030, effective October 12, 2009, after "ABSENT A COURT ORDER", deleted the former provision which stated that the date for production of documents entered on the subpoena shall not be less than fifteen (15) days from the date of service unless ordered by the court before the stated date; after "DO NOT RESPOND TO THIS SUBPOENA", added "UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA"; and added the certificate of service by attorney at the end of the form.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-02, effective March 15, 2008, added the "Certificate of Service by Attorney" at the end of the form.

4-506. Scheduling order.

[For use with Rules 2-306 and 3-306 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____,
Plaintiff

v.

No. _____

_____,
Defendant

SCHEDULING ORDER¹

The parties shall comply with the following scheduling order:

1. Motions to amend the pleadings or to join parties must be filed by _____ (date)².
2. Motions addressed to the pleadings must be filed by _____ (date).
3. Any permitted discovery must be completed by _____ (date).
4. All motions must be filed by _____ (date).

5. The plaintiff shall disclose to the defendant a witness list, including the names, addresses and telephone numbers of their witnesses, along with a summary of the testimony of each witness by _____ (date).

6. The defendant shall disclose to the plaintiff a witness list, including the names, addresses and telephone numbers of their witnesses, along with a summary of the testimony of each witness by _____ (date).

7. The plaintiff shall make all of plaintiff's exhibits available to each defendant for inspection or copying no later than _____ (date).

8. The defendant shall make all of defendant's exhibits available to each plaintiff for inspection or copying no later than _____ (date).

9. [Proposed jury instructions shall be submitted to the court by _____ (date).]³

[Proposed findings of fact and conclusions of law shall be submitted to the court by _____ (date).]

10. Any party may request a pretrial conference by filing a written request stating the purpose of the conference. The parties shall advise the court promptly if the case is settled.

[A settlement conference is scheduled on _____ (date).]

[A motion hearing will be held on _____ (date).]

[A pretrial conference will be held on _____ (date).]

When this order states that a document shall be submitted by a certain date, it must be received by the recipient by that date. Dates may be changed only by the court.

This matter is set for [jury] [non-jury] trial on _____ (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. This form may be adapted to local practice. For example, the court may want to require settlement conferences or pretrial conferences, or may schedule docket calls, etc. Dates should be in consecutive order.

2. Dates should be calendar dates, not "_____ days after entry of this order", or "_____ days before trial".

3. The alternatives in this paragraph may be used only if a party is represented by an attorney.

[Approved, effective December 17, 2001.]

4-507. Scheduling order.

[For use with District Court Civil Rule 1-016 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Plaintiff

v.

No. _____

_____, Defendant

SCHEDULING ORDER¹

Pursuant to Rule 1-016 NMRA, the court enters the following scheduling order:

1. Motions to amend the pleadings or to join parties shall be filed by _____ (date).

2. Motions addressed to the pleadings shall be filed by _____ (date).

*3. Plaintiffs shall file with the court a list of all lay witnesses who may be called to testify at trial by _____ (date).

*4. Defendants shall file with the court a list of all lay witnesses who may be called to testify at trial by _____ (date).

*5. Plaintiffs shall file with the court a list of all expert witnesses who may be called to testify at trial by _____ (date).

*6. Defendants shall file with the court a list of all expert witnesses who may be called to testify at trial by _____ (date).

7. Discovery shall be completed by _____ (date). Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably may comply with discovery requests prior to the deadline.

8. All other motions, except for motions *in limine*, shall be filed by _____ (date).

*9. All parties shall file with the court an exhibit list by _____ (date). The exhibit list shall state the reasonable place where such exhibits may be inspected and copied.

*10. All parties shall file specific objections to other parties' proposed exhibits by _____ (date).

[11. Plaintiffs shall submit their portions of a pretrial order to defendants by _____ (date).

Defendants shall file the proposed final pretrial order with the court by _____ (date).]

[11. All parties shall file a final witness list by _____ (date). The final witness list shall list "will call" and "may call" witnesses and may include any witnesses listed on any party's earlier witness list but may not include additional witnesses except by leave of court or consent of all parties.]

11. [Proposed jury instructions shall be submitted to the court by _____ (date).]

or

[Proposed findings of fact and conclusions of law shall be filed with the court by _____ (date).]

12. Motions *in limine* shall be filed by _____ (date).

13. Dates contained in paragraphs of this order marked with an asterisk (*) may be modified by written agreement of all parties, without court approval. Only the court, for good cause, may change other dates.

14. This matter is set for [jury] [non-jury] trial on _____ (date) [on a trailing docket].

USE NOTES

- 1. Dates should be in consecutive order.
- 2. Dates should be calendar dates, not "
_____ days after entry of this order", or " _____ days before trial".
- 3. Depending on the complexity of the case, the court may wish to use the paragraphs that are bracketed, which require submission of a pretrial report and final witness list.
- 4. This form may be adapted to local practice. For example, the court may want to require settlement conferences or pretrial conferences, or may schedule docket calls, etc.
- 5. If a scheduling order is not appropriate, the court shall enter an order indicating that no scheduling order will be entered, indicating the reason, and shall set the case for trial not later than eighteen (18) months after the filing of the complaint. Rule 1-016(B) NMRA.

[Approved, effective July 1, 2002.]

ARTICLE 6
Trials

4-601. Subpoena for jury service.

[For use with Rules 2-603 and 3-603 NMRA]

STATE OF NEW MEXICO
 IN THE _____ COURT No. _____
 _____ COUNTY
 _____, Plaintiff
 against
 _____, Defendant

SUBPOENA FOR JURY SERVICE

TO: _____

YOU ARE ORDERED TO APPEAR before this court located at

_____, on _____, _____, at the hour of _____ m.
for jury service. IF YOU DO NOT APPEAR and are not excused, you may be held in
contempt of court and punished by fine or imprisonment.

_____, _____

Judge or Clerk

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _____, _____, in said
county, I served this subpoena on _____ by delivering a copy of
the subpoena to such person.

Deputy Sheriff

4-602. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 17-8300-016, 4-602 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*.

4-602A. Juror summons.

[For use with Rules 1-047, 2-603, 3-603 NMRA]

_____ COURT

[Street Address]

[City, NM, Zip Code]

STATE OF NEW MEXICO

COUNTY OF _____ TO:

[Juror name]

[Street Address]

JURY SUMMONS

PLEASE BRING SUMMONS
TO ALL APPEARANCES

FOR QUESTIONS CALL:

[Name]

[Telephone Number]

[City, State, Zip Code]
[USPS Bar Code]

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.]

4-602B. Juror qualification.

[For use with Rules 1-047, 2-603, 3-603 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.]

4-602C. Juror questionnaire.

[For use with Rules 1-047, 2-603, 3-603 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.

4-602D. Juror questionnaire privacy and destruction certification.

[For use with Rules 1-047, 2-603, 3-603]

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 [1-047(C)] [2-603(G)] [3-603(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.]

ARTICLE 7 Judgment and Appeal

4-701. Judgment.

[For use with Rules 2-701 and 3-701 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT
_____ COUNTY

No. _____

_____, Plaintiff
against

_____, Defendant

JUDGMENT

This cause coming on for trial, plaintiff appearing (*in person*) (*and*) (*by attorney*); defendant appearing (*in person*) (*and*) (*by attorney*), and the court, having heard the evidence and argument presented, finds

in favor of plaintiff and against defendant.

in favor of defendant and against plaintiff.

in favor of plaintiff on his complaint and in favor of defendant on his counterclaim/setoff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that (*plaintiff*) (*defendant*) recover the following:

Damages \$ _____

Interest to date
(*if allowable*) \$ _____

Attorney fee
(if allowable) \$ _____
Costs \$ _____
TOTAL JUDGMENT \$ _____

(check if appropriate)

that plaintiff have possession of:
the premises at

(for forcible entry or detainer)

or

the following personal property:

(for replevin actions)
(To be completed if appellant desires to stay execution of judgment)

If this case is appealed and the appellant wishes to stay execution of the judgment the defendant shall file with the (magistrate) (metropolitan) court an appeal bond in the amount of \$ _____.

_____, _____

Judge

USE NOTES

If a bond secured by personal surety or sureties is tendered, the bond may be approved only on notice to the appellee. Each personal surety shall be required to show a net worth at least double the amount of the bond. If the judgment is for the recovery of money, the amount of the bond shall be the amount of the judgment remaining unsatisfied, together with costs, attorneys' fees and interest, if any.

[As amended, effective October 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective October 1, 1996, added the final paragraph of the form relating to appeal bond, and added the Use Note.

4-702. Motion for default judgment.

[For use with Rules 2-702 and 3-702 NMRA]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

MOTION FOR DEFAULT JUDGMENT

Plaintiff requests the court to enter a default judgment, and in support of this request, plaintiff states as follows:

The Complaint in the above described case was filed on the _____ day of _____, _____.

Service of a copy of the Summons, Complaint, and Answer form in this case were made on defendant(s) on the _____ day of _____, _____.

The defendant(s) _____, _____ and _____ (have) (has) failed to appear or to file an Answer or other responsive pleading to the Complaint.

The return of service was filed with this court on the _____ day of _____, _____.

Plaintiff previously has filed or has attached to this motion an affidavit or affirmation regarding the (defendant's) (defendants') military status.¹

The Plaintiff requests the court to enter judgment for the following damages, costs, and fees:

Damages

Attorneys' fees (if allowable)	\$ _____
Interest (if allowable)	\$ _____
.....	\$ _____
Filing fee	\$ _____
.....	\$ _____
Service fee	\$ _____
.....	\$ _____
Witness fees	
.....	

Total Judgment
.....

Attorney for Plaintiff

If the Plaintiff is not represented by an attorney, the Plaintiff must complete the following affirmation.

I, _____, affirm under penalty of perjury under the laws of the State of New Mexico that the statements in this motion are true and correct.

Dated: _____

Signature of person making affirmation

Printed name of person making affirmation

USE NOTES

1. The plaintiff may fulfill this requirement by completing and filing Form 4-702A NMRA.

[As amended by Supreme Court Order No. 16-8300-019, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-019, effective December 31, 2016, changed the caption of the case; in the section titled "Motion for Default Judgment", in the second box option, after "copy of", added "the", after "in this case", added "were", after "day of _____, _____", deleted "; on the _____ day of _____, _____"; and on the _____ day of _____"; in the third box option, after "(have) (has)", deleted "not entered an appearance or filed" and added "failed to appear or to file"; added the fifth box option; in the list of damages, costs and fees, after the "Service fee" line, deleted the "Return fee" line; after the "Attorney for Plaintiff" signature line, after "If the Plaintiff is not represented by an attorney", deleted "this motion must be sworn to by the plaintiff" and added "the Plaintiff must complete the following affirmation"; rewrote the affirmation provision; and added the Use Note.

4-702A. Affirmation in support of default judgment.

[50 U.S.C. § 3931]

STATE OF NEW MEXICO

COUNTY
COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**AFFIRMATION OF PLAINTIFF
IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT**

I, _____, affirm under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct:

1. I am over the age of 18, of sound mind, have personal knowledge of the matters contained in this affirmation, and if called as a witness, I would and could testify competently thereto.

2. *(Check applicable box.)*

The defendant is in military service;

The defendant is not in military service; or

I am unable to determine whether the defendant is in military service.

3. The following facts support the statements in this affidavit:

Dated: _____

Signature of person making affirmation

Printed name of person making affirmation

USE NOTES

1. The plaintiff may be able to access the federal government's Servicemembers Civil Relief Act (SCRA) website to obtain a certificate setting forth the defendant's military status. See <https://scra.dmdc.osd.mil/>.

[Adopted by Supreme Court Order No. 16-8300-019, effective for all cases pending or filed on or after December 31, 2016.]

4-703. Default judgment; judgment on the pleadings.

[For use with Rules 2-303, 2-702, 3-303 and 3-702 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT
_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**DEFAULT JUDGMENT
JUDGMENT ON THE PLEADINGS**

This cause coming before the court on motion of (*plaintiff*) (*defendant*) (*the court itself*) and the court finding it has jurisdiction and that:

Plaintiff appeared (*in person*) (*and*) (*by attorney*) and defendant failed to appear;

Defendant appeared (*in person*) (*and*) (*by attorney*) and plaintiff failed to appear;

There is no genuine issue as to any material fact and that (*plaintiff*) (*defendant*) is entitled to a judgment on the pleadings;

Defendant failed to answer on or before the appearance date fixed in the summons;

Plaintiff has filed an affidavit or affirmation regarding defendant's military status;¹

The Court, having heard the evidence and argument presented, finds that service of process was duly made and finds:

in favor of plaintiff and against defendant.

in favor of defendant and against plaintiff.

in favor of plaintiff on the complaint and in favor of defendant on the counterclaim/setoff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

(Plaintiff) (Defendant) recover the following:

Damages \$ _____

Other Damages \$ _____

Interest to Date \$ _____
(if allowable)
Attorneys' Fees \$ _____
(if allowable)
Costs \$ _____
TOTAL JUDGMENT \$ _____

(check if appropriate)

[Plaintiff] [Defendant] have possession of:

the premises at

(for forcible entry or detainer)

or

the following personal property:

(for replevin and restitution actions)

Judge

USE NOTES

1. The Servicemembers Civil Relief Act, which provides certain protections to servicemembers against default judgments, applies to any civil action or proceeding in which the defendant has not made an appearance. See 50 U.S.C. § 3931.

[As amended, effective October 1, 1987; October 1, 1991; as amended by Supreme Court Order No. 16-8300-019, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-019, effective December 31, 2016, changed the caption of the case; in the section titled “Default Judgment; Judgment on the Pleadings”, after the fourth box option, added “[] Plaintiff has filed an affidavit or affirmation regarding defendant’s military status;1; in the eighth box option, after “in favor of plaintiff on”, deleted “his” and added “the”, and after “defendant on”, deleted “his” and added “the”; after “(for replevin and restitution)”, deleted “_____”; and added the Use Note.

The 1991 amendment, effective October 1, 1991, inserted "on motion of (plaintiff) (defendant) (the court itself) and the court finding it has jurisdiction and that:" near the beginning; in the first group of alternatives, deleted "Upon motion of the (plaintiff) (defendant) for a judgment on the pleadings, the court finds that" from the beginning of the third alternative and added the fourth alternative; and in the order, inserted the line for "Other damages" and inserted "[Defendant]" and "and restitution".

4-704. Motion to set aside default judgment.

[For use with Magistrate Court Rule 2-702 NMRA and Metropolitan Court Rule 3-702 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

MOTION TO SET ASIDE DEFAULT JUDGMENT

The undersigned asks that the court set aside default judgment dated _____, _____, and states:

This motion is filed within thirty (30) days from date of judgment; and

No appeal has been taken from the judgment; and

Undersigned has a defense to present; and

My excuse for being in default is:

(Plaintiff) (Defendant)

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ this
_____ (insert paper served, such as "answer" or "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) at _____ (telephone
number). The transmission was reported as complete. 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) upon agreement of the party
to accept electronic service. The transmission was reported as complete. 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 1 for the methods service may be made using this alternative.)
_____:]

Signature of person sending paper

Date of signature

USE NOTES

A copy of this motion must be served on the other party or attorney for the other party.

[As amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, of this form added the certificate of service at the end of the form and substituted "motion must be served on" for "mailed or delivered to" in Use Note.

Cross references. — For rule governing computation of time, see Rules 2-104 and 3-104 NMRA.

4-705. Order setting aside default judgment and giving notice of trial date.

[For use with Rules 2-702 and 3-702 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

_____ COUNTY

_____, Plaintiff

against

_____, Defendant

ORDER SETTING ASIDE DEFAULT JUDGMENT AND GIVING NOTICE OF TRIAL DATE

A motion having been made to set aside the default judgment, and the court having held a hearing, finds that Defendant has a defense to present, that good cause has been shown, and that the motion should be granted.

IT IS ORDERED that the default judgment dated _____, _____, is set aside, and

Defendant shall file an Answer to the Complaint within _____ days.

Plaintiff and Defendant are notified that THIS CASE WILL BE TRIED _____, _____, at _____ m. at _____

_____ and the failure of any party to appear at the time and place set for trial will be ground for default judgment against such party.

_____, _____

Judge

4-706. Satisfaction of judgment.

[For use with Rules 2-704 and 3-704 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

_____ COUNTY

_____, Plaintiff
against

_____, Defendant

SATISFACTION OF JUDGMENT

Receipt of \$ _____ in *(full) (partial)* satisfaction of the judgment in this case. _____, _____

Party or Attorney

Address

City, State, Zip Code

4-707. Notice of appeal.

[For use with Rules 1-072, 1-073, 2-706 and 3-706 NMRA]

STATE OF NEW MEXICO

IN THE DISTRICT COURT Dist. Court No. _____

_____ JUDICIAL DISTRICT

_____ COUNTY

(Mag.) (Met.) Ct. No. _____

_____, Plaintiff

(appellant) (appellee)

against

_____, Defendant

(appellant) (appellee)

_____, Garnishee (if applicable)

NOTICE OF APPEAL

_____ (*plaintiff*) (*defendant*) _____ (*other party*)
appeals to the district court from the judgment or final order of the (*magistrate*)
(*metropolitan*) court entered in the above cause on the _____ day of
_____, _____.

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

*(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 PARTY

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

A copy of the judgment or final order appealed from, showing the date of the judgment or final order, shall be attached to the notice of appeal filed in the district court.

[As amended, effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, rewrote the form, added the certificate of service and affidavit of service, and added the use note.

4-707A. Appeal bond.

[For use with Rules 1-072, 1-073, 2-706 and 3-706 NMRA]

STATE OF NEW MEXICO

IN THE DISTRICT COURT

Dist. Court No.

_____ JUDICIAL DISTRICT

_____ COUNTY

(Mag.) (Met.) Ct. No. _____

_____, Plaintiff

(appellant) (appellee)

against

_____, Defendant

(appellant) (appellee)

_____, Garnishee (if applicable)

APPEAL BOND

Appeal bond is hereby set at \$ _____

Judge

USE NOTES

If a supersedeas bond is approved by the trial court, a copy of the bond shall be immediately filed with the District Court.

[Adopted, effective January 1, 1996.]

4-708. Title page of transcript of civil proceedings.

[For use with Rules 2-705 and 3-706 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant

_____, Garnishee.

TITLE PAGE OF TRANSCRIPT OF CIVIL PROCEEDINGS

1. _____
Name of plaintiff or plaintiff's attorney
 - _____
 - Address of plaintiff or plaintiff's attorney
 2. _____
Name of defendant or defendant's attorney
 - _____
 - Address of defendant or defendant's attorney
 3. Attached: *(Please check appropriate boxes.)*
 COMPLAINT
 ANSWER
 OTHER PAPERS AND PLEADINGS
 JUDGMENT OR FINAL ORDER (with date of filing)
 EXHIBITS
 TRANSCRIPT OF THE PROCEEDINGS
- _____
- Court Clerk

[As amended, effective July 1, 1996; as amended by Supreme Court Order No. 21-8300-013, effective for all cases filed or pending on or after December 31, 2021.]

ANNOTATIONS

The 2021 amendment, approved by Supreme Court Order No. 21-8300-013, effective December 31, 2021, changed the required signatory on the form from the judge to the court clerk, and made technical, nonsubstantive amendments; and after the form's signature line, deleted "Judge" and added "Court Clerk".

The 1996 amendment, effective for appeals filed after July 1, 1996, rewrote Paragraphs 1 and 2; and in Paragraph 3, substituted "other papers and pleadings" for "other pleadings and exhibits", substituted "judgment or final order (*with date of filing*)" for "final order or judgment (with date of filing noted thereon)", added "exhibits", and substituted "transcript of the proceedings" for "record of the hearing".

4-709. Order declaring judgment of this court satisfied in full.

[For use with Rules 2-703 and 3-704 NMRA]

STATE OF NEW MEXICO
 IN THE _____ COURT
 _____ COUNTY

No. _____

_____, Plaintiff
against _____, Defendant

**ORDER DECLARING JUDGMENT OF THIS COURT
SATISFIED IN FULL**

A motion having been made for an order of this court declaring the judgment in the above case to be satisfied in full and the court being satisfied that notice has been given to the defendant in accordance with the Rules of Civil Procedure and further that the judgment and any post-judgment costs and interest has been paid in full:

[] to the judgment creditor.

[] by deposit with this court of a (*money order*) (*cashier's check*) made payable to the administrative office of the courts in an amount equal to the full amount of such judgment, costs and interest.

IT IS ORDERED that the judgment in the above case is satisfied in full.

_____, _____ Judge

[Approved, effective October 1, 1991.]

4-710. Order setting aside judgment, order or writ of this court.

[For use with Rules 2-703 and 3-704 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT
_____ COUNTY

No. _____

_____, Plaintiff
against _____, Defendant

**ORDER SETTING ASIDE JUDGMENT, ORDER
OR WRIT OF THIS COURT**

A motion having been made to set aside the (*judgment*) (*an order* _____)
(*writ* _____) entered in the above styled case on the _____
day of _____, upon the grounds that such

(judgment) (order) (writ):

[] was entered because of *(a) (mistake) (inadvertence) (surprise) (excusable neglect) (fraud)*.

[] is void because

(set forth the reason the judgment is void)

The court having held a hearing finds that the motion was timely filed and there are good grounds to grant the relief requested.

IT IS ORDERED that the above *(judgment) (order) (writ)* be set aside.

[It is further ordered that

(set forth if other proceedings or trial is to be held)

Dated:

_____, _____

Judge

[Approved, effective October 1, 1991.]

4-711. Mandate to magistrate court after appeal.

[For use in District Court]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Plaintiff

v. No. _____

_____, Defendant

MANDATE TO MAGISTRATE COURT AFTER 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 _____ (enter name of court), in Case No. _____ (enter court case number), with instructions that the court take the following actions (*district court to check all appropriate instructions*):

- Vacate its dismissal and enter judgment as stated in the attached order.¹
- Vacate its judgment and dismiss the case as stated in the attached order.²
- Enter a judgment on mandate affirming its prior judgment as stated in the attached order.³
- Enter an amended judgment as stated in the attached order.⁴
- Proceed with its case because the appeal has been dismissed.⁵
- Collect the supersedeas bond.⁶
- Release a bond (supersedeas or other) to _____ (enter name of party entitled to receive the bond).⁷
- Issue any writ necessary to carry out the judgment.⁸
- Other: _____

USE NOTES

The district court must ensure that this order is provided to the magistrate court, either electronically or by hard copy.

1. This instruction is to be used when the magistrate court originally dismissed the case but the district court reversed dismissal and found in favor of a party. The magistrate court must enter judgment consistent with the district court's decision in the event enforcement actions are needed.

2. This instruction is to be used when the magistrate court judgment is reversed and the case is dismissed.

3. This instruction is to be used when the magistrate court judgment is affirmed. This closing document is needed so that the case may be closed with an enforceable judgment.

4. This instruction is to be used when it is necessary to update the amount of the judgment, such as interest or ongoing rent that is due.

5. This instruction is to be used when there is some type of interlocutory appeal in a case that is otherwise within the jurisdiction of the magistrate court.

6. Under Rule 2-705(G) NMRA, the supersedeas bond is enforceable on dismissal of the appeal or affirmance of the judgment.

7. This instruction is to be used, probably in addition to one of the other instructions above, where a bond has been posted and is to be released. An example is a landlord/tenant case where a bond has been posted to stay the eviction.

8. This instruction is to be used if a writ is needed, such as in a landlord/tenant case where eviction is ordered.

[Adopted by Supreme Court Order No. 19-8300-017, effective for all cases pending or filed on or after December 31, 2019.].

4-712. Plaintiff’s certification of absence of loss mitigation negotiations in foreclosure actions.

[For use with District Court Rule 1-054.2 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**PLAINTIFF’S CERTIFICATION OF THE ABSENCE OF
LOSS MITIGATION NEGOTIATIONS**

I, _____, duly authorized agent for Plaintiff, certify the following statements are true and correct as of _____ (date):

1. Plaintiff or Plaintiff’s affiliate or agent has solicited and attempted to engage Defendant homeowner in loss mitigation negotiations.

2. Neither Plaintiff nor Plaintiff's affiliate or agent is currently engaged in any loss mitigation negotiations with Defendant or Defendant's agents.

Company Name

Signature

Printed Name

Title

Address

[Approved by Supreme Court Order No. 21-8300-004, effective for all cases filed on or after September 7, 2021; as amended by Supreme Court Order No. 22-8300-010, effective for all cases pending or filed on or after May 23, 2022.]

ANNOTATIONS

The 2022 amendment, approved by Supreme Court Order No. 22-8300-010, effective May 23, 2022, clarified that a plaintiff in a foreclosure action must certify as a precondition to the entry of judgment of foreclosure by the district court that the plaintiff, or the plaintiff's agent, has solicited and attempted to engage the defendant homeowner in loss mitigation negotiations and that the plaintiff, or the plaintiff's agent, is not currently engaged in any loss mitigation negotiations with the defendant or the defendant's agents, and removed provisions requiring the plaintiff in a foreclosure action to certify that the plaintiff, or the plaintiff's agent, is not currently engaged in any loan modification negotiations with the defendant or the defendant's agents; in the form heading, after "absence of", deleted "loan modification and"; in the title of the form, after "ABSENCE OF", deleted "LOAN MODIFICATION AND/OR"; in the introductory clause, after "certify", deleted "that on _____ Plaintiff provided pre-filing notice to Defendant of the following" and added "the following statements are true and correct as of _____ (date)"; deleted Items 1 and 2, and redesignated Item 3 as Item 1; in Item 1, after "homeowner in", deleted "loan modification negotiations pre-foreclosure" and added "loss mitigation negotiations"; added new Item 2; and after Item 2, deleted the last sentence of the form, which provided "Plaintiff or its affiliate or agent has solicited and attempted to engage Defendant homeowner in loss mitigation negotiations pre-foreclosure."

ARTICLE 8

Special Proceedings

4-801. Writ of execution.

[For use with Rules 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

COUNTY No. _____

_____, Plaintiff
_____, Plaintiff's Address

v.

_____, Defendant
_____, Defendant's Address

WRIT OF EXECUTION

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of any New Mexico county:

Judgment having been entered in this action, you are ordered to levy against personal property of _____ at _____ in your county, the sum of \$ _____ (which is the judgment and costs to date) plus interest at the rate of _____ % per year from the _____ day of _____, _____ (date of judgment), and your fees thereon, and return this writ to me within sixty (60) days.

_____, _____
Judge or clerk

(This form may also be issued as a second or subsequent writ.)

RETURN

I certify that I carried out this writ of execution, as follows:
(check appropriate box or boxes and fill in blanks)

The writ was served on judgment debtor on _____, _____, and _____

full payment was made
 partial payment was made in the amount of \$ _____

No non-exempt personal property of judgment debtor was found on which levy could be made.

Property seized:

[] Personal property was taken into custody on _____, _____.
A written inventory is attached.

[] Judgment debtor provided bond to retain possession; a copy of the bond is
attached.

Date of return: _____

SHERIFF OF _____
COUNTY, State of New Mexico
By _____
Deputy or other authorized person

USE NOTES

The sheriff is obligated by law to make timely return.

Only non-exempt property may be seized. The sheriff may not seize any personal clothing, furniture or books or any jewelry unless the total value of all jewelry exceeds \$2,500.

[As amended, effective July 1, 1992; January 1, 1995; January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, substituted "a second or subsequent writ" for "an alias or pluries writ" in the parenthetical following the writ form, substituted "non-exempt personal property" for "personal property" in the second alternative in the Return, and added the last paragraph in the Use Note.

The 1995 amendment, effective January 1, 1995, added the lines for the addresses of the parties in the caption, and deleted "or clerk" following "judge" below the signature line of the writ of execution.

The 1992 amendment, effective July 1, 1992 for use in the magistrate and metropolitan courts, substituted "any New Mexico county" for "said county" and "your County" for "this County" and inserted "or Clerk" in the Writ of Execution and rewrote the Return.

Case law. — The postjudgment execution statutes are unconstitutional as not providing adequate notice of allowable exemptions and the right to a hearing. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

By creating exemptions from execution, New Mexico has granted judgment debtors a property interest in retaining their exempt property. While the state need not grant such

exemptions, once given, the property rights they create are entitled to due process protection. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

4-801A. Writ of execution.

[For use with Rule 1-065.1 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT

COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

WRIT OF EXECUTION

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of any New Mexico county:

Judgment having been entered in this action, you are ordered to levy against property of _____ at _____ in your county, the sum of \$ _____ (which is the judgment and costs to date) plus interest at the rate of _____ % per year from the _____ day of _____, _____ (date of judgment), and your fees thereon, and return this writ to me within sixty (60) days.

_____, _____

Judge or clerk

(This form may also be issued as a second or subsequent writ.)

RETURN

I certify that I carried out this writ of execution, as follows:

(check appropriate box or boxes and fill in blanks)

The writ was served on judgment debtor on _____, _____, and

full payment was made

partial payment was made in the amount of _____

No non-exempt property of judgment debtor was found on which levy could be made.

Property seized:

I levied upon the following real property

Personal property was taken into custody on _____, _____ . A written inventory is attached.

Judgment debtor provided bond to retain possession. A copy of the bond is attached.

Date of return: _____

SHERIFF OF _____
COUNTY, State of New Mexico
By _____
Deputy or other authorized person

USE NOTES

The sheriff is obligated by law to make timely return.

Only non-exempt property may be seized. The sheriff may not seize any personal clothing, furniture or books or any jewelry unless the total value of all jewelry exceeds \$2,500.

[Adopted, effective July 1, 1992; as amended, effective January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, substituted "a second or subsequent writ" for "an alias or pluries writ" in the parenthetical following the writ form, substituted "non-exempt personal property" for "personal property" in the second alternative in the Return, and added the last paragraph in the Use Note.

Case law. — The postjudgment execution statutes are unconstitutional as not providing adequate notice of allowable exemptions and the right to a hearing. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

By creating exemptions from execution, New Mexico has granted judgment debtors a property interest in retaining their exempt property. While the state need not grant such exemptions, once given, the property rights they create are entitled to due process protection. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

4-802. Writ of execution in forcible entry or detainer.

[For use with District Court Civil Rule 1-065.1 NMRA;
Magistrate Court Civil Rule 2-801 NMRA;
and Metropolitan Court Civil Rule 3-801 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

COUNTY

No. _____

_____, Plaintiff
against
_____, Defendant

WRIT OF EXECUTION IN FORCIBLE ENTRY OR DETAINER

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of said county:

Judgment having been entered for the plaintiff in this action, you are ordered to remove the defendant from the premises at _____ and to restore possession of the premises to plaintiff on _____ (date) at _____ (time) and to return this writ to the court.

_____, _____
Judge

RETURN

I certify that I carried out this writ of execution by removing the defendant from the premises and restoring possession of the premises to the plaintiff on the _____ day of _____, _____ (date).

SHERIFF OF _____
COUNTY, State of New Mexico
By _____
Deputy

(The sheriff is obligated by law to make timely return.)

[As amended, effective July 1, 1992; May 15, 2003.]

ANNOTATIONS

The 2003 amendment, effective May 15, 2003, in the first paragraph, deleted "without unnecessary delay and to levy against personal property of the defendant in this county, the sum of \$ _____ plus interest at the rate of _____% per year, and your fees thereon," following "restore possession of the premises to plaintiff" and substituted "the court" for "me within thirty (30) days" following "return this writ to"; in the second paragraph, deleted the language concerning service on judgment debtors and seizure of personal property.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, in the Return, substituted "Property seized:" for "[] Levy and Sale:" near the middle and deleted from near the end, lines relating to date of sale, amount of interest, amount of accrued costs, amount received, and amount paid to judgment creditor.

Cross references.— For statutory form of forcible entry or detainer, see Section 35-10-6 NMSA 1978.

4-803. Claim of exemptions on execution.

[For use with District, Magistrate and Metropolitan Court Rules of Civil Procedure 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[_____ JUDICIAL DISTRICT COURT]

[_____ COURT]

_____, Plaintiff

v.

No. _____

_____, Defendant

CLAIM OF EXEMPTIONS ON EXECUTION

A JUDGMENT HAS BEEN ENTERED AGAINST YOU. ALL OF THE PROPERTY YOU POSSESS MAY BE SEIZED AND SOLD TO PAY THIS JUDGMENT. YOU MUST COMPLETE AND RETURN THIS FORM WITHIN TEN (10) DAYS TO CLAIM ANY STATUTORY EXEMPTION FROM THIS SEIZURE AND SALE.

(check only applicable boxes)

Part I. Homestead exemption

(This part is for use only in the district court)

Judgment debtor owns, leases or is purchasing a dwelling house which judgment debtor occupies and is entitled to hold exempt a homestead in the amount of sixty thousand dollars (\$60,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption

(Parts II and III are for use in the district court, magistrate court and metropolitan court)

Judgment debtor is a resident of this state who does not claim a homestead exemption, but claims an exemption of real or personal property in the amount of five thousand dollars (\$5,000) under Section 42-10-10 NMSA 1978. The property claimed to be exempt is as follows:

LIST PROPERTY	STATED VALUE
_____	\$ _____
_____	\$ _____

(Attach additional page if necessary)

Part III. Personal property exemptions

Unless the judgment debtor files a written waiver of exemption, the sheriff may not seize the judgment debtor's personal clothing, furniture or books.

In addition to the property claimed or listed as exempt above, the judgment debtor hereby claims the following exemptions:

(check only applicable boxes)

personal property worth up to \$500

LIST ITEMS	STATED VALUE
_____	\$ _____

(Attach additional page if necessary)

tools of the trade worth up to \$1,500.
Occupation of judgment debtor: _____

LIST ITEMS	STATED VALUE
_____	\$ _____

(Attach additional page if necessary)

one motor vehicle worth up to \$4,000 or that amount of equity in a more valuable vehicle

MAKE, MODEL AND YEAR OF VEHICLE

FAIR MARKET VALUE

_____ \$ _____

Amount of any lien on vehicle: \$ _____.

[] jewelry worth up to \$2,500

LIST JEWELRY ITEMS

STATED VALUE

_____ \$ _____

(Attach additional page if necessary)

[] medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession; *(Attach separate sheet setting forth items claimed and the name of the household member and the medical condition of the member.)*

[] pensions or retirement funds;

[] not more than \$5,000 in benefits from a benevolent association of which the judgment debtor is a member;

[] building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;

[] a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978 [repealed];

[] worker's compensation benefits subject to the limitations of Section 52-1-52;

[] occupational health benefits as provided by Section 52-3-37 NMSA 1978;

[] unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;

[] public assistance and welfare benefits;

[] cash surrender values and benefits of life insurance contracts;

[] payment from life, accident and health insurance policies or annuity contracts;

[] crime victims' reparation fund payments;

[] fraternal benefit society benefits;

the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;

the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;

oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;

allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;

THIS LIST MAY NOT BE COMPLETE. YOU MAY CLAIM ANY OTHER EXEMPTION PERMITTED BY LAW BY COMPLETING THE FOLLOWING:

other exemption (*specify*) _____
_____.

I am aware of my exemption rights:

I desire to claim my exemption rights

I waive my right to claim my exemption rights to the following property

LIST ITEMS	STATED VALUE
_____	\$ _____
_____	—

(Attach additional page if necessary)

I understand that by waiving my statutory right to exempt property, this property may be seized and sold.

YOU MUST RETURN A COMPLETED AND SIGNED COPY OF THIS FORM TO THE CLERK OF THE COURT WHOSE ADDRESS IS SHOWN BELOW. YOU MUST ALSO SERVE A COPY ON THE JUDGMENT CREDITOR.

_____, _____

Signature of judgment debtor

Return to clerk of the court

Name of court

Printed name of judgment debtor

Address

Street address or P.O. box

City, state & zip code

City, state & zip code

USE NOTES

The judgment creditor may dispute any of the claimed exemptions. If the judgment creditor disputes claimed exemptions and files a request for hearing on the claimed exemptions, the clerk will schedule a hearing on the claimed exemptions.

[As amended, effective January 1, 1986; July 1, 1992; May 1, 1994; January 1, 1996; as amended by Supreme Court Order No. 09-8300-005, effective May 6, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-005, effective May 6, 2009, added the Use Note at the beginning of the form; in the caption, deleted the line for "IN THE ____ COURT", the line for the case number, and the line for "COUNTY OF ____" and added the line for "COUNTY OF ____", the line for "____ JUDICIAL DISTRICT COURT" and the line for "____ COURT"; in Part I, changed the homestead amount from thirty thousand dollars (\$30,000) to sixty thousand dollars (\$60,000); and in Part II, changed the exemption of real or personal property from two thousand dollars (\$2,000) to five thousand dollars (\$5,000).

The 1996 amendment, effective January 1, 1996, added the bold instruction line at the beginning of the form, rewrote Part III, rewrote the bold instruction line at the end of the form, and rewrote the Use Note.

The 1994 amendment, effective May 1, 1994, rewrote the paragraph in Part I to increase the amount of the exemption from \$20,000 to \$30,000, and to expand the applicability of the former section exemption.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

Case law. — The postjudgment execution statutes are unconstitutional as not providing adequate notice of allowable exemptions and the right to a hearing. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

By creating exemptions from execution, New Mexico has granted judgment debtors a property interest in retaining their exempt property. While the state need not grant such exemptions, once given, the property rights they create are entitled to due process protection. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

4-804. Order on claim of exemption and order to pay in execution proceedings.

[For use with Rules 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

_____, Plaintiff
against
_____, Defendant

**ORDER ON CLAIM OF EXEMPTION AND ORDER TO PAY
IN EXECUTION PROCEEDINGS**

This matter coming before the court, THE COURT FINDS:

- 1. At the time the writ of execution was served on the judgment debtor, the amount of \$_____ was unpaid and owing to the judgment creditor.
- 2. As a result of this execution proceeding, judgment creditor has spent additional costs of \$_____.
- 3. The total amount of judgment and costs to date is \$_____ plus interest of _____ % per year from _____, _____.
- 4. An affidavit of service or return of service of the writ of execution, a notice of right to claim exemption form, and a claim of exemption form were served on the judgment debtor(s) or their attorney of record, if any.
- 5. The judgment debtor:
 - has not filed a claim of exemption; or
 - has filed a claim of exemption and the judgment creditor has not disputed the claim of exemption for the following property and such property is therefore exempt:

_____;

and
the following disputed property is not exempt and may be seized and sold by the sheriff

THE COURT ORDERS:

- [] 1. The judgment creditor is awarded, in addition to the amount of the judgment, the sum of \$_____ as additional costs.
- [] 2. The following property held by the sheriff is exempt from execution and the writ of execution in this case is hereby released and discharged as to that property:

- [] 3. The sheriff may seize and sell the property of the judgment debtor except as set forth above.

_____, _____ Judge

[As amended, effective July 1, 1992; January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, rewrote Paragraphs 4 and 5 of the findings, and rewrote Paragraphs 2 and 3 of the order.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

4-805. Application for writ of garnishment.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO
 COUNTY OF _____
 IN THE _____ COURT

_____, Plaintiff

v.

No. _____

_____, Defendant

APPLICATION FOR WRIT OF GARNISHMENT

The judgment creditor, _____, states:

(1 The judgment creditor has a judgment dated _____ against
) the judgment debtor whose name is _____, and whose last known
 address is _____.

- (2 The total amount of the judgment including the principal, interest, costs, and
) attorney fees awarded by the judgment was \$_____.
- (3 From the date the judgment was filed through the date this Application was
) signed, additional interest at the rate of _____% totals \$_____.
 Judgment creditor has incurred additional costs of \$_____ and
 additional attorney fees of \$_____.
- (4 Payments totaling \$_____ have been received.
)
- (5 The unpaid balance now due is \$_____ (*Insert this amount on
) Civil Form 4-806 NMRA as "Balance Due upon Application for Writ."*) plus interest
 from the date this Application is filed.
- (6 Estimated costs would equal \$_____ and the judgment
) creditor will seek \$_____ in attorney fees.
- (7 Judgment debtor, to my knowledge, does not have sufficient property within New
) Mexico subject to execution to satisfy the judgment. I understand that I have a
 duty to make a reasonable investigation into the truth of this statement and have
 done so as follows:¹
 (*This allegation is not necessary prior to garnishment of funds for child support or
 alimony obligations.*)

_____,
 _____,
 _____.

- (8 I have reason to believe, and do believe, that the garnishee,
) _____
 (*name of garnishee*) _____ (*address*), holds
 or controls money or personal property which belongs to the judgment debtor or
 is indebted to the judgment debtor.²
- (9 The money or property held by the garnishee is not exempt from garnishment.
)

Therefore the judgment creditor requests a Writ of Garnishment.

 Judgment creditor or attorney for judgment creditor

 Judgment creditor's or attorney's name printed

 Address of judgment creditor or attorney

 City, state, and zip code (*print*)

Telephone number of judgment creditor or attorney

Date of signing

AFFIDAVIT

*(application must be sworn to
unless signed by an attorney)*

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

(seal)

Notary or other officer authorized
to administer oaths

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996;
as amended by Supreme Court Order No. 09-8300-024, effective September 4, 2009;
by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or
after January 7, 2013.]

USE NOTES

1. The judgment creditor shall list any steps taken to investigate whether the judgment debtor possesses property within New Mexico subject to execution to satisfy the judgment. A reasonable investigation may be made, for example, by conducting a credit check or by asking the judgment debtor to identify all of the judgment debtor's assets during a court hearing.

2. See *Jemko v. Liaghat*, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987) (providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

[Adopted by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-030, effective January 7, 2013, required Magistrate Courts to use the Application form as the basis for issuing a writ of garnishment; reorganized the sentences contained in former Paragraph (1) as separate numbered paragraphs; required the creditor to state the amount of the estimated costs and the attorney fees the creditor will seek; required the creditor to

describe the steps taken by the creditor to investigate whether the debtor has property to satisfy the judgment; at the top of the form, after "Rule 1-065", added "2-802"; deleted former Paragraph (1); restated the sentences contained in former Paragraph (1) as Paragraphs (1) through (9); and required either the creditor or the creditor's attorney to sign the application.

The 2009 amendment, approved by Supreme Court Order No. 09-8300-024, effective September 4, 2009, after the number and title of the Form, in the brackets, deleted the reference to Rule "2-802"; in the style of the case, deleted "against" and added "v."; in the first sentence, after "judgment creditor, states", added "the following"; and in Paragraph (1), in the fifth sentence, in the parenthesis, deleted "insert" and added "Insert" and changed "Rule 4-806" to "Civil Form 4-806 NMRA".

The 1996 amendment, effective January 1, 1996, deleted "and affidavit" from the form heading, and added the "Affidavit" heading and the parenthetical use note preceding the affidavit form.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, in Item (1), substituted "upon Application for Writ" for "per Application"; in Item (2), added the parenthetical at the end; and deleted former Item (4), relating to said garnishee being a commercial bank, savings and loan association, credit union or representative payee.

4-805A. Application for writ of execution.

[For use with Magistrate Court Rule 2-801 NMRA
and Metropolitan Court Rule 3-801 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT

Plaintiff

v.

No. _____

Defendant

APPLICATION FOR WRIT OF EXECUTION

_____, the judgment creditor, states:

(1) The judgment creditor has a judgment dated _____ (*date judgment filed*) against the judgment debtor whose name is

_____, and whose last known address is _____.
_____. The total of the principal, interest, costs and attorney's fees awarded by the judgment was \$_____.

Since the judgment was entered, additional interest at the judgment rate of _____% and costs total \$_____.

Payments totaling \$_____ have been received.

The unpaid balance now due is \$_____ (*insert this amount on Civil Form 4-801 NMRA as "Balance Due upon Application for Writ"*) plus interest from the date this Application is executed.

The estimated costs would equal \$_____; and the judgment creditor will seek \$_____ in attorney fees.

(2) (*check one of the following*)

I served the judgment debtor with a notice of right to claim exemptions more than ten (10) days prior to filing this application for writ of execution and the judgment debtor has not filed a claim of exemption for the property to be seized and sold.¹

The judgment debtor has filed a waiver of the right to claim exemption for the property to be seized and sold.²

The judgment debtor is not a natural person.

The judgment creditor requests the court to issue a Writ of Execution for non-exempt property for the judgment debt.

Judgment creditor or
attorney for judgment creditor

Judgment creditor's name printed

Address of judgment creditor

Printed name of person signing for
judgment creditor

Telephone of judgment creditor

Printed name of judgment creditor's attorney
(if any)

Mailing address of judgment creditor's attorney

(number and street or P.O. box)

City, State, zip code

Telephone number of judgment creditor's attorney

AFFIDAVIT

(This application must be sworn to unless it is signed by an attorney.)

I declare under penalty of perjury that the foregoing is true and correct.

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

Notary or other officer authorized
to administer oaths

(seal)

USE NOTES

1. If the judgment debtor is a natural person Civil Form 4-808A NMRA, Notice of Right to Claim Exemptions from Execution, must have been served on the judgment debtor.

2. This alternative may be checked if the judgment debtor filed a waiver of the right to claim exemptions. See Civil Form 4-803, Claim of Exemptions, also contains the waiver form.

[Approved, effective May 15, 2003.]

4-805B. Withdrawn.

[Adopted by Supreme Court Order No. 08-8300-45, effective December 31, 2008; as amended by Supreme Court Order No. 09-8300-024, effective September 4, 2009; withdrawn by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 12-8300-030, Form 4-805B NMRA, relating to application for writ of garnishment, was withdrawn effective for all cases filed or pending on or after January 7, 2013. For provisions of former form, see the 2012 NMRA on *NMOneSource.com*.

4-805.1. Expired.

Compiler's notes. — Pursuant to Supreme Court Order No. 21-8300-005, 4-805.1 NMRA, relating to application for writ of garnishment in consumer debt collection case, was effective for a limited time from September 1, 2021 to January 31, 2022. It expired on February 1, 2022. For provisions of former form, see the 2021 NMRA on *NMOneSource.com*.

4-805.2. Expired.

Compiler's notes. — Pursuant to Supreme Court Order No. 21-8300-005, 4-805.2 NMRA, relating to application for writ of execution in consumer debt collection case, was effective for a limited time from September 1, 2021 to January 31, 2022. It expired on February 1, 2022. For provisions of former form, see the 2021 NMRA on *NMOneSource.com*.

4-806. Writ of garnishment.

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v.

No. _____

_____, Defendant

Balance Due Upon Application for Writ: \$_____

Includes Interest at _____%

Through _____, _____ (*date*)

WRIT OF GARNISHMENT

THE STATE OF NEW MEXICO to _____, garnishee.

_____ is the judgment debtor in this case and owes the amount set out above to the judgment creditor, _____, whose address is _____.

The above judgment creditor believes that you hold or control money or property that belongs to the judgment debtor.

YOU ARE ORDERED to file a written answer with the _____ court located at _____ within twenty (20) days from the day you receive this writ. Your answer must be under oath and on the attached form (*answer by garnishee*).

YOU ARE FURTHER ORDERED, as follows:

1. If you owe the judgment debtor any money (other than wages), or become indebted to the judgment debtor before filing your answer, you must keep a sufficient amount of that money to satisfy the judgment and all costs and attorney fees due as a result of service of this writ and not pay it to the judgment debtor, unless this court enters an order releasing this writ of garnishment.
2. If the judgment debtor is an employee of yours, unless the debt is for child or spousal support, YOU SHALL PAY YOUR EMPLOYEE, THE JUDGMENT DEBTOR, whichever amount is greater, one of the following:
 - A. seventy-five percent (75%) of the debtor's disposable earnings (salary less social security, federal and state withholdings, and any other deduction required by law) for any pay period;

OR

- B. an amount each week equal to forty (40) times the federal minimum hourly wage rate.

If the debt is for child support or spousal support payments, you shall pay the judgment debtor fifty percent (50%) of the debtor's disposable earnings (*salary less social security, federal, and state withholding*).

If employee's wages or salary are subject to more than one garnishment or wage withholding proceeding, the writs shall be satisfied in the order they have been served on you.¹

In no event may you withhold from your employee's net disposable earnings more than fifty percent (50%) of the employee's net disposable earnings if one of the writs is for child or spousal support or more than twenty-five percent (25%) if none of the garnishments is for child or spousal support.²

Any wages you owe the employee in excess of that amount or that you may come to owe the employee in excess of that amount must be kept by you until further order of this court. (*A table giving equivalent exemptions for pay periods of other than one (1) week may be obtained from the Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michaels Drive, Santa Fe, New Mexico 87503.*)

3. If you have any property that belongs to the judgment debtor, including any rights, credits, bonds, bills, notes, drafts, and other rights to property or money that belongs to the judgment debtor, or if you acquire any such property, money, or rights to property or money before filing your answer, you must keep a sufficient amount of that property to satisfy the existing judgment and costs and not turn it over to the judgment debtor unless the court enters an order releasing the property or money.
4. If you hold property or money belonging to the judgment debtor, within four (4) business days after service of this writ, you are to mail or deliver a copy of this writ and the application for writ provided by the judgment creditor. If you hold property or money of the judgment debtor's other than wages and the debtor is a natural person, you shall also mail or deliver to the judgment debtor, the attached notice of right to claim exemptions and a copy of the attached claim of exemption forms to each person identified as a judgment debtor. You shall also send or deliver a copy of your answer to this writ to the judgment debtor and to the judgment creditor.
5. The court will be asked to enter an order awarding \$_____ for the judgment creditor's costs relative to the service of the writ of garnishment and \$_____ for judgment creditor's attorney fees in connection with the writ of garnishment in addition to \$_____, the "Balance Due Application for Writ."

THIS IS A COURT ORDER. If you fail to file the answer, or if you disobey any of these orders, a judgment may be entered against you for the full amount of the unpaid judgment in this case.

(Seal)

Judge or clerk

RETURN

STATE OF NEW MEXICO)

)ss

COUNTY OF _____)

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:

I certify that I served this writ in said county on the _____ day of _____, _____, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor, and a copy of the claim of exemption form for each judgment debtor to _____, garnishee.

(For garnishment of wages, serve only copies of the application for writ of garnishment, writ of garnishment, and answer form. For garnishment other than wages, if the judgment debtor is a natural person, serve the application for writ of garnishment, the writ of garnishment, a copy of the notice of right to claim exemptions, a copy of the claim of exemption form, and a copy of the answer by garnishee. Judgment debtors who are not natural persons are not entitled to garnishment exemptions.)

By _____
Name

Title

Fees:

SHERIFF OF _____

COUNTY, State of New Mexico

By _____
Deputy

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 I served this writ in said county on the _____ day of _____, _____, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor, and a copy of the claim of exemption form for each judgment debtor to _____ garnishee.

B _____
y _____
Name

Title

Signature of private person
making service

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

Judge, notary, or other officer
authorized to administer oaths

Official title

USE NOTES

1. Section 35-12-9 NMSA 1978 provides that if an employee's wages are subject to more than one garnishment proceeding, the writs shall be satisfied in the order in which they are served on the garnishee.

2. Section 35-12-7(C) NMSA 1978 provides that the maximum amount that may be taken from a person's disposable earnings is fifty percent (50%) of the employee's disposable earnings.

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; December 3, 2001; as amended by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-030, effective January 7, 2013, reorganized the language of Paragraph 2; in Paragraph 2, in the first sentence, after "child or spousal support", deleted "you shall pay your employee, the judgment debtor, only" and added "YOU SHALL PAY YOUR EMPLOYEE, THE JUDGMENT DEBTOR, whichever amount is greater, one of the following"; and at end of Subparagraph B of Paragraph 2, deleted "whichever is greater".

The 2001 amendment, effective December 3, 2001, in the introductory language in Paragraph 2, inserted "or spousal" following "for child", and "your employee" following "you shall pay"; in the first undesignated paragraph following Paragraph 2, inserted "or spousal support" following "child support"; added the second and third undesignated paragraphs following Paragraph 2; inserted "and the debtor is a natural person" following "than wages" in Paragraph 4; inserted "For garnishment of wages, serve only copies of the application for writ of garnishment" in the second paragraph under "Return"; and added the Use Notes.

The 1996 amendment, effective January 1, 1996, substituted "unless the court enters an order releasing this writ of garnishment" for "unless this court gives permission" in Paragraph 1, substituted "unless the court enters an order releasing the property or money" for "unless and until this court gives permission" in Paragraph 3, and rewrote Paragraph 4.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

4-807. Answer by garnishee.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff,

v.

No. _____

_____, Defendant.

Garnishee

ANSWER BY GARNISHEE

In answer to the writ of garnishment, garnishee states:

(Complete only applicable parts of this form.)

1. Wages

I do not employ the judgment debtor or pay the judgment debtor any wages.

The judgment debtor was my employee but the employment ended _____.

Calculated on a weekly basis, I pay the judgment debtor \$_____ as NET WAGES (*see definition below*). I pay the judgment debtor [weekly] [every other week] [twice a month] [monthly].

NET WAGES equal GROSS WAGES less Federal income tax, F.I.C.A., State income tax, and other deductions required by law. They do not include voluntary deductions.

75% of judgment debtor's NET WAGES per week is \$_____

40 times hourly federal minimum wage per week is \$_____

2. Money other than wages

I do not now owe the judgment debtor any money.

I owe the judgment debtor \$_____.

3. Property other than money

I have no property of the judgment debtor in my possession and have not received any since receiving the writ of garnishment.

I have in my possession the following property that belongs to the judgment debtor:

<i>(description)</i>	<i>(approximate value)</i>
_____	\$ _____
_____	\$ _____

4. **Prior Garnishments and/or Support Enforcement Orders**

I am withholding judgment debtor's NET WAGES due to other writs or orders to withhold wages. *(If you have been served with other writs of garnishment or court orders to withhold wages of the above judgment debtor, you must attach and file a copy of each writ or order with this answer.)*

5. **Service requirements to judgment debtor**

I have sent the following papers which have been provided to me by the judgment creditor to the judgment debtor, or if the judgment debtor has an attorney, to the judgment debtor's attorney:

If wages withheld: a copy of the application for a writ of garnishment; the writ of garnishment; and a copy of this answer have been mailed to each judgment debtor.

If money or property other than wages withheld: a copy of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form; and a copy of this answer have been mailed to each judgment debtor.

I am not aware of the location or address of the judgment debtor and therefore am unable to serve the notices set forth in this paragraph.

6. **Service requirements to judgment creditor**

A copy of this answer has been mailed or delivered to the judgment creditor, or if the judgment creditor has an attorney, to the judgment creditor's attorney.

7. **Attorney fees**

The garnishee has incurred \$ _____ in attorney fees in preparing this answer.

The undersigned verifies under penalty of perjury that the above foregoing answer by garnishee is true to the best of the garnishee's knowledge and belief.

Signature of garnishee or attorney

Printed name of person signing

Address

City, state, and zip code (*print*)

Telephone number

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

Judge, notary, or other officer
authorized to administer oaths

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; December 3, 2001; as amended by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

USE NOTES

See *Jemko v. Liaghat*, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987) (providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

[Adopted by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-030, effective January 7, 2013, reorganized the sentences and simplified the language of former Paragraphs 1, 2, 4, 5, and 6; required the garnishee to state the debtor's net wages rather than the debtor's gross wages and payroll deductions; deleted the requirement that the garnishee state the amount of withholding of the debtor's wages pursuant to other writs or orders; in Paragraph 1, deleted the former language, including the line items for gross wages and payroll withholding, added the rephrased language of former Paragraph 1, and defined "net wages"; in Paragraph 2, deleted the former third paragraph which concerned the debtor's property that came into the garnishee's possession after service of the writ of garnishment and deleted the former fourth paragraph which concerned money owned by the garnishee to the debtor; deleted former Paragraph 4, which concerned wage withholding pursuant to other writs and orders; added Paragraph 4, which restates and simplified the information required in former Paragraph 4; deleted former Paragraph 6, which concerned service requirements compliance; added Paragraph 5, which rephrased the language of former

Paragraph 6; and added Paragraph 6, which rephrased the last paragraph of former Paragraph 6; and in the last unnumbered paragraph, deleted the former verification of the person signing the Answer that it is true to the best of the signatory's knowledge and belief, that the signatory is the custodian of the records upon which the Answer is based, and that the Answer is true and correct based on those records, and added the last sentence.

The 2001 amendment, effective December 3, 2001, in Paragraph 4, required that all alternatives be completed that were applicable and inserted the third alternative; and, at the end of the form, included the signature of the garnishee or attorney, including the address and telephone number.

The 1996 amendment, effective January 1, 1996, rewrote the form.

Cross references.— For attorney fees and costs, see Section 35-12-16 NMSA 1978.

For garnishments, see Section 35-12-18 NMSA 1978.

For child support withholding, see Sections 40-4A-4.1 and 40-4A-6 NMSA 1978.

For duties of payor, see Section 40-4A-8 NMSA 1978.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

4-808. Notice of right to claim exemptions (*garnishment*).

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v.

No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS (GARNISHMENT)

1. THE JUDGMENT CREDITOR IS GARNISHING YOUR PROPERTY, WHICH MAY INCLUDE YOUR BANK ACCOUNT:

A ruling has been made in this case that you owe money to the judgment creditor. The

judgment creditor has started to collect that money from your property, which may include your bank account.

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. These funds or property are protected under federal or state law. Money or property that may not be taken is called "exempt" property. You may claim an exemption by filing with the court a claim of exemption (*garnishment*) form. There are limits on how much of your wages may be taken. You do not need to file a claim of exemption form to protect your exempt wages.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt. YOU MAY WISH TO CONSULT AN ATTORNEY BEFORE COMPLETING AND FILING THIS FORM.

3. PARTIAL LIST OF EXEMPTIONS:

- a. social security benefits (OASDI, SSI);
- b. public assistance benefits (AFDC, welfare, GA);
- c. life, accident or health insurance proceeds;
- d. workers' compensation benefits (*part may be garnished for child or spousal support*);
- e. occupational health benefits;
- f. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978;
- g. veterans' benefits;
- h. pensions or retirement funds;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978 [repealed];
- j. crime victims' reparation fund payments;
- k. a family allowance to a decedent's surviving spouse and children, subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- l. the minimum amount of shares necessary for certain cooperative associations as provided by Section 53-4-28 NMSA 1978;

m. fraternal benefit society payments;

n. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978.

4. HOW TO PROTECT EXEMPT PROPERTY:

A "claim of exemption (*garnishment*)" form is attached for you to complete and file with the court. YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions (*garnishment*) form within ten (10) days and attend the hearing, your money or property may be turned over to the judgment creditor.

DO NOT FILE THE CLAIM OF EXEMPTION FORM TO PROTECT ONLY WAGES.

YOU SHOULD COMPLETE AND RETURN THE CLAIM OF EXEMPTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS FORM UPON YOU. MAKE A COPY OF THE COMPLETED FORM FOR YOUR RECORDS AND SERVE A COPY ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 3, 2001, inserted "or spousal" in Subparagraph 3d.

The 1996 amendment, effective January 1, 1996, in Paragraph 2, deleted the former second sentence in the first paragraph which read: "There are limits on how much of your wages can be taken", added the last sentence of the first paragraph, and added the last sentence of the second paragraph; and rewrote Paragraph 4.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, added the reference to Rule 1-065.1 at the beginning, rewrote Items 3(e), 3(f), and 3(h), added Items 3(i) to 3(n), and, near the beginning of Item 4, substituted "three (3) copies" for "two (2) copies".

4-808A. Notice of right to claim exemptions from execution.

[For use with District, Magistrate and Metropolitan Court Rules of Civil Procedure Rules 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

[_____ JUDICIAL DISTRICT COURT]

[_____ COURT]

_____, Plaintiff

v. No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS FROM EXECUTION

1. THE JUDGMENT CREDITOR (IS SEIZING) (HAS A RIGHT TO SEIZE) YOUR PROPERTY

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor may collect that money from seizure and sale of your property. (Before the judgment creditor has the sheriff seize your property, you may have a right to claim exemptions of certain property.)

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. This property is protected under state law. The property which may not be taken is called "exempt property".

YOU MUST FILE A CLAIM OF EXEMPTION FORM TO CLAIM ANY EXEMPT PROPERTY. YOU MAY WISH TO CONSULT WITH AN ATTORNEY BEFORE COMPLETING AND FILING THE CLAIM OF EXEMPTION FORM.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

3. PARTIAL LIST OF EXEMPTIONS FROM EXECUTION.

Part I. Homestead exemption.

(This exemption may only be used in the district court.)

A judgment debtor who owns, leases or is purchasing a dwelling occupied by the judgment debtor is entitled to hold as exempt property a homestead in the amount of sixty thousand dollars (\$60,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption.

(Parts II and III are for use in the district court, magistrate court and metropolitan court.)

Residents of this state who do not claim a homestead exemption are entitled to an exemption of real or personal property in the amount of five thousand dollars (\$5,000) under Section 42-10-10 NMSA 1978. You may not claim this exemption if you claimed a homestead exemption above.

Part III. Personal property exemptions.

In addition to the property claimed as exempt above, judgment debtors are entitled to claim certain personal property exemptions. Most of those exemptions are listed below:

- a. personal property worth up to \$500;
- b. tools of the trade worth up to \$1,500;
- c. a motor vehicle worth up to \$4,000 or that amount of equity in a more valuable vehicle;
- d. jewelry worth up to \$2,500;
- e. clothing, furniture, books and medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession;
- f. pension or retirement funds;
- g. not more than \$5,000 in benefits from a benevolent association of which the judgment debtor is a member;
- h. building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978 [repealed];
- j. worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;

- k. occupational health benefits as provided by Section 52-3-37 NMSA 1978;
- l. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;
- m. public assistance and welfare benefits;
- n. cash surrender values and benefits of life insurance contracts;
- o. payment from life, accident and health insurance policies or annuity contracts;
- p. crime victims' reparation fund payments;
- q. fraternal benefit society benefits;
- r. the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- s. the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- t. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- u. allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978.

You may not claim an exemption for personal property which is subject to a security interest under the Uniform Commercial Code given to the judgment creditor.

4. HOW TO PROTECT EXEMPT PROPERTY.

The sheriff may not seize your personal clothing, furniture and books or any jewelry unless the total value of all jewelry is more than \$2,500. For other property, you must claim an exemption or it may be seized and sold. A claim of exemptions on execution form is attached for you to complete and file with the court.

YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS ON EXECUTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU

MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS ON EXECUTION FORM ON THE JUDGMENT CREDITOR.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions on execution form within ten (10) days and attend the hearing, your property may be seized and sold by the sheriff.

FAILURE TO COMPLETE AND FILE A CLAIM OF EXEMPTIONS ON EXECUTION FORM WITHIN TEN (10) DAYS AND SERVE A COPY ON THE JUDGMENT CREDITOR WILL RESULT IN THE LOSS OF YOUR RIGHT TO CLAIM AN EXEMPTION.

(The following proof of service may be used ONLY if the judgment debtor has entered an appearance in the case.)

AFFIDAVIT OF SERVICE

I declare, under penalty of perjury, that this notice, a claim of exemptions on execution form and a copy of the judgment in the above cause of action were mailed on the ____ day of _____, _____ from _____ (street address or post office branch) in _____, New Mexico.

Signature

Date of signature

(If the judgment debtor has not entered an appearance, personal service of this notice must be made on the judgment debtor and the following Return of Service must be completed and filed with the court.)

RETURN

STATE OF NEW MEXICO)
) ss
COUNTY OF)

(check one box and fill in appropriate blanks)

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 I served the notice of right to claim exemptions

(executions) and a claim of exemptions on execution form (in said county) (in _____ County) on the _____ day of _____, _____, by delivering a copy thereof, with copy of the judgment attached, in the following manner:

(check only if service by sheriff or deputy)

I certify that I served the Notice of Right to Claims Exemptions (*Execution*) (in said county) (in _____ County) on the _____ day of _____, _____, by delivering a copy thereof, with copy of judgment attached in the following manner:

(check one box and fill in appropriate blanks)

to defendant _____

to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, who at the time of such service was absent therefrom. Abode located at _____.

by posting a copy of the Notice of Right to Claim Exemptions in the most public part of the premises of defendant _____ (*used if no person found at dwelling house or usual place of abode*). Abode located at _____.

to _____, an agent authorized to receive service of process for defendant _____.

to _____, (*parent*) (*guardian*) of defendant _____ (*used when defendant is a minor or an incompetent person*).

after due diligence I was unable to serve this notice.

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn² to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Strike out the inapplicable alternative.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

[As amended, effective January 1, 1993; May 1, 1994; January 1, 1996; as amended by Supreme Court Order No. 09-8300-030, effective October 12, 2009.]

ANNOTATIONS

The 2009 amendment, approved by Supreme Court Order No. 09-8300-030, effective October 12, 2009, in the brackets at the beginning of the form, added "For use with district, magistrate and metropolitan court rules of civil procedure"; revised the caption of the form to add the blanks for "_____ Judicial District Court" and "_____ Court"; in Part I, changed the amount of the homestead exemption from thirty thousand dollars (\$30,000) to sixty thousand dollars (\$60,000); and in Part II, changed the amount of the exemption in lieu of the homestead exemption from two thousand dollars (\$2,000) to five thousand dollars (\$5,000).

The 1996 amendment, effective January 1, 1996, added the last sentence in Paragraph 2, deleted "state and local" preceding "pension" in Paragraph f of Part III, rewrote Paragraph 4, and substituted "a claim of exemptions on execution form" for "three copies of the claim of exemption form" in the Affidavit for Service form and in the first alternative in the Return form.

The 1994 amendment, effective May 1, 1994, amended the heading of the first paragraph to add "(HAS A RIGHT TO SEIZE) 1", to change "plaintiff" to "judgment creditor", to rewrite the second sentence and to add the last sentence of the paragraph; amended paragraph 3, Part I to increase the exemption from \$20,000 to \$30,000 and to substitute "A judgment debtor who owns, leases or is purchasing a dwelling occupied by

the judgment debtor is" for "Married persons, widows, widowers and persons who are supporting another person".

The 1993 amendment, effective January 1, 1993, deleted "(clerk) (judge)" adjacent to the signature line in the "Notice of Right to Claim Exemptions from Execution".

4-809. Claim of exemption from garnishment.

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT

No. _____

_____ COUNTY

_____, Plaintiff
against

_____, Defendant
_____, Garnishee

CLAIM OF EXEMPTION FROM GARNISHMENT

Judgment debtor claims the following exemptions:
(*check box next to exemption*)

- a. social security benefits (OASDI, SSI);
- b. public assistance benefits (AFDC, welfare, GA);
- c. life, accident or health insurance proceeds;
- d. workers' compensation awards;
- e. unemployment compensation benefits;
- f. veterans' benefits;
- g. pensions and retirement funds;
- h. crime victims' reparation fund payments;
- i. allowances to surviving spouse and children from deceased's estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- j. the minimum amount of shares necessary for certain non-profit cooperative associations as provided by Section 53-4-28 NMSA 1978;
- k. fraternal benefit society payments as provided by Section 59A-44-18 NMSA 1978.

A completed and signed copy of this form must be returned to the Clerk of the Court whose address is

A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption, a court hearing will be scheduled to consider the disputed exemptions. At this hearing you must bring evidence supporting each of your claims of exemption.

Date

Signature of judgment debtor

Printed name of judgment debtor

Number and street or P.O. box

City, state, zip code

Telephone number

[As amended, effective July 1, 1992; January 1, 1995; January 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, near the end of the form, substituted "A completed and signed copy" for "Two (2) copies", inserted "A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption", substituted "the disputed exemptions" for "the above exemptions", and deleted the former parenthetical use note relating to scheduling a hearing within 10 business days.

The 1992 amendment, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, inserted "from" in the heading, rewrote Item g, added Items h to k, added the two sentences preceding the signature lines, and added the parenthetical at the end.

4-810. Motion for default judgment against garnishee.

[For use with Rules 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT

No. _____

_____ COUNTY

_____, Plaintiff

v.

_____, Defendant
_____, Garnishee

MOTION FOR DEFAULT JUDGMENT AGAINST GARNISHEE

Judgment creditor moves the court to enter a default judgment against the garnishee.

The Writ of Garnishment was served on the garnishee on _____ (date) and the return of service of the writ on the garnishee has been filed with the court.

The garnishee has not filed an answer or other responsive pleading with the court nor has the judgment creditor been served with a responsive pleading.

The judgment creditor requests the court to set a hearing on this motion on not less than three (3) days notice to the garnishee.

Date

Attorney for plaintiff

If the plaintiff is not represented by an attorney, this motion must be sworn to or affirmed by the plaintiff.

I, _____, upon my oath or affirmation do solemnly declare or affirm that this motion contains a complete, accurate statement of the facts to the best of my knowledge. I understand that if I make a material misstatement of fact, I may be prosecuted and punished for perjury.

Signature of plaintiff

Signature of Judge, Notary or Other Officer Authorized to Administer Oaths

Official title

My commission expires:

(SEAL)

CERTIFICATE OF SERVICE

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 _____ (defendant or defendant's attorney). 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) who agreed to service in this manner. The transmission was successful. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (date).]

Signature of attorney

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 motion 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

[Approved, effective August 1, 1999.]

ANNOTATIONS

Compiler's notes.— Pursuant to a Supreme Court order dated April 15, 1992, former Form 4-810, providing the certificate of notice of garnishment, was withdrawn, effective July 1, 1992.

4-810A. Notice of dispute and request for hearing.

[For use with Rules 1-065.1, 1-065.2, 2-801, 2-802, 3-801 and 3-802 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

_____, Plaintiff

v. _____ No. _____
_____, Defendant

NOTICE OF DISPUTE AND REQUEST FOR HEARING¹

- 1. Assigned Judge: _____
- 2. [Execution proceeding] [Garnishment proceeding]²

The judgment [creditor disputes the following claimed exemptions] [debtor disputes the following]² and requests a hearing be held on this dispute

Judgment creditor or attorney

(Requesting party shall attach a separate sheet listing the name, firm, capacity, address, and telephone number of each party entitled to notice and a stamped, addressed, plain (without return address) envelope for each party entitled to notice.)

NOTICE OF HEARING

A hearing is scheduled on the [disputed claims of exemption] [dispute]² described above before the Honorable _____, at the _____ court located at _____ on _____ the _____ day of _____, _____, at the hour of _____ .m.

_____, _____
Judge

USE NOTES

1. A hearing must be held within 10 business days of the filing of this form. The clerk will file the request for hearing and endorse the copy for the assigned judge. The court shall give notice of the hearing on the disputed claim of exemption by mailing a copy of this form to the judgment debtor, judgment creditor and the garnishee, if any.

2. Use applicable alternative.

[Adopted, effective January 1, 1996.]

4-811. Judgment on writ of garnishment, claim of exemption and order to pay.

[For use with Rule 1-065.2 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Plaintiff (*Judgment creditor*)

v.

No. _____

_____, Defendant (*Judgment debtor*)

_____, Garnishee

JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF EXEMPTION AND ORDER TO PAY

This matter coming before the court, the court finds:

- 1. At the time the writ of garnishment was served on the garnishee, the amount of \$_____ was unpaid and owing to the judgment creditor.
- 2. As a result of this garnishment proceeding, judgment creditor has spent additional costs and fees of \$_____.
- 3. The total amount of judgment and costs to date are \$_____ plus interest of _____% per year from _____, _____.
- 4. The garnishee is not an employer of the judgment debtor and has also certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; notice of right to claim exemptions and a claim of exemption form and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.

5. The judgment debtor:
- has not filed a claim of exemption;
 - has filed a claim of exemption and the judgment creditor has not disputed the claim of exemption for the following property and such money or property is therefore exempt:
 _____;
 or
 - has filed a claim of exemption which has been disputed and after a hearing, the court finds that the following property is exempt from garnishment:

6. The garnishee:
- is in default;
 - is indebted to the judgment debtor in the amount of \$_____;
 - is indebted to the judgment debtor for wages;
 - is not indebted to the judgment debtor;
 - holds property of the judgment debtor;
 - does not hold property of the judgment debtor.
7. Pursuant to the Support Enforcement Act, the garnishee:
- is withholding \$_____ of the judgment debtor's income pursuant to a Notice to Withhold Income;
 or
 - is not withholding any income of the judgment debtor pursuant to such a Notice.
8. Pursuant to Section 35-12-16 NMSA 1978, the judgment creditor:
- is entitled to additional fees and costs of \$_____;
 - or
 - is not entitled to additional fees and costs.

THE COURT ORDERS:

1. **Default judgment against garnishee**

The judgment creditor recover from the garnishee the sum of \$_____, plus _____ percent per annum interest from the date the application was executed, the garnishee having failed to answer the writ;

or

2. **Payment of money other than wages**

[] The judgment creditor recover from the garnishee the sum of \$_____, which includes _____ percent per annum interest thereon from the date the application was executed to the date the answer was filed, such sum being held by garnishee other than as wages;

or

3. **Wage withholding other than child or spousal support**

[] The judgment being other than for child or spousal support, the judgment creditor recover from the garnishee the sum of \$_____, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages. The garnishee shall pay the judgment debtor only:

(a) seventy-five percent (75%) of judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period;

OR

(b) an amount each week equal to forty (40) times the federal minimum hourly wage rate;

whichever is greater.

The balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is satisfied, after this balance is first used to pay any prior garnishment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

4. **Wage withholding for child or spousal support**

[] **No prior writ or order.** The order or decree being for child or spousal support, the judgment creditor shall recover from the garnishee the sum of \$_____, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages. The garnishee shall pay the judgment debtor fifty percent (50%) of judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period. If there is no prior garnishment, the balance of the judgment debtor's disposable earnings each payday shall be paid to satisfy this judgment.

[] **Prior writ or order.** If there is a prior garnishment (*one that was served on the garnishee prior to the date and time the garnishment in this case was served*), up to fifty percent (50%) of the judgment debtor's disposable earnings each pay period shall be paid as follows:

first, the amount provided for in the judgment entered on the prior writ of garnishment shall be applied to the prior garnishment. If a judgment has not yet been entered on the prior writ of garnishment, the garnishee shall withhold the amount ordered by the prior writ of garnishment to be applied to the prior writ of garnishment when the judgment is entered;

next, until all prior writs have been fully satisfied, the remainder of the balance of fifty percent (50%) of the judgment debtor's disposable earnings shall be paid to this judgment creditor to satisfy the child or spousal support order. Upon satisfaction of all prior writs of garnishment, the entire balance of the judgment debtor's disposable earnings shall be applied to satisfy this child or spousal support order judgment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

Prior child or spousal support writ. Upon motion of the judgment debtor, this court orders the distribution of the judgment debtor's child or spousal support obligations as follows:

If the money being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceeds the otherwise garnishable amounts, this garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages being withheld pursuant to a notice to withhold income under the Support Enforcement Act are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor until the child or spousal support notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

5. Money or property other than wages

The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money or property from the judgment debtor on account of that writ.

The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.

[] The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

6. Costs and fees

[] The judgment creditor is awarded, in addition to the above amounts, the sum of \$_____ as additional costs and fees pursuant to Section 35-12-16 NMSA 1978.

[] The garnishee shall be reimbursed \$_____ for its costs and \$_____ for its attorney fees, the same to be paid by the _____. If paid by the judgment debtor, said sum shall be paid from the first money otherwise payable to the judgment creditor, but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

7. Payments

Payments under this order shall be sent to:

(name of judgment creditor)

(address of judgment creditor)

(city, state and zip code)

_____, _____
Date

Judge

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; October 15, 1999; December 3, 2001.]

ANNOTATIONS

The 2001 amendment, effective December 3, 2001, inserted "or spousal" in Paragraphs 3 and 4 and added Paragraph 7 following the heading "THE COURT ORDERS."

The 1999 amendment, effective October 15, 1999, deleted "[15%]" following "plus" in Paragraph I of the court orders.

The 1996 amendment, effective January 1, 1996, in the findings, substituted "a claim of exemption" for "three copies of the claim of exemption" in Paragraph 4, and added the second alternative in Paragraph 5 and inserted "which has been disputed" in the third alternative in Paragraph 5; and in the order, rewrote former Paragraphs 4 through 11 as Paragraphs 4 through 6.

The 1992 amendment, effective July 1, 1992 for use in the district courts, deleted former Finding 4, relating to certification in writing by the judgment creditor that the latter

had mailed copies of specified items; redesignated former Findings 5 to 9 as present Findings 4 to 8; rewrote present Finding 4; deleted "Civil Form" preceding "Garnishment" at the fifth occurrence of that word in the fourth sentence of Order 4; and made several gender neutral substitutions.

Cross references.— For attorney fees and costs, see Section 35-12-16 NMSA 1978.

For garnishments, see Section 35-12-18 NMSA 1978.

For support enforcement, see Section 40-4A-1 NMSA 1978 et seq.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

4-812. Judgment on writ of garnishment, claim of exemption and order to pay.

[For use with Rules 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE [MAGISTRATE] [METROPOLITAN] COURT

_____, Plaintiff (*Judgment Creditor*),

v. No. _____

_____, Defendant (*Judgment Debtor*).

_____, Garnishee.

JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF EXEMPTION, AND ORDER TO PAY

This matter coming before the court, the court finds:

1. The judgment creditor, _____, has a judgment dated _____ against the judgment debtor, _____.
2. The total amount of the judgment including the principal, interest, costs, and attorney fees awarded by the judgment was \$_____.
3. From the date the judgment was filed through the date this Application was signed, additional interest at the rate of _____% totals \$_____. Judgment creditor has

incurred additional costs of \$_____ and additional attorney fees of \$_____.
Payments totaling \$_____ have been received.

4. The unpaid balance now due is \$_____ plus interest from the date this Application is filed. Interest at _____% shall continue to accrue on any outstanding balance until the judgment is fully paid.
5. The judgment debtor:
 - has not filed a claim of exemption;
 - has filed a claim of exemption, which was not disputed. Therefore, the property or money shown on the claim of exemption is exempt;
 - has filed a claim of exemption that has been disputed and after hearing, the court finds that the following property is not exempt from garnishment:
_____;
6. The garnishee:
 - is in default;
 - is indebted to the judgment debtor for wages;
 - is indebted to the judgment debtor in the amount of \$_____;
 - is not indebted to the judgment debtor;
 - holds property of the judgment debtor;
 - does not hold property of the judgment debtor.
7. The garnishee:
 - is garnishing wages**, and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.
 - is garnishing property or money other than wages**, and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form; and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.
8. Pursuant to the Support Enforcement Act, the garnishee:
 - is withholding \$_____ of the judgment debtor's income pursuant to a notice to withhold income.

THE COURT ORDERS:

- 1. **Default judgment against garnishee**
The garnishee having failed to answer the writ, the judgment creditor shall recover from the garnishee the sum of \$_____ plus interest at _____% per year from the date this judgment is filed.
- 2. **Payment of money other than wages**
The judgment creditor shall recover from the garnishee the sum of \$_____

plus interest at _____% per year from the date this judgment is filed, such sum being held by garnishee other than as wages.

3. **Wage withholding other than child or spousal support**

The judgment being other than for child or spousal support, the judgment creditor shall recover from the garnishee the sum of \$_____, plus interest at _____% per year from the date this judgment is filed, until paid in full, to be deducted from the judgment debtor's wages.

The garnishee **SHALL PAY THE JUDGMENT DEBTOR**, whichever amount is greater, one of the following:

- (a) seventy-five percent (75%) of the judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period; **OR**
- (b) an amount each week equal to forty (40) times the federal minimum hourly wage rate.

The remaining balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is paid in full. If the wages of the judgment debtor are not enough to garnish because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

If wages are being withheld pursuant to a notice to withhold income under the Support Enforcement Act, this garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages are being withheld pursuant to a notice to withhold income under the Support Enforcement Act, but are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor until the child or spousal support notice to withhold income has been voided, modified, suspended, or terminated, at which time the full amount allowed for this garnishment shall be paid to the judgment creditor.

If wages are being withheld pursuant to a prior garnishment and/or a prior demand warrant for unpaid taxes, the prior garnishment and/or prior demand warrant shall be paid first and upon full payment of the prior garnishment and/or prior demand warrant, the full amount allowed for this garnishment shall be paid to the judgment creditor.

4. **Money or property other than wages**

The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money, or property from the judgment debtor on account of that writ.

- The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.
- The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

5. **Costs and fees of garnishee**

- The garnishee shall be reimbursed \$_____ for its costs and \$_____ for its attorney fees to be paid by the _____. If paid by the judgment debtor, said sum shall be paid from the first money otherwise payable to the judgment creditor but shall not reduce the amount due the judgment creditor as determined above.

6. **Payments**

Payments under this order shall be sent to:

(name of judgment creditor)

(address of judgment creditor)

(city, state, and zip code)

(phone number of judgment creditor)

 Date

 Judge

USE NOTES

See Jemko v. Liaghat, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987) (providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001; by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-030, effective January 7, 2013, simplified the former language of the court's findings and order;

required findings concerning service of the pleadings on the debtor; added Paragraph 1 of the court's findings; in Paragraphs 2 through 3 of the court's findings, simplified the language of former Paragraphs 1 through 3; deleted former Paragraph 4 of the court's findings that the debtor is not an employee of the garnishee and that the garnishee has complied with service requirements; in Paragraph 5 of the court's findings, in the second paragraph, simplified the former language of the paragraph and deleted the former fourth paragraph which duplicated the first paragraph; added Paragraph 7 of the court's findings; renumbered former Paragraph 7 of the court's findings as Paragraph 8; in Paragraph 8 of the court's findings, deleted the former second paragraph which stated that the garnishee is not withholding income pursuant to a Notice; deleted former Paragraph 8 of the court's findings which concerned the award of fees and costs pursuant to Section 35-12-16 NMSA 1978; in Paragraphs 1, 2, and 3 of the court's order, simplified the former language of these paragraphs; in Paragraph 3 of the court's order, in the fourth paragraph, added the last sentence; in Paragraph 5 of the court's order, deleted the former first paragraph which concerned the award of costs and fees pursuant to Section 35-12-16 NMSA 1978; and in Paragraph 6 of the court's order, added the creditor's telephone number.

The 2001 amendment, effective December 3, 2001, following the heading "THE COURT ORDERS", substituted the fill-in the blank percentage for "15%" in Paragraph 1, inserted "or spousal" in Paragraph 3, and added Paragraph 6.

The 1996 amendment, effective January 1, 1996, in the findings, substituted "a claim of exemption" for "three copies of the claim of exemption" in Paragraph 4, and added the second alternative in Paragraph 5 and inserted "which has been disputed in the third alternative in Paragraph 5; and in the order, rewrote former Paragraphs 4 through 10 as Paragraphs 4 and 5.

The 1992 amendment, effective July 1, 1992 for use in the magistrate and metropolitan courts, deleted former Finding 4, relating to certification by the judgment creditor that the latter had mailed copies of specified items; redesignated former Findings 5 to 9 as present Findings 4 to 8; and rewrote present Finding 4.

Cross references.— For attorney fees and costs, see Section 35-12-16 NMSA 1978.

For garnishments, see Section 35-12-18 NMSA 1978.

For support enforcement, see Section 40-4A-1 NMSA 1978 et seq.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

4-813. Default judgment against garnishee.

[For use with Rules 1-065.1, 2-802 and 3-801 NMRA]

STATE OF NEW MEXICO

IN THE _____
COURT

No. _____

_____ COUNTY
_____, Plaintiff
against
_____, Defendant
_____, Garnishee

DEFAULT JUDGMENT AGAINST GARNISHEE

This action was heard by the court. The court finds that the Garnishee is in default for failure to answer.

THE COURT ORDERS that the Judgment Creditor recover \$_____ from the Garnishee, together with interest from the date hereof.

_____, _____
Judge

[As amended, effective June 15, 1986.]

4-814. Release of garnishment.

[For use with Rules 1-065.1, 2-802 and 3-801 NMRA]

STATE OF NEW MEXICO

IN THE _____
COURT

No. _____

_____ COUNTY
_____, Plaintiff
against
_____, Defendant
_____, Garnishee

RELEASE OF GARNISHMENT

The WRIT OF GARNISHMENT in this case is hereby released and discharged; and the Garnishee no longer has any obligation to withhold wages, money or property from the Judgment Debtor on account of that writ.

_____, _____
Judge

4-815. Sheriff's report of sale of seized property.

[For use with Rules 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO

IN THE _____
COURT

No. _____

_____ COUNTY

_____, Plaintiff

v.

_____, Defendant

SHERIFF'S REPORT OF SALE OF SEIZED PROPERTY

Description of property sold:

(inventory may be attached)

Date of sale: _____

Date of judgment _____

Interest rate _____ %

Amount of judgment \$ _____

Amount of interest since date of judgment \$ _____

Amount of accrued costs since date of judgment \$ _____

Amount of sheriff's costs \$ _____

Total amount received from sale \$ _____

Amount paid to judgment creditor \$ _____

Date of return: _____

SHERIFF OF _____
COUNTY, State of New Mexico

By _____
Deputy or other authorized person

(The Sheriff is obligated by law to make timely return)

[Adopted, effective July 1, 1992.]

4-820. Certificate of Dean of law school.

[For use with Rule 1-094.1 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 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 January 1, 1995.]

4-821. Order approving clinical law student appearance.

[For use with Rules 1-094 and 1-094.1 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT
_____ JUDICIAL DISTRICT

_____, Plaintiff

against

No. _____

_____, 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 1-094) (Rule 1-094.1) of the Rules of Civil 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 as authorized by (Rule 1-094) (Rule 1-094.1).

It is hereby ordered that the above-named law student may participate in this case as authorized by (Rule 1-094) (Rule 1-094.1).

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 4-820 NMRA.

[Adopted, effective January 1, 1995.]

4-830. Writ of certiorari.

[For use with Rule 1-075 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT
_____, Petitioner

v.

No. _____

_____, Respondent

WRIT OF CERTIORARI

To: _____
(name of administrative agency);

The court has reviewed the petition for writ of certiorari filed in the above-styled case and finds:

1. That the court has jurisdiction over _____ (*name of administrative agency*).

2. That the petitioner does not have a statutory right to an appeal or review from orders or decisions of the above administrative agency;

3. That the petition makes a prima facie showing that the petitioner may be entitled to the relief sought by the petition.

IT IS THEREFORE ORDERED that the petition for writ of certiorari in the above case be and hereby is granted.

IT IS FURTHER ORDERED that _____ (*name of administrative agency*) prepare and file with this court within thirty (30) days after the date of service of this writ on _____ (*name of administrative agency*) the record on appeal in compliance with Paragraph F of Rule 1-075 of the Rules of Civil Procedure for the District Courts.

IT IS FURTHER ORDERED that the review in this case shall proceed in compliance with Rule 1-075 of the Rules of Civil Procedure for the District Courts.

District Judge

Dated: _____

CERTIFICATE OF SERVICE

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

(1) _____
(*Name of administrative agency*)

(*Address*)

(2) _____
(*Name of party*)

(*Address*)

(3) _____
(*Name of party*)

(*Address*)

(Petitioner) (Attorney for petitioner)

AFFIDAVIT OF SERVICE OF PARTY

I declare under penalty of perjury that I caused a copy of this writ of certiorari to be served on the following persons or entities by *(delivery) (certified mail, postage prepaid)* on this _____ day of _____, _____:

(1) _____
(Name of administrative agency)

(Address)

(2) _____
(Name of party)

(Address)

(3) _____
(Name of party)

(Address)

(Petitioner)

[Adopted, effective January 1, 1996.]

4-831. Petition for writ of certiorari in appeal pursuant to Unemployment Compensation Law.

[For use with Rule 1-077 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT

Petitioner,

v. No. _____
Admin. Case No. _____

New Mexico Department of Workforce Solutions,

and

_____ *(Former Employer or Employee),*
Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner appeals from the decision of the Workforce Transition Services Division of the State of New Mexico Department of Workforce Solutions in this case and states the following in support of this petition for a writ of certiorari:

1. Petitioner resides in _____ County, New Mexico, and venue is therefore properly in this court.

2. This petition is timely filed within thirty (30) days from the date of the final decision of the secretary of the Department of Workforce Solutions or the board of review. The date of the final decision is _____, and copy of the final decision is attached to this petition.

Statement of issues.

3. Petitioner believes the final decision was incorrect for the following reasons. *(Please list below in numerical order the reasons why you believe the final decision is incorrect. If you are raising more than three issues, list them on a separate sheet and attach it to this petition. See Rule 1-077(J) NMRA for a list of the reasons why the district court may reverse a decision of the board of review or secretary. After each statement of issue, state how the issue was raised in the administrative agency below.)*

Issue No. 1: _____

Issue No. 2: _____

Issue No. 3: _____

Summary of proceedings.

4. The following is a concise summary of what happened in this case, and it includes a short statement of all the facts that are relevant to the issues listed in this petition. *(Attach additional pages if necessary):*

Statement of relief sought.

5. Petitioner asks the court to issue a writ of certiorari to review the issues listed above. A copy of the proposed writ of certiorari is attached to this petition. (See *Form 4-832 NMRA*) Petitioner also asks the court to provide the following specific relief after reviewing this petition and issuing the writ:

(Signature of Petitioner)

(Petitioner's address)

(Petitioner's phone number)

CERTIFICATE OF SERVICE

I certify that I caused a copy of this petition for writ of certiorari to be served on the following persons or entities by *(delivery)* *(certified mail, postage prepaid)* on this ____ day of _____, 20____:

- (1) Office of General Counsel of the State of New Mexico Department of Workforce Solutions

(Address)

- (2) _____
(Name of Respondent Former Employer or Employee)

(Address)

- (3) _____
(Name of any other party to the proceedings)

(Address)

(Petitioner)

USE NOTES

1. If the Petitioner is not represented by counsel, the affidavit of service must be completed.

2. If the petition for writ of certiorari is not filed within thirty (30) days of the final decision issued by the secretary or board of review, the district court will not have jurisdiction to hear the appeal.

3. Both the Department of Workforce Solutions and the former employer or employee must be named and joined as parties (*respondents*) to the appeal on the petition for writ of certiorari and the writ of certiorari.

[Adopted by Supreme Court Order No. 11-8300-012, effective April 18, 2011.]

4-832. Writ of certiorari in appeal pursuant to Unemployment Compensation Law.

[For use with Rule 1-077 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT

_____,
Petitioner,

v.

No. _____

Admin. Case No. _____

New Mexico Department of Workforce Solutions,

and

_____ (*Former Employer or Employee*),
Respondents.

WRIT OF CERTIORARI

To: Office of General Counsel of the State of New Mexico Department of Workforce Solutions

The court has reviewed the petition for writ of certiorari filed in the above-styled case and finds the following:

1. The court has jurisdiction over the Workforce Transition Services Division of the State of New Mexico Department of Workforce Solutions and the other named Respondent and venue is proper in this county;

2. The petitioner has a statutory right to judicial review of the administrative decision in the above-styled case under the Unemployment Compensation Law; and

3. The petition seeks relief from the administrative decision on one or more of the grounds set forth in Subparagraphs (1), (2), or (3) of Paragraph J of Rule 1-077 NMRA.

IT IS FURTHER ORDERED that the Workforce Transition Services Division of the State of New Mexico Department of Workforce Solutions prepare and file with this court within twenty (20) days from the date of service of this writ the record on appeal in compliance with Paragraph G of Rule 1-077 NMRA.

IT IS FURTHER ORDERED that the review in this case shall proceed in compliance with Rule 1-077 NMRA.

District Judge

Dated: _____

CERTIFICATE OF SERVICE

I certify that I caused a copy of this writ of certiorari to be served on the following persons or entities by *(delivery)* *(certified mail, postage prepaid)* on this ____ day of _____, 20____:

(1) Office of General Counsel of the State of New Mexico Department of Workforce Solutions

(Address)

(2) _____
(Name of Respondent Former Employer or Employee)

(Address)

(3) _____
(Name of any other party to the proceedings)

(Address)

(Petitioner)

USE NOTES

1. If the Petitioner is not represented by counsel, the affidavit of service must be completed.

2. If the petition for writ of certiorari is not filed within thirty (30) days of the final decision issued by the secretary or board of review, the district court will not have jurisdiction to hear the appeal.

3. Both the Department of Workforce Solutions and the former employer or employee must be named and joined as parties (respondents) to the appeal on the petition for writ of certiorari and the writ of certiorari.

[Adopted by Supreme Court Order No. 11-8300-012, effective April 18, 2011.]

4-833. Stipulation of dismissal; mediated settlement agreement.

[For use with Magistrate Court Rule 2-806 NMRA,
Metropolitan Court Rule 3-806 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

_____ COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

STIPULATION OF DISMISSAL AFTER MEDIATED SETTLEMENT AGREEMENT

The parties have entered into a Mediated Settlement Agreement. The parties stipulate that this case should be dismissed because the Mediated Settlement Agreement fully and finally resolves all of the issues in this case. However, if the terms of the Mediated Settlement Agreement are not fulfilled, the parties reserve the right to ask the court to reopen this case within five years from the filing date of this document

for the limited purpose of entering a judgment to enforce the terms of the Mediated Settlement Agreement and for such other relief as the court deems just and proper.

The parties have agreed (*check one*):

To file the Mediated Settlement Agreement in this case; or

To waive filing the Mediated Settlement Agreement in this case. Each party will take responsibility for retaining a copy of the Mediated Settlement Agreement. In any action related to the Mediated Settlement Agreement, the responsibility to produce a copy of the Mediated Settlement Agreement belongs to the parties and not to the court.

Plaintiff or Attorney for Plaintiff

Defendant or Attorney for Defendant

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]

4-834. Motion for judgment and statement of noncompliance.

[For use with Magistrate Court Rule 2-806 NMRA;
Metropolitan Court Rule 3-806 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]

_____ COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**MOTION FOR JUDGMENT AND
STATEMENT OF NONCOMPLIANCE**

I request that the court reopen this case and enter a judgment enforcing the terms of a Mediated Settlement Agreement. In support of this request, I state as follows:

1.	<input type="checkbox"/>	The parties entered a Mediated Settlement Agreement, and a Stipulation of Dismissal After Mediated Settlement Agreement was filed on _____ (<i>date</i>).
2.	<input type="checkbox"/>	Plaintiff/Defendant has breached the terms of the Mediated Settlement Agreement.

3.	<input type="checkbox"/>	A copy of the Mediated Settlement Agreement was filed with the court on _____ (date); or
	<input type="checkbox"/>	A copy of the Mediated Settlement Agreement was not filed, but is attached.
(check all that apply)		
4.	<input type="checkbox"/>	Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to pay \$_____.
	<input type="checkbox"/>	Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to the following: _____ _____ _____.
(check all that apply)		
5.	<input type="checkbox"/>	As of today's date, Plaintiff/Defendant has paid a total of \$ _____
	<input type="checkbox"/>	As of today's date, Plaintiff/Defendant has done the following: _____ _____ _____.
(check all that apply)		
6.	<input type="checkbox"/>	Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still owes a total of \$_____.
	<input type="checkbox"/>	Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still needs to do the following: _____ _____ _____.
7.	<input type="checkbox"/>	I request that the court reopen this case and enter judgment in the amount listed below and for any other relief that the court deems just and proper.

Payments remaining: \$ _____
 Interest, costs, fees, and other amounts (if allowable):
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 Total judgment requested: \$ _____

I affirm under penalty of perjury under the laws of the State of New Mexico that the forgoing is true and correct, on this _____ day of _____, _____.

Signature

Printed Name

Address

City, State, and Zip Code

Phone

STATEMENT OF SERVICE

I declare under penalty of perjury under the laws of the State of New Mexico that I served a copy of this Motion and Statement on the following person(s) by certified mail, postage prepaid, on this _____ day of _____, _____:

Name

Name

Address

Address

City, State, and Zip Code

City, State, and Zip Code

Signature

Printed Name

[Adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after December 31, 2014.]

**ARTICLE 9
Statutory Proceedings**

4-901. Three (3)-day notice of nonpayment of rent (*Uniform Owner-Resident Relations Act*).

[Section 47-8-33 NMSA 1978]

**THREE (3)-DAY NOTICE OF
NONPAYMENT OF RENT¹
(*Uniform Owner-Resident Relations Act*)**

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement about the premises at:²

_____,
New Mexico _____

by failure to pay rent as follows:

	\$ _____
	\$ _____
	\$ _____
Total due:	\$ _____

If you do not pay this amount within three (3) days from the date of delivery of this notice, the owner may terminate the rental agreement and can file in court to evict you. You may receive a summons to appear in court.

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

You have the right to challenge the termination of the rental agreement or the amount of rent owed by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not attend the court hearing, the court may enter a judgment against you and issue a court order evicting you from the premises.

You are NOT required to leave the home voluntarily before you have had the chance to go to the court hearing and the judge has issued an order in the case.

Payment will be accepted only by:

- | | |
|--|---|
| <input type="checkbox"/> cash | <input type="checkbox"/> money order |
| <input type="checkbox"/> cashiers or certified check | <input type="checkbox"/> personal check |

Dated this _____ day of _____, _____.

(Owner) (Agent)

Service of notice:

- personally delivered to resident
- posted
- mailed certified mail, return receipt requested
- mailed

Delivered Posted:
 Time: _____
 Date: _____
 By:³ _____

Mailed:
 Time: _____
 Date: _____
 By:³ _____

USE NOTES

1. The owner/agent giving notice should keep two (2) copies in case they are needed for court.
2. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than twelve (12) units. See NMSA 1978, § 47-10-2(C) (1997).
3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. 20-8300-018, effective December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-018, effective December 31, 2020, provided notice to the resident, when rent is past due, that the owner may terminate the rental agreement, that the owner of the premises can file an eviction action in court, that the resident has the right to challenge the owner's termination of the rental agreement or the amount of rent owed, and of the possible consequences of an eviction action, made technical, nonsubstantive changes, and revised the Use Notes; after "three (3) days from the date of delivery", deleted "set out below" and added "of this notice", added "the owner may terminate", after "the rental agreement", deleted "shall be terminated" and added "and can file in court to evict you. You may receive a summons to appear in court.", and added the next three undesignated paragraphs; and in Use Note 1, after "The", deleted "party" and added "owner/agent", after "(2) copies", deleted "for possible court action" and added "in case they are needed for court".

The 1998 amendment, effective April 6, 1998, inserted "rent" following "by failure to pay", deleted the explanation of entries for different charges, substituted "amount due" for "rent", deleted "and mailed certified mail, return receipt requested" following "posted" in the service certification, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

The 1997 amendment, effective September 2, 1997, deleted "rent as due" following "failure to pay" and added the entries for the different charges, added the payment method choices, rewrote the service certification, added Use Notes 2 through 4, and made stylistic changes throughout.

4-901A. Three (3)-day notice of substantial violation of rental agreement (*Uniform Owner-Resident Relations Act*).

[Section 47-8-33 NMSA 1978]

**THREE (3)-DAY NOTICE OF SUBSTANTIAL VIOLATION
OF RENTAL AGREEMENT
(Uniform Owner-Resident Relations Act)**

To: _____
and all other occupants
Address: _____ Unit: _____
_____, New Mexico _____

You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement about the premises at:¹

_____, New Mexico _____

in that on or about _____, _____ (date), you, or someone with your consent, did the following:

This conduct occurred on or within three hundred (300) feet of the premises and includes (*check all that apply*):

- possession, use, sale, distribution, or manufacture of a controlled substance, other than misdemeanor possession and use;
- unlawful use of a deadly weapon;
- unlawful action causing serious physical harm to another person;
- sexual assault or sexual molestation of another person;
- entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;
- theft or attempted theft of the property of another person by use or threatened use of force; or
- intentional or reckless damage to property in excess of one thousand dollars (\$1,000.00).

As a result of this conduct, the owner of the premises may terminate the rental agreement three (3) days from the date of service set out below.

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

The owner may file in court to evict you for a substantial violation of the rental agreement. You have the right to challenge the termination of the rental agreement by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a court order evicting you from your home.

If you choose to leave the premises, you must leave no later than _____ (date).

Dated this _____ day of _____, _____.

(Owner) (Agent)

Service of notice:²

- personally delivered to resident
- posted and mailed certified mail, return receipt requested
- mailed by certified mail, return receipt requested

Delivered Posted:
Time: _____
Date: _____
By:³ _____

Mailed:
Time: _____
Date: _____
By:³ _____

USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than twelve (12) units. See NMSA 1978, § 47-10-2(C) (1997).

2. If this notice is personally delivered to the resident, mailing or posting is not required. If posted, mailing by certified mail is also required by this form. A posted notice must be affixed to a door by taping all sides or placing it in a fixture or receptacle designed for notices. See NMSA 1978, § 47-8-13(D) (1995).

The party giving notice should retain two (2) copies for possible court action.

3. Set forth the name of the person delivering, posting, or mailing the notice.

[Adopted, effective September 2, 1997; as amended, effective October 15, 1999; as amended by Supreme Court Order No. 20-8300-018, effective December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-018, effective December 31, 2020, provided notice to the resident, when there has been a substantial violation of the rental agreement, that the owner of the premises may terminate the rental agreement, that the owner may file an eviction action in court, that the resident has the right to challenge the owner’s termination of the rental agreement, and of the possible consequences of an eviction action, made technical, nonsubstantive amendments, and revised the Use Notes; and after "As a result of this conduct, the", added "owner of the premises may terminate the", after "rental agreement", deleted "shall terminate", after "set out below.", deleted "You must vacate the premises no later than _____ (date). Failure to vacate by this date will result in a legal action against you.", and added the next two undesignated paragraphs.

The 1999 amendment, effective October 15, 1999, conforms this form with the 1999 amendment of 47-8-3 NMSA 1978 by Laws 1999, ch. 99, § 1.

4-902. Seven (7)-day notice of noncompliance with rental agreement (other than failure to pay rent) (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-27.1, 47-8-33, 47-8-37 NMSA 1978]

**SEVEN (7)-DAY NOTICE OF NONCOMPLIANCE
WITH RENTAL AGREEMENT
(OTHER THAN FAILURE TO PAY RENT)
(*Uniform Owner-Resident Relations Act*)**

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement about the premises at:²

_____, New Mexico _____

in that on or about _____, _____ (date), the following noncompliance occurred:

(describe the noncompliance specifically and in detail. Attach additional pages if necessary.)

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the termination of the rental agreement.

First notice. If you, the tenant, correct the noncompliance within seven (7) days from the date of delivery of this notice, the rental agreement will continue and you will be permitted to stay. If you do not correct the noncompliance within seven (7) days from the date of delivery, the owner may terminate the rental agreement and file in court to evict you.

If the owner files in court to evict you, you, the tenant, have the right to challenge the termination of the rental agreement by going to the court hearing to respond and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a court order evicting you from your home.

Even if you correct the noncompliance, if a second material noncompliance with the rental agreement occurs within six (6) months of the first noncompliance, the owner may terminate the rental agreement and file in court to evict you.

Second notice. You were given previous notice of noncompliance on _____ (date). Therefore, you have been in material noncompliance twice or more within a six (6)-month period. As a result, the owner/agent may terminate the rental agreement in seven (7) days from the date of delivery of this notice. If you do not voluntarily leave the premises by _____ (insert date), the owner may file in court to evict you, and you may receive a summons to appear in court.

You have the right to challenge the termination of the rental agreement. If you want to challenge the termination of the rental agreement, you must go to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a court order evicting you from the premises.

Dated this _____ day of _____, _____.

(Owner) (Agent) (Resident)

Service of notice

- personally delivered to resident
- posted
- mailed certified mail, return receipt requested

[] Delivered [] Posted:
Time: _____
Date: _____
By:³ _____

Mailed:
Time: _____
Date: _____
By:³ _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action. If this form is used by the resident some modifications will be necessary.
2. If leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than twelve (12) units. See NMSA 1978, § 47-10-2(C) (1997).
3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. 20-8300-018, effective December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-018, effective December 31, 2020, provided notice to the resident, when the resident is not in compliance with the rental agreement, that the owner of the premises may terminate the rental agreement and may file an eviction action in court, that the resident has the right to challenge the owner's termination of the rental agreement, that, even if the noncompliance is corrected, if a second material noncompliance with the rental agreement occurs within six months of the first noncompliance, that the owner of the premises may terminate the rental agreement and may file an eviction action in court, and of the possible consequences of an eviction action, made technical, nonsubstantive amendments, and revised the Use Notes; after "Attach additional pages if necessary.)", added the next undesignated paragraph; after "First notice. If", deleted "this" and added "you, the tenant, correct the", after "noncompliance", deleted "is not corrected", after "date of delivery", deleted "set out below" and added "of this notice", after "rental agreement", deleted "shall be terminated and you shall be required to vacate the premises. Regardless of whether this noncompliance is corrected, if a second material noncompliance with the rental agreement or any separate agreement occurs within six (6) months of this initial noncompliance, the rental agreement will be terminated" and added "will continue and you will be permitted to stay. If you do not correct the noncompliance within seven (7) days from the date of delivery, the owner may terminate the rental agreement and file in court to evict you", added the next two undesignated paragraphs; in the paragraph with the heading "Second notice.", after "As a result", added "the owner/agent may terminate", after "rental agreement", deleted "shall terminate" and added "in", after "of this notice", deleted "You must vacate" and added "If you do not voluntarily leave", after "(insert date)", deleted "Failure to vacate by this date

will result in a legal action against you" and added "the owner may file in court to evict you, and you may receive a summons to appear in court"; and added the next undesignated paragraph.

The 1998 amendment, effective April 6, 1998, deleted "and mailed, return receipt requested" following "posted" in the service certification, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

The 1997 amendment, effective September 2, 1997, inserted "or separate agreement" near the beginning, inserted the entry for when the noncompliance occurred, designated the exist language as "First Notice" and added the language at the end of the First Notice beginning "and you shall be", added the second notice, added "(Agent)" below the signature line, rewrote the certification of service, added the last sentence in Use Note 1, added Use Notes 2 through 4, and made stylistic changes throughout.

4-902A. Resident's seven-day notice of abatement or termination of rental agreement (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-27.2 and 47-8-37 NMSA 1978]

RESIDENT'S SEVEN-DAY NOTICE OF ABATEMENT OR TERMINATION OF RENTAL AGREEMENT¹ (*Uniform Owner-Resident Relations Act*)

To: _____

Address: _____

(include name and unit number if applicable)
_____, New Mexico _____ (zip code).

You are notified that you have breached the rental agreement or the Uniform Owner-Resident Relations Act concerning the premises at:

(include name and unit number if applicable)
_____, New Mexico _____ (zip code),

in that
(check all that apply)

[] You failed to make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations;

- You failed to keep common areas of the premises in a safe condition;
- You failed to maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning or other facilities and appliances supplied by you;
- You failed to provide and maintain appropriate receptacles for the removal of garbage and other waste and arrange for their removal from the appropriate receptacle;
- You failed to supply running water and a reasonable amount of hot water at a reasonable temperature at all times;
- The dwelling I rent from you does not substantially comply with the minimum housing codes that materially affect health and safety.

Specifically, the condition which needs to be remedied is as follows:

(describe the condition specifically and in detail. Attach additional pages if necessary.)

This condition materially affects the health and safety or habitability of the dwelling I rent. If reasonable steps are not taken to correct this condition within seven (7) days from the date of delivery set out below, I will:
(check only one)

- Reside in the dwelling and withhold one third of my daily rent until the condition is corrected;
- Temporarily move from the dwelling and withhold all of my rent until the condition is corrected;
- Terminate the rental agreement and vacate the dwelling.

Dated this _____ day of _____, _____.

Resident

Service of notice

- personally delivered to owner
- posted and mailed

mailed
 mailed certified mail

Delivered posted:
Time: _____
Date: _____
By²: _____

Mailed:
Time: _____
Date: _____
By²: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action.
2. Include the name of the person delivering, posting or mailing the notice.

[Approved, effective March 1, 2000; as amended by Supreme Court Order No. 08-8300-019, effective August 4, 2008.]

ANNOTATIONS

The 2008 amendment, effective August 4, 2008, changed the provision that provided for withholding of one-third of rent from monthly rent to daily rent if the landlord does not take reasonable steps to correct the landlord's default.

4-903. Thirty-day notice to terminate rental agreement (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-33, 47-8-37 NMSA 1978]

THIRTY-DAY NOTICE¹ TO TERMINATE RENTAL AGREEMENT (*Uniform Owner-Resident Relations Act*)

To: _____
Address: _____
_____, New Mexico _____

You are notified that the undersigned terminates the rental agreement concerning the premises at²:

_____, New Mexico _____
effective _____, _____ (*date*), and the premises are to be restored to the owner on that date. Prepaid rent and damage deposit, if any, will be dealt with in accordance with the

Uniform Owner-Resident Relations Act and any agreement between the parties. Failure to vacate by this date will result in a legal action being filed against you.

Dated this _____ day of _____, _____.

(Owner) (Agent) (Resident)

Service of notice

- personally delivered to resident
- posted
- mailed by certified mail, return receipt requested

Delivered posted:

Time: _____

Date: _____

By³: _____

Mailed:

Time: _____

Date: _____

By³: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action.

This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.

If the residency is week-to-week, strike the words "Thirty-Day" in the title to this form, and insert the words "One-Week".

If the residency is month-to-month, the thirty (30) day notice must be given at least thirty (30) days before the periodic rental date; for example, if the rent is due on the 1st, the notice must be given at least thirty (30) days before the 1st.

2. If the leased premises is an apartment, include the name of the apartments and the apartment number.

3. Include the name of the person delivering, posting or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998.]

ANNOTATIONS

The 1998 amendment, effective April 6, 1998, deleted "and mailed certified mail, return receipt requested" following "posted" in the service certification, substituted "include" for

"set forth" in Use Note 2, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

The 1997 amendment, effective September 2, 1997, added "Failure to vacate by this date will result in a legal action being filed against you", inserted "(Agent)" below the signature line, rewrote the certification of service, added Use Notes 2 through 4, and made stylistic changes throughout.

4-904. Petition by owner for restitution.

[Sections 47-8-42 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

PETITION BY OWNER FOR RESTITUTION (Uniform Owner-Resident Relations Act)

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at¹:

_____, New Mexico _____.

2. Defendant entered into possession of the premises under a rental agreement and has breached the terms of the agreement, as follows:

_____.

3. Plaintiff gave written notice of

termination

breach of the rental agreement

to defendant on _____, _____ (*date*), and defendant has failed to remedy the breach.

A copy of the written notice is attached as Exhibit A.

(check and complete if applicable)

4. Defendant is indebted to plaintiff in the sum of \$_____ for unpaid rent, plus \$_____ rent per day to date of restitution, plus damages as determined by the court.

5. Plaintiff holds \$_____ of defendant as a damage deposit under the rental agreement.

6. Plaintiff requests separate trials on the issues of restitution and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate possession of the premises;

2. Unpaid rent of \$_____, plus \$_____ per day to date of restitution;

3. Damages as may be determined by the court;

4. Costs of this action;

5. Reasonable attorneys fees;

6. A civil penalty as provided by law;

7. Such other relief as the court may deem reasonable.

Dated: _____

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number.

2. The owner must bring a copy of any written rental agreement to court for the hearing on the petition for restitution.

[Former Rule 4-905 SCRA 1986; recompiled as Rule 4-904 and amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, substituted "Exhibit A" for "Exhibit B" in Paragraph 3 of this form.

The 1998 amendment, effective April 6, 1998, in the allegations, deleted "A copy of the rental agreement is attached as Exhibit A." in Paragraph 2, substituted "include" for "set forth" in Use Note 1 and added Use Note 2.

The 1997 amendment, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-905 NMRA; in the allegations, substituted "has breached" for "is now in default under" and added "A copy of the rental agreement is attached as Exhibit A" in Paragraph 2, substituted "gave" for "delivered" and added "termination" in Paragraph 3, substituted "damages as determined by the court" for a blank for specific amount for damage to the premises in Paragraph 4, and deleted former Paragraph 7 relating to demand for a jury trial; in the prayer for relief, substituted "damages as determined by the court" for a blank for specific amount for damage to the premises in Paragraph 3, added Paragraphs 5 and 6, and redesignated former Paragraph 5 as paragraph 7; and made stylistic changes throughout.

Recompilations.— Former Rule 4-904 NMRA, relating to summons and notice of trial on petition for writ restitution, was recompiled as Rule 4-905 NMRA, effective September 2, 1997.

4-904A. Post-judgment application for writ of restitution and request for hearing.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**POST-JUDGMENT APPLICATION FOR WRIT OF RESTITUTION
AND REQUEST FOR HEARING¹
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)**

Plaintiff, whose name is _____
_____ (include names of all Plaintiffs, if more than one), states
as follows:

1. Plaintiff is an owner, landlord, or authorized representative of management² that has a
(check one of the following)
 Judgment for Restitution under the Uniform Owner-Resident Relations Act;
or
 Judgment for Possession under the Mobile Home Park Act.
2. The Judgment is against Defendant, whose name is _____ (include names of all Defendants, if more than one).
3. Defendant's contact information is as follows (check one of the following):
 Per Plaintiff's good faith search, Defendant's last known contact information is as follows (include for all Defendants, if more than one):
Physical address: _____
Mailing address (if different): _____
Phone number with area code: _____
Email address: _____
 Despite Plaintiff's good faith search, Plaintiff has been unable to determine Defendant's current physical, mailing, or email address or phone number, and Plaintiff states that Plaintiff communicates with Defendant as follows

(include information for all Defendants, if more than one):

4. Defendant is a resident of, and remains in possession of, the property identified in Plaintiff's rental agreement with Defendant, located at the following full street address (include street number and street, name of apartment complex, building, and unit number (if any), city, state, and zip code):

5. The Judgment is dated: _____.
6. The total amount awarded in the Judgment, including unpaid rent, damages, attorney's fees, costs, and interest, is \$ _____.
7. Since the date of the Judgment, Defendant has accrued the following additional, itemized unpaid rent and/or other charges in the total amount of \$ _____.

(attach an itemized list or insert amounts below for the monthly rent and other charges due through the date of this Application, as may be evidenced by the rental agreement(s))

Itemized charges: _____

A copy of any relevant rental agreement with Defendant is attached to this application.

(check, if applicable, and complete)

8. Since the Judgment, Plaintiff has received payments from Defendant totaling \$ _____ to address the Judgment.
- Since the date of Judgment, Plaintiff has received \$ _____ in total government rental assistance on behalf of the Defendant for the premises listed in Paragraph 4. \$ _____ addressed the Judgment, and \$ _____ was applied for rent due subsequent to the Judgment.
- Plaintiff is aware of a pending government rental assistance application made on behalf of Defendant for the premises listed in Paragraph 4 by:
- Defendant
- Plaintiff
- Other (specify): _____
9. Plaintiff holds \$ _____ as a damage deposit for Defendant under the rental agreement.
10. The unpaid balance now due from Defendant to Plaintiff, including the amount from Questions 7 and 8 above, is \$ _____.
11. The undersigned certifies that the stay of writs of restitution for nonpayment of rent provided by Supreme Court Order Nos. 20-8500-007 and 20-8500-008 has been lifted by Supreme Court Order No. 22-8500-____ in this judicial district prior to the time and date of this application.¹

12. Plaintiff certifies that Plaintiff has provided, or immediately will provide, a copy of the Resource Information Sheet³ designated for use in this particular Court to the Defendant, along with this Post-Judgment Application for Writ of Restitution and Request for Hearing.
13. Under Supreme Court Order No. 22-8500-____,¹ Plaintiff seeks a post-judgment writ of restitution and requests a hearing on this application.⁴

Plaintiff (*signature*)

Plaintiff (*print*)

Plaintiff address (*include street number and street, name of apartment complex, building, and unit number (if any), city, state, and zip code*):

Plaintiff telephone number (*include area code*)

Plaintiff email address

AFFIRMATION

(required, unless signed by an active New Mexico attorney)

I SWEAR OR AFFIRM, under penalty of perjury under the laws of the State of New Mexico, that the statements in this application are true and correct to the best of my knowledge.

Plaintiff's signature

Date of signature

USE NOTES

1. Insert the applicable order number. This application is for use only in conjunction with Supreme Court Order No. 22-8500-001, which created a pilot project to implement the Eviction Prevention and Diversion Program ("Program") in the Ninth Judicial District, or Supreme Court Order No. 22-8500-012, which implemented the Program in the remaining judicial districts in phases.

2. See Section 47-8-3 NMSA 1978 (providing definitions for the Uniform Owner-Resident Relations Act); Section 47-8-19(C) NMSA 1978 (addressing owner disclosures under the Uniform Owner-Resident Relations Act and describing who constitutes an

owner's agent); Section 47-10-2(A) NMSA 1978 (defining "landlord" and "management" for purposes of the Mobile Home Park Act).

3. Provide the Resource Information Sheet designated for use in the applicable court. For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña Ana County; and (3) Albuquerque and other parts of the State of New Mexico.

4. This application must be filed in the court that issued the underlying judgment.

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program; as amended by Supreme Court Order No. 22-8300-008, effective for all cases filed or pending on or after April 13, 2022, that are subject to the Eviction Prevention and Diversion Program.]

Committee commentary. —

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program; withdrawn by Supreme Court Order No. 22-8300-008, effective for all cases pending or filed on or after April 13, 2022, that are subject to the Eviction Prevention and Diversion Program.]

ANNOTATIONS

The 2022 amendment, approved by Supreme Court Order No. 22-8300-008, effective April 13, 2022, that are subject to the Eviction Prevention and Diversion Program, removed an item requiring the Plaintiff to certify whether the property at issue is subject to federal thirty-day notice to vacate requirements, made technical amendments to the Use Notes, and deleted the committee commentary; in the Application for Writ of Restitution, deleted Item 13, which required the Plaintiff to certify whether the property at issue is subject to federal 30-day notice to vacate requirements, and redesignated Item 14 as Item 13; in Use Note 1, added "Insert the applicable order number", after "Ninth Judicial District, or", deleted "any subsequent", and after "Supreme Court Order", added "No. 22-8500-012, which", deleted Use Note 4, which provided "This may be a complicated legal determination, and Plaintiff is encouraged to consult an attorney. See *generally* the commentary to this form.", and redesignated former Use Note 5 as Use Note 4; and deleted the committee commentary, which discussed U.S. Department of Housing and Urban Development and other federal notice to vacate requirements.

4-904B. Petition by owner for restitution.

[Sections 47-8-42 and 47-8-46 NMSA 1978; for use only with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**PETITION BY OWNER FOR RESTITUTION
(Uniform Owner-Resident Relations Act)**

Plaintiff, whose name is _____
(include names of all Plaintiffs, if more than one), alleges:

1. Plaintiff is an owner¹ lawfully entitled to possession of the premises located at: _____, New Mexico
(include street number and street, name of apartment complex, building, and unit number (if any), city, and zip code).
2. Defendant entered into possession of the premises under a rental agreement² and has breached the terms of the agreement by (check all that apply):
 nonpayment of rent; substantial violation of, or material non-compliance with, rental or other agreement; or
 damage to premises;
 other (explain facts): _____

A copy of any relevant rental agreement with Defendant is attached to this petition.

3. Defendant's contact information is as follows (check one of the following):
 Per Plaintiff's good faith search, Defendant's last known contact information is as follows (include for all Defendants, if more than one):
Physical address: _____
Mailing address (if different) _____
Phone number with area code: _____
Email address: _____
 Despite Plaintiff's good faith search, Plaintiff has been unable to determine Defendant's current physical, mailing, or email address or phone number, and Plaintiff states that Plaintiff communicates with Defendant as follows (include information for all Defendants, if more than one): _____
4. On _____, _____ (specific date), Plaintiff gave Defendant written notice of (check all that apply):
 termination of the rental agreement or residency; and
 breach of the rental agreement that Defendant has failed to remedy.

This notice was given by (*select all delivery methods Plaintiff used*):

hand delivery to the Defendant hand delivery to _____

mail; _____ (*full name*); and

posting on exterior door.

A copy of any relevant written notice given to Defendant is attached to this Petition.

5. Plaintiff certifies that Plaintiff has provided, or immediately will provide, a copy of the Resource Information Sheet³ designated for use in this particular Court to the Defendant, along with this Petition for Restitution.

(*check and complete Questions 6 and 7, if applicable*)

6. Defendant owes the Plaintiff the following itemized unpaid rent and/or other charges in the total amount of \$ _____ as of the date of this Petition. (*attach an itemized list or insert amounts below for the monthly rent and other charges due through the date of this Petition, as may be evidenced by the rental agreement(s)*)

Itemized charges:

7. Plaintiff has received \$ _____ in total government emergency rental assistance on behalf of the Defendant for the premises listed in Paragraph 1. \$ _____ addressed back rent, and \$ _____ was applied as future rent.

Plaintiff is aware of a pending government rental assistance application made on behalf of Defendant for the premises listed in Paragraph 1 by:

Defendant

Plaintiff

Other (*specify*): _____

8. Plaintiff holds \$ _____ as a damage deposit for Defendant under the rental agreement.

9. Plaintiff requests separate trials on the issues of restitution and damages.

10. Plaintiff requests judgment against Defendant, remedied by (*select all remedies that Plaintiff seeks*):

1. Immediate possession of the premises;

2. Unpaid rent of \$ _____, plus future rent calculated as \$ _____ per _____ (*time period*) up to the date of restitution;

3. Damages as may be determined by the Court;⁴

4. Court costs;⁵

5. Reasonable attorney fees;⁵

6. A civil penalty as provided by law;⁶

7. Other relief as the court may deem reasonable.

AFFIRMATION

(*required, unless signed by an active New Mexico attorney*)

I SWEAR OR AFFIRM, under penalty of perjury under the laws of the State of New Mexico, that the statements in this petition are true and correct to the best of my knowledge.

Dated: _____

_____ Plaintiff Signature
_____ Plaintiff Name (*print*)
_____ Plaintiff Address (*print*)
_____ City, State and Zip Code (*print*)
_____ Plaintiff Telephone Number
_____ Plaintiff Email Address

USE NOTES

1. See Section 47-8-3 NMSA 1978 (defining “owner” under the Uniform Owner-Resident Relations Act); Section 47-8-19(C) NMSA 1978 (addressing owner disclosures under the Uniform Owner-Resident Relations Act and describing who constitutes the owner’s agent).
2. The owner must bring a copy of any written rental agreement to court for any hearing or trial on the Petition for Restitution.
3. Provide the Resource Information Sheet designated for use in the applicable court. For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña Ana County; and (3) Albuquerque and other parts of the State of New Mexico.
4. See Section 47-8-33(F) NMSA 1978 (addressing the recovery of damages and injunctive or other relief); Section 47-8-35 NMSA 1978 (addressing claims for rent, damages, and reasonable attorney fees).
5. See Section 47-8-48(A) NMSA 1978 (addressing attorney fees and court costs).
6. See Section 47-8-22(F) NMSA 1978 (providing that a “resident shall . . . not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so”); Section 47-8-48(C) NMSA 1978 (providing that a “resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.”).

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program; as amended by Supreme Court Order No. 22-8300-008, effective for all cases filed or pending on or after April 13, 2022, that are subject to the Eviction Prevention and Diversion Program.]

Committee commentary. —

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program; withdrawn by Supreme Court Order No. 22-8300-008, effective for all cases pending or filed on or after April 13, 2022, that are subject to the Eviction Prevention and Diversion Program.]

ANNOTATIONS

The 2022 amendment, approved by Supreme Court Order No. 22-8300-008, effective April 13, 2022, that are subject to the Eviction Prevention and Diversion Program, removed an item requiring the Plaintiff to certify whether the property at issue is subject to federal thirty-day notice to vacate requirements, made technical amendments to the Use Notes, and deleted the committee commentary; in the Petition by Owner for Restitution, deleted Item 6, which required the Plaintiff to certify whether the property at issue is subject to federal 30-day notice to vacate requirements, and redesignated Items 7 through 11 as Items 6 through 10, respectively, and in the parenthetical preceding Item 6, after “Questions”, deleted “7 and 8” and added “6 and 7”; deleted Use Note 4, which provided “This may be a complicated legal determination, and Plaintiff is encouraged to consult an attorney. See generally the commentary to this form.”, and redesignated former Use Notes 5 through 7 as Use Notes 4 through 6, respectively; and deleted the committee commentary, which discussed U.S. Department of Housing and Urban Development and other federal notice to vacate requirements.

**4-905. Summons and notice of trial on petition for writ of restitution
(Uniform Owner-Resident Relations Act).**

[Section 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

COURT
COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**SUMMONS AND NOTICE OF TRIAL
ON PETITION FOR WRIT OF RESTITUTION
(Uniform Owner-Resident Relations Act)**

To: _____, defendant
Address: _____
_____, New Mexico _____

GREETINGS:

You are ordered to appear for trial before the Honorable _____, Judge, Div. _____, located at _____, New Mexico on the _____ day of _____, _____ (date), at the hour of _____ .m. to show cause and present all evidence you may have why the plaintiff's petition for a writ of restitution for the property located at _____ should not be granted and why the plaintiff should not have judgment against you for any back rents or damages you caused to the property, in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

FOR USE ONLY IN METROPOLITAN COURT CASES

[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]

Dated: _____ .

Judge
By: _____
Clerk

**THIS IS YOUR NOTICE OF TRIAL
and will be the only notice
that you will receive.**

RETURN'

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

(complete if service is by a person other than the sheriff or deputy³)

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form² in the following manner:

(check and complete only if service by sheriff or deputy)³

I certify that I served this summons in _____ county on the _____ day of _____, _____ (date), by delivering a copy of the summons, a copy of the petition and an answer form² in the following manner:

(person serving summons must check one of following boxes and fill in appropriate blanks)

by delivering a copy of this summons, a copy of the petition and an answer form to the defendant _____ (*used when defendant receives copy of summons or refuses to receive summons*).

by delivering a copy of this summons, a copy of the petition and an answer form to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, located at _____ (address) (*used when defendant is not presently at the abode*).

by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant _____ located at _____ (address). (*Used if no person found at dwelling house or usual place of abode.*) (*If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.*)

by delivering a copy of this summons, a copy of the petition and an answer form to _____, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons, a copy of the complaint and an answer form to _____, (parent) (guardian) (custodian) of defendant (*used when defendant is a minor or an incompetent person*).

by delivering a copy of this summons, a copy of the petition and an answer form to _____ (name of person), _____, (title of person authorized to receive service) (*used when defendant is a corporation or an*

association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

[] by service by mail.

Fees: _____

Signature of person making service

Title (if any)

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

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by posting)⁴

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

_____ *(name of person served)*
_____ *(address where mailed)*
_____ *(county)*
_____ *(city, state and zip code)*

Signature of person making service

Title (if any)

Place of mailing

Date

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

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by mail.)⁵

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

_____ *(name of person served)*
_____ *(address where mailed)*
_____ *(county)*
_____ *(city, state and zip code)*

Signature of person making service

Title *(if any)*

Place of mailing

Date

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

Judge, notary or other officer
authorized to administer oaths

Official title³

USE NOTES

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, see Rule 4-907 NMRA.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. For use when service is by posting.

5. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[Former Rule 4-904 SCRA 1986; recompiled as Rule 4-905 NMRA and amended, effective September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-904 NMRA, added the blanks for the name and address of the defendant, added the provisions relating to recording of the proceeding in metropolitan court cases, deleted the former certificate of service by sheriff and the affidavit of service by private citizen and added the return of service, added the use notes, and made stylistic changes throughout.

Recompilations.— Former Rule 4-905 NMRA, relating to petition by owner for restitution, was recompiled as Rule 4-904 NMRA, effective September 2, 1997.

4-905A. Summons and notice of hearing on post-judgment application for writ of restitution.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

EVICION¹ PROCEEDINGS

IMPORTANT READ NOW

4-905A. Summons and notice of hearing on post-judgment application for writ of restitution.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program and Form 4-904A]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**SUMMONS AND NOTICE OF HEARING ON
POST-JUDGMENT APPLICATION FOR WRIT OF RESTITUTION²
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)**

On _____ (date of filing), Plaintiff, whose name is _____

(include names of all Plaintiffs, if more than one), requested that this Court issue a writ of restitution to evict you, all of the people living with you, and all personal items from the property where you live, located at _____

(include street number and street, name of apartment complex, building, and unit number (if any), city, state, and zip code), and to restore legal possession of that property to the Plaintiff.

The Honorable Judge _____ will conduct an (in person) (online video) (telephone) hearing on _____
(date, including day of the week), beginning at _____ (a.m.) (p.m.). You are required to attend (select one):

live in person at the _____ Courthouse located at

(address, including City) in Room _____.

using (online video) (telephone), and you must closely follow these instructions to connect and take part in the hearing:

_____.

The Court has scheduled _____ (hours and/or minutes) for the hearing on the Plaintiff's Post-judgment Application for Writ of Restitution.

YOU MUST ATTEND THIS HEARING. This hearing will provide you with access to the Court's Eviction Prevention and Diversion Program, through which you may qualify for emergency government rental assistance **funding to remain in your home or move.**

At the hearing, you will also have the opportunity to tell the judge why the Court should not grant Plaintiff's Post-Judgment Application and present any evidence that supports your argument.³

IF YOU DO NOT SHOW UP AT THE HEARING AT THE RIGHT TIME, ON THE RIGHT DAY, THE COURT MAY ALLOW THE COUNTY SHERIFF TO EVICT YOU, EVERYONE LIVING WITH YOU, AND ANY PERSONAL ITEMS IN AS LITTLE AS THREE (3) DAYS AFTER THE HEARING, depending on the applicable law.

Attached to this Summons and Notice of Hearing are copies of:

- 1. The Plaintiff's Post-judgment Application for Writ of Restitution;
- 2. The existing Court Judgment, finding that you owe back rent and any damages;
- 3. This Court's specified Resource Information Sheet that provides information about government-provided rental assistance programs and legal assistance.⁴ **You should use this Information Sheet and do all that you can to start an application for the emergency rental assistance funding prior to the hearing**, if you have not already done so. The Court's Eviction Prevention and Diversion Program can help you start and complete the application.

If you have a disability or need language interpretation: Please let the Clerk of the Court know at least five (5) business days before any hearing, so that the Court can make accommodations. You can contact the Clerk at _____ (clerk phone number and email address).

FOR METROPOLITAN COURT CASES ONLY:

If this case DOES NOT involve a mobile home, and you want or need the hearing to be recorded, you MUST request an audio recording of the hearing before the hearing begins.

All hearings held in Metropolitan Court under the Mobile Home Park Act shall be recorded by the Metropolitan Court.

_____	By: _____
Judge	Clerk

RETURN OF SERVICE⁵

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

(complete and notarize if service IS NOT by the Sheriff or a deputy sheriff)⁶

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this Summons and Notice of Hearing in _____ County on the _____ day of _____, _____ (date), by delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet in the following manner:

(complete if service IS by the Sheriff or a deputy sheriff)⁶

I certify that I served this Summons and Notice of Hearing in _____ County on the _____ day of _____, _____ (date), by delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet in the following manner:

(person serving summons must check and complete all applicable alternative(s) below)

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to Defendant _____ (name) (used when Defendant directly receives a copy of this Summons and Notice or refuses to accept).

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to _____ (name), a person over fifteen (15) years of age and residing at the usual residence of Defendant _____ (name), located at _____ (include street number and street, name of apartment complex, building, and unit number (if any) OR name of mobile home park, mailing address, mobile home space number or location, AND city, county, state, and zip code) (used when Defendant is not presently at the residence).

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to _____ (name), an agent authorized to receive service of process for Defendant.

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to _____ (name), who is the (parent) (guardian) (custodian) (circle one) of Defendant. (used when defendant is a minor or an incompetent person).

[] by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to _____ (name of person), _____ (title of person authorized to receive service) (used when Defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico, or any political subdivision).

[] by posting a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet on the most utilized exterior door, at a visible level, of the premises of Defendant _____ (name) located at

(include street number and street, name of apartment complex, building, and unit number (if any) OR name of mobile home park, mailing address, mobile home space number or location, AND city, county, state, and zip code (used if no person found at the residence)(if this option is selected, service by mail is also required).

[] by service by mail (mailing must be used in addition to service by posting).

Fees: _____

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

Judge, notary, or other officer
authorized to administer oaths⁶

Official title (if any)

Signature of person making service

Printed name of person making service

Title (if any)

Date

CERTIFICATE OF MAILING

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet on the _____ day of _____, _____, by mailing first-class mail, postage prepaid, a copy of this Summons and Notice of Hearing, a copy of the Post-judgment Application for Writ of Restitution, a copy of the Judgment, and a copy of the specified Resource Information Sheet to:

(name of person served)
(address where mailed, including unit or space number)
(county)

_____ (city, state and zip code)

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

Signature of person making service

Printed name of person making service

Judge, notary, or other officer authorized to administer oaths⁵

Title (if any)

Date _____

Official title (if any)

USE NOTES

1. This cover sheet should be the first page of any service packet, mailing, or posting.
2. This Summons and Notice of Hearing is for use only in conjunction with Supreme Court Order No. 22-8500-001, which created a pilot project to implement the Eviction Prevention and Diversion Program ("Program") in the Ninth Judicial District, or any subsequent Supreme Court Order implementing the Program in the applicable judicial district.
3. Evidence may include receipts, pictures, letters, bank statements, or any other item, document, or sworn testimony from a witness (including from Defendant) that supports your argument, a claim of domestic violence in the home, or that the property you live in is assisted by the federal government.
4. Provide the Resource Information Sheet designated for use in the applicable court. For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña Ana County; and (3) Albuquerque and other parts of the State of New Mexico.
5. The plaintiff must provide a separate Summons and Notice of Hearing, all required attachments, and a Return of Service for each defendant.
6. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-905B. Summons and notice of hearing on petition for restitution or petition for termination of tenancy and judgment of possession.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

EVICITION¹ PROCEEDINGS

IMPORTANT READ NOW

4-905B. Summons and notice of hearing on petition for restitution or petition for termination of tenancy and judgment of possession.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
COUNTY OF _____

_____ COURT

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**SUMMONS AND NOTICE OF HEARING ON
PETITION FOR RESTITUTION OR
PETITION FOR TERMINATION OF TENANCY AND JUDGMENT OF POSSESSION²
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)**

On _____ (date of filing), Plaintiff, whose name is _____ (include names of all Plaintiffs, if more than one), requested that this Court issue a judgment to evict you, all of the people living with you, and all personal items from the property where you live, located at _____ (include street number and street, name of apartment complex, building, and unit number (if any) OR name of mobile home park, mailing address, mobile home space

number or location), _____ (city), New Mexico, _____ (zip code) and to restore legal possession of that property to the Plaintiff.

The Honorable Judge _____ will conduct an (*in person*) (*online video*) (*telephone*) hearing on _____ (date, including day of the week), beginning at _____ (a.m.) (p.m.). **You are required to attend** (select one):

live in person at the _____ Courthouse located at _____ (address, including City) in Room _____.

using (*online video*) (*telephone*), and you must closely follow these instructions to connect and take part in the hearing: _____

_____.

The Court has scheduled _____ (hours and/or minutes) for the hearing on the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*).

YOU MUST ATTEND THIS HEARING. This hearing will provide you with access to the Court's Eviction Prevention and Diversion Program, through which you may qualify for emergency government rental assistance **funding to remain in your home or move.**

At the hearing, you will also have the opportunity to tell the judge why the Court should not grant Plaintiff's Petition and present any evidence that backs up your argument.³

IF YOU DO NOT SHOW UP AT THE HEARING AT THE RIGHT TIME, ON THE RIGHT DAY, THE COURT MAY ALLOW THE COUNTY SHERIFF TO EVICT YOU, EVERYONE LIVING WITH YOU, AND ANY PERSONAL ITEMS IN AS LITTLE AS THREE (3) DAYS AFTER THE HEARING, depending on the applicable law.

Attached to this Summons and Notice of Hearing are copies of:

1. The Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession (*circle one*)); and
2. This Court's specified Resource Information Sheet that provides information about government-provided rental assistance programs and legal assistance.⁴ **You should use this Information Sheet and do all that you can to start an application for the emergency rental assistance funding prior to the hearing,** if you have not

already done so. The Court's Eviction Prevention and Diversion Program can help you start and complete the application.

If you have a disability or need language interpretation: Please let the Clerk of the Court know at least five (5) business days before any hearing, so that the Court can make accommodations. You can contact the Clerk at _____ (clerk phone number and email address).

FOR METROPOLITAN COURT CASES ONLY:

If this case DOES NOT involve a mobile home, and you want or need the hearing to be recorded, you MUST request an audio recording of the hearing before the hearing begins.

All hearings held in Metropolitan Court under the Mobile Home Park Act shall be recorded by the trial court.

By: _____
Judge Clerk

RETURN OF SERVICE⁵

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

(complete and notarize if service IS NOT by the Sheriff or a deputy sheriff)⁶

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this Summons and Notice of Hearing in _____ County on the _____ day of _____, _____ (date), by delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (circle one), and a copy of the specified Resource Information Sheet in the following manner:

(complete if service IS by the Sheriff or a deputy sheriff)⁶

I certify that I served this Summons and Notice of Hearing in _____ County on the _____ day of _____, _____ (date), by delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or

(Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet in the following manner:

(person serving summons must check and complete all applicable alternative(s) below)

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet to Defendant _____ (*name*) (*used when Defendant directly receives a copy of this Summons and Notice or refuses to accept*).

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet to _____ (*name*), a person over fifteen (15) years of age and residing at the usual residence of Defendant _____ (*name*), located at _____ (*include street number and street, name of apartment complex, building, and unit number (if any) OR name of mobile home park, mailing address, mobile home space number or location, AND city, county, state, and zip code*) (*used when Defendant is not presently at the residence*).

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet to _____ (*name*), an agent authorized to receive service of process for Defendant.

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet to _____ (*name*), who is the (parent) (guardian) (custodian) (*circle one*) of Defendant. (*used when defendant is a minor or an incompetent person*).

by hand delivering a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet to _____ (*name of person*), _____ (*title of person authorized to receive service*) (*used when Defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico, or any political subdivision*).

by posting a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for (Restitution) or (Termination of Tenancy and Judgment of Possession) (*circle one*), and a copy of the specified Resource Information Sheet on the

main entrance door, at a visible level, of the premises of Defendant
_____ (name) located at

_____ (include street number and street, name of apartment complex, building, and unit number (if any) OR name of mobile home park, mailing address, mobile home space number or location, AND city, county, state, and zip code) (used if no person found at the residence) (if this option is selected, service by mail is also required).

[] by service by mail (mailing must be used in addition to service by posting).

Fees: _____

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

Judge, notary, or other officer
authorized to administer oaths⁶

Official title (if any)

Signature of person making service

Printed name of person making service

Title (if any)

Date

CERTIFICATE OF MAILING

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's Petition for Restitution or Termination of Tenancy (*circle one*), and a copy of the specified Resource Information Sheet on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this Summons and Notice of Hearing, a copy of the Plaintiff's(') Petition for Restitution or Termination of Tenancy (*circle one*), and a copy of the specified Resource Information Sheet to:

(name of person served)
(address where mailed, including unit or space number)
(county)
(city, state and zip code)

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

Judge, notary, or other officer
authorized to administer oaths⁶

Signature of person making service

Printed name of person making service

Title (if any)

Official title (*if any*)

Date

USE NOTES

1. This cover sheet should be the first page of any service packet, mailing, or posting.
2. This Summons and Notice of Hearing is for use only in conjunction with Supreme Court Order No. 22-8500-001, which created a pilot project to implement the Eviction Prevention and Diversion Program ("Program") in the Ninth Judicial District, or any subsequent Supreme Court Order implementing the Program in the applicable judicial district.
3. Evidence may include receipts, pictures, letters, bank statements, or any other item, document, or sworn testimony from a witness (including from Defendant) that supports your argument, a claim of domestic violence in the home, or that the property you live in is assisted by the federal government.
4. Provide the Resource Information Sheet designated for use in the applicable court. For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña Ana County; and (3) Albuquerque and other parts of the State of New Mexico.
5. The plaintiff must provide a separate Summons and Notice of Hearing, all required attachments, and a Return of Service for each defendant.
6. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-906. Petition by resident for relief (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-42, 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO
IN THE _____ COURT

COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

PETITION BY RESIDENT FOR POSSESSION

(Uniform Owner-Resident Relations Act)

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at:

_____, New Mexico
_____.

2. Plaintiff is entitled to possession of the premises under a rental agreement and the defendant is now in default under the terms of such agreement by excluding plaintiff from the premises or otherwise interfering with plaintiff's right to occupy the premises, as follows:

_____.

3. Defendant owes plaintiff damages as may be determined by the court.

4. Plaintiff delivered written notice of breach of the rental agreement to defendant on _____, _____, (*date*) and defendant has failed to remedy the breach. (*A copy of the notice is attached as Exhibit A.*)

5. Defendant holds \$ _____ of plaintiff's money under the rental agreement.

6. Plaintiff requests separate trials on the issues of restitution and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate possession of the premises;
2. Damages as may be determined by the court;
3. Costs of this action;
4. Reasonable attorneys fees;
5. A civil penalty as provided by law;
6. Such other relief as the court may deem reasonable.

Dated: _____

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

USE NOTES

This petition may be only used for cases in which the resident is excluded from the dwelling unit or the landlord is interfering with the resident's right to occupy the premises. It should not be used when the resident primarily seeks monetary relief. This petition is to be scheduled for hearing within ten (10) days after it is filed.

[Rule 10-406 SCRA 1986; as amended, effective September 2, 1997; as amended by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

ANNOTATIONS

The 2005 amendment, effective March 21, 2005, revised Paragraph 2 of the allegations to substitute "Plaintiff is entitled to" for "Defendant let Plaintiff have", added to Paragraph 2 "by excluding plaintiff from the premises or otherwise interfering with plaintiff's right to occupy the premises, deleted the request paragraph designated "2.", redesignated the requests paragraphs numbered 3 to 7 as paragraphs 2 to 6, deleted

"(check only if applicable)" preceding the request that the court award "a civil penalty as provided by law" and added the Use Note at the end of the form.

The 1997 amendment, effective September 2, 1997, in the allegations, substituted "damages as may be determined by the court" for a blank for specific amount in Paragraph 3, and deleted former Paragraph 7 relating to demand for jury trial; in the prayer for relief, substituted "damages as may be determined by the court" for a blank for specific amount in Paragraph 3, added Paragraphs 5 and 6, and redesignated former Paragraph 5 as Paragraph 7; and made stylistic changes throughout.

Cross references. — For rule governing computation of time for service of this form, see Rules 2-104 and 3-104 NMRA.

4-906A. Complaint by resident for return of deposit (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-42, 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO
IN THE _____ COURT

_____ COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

COMPLAINT BY RESIDENT FOR RETURN OF DEPOSIT¹

(*Uniform Owner-Resident Relations Act*)

The plaintiff alleges:

1. Plaintiff entered into a rental agreement with Defendant for property located at

_____, New Mexico
_____.

2. As part of the rental agreement, plaintiff delivered to defendant one or more deposits totaling \$_____.
3. Plaintiff vacated the above premises on _____ (*date*), and defendant retained all of part of plaintiff's deposit.
4. Defendant

(*check one*)

mailed written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty (30) days after the date plaintiff vacated the premises or the date the rental agreement terminated. A copy of the notice is attached as Exhibit A of this complaint.

did not mail written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty days of the date plaintiff vacated the premises or the date the rental agreement terminated.

5. Defendant kept the following amount of the deposit: \$_____.
6. Plaintiff is asking for the return of the following amount: \$_____.

Plaintiff requests judgment against defendant, as follows:

1. Damages as may be determined by the court;
2. Costs of this action;
3. Reasonable attorneys fees;
4. A civil penalty if provided by law²;
5. Such other relief as the court may deem reasonable.

Dated: _____

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

USE NOTES

1. This form is used for cases in which the resident is claiming a return of deposit. A complaint for return of deposit is not required to be heard within ten (10) days.
2. See Paragraph E of Section 47-8-18 NMSA 1978 for civil penalty.

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]

4-907. Answer to petition for restitution (*Uniform Owner-Resident Relations Act*).

[Sections 47-8-37, 47-8-40 to 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT No. _____

_____ COUNTY

_____, Plaintiff

v.

_____, Defendant

ANSWER TO PETITION FOR RESTITUTION

(*Uniform Owner-Resident Relations Act*)

1. Defendant should not have to vacate the premises because: _____

_____.

2. The amount of rent claimed by the plaintiff in this action is not owed because:

_____.

3. The damages claimed by the plaintiff in this action are not owed to the plaintiff because: _____
_____.
4. The defendant asserts the following counterclaim or setoff against the plaintiff:

_____.
5. Defendant requests separate trials on the issues of restitution and damages.

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

[Rule 4-907 SCRA 1986; as amended, effective August 1, 1992; January 1, 1993; September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, substituted "should not have to vacate the premises" for "is not in default" in Paragraph 1, rewrote Paragraph 5 to delete language relating to demand for jury trial, and made stylistic changes throughout.

The 1993 amendment, effective January 1, 1993, inserted "on the issue of damages" in Item 5.

4-908. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated June 16, 1997, Form 4-908 NMRA, relating to answer by owner to petition by resident, was withdrawn effective September 2, 1997. For provisions of former form, see the 1996 NMRA on *NMOneSource.com*. For present comparable provisions, see Rule 4-907 NMRA.

4-908A. Order of referral to facilitation.

[For use in Magistrate, Metropolitan, and District Courts with the

Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
_____ COURT

_____ COUNTY

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

ORDER OF REFERRAL TO FACILITATION
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)

The Court, with consent of the parties, finds that this case is appropriate for referral to facilitation through the Court's Eviction Prevention and Diversion Program and orders:

1. The parties must immediately read this Order in full;
2. This case is stayed for a minimum of sixty (60) days to allow for facilitation and government rental assistance processing;
3. The parties shall participate in the Eviction Prevention and Diversion Program's confidential pre- and post-facilitation processes by providing the Program's staff with up-to-date contact information, communicating with the staff, and cooperating and collaborating with staff to identify, locate, complete, submit, accept, and receive necessary documents;
4. The Clerk shall mail a Notice of Facilitation to the parties clearly stating the date, time, and location of the facilitation, including remote videoconference connection and participation information via simple instructions;
5. The parties shall attend and meaningfully participate in a confidential settlement facilitation with a facilitator assigned by the Eviction Prevention and Diversion Program;
6. Before the confidential settlement facilitation, the parties may contact the Eviction Prevention and Diversion Program, via the contact information immediately below, with questions about rescheduling, technological requirements and resources, government rental assistance applications, getting other state benefits, and what to expect in the pre-facilitation, facilitation, and post-facilitation processes;
 - a. Online: _____

- b. Email: _____
- c. Text: _____
- d. Phone: _____
- e. Smartphone applications (apps): _____

7. If a party is represented by an attorney, the attorney's attendance with the party is optional;
8. There will be no fees for the Eviction Prevention and Diversion Program pre-facilitation, facilitation, or post-facilitation services;
9. The facilitator will report the outcome of the facilitation to the Eviction Prevention and Diversion Program;
10. The Eviction Prevention and Diversion Program will ensure that documents necessary to conclude the case are filed with the Court; and
11. A party's failure to attend facilitation may result in sanctions, including sanctions for contempt of court, responsibility for costs or reasonable attorney fees, or reimbursement for the other party's lost wages, if applicable.

Judge

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-908B. Stipulation of dismissal with prejudice after facilitated settlement agreement.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
 _____ COURT
 _____ COUNTY

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

STIPULATION OF DISMISSAL WITH PREJUDICE

AFTER FACILITATED SETTLEMENT AGREEMENT
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)

The Parties entered into a Facilitated Settlement Agreement that fully and finally resolves all of the issues in this case. The Parties stipulate that this case should be dismissed with prejudice upon the filing by a licensed New Mexico attorney from the Eviction Prevention and Diversion Program of a Notice of Payment, certifying that the New Mexico Department of Finance and Administration has issued the rental and/or utility assistance payments contemplated by the Facilitated Settlement Agreement. .

The Parties have agreed to contact the Eviction Prevention and Diversion Program promptly if they encounter significant delay or problems with the processing, distribution, or receipt of government rental or utility assistance payments.

The Parties have agreed to waive filing of the Facilitated Settlement Agreement in this case. Each party takes full responsibility for retaining a copy of the Facilitated Settlement Agreement and understands that the Court will not maintain a copy of the Facilitated Settlement Agreement.

Plaintiff Signature	Dated: _____
Defendant Signature	Dated: _____

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-908C. Notice of payment.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff(s),

v. _____ No. _____

_____, Defendant(s).

NOTICE OF PAYMENT

(Uniform Owner-Resident Relations Act; Mobile Home Park Act)

The Court referred this matter to the Eviction Prevention and Diversion Program on _____, _____ (date of Order of Referral).

The Parties subsequently reached a Facilitated Settlement Agreement and filed a Stipulation of Dismissal with Prejudice after Facilitated Settlement Agreement on _____, _____ (date of Stipulation of Dismissal with Prejudice after Facilitated Settlement Agreement).

The undersigned licensed New Mexico attorney from the Eviction Prevention and Diversion Program hereby certifies to the Court that the New Mexico Department of Finance and Administration has issued rental and/or utility assistance payment(s) to (Plaintiff) (Defendant) (circle all applicable) and that payment was received, as follows (attach additional sheets if needed):

<u>Recipient (circle one):</u>	<u>Type of assistance (circle one):</u>	<u>Date of payment (insert):</u>
(Plaintiff) (Defendant)	(rental) (utility)	_____, ____
(Plaintiff) (Defendant)	(rental) (utility)	_____, ____
(Plaintiff) (Defendant)	(rental) (utility)	_____, ____
(Plaintiff) (Defendant)	(rental) (utility)	_____, ____

Special circumstances, if any: _____

By filing this Notice, the undersigned certifies that it is appropriate for the Court to dismiss this matter with prejudice.

Signature of attorney representative from the Eviction Prevention and Diversion Program

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-908D. Order of dismissal with prejudice.

[For use in Magistrate, Metropolitan, and District Courts with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**ORDER OF DISMISSAL WITH PREJUDICE
(Uniform Owner-Resident Relations Act; Mobile Home Park Act)**

The Court, having referred this matter to the Eviction Prevention and Diversion Program, finds that the Parties reached a Facilitated Settlement Agreement and filed a Stipulation of Dismissal with Prejudice after Facilitated Settlement Agreement on _____, _____ (date of Stipulation of Dismissal with Prejudice after Facilitated Settlement Agreement).

The Court further finds that a licensed New Mexico attorney from the Eviction Prevention and Diversion Program has filed a Notice of Payment in this matter, confirming that the New Mexico Department of Finance and Administration issued the rental and/or utility payments contemplated by the Facilitated Settlement Agreement and that those payments were actually received by the appropriate party.

The Court, having reviewed the Stipulation of Dismissal with Prejudice after Facilitated Settlement Agreement and the Notice of Payment, and being otherwise sufficiently advised, hereby ORDERS as follows:

This case is DISMISSED WITH PREJUDICE.

Judge

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-909. Judgment for restitution.

[For use in Metropolitan and District Courts
Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

JUDGMENT FOR RESTITUTION

(Uniform Owner-Resident Relations Act)¹

This matter was set for trial on _____, _____ (date). The plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

the plaintiff.

the defendant.

IT IS THEREFORE ORDERED:

1. The premises at: _____, New Mexico be restored to (plaintiff) (defendant);

2. The rental agreement (is) (is not) terminated; (check, if applicable, and complete)

Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney's fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____ ²

(check, if applicable, and complete)

A writ of restitution be issued effective _____, _____ (date).³

(check, if applicable, and complete)

The court further orders _____ (other relief).

(check, if applicable, and complete)

[] A hearing on the issue of damages will be held by this court on _____, _____ (date) at _____ (a.m.) (p.m.).²

3. If this case is appealed, the (plaintiff) (defendant) shall

_____.⁴

Dated: _____

Judge⁴

USE NOTES

1. This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.

2. Use Civil Form 4-701 if damages are determined at a separate hearing.

3. Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.

4. Section 47-8-47 provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. See Section 47-8-47 NMSA 1978 for appeals by the plaintiff.

[Rule 4-909 SCRA 1986; as amended, effective September 2, 1997; January 1, 1999; as amended by Supreme Court Order No. 16-8300-033, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-033, effective December 31, 2016, at the beginning of the form, added "For use in Metropolitan and District Courts".

The 1998 amendment, effective January 1, 1999, substituted "This matter was set" for "This matter came on" near the beginning and in Item 2 of the Order substituted "agreement (is) (is not) terminated" for "agreement is terminated" near the beginning and inserted the footnote 3 designation at the end.

The 1997 amendment, effective September 2, 1997, added "for restitution" in the heading, deleted "and against the plaintiff" following "court finds in favor of the plaintiff" and added the alternative for finding for the defendant, added "[defendant]" in Paragraph 1 of the order, substituted "terminated" for "forfeited" in Paragraph 2, added Paragraphs 5, 6, and 7, and added the use notes.

4-909A. Judgment for restitution.

[For use in Magistrate Court
Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48 NMSA 1978]

STATE OF NEW MEXICO
_____ COURT
_____ COUNTY

_____, Plaintiff,

v. _____ No. _____

_____, Defendant.

**JUDGMENT FOR RESTITUTION
(Uniform Owner-Resident Relations Act)¹**

This matter was set for trial on _____, _____ (date). The plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

the plaintiff.

the defendant.

IT IS THEREFORE ORDERED:

1. The premises at: _____, New Mexico be restored to (plaintiff) (defendant);

2. The rental agreement (is) (is not) terminated;
(check, if applicable, and complete)

Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorneys' fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____ ²

Plus _____ % interest per year until the judgment is paid.³

(check, if applicable, and complete)

A writ of restitution be issued effective _____, _____
(date).⁴

(check, if applicable, and complete)

The court further orders _____ (other relief).

3. A hearing on the issue of damages shall be held by this court only upon request for setting.²

4. If this case is appealed and the resident wants to stay the eviction pending appeal, the resident shall pay rent in the manner set forth in Section 47-8-47 NMRA. If the money judgment is appealed, the court sets the appeal bond at \$_____ (if left blank, the appeal bond is set at zero dollars (\$0)).

Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all parties and counsel on _____:

Signature

Title

USE NOTES

1. This form may also be used for a mobile home park with less than 12 units. See NMSA 1978, § 47-10-2(C).

2. Use Form 4-701 NMRA if damages are determined at a separate hearing.

3. Interest is calculated at the statutory rate set forth in NMSA 1978, Section 56-8-4(A), unless the judgment is rendered on a lease having a different rate of interest.

4. Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.

[Adopted by Supreme Court Order No. 16-8300-033, effective for all cases pending or filed on or after December 31, 2016.]

4-910. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated June 16, 1997, Form 4-910 NMRA, relating to judgment for damages on default, was withdrawn effective September 2, 1997. For provisions of former form, see the 1996 NMRA on *NMOneSource.com*. For present comparable provisions, see Rule 4-703 NMRA.

4-911. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated June 16, 1997, Form 4-911 NMRA, relating to judgment for damages on appearance by the parties, was withdrawn effective September 2, 1997. For provisions of former form, see the 1996 NMRA on *NMOneSource.com*. For present comparable provisions, see Rule 4-701 NMRA.

4-912. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated June 16, 1997, Form 4-912, relating to judgment for restitution reserving question of damages, was withdrawn effective September 2, 1997. For provisions of former form, see the 1996 NMRA on *NMOneSource.com*. For present comparable provisions, see Rule 4-909 NMRA.

4-913. Writ of restitution (*Restitution to owner*) (*Uniform Owner-Resident Relations Act*).

[Section 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT

_____ COUNTY

_____, Plaintiff

v.

No. _____

_____, Defendant

WRIT OF RESTITUTION
(Restitution to owner)
(Uniform Owner-Resident Relations Act)

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff(s) in this action, you are ordered to remove the defendant(s) from the premises at _____ and to restore possession of the premises to plaintiff(s) on or after _____ (date).

You are ordered to return this writ to this court immediately after its execution.

Judge or Designee

RETURN ON WRIT OF RESTITUTION

I certify that I carried out this writ of restitution by removing the defendant(s) from the premises and restoring possession of the premises to the plaintiff(s) on _____, _____ (date).

Date of return: _____

Sheriff of _____
County, State of New Mexico
By _____
Sheriff or deputy sheriff

[Rule 4-913 SCRA 1986; as amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. 13-8300-027, effective for all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-027, effective December 31, 2013, made stylistic changes; and in the Writ of Restitution, deleted the date line next to the signature line for the judge.

The 1998 amendment, effective April 6, 1998, substituted "after" for "before" in the language of the restitution to owner, and deleted the Use Notes.

The 1997 amendment, effective September 2, 1997, deleted "and writ of execution" from the heading, inserted "(Restitution to owner)" following the heading, deleted language directing the sheriff to execute the writ, deleted "and execution" following "restitution" in the return heading and deleted language relating to the return of the

execution, added Use Note 1 and designated the existing use note as Use Note 2, and made stylistic changes throughout.

4-913A. Order setting escrow deposit/appeal bond (Uniform Owner-Resident Relations Act).

[Section 47-8-47 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT

_____ COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

**ORDER SETTING ESCROW DEPOSIT/APPEAL BOND
(Uniform Owner-Resident Relations Act)**

THIS MATTER having come before the Court and a Judgment having been entered, and the Court being otherwise fully advised in the premises,

[] IT IS ORDERED that if the case is appealed and the Appellant(s), the tenant(s)/resident(s), wishes to stay eviction from the property, within five (5) days of filing the Notice of Appeal¹ with the District Court, the Appellant(s) must pay in cash or cashier's check \$_____ (representing an amount equal to the rental amount that shall come due following the Judgment through the end of the rental period from _____ to _____) to the owner or deposit that amount into an escrow account with a professional escrow agent. In addition, the Appellant shall continue to pay \$_____ (representing the monthly rent established in the rental agreement) to the owner or deposit into an escrow account with a professional escrow agent on the ____ day of each month beginning _____ and continuing until the Appeal is decided or the Appellant vacated the property, whichever occurs first.

[] IT IS ORDERED that if the case is appealed and the Appellant(s), the tenant(s)/resident(s), wishes to stay collection of the monetary amounts other than rent (such as late fees, damages, etc.) due under the Judgment, the Appellant(s) shall file with the Court an Appeal Bond in the amount of \$_____ (in addition to the above described amounts).

IT IS FURTHER ORDERED that the parties are to follow the procedures set forth in Section 47-8-47 NMSA 1978, a copy of which is attached hereto, during the pendency of the Appeal or except as otherwise ordered by the Appellate Court.

NOTICE: IT IS THE RESPONSIBILITY OF THE DEFENDANT/APPELLANT TO ENSURE THAT THE COURT IS NOTIFIED IN WRITING THAT MONEY HAS BEEN DEPOSITED WITH AN ESCROW AGENT OR THE PLAINTIFF WITHIN THE TIME ALLOWED BY LAW. FAILURE TO GIVE THE COURT NOTICE WITHIN FIVE (5) DAYS OF THE DEPOSIT MAY RESULT IN A WRIT OF RESTITUTION (EVICTION) BEING ISSUED BY THE COURT.

Judge

I certify that a copy of the foregoing Order was mailed/hand delivered to _____ on _____.

Clerk

USE NOTES

1. Upon filing the Notice of Appeal with the District Court, the Appellant must promptly file a copy of the Notice of Appeal that has been endorsed by the Clerk of the District Court with the Magistrate or Metropolitan Court, together with a copy of the receipt of payment of the docket fee.

[Adopted by Supreme Court Order No. 13-8300-027, effective for all cases pending or filed on or after December 31, 2013.]

4-914. Writ of restitution (*Restitution to resident*) (*Uniform Owner-Resident Relations Act*).

[Section 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

COURT

COUNTY

No. _____

_____, Plaintiff, resident

v.

_____, Defendant, owner

**WRIT OF RESTITUTION
(*Uniform Owner-Resident Relations Act*)
(*Restitution to resident*)**

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff, resident, in this action, you are to restore possession of the premises to _____ on the _____ day of _____, _____ (date).

You are to ordered to return this writ to the court by _____, _____ (date).

Date: _____

Judge

RETURN ON WRIT OF RESTITUTION

I certify that I carried out this writ of restitution by restoring possession of the premises to _____ on the _____ day of _____, _____ (date) at _____ (a.m.) (p.m.)

Date of return: _____

Sheriff of _____
County, State of New Mexico
By _____
Sheriff or deputy sheriff

(The sheriff is obligated by law to make timely return.)

[As amended, effective September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, added "(Restitution to resident)" following the heading, and rewrote the form to delete language relating to removing the defendant from the premises and made stylistic changes throughout.

4-915. Petition for post-judgment writ of replevin.

[Sections 35-11-1 to 35-11-3 NMSA 1978]

STATE OF NEW MEXICO

IN THE _____
COURT

No. _____

_____ COUNTY
_____, Plaintiff
against _____, Defendant

PETITION FOR POST-JUDGMENT WRIT OF REPLEVIN

Comes now the Plaintiff, petitioner herein, and alleges:

1. Plaintiff has a judgment against the Defendant in this matter dated _____, _____, with a present value including post-judgment costs and accrued interest totaling \$_____, the terms of which include Plaintiff's right to recover following personal property

_____ (*attach exhibit if necessary*)

2. Plaintiff believes that the property may be found at _____ which is within the jurisdiction of this court;

3. This court has jurisdiction to issue a writ of replevin returning to Plaintiff the property described;

4. The specific facts upon which a writ of replevin is requested are that Plaintiff holds a valid, unsatisfied judgment against Defendant, declaring that property formerly in the possession of Plaintiff has been wrongfully taken or retained by Defendant and Defendant refuses to return it to Plaintiff or pay the judgment amount;

WHEREFORE Plaintiff prays for an order of this court requiring the sheriff of _____ county to take possession of the property and return it to the Plaintiff.

Signed

Name (*print*)

Address (*print*)

City, State and Zip Code (*print*)

Telephone number

Dated: _____

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

Notary Public or Other Officer Authorized to Take Oaths

My commission expires: _____

[Approved, effective January 1, 1993.]

4-921. Three-day notice of nonpayment of rent (*Mobile Home Park Act*).

[Sections 47-10-3 and 47-10-6 NMSA 1978]

**THREE-DAY NOTICE OF
NONPAYMENT OF RENT¹
(*Mobile Home Park Act*)**

To: _____
Address: _____,
_____, New Mexico _____

You are notified that you have failed to pay rent as required by the agreement or
separate agreement for a mobile home located in _____
County, New Mexico at:

_____ (*name of mobile home park*)
_____ (*mobile home address*)
_____ (*mobile home lot or space*)
_____, New Mexico
_____.

The amount of rent and utilities owed is as follows:

Rent:	\$ _____
Late fee:	\$ _____
Utilities:	\$ _____
Other _____ (<i>explain</i>)	\$ _____
Total due:	\$ _____

If the total shown above is not paid within three (3) days from the date of delivery set out below, the rental agreement is terminated.

Payment will be accepted only by:

cash

money order

cashiers or certified check

personal check

Dated this _____ day of _____, _____.

(owner, manager or agent)

Service of notice²:

personally delivered to resident

posted on the mobile home on _____ (date) and mailed certified mail, return receipt requested

Delivered posted:

Mailed:

Time: _____

Time: _____

Date: _____

Date: _____

By³: _____

By³: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action.

2. Section 47-10-3 NMSA 1978 provides that service of a notice to quit shall be served by delivering the notice to the tenant personally or by posting the notice at the main entrance of the mobile home and sending a copy to the tenant by certified mail, return receipt requested. If this notice is personally delivered to the resident, mailing or posting is not required. The date of posting must be included on the posted notice and on the copy mailed to the mobile home tenant.

3. Set forth the name of the person delivering, posting or mailing the notice.

[Adopted, effective September 2, 1997.]

ANNOTATIONS

Recompilations.— Former Rule 4-921 NMRA, relating to notice of judgment, was recompiled as Rule 4-927 NMRA, effective September 2, 1997.

4-922. [Thirty-day notice] [sixty-day notice] to quit (*Mobile Home Park Act*).

[Section 47-10-3 NMSA 1978]

**[THIRTY-DAY NOTICE] [SIXTY-DAY NOTICE]¹
TO QUIT²
(Mobile Home Park Act)**

To: _____

Address: _____ County
_____, New Mexico _____

You are notified that the undersigned terminates the rental agreement for a mobile home located in _____ County, New Mexico at:

_____ (*name of mobile home park*)
_____ (*mobile home address*)
_____ (*mobile home lot or space*)
_____, New Mexico _____

effective _____, _____ (*date*).

You are to remove your mobile home from the premises by _____,
_____.¹ This notice of termination is given for the following reasons³:

Failure to vacate by this date will result in a legal action being filed against you.

Dated this _____ day of _____, _____.

(*owner, manager or agent*)

Service of notice⁴:

personally delivered to resident

posted on the mobile home on _____ (*date*) and mailed certified mail,
return receipt requested

Delivered posted:

Time: _____

Date: _____

By⁵: _____

Mailed:

Time: _____

Date: _____

By⁵: _____

USE NOTES

1. See Section 47-10-3 NMSA 1978. The tenant must be given a period of not less than thirty days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises. If the mobile home is a multisection mobile home and the tenant is the owner of the mobile home, the tenant must be given sixty (60) days from the end of the rental period to move the mobile home from the premises. However, if the multisection mobile home is being leased to or occupied by a person other than its owner a thirty-day notice is all that is required.

2. Use Civil Form 4-921 NMRA if termination is for non-payment of rent.

3. Set forth the reason for termination of the tenancy and the date, place and circumstances of any acts allegedly justifying the termination. See Section 47-10-5 NMSA 1978 for the reasons a mobile home park tenancy may be terminated.

4. Section 47-10-3 NMSA 1978 provides that service of a notice to quit shall be served by delivering the notice to the tenant personally or by posting the notice at the main entrance of the mobile home and sending a copy to the tenant by certified mail, return receipt requested. If this notice is personally delivered to the resident, mailing or posting is not required. The date of posting must be included on the posted notice and on the copy mailed to the mobile home tenant.

5. Set forth the name of the person delivering, posting or mailing the notice. The party giving notice should retain two (2) copies for possible court action.

[Adopted, effective September 2, 1997.]

ANNOTATIONS

Recompilations.— Former Rule 4-922 NMRA, relating to judgment, was recompiled as Rule 4-927 NMRA, effective September 2, 1997.

4-923. Petition by landlord for termination of tenancy and judgment of possession (*Mobile Home Park Act*).

[Sections 47-8-35, 47-10-4 to 47-10-6 and 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT
_____ COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**PETITION BY LANDLORD FOR
TERMINATION OF TENANCY AND
JUDGMENT OF POSSESSION
(Mobile Home Park Act)**

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at¹:

_____, New Mexico
_____.

2. Defendant entered into possession of the premises under a rental agreement and has breached the terms of the agreement as follows²:

_____.

A copy of the rental agreement is attached as Exhibit A.

3. The mobile home (*is*) (*is not*) subject to the security interest of a first lienholder. (*If there is a first lien, complete the following.*)

The lienholder is _____ and the address of the lienholder is _____
_____.

4. Plaintiff gave written:

notice of non-payment of rent and the defendant has failed to pay all amounts owed;

(*thirty*) (*sixty*)³ day notice to quit on _____, _____ (*date*), and defendant has failed to vacate the premises.

A copy of the written notice is attached as Exhibit B.
(*check and complete if applicable*)

5. The amount of rent and utilities owed is as follows:

Unpaid rent	\$ _____
Rent per day until the mobile home is moved from the premises	\$ _____
Late fee	\$ _____
Utilities	\$ _____
Other _____ (<i>explain</i>)	\$ _____
Total due:	\$ _____

- 6. Plaintiff holds \$_____ of defendant as a damage deposit under the rental agreement.
- 7. Plaintiff requests separate trials on the issues of termination and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate [removal of the mobile home from the premises] [possession of the above described premises];
2. Unpaid rent of \$_____ plus \$_____ per day to date of restitution;
3. Damages as may be determined by the court;
4. Costs of this action;
5. Reasonable attorney fees;
6. Such other relief as the court may deem reasonable.

Dated: _____

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

USE NOTES

1. Section 47-10-4 NMSA 1978 provides that the property description is deemed legally sufficient if it states the name of the landlord or of the mobile home park, the mailing address of the property, the location or space number upon which the mobile home is situated and the county in which the mobile home is situated.

2. The reasons for termination are set forth in Sections 47-10-5 and 47-10-6 NMSA 1978. One of these reasons must be described for termination.

3. Sixty days notice is required if the mobile home is a multisection mobile home. See Subsection C of Section 47-10-4 NMSA 1978.

[Adopted, effective September 2, 1997.]

4-923A. Petition by landlord for termination of tenancy and judgment of possession.

[Sections 47-8-35, 47-10-4 to 47-10-6 and 47-10-9 NMSA 1978; for use only with the Eviction Prevention and Diversion Program]

STATE OF NEW MEXICO
COUNTY OF _____
_____ COURT

_____, Plaintiff(s),

v.

No. _____

_____, Defendant(s).

**PETITION BY LANDLORD FOR TERMINATION OF TENANCY
AND JUDGMENT OF POSSESSION
(Mobile Home Park Act)**

Plaintiff, whose name is _____
_____ (include names of all Plaintiffs, if more than one), alleges:

1. Plaintiff is the landlord,¹ or an authorized representative of the management, of _____ (name of mobile home park), and is lawfully entitled to possession of the premises located at: _____ (mailing address), _____ (mobile home space no. or location), _____ County, New Mexico _____ (zip code).

2. Defendant entered into possession of the premises under a rental agreement² and has breached the terms of the agreement by (check all that apply)³:

<input type="checkbox"/> nonpayment of rent ;	<input type="checkbox"/> noncompliance with local ordinance or state law or regulation concerning mobile homes;
<input type="checkbox"/> condemnation;	
<input type="checkbox"/> change of use; ⁴	
<input type="checkbox"/> noncompliance with mobile home park rules or regulation; ⁵ and	<input type="checkbox"/> tenant conduct constituting annoyance to other tenants or interference with park management

A copy of any relevant rental agreement with Defendant is attached to this Petition.

3. The mobile home (*is*) (*is not*) subject to the security interest of a first lienholder.⁶
(*If there is a first lien, complete the following.*)
The first lienholder is _____, as evidenced by (*select one*):
 the resident's application for tenancy or motor vehicle division title search statement. The address of the first lienholder is _____

4. Defendant's contact information is as follows (*check one of the following*):
 Per Plaintiff's good faith search, Defendant's last known contact information is as follows (*include for all Defendants, if more than one*):
Physical address: _____
Mailing address (*if different*): _____
Phone number with area code: _____
Email address: _____

Despite Plaintiff's good faith search, Plaintiff has been unable to determine Defendant's current physical, mailing, or email address or phone number, and Plaintiff states that Plaintiff communicates with Defendant as follows (*include information for all Defendants, if more than one*):

5. Plaintiff gave Defendant written (*check all that apply*):
 notice of nonpayment of rent on _____, _____ (*specific date*), and Defendant has failed to pay the amount due; and (*thirty*) (*sixty*)⁷ day notice to quit on _____, _____ (*specific date*), and Defendant has failed to vacate the premises.

This notice was given by (*select all delivery methods Plaintiff used*):
 hand delivery to the _____ certified mail, return receipt requested; & Defendant;
 posting on the mobile home's main entrance.

A copy of any relevant written notice given to Defendant is attached to this Petition.

6. Plaintiff certifies that Plaintiff has provided, or immediately will provide, a copy of the Resource Information Sheet⁸ designated for use in this particular Court to the Defendant, along with this Petition for Termination of Tenancy and Judgment of Possession.

7. Plaintiff certifies that the property at issue in this case (*check one*):
 IS subject to federal 30-day notice to vacate requirements;
 IS NOT subject to federal 30-day notice to vacate requirements.⁹

(*check and complete Questions 8 and 9, if applicable*)

8. Defendant owes the Plaintiff the following itemized unpaid rent, utilities, and/or other charges in the total amount of \$ _____ as of the date of this petition. *(attach an itemized list or insert amounts below for the monthly rent and other charges due through the date of this Petition, as may be evidenced by the rental agreement(s))*

Itemized charges: _____

9. Plaintiff has received \$ _____ in total government emergency rental assistance on behalf of the Defendant for the premises listed in Paragraph 1. \$ _____ addressed back rent, and \$ _____ was applied as future rent.

Plaintiff is aware of a pending government rental assistance application made on behalf of Defendant for the premises listed in Paragraph 1 by:

Defendant

Plaintiff

Other (specify): _____

10. Plaintiff holds \$ _____ as a damage deposit for Defendant under the rental agreement.

11. Plaintiff requests separate trials on the issues of restitution and damages.

12. Plaintiff requests judgment against Defendant, remedied by (select all remedies that Plaintiff seeks):

1. Immediate possession of the premises;

2. Unpaid rent of \$ _____, plus future rent calculated as \$ _____ per _____ (*time period*) up to the date of restitution;

3. Unpaid utilities of \$ _____;

4. Damages as may be determined by the Court;¹⁰

5. Court costs;¹¹

6. Reasonable attorney fees; ¹¹

7. Other relief as the court may deem reasonable.

AFFIRMATION

(required, unless signed by an active New Mexico attorney)

I SWEAR OR AFFIRM, under penalty of perjury under the laws of the State of New Mexico, that the statements in this petition are true and correct to the best of my knowledge.

Dated: _____

Plaintiff Signature

Plaintiff Name (*print*)

Plaintiff Address (*print*)

City, State and Zip Code (*print*)

Plaintiff Telephone Number

Plaintiff Email Address

USE NOTES

1. See Section 47-10-2(A) NMSA 1978 (defining "landlord" or "management" under the Mobile Home Park Act).

2. The plaintiff must bring a copy of any written rental agreement to court for any hearing or trial on the petition for termination of tenancy and judgment of possession.

3. One of these reasons must apply. See Section 47-10-5 NMSA 1978 (listing permissible reasons for termination); Section 47-10-6 NMSA 1978 (addressing termination for nonpayment of rent).

4. If the plaintiff seeks to terminate the tenancy to change the use of the property and applicable zoning law permits the change of use, the plaintiff must provide six (6)-months notice. See Section 47-10-5(E) NMSA 1978.

5. See Section 47-10-5(C) NMSA 1978 (addressing when rules and regulations of the mobile home park are applicable).

6. See Section 47-10-2(K) NMSA 1978 (defining "first lienholder"); Section 47-10-9(F)-(J) (providing additional definitions); Section 47-10-9(L) (describing process if first lienholder has paid in full).

7. The law requires sixty (60)-days notice if the tenant must remove a multisection mobile home. See Section 47-10-3(C) NMSA 1978.

8. Provide the Resource Information Sheet designated for use in the applicable court. For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña Ana County; and (3) Albuquerque and other parts of the State of New Mexico.

9. This may be a complicated legal determination, and Plaintiff is encouraged to consult an attorney. See generally the commentary to this form.

10. See Section 47-10-10(D) NMSA 1978 (allowing actual damages, equitable, and injunctive relief); Section 47-10-18 NMSA 1978 (applying Uniform Owner Resident Relations Act ("UORRA") unless Mobile Home Park Act is in direct conflict); Section 47-

8-52 NMSA 1978 (same); Section 47-10-4(A) NMSA 1978 (stating that termination actions are "commenced and prosecuted in the manner described in" UORRA); 47-8-33(F) NMSA 1978 (addressing the recovery of damages and injunctive or other relief); Section 47-8-35 NMSA 1978 (addressing damages for breach of the rental agreement and reasonable attorney fees).

11. See Section 47-10-18 NMSA 1978 (applying UORRA unless Mobile Home Park Act is in direct conflict); Section 47-8-52 NMSA 1978 (same); Section 47-10-4(A) NMSA 1978 (stating that termination actions are "commenced and prosecuted in the manner described in" UORRA); Section 47-8-48(A) NMSA 1978 (addressing attorney's fees and court costs).

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

Committee commentary. — Question 7 requires the plaintiff to state whether the property at issue is subject to federal thirty (30)-day notice to vacate requirements. Most properties associated with the U.S. Department of Housing and Urban Development (HUD) are subject to this requirement at this time. See Extension of Time and Required Disclosures for Notification of Nonpayment of Rent, 86 Fed. Reg. 55693 (proposed Oct. 7, 2021) (to be codified at 24 C.F.R. pts. 247, 880, 882, 884, 966) (specifying application to public housing and project based rental assistance, including "Section 8, Section 8 Moderate Rehabilitation, Section 202/162 Project Assistance Contract, Section 202/162, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC, Section 236 Rental Housing Assistance Program and Rent Supplement").

Other properties, including those subject to a federally backed mortgage loan, may fall under a thirty (30)-day notice requirement in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). See *generally* 15 U.S.C. § 9058 (2021). A federally backed mortgage is any loan secured by the real property and made, "insured, guaranteed, supplemented, [secured, administered,] or assisted in any way" by any federal officer or any part of the federal government. See *id.* at §§ 9058(a)(4)-(5).

While the current HUD and CARES Act provisions may or may not expire, some federal thirty (30)-day notice to vacate requirements are permanent. See, e.g., 24 CFR § 92.253(c) (2021).

[Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases pending or filed on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion Program.]

4-924. Summons and notice of trial on petition for termination of tenancy (*Mobile Home Park Act*).

[Sections 47-10-4 and 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

COURT
COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**SUMMONS
AND NOTICE OF TRIAL ON
PETITION FOR TERMINATION OF TENANCY
(Mobile Home Park Act)**

To: _____, defendant

Address: _____
_____, New Mexico _____

You are notified that an action has been filed to terminate the rental agreement or lease of a mobile home space located in _____ County, New Mexico at:

_____, New Mexico _____
(name of mobile home park)
(mobile home address)
(mobile home lot or space)

You are ordered to appear for trial before the Honorable _____, Judge, Div. _____, located at _____, New Mexico on the _____ day of _____, _____, at the hour of _____ m. to show cause and present all evidence you may have why the tenancy should not be terminated.¹

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

FOR USE ONLY IN METROPOLITAN COURT CASES

[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]

Dated: _____.

Judge

By: _____

Clerk

**THIS IS YOUR NOTICE OF TRIAL
and will be the only notice
that you will receive.**

RETURN²

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

*(complete if service is by a person
other than the sheriff or deputy³)*

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form⁴ in the following manner:
(check and complete only if service by sheriff or deputy)³

I certify that I served this summons in _____ county on the _____ day of _____, (date), by delivering a copy of the summons, a copy of the petition and an answer form in the following manner:
(person serving summons must check one of following boxes and fill in appropriate blanks)

[] by delivering a copy of this summons, a copy of the petition and an answer form to the defendant _____ *(used when defendant receives copy of summons or refuses to receive summons).*

[] by delivering a copy of this summons, a copy of the petition and an answer form to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, located at _____ *(address) (used when defendant is not presently at the abode).*

[] by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant _____ located at _____ *(address).* *(used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The*

person mailing must check and complete the certificate of mailing at the end of this summons.)

by delivering a copy of this summons, a copy of the petition and an answer form to _____, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons, a copy of the complaint and an answer form to _____, (parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).

by delivering a copy of this summons, a copy of the petition and an answer form to _____ (name of person), _____, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

by service by mail.

Fees: _____

Signature of person making service

Title (if any)

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

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by posting)⁵

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title *(if any)*

Place of mailing

Date

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

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by mail.)⁶

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title *(if any)*

Place of mailing

Date

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

Judge, notary or other officer
authorized to administer oaths

Official title³

USE NOTES

1. The trial setting must be not less than seven (7) nor more than ten (10) days after service of this summons. See Section 47-8-43 NMSA 1978.
2. A separate summons must be used for each defendant.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. An answer form must be attached to the summons at the time of service. See Rule 4-925 NMRA for answer to petition for termination of tenancy.
5. For use when service is by posting. See Section 47-10-4 NMSA 1978 for service by posting under the Mobile Home Park Act. This form requires service by mail in addition to posting.
6. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[Adopted, effective September 2, 1997.]

4-925. Answer to petition for termination of tenancy (*Mobile Home Park Act*).

[Sections 47-8-30, 47-8-41 to 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

COURT

COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

ANSWER TO PETITION FOR TERMINATION OF TENANCY (*Mobile Home Park Act*)

1. Defendant is not in default because: _____
_____.

2. The amount of rent that the plaintiff states is owed is not correct because: _____
_____.
3. The damages claimed by the plaintiff are not owed to the plaintiff because: _____
_____.
4. The defendant asserts the following counterclaim or setoff against the plaintiff: _____
_____.

(check if applicable)

5. Defendant requests separate trials on the issues of restitution and damages.

Signed

Name *(print)*

Address *(print)*

City, state and zip code *(print)*

Telephone number

[Adopted, effective September 2, 1997.]

4-926. Judgment for possession (*Mobile Home Park Act*).

[Sections 47-10-9, 47-8-40 and 47-8-41 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT

No. _____

_____ COUNTY

_____, Plaintiff

v.

_____, Defendant

**JUDGMENT FOR POSSESSION
(*Mobile Home Park Act*)**

This matter came on for trial on _____, _____ (date). The plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

the plaintiff

the defendant.

The court further finds that the mobile home:

is subject to the security interest of a first lienholder².

is not subject to the security interest of a first lienholder.

IT IS THEREFORE ORDERED:

1. The premises located in _____ County, New Mexico at:
_____ (name of mobile home park)
_____ (mobile home address)
_____ (mobile home lot or space)
_____, New Mexico _____

be restored to plaintiff;

2. The rental agreement is terminated;

3. (complete applicable)

Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____

[A hearing on the issue of damages will be held by this court on _____, _____ at _____ (a.m.) (p.m.)³

4. A writ of restitution be issued effective _____, _____ (date).

(The following paragraph is used if there is a security interest of a first lienholder on the mobile home)

[5. The plaintiff will promptly serve notice of this judgment on the first lienholder in accordance with civil form 4-928. The cost of removal by the first lienholder shall be paid by the first lienholder.]⁴

[6. If this case is appealed the (*plaintiff*) (*defendant*) shall _____.]⁵

Date: _____

Judge

USE NOTES

1. Section 47-10-9 NMSA 1978 provides that not less than 48 hours after entry of a notice of judgment (Civil Form 4-926 NMRA) and upon execution of a writ of restitution (Civil Form 4-929) the sheriff will oversee the removal of a mobile home.

2. Section 47-10-9 NMSA 1978 provides that prior to issuance of the writ of restitution the court shall make a finding of fact that the mobile home is or is not subject to the security interest of a first lienholder. In those cases where the court finds there is a security agreement on the mobile home, the landlord must give written notice to the first lienholder. See Civil Form 4-928 NMRA for notice to lienholder of mobile home judgment.

3. Use Civil Form 4-701 NMRA if damages are determined at a separate hearing.

4. Use this paragraph only if the court finds that the mobile home is subject to a first lien. Notice shall be substantially in the form approved by the Supreme Court. See Civil Form 4-928 NMRA.

5. Section 47-8-47 NMSA 1978 of the Owner-Resident Relations Act provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. See Section 47-8-47 NMSA 1978 for appeals by the plaintiff.

[Former Rule 4-921 SCRA 1986; adopted, effective November 1, 1995; recompiled as Rule 4-926 NMRA and amended, effective September 2, 1997; as amended, effective January 1, 1999.]

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "security interest" for "security agreement" at the second instance of the term and rewrote the first sentence in Item 5 of the Order, which read: "The plaintiff will promptly serve notice on the first lienholder that the first lienholder may pay the rent and charges due in accordance with

the defendant's lease within thirty (30) days of receipt of the notice or, upon payment of the rent and charges owed, remove the mobile home".

The 1997 amendment, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-921 NMRA, and rewrote the form.

4-927. Notice of judgment (*Mobile Home Park Act*).

[Section 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

COURT

COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**NOTICE OF JUDGMENT
(*Mobile Home Park Act*)**

To: _____ (*mobile home owner*)

You are notified that:

1. A judgment has been entered against you and a writ of restitution will be issued effective _____ (*date*). Without additional notice to you, the sheriff will serve a writ of restitution on or after 8:00 a.m. on _____ (*date*).

2. You are to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires and otherwise making the mobile home safe and ready for highway travel. Your mobile home should be removed or ready for removal by the date and time specified in paragraph one of this notice.

3. If your mobile home is not removed from the landlord's land by the date and time specified in paragraph 1 of this notice, the landlord and sheriff shall have the right to take possession of your mobile home for purposes of removal and storage. If you have a property interest in the mobile home it is your responsibility to prevent weather damage to the mobile home.

4. You may be held responsible for utility charges, rents and reasonable removal and storage charges. Those charges constitute a lien on your mobile home. Any person who claims the mobile home will owe that sum to the person who paid it.

Date: _____

Judge

[Former Rule 4-921 SCRA 1986; adopted, effective November 1, 1995; recompiled as Rule 4-927 NMRA and amended, effective September 2, 1997.]

ANNOTATIONS

The 1997 amendment, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-922 NMRA, and rewrote the form.

4-928. Notice to lienholder of mobile home judgment (*Mobile Home Park Act*).

[Section 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

COURT
COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**NOTICE TO LIENHOLDER
OF MOBILE HOME JUDGMENT
(*Mobile Home Park Act*)**

To: _____ (*lienholder or other security interest*)

You are notified that:

1. A judgment has been entered against _____ (*name of defendant*) and a writ of restitution will be issued effective _____ (*date*) to remove the mobile home from the premises located in _____ County, New Mexico at:

_____, New Mexico _____.

(*name of mobile home park*)
(*mobile home address*)
(*mobile home lot or space*)

Without additional notice to you, the sheriff will serve a writ of restitution on or after 8:00 a.m. on _____ (date) for the removal of the mobile home on or before _____ (date)¹.

2. You have thirty (30) days from the date of receipt of this notice to pay the rent and charges permitted by law and to advise the landlord in writing whether you intend to pay the rent and other charges under the terms of the rental agreement.

3. If you want to remove the mobile home at your expense before the date set for removal, you may do so by paying the landlord all rent, utility and other removal costs provided by law. The amount of rent, utility charges and other charges as of _____ (date) is as follows:

Rent:	\$ _____
Utilities:	\$ _____
Removal and storage charges	\$ _____
Other _____ (explain)	\$ _____
Total due:	\$ _____
Daily rent	\$ _____

4. The tenant is required to pay rent on _____ (day of month) and utilities on _____ (day of month).

5. A copy of the lease and the landlord's rules and regulations are attached as Exhibits A and B.

6. This notice does not relieve you of complying with other applicable provisions of law relating to the repossession of the mobile home.

Date: _____

Judge

RETURN²

STATE OF NEW MEXICO)
) ss
COUNTY OF)

(complete if service is by a person other than the sheriff or deputy)³

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the

_____ day of _____, (date), by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached in the following manner:

(check and complete only if service by sheriff or deputy)³

I certify that I served this summons in _____ county on the _____ day of _____ (date), by delivering a copy of the summons and a copy of the notice of judgment with Exhibits A and B attached in the following manner:
(person serving summons must check one of following boxes and fill in appropriate blanks)

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to the defendant _____ (used when defendant receives copy of summons or refuses to receive summons).

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, located at _____ (address) (used when defendant is not presently at the abode).

by posting a copy of the summons and the notice of judgment with Exhibits A and B attached in the most public part of the premises of defendant _____ located at _____ (address) (This alternative is used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, the notice of judgment with Exhibits A and B attached must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to _____, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to _____, (parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to _____ (name of person), _____, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

by service by certified mail, return receipt requested.

CERTIFICATE OF SERVICE BY ATTORNEY
(for service on a party)

I certify that I caused a copy of this notice 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 landlord

Signature

Date of signature

USE NOTES

1. A writ of restitution directs the sheriff to restore the premises to the plaintiff. A copy of the writ need not be served on the lienholder unless the lienholder intervenes as a party.

2. If the lienholder is a party or has entered an appearance in the proceedings, service may be made in the manner provided by the rules of civil procedure for the service of papers on a party subsequent to service of the original pleading. See, however, Subsection J of Section 47-10-9 NMSA 1978 for statutory notice.

3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized. If service is made on a party by an attorney the signature of the attorney need not be notarized.

[Adopted, effective September 2, 1997; as amended, effective April 6, 1998.]

ANNOTATIONS

The 1998 amendment, effective April 6, 1998, in the notice to lienholder, substituted "permitted by law" for "accrued to the date of this notice" in Paragraph 2, substituted "provided" for "permitted" in Paragraph 3, in the return portion, inserted "This alternative is" in the third paragraph of the list for the person serving summons, and substituted "to

the plaintiff" for "on a specified date not less than three nor more than seven days after entry of the judgment" in Use Note 1.

4-929. Writ of restitution (*Mobile Home Park Act*).

[Sections 47-10-9 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT
_____ COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

**WRIT OF RESTITUTION
(*Mobile Home Park Act*)**

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff, you are ordered to remove the tenant and to take possession of the following mobile home on or before

_____ (*date*):

_____ (*name of mobile home park*)

_____ (*mobile home address*)

_____ (*mobile home lot or space*)

_____, New Mexico _____

for the purpose of storage.

You are ordered to return this writ to this court by _____.

Dated: _____, _____.

Judge

RETURN ON WRIT OF RESTITUTION²

I certify that I carried out this writ of restitution by removing the defendant from the mobile home located at _____ and restoring possession of the premises to _____ on _____, _____ at

_____ (a.m.) (p.m.). The mobile home is now located at _____

_____ (*address*).

Date of return: _____

Sheriff of _____
County, State of New Mexico

By _____
Sheriff or deputy sheriff

USE NOTES

1. See Section 47-8-46 NMSA 1978 for service of the writ of restitution.
2. The sheriff is obligated by law to make timely return.

[Adopted, effective September 2, 1997; as amended, effective January 1, 1999.]

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, amended this form to conform it with Form 4-913 NMRA.

4-930. Petition for appointment of a treatment guardian for an adult.

[For use with Rule 1-130 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ DISTRICT COURT

In the Matter of _____,

SI No. _____

**PETITION FOR APPOINTMENT
OF A TREATMENT GUARDIAN FOR AN ADULT**

Petitioner, _____, under Section 43-1-15 NMSA 1978 states:

1. Respondent, _____, is ____ years of age and is a resident of _____ County, New Mexico.

2. Respondent is currently

a patient at _____ (*name of institution or facility*).

OR

in the custody of _____ (*name of institution or facility*).

OR

residing in the community at _____ (*Respondent's last-known address*).

3. Respondent has a mental disorder as defined by the New Mexico Mental Health Code, Section 43-1-3(O) NMSA 1978, and is currently diagnosed as follows:

4. The symptoms or behaviors that support the diagnosis are as follows:

5. Respondent is receiving treatment at

_____ (*name of institution or facility*).

OR

in community based services.

6. Respondent's mental health or developmental disabilities professional or physician, _____ (*name and address of professional or physician*), is proposing the following course of treatment:

7. (OPTIONAL) Respondent was administered emergency medications on _____ (*date*) pursuant to Section 43-1-15(M) NMSA 1978.

8. Petitioner believes that Respondent is incapable of giving or withholding informed consent to the proposed course of treatment, and therefore lacks capacity to make [his] [her] own mental health care treatment decisions.

9. The following efforts have been made by _____ (*name of mental health or developmental disabilities professional or physician*) to discuss the proposed course of treatment and the associated risks and benefits with Respondent:

10. The following individual or entity has expressed a willingness to serve as a treatment guardian to make substitute decisions for Respondent as to the course of treatment which would be in Respondent's best interest and consistent with the least drastic means for accomplishing the treatment objective:

Name: _____
Phone Number: _____

11. The proposed treatment guardian is:

(check all that apply)

- A family member or friend of Respondent.
- A "contract treatment guardian" with the Office of Guardianship.
- A court appointed guardian under the Probate Code.
- An agent designated or nominated by Respondent when Respondent had capacity.
- A surrogate under the Uniform Health Care Decisions Act.

12. Petitioner has provided the proposed treatment guardian with a copy of Form 4-931 NMRA which sets forth the duties and responsibilities of a treatment guardian.

13. (OPTIONAL) Petitioner believes that Respondent has the following designated or court-appointed agent(s): _____

(name and type of all designated or court-appointed agents).

14. Petitioner intends to call the following witnesses: _____

WHEREFORE, Petitioner prays that the Court find that Respondent is not capable of making [his] [her] own mental health treatment decisions, and that it appoint the above-named person to serve as a treatment guardian for Respondent and to serve in such capacity for

- _____ days;
- _____ months;
- Respondent's course of hospitalization

- [] Respondent's duration of detention or incarceration; or
- [] other: _____;

provided that such appointment shall not exceed one year without further court review and shall be for a time period consistent with the treatment needs of Respondent. Petitioner further prays for such other relief as the Court may deem proper.

Respectfully submitted,

*(Signature of attorney or of self-represented
Petitioner)*

VERIFICATION

(To be used only by self-represented petitioners)

I, _____, affirm under penalty of perjury under the laws of the State of New Mexico that the information above is true and correct.

(Signature and date)

[Adopted by Supreme Court Order No. 14-8300-013, effective for all cases filed or pending on or after December 31, 2014.]

4-931. Acceptance of appointment, duties, and responsibilities as treatment guardian.

[For use with Rule 1-130 NMRA and Form 4-930 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ DISTRICT COURT

In the Matter of _____, No. _____

**ACCEPTANCE OF APPOINTMENT, DUTIES,
AND RESPONSIBILITIES AS TREATMENT GUARDIAN**

I, _____ (*name of treatment guardian*), agree to perform the following duties and responsibilities in accordance with Section 43-1-15 NMSA 1978.

1. I shall make decisions on behalf of Respondent _____ (*name*) about whether to accept treatment.

2. I shall base decisions about whether to accept treatment on behalf of Respondent on whether the treatment appears to be in Respondent's best interest.

3. I shall verify that the proposed treatment is the least drastic means (i.e., **no more harsh, hazardous, or intrusive than necessary**) to achieve the treatment objectives for Respondent.

4. In making treatment decisions I shall

(A) consult with Respondent and consider his or her expressed opinions;

(B) consult with the mental health or developmental disabilities professional or physician who is proposing treatment;

(C) consult with Respondent's attorney;

(D) consult with any interested friends or relatives of Respondent to the extent reasonably practical; and

(E) give consideration to previous decisions made by Respondent when Respondent was competent.

5. I shall have the authority to review and release information concerning Respondent as provided in Section 43-1-19 NMSA 1978. This authority is not intended to automatically limit Respondent's ability to access Respondent's own records, including Respondent's ability to authorize an attorney to access such records. Any restrictions on Respondent's access will be made in accordance with state and federal law.

6. If during my term of appointment as treatment guardian I believe that Respondent has regained capacity to make Respondent's own decisions, I shall petition the court for termination of the treatment guardianship.

7. If during my term of appointment as treatment guardian I believe that I am unable to carry out the duties and responsibilities of a treatment guardian, I shall petition the court for substitution of treatment guardian.

I have read and understand the above explanation of my duties and responsibilities as a treatment guardian, and I promise that I will discharge the duties of that appointment in compliance with the requirements of law and for the best interest of Respondent, to the best of my ability.

Treatment Guardian

Date

[Adopted by Supreme Court Order No. 14-8300-013, effective for all cases filed or pending on or after December 31, 2014.]

4-932. Order for appointment of a treatment guardian.

[For use with Rule 1-130 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ DISTRICT COURT

In the Matter of _____,

No. _____

ORDER FOR APPOINTMENT OF A TREATMENT GUARDIAN

THIS MATTER came before the Court upon the Petition of _____ for Appointment of a Treatment Guardian for an Adult. The parties were represented by counsel; Respondent [was] [was not] present; and the Court being fully advised in the premises FINDS BY CLEAR AND CONVINCING EVIDENCE the following:

1. _____, Respondent, is not capable of making [his] [her] own mental health treatment decisions, as [he] [she] is incapable of providing informed consent.

2. The proposed Treatment Guardian, _____, understands the duties and responsibilities of a Treatment Guardian under Section 43-1-15 NMSA 1978 and has agreed to fulfill those duties and responsibilities as required by law.

IT IS THEREFORE ORDERED that, in accordance with Section 43-1-15 NMSA 1978, _____ is appointed Treatment Guardian for the purpose of making substitute mental health treatment decisions for Respondent. Treatment decisions shall be limited to the following:

A. Decisions permitted under Section 43-1-15 NMSA 1978, including whether Respondent should receive psychotropic medication; and

B. Decisions regarding release of information as provided in Section 43-1-19(H) NMSA 1978. The authority related to the release and review of Respondent's records is not intended to automatically limit Respondent's ability to access [his] [her] own records. Any restrictions on Respondent's access will be made in accordance with state and federal law.

IT IS FURTHER ORDERED that the Treatment Guardian shall make decisions about whether Respondent shall receive treatment based on a determination that the treatment appears to be in Respondent's best interest and is the least drastic means for accomplishing the treatment objective.

IT IS FURTHER ORDERED that the Treatment Guardian for Respondent shall serve in such capacity

- until _____ (*date*);
- Respondent's course of hospitalization;
- Respondent's course of detention or incarceration; or
- other: _____;

provided that such appointment shall terminate not later than one year from the date of this order. Nothing in this order shall preclude the appointment of the treatment guardian to another term upon the filing of a subsequent petition for appointment of a treatment guardian.

IT IS FURTHER ORDERED that the previous Order of the Court appointing _____ to represent Respondent herein is reaffirmed, and an attorney's fee for services in this case shall be granted as per the contract between Respondent's attorney and the Attorney for the Administrative Office of the Court.

DISTRICT JUDGE

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

- Following a hearing
- By stipulation of the parties

[Adopted by Supreme Court Order No. 14-8300-013, effective for all cases filed or pending on or after December 31, 2014.]

4-933. Order denying petition for appointment of a treatment guardian for an adult.

[For use with Rule 1-130 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ DISTRICT COURT

In the Matter of _____,

No. _____

**ORDER DENYING PETITION FOR APPOINTMENT
OF A TREATMENT GUARDIAN FOR AN ADULT**

THIS MATTER came before the Court upon the Petition of _____ for Appointment of a Treatment Guardian for an Adult. The parties were represented by counsel, and the Court being fully advised in the premises FINDS:

1. _____, Respondent, was present at the hearing on this matter and was represented by counsel; and
2. The Petition for Appointment of a Treatment Guardian for an Adult is not well taken.

IT IS THEREFORE ORDERED that the Petition for Appointment of a Treatment Guardian for an Adult is denied.

DISTRICT JUDGE

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

[Adopted by Supreme Court Order No. 14-8300-013, effective for all cases filed or pending on or after December 31, 2014.]

4-934. Petition for enforcement order.

[For use with Section 43-1-15(G) NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ DISTRICT COURT

In the Matter of _____, SI No. _____

PETITION FOR ENFORCEMENT ORDER

Petitioner, _____ under Section 43-1-15 NMSA 1978, states the following.

1. Petitioner was appointed as treatment guardian for Respondent, _____, on _____ (date) in Case No. _____.
2. Petitioner's appointment as treatment guardian shall terminate on _____ (date).
3. Respondent is currently residing at _____ (Respondent's last-known address).
4. Respondent has a mental disorder as defined by the New Mexico Mental Health Code, Section 43-1-3(O) NMSA 1978, and is currently diagnosed as follows:

5. Respondent has been prescribed the following medication(s), on the following date(s), by the following authorized prescriber(s):

Medication	Date	Prescriber (name and contact info)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Petitioner's last contact with Respondent was on _____ (date) by _____ (type of contact, e.g., in person, by telephone, etc.).

7. Petitioner's last contact with the authorized prescriber who prescribed the medication that is the subject of this petition was on _____ (date).

8. Respondent's last known contact with the authorized prescriber, a mental health practitioner, or a community provider was on _____ (*date*).

9. Respondent did not comply with Petitioner's treatment decision about the following medications, on the following date(s):

Medication	Date
_____	_____
_____	_____
_____	_____

10. Petitioner made the following efforts to engage Respondent to comply with Petitioner's treatment decision(s): _____

11. Respondent responded to the efforts described in Paragraph 10 as follows:

12. Respondent reports taking medication(s) last on _____ (*date*).

13. The following individuals report that Respondent last took medication(s) on the following date(s):

Name of individual	Medication	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. Petitioner has weighed the following risks and benefits about filing this petition:

15. If this petition is not granted, the following outcome is likely for Respondent:

16. The following options are available for administering the medication(s) in question to Respondent: _____

17. Respondent has been ordered to comply with previous treatment decisions as follows: _____

18. This enforcement order should remain in effect until _____
(date) because _____

WHEREFORE, Petitioner requests an order to enforce the following treatment decision(s): _____

The order [] should [] should not authorize a peace officer to take Respondent into custody and to transport Respondent to an evaluation facility.

The order [] should [] should not authorize the evaluation facility to forcibly administer treatment.

Respectfully submitted,

USE NOTES

A person appointed as a treatment guardian may petition for an enforcement order “[i]f a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian.” NMSA 1978, § 43-1-15(G). An enforcement order is not a prophylactic

measure. Rather, an enforcement order should be granted only upon proof that the respondent has refused to comply with the treatment guardian's decision. As such, a petition for an enforcement order should be viewed as a last resort, to be pursued after other efforts to get the respondent to comply with a treatment decision have been unsuccessful. For further information about the procedures for the appointment of a treatment guardian, see Rule 1-130 NMRA.

[Adopted by Supreme Court Order No. 19-8300-021, effective December 31, 2019.]

4-940. Notice of federal restriction on right to possess or receive a firearm or ammunition.

[For use with Rule 1-131 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

Petitioner,

v.

No. _____

Respondent.

**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.]

4-941. 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

In the matter of _____, No. _____
Respondent.

**MOTION TO RESTORE RIGHT
TO POSSESS OR RECEIVE A FIREARM OR AMMUNITION¹**

I, _____ (name), am the Respondent 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 order (*select one*):

Order appointing a full or plenary guardian that includes a finding of total incapacitation.

Order appointing a full or plenary conservator that includes a finding of total incapacitation.

Order for involuntary commitment.

Order for involuntary protective services or protective placement.

Order for assisted outpatient treatment that includes a finding of serious violent behavior or of threatened or attempted serious physical harm.

2. The Court entered the order identified in Paragraph 1, above, in this case.

YES (required) I have attached a copy of the order 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 1978.²

WHEREFORE, I ask the Court to grant this motion and for any other relief that the Court deems proper.

Respectfully submitted,

Signature of Respondent

Name of Respondent (*print*)

Mailing address

Telephone number

VERIFICATION

I, the Respondent, affirm under penalty of perjury under the laws of the State of New Mexico the following:

(A) I am the respondent 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 order 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.³

Date

Respondent

USE NOTES

1. You may be required to pay a filing fee to the court clerk in cash or money order at the time the motion is filed. If you cannot afford to pay the filing fee, you may ask the court to allow you to file for free or for a reduced rate by filing an application for free process, Form 4-222 NMRA.

2. 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.

3. 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. 17-8300-003, effective for all cases filed on or after March 31, 2017; as amended by Supreme Court Order No. 17-8300-026, effective December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017, changed the form from a petition to a motion; deleted “petition” and added “motion” throughout the form; deleted “Petitioner” and added “Respondent” throughout the form; in the first undesignated sentence of the form, after “in this proceeding”, deleted “under Section 34-9-19(D) NMSA 1978”; in Paragraph 1, after “following order”, deleted “or finding”, deleted the final two options to select, which provided “Finding of incompetent to stand trial.” and “Finding of not guilty by reason of insanity at the time of the offense.”; in Paragraph 2, after “in”, deleted “Case No. _____” and added “this case”, and after “of the order”, deleted “or finding”; in Subparagraph (D)(1)(d) of the Verification, after “the order”, deleted “or finding”; and in the Use Note, in Paragraph 1, after “You”, deleted “must” and added “may be required to”, and in Paragraph 3, after “all parties to”, deleted “the original” and added “this”.

4-950. Tribal court order for initial involuntary commitment of an adult for mental health evaluation and treatment not to exceed 30 days.

TRIBAL COURT
[NAME OF TRIBE]
STATE OF NEW MEXICO

IN THE MATTER OF

No. _____

_____, an adult.

TRIBAL COURT ORDER FOR INITIAL INVOLUNTARY COMMITMENT OF AN ADULT FOR MENTAL HEALTH EVALUATION AND TREATMENT NOT TO EXCEED 30 DAYS

THIS MATTER, having come before the Court upon proper notice and hearing on the petition concerning _____ (*name of petitioner*) for involuntary commitment up to thirty (30) days, the _____ (*name of residential or evaluating treatment facility*) will admit _____ (*name of adult client*) for evaluation and treatment.

The adult was represented by _____ (*name of legal representative*), appointed counsel by the Tribal Court. The adult has been afforded the opportunity to present evidence, including the testimony of a mental health and developmental disabilities professional of the adult’s own choosing, to cross-examine witnesses, and to

access the complete record in this case. The adult has been advised of the right to appeal this order.

THE COURT FINDS on the basis of clear and convincing evidence and by testimony of _____ (*name*), who is a physician or other professional qualified by training or experience to work with persons with a mental disorder or a developmental disability, that the adult's medical and psychological evaluations demonstrate the following.

1. Involuntary treatment is in the best interest of the adult because the adult's mental disorder creates a likelihood of serious harm to the adult's self or to others.
2. As a result of a mental disorder:
 - a. The adult needs treatment and is likely to benefit from the proposed treatment;
 - b. The involuntary commitment is consistent with the adult's treatment needs; and
 - c. The proposed involuntary commitment is consistent with the least restrictive means principle.
3. Taking into account efforts to ascertain the opinion of the adult's legal guardian, if any, involuntary treatment is necessary to maintain the health and safety of the adult. The guardian has had an opportunity to appear at every stage of the hearing by any means of communication (phone, affidavit, skype, etc.).

THE COURT HEREBY ORDERS the involuntary commitment of the adult into the custody of _____ (*name of residential or evaluating treatment facility*), pursuant to _____ (*applicable tribal statute*). The adult shall be transported to the above-named facility by _____.

IT IS FURTHER ORDERED that the adult shall be subject to the continuing jurisdiction of the tribal court, provided that any decisions regarding discharge or release from the evaluation facility shall be made by the administrator of that facility. Further, prior to discharging the adult, the facility shall make arrangements with the adult and the adult's guardian, power of attorney for health care, treatment guardian, surrogate, or other alternate decision maker and establish a plan for the adult's aftercare. Any state district court order entered for the adult for continued treatment under Section 43-1-12 NMSA 1978 or for the appointment of a treatment guardian under Section 43-1-15 NMSA 1978 that is related to this order shall be sent to the tribal court judge signing this order for informational purposes after execution in state court.

Tribal Court Judge

Prepared by: _____

[Approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018.]

**4-951. Petition to expunge arrest records and public records;
identity theft.**

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

**PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER
SECTION 29-3A-3 NMSA 1978
(Identity Theft)**

Petitioner, [] unrepresented by counsel/[] represented by counsel (*select one*),
under Section 29-3A-3 NMSA 1978, respectfully moves the Court to expunge the arrest
records and public records related to the cases/charges below.

1. Information about Petitioner:

Date of Birth: _____
Current Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Home Phone #: _____ Work Phone #: _____ Cell #: _____
Other names or aliases by which Petitioner has been known (*include prior
names, nicknames, or aliases, especially if your arrest records may reflect a
different name*):

2. [] Petitioner has no pending expungement cases in the _____ Judicial
District.

[] Petitioner has the following pending expungement cases in the _____
Judicial District Court (*provide expungement case numbers for any expungement
cases that may be currently pending before the _____ Judicial District
Court*): _____

3. [] Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

- 4 As the result of identity theft, Petitioner has been improperly named in the following criminal case or cases:

Case name: _____

Case number: _____

Date of filing: _____

Please attach copies of any records in your possession associated with this case.

5. Petitioner asks this Court for an Order to Expunge Arrest and Criminal Records for information in the custody of the following agencies:

District Court in the _____ Judicial District;

_____ County Sheriff's Department;

District Attorney for the _____ Judicial District;

New Mexico Department of Public Safety;

Law Enforcement Agency (*name of agency*) _____;

Metropolitan/Magistrate/Municipal Court in _____ (*location*);

New Mexico State Police Investigations Bureau;

Other _____

6. The charges sought to be expunged were originally disposed of or originated in (*select one*)

District Court in the _____ Judicial District

Metropolitan Court in _____ (*location*)

Magistrate Court in _____ (*location*)

Municipal Court in _____ (*location*)

7. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (if applicable)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-952. Petition to expunge arrest records and public records; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER SECTION 29-3A-4 NMSA 1978 (Upon Release without Conviction)

Petitioner, [] unrepresented by counsel/ [] represented by counsel (*select one*), under Section 29-3A-4 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the case and charge(s) below.

1. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known (*include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

2. Petitioner has no pending expungement cases in the _____ Judicial District.

Petitioner has the following pending expungement case or cases in the _____ Judicial District (*provide expungement case numbers for any expungement cases that may be currently pending before the _____ Judicial District Court*):

3. Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

4. The following case(s) and record(s) are the subject of Petitioner's Petition to Expunge

(*Include additional pages, if necessary*):

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Law Enforcement Agency case number(s): _____

Arrest number(s): _____

5. Petitioner was released without conviction for the following charges: (*Complete for each charge sought to be expunged. Include additional pages if necessary.*)

(1) Date of arrest: _____

Name of offense and statute/ordinance number: _____

Final disposition of offense: (*check one*) acquittal or finding of not guilty nolle prosequi no bill referral to pre-prosecution diversion program Order of Conditional Discharge under Section 31-20-13 (1994) NMSA 1978 other dismissal/discharge (*explain*): _____

Degree of offense, if known (e.g., misdemeanor, petty misdemeanor, etc.): _____

Date of final disposition: _____

Check if additional pages attached.

6. Petitioner has no cases related to the charges sought to be expunged.

The following cases are related to the charges sought to be expunged: (*Include case names and numbers for any cases that were joined either with a co-defendant or joined as the result of a plea.*)

7. It has been one (1) year or more since the date of the final disposition of the charge(s) Petitioner seeks to expunge.

8. There is no other charge or proceeding pending against Petitioner.

9. Petitioner asks this Court for an Order to Expunge arrest records and public records in the custody of the following agencies:

District Court in the _____ Judicial District;

_____ County Sheriff's Department;

District Attorney for the _____ Judicial District;

New Mexico Department of Public Safety

Law Enforcement Agency (*name of agency that arrested Petitioner*);

Metropolitan/Magistrate/Municipal Court in _____ (*location*);

New Mexico State Police Investigations Bureau

Other _____

10. A copy of this Petition, when filed with the Court, will be mailed by first class United States mail to:

(1) The District Attorney in the _____ Judicial District
(The District Attorney in the Judicial District where Petitioner's charge originated)

(Address)

(2) The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628

11. The charges sought to be expunged were originally disposed of or originated in (*select one*)

District Court in the _____ Judicial District

Metropolitan Court in _____ (*location*)

Magistrate Court in _____ (*location*)

Municipal Court in _____ (*location*)

12. Petitioner has included Petitioner's State of New Mexico, Department of Public Safety Record of Arrest and Prosecution (RAP) sheet, dated no later than ninety (90) days prior to the filing of the petition.

13. Petitioner has also included the following documentation related to Petitioner's criminal history:

a. Docket sheet, arrest sheet, or other record detailing the offenses Petitioner is seeking to expunge;

b. Documentation showing final disposition of the charges Petitioner is seeking to expunge;

c. Other: _____
(list any other documentation provided with the petition).

14. [] Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (if applicable)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-953. Petition to expunge arrest records and public records; upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner.

No.

**PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER
SECTION 29-3A-5 NMSA 1978
(Upon Conviction)**

Petitioner, unrepresented by counsel/ represented by counsel (*select one*), under Section 29-3A-5 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the case and charge(s) below.

1. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known (*Include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

2. Petitioner has no pending expungement cases in the _____ Judicial District.

Petitioner has the following pending expungement case or cases in the _____ Judicial District (*provide expungement case numbers for any expungement cases that may be currently pending before the _____ Judicial District Court*):

3. Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

4. The following case(s) and record(s) are the subject of Petitioner's Petition to Expunge:

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Law Enforcement Agency case number(s): _____

Arrest number(s): _____

5. Petitioner was convicted of the following charges: (*Complete for each offense that you are seeking to expunge. Include additional pages if necessary.*)

(1) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____
Date fines and fees paid: _____

Check if additional pages attached.

6. Petitioner has no cases related to the charges sought to be expunged.
 The following cases are related to the charges sought to be expunged:
(Include case names and numbers for any cases that were joined either with a co-defendant or joined as the result of a plea.)

7. There is currently no other charge(s) or proceeding(s) pending against Petitioner.

8. Petitioner has had no other criminal convictions (measured from the date of completion of a sentence for a conviction in *any jurisdiction*) for a period of:

- Two years
 Four years
 Six years
 Eight Years
 Ten or more years

9. Petitioner has paid all fines and fees and has fulfilled all victim restitution ordered for the charges Petitioner seeks to expunge.

10. Petitioner is not seeking to expunge convictions pertaining to any of the following:

- An offense committed against a child;
- An offense causing great bodily harm or death;
- A sex offense as defined in Section 29-11A-3 NMSA 1978;
- An offense for embezzlement under Section 30-16-8 NMSA 1978; or
- An offense involving driving while under the influence of intoxicating liquor or drugs.

11. Petitioner believes justice will be served by the Court granting the Petition and states the following in support: (*Explain why expungement is being sought, e.g., employment, licensure, housing, and any adverse consequences that have been suffered by Petitioner or will be suffered if the Petition is not granted. Attach additional pages if necessary.*)

Check if additional pages attached.

12. Petitioner asks this Court for an Order to Expunge arrest records and court records in the custody of the following below:

- District Court in the _____ Judicial District;
- _____ County Sheriff's Department;
- District Attorney for the _____ Judicial District;
- New Mexico Department of Public Safety;
- Law Enforcement Agency (*name of agency that arrested Petitioner*) _____;
- Metropolitan/Magistrate/Municipal Court in _____ (*location*);
- New Mexico State Police Investigations Bureau;
- Other: _____

13. The charges sought to be expunged were originally disposed of or originated in (*select one*)

- District Court in the _____ Judicial District
- Metropolitan Court in _____ (*location*)
- Magistrate Court in _____ (*location*)
- Municipal Court in _____ (*location*)

14. A copy of this Petition, when filed with the Court, will be mailed by first class United States mail to:

(1) The District Attorney in the _____ Judicial District
(The District Attorney in the Judicial District where Petitioner's charge originated)

(Address)

(2) The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628

(3) _____
(The law enforcement agency that arrested Petitioner)

(Address)

15. Petitioner has included copies of Petitioner's FBI and DPS Record of Arrest and Prosecution (RAP) sheets, dated no later than ninety (90) days prior to the filing of the petition.

16. Petitioner has included the following additional documentation related to Petitioner's criminal history: (*Petitioner should attach the documentation detailing*

the sentences for the charges Petitioner is seeking to expunge. If there have been additional convictions, additional paperwork may be required.)

- a. Documentation showing completion of Petitioner's sentences for the convictions Petitioner is seeking to expunge;
- b. Documentation showing completion of sentences for any other convictions that Petitioner has served;
- c. Documentation showing final payment of any fines and fees owed related to the convictions Petitioner is seeking to expunge;
- d. Documentation showing completion of any victim restitution ordered as a result of the convictions Petitioner is seeking to expunge;
- e. Other: _____
(list any other documentation provided with the petition).

17. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner	Date
Signature of Petitioner	
Mailing Address	
Telephone Number	Email
Attorney Name <i>(if applicable)</i>	Date
Attorney Signature	
Mailing Address	
Telephone Number	Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

4-954. Petition to expunge arrest records and public records; automatic.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

**PETITION FOR REQUEST FOR AUTOMATIC EXPUNGEMENT UNDER SECTION
29-3A-8 NMSA 1978
(Automatic Expungement of Arrest and Conviction Records;
Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978)**

Name _____
First Middle Last

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known
(Include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name)

Petitioner claims an entitlement to automatic expungement of the following offense(s) involving cannabis that is(are) no longer a crime as of the effective date of the Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978, or would have resulted in a lesser offense if the Cannabis Regulation Act had been in effect at the time of the offense(s).

You may include more than one case if there are multiple cases with eligible offenses. (Include additional pages if necessary)

District Court case number: _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (*if applicable*)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-955. Certificate of service; expungement of records upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner.

No.

CERTIFICATE OF SERVICE

(Required for Petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

I hereby certify that on the _____ (day) of _____ (month) _____ (year), an endorsed copy of the Petition to Expunge New Mexico Arrest Records and Public Records under Section 29-3A-4 NMSA 1978, filed on _____ (date), and this Certificate of Service were mailed via first-class United States mail to:

- The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628
 - The district attorney in the _____ Judicial District
- _____
(Address)

Petitioner is pro se **OR** Petitioner is represented by counsel

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

_____ Petitioner Printed Name	_____ Attorney Printed Signature
_____ Petitioner Address	_____ Attorney Address
_____ Petitioner Telephone Number	_____ Attorney Telephone Number
_____ Petitioner Signature	_____ Attorney Signature
_____ Date of Signature	_____ Date of Signature

USE NOTES

This certificate of service must be filed with the district court.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-956. Certificate of service; expungement of records upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

CERTIFICATE OF SERVICE
(Required for Petitions filed under Section 29-3A-5 NMSA 1978
(Expungement of Records upon Conviction))

I hereby certify that on the _____ (day) of _____ (month) _____ (year), an endorsed copy of the Petition to Expunge New Mexico Arrest Records and Public Records under Section 29-3A-5 NMSA 1978, filed on _____ (date), and this Certificate of Service were mailed via first-class United States mail to:

- The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628
- The district attorney in the _____ Judicial District

(Address)

- The law enforcement agency that arrested Petitioner

(Address)

Petitioner is pro se **OR** Petitioner is represented by counsel

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

_____ Petitioner Printed Name	_____ Attorney Printed Name
_____ Petitioner Address	_____ Attorney Address
_____ Petitioner Telephone Number	_____ Attorney Telephone Number
_____ Petitioner Signature	_____ Attorney Signature
_____ Date of Signature	_____ Date of Signature

USE NOTES

This certificate of service must be filed with the district court.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-957. Objection to petition to expunge records.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

OBJECTION TO PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS

***(Applicable to Petitions filed under Section 29-3A-4 NMSA 1978
(Upon Release without Conviction) and Section 29-3A-5 NMSA 1978
(Upon Conviction))***

_____ (name and agency), under Sections 29-3A-4 to -5 NMSA 1978, having received notice of the Petition by first class mail, objects to Petitioner’s Petition to Expunge Arrest Records and Public Records, which was filed on _____, and respectfully asks this Court to deny the Petition on the following grounds:

Check if additional pages attached.

If this Objection relates to a petition filed under Section 29-3A-4 NMSA 1978 (upon release without conviction) and is based on the contents of Petitioner’s FBI Record of Arrest and Prosecution (RAP) sheet, a copy of the FBI RAP sheet will be provided along with this Objection to Petitioner at no cost to Petitioner.

I, _____ (name), on behalf of _____ (insert agency name) wish to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

Date

Printed Name

Signature

Agency (if applicable)

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ (day) of _____ (month) _____ (year), I caused a copy of the foregoing to be served on Petitioner and all Parties entitled to notice of the Petition via first-class United States mail.

Printed Name

Agency (if applicable)

Address

Telephone Number

Signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-957.1. Objection to automatic expungement.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____
(defendant)

No. _____

Concerning _____
(case and/or record number)

**OBJECTION TO AUTOMATIC EXPUNGEMENT
PURSUANT TO NMSA 1978, § 29-3A-9 (2021)**

_____ (*name and agency*), under Section 29-3A-9(G) NMSA 1978, having received notice that the above records may be eligible for automatic dismissal and expungement or redesignation pursuant to Section 29-3A-8 NMSA 1978, respectfully asks this Court to deny the dismissal and expungement or redesignation on the following grounds:

Check if additional pages attached

I, _____ (*name*), on behalf of _____ (*insert agency name*) wish to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

Date

Agency (*if applicable*)

Printed Name

Mailing Address

Signature

Telephone Number

Email

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ (*day*) of _____ (*month*) _____ (*year*), this document was: Mailed via first class United States mail OR Hand-delivered OR Faxed OR E-mailed to all Parties entitled to notice of the Objection.

Printed Name

Agency (*if applicable*)

Address

Telephone Number

Signature

[Adopted by Supreme Court Order No. 22-8500-027, effective for all cases filed or pending on or after June 10, 2022.]

4-958. Notice of non-objection to petition to expunge records.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

**NOTICE OF NON-OBJECTION TO PETITION TO EXPUNGE ARREST RECORDS
AND PUBLIC RECORDS**
***(Applicable to Petitions filed under Section 29-3A-4 NMSA 1978 (Upon Release
without Conviction) and Section 29-3A-5 NMSA 1978 (Upon Conviction))***

_____ (*name and agency*), under Sections 29-3A-4 to -5 NMSA 1978, having received notice of the Petition by first class United States mail, gives this notice that it has no objection to the relief requested in the Petitioner's Petition to Expunge Arrest Records and Public Records, which was filed on _____.

Date

Printed Name

Signature

Agency

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ (day) of _____ (month) _____ (year), I caused a copy of the foregoing to be served on Petitioner and all Parties entitled to notice of the Petition via first-class United States mail.

Printed Name

Agency

Address

Telephone Number

Signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-959. Notice of completion of briefing; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

NOTICE OF COMPLETION OF BRIEFING
(for use with petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

Petitioner hereby notifies the Court, in accordance with Rule 1-077.1(H) NMRA, that briefing is complete as to Petitioner's Petition to Expungement Arrest Records and Public Records and that the Petition is ready for decision. Petitioner further states:

Notice of the Petition has been provided via first-class United States mail to:

- The District Attorney in the _____ Judicial District;
- The New Mexico Department of Public Safety.

At least sixty-three (63) days have passed since Petitioner mailed the Petition to the parties entitled to notice.

The District Attorney:

Has filed a Notice of Non-Objection; or
 Has filed an objection.

The New Mexico Department of Public Safety:

Has filed a Notice of Non-Objection; or
 Has filed an objection.

Petitioner has included an Affirmation in Support of Expungement (Form 4-960.2 NMRA) with this Notice of Completion of Briefing.

Printed name of Petitioner

Signature of Petitioner

Mailing Address

Telephone Number

Date

Attorney Name (*if applicable*)

Attorney Signature

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this Notice of Completion of Briefing was served by United States first class mail on the following:

(The District Attorney in the _____ Judicial District)

(Address)

(Telephone)

AND

New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico, 87504-1628
(505) _____

Signature of person sending paper

Date of signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-960. Notice of completion of briefing; upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner. No.

NOTICE OF COMPLETION OF BRIEFING
(for use with petitions filed under Section 29-3A-5 NMSA 1978 (Expungement of Records upon Conviction))

Petitioner hereby notifies the Court, in accordance with Rule 1-077.1(H) NMRA, that briefing is complete as to Petitioner's Petition to Expunge Arrest Records and Public Records and the Petition is ready for decision. Petitioner further states:

Notice of the Petition has been provided via first-class United States mail to:

- The District Attorney in the _____ Judicial District;
- The New Mexico Department of Public Safety;
- The law enforcement agency that arrested Petitioner.

At least sixty-three (63) days have passed since Petitioner mailed the Petition to the parties entitled to notice.

The District Attorney:

- Has filed a Notice of Non-Objection; or
- Has filed an objection.

The New Mexico Department of Public Safety:

- Has filed a Notice of Non-Objection; or
- Has filed an objection.

The law enforcement agency that arrested Petitioner:

- Has filed a Notice of Non-Objection; or
- Has filed an objection.

Petitioner has included an Affirmation in Support of Expungement (Form 4-960.3 NMRA) with this Notice of Completion of Briefing.

Printed name of Petitioner

Signature of Petitioner

Mailing Address

Telephone Number

Date

Attorney Name (*if applicable*)

Attorney Signature

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this Notice of Completion of Briefing was served by United States first class mail on the following:

(The District Attorney in the _____ Judicial District)

(Address)

(Telephone)

AND

New Mexico Department of Public Safety

P.O. Box 1628, Santa Fe, New Mexico, 87504-1628

(505) _____

(The law enforcement agency that arrested Petitioner)

(Address)

(Telephone)

Signature of person sending paper

Date of signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-960.1. Notice of hearing.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner.

No.

NOTICE OF HEARING

Petitioner may be entitled to expungement of arrest records or public records under the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978. A hearing in this matter is set before the Honorable _____ as follows:

1. Date of Hearing: _____
2. Time of Hearing: _____
3. Length of Hearing: _____
4. Place of Hearing: _____

5. Matter(s) to be heard:

HONORABLE _____

By _____

TCAA

PARTIES ENTITLED TO NOTICE:

Petitioner Name

Petitioner Address

Petitioner Telephone Number

Petitioner Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

USE NOTES

For the purpose of this form, the parties entitled to notice include the petitioner and any party that filed and served objections to the petition for expungement pursuant to Rule 1-077.1(G)(1) NMRA no later than sixty-three (63) days from the date of service. See Rule 1-077.1(G)(1) (providing sixty (60) days for a party entitled to notice to file an objection); Rule 1-077.1(E)(3) NMRA (providing for service by mail for actions filed pursuant to Rule 1-077.1); Rule 1-006(C) (providing for three (3) additional days where service is made by mail).

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-960.2. Affirmation in support of expungement; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner.

No.

**AFFIRMATION IN SUPPORT OF EXPUNGEMENT
(Upon Release without Conviction)**

I, _____, (*Petitioner name*), am requesting the expungement of records under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction), and hereby affirm the following:

No charge or criminal proceeding is pending against me in any state or federal court in the United States.

OR

The following charge(s) or criminal proceeding(s) are pending against me in New Mexico state court:

The following charge(s) or criminal proceeding(s) are pending against me in another state court:

The following charge(s) or criminal proceeding(s) are pending against me in federal court:

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

(*Petitioner Signature*)

(*Print Name*)

Street Address

City

State

Zip Code

(*Telephone*)

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-960.3. Affirmation in support of expungement; upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, Petitioner.

No.

AFFIRMATION IN SUPPORT OF EXPUNGEMENT

(Upon Conviction)

I, _____, (*Petitioner name*), am requesting the expungement of records under Section 29-3A-5 (2019) NMSA 1978 (Expungement of Records upon Release upon Conviction), and hereby affirm the following:

1. No charge or criminal proceeding is pending against me in any state or federal court in the United States.

OR

The following charge(s) or criminal proceeding(s) are pending against me in New Mexico state court:

The following charge(s) or criminal proceeding(s) are pending against me in another state court:

The following charge(s) or criminal proceeding(s) are pending against me in federal court:

AND

2. I have had no criminal convictions against me in the last ten (10) years.

OR

The most recent criminal conviction against me was: (Provide date of conviction, jurisdiction, case number, offense of conviction, and the date you finished serving your sentence for the conviction)

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

(*Petitioner Signature*)

(*Print Name*)

Street Address

City

State

Zip Code

(*Telephone*)

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases filed or pending on or after January 28, 2022.]

4-961. Petition for order of protection from domestic abuse.

[Family Violence Protection Act,
Sections 40-13-1 to 40-13-8 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No. _____

_____, Respondent

PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE¹

1. COURT ASSISTANCE REQUEST

We will need an interpreter in _____ to translate at hearings for [
] me [] the respondent.

We will need _____ (*describe other request for special help*).

2. INFORMATION ABOUT THE RESPONDENT (*the person I am filing against*)

A. The respondent is:

my husband or [] my wife

my ex-husband or [] my ex-wife

the parent of my [child] [children]

a family member _____ (*describe the family relationship*)

a person with whom I have had a continuing personal relationship
_____ (*describe the relationship*)

a person who has sexually assaulted me

a person who has stalked me

B. The respondent has the following firearms (make/model):

(use additional page if needed)

3. INFORMATION ABOUT [CHILD] [CHILDREN]²

A. List minor [child] [children] of either party, even if from another relationship.

Name	Date of Birth	Relationship of [Child] [Children]	
		To You	To Respondent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. List address and with whom the [child] [children] are currently living. *(List each child separately if [child] [children] do not reside with same person.)*

C. List each address where [child] [children] have lived during the last five (5) years. *(List each child separately if [child] [children] did not reside with same person.)*

D. Does anyone else have physical custody of the [child] [children] or claim to have custody or visitation rights? yes no

If yes, complete the following for the [child] [children]:

Child's name

Person claiming rights

E. Describe how often the [child] [children] have been with the other party during the past six (6) months.

4. OTHER CASES

[] The following divorce, separation, order of protection, child support, paternity, abuse or neglect cases have been previously filed by me, the respondent or the state:

Type of Case	Year Filed <i>(if known)</i>	Case Number <i>(if known)</i>	Where Filed <i>(city and state)</i>
_____	_____	_____	_____
_____	_____	_____	_____

5. DOMESTIC ABUSE

A. The respondent committed the following act(s) of domestic abuse against me or a member of my household: *(describe in detail what happened to you or to a member of your household and when and where.)*

Physical abuse: _____.

Threats which caused fear that you or any household member would be injured:

_____.

Other abuse: _____.

Date of abuse: _____.

Place of abuse: _____.

B. Respondent is a credible threat to my physical safety because:

_____.

C. Others present during the abuse: _____.

D. Did drugs or alcohol play a role in the domestic abuse? yes no

E. Were weapons used during the abuse? yes no

If yes, describe the weapons?

F. Has there been prior domestic abuse? yes no

[continuation sheets to be inserted here]

6. REQUESTS TO THE COURT

I REQUEST THAT THE COURT ORDER (*check all that you want*):

A. that the respondent not contact me, not abuse me, and that the respondent stay away from me.

B. (1) that the respondent shall immediately leave my our residence at _____

(2) that the respondent provide me with temporary suitable alternative housing.

C. that the respondent shall not sell, remove, pawn, hide, destroy or damage any property of mine.

D. that law enforcement officers assist me in retrieving my clothing and personal belongings.

E. that I be given temporary custody of the [child] [children] listed in this petition.

F. that until the court hearing:

respondent shall have the following contact with the [child] [children]:

respondent shall have no contact with the [child] [children].

G. that the respondent shall pay:

support for the [child] [children].

support for me.

H. that the respondent shall pay me for the damage and medical bills resulting from the abuse.

I. other relief that is necessary to resolve this domestic abuse problem (*list or describe what you want*)

J. the respondent be found to be a credible threat and be required to deliver any firearm in his or her possession to the court and be required to surrender any firearm license.

7. INFORMATION ABOUT THE PETITIONER (ME)

(If you do not want the respondent to know your address and phone number, do not include it on this form. Tell the court clerk that you need to complete two other forms (Forms 4-961A and 4-961B NMRA) for your name and address and request that the clerk place your address under seal.)

[] A. **I DO NOT WANT RESPONDENT TO KNOW MY ADDRESS NOW OR AFTER THE HEARING AND GIVEN IT TO THE COURT CLERK.**

OR

[] B. My physical address is: _____ in the [] County []
My mailing address (if different from above):

(street address)

(city and zip)

My telephone numbers are:

Home _____

Work _____

Message _____

8. NOTICE TO RESPONDENT

[A I have not told respondent that I am filing a petition to ask the court for an
] . order of protection because I believe irreparable harm would result if I told
respondent before coming to court. (Describe what might happen to you or
what you are afraid might happen if the respondent knew you were asking for
a court order of protection.)

_____.

[B I have told respondent that I am filing this petition.
] .

9. LOCATION OF RESPONDENT

A. Respondent may be found at:

_____ (address)

_____ (city)

_____ (state and zip code)

_____ (if in Indian Country, please name tribe or pueblo).

Respondent's:

_____ (date of birth)

_____ (home telephone number)

_____ (work address)

_____ (work telephone number).

B. Is respondent in jail? [] yes [] no

VERIFICATION

I, the Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the petition for order of protection from domestic abuse; and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner

USE NOTES

1. Petitioner should complete all information known by the petitioner.

2. This part must be completed if there are children. NMSA 1978, Section 40-10A-209 of the Uniform Child Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information as to the child's present address, the places where the child has lived within the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period. If a child lives with you now, but you do not want the respondent to know your address, do not put your current address here, but do fill out Forms 4-961A and 4-961B NMRA.

3. Use Notes 1 and 2 are to be printed on pre-printed forms published for use by pro se petitioners. This note and Use Note 4 should not be printed on the form. This form has been approved by the Supreme Court of New Mexico for use in the courts of this state and distribution pursuant to NMSA 1978, Section 40-13-3. Pre-printed pro se forms should include a lined blank page at the end of the form for use by the petitioner if the pre-printed form does not include adequate space for a complete answer to a question.

4. NMSA 1978, Section 40-13-3.1(A)(4) provides that a victim in a domestic abuse case shall not be required to pay for "the filing, issuance or service of a petition for an order of protection."

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014; as amended by Supreme Court Order No. 19-8300-009, effective for all petitions filed on or after July 1, 2019.]

ANNOTATIONS

The 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, provided clarifying language, required additional information related to physical custody of the children, added a provision where the petitioner can note instances of domestic abuse and reasons for the need for an order of protection, added a provision requesting that the court make a finding that the respondent is a credible

threat and ordering the respondent to deliver any firearm in the respondent's care to a law enforcement officer or a federal firearms licensee, and made technical changes; in Section 2, in Paragraph B, after "following", deleted "weapons" and added "firearms (make/model)"; in Section 3, in Paragraph A, after "either party", added ", even if from another relationship", and added new Paragraph E; in Section 5, added new Paragraph B and redesignated the succeeding paragraphs accordingly; and in Section 6, added new Paragraph J.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, eliminated the requirement that the form be notarized; in the Verification, deleted the former affirmation of the signatory and the certification and signature line of the notary public; and in the Use Note, in Paragraph 2, in the first sentence, after "give information", deleted "under oath".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, in Subparagraph A of Paragraph 2, added that the respondent is "a person who has sexually assaulted me" and that the respondent is "a person who has stalked me"; in Subparagraph A of Paragraph 5, added the blank for "Date of abuse" and the blank for "Place of abuse"; in Item (1) of Subparagraph B of Paragraph 6, added the blank for the petitioner's residence location; in Subparagraph A of Paragraph 9, deleted the blank for the respondent's social security number; in the Verification section, added the initial statement that the petitioner, being duly sworn upon oath, deposes and states that the petitioner is the petitioner, deleted language that the petition is true to the best of the petitioner's knowledge and belief, and that the petitioner understands that the petitioner can be punished civilly and criminally if any information in the petition is false, and added the last sentence; in the Use Notes, in Paragraph 4, added the reference to Subparagraph (4) of Paragraph (A) of Section 40-13-3.1 NMSA 1978, changed "the issuance or service of a protection order" to "the filing, issuance or service of a petition for an order of protection", and deleted the sentence which stated that the former statement has been construed to mean that a petitioner or counter-petitioner in a domestic abuse case is not required to pay a docket fee or other filing fees, or fee for service of process.

The 2003 amendment, effective February 16, 2004, substituted "five (5)" for "3" in Paragraph C of item 3 and "40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement " for "40-10-10 NMSA 1978 of the Child Custody Jurisdiction" and "five (5)" for "3" in the second sentence of Use Note 2.

The 2001 amendment, effective May 1, 2001, combined the provisions of the former second paragraph in item 8, "Notice to Respondent," into the first paragraph and, in Use Note 4, substituted "a victim" for "a petitioner" in the first sentence and inserted "or counter-petitioner in a domestic abuse case" in the second sentence.

4-961A. Service of process information for petition for order of protection from domestic abuse and petition for emergency order protection.

[For use with Rules 4-961 and 4-972 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No. _____

_____, Respondent

**SERVICE OF PROCESS INFORMATION FOR
PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE
AND
PETITION FOR EMERGENCY ORDER OF PROTECTION
INFORMATION ABOUT THE RESPONDENT**

Respondent's name

Respondent's date of birth

Is respondent in jail? yes no

If yes, where? _____

Respondent's physical address is:

_____ (street)
_____ (city)
_____ (county)
_____ (state and zip code)

Tribe Pueblo of _____

Respondent's workplace:

_____ (employer's name)
_____ (street)
_____ (city)
_____ (county)
_____ (state and zip code)

Tribe Pueblo of _____

Respondent works the following hours:

_____ (a.m.) (p.m.) to _____ (a.m.) (p.m.)

Respondent's telephone numbers are:

Home

Work

Message

What does respondent look like?

Hair _____ (color) Eyes _____ (color)

Height _____ Weight _____

Race - ethnicity: _____

Other physical characteristics or marks: _____

Do you consider the respondent to be dangerous?

yes no. If yes, why? _____

Does respondent have any weapons? yes no.

If yes, please describe: _____

Places where respondent can be found apart from physical address and workplace: _____

Date

Signature of Petitioner

*(Petitioner's street address
unless petitioner files Form 4-961B)*

*(City, state and zip code
unless petitioner files Form 4-961B)*

USE NOTES

This form should be used with Form 4-961 NMRA (Petition for Order of Protection from Domestic Abuse) and Form 4-972 (Petition for Emergency Order of Protection from Domestic Abuse). It should be distributed to *pro se* petitioners pursuant to Section 40-13-3 NMSA 1978. This use note need not be printed on pre-printed *pro se* forms.

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, deleted the blank for the respondent's social security number and added blanks for the respondent's home, work and message telephone numbers.

4-961B. Request for order to omit petitioner's address and telephone number from petition, to place references to petitioner's address under seal and for an order providing alternative means of service on petitioner.

[Standard simplified request to seal petitioner's address form,
Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978]

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

Petitioner

v.

No. _____

Respondent

**REQUEST FOR ORDER TO OMIT PETITIONER'S ADDRESS
AND TELEPHONE NUMBER FROM PETITION,
TO PLACE REFERENCES TO PETITIONER'S ADDRESS UNDER
SEAL AND FOR AN ORDER PROVIDING
ALTERNATIVE MEANS OF SERVICE ON PETITIONER**

1. I do not want my current address and telephone number to be made known to the respondent for the following reasons: _____

2. My current mailing address and telephone number are:

(address)

(city, state and zip code)

My telephone numbers are:

phone number

work phone

message phone

3. I ask the court not to disclose my current address and telephone number.

4. I ask that if my request is granted, all process and papers be served on me by delivering them to the clerk of the court who shall serve me at my current address.

5. I agree that if either my address or telephone number change during this lawsuit, I will immediately file another form like this one giving my new address or telephone number.

VERIFICATION

I, the petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I have read the above information; that it is true to the best of my knowledge and belief; and that I understand that I can be punished both civilly and criminally if any information in this request is false.

Date

Signature of petitioner

Petitioner's street address

(City, state and zip code)

I have reviewed this request

I recommend that the request be granted.

I recommend that the request be denied.

Signed

Title

Court's telephone number

Request of petitioner is granted. The respondent shall serve all pleadings and other papers required to be served by filing them with the clerk who will note on the pleading or papers the date and manner of service. The clerk shall promptly serve such pleadings and papers on the petitioner, noting in the court file the date and manner of service upon petitioner.

Request of the petitioner is denied. The petitioner shall place petitioner's name, address and phone number in the appropriate places on the petition prior to service of the petition upon the respondent.

District Judge

Date

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]

Committee commentary. — The committee assumes that the district court has inherent power to grant requests of this type under compelling circumstances when petitioner demonstrates a reasonable basis to believe that the petitioner's physical safety or that of a household member would be threatened if petitioner's current address is made available to respondent. The form provides an alternative means by which respondent can serve pleadings and other papers on petitioner.

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, eliminated the requirement that the form be notarized; and in the Verification, deleted the former affirmation of the signatory and the certification and signature line of the notary public.

4-962. Response to petition for order of protection from domestic abuse.

[Standard simplified response to petition form, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978]

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

Petitioner

v.

No. _____

Respondent

RESPONSE TO PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE

Respondent in response to the allegations in the petition for order of protection from domestic abuse states: *(Set forth a response to each paragraph of the petition you do not agree with. Please include the paragraph number of the petition preceding each response.)*

(If you need additional space, please attach additional pages.)

Respondent requests that the court:

(check and complete applicable alternatives)

modify the temporary order of protection as follows:

terminate the temporary order of protection because:

hold an earlier hearing on the petition for protection order because:

hold a later hearing on the petition for protection order because:

dismiss the petition for protection order because:

(Signature of respondent)

(Respondent's name printed)

(Respondent's address)

(Respondent's telephone number)

AFFIDAVIT OF SERVICE OF PARTY

I affirm under penalty of perjury under the laws of the State of New Mexico that a copy of this response was served on the petitioner by:

(check and complete applicable alternative)

first class mail, postage prepaid on this ____ day of _____, _____ at the following address:

(address)

OR

the following means: _____

OR

(*check only if the petitioner's present address is unknown to respondent and not contained on the petition*) service on the clerk of the court by filing two copies of this response with the clerk on this ____ day of _____, _____.

Signature of respondent

Date of signature

SERVICE OF PETITIONER BY CLERK
(to be completed by clerk when
petitioner's address has been sealed
by order of the court)

I served this response on the petitioner by first class mail, postage prepaid on this ____ day of _____, _____.

Clerk

USE NOTES

This Response to Petition gives respondent an opportunity to state defenses against the charges in the petition. This Response to Petition does not contain a counter petition charging the petitioner with an act of domestic abuse. If the respondent only wants to defend against the petitioner's charge of abuse, this form should be used as drafted. If the respondent wants both to defend against the petitioner's charge of domestic abuse and also to charge the petitioner with domestic abuse, the respondent should fill out this form and also fill out Form 4-962A NMRA. Respondent then should attach Form 4-962 and Form 4-962A.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, eliminated the requirement that the form be notarized; and in the Affidavit of Service, at the beginning of the sentence, deleted “declare” and added “affirm”, after “perjury”, added “under the laws of the State of New Mexico”, and deleted the former certification and signature lines of the judge, notary, and other officer authorized to administer oaths.

The 2001 amendment, effective May 1, 2001, substituted "fill out this form and also fill out Form 4-962A NMRA" for "add a section to this form titled "Counter Petition' and should include in it suitably modified relevant provisions from Form 4-961" in the next-to-last sentence in the Use Note and added the last sentence thereto.

4-962A. Counter-petition for order of protection from domestic abuse.

[Family Violence Protection Act,
Sections 40-13-1 to 40-13-8 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No. _____

_____, Respondent

**COUNTER-PETITION FOR ORDER OF PROTECTION
FROM DOMESTIC ABUSE¹**

1. COURT ASSISTANCE REQUEST

We will need an interpreter in _____ to translate at hearings for [
] me the petitioner.

We will need _____ (*describe other request for special help*).

2. INFORMATION ABOUT THE PETITIONER (*the person I am filing against*)

A. The petitioner is:

my husband or my wife

my ex-husband or my ex-wife

the parent of my [child] [children]

a family member _____ (*describe the family relationship*)

a person with whom I have had a continuing personal relationship
_____ (*describe the relationship*)

a person who has sexually assaulted me

a person who has stalked me

B. The petitioner has the following firearms (make/model): _____

(use additional page if needed)

3. INFORMATION ABOUT [CHILD] [CHILDREN]²

A. List minor [child] [children] of either party, even if from another relationship.

Name	Date of Birth	Relationship of [Child] [Children]	
		To You	To Petitioner
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. List address and with whom the [child] [children] are currently living. (*List each child separately if [child] [children] do not reside with same person.*)

C. List each address where [child] [children] have lived during the last five (5) years. (*List each child separately if [child] [children] did not reside with same person.*)

D. Does anyone else have physical custody of the [child] [children] or claim to have custody or visitation rights? [] yes [] no

If yes, complete the following for the [child] [children]:

Child's name

Person claiming rights

E. Describe how often the [child] [children] have been with the other party during the past six (6) months.

4. OTHER CASES

[] The following divorce, separation, order of protection, child support, paternity, abuse or neglect cases have been previously filed by me, the petitioner or the state:

Type of Case

Year Filed
(if known)

Case Number
(if known)

Where Filed
(city and state)

5. DOMESTIC ABUSE

A. The petitioner committed the following act(s) of domestic abuse against me or a member of my household: *(describe in detail what happened to you or to a member of your household and when and where.)*

Physical abuse: _____

Threats which caused fear that you or any household member would be injured:

Other abuse: _____

Date of abuse: _____

Place of abuse: _____.

B. Petitioner is a credible threat to my physical safety because: _____

C. Others present during the abuse: _____.

D. Did drugs or alcohol play a role in the domestic abuse? yes no

E. Were weapons used during the abuse? yes no

If yes, describe the weapons?

F. Has there been prior domestic abuse? yes no

[continuation sheets to be inserted here]

6. REQUESTS TO THE COURT

I REQUEST THAT THE COURT ORDER (*check all that you want*):

A. that the petitioner not contact me, not abuse me, and that the petitioner stay away from my residence [and] [place of employment] [and] [school].

B. (1) that the petitioner shall immediately leave my our residence at

_____.

(2) that the petitioner provide me with temporary suitable alternative housing.

(3) _____ Provide (*address of the place of eviction*).

C. that the petitioner shall not sell, remove, pawn, hide, destroy or damage any property owned by me or the two of us jointly.

D. that law enforcement officers assist me in retrieving my clothing and personal belongings from the residence at _____.

E. that I be given temporary custody of the [child] [children] listed in this petition.

F. that until the court hearing:

petitioner shall have the following contact with the [child] [children]:

_____.

petitioner shall have no contact with the [child] [children]:

_____.

G. that the petitioner shall pay:

support for the [child] [children].

- support for me.
- H. that the petitioner shall pay me for the damage and medical bills resulting from the abuse.
- I. other relief that is necessary to resolve this domestic abuse problem (*list or describe what relief is necessary*)

- J. the petitioner be found to be a credible threat and be required to deliver any firearm in the petitioner's care, custody, or control to a law enforcement officer or a federal firearms licensee.

7. INFORMATION ABOUT THE RESPONDENT (ME)

(If you do not want the petitioner to know your address and phone number, do not include it on this form. Tell the court clerk that you need to complete two other forms (Forms 4-961A and 4-961B NMRA) for your name and address and request that the clerk place your address under seal.)

- A. **I DO NOT WANT PETITIONER TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

- B. My physical address is: _____ in the County
 Indian Country of _____, State of New Mexico.

My mailing address (*if different from above*):

_____ (street address)

_____ (city and zip)

My telephone numbers are:

Home

Work

Message

8. NOTICE TO PETITIONER

- A. I have not told petitioner that I am filing a petition to ask the court for an order of protection because I believe irreparable harm would result if I told petitioner before coming to court. (*Describe what might happen to you or what you are afraid might happen if the petitioner knew you were asking for a court order of protection.*)

- B. I have told petitioner that I am filing this petition.

9. LOCATION OF PETITIONER

- A. Petitioner may be found at:
- _____ (address)
 _____ (city)
 _____ (state and zip code)
 _____ (if in Indian Country, please
 name tribe or pueblo).
- Petitioner's:
- _____ (date of birth)
 _____ (home telephone number)
 _____ (work address)
 _____ (work telephone number).
- B. Is petitioner in jail? [] yes [] no

VERIFICATION

I, the Respondent/Counter-Petitioner affirm under penalty of perjury under the laws of the State of New Mexico that I am the Respondent/Counter-Petitioner in the above-entitled cause; that I have read the counter-petition for order of protection from domestic abuse; and that the contents of the counter-petition are true and correct to the best of my information and belief.

Date

Signature of Respondent

USE NOTES

1. Respondent should complete all information known by the respondent.
2. This part must be completed if there are children. NMSA 1978, Section 40-10A-209 of the Uniform Child Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information as to the child's present address, the places where the child has lived within the last five (5) five years and the names and present addresses of the persons with whom the child has lived during that period. If a child lives with you now, but you do not want petitioner to know your address, do not put your current address here, but do fill out Forms 4-961A and 4-961B NMRA.
3. Use Notes 1 and 2 are to be printed on pre-printed forms published for use by pro se respondents. This note and Use Note 4 should not be printed on the form. This form has been approved by the Supreme Court of New Mexico for use in the courts of this state and distribution pursuant to NMSA 1978, Section 40-13-3. Pre-printed pro se forms should include a lined blank page at the end of the form for use by the respondent if the pre-printed form does not include adequate space for a complete answer to a question.

4. NMSA 1978, Section 40-13-3.1(A)(4) provides that a victim in a domestic abuse case shall not be required to pay for “the filing, issuance or service of a petition for an order of protection.”

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014; as amended by Supreme Court Order No. 19-8300-009, effective for all counter-petitions filed on or after July 1, 2019.]

ANNOTATIONS

The 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, provided clarifying language, required additional information related to physical custody of the children, added a provision where the respondent can note instances of domestic abuse and reasons for the need for an order of protection, added a provision requesting that the court make a finding that the petitioner is a credible threat and ordering the petitioner to deliver any firearm in the respondent’s care to a law enforcement officer or a federal firearms licensee, and made technical changes; in Section 2, in Paragraph B, after “following”, deleted “weapons” and added “firearms (make/model)”; in Section 3, in Paragraph A, after “either party”, added “even if from another relationship”, and added new Paragraph E; in Section 5, added new Paragraph B and redesignated the succeeding paragraphs accordingly; and in Section 6, added new Paragraph J.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, eliminated the requirement that the form be notarized; in the Verification, deleted the former affirmation of the signatory and the certification and signature line of the notary public; and in the Use Note, in Paragraph 2, in the first sentence, after “give information”, deleted “under oath”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Subparagraph A of Paragraph 2, added that the petitioner is "a person who has sexually assaulted me" and that the petitioner is "a person who has stalked me"; in Subparagraph A of Paragraph 5, added the blanks for "Date of abuse" and for "Place of abuse"; in Item (1) of Subparagraph B of Paragraph 6, added the blank for the location of the respondent’s residence; added Item (3) of Subparagraph B of Paragraph 6; in Subparagraph A of Paragraph 9, deleted the blank for the petitioner’s social security number; in the Verification section, added the initial statement that the respondent, being duly sworn upon oath, deposes and states that the respondent is the respondent, deleted language that the counter-petition is true to the best of the respondent’s knowledge and belief and that the respondent understands that the respondent can be punished civilly and criminally if any information in the counter-petition is false, and added the last sentence; in the Use Notes, in Paragraph 4, added the reference to Subparagraph (4) of Paragraph (A) of Section 40-13-3.1 NMSA 1978,

changed "the issuance or service of a protection order" to "the filing, issuance or service of a petition for an order of protection", and deleted the sentence which stated that the former statement has been construed to mean that a petitioner or counter-petitioner in a domestic abuse case is not required to pay a docket fee or other filing fees, or fee for service of process.

The 2003 amendment, effective February 16, 2004, substituted "(5) five" for "3" in Paragraph C of item 3 and "40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement " for "40-10-10 NMSA 1978 of the Child Custody Jurisdiction" and "(5) five" for "3" in the second sentence of Use Note 2.

4-963. Temporary order of protection and order to appear.

[Family Violence Protection Act, NMSA 1978, Sections 40-13-1 to 40-13-8.]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner

v.

No. _____

_____, Respondent

TEMPORARY ORDER OF PROTECTION AND ORDER TO APPEAR

The court has reviewed the sworn petition alleging domestic abuse. The court having considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court **ORDERS:**

- 1. The respondent shall not write to, talk to, visit, or contact the petitioner in any way except through the petitioner's lawyer, if the petitioner has a lawyer.
- 2. The respondent shall not abuse the petitioner or the petitioner's household members in any way. "Abuse" means any incident by the respondent against the petitioner or the petitioner's household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.
- 3. The respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.

4. The respondent shall not go within _____ yards of the petitioner's home or school or work place. The respondent shall not go within _____ yards of the petitioner at all times except _____. If at a public place, such as a store, the respondent shall not go within _____ yards of the petitioner.
5. The respondent shall not post or cause another to post anything about the petitioner on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the petitioner's family members, significant other, and children.
6. _____ (*first and last name of party*) shall have temporary physical custody of the following child(ren):
- | Child's Name | Date of Birth |
|--------------|---------------|
| _____ | _____ |
| _____ | _____ |
7. With respect to the child(ren) named in the preceding paragraph, _____ (*first and last name of party*) shall have:
- A. No contact with the child(ren) until further order of this court and shall stay _____ yards away from the child(ren)'s school.
 - B. Contact with the child(ren), subject to: _____.
8. Neither party shall remove the child(ren) named in paragraph 6 from the state of New Mexico or disenroll the child(ren) from the child(ren)'s present school during the period of this temporary order of protection.
9. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work-related day-care costs, and proof of medical insurance costs for the child(ren).
- 10.
- A. The respondent is ordered to immediately leave the residence at _____ and to not return until further court order.
 - B. Law enforcement officers are hereby ordered to evict the respondent from the residence at _____.
 - C. The respondent is ordered to surrender all keys to the residence to law enforcement officers.
11. Law enforcement officers or _____ shall accompany the respondent the petitioner to remove essential tools (*as specified in No. 14*), clothing, and personal belongings from the residence at _____.
12. Neither party shall transfer, hide, add debt to, sell, or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all changes to

property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

13. This order supersedes any inconsistent prior order in Cause No. _____ and any other prior domestic relations order and domestic violence restraining orders between these two parties.
14. Other: _____
15. While this order of protection is in effect, the petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6(D), only the restrained party can be arrested for violation of this order.

HEARING

IT IS FURTHER ORDERED that the parties shall appear in the _____ Judicial District Court, Room _____, at _____, before _____, at _____ (a.m.) (p.m.) on _____ (date) for hearing on whether an extended order of protection against domestic abuse will be issued. Either party may bring witnesses or evidence and may be represented by counsel at this hearing. The respondent may file a Response to the Petition for Order of Protection from Domestic Abuse, see Form 4-962 NMRA, on or before the hearing. If the respondent fails to attend this hearing, an extended order may be entered by default against the respondent and a bench warrant may be issued for the respondent's arrest. If the petitioner willfully fails to appear at this hearing, the petition may be dismissed. This order remains in force until _____, _____.

If an order of protection is entered, the restrained party is prohibited from receiving, transporting, or possessing a firearm or destructive device while the order of protection is in place. If at the hearing the court finds that the restrained party presents a credible threat to the physical safety of the protected party, the court shall order the restrained party (a) to immediately deliver any firearm in the restrained party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and (b) to refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess any firearm while the order of protection is in effect.

DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.

ENFORCEMENT OF ORDER

If the restrained party violates any part of this order, the restrained party may be charged with a crime, arrested, held in contempt of court, fined or jailed.

SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the respondent a copy of this order and a copy of the petition.

A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

[] I have reviewed the petition for order of protection and made recommendations to the district judge regarding its disposition.

(Signed)

Court telephone number

(Title)

SO ORDERED:

District Judge

Date and time approved

USE NOTES

1. The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form, which will be used for this purpose.

2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the respondent of the content of the temporary order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, 7 N.M. 580, 37 P. 1108.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-010, effective December 31, 2020, added an additional provision in the temporary order of protection form prohibiting a respondent from posting or causing another to post anything on social media about the petitioner, the petitioner's family members or the petitioner's significant other, revised the Use Notes, and made certain technical amendments; added a new Paragraph 5 and redesignated former Paragraphs 5 through 14 as Paragraphs 6

through 15, respectively; in Paragraph 7, after “first and last name of”, deleted “parent” and added “party”; in Paragraph 8, after “named in”, deleted “the preceding”, and after “paragraph”, added “6”; in Paragraph 11, after “as specified in No.”, deleted “13” and added “14”; and in Use Note 2, added parallel citations to the case *Territory of New Mexico v. Clancy*.

The 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, required additional personal information from the parties, added a provision informing the restrained party of the prohibitions related to the purchase or possession of firearms, and made technical changes; in Paragraph 5, after the first blank line, added “(first and last name of party)”, and after “child(ren)”, added “Child’s Name and “Date of Birth”; in Paragraph 6, after “paragraph,”, deleted “[] respondent [] petitioner” and added “(first and last name of parent)”; in the “Hearing” section, in the first undesignated paragraph, after “This order remains in force until _____”, added the last two sentences of the paragraph; and in the “Enforcement of Order” section, replaced each occurrence of “respondent” with “restrained party”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, in the Findings section, deleted language which provided that the petitioner or a household member of petitioner will suffer immediate and irreparable injury, loss or damage unless the court enters this order; added Paragraph 7; renumbered former Paragraphs 7 through 13 as Paragraphs 8 through 14; in Paragraph 14, added the last sentence; and in the Hearing section, added the reference to Form 4-962 NMRA.

The 2007 amendment, effective September 17, 2007, amended Paragraph 13 to change "shall refrain" to "should refrain" and added the last sentence providing Paragraph 13 does not create a mutual protection order.

The 2001 amendment, effective May 1, 2001, inserted "of petitioner" in the second sentence in the introductory paragraph, substituted "petitioner's household" for "another household" in the second sentence in item 1., substituted "may decide" for "shall decide" near the beginning of item 7., substituted "shall accompany respondent/petitioner" for "shall assist respondent" near the beginning of item 9., and rewrote item 13.

4-963A. Temporary order of protection against petitioner and order to appear.

[Family Violence Protection Act, NMSA 1978, Sections 40-13-1 to 40-13-8.]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner

v.

_____, Respondent

No. _____

**TEMPORARY ORDER OF PROTECTION AGAINST PETITIONER
AND ORDER TO APPEAR**

The court has reviewed the sworn counter-petition alleging domestic abuse. The court having considered the petition, FINDS that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court ORDERS:

1. The petitioner shall not write to, talk to, visit, or contact the respondent in any way except through the respondent's lawyer, if the respondent has a lawyer.

2. The petitioner shall not abuse the respondent or the respondent's household members in any way. "Abuse" means any incident by the petitioner against the respondent or the respondent's household members resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

3. The petitioner shall not ask or cause other persons to abuse the respondent or the respondent's household members.

4. The petitioner shall not go within _____ yards of the respondent's home or school or work place. The petitioner shall not go within _____ yards of the respondent at all times except _____. If at a public place, such as a store, the petitioner shall not go within _____ yards of the respondent.

5. The petitioner shall not post or cause another to post anything about the respondent on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the respondent's family members, significant other, and children.

6. _____ (*first and last name of party*) shall have temporary physical custody of the following child(ren):

Child's Name

Date of Birth

7. With respect to the child(ren) named in the preceding paragraph,
_____ (first and last name of party) shall have:

A. No contact with the child(ren) until further order of this court and shall stay _____ yards away from the child(ren)'s school.

B. Contact with the child(ren), subject to: _____.

8. Neither party shall remove the child(ren) named in paragraph 5 from the state of New Mexico or disenroll them from the child(ren)'s present school during the period of this temporary order of protection.

9. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work-related daycare costs, and proof of medical insurance costs for the child(ren).

10.

A. The petitioner is ordered to immediately leave the residence at _____ and to not return until further court order.

B. Law enforcement officers are hereby ordered to evict the petitioner from the residence at _____.

C. The petitioner is ordered to surrender all keys to the residence to law enforcement officers.

11. Law enforcement officers or _____ shall accompany the respondent the petitioner to remove essential tools (*as specified in No. 14*), clothing, and personal belongings from the residence at _____.

12. Neither party shall transfer, hide, add debt to, sell, or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

13. This order supersedes any inconsistent prior order in Cause No. _____ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

14. Other: _____.

[] 15. While this order of protection is in effect, the respondent should refrain from any act that would cause the petitioner to violate this order. This provision is not intended to and does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6(D), only the restrained party can be arrested for violation of this order.

HEARING

IT IS FURTHER ORDERED that the parties shall appear in the _____
Judicial District Court, Room _____, at _____, before _____,
at _____ (a.m.) (p.m.) on _____ (*date*) for hearing on whether
an extended order of protection against domestic abuse will be issued. Either party may
bring witnesses or evidence and may be represented by counsel at this hearing. The
petitioner may file a Response to the Petition for Order of Protection from Domestic
Abuse, see Form 4-962 NMRA, on or before the hearing. If the petitioner fails to attend
this hearing, an extended order may be entered by default against the petitioner and a
bench warrant may be issued for the petitioner's arrest. If the respondent willfully fails to
appear at this hearing, the counter-petition may be dismissed. This order remains in
force until _____.

If an order of protection is entered, the restrained party is prohibited from receiving, transporting, or possessing a firearm or destructive device while the order of protection is in place. If at the hearing the court finds that the restrained party presents a credible threat to the physical safety of the protected party, the court shall order the restrained party (a) to immediately deliver any firearm in the restrained party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and (b) to refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess any firearm while the order of protection is in effect.

DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.

ENFORCEMENT OF ORDER

If the restrained party violates any part of this order, the restrained party may be charged with a crime, arrested, held in contempt of court, fined or jailed.

SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the petitioner a copy of this order and a copy of the counter-petition.

A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

[] I have reviewed the counter-petition for an order of protection and made recommendations to the district judge regarding its disposition.

(Signed)

Court telephone number

(Title)

SO ORDERED:

District Judge

Date and time approved

USE NOTES

1. The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form, which will be used for this purpose.

2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the petitioner of the content of the temporary order will also suffice to bind the petitioner to comply with the order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, 7 N.M. 580, 37 P. 1108.

[Approved, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-010, effective December 31, 2020, added an additional provision in the temporary order of protection against petitioner form prohibiting a petitioner from posting or causing another to post anything on social media about the respondent, the respondent’s family members or the respondent’s significant other, revised the Use Notes, and made certain technical amendments; added a new Paragraph 5 and redesignated former Paragraphs 5 through 14 as Paragraphs 6 through 15, respectively; in Paragraph 7, after “first and last name of”, deleted “parent” and added “party”; in Paragraph 8, after “named in”, deleted “the preceding”, and after “paragraph”, added “5”; in Paragraph 11, after “as specified in No.”, deleted “13” and added “14”; and in Use Note 2, added parallel citations to the case *Territory of New Mexico v. Clancy*.

The 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, required additional personal information from the parties, added a provision informing the restrained party of the prohibitions related to the purchase or possession of firearms, and made technical changes; in Paragraph 5, after the first blank line, added "(first and last name of party)", and after "child(ren)", added "Child's Name and "Date of Birth"; in Paragraph 6, after "paragraph," , deleted "[] respondent [] petitioner" and added "(first and last name of parent)"; in the "Hearing" section, in the first undesignated paragraph, after "This order remains in force until _____", added the last two sentences of the paragraph; and in the "Enforcement of Order" section, replaced each occurrence of "petitioner" with "restrained party".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, in the Findings section, deleted language which provided that the respondent or a household member of respondent will suffer immediate and irreparable injury, loss or damage unless the court enters this order; added Paragraph 7; renumbered former Paragraphs 7 through 13 as Paragraphs 8 through 14; in Paragraph 14, added the last sentence; and in the Hearing section, added the reference to Form 4-962 NMRA.

The 2007 amendment, effective September 17, 2007, amended Paragraph 13 to change "shall refrain" to "should refrain" and added the last sentence providing Paragraph 13 does not create a mutual protection order.

4-964. Order to appear.

[Standard simplified order to appear at hearing,
Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

_____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

Petitioner

v.

No. _____

Respondent

ORDER TO APPEAR

You are hereby ordered to appear in the _____ judicial district court, room _____, at _____ (address), before _____, at _____ (a.m.) (p.m.) on _____ (date) for hearing on whether an order of protection against domestic abuse will be issued. You may bring witnesses or evidence and may be represented by counsel at this hearing. You may file a Response

to Petition for Order of Protection from Domestic Abuse (Form 4-962 NMRA) at or before the hearing.

If you fail to attend this hearing, an order of protection may be entered by default against you and a bench warrant may be issued for your arrest.

[] DO NOT BRING ANY CHILDREN TO THE HEARING.

District Judge

USE NOTES

This form is for use when petitioner does not seek a temporary order of protection and also when the petitioner seeks a temporary order of protection, but the court denies the request.

The date for hearing should be set in accordance with the mandate of Section 40-13-4(D) NMSA 1978 which provides that "if an ex parte order is not granted," the court "shall serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition."

The Order to Appear requires a proof of return of service. The Committee has been informed that each local law enforcement agency has its own return of service form which will be used for this purpose.

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001.]

4-965. Order of protection, mutual, non-mutual.

_____ Judicial District _____ County, New Mexico	Order of Protection
Case No. _____	[] Amended Order

PROTECTED PARTY ([] PETITIONER [] RESPONDENT)			PROTECTED PARTY IDENTIFIERS				
[]			[]				
First	Middle	Last	Date of Birth of Protected Party				
And/or on behalf of minor family member(s): (list name and DOB)			Other Protected Persons/DOB				
_____			_____				
_____			_____				
V.							
RESTRAINED PARTY			RESTRAINED PARTY IDENTIFIERS				
[]			SEX	RACE	DOB	HT	WT
First	Middle	Last	EYES	HAIR	SOCIAL SECURITY #		
			<i>Not used in New Mexico</i>				

Relationship to Protected Party:

Restrained Party's Address

DRIVERS LICENSE #	STATE	EXP DATE

Distinguishing Features _____

CAUTION:

- Weapon Involved
- Credible Threat. Firearm Delivery Ordered.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

THE COURT HEREBY ORDERS:

That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.

That the above named Restrained Party be restrained from any contact with the Protected Party.

Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until [] , [] .

WARNINGS TO THE RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it is unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8) and NMSA 1978, Section 30-7-16, and may be unlawful under 18 U.S.C. Section 921(a)(32). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of _____

Judge's signature on last page

[Family Violence Protection Act, NMSA 1978, Sections 40-13-1 to 40-13-8.]

**ADDITIONAL PAGES¹ OF
ORDER OF PROTECTION**

THIS MATTER came before the court on the _____ day of _____, _____ through a hearing on the the petitioner's the respondent's request for an order prohibiting domestic abuse.

The court further **FINDS, CONCLUDES AND ORDERS:**

(check only applicable paragraphs)

1. FINDING OF CREDIBLE THREAT

The restrained party presents a credible threat to the physical safety of the protected party or a member of the protected party's household. The court's order regarding relinquishment of firearms is addressed in paragraph five (5) of this order of protection.

The restrained party presents a credible threat to the physical safety of the protected party, who is a household member.

The restrained party shall, within forty-eight (48) hours, deliver any firearm in the restrained party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and shall refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess, any firearm while the order of protection is in place.

The restrained party is responsible for ensuring that the firearm delivery receipt is filed in this case within seventy-two (72) hours of entry of this order.

2. NOTICE, APPEARANCES AND STATUS

The petitioner was present.

The petitioner was represented by counsel.

The respondent was present.

The respondent was represented by counsel.

The respondent was properly served with a copy of the petition, temporary order of protection prohibiting domestic abuse and order to appear.²

The respondent was properly served with a copy of the petition and order to appear.²

The respondent received actual notice of the hearing and had an opportunity to participate in the hearing.²

The petitioner was properly served with a copy of the counter-petition and order to appear.²

The petitioner was properly served with a copy of the temporary order of protection prohibiting domestic abuse and order to appear.

The petitioner received actual notice of the hearing and had an opportunity to participate in the hearing.²

The relationship of the parties is that of an "intimate partner" as defined in 18 U.S.C. Section 921 (a)(32). (See 3 below.)³

3. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION

Violation of this order by the restrained party can have serious consequences, including:

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up to one thousand dollars (\$1,000.00), or both. You may be found in contempt of court.

B. If you receive, transport, or possess a firearm or destructive device while the order of protection is in effect, you may be charged with a misdemeanor, which is punishable by imprisonment for up to three hundred and sixty-four (364) days and a fine of up to one thousand dollars (\$1,000.00).

C. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law also prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred and fifty thousand dollars (\$250,000.00).

D. If you are not a citizen of the United States, violation of this order will have a negative effect on your application for residency or citizenship.

4. FINDING OF DOMESTIC ABUSE

An act of domestic abuse was committed by the respondent the petitioner that necessitates an order of protection. The petitioner The respondent is the protected party under this order.

5. FINDING THAT THE RESTRAINED PARTY PRESENTS A CREDIBLE THREAT TO THE PROTECTED PARTY'S PHYSICAL SAFETY, ORDER

The restrained party presents a credible threat to the physical safety of the protected party, who is a household member.

The restrained party shall deliver any firearm in the restrained party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and shall refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess, any firearm while the order of protection is in effect.

6. DOMESTIC ABUSE PROHIBITED

The restrained party shall not abuse the other party or members of the other party's household. "Abuse" means any incident by one party against the other party or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by the petitioner or the respondent causing imminent fear of bodily injury to the other party or any household member; (5) criminal trespass;

(6) criminal damage to property; (7) repeatedly driving by the protected party's or a household member's residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

The restrained party shall not ask or cause other persons to abuse the other party or any other household members.

7. CONTACT PROHIBITIONS

The restrained party shall stay one hundred (100) yards away from the other party, the other party's home, and any work place at all times, unless at a public place, where the restrained party shall remain twenty-five (25) yards away from the other party except as specifically permitted by this order.

The restrained party shall not telephone, talk to, visit, or contact the other party in any way except as follows: _____
_____.

The parties may contact each other by telephone regarding medical emergencies of minor children;

The restrained party shall not post or cause another to post anything about the protected party on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the protected party's family members, significant other, and children.

Other: _____
_____.

The parties may attend joint counseling sessions at the counselor's discretion.

(Unless the court has sealed the protected party's address, include it below.)

Protected Party

Home address

City, State, Zip Code

Work Address

City, State, Zip Code

Tribe/Pueblo *(if applicable)*

State and Zip Code

8. COUNSELING

The restrained party shall attend counseling at _____, contacting that office within five (5) days. The restrained party shall participate in, attend, and complete counseling as recommended by the named agency.

The protected party shall attend counseling at _____, contacting that office within five (5) days. The protected party shall participate in, attend, and complete counseling as recommended by the named agency.

The restrained party shall report to _____, for a drug [and] alcohol screen by _____, _____ (date) with the results returned to this court.

The protected party shall report to _____, for a drug [and] alcohol screen by _____, _____ (date) with the results returned to this court.

Other counseling requirements: _____

9. CUSTODY

The court's orders regarding the minor child(ren) are addressed in the Custody, Support and Division of Property Attachment of this order of protection.⁴

10. PROVISIONS RELATING TO SUPPORT

The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.⁴

11. PROPERTY, DEBTS, AND PAYMENT OF MONEY

The court's orders regarding property, debts, and payment of money are found in the Custody, Support and Division of Property Attachment of this order of protection.⁴

12. PARTIES SHALL NOT CAUSE VIOLATION

While this order of protection is in effect the protected party should refrain from any act that would cause the restrained party to violate this order. This provision is not intended to and does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6 (D), only the restrained party can be arrested for violation of this order.

13. ADDITIONAL ORDERS

Review hearing. The parties are ordered to appear for a review hearing on the _____ day of _____, _____, at _____ (a.m.) (p.m.).

Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED:⁵ _____
_____.

14. NOTICE TO LAW ENFORCEMENT AGENCIES

ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

_____ (*name*) is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or _____ shall be present during any property exchange.

This order supersedes prior orders in _____ County, State of _____, Cause No. _____ to the extent that there are contradictory provisions.

15. NOTICE TO PARTIES

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

To make a request to extend this order, the protected party should return to the court with a copy of this order at least three (3) weeks before this order expires.

16. RECOMMENDATIONS

I have:

reviewed the petition for order of protection;

reviewed the counter-petition for order of protection;

conducted hearings on the merits of the petition;

after notice and hearing, prepared this order as my recommendation to the district court judge regarding disposition of the request for order of protection. If any party disagrees with the recommendations, that party may, but is not required to, file written objections and a request for hearing on those objections with the district court

within ten (10) days. A copy of those objections and a request for hearing must be served by mail on the other party.

Signed

Title

Court's telephone number: _____

The court has reviewed the recommendations and adopts them. This order remains in effect unless and until it is modified by a district court judge or it expires. If objections are filed the court may conduct a hearing to resolve the objections. (See Rule 1-053.1(H)(1)(a) NMRA.)

SO ORDERED:

District Judge

Date

A copy of this order was hand delivered faxed mailed to the respondent

the respondent's counsel on _____ (date).⁶

A copy of this order was hand delivered faxed mailed to the petitioner

the petitioner's counsel on _____ (date).

Signed

Title

USE NOTES

1. The first page of this order of protection shall be in the uniform format preceding the heading for additional pages of the order.

2. This order may be entered only after a hearing at which the respondent received actual notice and at which the respondent had an opportunity to participate if 18 U.S.C. Section 922 is to apply to this order.

3. The federal definition of "intimate partner" under the Gun Control Act, 18 U.S.C. Section 921(a)(32), is narrower than the state definition of "household member" under the Family Violence Protection Act, NMSA 1978, Section 40-13-2(E). Thus, while the parties subject to this order must be household members as a matter of state law, the

court also must determine whether they are intimate partners and therefore subject to 18 U.S.C. Section 922(g)(8), as described in Paragraph 2, above.

4. See Form 4-967 NMRA for the Custody, Support and Division of Property Order attachment.

5. If appropriate, an order providing for restitution may be included in this paragraph.

6. The respondent or the petitioner should be served at the time this order is issued, before leaving the courthouse. If a default order is issued, service on the non-attending party shall be made by mail or by personal service. See NMSA 1978, Section 40-13-6(A).

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended by Supreme Court Order No. 19-8300-015, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

Committee commentary. — The Family Violence Protection Act provides that “a peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order” of protection entered pursuant to the Act. NMSA 1978, Section 40-13-6(C).

This statute would allow a warrantless misdemeanor arrest for conduct occurring outside the presence of the officer and would not require exigent circumstances in addition to probable cause. That a misdemeanor must occur in the presence of the arresting officer is a long-standing common law requirement for a warrantless misdemeanor arrest. *E.g.*, *State v. Luna*, 1980-NMSC-009, ¶ 11, 93 N.M. 773, 606 P.2d 183, 187. The “exigent circumstances” requirement is mandated by the New Mexico Constitution. *Campos v. State*, 1994-NMSC-012, ¶ 1, 117 N.M. 155, 870 P.2d 117, 121 (“For a warrantless arrest to be reasonable it must be based upon both probable cause and sufficient exigent circumstances.”). Absent the exigent circumstance that the misdemeanor is committed in the presence of the officer, *id.* (“If an officer observes the person arrested committing a felony, exigency will be presumed.”), the New Mexico Constitution appears to bar blanket authority to make warrantless arrests for misdemeanors committed outside the presence of the officer.

The Legislature, of course, lacks power to provide by statute for an arrest procedure that violates the New Mexico Constitution. *Campos*, 1994-NMSC-012, ¶ 7. To avoid having the Supreme Court give approval to a form containing language of questionable constitutional validity, the committee did not use the statutory language in the portion of

the final order describing the power of a law enforcement officer to make a warrantless arrest for the misdemeanor crime (NMSA 1978, Section 40-13-6(D)), of violating the final order of protection. The committee substituted more general language, which does not prejudge the constitutional issue.

The general provisions of the order of protection, including injunctive orders, “shall continue until modified or rescinded . . . or until the court approves a subsequent consent agreement. . . .” NMSA 1978, Section 40-13-6(B). In contrast, “[a]n order of protection . . . involving custody or support shall be effective for a fixed period of time not to exceed six months.” *Id.* The custody or support “order may be extended for good cause upon motion . . . for an additional period of time not to exceed six months,” *id.*, unless “the order supersedes or alters prior orders of the court” pertaining to child custody or child support. See NMSA 1978, Section 40-13-5(C). In the latter situation, “the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.” *Id.*

[As amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-010, effective December 31, 2020, added an additional provision in the order of protection form prohibiting the restrained party from posting or causing another to post anything on social media about the protected party, the protected party’s family members or the protected party’s significant other, made certain technical amendments, revised the Use Notes, and revised the committee commentary; in Section 7, after “The parties may contact each other by telephone regarding medical emergencies of minor children”, added “The restrained party shall not post or cause another to post anything about the protected party on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the protected party’s family members, significant other, and children.”; in Section 9, changed Use Note designation “3” to “4”; in Use Note 3, after “Paragraph”, deleted “2(B)” and added “2”; and in the committee commentary, added vendor neutral citations for the cases cited.

The second 2019 amendment, approved by Supreme Court Order No. 19-8300-015, effective for all cases pending or filed on or after December 31, 2019, changed the potential punishment for violating the order of protection by receiving, transporting, or possessing a firearm or destructive device while the order of protection is in effect; and in Section 3, Paragraph B, after "punishable by imprisonment for up to", deleted "three (3) years" and added "three-hundred and sixty-four (364) days and a fine of up to one-thousand dollars (\$1,000.00)".

The first 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, revised the warnings to the restrained party, added optional findings regarding the credible threat of the restrained party, added a provision informing the restrained party of the prohibitions related to the possession of firearms, made technical and clarifying changes, and revised the Use Note; in the “Warnings To Restrained Party” section, after “18 U.S.C. Section 922(g)(8)”, added “and NMSA 1978, Section 30-7-16, and may be unlawful under 18 U.S.C. Section 921(a)(32)”; added new Paragraph 1 and redesignated former Paragraphs 1 through 3 as Paragraphs 2 through 4, respectively; in Paragraph 2, after “See” deleted “2(B)” and added “3(B)”; in Paragraph 3, deleted “[] respondent [] petitioner” and added “restrained party”, and added new Subparagraph B and redesignated the succeeding subparagraphs accordingly; added new Paragraph 5 and redesignated former Paragraphs 4 through 14 as Paragraphs 6 through 16, respectively; in Paragraphs 6 and 7, replaced each occurrence of “[] Respondent [] Petitioner” with “The restrained party”; and in Paragraph 6 after “repeatedly driving by”, deleted “petitioner’s or respondent’s” and added “the protected party’s”; in Paragraph 7, after “shall stay”, added “100”, and rewrote the provision related to the protected party’s address; in Paragraph 8, replaced each occurrence of “Respondent” with “Restrained party”, and replaced each occurrence of “Petitioner” with “Protected party”; and in the Use Note, added new Use Note 3 and redesignated the succeeding Use Notes accordingly.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, changed the title from "Order of Protection [] Mutual [] Non-Mutual" to "Additional Pages of Order of Protection"; deleted the former introductory paragraph which provided that the order was an order of protection under 18 U.S.C. §922, 18 U.S.C. §2265 and Section 40-13-6(D) NMSA 1978 and that the order shall be accorded full faith and credit and be enforced as if it were an order of the other state or Tribe; in the Findings section, deleted the provision that the court has legal jurisdiction over the parties and the subject matter; in Paragraph 1 added "And Status" to the title; in Paragraph 1, added the last item; in Subparagraph A of Paragraph 2, added "or both" at the end of the first sentence; in Subparagraph B of Paragraph 2, changed "spouse of the other party" to "spouse or former spouse of the other party", changed "lives" and "lived" to "cohabitates" and "cohabitated"; in Subparagraph C of Paragraph 2, changed "entry" to "violation"; in Paragraph 3, added the last sentence; in Paragraph 5, in the bold, italicized paragraph, changed "petitioner’s or respondent’s" to "the protected party’s" and changed "address of residence and employment for the appropriate party or parties" to "it below"; changed "Respondent’s addresses" to "Protected party’s addresses", deleted the blanks for the Petitioner’s addresses; in Paragraph 10, changed "petitioner" to "protected party" and "respondent" to "restrained party" and added the last sentence; in Paragraph 11, added the last sentence of the first paragraph; deleted former Paragraph 12 which provided for the effective date, extension and modification of the order; renumbered former Paragraphs 13 through 15 as Paragraphs 12 through 14; in Paragraph 13, added the last sentence; in Paragraph 14, added the last sentence of the last check item and added the last paragraph; in the Use Notes, in Paragraph 1, deleted the note which provided that the notes shall not be included in the order and added the current note; deleted former Paragraph 2 which provided that mutual orders

of protection are binding on the petitioner and the respondent and are entitled to full faith and credit when certain procedural requirements are met and pursuant to 18 U.S.C. §2265(c) and Section 40-13-6(D) NMSA 1978; deleted former Paragraph 3 which provided that a mutual order may be entered only after a counter-petition has been filed and a hearing has been held; and renumbered former Paragraphs 5 through 7 as Paragraphs 3 through 5.

The 2007 amendment, effective September 17, 2007, amended Paragraph 10 to change "shall refrain" to "should refrain"; added the last sentence providing Paragraph 13 does not create a mutual protection order; deleted Use Note 6 providing that a violation of the order may result in a finding of contempt of court; and renumbered the following paragraphs of the Use Notes.

The 2001 amendment, effective May 1, 2001, substituted "Mutual/Non Mutual" for "Against Respondent" in the title of the order and rewrote the order to reflect the fact that the order addresses the actions of both parties in the protection order.

Order of protection did not violate respondent's due process rights. — Where respondent was found in criminal contempt for her violation of an order of protection, which expressly prohibited respondent from engaging in conduct that would cause petitioner to suffer severe emotional distress, and where respondent repeatedly posted on the internet photos of petitioner snorting prescription drugs, implying that petitioner had a substance abuse problem, accompanied by statements claiming that petitioner was a "junkie," a drug-addled imbecile," and a "drug-addicted hypocrite," respondent's due process rights were not violated, because the order provided respondent with sufficient notice that her online activity would constitute a violation. *Best v. Marino*, 2017-NMCA-073, cert. denied.

Order of protection's restriction of respondent's ability to access the Internet was unconstitutionally overbroad. — Where the district court issued an order of protection based on respondent's sustained pattern of stalking and harassment of petitioner, the court's restriction of respondent's ability to access the internet was a clear prior restraint on respondent's first amendment rights and was not the least restrictive means by which to address the harm in this case, and therefore the district court's restriction was unconstitutionally overbroad and violated respondent's first amendment rights. *Best v. Marino*, 2017-NMCA-073, cert. denied.

4-966. Withdrawn.

ANNOTATIONS

Withdrawals.— Pursuant to a court order dated April 9, 2002, Form 4-966 NMRA, an order of protection against the petitioner in a domestic abuse proceeding, was withdrawn, effective April 9, 2002. For provisions of former form, see the 2001 NMRA on *NMOneSource.com*.

4-966A. Withdrawn.

ANNOTATIONS

Withdrawals.— Pursuant to a court order dated February 27, 2001, Form 4-966A, pertaining to mutual order of protection, was withdrawn, effective May 1, 2001. For provisions of former form, see the 2000 NMRA on *NMOneSource.com*. For comparable provisions, see Form 4-965 NMRA.

4-967. Custody, support and division of property order attachment.

**CUSTODY, SUPPORT AND
DIVISION OF PROPERTY ORDER ATTACHMENT 1**

1. CUSTODY

- A. Petitioner Respondent shall have temporary legal custody of the following child(ren): _____
_____.
- B. Petitioner Respondent shall have physical custody of the above child(ren) at all times, except that respondent petitioner shall have contact as follows:
 - No contact, and stay _____ yards from the child(ren)'s school at all times.
 - Contact at the following specified times: _____
_____.
 - The child(ren) shall be exchanged for visitation at _____ on _____.
 - Referred to _____ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.
- C. Custody, visitation and child support will be continued in accordance with the court order in _____ County, State of _____, Cause No. _____.
- D. Other _____
_____.
- E. Petitioner Respondent shall not hide the child(ren) from the other parent or permanently remove the child(ren) from the State of New Mexico. Neither parent should speak negatively about the absent parent in front of the child(ren) or question the child(ren) about the other parent.
- F. Each parent shall immediately notify the other parent about any emergency condition of the child(ren).

2. PROVISIONS RELATING TO SUPPORT

- Temporary support shall be paid by respondent petitioner to respondent petitioner in the amount of \$_____ per month payable _____.
- Respondent Petitioner shall provide suitable alternative housing to respondent petitioner and any child(ren) to whom the respondent owes a legal obligation of support. This shall be provided as follows:

- All child support payments shall be made by check or money order made payable to and sent to _____.
- A separate wage withholding order shall be entered and directed to (*employer*) _____, at _____ (address).

3. PROPERTY, DEBTS, PAYMENTS OF MONEY

- Neither party shall transfer, conceal, encumber or otherwise dispose of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life. Each party shall account to the other party for all such transfers, encumbrances and expenditures made by that party after the order is entered.
- This means that you shall not give away, hide, add debt to, sell or pawn the property.
- The parties' property shall be temporarily distributed as follows:

- Petitioner Respondent shall have temporary physical custody of the following physical assets?:

4. ADDITIONAL PROVISIONS REGARDING CUSTODY, SUPPORT AND DIVISION OF PROPERTY

IT IS FURTHER ORDERED³:

5. EFFECT OF ORDER

If there is a pending or completed action relating to child custody or child support at the time this order is filed, the court may modify the order, but the portion of the order dealing with child custody or child support must then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

6. EXPIRATION

The provisions set forth regarding custody, support, and division of property shall expire on the ____ day of _____ at 5:00 p.m., unless explicitly extended by court order. Either party may petition the court to extend the provisions regarding custody, support, and division of property.

USE NOTES

1. This form may be modified as appropriate and attached to an order of protection in any domestic violence proceeding.
2. List personal assets. A separate schedule may be attached to this order.
3. If appropriate, an order providing for restitution may be included in this paragraph.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-026, effective January 7, 2013, provided for the expiration of the order with regard to custody, support, and division of property; and in Paragraph 6, in the first sentence, after "The provisions set forth" deleted "in this attachment shall expire on ____ day of _____ at 5:00 p.m." and added "regarding custody, support, and division of property shall expire on the ____ day of ____ at 5:00 p.m.", and added the last sentence.

The 2001 amendment, effective May 1, 2001, rewrote this form, deleting provisions relating to the counseling of the respondent and the petitioner.

4-968. Application to modify, terminate, or extend the order of protection from domestic abuse.

[Standard simplified domestic abuse form, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No. _____

_____, Respondent

**APPLICATION TO MODIFY, TERMINATE, OR EXTEND
THE ORDER OF PROTECTION FROM DOMESTIC ABUSE**

Petitioner Respondent asks the court:
(check and complete applicable alternatives)

to modify the protection order as follows: _____
_____.

to terminate the protection order because: _____
_____.

to extend the protection order for an additional _____ (days) (months)
because: _____
_____.

The other party:

objects to the extension, modification, or termination of the protection order.

agrees to the extension, modification, or termination of the protection order.

has not told me whether (he) (she) objects or agrees to the extension,
modification, or termination of the protection order.

VERIFICATION

I, the Petitioner Respondent, affirm under oath and penalty of perjury under the laws of the State of New Mexico that I am the Petitioner Respondent in the above-entitled cause; that I have read this application to modify, terminate, or extend the order of protection from domestic abuse; and that the contents of the application are true and correct to the best of my information and belief.

Date

Signature of party filing this application

STATE OF NEW MEXICO)

COUNTY OF _____) ss

TRIBE OR PUEBLO _____)

Signed and sworn before me on this ____ day of _____, _____.

Notary public

My commission expires: _____.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ this application 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 document) to _____ (name of recipient) at _____ (telephone number).

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 _____ (name of recipient) at _____ (electronic mail address of recipient) who agreed to service in this manner. 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 affirm under penalty of perjury under the laws of the State of New Mexico that a copy of this application was served by [mail] [fax] [electronic transmission] as described above on this _____ day of _____, _____.

Signature of person who made service

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 14-8300-023,

effective for all pleadings and papers filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-024, effective November 18, 2015, required the party to sign the application before a notary public; in the "Verification" provision, after "I affirm under", added "oath and", and after "Signature of party filing this application", added the new notarization section of the Verification.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, eliminated the requirement that the form be notarized; in the Verification, deleted the former affirmation of the signatory and the certification and signature line of the notary public; and in the Affidavit of Service, at the beginning of the sentence, deleted "declare" and added "affirm", after "perjury", added "under the laws of the State of New Mexico", and deleted the former certification and signature lines of the judge, notary, and other officer authorized to administer oaths.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-026, effective January 7, 2013, provided that the order may be extended; in the title of the rule, after "terminate or", deleted "renew" and added "extend"; in the title of the form after "terminate or", deleted "renew" and added "extend", in the last paragraph regarding the petitioner, after "to", deleted "renew and"; in each of the three paragraphs regarding the other party, after "to the", deleted "renewal" and added "extension"; and in the verification, in the first sentence, after "terminate or", deleted "renew" and added "extend".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in the Verification section, added the initial statement that the petitioner, being duly sworn upon oath, deposes and states that the petitioner is the petitioner and that the petitioner has read the application to modify, terminate or renew the order; deleted the language that the petition is true to the best of the petitioner's knowledge and belief and that the petitioner understands that the petitioner can be punished civilly and criminally if any information in the petition is false, and added the last sentence; and added the Certificate of Service and the Affidavit of Service.

4-970. Stipulated order of protection.

_____ _____ Judicial District County, New Mexico	Order of Protection
Case No. _____	[] Amended Order

PROTECTED PARTY ([] PETITIONER [] RESPONDENT)

--

PROTECTED PARTY IDENTIFIERS

--

First Middle Last
And/or on behalf of minor family member(s): (list name and
DOB)

Date of Birth of Protected Party

Other Protected Persons/DOB

V.

RESTRAINED PARTY

--

First Middle Last

Relationship to Protected Party:

Restrained Party's Address

RESTRAINED PARTY IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY #		
Not used in New Mexico				
DRIVERS LICENSE #		STATE	EXP DATE	

Distinguishing Features _____

CAUTION:

- Weapon Involved
- Credible Threat. Firearm Delivery Ordered.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

- Additional findings of this order follow on succeeding pages.

THE COURT HEREBY ORDERS:

- That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.
- That the above named Restrained Party be restrained from any contact with the Protected Party.
- Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until _____ , _____ .

WARNINGS TO THE RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it is unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8) and NMSA 1978, Section 30-7-16, and may be unlawful under 18 U.S.C. Section 921(a)(32). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of _____

Judge's signature on last page

ADDITIONAL PAGES¹ OF STIPULATED ORDER OF PROTECTION

The court further **FINDS, CONCLUDES AND ORDERS:**

1. FINDING OF CREDIBLE THREAT

The restrained party presents a credible threat to the physical safety of the protected party or a member of the protected party's household.

The restrained party presents a credible threat to the physical safety of the protected party, who is a household member.

The restrained party shall, within forty-eight (48) hours, deliver any firearm in that party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and shall refrain from purchasing, receiving, or possessing or attempting to purchase, receive, or possess any firearm while the order of protection is in effect.

The restrained party is responsible for ensuring that the firearm delivery receipt is filed in this case within seventy-two (72) hours of entry of this order.

2. NOTICE, APPEARANCES AND STATUS

This order was entered on stipulation of the parties.

The relationship of the parties is that of an "intimate partner" as defined in 18 U.S.C. Section 921(a)(32). (See 3 below.) This order may be entered into a federal firearms database.

The petitioner was present.

The petitioner was represented by counsel.

The respondent was present.

The respondent was represented by counsel.

3. EFFECT OF STIPULATION TO ORDER OF PROTECTION

Violation of this order can have serious consequences, including:

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred and sixty-four (364) days and a fine of up to one thousand dollars (\$1,000.00) or both. You may be found to be in contempt of court.

B. If you receive, transport, or possess a firearm or destructive device while the order of protection is in effect, you may be charged with a misdemeanor, which is punishable by imprisonment for up to three hundred and sixty-four (364) days and a fine of up to one thousand dollars (\$1,000.00).

C. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred and fifty thousand dollars (\$250,000.00). 18 U.S.C. § 922, *et seq.*

D. If you are not a citizen of the United States, violation of this order will have a negative effect on your application for residency or citizenship.

4. DOMESTIC ABUSE PROHIBITED

The restrained party shall not abuse the protected party or members of the protected party's household. "Abuse" means any incident by one party against the other party or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury to the other party or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by the protected party's or a household members' residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

The restrained party shall not ask or cause other persons to abuse the other party or any other household members.

5. CONTACT PROHIBITIONS

The restrained party shall stay one hundred (100) yards away from the protected party and the protected party's home and work place at all times, unless at a public place, where the restrained party shall remain twenty-five (25) yards away from the protected party except as specifically permitted by this order.

The restrained party shall not telephone, talk to, visit, or contact the protected party in any way except as follows:

(check only applicable paragraphs)

The parties may contact each other by telephone regarding medical emergencies of minor children;

_____.

The restrained party shall not post or cause another to post anything about the protected party on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the protected party's family members, significant other, and children.

The parties may attend joint counseling sessions at the counselor's discretion.

(Unless the court has entered an order sealing the protected party's address, include it below.)

Protected party's addresses:

_____ (home address)

_____ (work address)

_____ (city)

_____ (if applicable, tribe or pueblo)

_____ (state and zip code)

6. COUNSELING

The petitioner shall attend counseling at _____, contacting that office within five (5) days. The petitioner shall participate in, attend, and complete counseling as recommended by the named agency.

The respondent shall attend counseling at _____, contacting that office within five (5) days. The respondent shall participate in, attend, and complete counseling as recommended by the named agency.

The petitioner shall report to _____ for a drug [and] alcohol screen by _____, _____ (date) with the results returned to this court.

The respondent shall report to _____ for a drug [and] alcohol screen by _____, _____ (date) with the results returned to this court.

Other counseling requirements: _____.

7. CUSTODY²

The court's orders regarding the minor [child] [children] of the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

8. PROVISIONS RELATING TO SUPPORT²

The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

9. PROPERTY, DEBTS, PAYMENT OF MONEY²

The court's orders regarding property, debts, and payment of money are addressed in the Custody, Support and Division of Property Attachment of this order of protection.

10. ADDITIONAL ORDERS

Review hearing. The parties are ordered to appear for a review hearing on the _____ day of _____, _____, at _____ (a.m.) (p.m.). Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED³:

_____.

11. PROTECTED PARTY SHALL NOT CAUSE VIOLATION

While this order of protection is in effect, the protected party should refrain from any act that would cause the restrained party to violate this order. This provision is not intended to and does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6(D), only the restrained party can be arrested for violation of this order.

12. NOTICE TO LAW ENFORCEMENT AGENCIES

ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

_____ (*name*) is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or _____ shall be present during any property exchange.

This order supersedes prior orders in _____ County, State of _____, Cause No. _____ to the extent that there are contradictory provisions.

13. NOTICE TO PARTIES

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

14. AGREEMENT OF PARTIES

Without admitting that domestic abuse has occurred, the parties stipulate to the entry of this order and affirm that they have read and do understand the effects of this order as stated in Paragraph 3.

Protected party's signature

Restrained party's signature

Protected party's counsel, if any

Restrained party's counsel, if any

Date

Date

15. RECOMMENDATIONS

I have:

reviewed the pleading for order of protection;

prepared this order as my recommendation to the district court judge regarding disposition of requests for order of protection.

Signed

Domestic Violence Commissioner
Court's telephone number: _____

SO ORDERED.

District Judge

DATE

A copy of this order was hand delivered faxed mailed to the restrained party the restrained party's counsel on _____ (date).³

A copy of this order was hand delivered faxed mailed to the protected party the protected party's counsel on _____ (date).

Signed

Title

USE NOTES

1. The first page of this stipulated order of protection form shall be in the uniform format preceding the heading for additional pages of the order.

2. See Form 4-967 NMRA, “Custody, Support and Division of Property Attachment.”

3. If appropriate, an order providing for restitution may be included in this paragraph.

4. The restrained party may be served at the time this order is issued. If the restrained party is not present at the time this order is issued, service on the restrained party shall be made by delivering a copy to the party. See NMSA 1978, Section 40-13-6(A).

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; April 9, 2002; as amended by Supreme Court Order No. 07-8300-020 effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended by Supreme Court Order No. 19-8300-015, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

Committee commentary. — This stipulated order of protection is not the same as an order of protection entered under Form 4-965 NMRA. This order provides fewer protections to the parties than does the Form 4-965 Order of Protection. The decreased protection is the result of the fact that the order is not based upon findings of abuse, but is entered without reference to whether abuse has occurred. Nonetheless, there may be occasions when the parties and the court are satisfied that this stipulated order of protection provides adequate relief to the parties.

The general provisions of the order of protection, including injunctive orders, shall “continue until modified or rescinded . . . or until the court approves a subsequent consent agreement. . . .” NMSA 1978, Section 40-13-6(B). In contrast, “[a]n order of protection . . . involving custody or support shall be effective for a fixed period of time not to exceed six months.” *Id.* The custody or support “order may be extended for good cause upon motion . . . for an additional period of time not to exceed six months,” *id.*, unless “the order supersedes or alters prior orders of the court” pertaining to child custody or child support. See NMSA 1978, § 40-13-5(C). In the latter situation, “the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.” *Id.*

Factual Distinction Between Mutual Order of Protection and Stipulated Order of Protection

The core factual difference between the Form 4-965 NMRA order of protection and this stipulated order of protection is that Form 4-965 NMRA requires the court to make findings that each party has committed an act of domestic abuse. In contrast, this order is entered by the court with no finding of domestic abuse by the respondent, but rather,

is based solely on the stipulation of the parties that, without admitting to acts of abuse, each party is willing to have the restraining order issued against the restrained party.

[Amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended for stylistic compliance by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]

ANNOTATIONS

The 2020 amendment, approved by Supreme Court Order No. 20-8300-010, effective December 31, 2020, added an additional provision in the stipulated order of protection form prohibiting the restrained party from posting or causing another to post anything on social media about the protected party, the protected party's family members or the protected party's significant other, made certain technical amendments, revised the Use Notes, and revised the committee commentary; and in Section 5, added "The restrained party shall not post or cause another to post anything about the protected party on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the protected party's family members, significant other, and children."

The second 2019 amendment, approved by Supreme Court Order No. 19-8300-015, effective for all cases pending or filed on or after December 31, 2019, changed the potential punishment for violating the order of protection by receiving, transporting, or possessing a firearm or destructive device while the order of protection is in effect; and in Section 3, Paragraph B, after "punishable by imprisonment for up to", deleted "three (3) years" and added "three-hundred and sixty-four (364) days and a fine of up to one-thousand dollars (\$1,000.00)".

The first 2019 amendment, approved by Supreme Court Order No. 19-8300-009, effective July 1, 2019, revised the warnings to the restrained party, added optional findings regarding the credible threat of the restrained party, added provisions regarding the appearance and status of the respondent and petitioner, added a provision informing the restrained party of the prohibitions related to the possession of firearms, made technical and clarifying changes, revised the Use Note, and revised the Committee commentary; in the "Warnings To Restrained Party" section, after "18 U.S.C. Section 922(g)(8)", added "and NMSA 1978, Section 30-7-16, and may be unlawful under 18 U.S.C. Section 921(a)(32)"; replaced "respondent" with "restrained party" and "petitioner" with "protected party" or "other party" throughout the form; added new Paragraph 1 and redesignated former Paragraphs 1 through 15 as Paragraphs 2 through 16, respectively; in Paragraph 2, after "See", deleted "2 and added "3", and after "below)", added the remainder of the paragraph; in Paragraph 3, added new Subparagraph B and redesignated the succeeding subparagraphs accordingly, in Subparagraph C, after "(\$250,000).", added "18 U.S.C. § 922, et seq"; in Paragraph 5, after "shall remain", added "25"; in Paragraph 13, in the heading, after "NOTICE TO",

deleted "PETITIONER AND RESPONDENT" and added "PARTIES"; and in the Use Note, replaced each occurrence of "Respondent" with "restrained party".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, added "Additional Pages Of" to the title and deleted the statement that this order is not an order under 18 U.S.C. §922; deleted language which provided that the matter came before the court by agreement of the parties to enter an order; deleted language which stated that the court has legal jurisdiction over the parties and the subject matter; in Paragraph 1, in the title, added "And Status"; in Paragraph 1 in the first sentence, deleted the statement that the order was entered in a proceeding that does not satisfy the requirements of 18 U.S.C. §922.2; in Paragraph 1, added the second sentence; in Subparagraph A of Paragraph 2, added "or both" in the first sentence and added the second sentence; in Subparagraph B of Paragraph 2, deleted language which provided that the parties may be found in contempt and added the current paragraph; in Subparagraph C of Paragraph 2, changed "entry" to "violation"; in Paragraph 4, changed "petitioner's" to "the protected party's" and changed "address of residence and employment for the petitioner" to "it below"; in Paragraph 4, deleted the blanks for the Respondent's addresses and changed "Petitioner's addresses" to "Protected party's addresses"; in Paragraph 9, added the last sentence in the checked item; in Paragraph 10, added the last sentence; deleted former Paragraph 11 which provided for the effective date, extension, and modification of the order; deleted former Paragraph 12 which provided that the order shall not be entered in the federal registry; renumbered former Paragraphs 13 through 16 as Paragraphs 11 through 14; in the Use Notes, in Paragraph 1, deleted language which provided that the form may be used if the parties stipulate to an order against respondent without any findings of abuse and added the current sentence; deleted former Paragraph 2 which provided that the order may be entered only upon a stipulation of the parties without a hearing on abuse, that if a hearing is held on abuse, Form 4-965 should be used and if a hearing is held on other matters, Form 4-967 may be attached to this order; and renumbered former Paragraphs 4 and 5 as Paragraphs 3 and 4.

The 2007 amendment, effective September 17, 2007, amended Paragraph 10 to change "shall refrain" to "should refrain"; added the last sentence providing Paragraph 13 does not create a mutual protection order; deleted Use Note 5 providing that a violation of the order may result in a finding of contempt of court; and renumbered former Use Note 6 as Use Note 5.

The 2002 amendment, effective April 9, 2002, specifically made this form a stipulated order of protection against respondent to compliment the new Form 4-971 which is a stipulated order against petitioner.

The 2001 amendment, effective May 1, 2001, added the option of nonmutuality to the stipulated order and deleted provisions relating to child custody, support, and property, debts, and payments of money, referring instead to the "Custody, Support and Division of Property Attachment of this Order of Protection".

4-971. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 20-8300-010, Form 4-971 NMRA, relating to stipulated order of protection against petitioner, was withdrawn effective December 31, 2020. For provisions of former form, see the 2019 NMRA on *NMOneSource.com*.

4-972. Petition for emergency order of protection from domestic abuse.

[Family Violence Protection Act,
Sections 40-13-1 to 40-13-8 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO ON BEHALF OF:

_____, Petitioner

v.

No. _____

_____, Respondent

**PETITION FOR EMERGENCY ORDER OF PROTECTION
FROM DOMESTIC ABUSE¹**

1. INFORMATION ABOUT THE RESPONDENT

The respondent is:

the husband of wife of petitioner

the ex-husband of ex-wife of petitioner

a family member of petitioner (*describe relationship*)

a person with whom petitioner has had a continuing personal relationship.
(*describe relationship*)

a person who has sexually assaulted me

a person who has stalked me

_____ **Petitioner's initials**

2. CHILD(REN)

List minor child(ren) who may be in immediate danger or in need of an order of temporary custody.

Name	Date of Birth	Relationship of Child	
		To Petitioner	To Respondent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ **Petitioner's initials**

3. DOMESTIC ABUSE

A. The respondent committed the following act(s) of domestic abuse against petitioner or the petitioner's child(ren).

(describe in detail what happened and when and where)

Physical abuse: _____

_____.

Threats which caused fear that _____ or any household member would be injured: _____

_____.

Other abuse: _____

_____.

B. Others present during the abuse: _____

C. Did drugs or alcohol play a role in the domestic abuse? yes no

D. Were weapons used during the abuse? yes no.

If yes, what weapons? _____

E. Has there been prior domestic abuse? [] yes [] no.

_____ **Petitioner's initials**

4. REQUESTS TO THE COURT

THE COURT IS REQUESTED TO ENTER AN EMERGENCY ORDER OF PROTECTION prohibiting respondent from abusing petitioner or any member of petitioner's household as follows:

(check applicable)

[] providing for law enforcement officers to assist [] petitioner [] respondent in retrieving [] petitioner's [] respondent's clothing and personal belongings from the residence at _____.

[] granting petitioner temporary custody of the child(ren) listed in this petition.

[] prohibiting respondent from contact with the child(ren) listed in this petition.

[] other relief that is necessary to resolve this domestic abuse problem (*list or describe what relief is necessary*):

_____ **Petitioner's initials**

5. INFORMATION ABOUT THE PETITIONER (ME)

(If you do not want the respondent to know your address and phone number, do not include it on this form. Tell the court clerk that you need a separate form (Form 4-961B NMRA) for your name and address and request that the clerk place your address under seal.)

[] A. **I DO NOT WANT RESPONDENT TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

[] B. My physical address is: _____ in the [] County [] Indian Country of _____, State of New Mexico.

My mailing address is:

_____ (*street address*)

_____ (*city and zip*)

My telephone numbers are:

Home

Work

Message

Petitioner's initials

6. LOCATION OF RESPONDENT

A. Respondent may be found at:

(address)
(city)
(state and zip code)
(if in Indian Country, please name tribe or pueblo).

Respondent's:

(date of birth)
(home telephone number)
(work address)
(work telephone number).

B. Is respondent in jail? [] yes [] no

Petitioner's initials

OATH OF PETITIONER

I AFFIRM UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEW MEXICO THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF.

Date

Signature of petitioner

OATH OF LAW ENFORCEMENT OFFICER

I affirm under penalty of perjury under the laws of the State of New Mexico 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 if I make a false statement in this petition.

Date

Signature of law enforcement officer

USE NOTES

1. Complete all information known by the officer.

2. NMSA 1978, Section 40-13-3.1(A)(4) provides that the petitioner in a domestic abuse case shall not be required to pay for the “the filing, issuance or service of a petition for an order of protection.”

[Approved, effective November 1, 1999 until July 1, 2001; as amended, effective August 29, 2000; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, provided that the oaths of the petitioner and the law enforcement officer are affirmations made under penalty of perjury under the laws of the State of New Mexico; in the Oath of Petitioner, at the beginning of the sentence, deleted “swear or” and after “perjury”, added “under the laws of the State of New Mexico”; and in the Oath of Law Enforcement Officer, at the beginning of the sentence, deleted “swear or” and after “perjury”, added “under the laws of the State of New Mexico”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Paragraph 1, added "a person who has sexually assaulted me" and "a person who has stalked me"; in Paragraph 6, deleted the blank for the respondent's social security number; in the Oath of Petitioner, deleted the last sentence which stated that the petitioner understands that it is a criminal offense subject to imprisonment if the petitioner makes a false statement in the petition; in the Use Notes, added the reference to Subparagraph (4) of Paragraph A of Section 40-13-3.1 NMSA 1978; deleted the provision that the petitioner shall not be required to pay for the issuance or service of a protection order and the sentence that this has been construed to mean that the petitioner is not required to pay a docket fee or other filing fees, or fee for service of process; and added "the filing, issuance or service of a petition for an order of protection".

The 2000 amendment, effective August 29, 2000, after Item 6, substituted "Oath of Petitioner" for "Verification of Petitioner" and "Oath of Law Enforcement Officer" for "Verification of Law Enforcement Officer" and deleted the notary public's signature and expiration of his commission in both places.

Cross references.— For crime of perjury, see Section 30-25-1 NMSA 1978.

For the need for an emergency order, see Section 40-13-3.2 NMSA 1978 which requires a sworn written statement setting.

4-973. Emergency order of protection against respondent.

[Family Violence Protection Act,
Section 40-13-3.2 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner

v.

No. _____

_____, Respondent

EMERGENCY ORDER OF PROTECTION AGAINST RESPONDENT

The court has reviewed the sworn written statement for an emergency order of protection. The court having considered the statement, **FINDS** that the court has jurisdiction, that there is reasonable cause to believe that an act of domestic abuse has occurred and that petitioner or a household member will suffer immediate and irreparable injury, loss, or damage unless the court enters this order. The court **ORDERS:**

1. **NO CONTACT**

- A. Respondent shall not write to, talk to, visit, or contact the petitioner in any way except through petitioner's lawyer, if petitioner has a lawyer.
- B. Respondent shall not abuse the petitioner or the petitioner's household members in any way. "Abuse" means any incident by respondent against petitioner or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.
- C. Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.
- D. Respondent shall not go within _____ yards of the petitioner's home or school or workplace.

(Unless the court has entered an order sealing petitioner's address, include address of residence and employment for petitioner.)

Petitioner's addresses

(home address)
(work address)
(city)
(if applicable, tribe or pueblo)
(state and zip code)

2. CHILDREN

A. Petitioner shall have temporary physical custody of the following child(ren):

_____.

B. Respondent shall [have] [not have] visitation with the child(ren) during the term of this order.

C. Neither party shall remove the child(ren) from the State of New Mexico or allow anyone else to do so.

3. PROPERTY AND RESIDENCE

- A. Respondent is ordered to immediately leave the residence at _____, and to not return until further court order.
- B. Law enforcement officers are hereby ordered to evict respondent from the residence at _____.
- C. Respondent is ordered to surrender all keys to the residence to law enforcement officers.
- D. Law enforcement officers or _____ shall assist respondent to remove essential tools, clothing, and personal belongings from the residence at _____.
- E. Neither party shall transfer, hide, add debt to, sell, or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all such changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

4. OTHER ORDERS SUPERSEDED

This order supersedes any other domestic relations order and domestic violence restraining orders between these two parties.

5. PETITIONER'S DUTY

While this order of protection is in effect, petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

6. EFFECTIVE AND EXPIRATION DATE OF THIS ORDER

- A. Upon service of this order on respondent, this order becomes effective on respondent.
- B. This order expires seventy-two (72) hours after the time approved by the judge or at 5:00 p.m. on the next business day of the court, whichever time is latest.

7. PETITION FOR ORDER OF PROTECTION OR RESTRAINING ORDER

Petitioner may file a petition for a temporary and permanent order of protection based on the same allegations of domestic abuse.

8. ENFORCEMENT OF ORDER

If the respondent violates any part of this order, the respondent may be charged with a crime, arrested, held in contempt of court, fined, or jailed.

9. SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the respondent a copy of this order and shall carry out the other provisions of this order.

A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

SO ORDERED:

District Judge

Date and time approved

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

RETURN OF SERVICE

I, _____ (*name of law enforcement officer*) affirm under penalty of perjury under the laws of the State of New Mexico that I am a certified law enforcement officer for _____ (*name of agency*) and I personally served the respondent with a signed copy of this emergency order of protection against respondent upon the respondent in _____ County, New Mexico on this _____ day of _____, _____ (*date*) at _____ (a.m.) (p.m.).

Signature of law enforcement officer

Title and agency

USE NOTES

1. This emergency order of protection against respondent requires an affidavit of service. See NMSA 1978, § 40-13-3.2.

2. Personal service of the emergency order of protection will assure that the emergency order is fully enforceable. It is possible that actual notice to the respondent of the content of the emergency order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, ¶ 1, 7 N.M. 580, 37 P. 1108.

3. The person who serves the respondent with a copy of this order should also “immediately provide the petitioner with a signed copy of the order.” See NMSA 1978, § 40-13-3.2(B)(3).

[Approved, effective November 1, 1999 until July 1, 2001; as amended, effective August 29, 2000; approved, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-023, effective December 31, 2014, provided that the return of service of the law enforcement officer is an affirmation made under penalty of perjury under the laws of the State of New Mexico; in the Return of Service, after “(*name of law enforcement officer*)”, deleted “swear or” and after “affirm”, added “under penalty of perjury under the laws of the State of New Mexico”; and in the Use Note, in Paragraph 2, added “1894-NMSC-012 ¶ 1”, deleted “583 (1894)” and added “37 P. 1108”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, in Paragraph 5 of the Order, added the last sentence and in the Use Notes, deleted former Paragraph 4 which provided that although Section 40-13-3.2 NMSA 1978 authorizes law enforcement officers to prepare and sign an emergency order, a judge must sign this order.

The 2007 amendment, effective September 17, 2007, amended Paragraph 5 to change "shall refrain" to "should refrain"; and added the last sentence providing Paragraph 5 does not create a mutual protection order.

4-974. Order of dismissal.

[Family Violence Protection Act, Section 40-13-3.2 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

_____, Petitioner

v.

No. _____

_____, Respondent

ORDER OF DISMISSAL

This matter coming before the court on _____ (*date*) and the court having reviewed the pleadings and being sufficiently advised,

FINDS AND ORDERS:

(check applicable)

The petitioner failed to appear at the hearing and therefore failed to prosecute this case.

The petitioner appeared at the hearing and requested dismissal of this case.

The respondent has not been served despite reasonable attempts.

The allegations in the petition do not allege "domestic abuse" as defined in Section 40-13-2 NMSA 1978.

The allegations in the petition involve child custody and divorce issues which should be addressed in the proper court proceeding.

The allegations in the petition do not involve a "household member" as defined in Section 40-13-2 NMSA 1978.

Other _____.

The petition for order of protection from domestic abuse is denied.

This cause of action is dismissed without prejudice.

This cause of action is dismissed with prejudice.

RECOMMENDATIONS

I have:

reviewed the petition for order of protection;

reviewed the counter-petition for order of protection;

conducted hearings on the merits of the petition;

after notice and hearing, I prepared this order as my recommendation to the district court judge regarding disposition of the request for order of protection. If any party disagrees with the recommendations, that party may, but is not required to, file written objections and a request for hearing on those objections with the district court within ten (10) days. A copy of those objections and a request for hearing must be served by mail on the other party.

Signed

Title

Court's telephone number: _____

The court has reviewed the recommendations and adopts them. This order remains in effect unless and until it is modified by a district court judge or it expires. If objections are filed the court may conduct a hearing to resolve the objections. (See Rule 1-053.1(H)(1)(a) NMRA).

SO ORDERED.

District Judge

Date and time approved

USE NOTES

This form may be modified and used for dismissal of a petition upon motion of the respondent.

[Approved, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-040, effective December 15, 2008, added the Recommendations section.

4-981. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-981 NMRA was recompiled and amended as 4A-501 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-982. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-982 NMRA, relating to summons kinship guardianship proceedings, was withdrawn effective for all pleadings and papers filed on or after December 31, 2016. For provisions of former form, see the 2016 NMRA on *NMOneSource.com*.

4-983. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-983 NMRA was recompiled and amended as 4A-506 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-984. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-984 NMRA was recompiled and amended as 4A-509 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-985. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-985 NMRA was recompiled and amended as 4A-505 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-986. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-986 NMRA, relating to parental consent to appointment of guardian and waiver of service of process, paternity not admitted, was withdrawn effective for all pleadings and papers filed on or after December 31, 2016. For provisions of former form, see the 2016 NMRA on *NMOneSource.com*.

4-987. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-987 NMRA was recompiled and amended as 4A-510 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-988. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-988 NMRA was recompiled and amended as 4A-511 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-989. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-989 NMRA, relating to order appointing kinship guardian by consent, paternity not admitted,

was withdrawn effective for all pleadings and papers filed on or after December 31, 2016. For provisions of former form, see the 2016 NMRA on *NMOneSource.com*.

4-990. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-990 NMRA, relating to order appointing kinship guardian without consent of both respondents, was withdrawn effective for all pleadings and papers filed on or after December 31, 2016. For provisions of former instructions, see the 2016 NMRA on *NMOneSource.com*.

4-991. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-020, former 4-991 NMRA was recompiled and amended as 4A-512 NMRA, effective for all pleadings and papers filed on or after December 31, 2016.

4-992. Guardianship and conservatorship information sheet; petition.

[For use with Rule 1-003.2 NMRA]

GUARDIANSHIP AND CONSERVATORSHIP INFORMATION SHEET (Submit with Petition)

*Type or print responses. To be submitted with a petition
for the appointment of a guardian or conservator
under Chapter 45, Article 5, Parts 3 and 4, NMSA 1978*

THIS SECTION FOR OFFICIAL USE ONLY

NOTE TO COURT CLERK:

DOCKET EVENT CODE _____, CRT: G/C Information Sheet (Petition).

Scan document, but will not become part of the official record.

Case number: _____ Assigned judge: _____

I. Persons entitled to notice and access to court records until the appointment of a guardian or conservator.

1. Full name, address, and date of birth of person to be protected:
2. Full name and address of petitioner:

For each relationship below, indicate whether the petitioner is aware of anyone with such a relationship to the person to be protected. For each relationship marked "Yes," provide the name and mailing address, if known, of the person with such a relationship to the person to be protected. Attach additional sheets if necessary.

3. Attorney representing the petitioner: Yes; No; Unknown
4. Spouse of the person to be protected: Yes; No; Unknown

If no known spouse, an adult with whom the person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the person to be protected similar to the commitment of a spouse and in which the individual and the person to be protected consider themselves to be responsible for each other's well-being: Yes; No; Unknown

5. Adult children of the person to be protected: Yes; No; Unknown

If no known adult children, each parent and adult sibling of the person to be protected: Yes; No; Unknown

If no known parent or adult sibling, at least one adult nearest in kinship to the person to be protected who can be found with reasonable diligence:

Yes; No; Unknown

6. Adult stepchildren of the person to be protected whom the person actively parented during the stepchildren's minor years and with whom the person had an ongoing relationship in the two-year period immediately preceding the filing of the petition:

Yes; No; Unknown

7. A person responsible for the care or custody of the person to be protected:

Yes; No; Unknown

8. Any attorney currently representing the person to be protected:

Yes; No; Unknown

9. Any representative payee appointed by the federal social security administration for the person to be protected: Yes; No; Unknown

10. A guardian or conservator acting for the person to be protected in New Mexico or in another jurisdiction: Yes; No; Unknown

11. A trustee or custodian of a trust or custodianship of which the person to be protected is a beneficiary: Yes; No; Unknown

12. Any fiduciary for the person to be protected appointed by the federal department of veterans affairs: Yes; No; Unknown

13. An agent designated under a power of attorney for health care in which the person to be protected is identified as the principal: Yes; No; Unknown

14. An agent designated under a power of attorney for finances in which the person to be protected is identified as the principal: Yes; No; Unknown

15. A person nominated as guardian or conservator by the person to be protected:
 Yes; No; Unknown

16. A person nominated as guardian by the parent or spouse of the person to be protected in a will or other signed record: Yes; No; Unknown

17. A proposed guardian or conservator: Yes; No; Unknown

18. A person known to have routinely assisted the person to be protected with decision making during the six months immediately preceding the filing of the petition: Yes; No; Unknown

19. If the petition is for a guardianship, any person with whom the petitioner seeks to limit contact with the person to be protected: Yes; No; Unknown

II. Certification/Affirmation.

I [certify] [affirm under penalty of perjury under the laws of the State of New Mexico] that the information contained herein is complete and accurate to the best of my knowledge and belief. I acknowledge that under Sections 45-5-309(C) and/or 45-5-405(C) NMSA 1978, a copy of the petition and notice of a hearing on the petition must be served on the persons identified in this information sheet.

Signature of [Petitioner] [Petitioner's attorney]

Date of signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed or pending but not adjudicated on or after July 1, 2018.]

4-993. Order identifying persons entitled to notice and access to court records.

[For use with Rules 1-140 and 1-141 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of

No. _____

_____,
a Protected Person.

**ORDER IDENTIFYING PERSONS ENTITLED TO NOTICE
AND ACCESS TO COURT RECORDS**

The court, having appointed a guardian and/or conservator in this matter by separate order, **ORDERS** that the following persons are entitled to notice of further proceedings and access to court records under Rule 1-079.1 NMRA and Sections 45-5-309(D) and/or 45-5-405(D) NMSA 1978.

1. Protected person: _____

2. Guardian: _____

Conservator: _____

3. Other person(s) entitled to notice of subsequent proceedings and access to court records:

Name: _____

Relationship to protected person: _____

Mailing address: _____

Name: _____

Relationship to protected person: _____

Mailing address: _____

Name: _____

Relationship to protected person: _____

Mailing address: _____

DISTRICT COURT JUDGE

Copies to:

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-994. Order to secure or waive bond.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of

_____,
a Protected Person.

No. _____

ORDER TO SECURE OR WAIVE BOND

THIS MATTER is before the Court on the petition of, _____, pro se or by and through her/his attorney, _____, to appoint a conservator for _____, the Protected Person in this matter. The Court, having granted the petition by separate order, FINDS:

- 1. The Court has appointed _____ as Conservator.
- 2. The Protected Person's estate has an aggregate capital value, as defined in Section 45-5-411(B) NMSA 1978, of \$ _____.

The Court therefore ORDERS:

The Conservator shall post a surety bond in the amount of \$ _____ in accordance with Section 45-5-411 NMSA 1978. The Conservator may enlist the services of any insurance agent qualified to issue an A-1 surety bond in the State of New Mexico. The Court herewith provides a listing of available bond agents *but the Court makes no recommendation as to specific insurers.*

OR

The Conservator shall comply with the following alternative asset-protection arrangement, which has been approved and accepted by the Court:

OR

The requirement to post a bond is waived because,

A bond or alternative asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship because

OR

A bond is not required because the Conservator is a financial institution that possesses and is exercising general trust powers in New Mexico, as provided in Section 45-5-411(C) NMSA 1978.

IT IS SO ORDERED.

The Honorable _____
DISTRICT COURT JUDGE

Submitted by:

Attorney for Petitioner
Address

Copies to:

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-995. Conservator's notice of bonding.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of

No. _____

_____,
a Protected Person.

CONSERVATOR'S NOTICE OF BONDING

I, _____, as conservator for _____, submit this Notice as proof that I have obtained the Court-ordered bond required under Section 45-5-411 NMSA 1978 and the Order To Secure or Waive Bond.

I have attached a copy of the Statement issued by the Corporate Surety, _____, which acknowledges the issuance of a bond in the amount of \$ _____.

I acknowledge that this bond meets the requirements of Section 45-5-411 NMSA 1978 and must remain in force until further order of the Court.

Date

Conservator's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-995.1. Corporate surety statement.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of

No. _____

_____,
a Protected Person.

CORPORATE SURETY STATEMENT

We, _____,
acting as Corporate Surety in the above referenced matter, under Section 45-5-411 NMSA 1978, hereby submit the following statement to the Court:

By the execution of this Statement, we acknowledge that we are Surety on the bond set by the Court in this matter, and that the bond amount is
\$ _____.

We further state that the bond is in force for the next annual period, and will remain in effect until we are discharged by further order of the Court.

We will notify the Court of any failure to pay premiums, as required by Section 45-5-411 NMSA 1978.

The bond's current expiration date is _____.

This _____ day of _____, 20_____.

SIGNATURE OF SURETY: _____
NAME OF CORPORATE SURETY: _____
ADDRESS: _____

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-996. Guardian's report.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of

No. _____

_____,
a Protected Person.

GUARDIAN'S REPORT

Instructions.

*You must use this form, Form 4-996 NMRA, when you file a **Guardian's Report**. The purpose of this **Guardian's Report** is to give the court information about an adult for whom a guardian has been appointed.*

1. *You must complete and file this **Guardian's Report**, as follows:*
 - a. *Within ninety (90) days of your appointment as guardian by the court;*
 - b. *Every year within thirty (30) days of the anniversary date of your appointment as guardian;*
 - c. *Within thirty (30) days of your resignation, removal, or termination as guardian; and*
 - d. *As otherwise ordered by the court.*
2. *Please type or print clearly using ink.*
3. *Complete all sections of this report that apply, and answer all questions thoroughly.*

4. *Attach additional pages if necessary.*
5. *After completing this report, you must sign it under penalty of perjury.*
6. *Copies of this report must be given to the Protected Person, the Protected Person's conservator if one has been appointed, and any other persons specified by the court.*
7. *Keep a copy of this report for your records.*
8. *If you give financial information in Section (IV)(D) of this report, you must keep a copy of **ALL** of the Protected Person's financial records for seven (7) years and make them available to the court upon request.*

TYPE OF REPORT: 90 day Annual Final

Date of your appointment as guardian: _____

*If this is a **Final Report**, please check the box below that explains why you are filing a **Final Report**, and fill in the requested information. If this is not a Final Report, skip to Section I.*

The Protected Person has died (*attach a copy of the death certificate if available*).

Date and place of death: _____

Name of personal representative, if appointed: _____

Address: _____

The court has appointed a new guardian.

Name of new guardian: _____

Address and phone number of new guardian: _____

The court has issued an order ending the guardianship.

Other (*please explain*): _____

SECTION I – Information about the Protected Person.

A. Protected Person's name: _____

B. Protected Person's age: _____

C. Protected Person's physical address: _____

Mailing address (*if different*): _____

D. Protected Person's telephone number(s) and other contact information:

Home: _____

Cell: _____

Work: _____

Fax: _____

Email: _____

E. Has the Protected Person's residence changed in the last 12 months?

Yes No

If yes, please explain why: _____

F. Will the Protected Person's residence change in the next 12 months?

Yes No Unknown

If yes, please explain why: _____

G. Does the Protected Person live in a facility?

Yes If yes, complete Part A, below (do not complete Part B).

No If no, complete Part B, below (do not complete Part A).

PART A

Complete Part A only if the Protected Person lives in a facility.

H. What type of facility does the Protected Person live in?

Assisted Living Facility

Group Home

Licensed Nursing Facility

Other (*please explain*) _____

I. Name of Facility: _____

Facility contact person's name: _____

Facility's physical address: _____

Facility's contact information:

Telephone: _____ Email: _____

J. How is the facility paid for? _____

K. Do you have any concerns about the quality of care that the Protected Person is receiving in the following areas?

Cleanliness Yes No

Nutrition/Meals Yes No

Personal Care Yes No

Privacy Yes No

Individualized Care Plans Yes No

Safety Yes No

Other: _____ Yes No

If you marked yes to any of the above, please explain: _____

L. Has the Protected Person been restricted from communicating, visiting, or interacting with others? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

M. Have others been restricted from communicating, visiting, or interacting with the Protected Person? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

N. Why was this facility chosen for the Protected Person? _____

O. How does the Protected Person feel about the placement? _____

P. Do you believe the Protected Person could live and function more independently in a different type of setting? Yes No

Please explain your answer: _____

Q. Have you tried to change the Protected Person's residence in the past year?
 Yes No

If yes, what was the outcome? _____

How does the Protected Person feel about the change of residence? _____

END OF PART A – If you filled out Part A, skip to Section II.

PART B

Complete Part B only if the Protected Person does not live in a facility.

H. Describe the Protected Person's living arrangement: _____

I. Does the Protected Person live with you?

a. If yes, do you charge the Protected Person room and board? Yes No

b. If yes, how much per month? _____

J. Who takes care of the Protected Person? _____

Caregiver's physical address: _____

Caregiver's contact information: _____

Telephone: _____ Email: _____

K. Do you have any concerns about the quality of care that the Protected Person is receiving in the following areas?

Cleanliness	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Nutrition/Meals	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Personal Care	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Privacy	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Safety	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other: _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If you marked yes to any of the above, please explain: _____

L. List all people living with the Protected Person and their relationship to the Protected Person:

M. Has anyone moved into or out of the Protected Person's residence during the last 12 months? Yes No

If yes, please explain: _____

N. List any person who lives with the Protected Person and is paid to provide services for the Protected Person. (*attach additional pages if necessary*)

Name: _____

Relationship to Protected Person: _____

Types of Services: _____

Payment: _____ Source of Payment: _____

O. Do you have concerns about anyone who lives with the Protected Person?
 Yes No

If yes, please explain: _____

P. Why was this living arrangement chosen for the Protected Person? _____

Q. How does the Protected Person feel about the living arrangement?

R. Do you believe the Protected Person could live and function more independently in a different type of setting? Yes No

Please explain your answer: _____

S. Have you tried to change the Protected Person's residence in the past year?
 Yes No

If yes, what was the outcome? _____

How does the Protected Person feel about the change of residence? _____

T. Has the Protected Person been restricted from communicating, visiting, or interacting with others? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

- U. Have others been restricted from communicating, visiting, or interacting with the Protected Person? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

END OF PART B – Continue to Section II.

SECTION II - Protected Person's Health.

- A. Please describe the Protected Person's current physical health:

Poor

Fair

Good

Excellent

Please explain: _____

Please describe any changes to the Protected Person's physical health in the last 12 months:

Please describe any medical treatment the Protected Person received in the last 12 months:

B. Please describe the Protected Person's current mental health:

Poor Fair Good Excellent

Please explain: _____

Please describe any changes to the Protected Person's mental health in the last 12 months:

Please describe any mental health treatment the Protected Person received in the last 12 months:

C. Is the Protected Person under a healthcare provider's regular care? Yes
 No

If yes, please identify the Protected Person's healthcare providers:

Primary care provider: _____

Dentist: _____

Mental health professional: _____

Other: _____

D. How does the Protected Person feel about these healthcare providers?

E. Do you attend the Protected Person's medical and/or mental health appointments?

Yes No

If no, why not? _____

SECTION III - Protected Person's Services and Activities.

A. Is the Protected Person receiving support services, including public benefits?

Yes No

If yes, please list: _____

B. Are you in regular contact with the Protected Person's support-service providers?

Yes No

If yes, how often and in what manner? _____

If no, why not? _____

C. Is the Protected Person involved in selecting the Protected Person's services?

Yes No

If no, please explain: _____

D. Is the Protected Person involved in developing the Protected Person's care plan or service plan? Yes No

If no, why not? _____

E. Does the Protected Person participate in social activities, such as family gatherings, local events, worship services, or community groups? Yes No

If yes, please describe: _____

If no, why not? _____

SECTION IV - Protected Person's Financial Status.

A. Does the Protected Person have a conservator? Yes No

If yes, what is the conservator's name and contact information? _____

B. Are you responsible for the Protected Person's money in your role as guardian?

Yes No

If yes, are you keeping the Protected Person's money and your money in separate accounts? Yes No

If you are responsible for the Protected Person's money, you must keep the Protected Person's money in a separate account from yours and that of others.

If you are not doing this, why not? _____

C. Are you responsible for the Protected Person's money in any other capacity or role (e.g., Representative Payee, VA Fiduciary, Power of Attorney, Trustee)?

Yes No

If yes, please describe: _____

If you are not responsible for the Protected Person's money in any other capacity or role, the name, role, and contact information for those who are:

D. If you are responsible for the Protected Person's money, please complete the following summary of financial activity **since your appointment or last report**:

Balance of Protected Person's bank accounts on date of your appointment or last report (savings, checking, CDs, money market, etc.)	\$	
Plus (+) annual money received from any source on behalf of the Protected Person (Social Security, SSI, pension, disability, interest, etc.)	+	
Less (-) annual total fees to care providers	-	
Less (-) annual total monies paid to the Protected Person (personal needs, etc.)	-	
Less (-) annual total fees paid to guardian	-	
Less (-) annual any other expenses (room and board, housing, insurance, maintenance, etc.)	-	
Ending balance of bank accounts	\$	

*If you are responsible for the Protected Person's money, you must keep a copy of **ALL** of the Protected Person's financial records for seven years and make them available to the court upon request.*

E. Is the Protected Person employed? Yes No

If yes, identify the Protected Person's employer, job title, and wages: _____

Does the Protected Person have control of these wages? Yes No

If no, why not? _____

F. Describe efforts to allow the Protected Person to make financial decisions: _____

G. Have there been any significant changes in the Protected Person's ability to manage finances? Yes No

If yes, describe: _____

H. Have there been any significant changes in the Protected Person's financial situation, such as a settlement, inheritance, lottery winnings, reverse mortgage, etc.?

Yes No

If yes, describe: _____

SECTION V – Information about the Guardianship.

A. Describe significant decisions you have made for the Protected Person in the last 12 months (e.g., change in healthcare providers, enrollment in hospice, discontinuation of treatment, surgery, etc.): _____

B. How often and in what way(s) are you in contact with the Protected Person? _____

C. When was the last time you were in contact with the Protected Person? _____

D. Describe any significant problems or unmet needs of the Protected Person not described elsewhere: _____

E. Does the Protected Person believe that the guardianship should be changed or terminated? Yes No

If yes, please explain: _____

Have you informed the Protected Person that the Protected Person may contact the court to request changing or terminating the guardianship? Yes No

If no, why not? _____

F. Do you believe that the guardianship should be changed or terminated?

Yes No

If yes, you have a duty to file a separate written request asking the court to schedule a status conference to review the guardianship.

G. How does the Protected Person feel about the guardianship? _____

H. Is there anything else you would like to tell the court about the guardianship? _____

SECTION VI – Information about the Guardian.

For purposes of this section, “guardian” means an individual or a corporate entity appointed by the court, and includes any individual working for a corporate entity who is responsible for the Protected Person.

- A. Do you serve as guardian for more than two non-family members? Yes No
- B. If yes, are you certified with the Center for Guardianship Certification? Yes No

If yes, please attach a copy of your Certification to this report.

- C. Does the guardian have any significant physical or mental health problems that would interfere with the ability to continue as guardian in the next year? Yes No

If yes, please explain: _____

- D. Does the guardian charge a fee or receive payment for acting as the Protected Person's guardian? Yes No

If yes, how much have has the guardian received since the guardian's last report (or since the guardian's appointment if this is the guardian's first report)?

How is the guardian's fee or payment calculated? _____

Who pays the guardian's fee? _____

E. Since the guardian's last report (or since the guardian's appointment if this is the guardian's first report), has the guardian,

1. Been arrested for, charged with, or convicted of any felony or misdemeanor?

Yes No

If yes, please explain: _____

2. Been investigated by the Children, Youth and Families Department (CYFD), Adult Protective Services (APS), Internal Revenue Service (IRS), or any other governmental agency?

Yes No

If yes, please explain: _____

3. Filed for bankruptcy or received protection from creditors?

Yes No

If yes, please explain: _____

4. Had any professional or occupational license revoked or suspended?

Yes No

If yes, please explain: _____

5. Had the guardian's driver's license suspended or revoked?

Yes No

If yes, please explain: _____

6. Delegated any powers over the Protected Person to another person?

Yes No

If yes, who were power(s) delegated to? _____

What power(s) were delegated? _____

For what period(s) of time? _____

7. Received any special training or certification as a guardian?

Yes No

If yes, please explain: _____

F. Is the guardian a court-appointed guardian or conservator for any other person?

Yes No

If yes, please list the court and case number(s) for each (*attach additional pages if necessary*): _____

AFFIRMATION UNDER PENALTY OF PERJURY

I, _____, am the guardian of
_____, and I affirm under penalty of perjury under the laws of
the State of New Mexico that the information in this report is true and correct.

Date Submitted: _____

Guardian's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

Is this a change in address from your previous
report?

Yes

No

CERTIFICATE OF SERVICE

I certify that on (date) _____ I served a copy to the following individuals:

Protected Person

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

Person(s) designated by court order (name and address):

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

By mail or other delivery service
 By fax (number)

[] By hand delivery
[] By e-mail

Typed/Printed Name

Guardian's Signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018; as amended by Supreme Court Order No. 21-8300-003, effective June 22, 2021.]

ANNOTATIONS

The 2021 amendment, approved by Supreme Court Order No. 21-8300-003, effective June 22, 2021, added additional questions and instructions to the form to provide the court with additional information about an adult for whom a guardian has been appointed and information about the guardian, clarified certain questions in the form, and added an instruction to guardians prohibiting the comingling of a Protected Person's money with that of any other person; in Section I, Part B, added new Paragraph I and redesignated the succeeding paragraphs accordingly; in Section IV, Paragraph B, added the instruction in the box that reads, "If you are not responsible for the Protected Person's money, you must keep the Protected Person's money in a separate account from yours and that of others", and after the second occurrence of "If", deleted "no" and added "you are not doing this", in Paragraph C, added "If you are not responsible for the Protected Person's money in any other capacity or role, the name, role, and contact information for those who are:", and in Paragraph D, in the worksheet for the "summary of financial activity", added "annual" after each occurrence of "(+)" and "(-)"; in Section IV, Paragraph D, after "any other expenses" added "room and board"; and in Section VI, added new Paragraphs A and B, and redesignated the succeeding paragraphs accordingly.

4-997. Conservator's inventory.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of
_____ ,

No. _____

a Protected Person.

CONSERVATOR'S INVENTORY

Please note: Fill out this net asset summary after you have completed this entire inventory. Use the information that you enter in Sections II and III of this inventory.

NET ASSET SUMMARY		Total Amount
A.	Total Assets (SECTION II TOTAL)	\$
B.	Total Debts (SECTION III TOTAL)	– \$
	Net Asset Value (A – B)	\$

Instructions.

You must use this form, Form 4-997 NMRA, when you file a **Conservator's Inventory**. The purpose of a **Conservator's Inventory** is to give the court as complete a picture as possible of the financial situation of the person under conservatorship, also called the Protected Person.

1. This **Conservator's Inventory** is due within ninety (90) days of your appointment as conservator.
2. As conservator you will also be required to complete and file a **Conservator's Report** using Form 4-998 NMRA as follows:
 - a. Every year within thirty (30) days after the anniversary date of your appointment.
 - b. Within sixty (60) days after your resignation, removal, or termination as conservator.
3. Please type or print clearly using ink.
4. Complete all sections of this inventory.
5. Attach additional pages if necessary.
6. After completing this inventory, you must sign it under penalty of perjury.
7. Copies of this inventory must be given to the Protected Person, the Protected Person's guardian if one has been appointed, and any other persons specified by the court.
8. Keep a copy of this inventory for your records.
9. You must keep a copy of **ALL** of the Protected Person's financial records for seven (7) years and make them available to the court upon request.

SECTION I – Information about the Protected Person.

1. Protected Person's name: _____
2. Protected Person's age: _____
3. Protected Person's physical address: _____
Mailing address (if different): _____
4. Protected Person's telephone number(s) and other contact information:

Home: _____ Cell: _____
Work: _____ Fax: _____
Email: _____

5. Has a guardian also been appointed for the Protected Person?

Yes No

If yes, name of guardian _____

Address _____

Phone number of guardian _____

6. What date were you appointed conservator? _____

7. Is the Protected Person the beneficiary of a trust? Yes No

If yes, what is the name of the trust? _____

What is the current value of the trust? _____

Who is the trustee? _____

What is the trustee's contact information? _____

Please note: The information you fill out in Sections II through IV below will show the value of the Protected Person's estate on the date you were appointed.

SECTION II – Assets.

Please provide information about all of the assets of the Protected Person as of the date of your appointment as conservator. Assets are anything of value owned by the Protected Person. Attach additional pages if necessary.

A. Are you holding cash on hand on behalf of the Protected Person?

Yes No Amount \$ _____

If yes, why is cash kept on hand? _____

B. Bank Accounts.

Name of Bank/Institution	Type of Account (Examples: checking, savings, certificates of deposit, etc.)	Value on Date of Appointment
		\$
		\$
		\$
	TOTAL	\$

C. Investment Accounts.

Name of Bank/Institution	Type of Account (Examples: brokerage, investment, money market, stocks, bonds, IRAs, 401(k) plan, etc.)	Value on Date of Appointment
		\$
		\$
		\$
	TOTAL	\$

D. Life Insurance Policies.

Name Of Company	Type of Insurance (Examples: whole, term or universal, etc.)	Cash Value on Date of Appointment
		\$
		\$
	TOTAL	\$

E. Real Estate.

Address of Property (List all land and buildings)	Method for Determining Value (Examples: appraisal, tax	Value

	assessment, market value, etc.)	
		\$
		\$
	TOTAL	\$

F. Vehicles.

Make, Model, and Year (List all cars, boats, ATVs, etc.)	Value
	\$
	\$
	\$
	TOTAL
	\$

G. Other Property Not Listed Above. (*Attach additional pages if necessary.*)

Detailed Description of Item or Collection (Only list items or collections that are worth more than \$500.00)	Method for Determining Value (Examples: appraisal, market value)	Value
		\$
		\$
		\$
	TOTAL	\$

H. Total value of assets listed above. (*The sum of all "Totals" reported in Section II.*)

SECTION II TOTAL \$

Section III – Debts.

A. Real Estate Debts.

Address of Property and Name of Lender	Amount Owed on Date of Appointment
	\$
	\$

	TOTAL	\$
--	--------------	----

B. Other Loans.

Lender/Creditor Name	Purpose of Loan (Examples: automobile loan or personal payday loan, etc.)	Amount Owed on Date of Appointment
		\$
		\$
	TOTAL	\$

C. Credit Cards.

Company Name and Address	Amount Owed on Date of Appointment
	\$
	\$
	TOTAL

D. Judgments/Liens.

Judgment/Lien Description	Amount Owed On Date Of Appointment
	\$
	\$
	TOTAL

E. Other Liabilities/Debts.

Description	Amount Owed On Date Of Appointment
	\$
	\$
	\$
	TOTAL

F. Total amount of debts listed above. (*The sum of all "TOTALS" reported in Section III.*)

SECTION III TOTAL

\$

G. Explain any personal or professional relationship between the conservator and any lender/creditor listed in any section above: _____

H. Explain any personal or professional relationship between the Protected Person and any lender/creditor listed in any section above: _____

SECTION IV – Management of estate.

A. What are the Protected Person's expected sources of income? (e.g., Pension, Social Security, SSI, etc.) _____

B. What are the Protected Person's expected expenses? (e.g., housing, care, household, etc.) _____

C. If expected expenses will exceed expected income, what is your plan to meet the basic needs of the Protected Person? _____

D. Do you anticipate significant one-time income over the next 12 months? (e.g., sale of house or car, back payment of social security, insurance proceeds, etc.)

Yes No

If yes, list and describe each income source and amount separately: _____

If yes, what do you plan on doing with this income? (e.g., pay off debt, invest) ___

- E. Do you anticipate significant one-time expenses over the next 12 months? (e.g., major home or car repair, medical expenses, gifts) Yes No

If yes, list and describe the nature and amount of each expense: _____

If yes, how do you plan on paying for this expense? _____

- F. Are the assets in the estate sufficient to provide for the ongoing care of the Protected Person? Yes No

If no, describe why and what steps should be taken to provide for the Protected Person: _____

AFFIRMATION UNDER PENALTY OF PERJURY

I, _____, am the conservator of _____, and I affirm under penalty of perjury under the laws of the State of New Mexico that the information in this report is true and correct.

Date Submitted: _____

Conservator's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

Is this address different from your address in the order of appointment? Yes
 No

CERTIFICATE OF SERVICE

I certify that on (*date*) _____ I served a copy to the following individuals:

Protected Person

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

Person(s) designated by court order (name and address):

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

By mail or other delivery service
 By fax (number)

By hand delivery
 By e-mail

 By mail or other delivery service
 By fax (number)

 By hand delivery
 By e-mail

Typed/Printed Name

Conservator's Signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-998. Conservator's report.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the matter of
_____,
a Protected Person.

No. _____

CONSERVATOR'S REPORT

Please note: Fill out this financial summary after you have completed this entire report. Use the information that you enter in Sections II through V of this report and the information from the reports that you filed last year and two years ago.

	FINANCIAL SUMMARY	Current	Last Year	Two Years Ago
A.	Net Asset Value of Previous Year's Report (or Beginning Inventory if this is your first report)	\$		
B.	Plus Income (Total from Section II, below)	\$		

C.	Less Expenses (Total from Section III, below)	\$		
D.	Plus additions or (minus) deletions to inventory during the year	\$		
E.	(Minus) additions or plus deletions to debt during the year	\$		
F.	Net Asset Value (A + B – C +/- D +/- E)	\$		
	Assets (Sum Total from Section IV, below)	\$		
	Less Debts (Sum Total from Section V, below)	\$		
	Net Asset Value (Line F)	\$		

Instructions.

If you were appointed conservator within the past ninety (90) days, **do not use this form**. The first report that you must file is a **Conservator's Inventory, Form 4-997 NMRA**. The Conservator's Inventory is due within ninety (90) days of your appointment.

You must use this form, Form 4-998 NMRA, when you file a **Conservator's Report**. The purpose of a **Conservator's Report** is to give the court as complete a picture as possible of the current financial situation for the person under conservatorship, also called the Protected Person.

1. This **Conservator's Report** is due as follows:
 - a. You must complete and file this **Conservator's Report** every year within thirty (30) days of the anniversary date of your appointment as conservator.
 - b. You must complete and file this **Conservator's Report** within sixty (60) days of your resignation, removal, or termination as conservator.
2. Please type or print clearly using ink.
3. Complete all sections of this report.
4. Attach additional pages if necessary.
5. After completing this report, you must sign it under penalty of perjury.
6. Copies of this report must be given to the Protected Person, the Protected Person's guardian if one has been appointed, and any other persons specified by the court.
7. Keep a copy of this report for your records.
8. You must keep a copy of **ALL** of the Protected Person's financial records for seven (7) years and make them available to the court upon request.

REPORTING PERIOD.

This report covers the dates beginning _____ and ending _____.

Is this a Final Report? Yes No

If yes, please check the box that explains why you are filing a Final Report and fill in the requested information.

The Protected Person has died (*attach a copy of the death certificate if available*).

Date and place of death: _____

Name of personal representative, if appointed: _____

Address: _____

The court has appointed a new conservator.

Name of new conservator: _____

Address and phone number of new conservator: _____

The court has issued an order ending the conservatorship.

Other (*please explain*): _____

SECTION I - Information about the Protected Person.

A. Protected Person's name: _____

B. Protected Person's age: _____

C. Protected Person's physical address: _____

Mailing address (if different): _____

D. Protected Person's telephone number(s) and other contact information:

Home: _____ Cell: _____
Work: _____ Fax: _____
Email: _____

E. Has a guardian also been appointed for the Protected Person?

Yes No

If yes, name of guardian: _____

Address: _____

Phone: _____

F. Does the Protected Person have sole control over any money?

Yes No

If yes, explain: _____

G. Has the Protected Person's residence changed in the past 12 months?

Yes No

If yes, explain: _____

H. Describe any significant actions you have taken as conservator regarding the Protected Person's financial condition during the reporting period. _____

I. Describe any significant changes of circumstances for the Protected Person (financial, physical or mental health, living arrangements, etc.). _____

J. Is the Protected Person the beneficiary of a trust? Yes No

If yes, what is the name of the trust? _____

What is the current value of the trust? _____

Who is the trustee? _____

What is the trustee's contact information? _____

K. Are the Protected Person's funds kept in a separate account from the conservator's funds?

Yes No

If no, explain: _____

SECTION II - Income. (Fill in only the boxes that apply to the Protected Person's income; leave the other boxes blank)

Description of each Income Source (Report only the income received by the Protected Person, not your income)	Amount Received this Reporting Period	Amount Received last year	Amount Received two Years ago
Social Security Benefits			
Social Security	\$		
Social Security Disability Insurance (SSDI)	\$		
Supplemental Security Income (SSI)	\$		
Veterans Financial Benefits	\$		
Trust Income	\$		
Wages	\$		

Worker's Compensation Benefits	\$		
Dividends Received	\$		
Interest Income	\$		
Refunds			
Tax Refunds	\$		
Insurance Refunds	\$		
Other Refunds (explain) _____ _____	\$		
Realized Gain/Loss on Sale of Asset	\$		
Rental Income	\$		
Royalty Income (oil, gas, etc.)	\$		
Pension or 401(k) Distributions	\$		
Annuity Income	\$		
Alimony or Child Support	\$		
Inheritance and Gifts Received	\$		
Sale of Personal Property Not Listed on Inventory	\$		
IRA Distributions	\$		
Distribution from Tribal or Pueblo Government	\$		
Life Insurance Proceeds	\$		
Other (reverse mortgage, etc.) _____ _____	\$		
SECTION II TOTAL	\$		

SECTION III - Expenses. (Fill in only the boxes that apply to the Protected Person's expenses; leave the other boxes blank)

Description of each Type of Expense (money paid to anyone on behalf of the Protected Person or on behalf	Expense this Reporting Period	Expense one Year ago	Expense two Years ago

of his/her legal dependents)				
Nursing/Assisted Living Home		\$		
In-Home Care		\$		
Rent Payment		\$		
Mortgage Payment				
	Mortgage Interest	\$		
	Mortgage Escrow	\$		
	Homeowner's Insurance if Not Paid by Escrow Account	\$		
	Property Tax if Not Paid by Escrow Account	\$		
Utilities (Gas, Electric, Water, and Sewer)		\$		
Cable/Satellite Television and/or Internet Service		\$		
Cell and other Phone Service		\$		
Transportation (including gasoline expenses)		\$		
Medical, Dental, and Vision Treatment Costs Not Paid by Insurance (including co-pays and deductibles)		\$		
Medical Supplies and Equipment		\$		
Medications Not Paid by Insurance (including co-pays and deductibles)		\$		
Credit Card Payments		\$		

Food, Groceries, Dining	\$		
Clothing	\$		
Recreation, Entertainment, Memberships	\$		
Travel (Vacation, Family Visits, etc.)	\$		
Household Goods and Electronics	\$		
Personal Grooming	\$		
Personal Spending Allowance	\$		
Pet Care (Food, Veterinary Care, Kennel, etc.)	\$		
Income Tax			
	Total Federal Payments	\$	
	Total State Payments	\$	
Home/Property Maintenance Costs (including housekeeping and yard service)		\$	
Insurance			
	Auto Insurance	\$	
	Medical Insurance	\$	
	Life Insurance	\$	
	Other Insurance (Long Term Care, Etc.)	\$	
Court Approved Gifts		\$	
Other Gifts or Charitable Donations		\$	
Child/Spousal Support		\$	
Legal Fees		\$	
Fees/Costs Paid to Conservator		\$	
Fees/Costs Paid to Guardian		\$	
Accounting Fees		\$	
Court Costs		\$	
Conservator's Bond		\$	
Case Management		\$	

Other Expenses (describe) _____ _____	\$		
SECTION III TOTAL	\$		

SECTION IV – Assets. (Fill in only the boxes that apply to the Protected Person’s assets; leave the other boxes blank)

A. Are you holding cash on hand on behalf of the Protected Person?

Yes No If yes, amount \$ _____

If yes, why is cash kept on hand? _____

B. Bank Accounts.

Name Of Bank/Institution	Type of Account (Examples: checking, savings, certificates of deposit, etc.)	Value on last Day of Reporting Period
		\$
		\$
		\$
	TOTAL	\$

C. Investment Accounts.

Name Of Bank/Institution	Type of Account (Examples: brokerage, investment, money market, stocks, bonds, IRAs, 401(k) plan, etc.)	Value on last Day of Reporting Period
		\$
		\$
		\$
	TOTAL	\$

D. Life Insurance Policies.

Name Of Company	Type Of Insurance (Examples: whole, term or universal, etc.)	Cash Value on last Day of Reporting Period
		\$
		\$
	TOTAL	\$

E. Real Estate.

Address And Type Of Property (Examples: residential, rental, commercial, agricultural, or mineral interests)	Method For Determining Value (Examples: appraisal, tax assessment, market value, etc.)	Current Market Value
		\$
		\$
	TOTAL	\$

F. Vehicles.

Make, Model, and Year (List all cars, boats, ATVs, etc.)	Current Market Value
	\$
	\$
	\$
	TOTAL

G. Other Property Not Listed Above.

Detailed Description Of Item Or Collection (Only list items or collections that are worth more than \$500.00)	Method For Determining Value (Examples: appraisal, market value, etc.)	Current Market Value
		\$
		\$
		\$
		\$

		\$
	TOTAL	\$

H. Total Value Of Assets Listed Above. (*The sum of all "TOTALS" reported in Section IV*)

SECTION IV SUM TOTAL \$

SECTION V – Debts. (Fill in only the boxes that apply to the Protected Person’s debts; leave the other boxes blank)

A. Real Estate Debts.

Address of Property and Name of Lender	Type of Property (examples: residential, rental, commercial, or agricultural)	Amount Owed on last Date of Reporting Period
		\$
		\$
	TOTAL	\$

B. Other Loans.

Lender/Creditor Name	Purpose of Loan (Examples: automobile loan or personal payday loan, etc.)	Amount Owed on last Date of Reporting Period
		\$
		\$
	TOTAL	\$

C. Credit Cards.

Company Name and Address	Amount Owed on last Date of Reporting Period
	\$
	\$

		\$
	TOTAL	\$

D. Judgments/Liens.

Judgment/Lien Description	Amount Owed on last Date of Reporting Period
	\$
	\$
	TOTAL
	\$

E. Other Liabilities/Debts. (*promissory notes, IOUs, personal loans, etc.*)

Description	Amount Owed on last Date of Reporting Period
	\$
	\$
	\$
	TOTAL
	\$

F. Total Amount Owed By Protected Person. (*The sum of all "TOTALS" reported in Section V.*)

SECTION V SUM TOTAL \$

G. Explain any personal or professional relationship between the conservator and any lender/creditor listed in any section above: _____

H. Explain any personal or professional relationship between the Protected Person and any lender/creditor listed in any section above: _____

SECTION VI - Information about the Conservator.

For purposes of this section, "conservator" means an individual or a corporate entity appointed by the court, and includes any individual working for a corporate entity who is responsible for the Protected Person.

A. Does the conservator have any significant physical or mental health problems that would interfere with the ability to continue as conservator in the next year?

Yes No

If yes, please explain: _____

B. Does the conservator charge a fee or receive payment for acting as the Protected Person's conservator?

Yes No

If yes, how much has the conservator received since the conservator's last report? _____

How is the conservator's fee or payment calculated? _____

C. Since the conservator's last report (or since the conservator's appointment if this is the conservator's first report), has the conservator,

1. Been arrested for, charged with, or convicted of any felony or misdemeanor?

Yes No

If yes, please explain: _____

2. Been investigated by the Children, Youth and Families Department (CYFD), Adult Protective Services (APS), Internal Revenue Service (IRS), or any other governmental agency?

Yes No

If yes, please explain: _____

3. Filed for bankruptcy or received protection from creditors?

Yes No

If yes, please explain: _____

4. Had any professional or occupational license revoked or suspended?

Yes No

If yes, please explain: _____

5. Had the conservator's driver's license suspended or revoked?

Yes No

If yes, please explain: _____

6. Delegated any powers over the Protected Person to another person?

Yes No

If yes, who were power(s) delegate to? _____

What power(s) were delegated? _____

For what period(s) of time? _____

7. Received any special training or certification as a conservator?

Yes No

If yes, please explain: _____

D. Is the conservator a court-appointed guardian or conservator for any other person?

Yes No

If yes, please list the court and case number(s) for each (*attach additional pages if necessary*):

E. If the conservator is required to have a conservator's bond, is the bond still in place?

Yes No

If no, please explain: _____

AFFIRMATION UNDER PENALTY OF PERJURY

I, _____, am the conservator of _____, and I affirm under penalty of perjury under the laws of the State of New Mexico that the information in this report is true and correct.

Date Submitted:

Conservator's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

Is this a change in address from your previous report? Yes No

CERTIFICATE OF SERVICE

I certify that on (*date*) _____ I served a copy to the following individuals:

<input type="checkbox"/> Protected Person _____ _____ _____	<input type="checkbox"/> By mail or other delivery service <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By hand delivery <input type="checkbox"/> By e-mail
<input type="checkbox"/> Person(s) designated by court order (<i>name and address</i>): _____ _____ _____	<input type="checkbox"/> By mail or other delivery service <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By hand delivery <input type="checkbox"/> By e-mail
_____ _____ _____	<input type="checkbox"/> By mail or other delivery service <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By hand delivery <input type="checkbox"/> By e-mail
_____ _____ _____	<input type="checkbox"/> By mail or other delivery service <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By hand delivery <input type="checkbox"/> By e-mail
_____	<input type="checkbox"/> By mail or other delivery service

_____	<input type="checkbox"/> By fax (number) _____
_____	<input type="checkbox"/> By hand delivery
_____	<input type="checkbox"/> By e-mail

 Typed/Printed Name

 Conservator's Signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

4-999. Notice of hearing and rights.

STATE OF NEW MEXICO
 COUNTY OF _____

_____ JUDICIAL DISTRICT

In the matter of _____ No. _____

NOTICE OF HEARING AND RIGHTS

TO: _____ *(name and address of
 alleged
 incapacitated person)*

A hearing will be held at the following date, time, and location on the
 Petition to Appoint a Guardian and/or Conservator for
 _____ *(alleged incapacitated person)*:

Date: _____
 Time: _____
 Judicial District: _____
 Courthouse: _____
 Address: _____
 Judge: _____

The purpose of the hearing will be to determine whether protection is
 needed for _____ *(alleged incapacitated person)* and
 _____ *(alleged incapacitated person)*'s property.

Before the hearing, the Court will appoint a visitor, a qualified health care professional, and if necessary, a guardian *ad litem* to advise the Court about _____ (*alleged incapacitated person*)'s capacity and whether a guardian and/or conservator should be appointed.

If the Court appoints a guardian and/or a conservator, the guardian and/or conservator,

(1) will have authority to make decisions over some or all of _____ (*alleged incapacitated person*)'s personal and/or financial affairs;

(2) must use their decision-making authority only when necessary to promote and protect the well being and/or financial interests of _____ (*alleged incapacitated person*); and

(3) must use their decision-making authority in a manner that encourages the development of maximum self-reliance and independence of _____ (*alleged incapacitated person*).

If the Court appoints a guardian and/or conservator, _____ (*alleged incapacitated person*) retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian and/or conservator by the Court.

NOTICE OF RIGHTS

_____ (*alleged incapacitated person*) has the following rights under Sections 45-5-309(B) and 45-5-303 and/or 45-5-405(B) and 45-5-407 NMSA 1978:

1. The right to obtain an attorney of _____ (*alleged incapacitated person*)'s choice;
2. The right to object to the individuals appointed as visitor, qualified health care professional, and guardian *ad litem*;
3. The right to attend the hearing. If _____ (*alleged incapacitated person*) is unable to be present in court, the Court

upon request or its own motion may conduct hearings at _____ (*alleged incapacitated person*)'s location;

- 4. The right to present evidence at the hearing and to subpoena witnesses and documents;
- 5. The right to examine witnesses at the hearing, including a court-appointed guardian *ad litem*, qualified health care professional, and visitor;
- 6. The right to otherwise participate in the hearing; and
- 7. The right to be personally served with a copy of this notice and of the petition filed in this proceeding.

THE COURT SHALL NOT GRANT THE PETITION IF THE PETITION AND THIS NOTICE OF HEARING AND RIGHTS IS NOT PERSONALLY SERVED ON _____ (*ALLEGED INCAPACITATED PERSON*).

BY: _____
TCAA for Judge

A copy of this Notice of Hearing and Rights is being provided as required under Sections 45-5-309(C) and/or 45-5-405(C) NMSA 1978 to the following interested persons who are identified in the information sheet submitted with the Petition under Rule 1-003.2 NMRA:

(list names and addresses of all persons identified on the information sheet and of the guardian ad litem, visitor, and qualified health care professional appointed by the court)

USE NOTES

This Notice of Hearing and Rights must be used in cases filed on or after October 15, 2018. In a case filed after July 1, 2018 but before October 15, 2018, the alleged incapacitated person must receive notice that substantially complies with the notice-of-rights requirements set forth in NMSA 1978, §§ 45-5-309(B) and 45-5-405(B).

[Provisionally approved by Supreme Court Order No. 18-8300-007, effective for all cases filed on or after October 15, 2018; approved as amended by Supreme Court Order No. 19-8300-001, effective January 14, 2019; as amended by Supreme Court Order No. 19-8300-019, effective December 1, 2019.]

ANNOTATIONS

The second 2019 amendment, approved by Supreme Court Order No. 19-8300-019, effective December 1, 2019, provided additional rights to alleged incapacitated persons during hearings on whether protection is needed for the alleged incapacitated person; in the Notice of Rights section, Paragraph 4, deleted “The right to respond to any statements made by any person at the hearing and to object to any part of this proceeding; and” and added “The right to present evidence at the hearing and to subpoena witnesses and documents”, added new Paragraphs 5 and 6 and redesignated former Paragraph 5 as Paragraph 7.

The first 2019 amendment, approved by Supreme Court Order No. 19-8300-0001, effective January 14, 2019, required certain persons to be listed on the form for the purpose of receiving notice of the hearing on the petition and notice of the rights of the alleged incapacitated person; in the parenthetical, after “information sheet”, added “and of the guardian ad litem, visitor, and qualified health care professional appointed by the court”.

4-999.1. Grievance about guardian or conservator.

Name of protected person: _____

Case number: _____

County where case is filed: _____

Judge assigned to case: _____

(Note: You can search for the case online at <https://caselookup.nmcourts.gov/caselookup/>)

**GRIEVANCE ABOUT GUARDIAN, CONSERVATOR, OR
REPRESENTATIVE PAYEE**

This form is optional. If you choose to use it, please answer each question. Write "Unknown" or "N/A" if you do not know the answer or the question does not apply to your grievance. It will help the court to review your grievance if you provide as much information as possible. You may attach additional pages if needed for explanation of your grievance.

1. Information about you and/or protected person.

Your name: _____

Your contact information:

Address: _____

Phone number: () _____ Email: _____

Are you the protected person? Yes No

If no, what is your interest in the welfare of the protected person or to the case? _____

2. Information about your grievance.

Type of Case:

Guardianship Conservatorship Other (e.g., trustee,
representative payee, VA fiduciary)

Name of person grievance is against: _____

Their contact information:

Address: _____

Phone number: () _____ Email: _____

Briefly describe below how the person has failed to comply with their duties and responsibilities. Describe what the person did or did not do, what they said, or any other actions of the person you are concerned about. Be as specific as possible, and please attach copies of relevant documents, such as court orders, petitions, letters to the protected person, etc.

Date: _____

Time: _____

Location: _____

Description of what happened:

What would you like the court to do?

Have you brought this to the court's attention within the past six months? Yes No

Do you have concerns for yourself or the protected person about raising this grievance?

Yes No If yes, what are your concerns?

If you are not the protected person, is the protected person aware of your grievance?

Yes No If yes, what was the protected person's response?

If no, why not?

Have you discussed your grievance with the person you have the grievance against?

Yes No If yes, what was the response?

If no, why not?

Have you contacted other authorities about this incident, such as Adult Protective Services, nursing home staff, ombudsman, law enforcement, Attorney General's Office, District Attorney's Office, Center for Guardianship Certification, Social Security Administration, Veteran's Administration, Office of State Auditor, or Office of Guardianship?

Yes No If yes, please identify any authorities you have notified, the date, and the result. Attach a copy of any materials submitted or received.

Authority: _____ Date: _____ Result: _____

Authority: _____ Date: _____ Result: _____

Authority: _____ Date: _____ Result: _____

3. Affirmation and signature.

- The information in this grievance is true and accurate to the best of my knowledge.
- I understand that my grievance will be filed in the court file and available to the person who my grievance is against and anyone else who is entitled to access court records in the case.

Date

Name

Mail or deliver your grievance to the courthouse located in the county where the case is filed. Please keep a copy of the grievance for your records.

[Approved by Supreme Court Order No. 19-8300-011, effective August 20, 2019.]

4-999.2. Certificate of completion of adult guardian and conservator orientation program.

[For use with Rule 1-144 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In the matter _____

No. _____

**CERTIFICATE OF COMPLETION
ADULT GUARDIAN AND CONSERVATOR ORIENTATION PROGRAM**

Under Rule 1-144 NMRA, I hereby acknowledge that I have viewed the following required videos on the New Mexico Court's website (www.adultguardianship.nmcourts.gov) and/or on the Judiciary's YouTube channel (<https://www.youtube.com/NewMexicoCourts>).

1. Guardians are required to view all six (6) videos.

VIDEO	DATE VIEWED
Video 1: Introduction	
Video 2: Guardian orientation	
Video 3: How to complete the guardian's report	
Video 8: Guide to filing and distributing guardian and conservator's reports	
Video 9: Abuse and neglect	
Video 10: How to file a grievance	

2. Conservators are required to view all eight (8) videos.

VIDEO	DATE VIEWED
Video 1: Introduction	
Video 4: Conservator orientation	
Video 5: Overview of the conservator's report and bonding requirements	
Video 6: How to complete the conservator's inventory	
Video 7: How to complete the conservator's report	

Video 8: Guide to filing and distributing guardian and conservator's reports	
Video 9: Abuse and neglect	
Video 10: How to file a grievance	

By filing this certificate, I certify that I understand my duty, role, and responsibilities as the guardian and/or conservator in this matter.

PROPOSED GUARDIAN/CONSERVATOR: I recognize that this certificate must be filed with the court clerk at least five (5) calendar days before a hearing on the petition to appoint a guardian or conservator in this matter.

EXISTING OR SUCCESSOR GUARDIAN/CONSERVATOR: I have been ordered by the Judge to watch the Adult Guardian and Conservator Orientation Program videos and I understand that I must file this certificate with the court clerk as proof that I have complied with the Judge's orders.

Dated: _____

Respectfully submitted,

Signature

Printed name

Street address

City, State, and ZIP Code

Phone number

Email address

[Adopted by Supreme Court Order No. 21-8300-003, effective for all cases pending or filed on or after June 22, 2021.]