

# 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)<sup>1</sup>

The undersigned believes that the impartiality of the Honorable  
\_\_\_\_\_ may reasonably be questioned because:  
\_\_\_\_\_

\_\_\_\_\_ (set forth specific facts which prohibit  
the judge from presiding. The facts must be grounds for excusal under the New Mexico  
Constitution or the Code of Judicial Conduct.)

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

Signature of party

#### USE NOTE

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 NOTE

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

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

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

### MOTION TO WITHDRAW AS COUNSEL<sup>1</sup>

### 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 party<sup>1</sup>.

\_\_\_\_\_ *(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 attorney<sup>1</sup>**

---

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 NOTE**

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]<sup>1</sup>

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.)<sup>2</sup>*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 NOTE

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]<sup>1</sup>

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

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

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

### NOTICE OF HEARING<sup>2</sup>

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 NOTE

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.)<sup>1</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 NOTE**

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.)<sup>1</sup>.

\_\_\_\_\_ (minutes) (hours) is allotted for the hearing on \_\_\_\_\_<sup>2</sup>.

Notice [mailed] [delivered] [faxed] on \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

#### USE NOTE

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 NOTE**

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 NOTE

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 NOTE**

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.]*

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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: \_\_\_\_\_, Defendant<sup>1</sup>

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)<sup>2</sup> 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



**(complete the following, unless service by sheriff or deputy)<sup>3</sup>**

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 \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, a copy of the complaint and an answer (*indicate below how served*):

**(complete if service by sheriff or deputy)<sup>3</sup>**

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, a copy of the complaint and an answer form in the following manner:

---

---

---

---

**(person serving summons must check one box and fill in appropriate blanks)**

by delivering a copy of this summons, a copy of the complaint 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 complaint and an answer form to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual home of the defendant, \_\_\_\_\_, located at \_\_\_\_\_ (*address*). (*used when defendant is not presently at the home.*)

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 (if any)

Subscribed and sworn to

before me this \_\_\_\_\_

day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

Judge, notary or other officer

authorized to administer oaths<sup>3</sup>

\_\_\_\_\_

Official title

*(To be completed if service is made by posting)*<sup>4</sup>

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 oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by mail.)*<sup>5</sup>

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 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 (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 title<sup>3</sup>

#### USE NOTE

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 when service is by posting.
5. If service is by mail, Civil Form 4-208 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.]

## ANNOTATIONS

**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:

Plaintiff(s):

v.

Defendant(s):

Case Number:

Judge:

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](http://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 <sup>1</sup>**

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 \_\_\_\_\_, \_\_\_\_\_.<sup>2</sup>

\_\_\_\_\_



Judge, notary or other officer  
authorized to administer oaths

---

Official title

#### USE NOTE

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

\_\_\_\_\_  
COURT

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

\_\_\_\_\_ (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 NOTE

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 PROCESS<sup>1</sup> 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]<sup>1</sup> [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*)<sup>1</sup>. 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 NOTE

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*)<sup>1</sup>**

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]<sup>2</sup> [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*)]<sup>1</sup>. 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 NOTE

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  
\_\_\_\_\_ ,

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

v.

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 NOTE

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 NOTE

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 upon Petitioner's attorney's certificate supporting indigency and free process pursuant to 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.

on the basis of 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), provided that the applicant first attempts service by certified mail pursuant to Rule 1-004 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:

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---

**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 law suit 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 any such 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.]

**ANNOTATIONS**

**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 Rule 1-009(J) 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) shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Plaintiff,

v. No. \_\_\_\_\_

\_\_\_\_\_, Defendant



**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 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 this 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 of 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, 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.

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.

\_\_\_\_ 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address (print)

\_\_\_\_\_  
City, State, and Zip Code (print)

\_\_\_\_\_  
Telephone Number

USE NOTE

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.]

## **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 COMPLAINT<sup>1</sup>**

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 SERVICE<sup>2</sup>**

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 NOTE

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 COMPLAINT<sup>1</sup>**

Plaintiff hereby dismisses plaintiff's complaint without prejudice.

\_\_\_\_\_

Plaintiff or attorney for plaintiff

**CERTIFICATE OF SERVICE<sup>2</sup>**

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 NOTE

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 NOTE

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 NOTE

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 of appointment for guardian ad litem.**

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

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

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

\_\_\_\_\_, Petitioner

v.

\_\_\_\_\_, 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:

(a) interview the [child] [children] face-to-face outside the presence of both parents and counsel if the [child is] [children are] six (6) years of age or older;

(b) interview all parties and any available parent subject to Rule 16-402 NMRA;

(c) interview each mental health professional treating the [child] [children] after obtaining any necessary authorization;

(d) interview any other [person] [persons] and review any relevant records the GAL deems reasonably necessary after obtaining any necessary authorization;

(e) determine the [child's] [children's] wishes, if appropriate;

(f) submit, but do not file, a written report of investigation and separate written recommendations to all parties and counsel at least ten days before the recommendations are filed with the court, except in the case of emergency;

(g) file the recommendations, but not the report, with the court;

(h) perform the duties to the [child] [children] as set forth in Paragraphs H and I of Rule 1-053.3 NMRA; and

(i) 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 ten (10) 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 ten (10) 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) If no party files timely objections, the court shall enter an appropriate order.

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 shall assist the GAL in carrying out the duties set forth in this order.

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 guardian ad litem may request a hearing on the guardian ad litem fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed \_\_\_\_\_.

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.]

### ANNOTATIONS

**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  
Under Subparagraph (B)(1)(b) of Rule 2-107 NMRA or Rule 3-107 NMRA, I  
 authorize \_\_\_\_\_, a director or general manager; or
- 3.  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.

\_\_\_\_\_  
(Name of Corporation or LLC) (Seal, if any)

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 SERVICE<sup>1</sup>**

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 NOTE

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 NOTE

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 \_\_\_\_\_

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

\_\_\_\_\_ COURT  
\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

#### **SUBPOENA<sup>1</sup>**

#### **SUBPOENA**

FOR APPEARANCE OF PERSON FOR  TRIAL  HEARING

TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL<sup>2</sup>

**[ ] FOR INSPECTION OF PREMISES OF A PARTY<sup>2</sup>**

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

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY<sup>4</sup>**

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 SERVICE<sup>4</sup>**

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 ATTORNEY<sup>4</sup>**

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

(1) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)



(2) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

### TO BE PRINTED ON EACH SUBPOENA

1. 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 prior to 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.

### PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

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

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, such a 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, or

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(4) subjects a person to undue burden.

If a subpoena

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### **DUTIES IN RESPONDING TO SUBPOENA**

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

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

[Approved, effective May 1, 2002; as amended, effective January 20, 2005.]

### **ANNOTATIONS**

**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

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

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

#### **SUBPOENA<sup>1</sup>**

#### **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.

\_\_\_\_\_  
Judge <sup>2</sup> or attorney

#### **RETURN FOR COMPLETION BY SHERIFF OR DEPUTY<sup>3</sup>**

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 SERVICE <sup>3</sup>**

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 ATTORNEY<sup>3</sup>**

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

(1) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(2) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

---

Attorney

---

Signature

---

Date of signature

### **TO BE PRINTED ON EACH SUBPOENA**

1. 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 prior to 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.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

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, such a 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, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena

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

### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Approved, effective May 1, 2002; as amended, effective January 20, 2005.]

### **ANNOTATIONS**

**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 \_\_\_\_\_

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

\_\_\_\_\_ JUDICIAL DISTRICT  
\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**SUBPOENA<sup>1</sup>**

**SUBPOENA FOR APPEARANCE OF PERSON FOR<sup>2</sup>**

**[ ] 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

**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 \$ \_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
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 \$\_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
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 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

### **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 Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 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 Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises 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. 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 pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a

party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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

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

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly

and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[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.]

## ANNOTATIONS

**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 \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**SUBPOENA FOR PRODUCTION OR INSPECTION<sup>1</sup>**

**SUBPOENA FOR**

**DOCUMENTS OR OBJECTS<sup>2</sup>**

**INSPECTION OF PREMISES<sup>2</sup>**

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 pursuant to 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

**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"*)<sup>3</sup>.

\_\_\_\_\_

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"*)<sup>3</sup>.

\_\_\_\_\_

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 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

### **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 Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 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 Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

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

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises 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. 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 pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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

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

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a



substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### **DUTIES IN RESPONDING TO SUBPOENA**

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

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

(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.]

### **ANNOTATIONS**

**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 ORDER<sup>1</sup>

The parties shall comply with the following scheduling order:

1. Motions to amend the pleadings or to join parties must be filed by \_\_\_\_\_ (date)<sup>2</sup>.
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).]<sup>3</sup>  
  
[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 NOTE

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 ORDER<sup>1</sup>**

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].

---

District Judge

#### USE NOTE

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. Juror summons, qualification, and questionnaire form.

[Rules 1-047, 2-603, 3-603 NMRA]

\_\_\_\_\_ COURT

[Street Address]

[City, NM, Zip Code]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_ TO:

[Bar Code and Juror #]

[Juror Name]

[Street Address]

[City, State, Zip Code]

[USPS Bar Code]

JURY SUMMONS

PLEASE BRING SUMMONS

TO ALL APPEARANCES

FOR QUESTIONS CALL:

[Name]

[Telephone Number]

### SUMMONS TO JURY SERVICE

Por favor preste atención a lo siguiente: Si no le es posible leer o llenar estos formularios, llame al número telefónico indicado en la primera página del citatorio para servir como jurado. Estos formularios están disponibles en español en <http://www.nmcourts.gov/jury/index.php>.

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*).

[You are ordered to appear for qualification and orientation on \_\_\_\_\_ (*date*) at \_\_\_\_\_ (*time*) at the following address:

\_\_\_\_\_ (Court name)

\_\_\_\_\_ (Street Address)

\_\_\_\_\_ (City), New Mexico

**Complete and SIGN the enclosed Juror Qualification and Questionnaire Form and return by \_\_\_\_\_ (*date*) in the enclosed envelope.]**

{or}

[You will be notified prior to the time you are required to appear. **Complete and SIGN the enclosed Juror Qualification and Questionnaire Form and return by \_\_\_\_\_ (date) in the enclosed envelope.**]

{or}

[In order to comply with this summons you must go to our website \_\_\_\_\_ (*insert web address*) to complete and submit your online Juror Questionnaire and Qualification Form 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*), and request that the forms be mailed to you.]

**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 also 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, panel number if assigned, 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 \$6.25 per hour. In addition, round-trip mileage from your home to the courthouse will be paid at \$0.41 per mile. Mileage is computed based upon 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 reimburse employees for 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 [www.nmcourts.gov/jury/index.php](http://www.nmcourts.gov/jury/index.php)**

### ***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 \_\_\_\_\_ (*date on page 1 of summons*).

#### **Part A. Juror qualification. 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.

Name as it appears on the summons:

Legal name: \_\_\_\_\_

Mailing address:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone numbers:

Home: \_\_\_\_\_

Business: \_\_\_\_\_ Ext: \_\_\_\_\_

Cell: \_\_\_\_\_

E-mail: \_\_\_\_\_

1. Do you want to be paid for roundtrip mileage from your home to the courthouse?  
Yes \_\_\_\_ No \_\_\_\_  
If yes, what is your roundtrip mileage? \_\_\_\_\_

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. Do you read, speak, and understand English? Yes \_\_\_\_ No \_\_\_\_  
If not, which language do you read, speak, and write? \_\_\_\_\_

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.

*Request for postponement, excusal, or exemption on back.*

## **REQUEST FOR POSTPONEMENT, EXCUSAL, OR EXEMPTION**

**PLEASE NOTE:** If your jury service is scheduled for a date that conflicts with your schedule, please request a postponement for a more convenient time in the space below. Jurors may be postponed for up to six (6) months.

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 utility bill in your name, a 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)

\_\_\_\_\_ Students and Teachers (request to be postponed until school breaks - please provide below the dates when your school break begins and ends):

\_\_\_\_\_ Other: \_\_\_\_\_

(Select one)

\_\_\_\_\_ I am requesting a postponement for the reasons noted above until the following date:

\_\_\_\_\_

\_\_\_\_\_ I am requesting to be excused or exempted for the reasons noted above. I am submitting the required documents.

**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.

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 the person requesting postponement, excusal, or exemption

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of the person preparing this form, if different from prospective juror

\_\_\_\_\_  
Date

## Part B. Juror questionnaire.

Please answer all questions, 1-35, 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 in question 35 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.

Date of jury service: day \_\_\_\_\_ month \_\_\_\_\_

1. Legal name and former names:
2. Gender: Male \_\_\_\_ Female \_\_\_\_
3. Date of birth: \_\_\_\_\_  
Birth place (city and state; country if outside the United States):
4. How long have you lived in New Mexico?
5. In which New Mexico county do you live?  
How long? \_\_\_\_\_
6. Which town or city do you live in?  
Neighborhood?  
What major intersection is closest to your home?
7. Where else have you lived (*city, state, country*)?
8. What is your marital status? single \_\_\_\_ married \_\_\_\_  
domestic partner \_\_\_\_ separated \_\_\_\_ divorced \_\_\_\_ widowed \_\_\_\_
9. What is your ethnic background?
10. Do you own or rent your home? own \_\_\_\_ rent \_\_\_\_
11. Your occupation:  
(*If retired or unemployed please state, and also state your previous occupation.*)
12. If employed please state:  
Name of employer and place of work:  
Job title and duties:  
Time worked there:

Normal working hours:  
How many hours per week do you work?

13. Do you have a second job? Yes \_\_\_\_ No \_\_\_\_

14. What other jobs have you had as an adult?

15. How many years of schooling have you completed?  
Highest level completed? high school or GED \_\_\_\_ associate \_\_\_\_  
trade or vocational school \_\_\_\_ bachelor \_\_\_\_ master \_\_\_\_ Ph.D. \_\_\_\_ M.D. \_\_\_\_ J.D.

\_\_\_\_\_  
Major areas of study:

16. Have you served in the military? Yes \_\_\_\_ No \_\_\_\_  
Highest rank:

17. Do you belong to or participate in any religious, civic, social, union, professional, fraternal, political, or recreational organizations? Yes \_\_\_\_ No \_\_\_\_  
Organization: \_\_\_\_\_ Office held:

18. Current voter registration: Democrat \_\_\_\_ Republican \_\_\_\_  
Not registered \_\_\_\_ No party selected \_\_\_\_  
Other, please specify:

19. If you are married or in a domestic partnership, please provide spouse's/partner's full name and occupation:

20. Do you have any children or stepchildren? Yes \_\_\_\_ No \_\_\_\_  
How many? \_\_\_\_\_ ages \_\_\_\_\_ occupations

21. Have you ever been a witness in a court proceeding? Yes \_\_\_\_ No \_\_\_\_  
If yes, what type of case was it? civil \_\_\_\_ criminal \_\_\_\_  
What were the circumstances?

22. Have you ever served as a juror? Yes \_\_\_\_ No \_\_\_\_  
If yes, year: \_\_\_\_\_ court or location: \_\_\_\_\_ case type: \_\_\_\_\_  
If yes, year: \_\_\_\_\_ court or location: \_\_\_\_\_ case type: \_\_\_\_\_  
Were you ever the foreperson? Yes \_\_\_\_ No \_\_\_\_  
If yes, courts: \_\_\_\_\_ years: \_\_\_\_\_

23. Have you ever had an injury that required hospitalization or extended medical care? Yes \_\_\_\_ No \_\_\_\_  
If yes, what was the injury?  
Did the injury cause you to lose time from work? Yes \_\_\_\_ No \_\_\_\_  
If yes, how long?

24. Have you or any member of your family ever filed a civil suit against someone?  
Yes \_\_\_\_ No \_\_\_\_  
If yes, please explain:

25. Have you or any member of your family ever been sued? Yes \_\_\_\_ No \_\_\_\_  
If yes, please explain:

26. Have you or an immediate family member ever been an agent, employee, or representative of an insurance company? Yes \_\_\_\_ No \_\_\_\_  
If yes, who and relationship to you:

27. 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 \_\_\_\_

28. Have you or an immediate family member been a defendant in a criminal case?  
Yes \_\_\_\_ No \_\_\_\_  
If yes, who and relationship to you? \_\_\_\_\_  
Crime accused of committing? \_\_\_\_\_  
Was there a conviction? Yes \_\_\_\_ No \_\_\_\_

29. Have you, any family member, or close friend ever been employed by, or volunteered for, any federal, state, or local law enforcement agency; a jail, prison or detention center; or a district attorney or other prosecuting attorney's office?  
Yes \_\_\_\_ No \_\_\_\_  
If yes, who?  
Relationship to you:  
Position held:  
Dates of employment:  
Name of agency, or attorney and office:

30. Have you or any family member ever worked for any other attorney?  
Yes \_\_\_\_ No \_\_\_\_  
If yes, who?  
Relationship to you:  
Position held:  
Dates of employment:  
Name of attorney and office:

31. Have you or any family member ever been represented by an attorney or law office? Yes \_\_\_\_ No \_\_\_\_  
If yes, name of attorney and office:

32. Do you have a physical disability of which we need to be aware? Yes \_\_\_\_ No \_\_\_\_

If yes, are there any special accommodations, services, or assistance we can provide during your jury service? Yes \_\_\_\_ No \_\_\_\_

Please explain:

33. Are you presently taking any medication that may affect your ability to serve as a juror? Yes \_\_\_\_ No \_\_\_\_

If yes, please explain:

34. 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:

35. Use this space for any additional comments:

**I SWEAR OR AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.**

\_\_\_\_\_  
Signature of prospective juror

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of preparer, if different than prospective juror

\_\_\_\_\_  
Date

**PLEASE SUBMIT THE JUROR QUALIFICATION FORM AND THIS JUROR QUESTIONNAIRE TO:**

\_\_\_\_\_  
\_\_\_\_\_

[Approved, effective January 1, 1995; as amended by Supreme Court Order No. 06-8300-016, effective June 20, 2006; UJI 14-110 NMRA, recompiled in part as 4-602 NMRA by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013.]

**ANNOTATIONS**



**Recompilations.** — Former UJI 14-110 NMRA was recompiled as Forms 4-602 and 9-513 NMRA by Supreme Court Order No. 13-8300-042, effective for all cases pending or filed on or after December 31, 2013.

## **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<br>( <i>if allowable</i> ) | \$ _____ |
| Attorney fee<br>( <i>if allowable</i> )     | \$ _____ |
| 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 NOTE**

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.<sup>1</sup>

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 NOTE**

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 NOTE**

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;<sup>1</sup>

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 NOTE

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 NOTE

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 NOTE

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 NOTE**

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

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

\_\_\_\_\_, Plaintiff  
against

\_\_\_\_\_, 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

\_\_\_\_\_  
Judge

[As amended, effective July 1, 1996.]

### ANNOTATIONS

**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.]

**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 NOTE

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 NOTE**

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:

| <b>LIST PROPERTY</b> | <b>STATED VALUE</b> |
|----------------------|---------------------|
| _____                | \$                  |
| _____                | \$                  |

*(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

| <b>LIST ITEMS</b> | <b>STATED VALUE</b> |
|-------------------|---------------------|
| _____             | \$                  |

*(Attach additional page if necessary)*

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

| <b>LIST ITEMS</b> | <b>STATED VALUE</b> |
|-------------------|---------------------|
| _____             | \$                  |

*(Attach additional page if necessary)*

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

| <b>MAKE, MODEL AND YEAR OF VEHICLE</b> | <b>FAIR MARKET VALUE</b> |
|--|--------------------------|
| _____                                  | \$                       |



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**

\_\_\_\_\_

Printed name of judgment debtor

\_\_\_\_\_

Street address or P.O. box

\_\_\_\_\_

City, state & zip code

Telephone number

## USE NOTE

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 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. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, 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.

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:<sup>1</sup>

(7) (*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.<sup>2</sup>

(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  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary or other officer authorized  
to administer oaths

*(seal)*

[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 NOTE**

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.<sup>1</sup>

The judgment debtor has filed a waiver of the right to claim exemption for the property to be seized and sold.<sup>2</sup>

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 \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ (seal)

Notary or other officer authorized  
to administer oaths

**USE NOTE**

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.**

**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*.

**4-806. 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:

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.

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.<sup>1</sup>

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.<sup>2</sup>

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.*)

- 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,
3. 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.

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

4. 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.

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

5. \$\_\_\_\_\_ 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.

By \_\_\_\_\_  
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 NOTE

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:

(description)

(approximate value)

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

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 NOTE

*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*)<sup>1</sup> 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 sworn to

before me this \_\_\_\_\_

day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

Judge, notary or other officer

authorized to administer oaths

\_\_\_\_\_

Official title

#### USE NOTE

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  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff

v. \_\_\_\_\_ No. \_\_\_\_\_  
\_\_\_\_\_, Defendant

**NOTICE OF DISPUTE AND REQUEST FOR HEARING<sup>1</sup>**

1. Assigned Judge: \_\_\_\_\_
2. [Execution proceeding] [Garnishment proceeding]<sup>2</sup>

The judgment [creditor disputes the following claimed exemptions] [debtor disputes the following]<sup>2</sup> 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]<sup>2</sup> described above before the Honorable \_\_\_\_\_, at the \_\_\_\_\_ court located at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ .m.

\_\_\_\_\_, \_\_\_\_\_ Judge

### USE NOTE

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 \$\_\_\_\_\_.  
From the date the judgment was filed through the date this Application was signed, additional interest at the rate of \_\_\_\_\_% totals \$\_\_\_\_\_.
3. 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:**

**Default judgment against garnishee**

- 1. 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.

**Payment of money other than wages**

- 2. 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.

**Wage withholding other than child or spousal support**

- 3. 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 NOTE**

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. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, 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 NOTE

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

\_\_\_\_\_  
\_\_\_\_\_, 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 NOTE

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 NOTE

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.  The parties entered a Mediated Settlement Agreement, and a Stipulation of Dismissal After Mediated Settlement Agreement was filed on \_\_\_\_\_ (date).
2.  Plaintiff/Defendant has breached the terms of the Mediated Settlement Agreement.
3.  A copy of the Mediated Settlement Agreement was filed with the court on \_\_\_\_\_ (date); or  
 A copy of the Mediated Settlement Agreement was not filed, but is attached.

(check all that apply)

4.  Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to pay \$\_\_\_\_\_.
- Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to the following:

(check all that apply)

5.  As of today's date, Plaintiff/Defendant has paid a total of \$\_\_\_\_\_.
- As of today's date, Plaintiff/Defendant has done the following:

(check all that apply)

6.  Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still owes a total of \$\_\_\_\_\_.
- Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still needs to do the following:

7.  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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

[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-day notice of nonpayment of rent (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-33 NMSA 1978]

#### **THREE-DAY NOTICE OF NONPAYMENT OF RENT<sup>1</sup> (*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 concerning the premises at<sup>2</sup>:

\_\_\_\_\_, New Mexico

by failure to pay rent as follows:

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Total due: \$ \_\_\_\_\_

If the amount due is not paid within three (3) days from the date of delivery set out below, the rental agreement shall be terminated.

Payment will be accepted only by:

cash

money order

cashiers or certified check

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:

Mailed:

Time: \_\_\_\_\_

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

**USE NOTE**

1. The party giving notice should retain two (2) copies for possible court action.

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 12 units. See Subsection C of Section 47-10-2 NMSA 1978.

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, 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-day notice of substantial violation of rental agreement (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-33 NMSA 1978]

#### **THREE-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 concerning the premises at:

\_\_\_\_\_  
\_\_\_\_\_, New Mexico  
\_\_\_\_\_

in that on or about \_\_\_\_\_, \_\_\_\_\_ (*date*), you, or someone with your consent, did the following:

---

---

This conduct occurred on or within 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 rental agreement shall terminate three (3) days from the date of service set out below. You must vacate the premises no later than \_\_\_\_\_ (*date*). Failure to vacate by this date will result in a legal action against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(*Owner*) (*Agent*)

Service of notice<sup>2</sup>:

- personally delivered to resident
- posted and mailed certified mail, return receipt requested
- mailed by certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

USE NOTE

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 12 units. See Subsection C of Section 47-10-2 NMSA 1978.

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 Paragraph D of Section 47-8-13 NMSA 1978.

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.]

ANNOTATIONS

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-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-DAY NOTICE OF NONCOMPLIANCE  
WITH RENTAL AGREEMENT  
(OTHER THAN FAILURE TO PAY RENT)<sup>1</sup>  
(*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 concerning the premises at<sup>2</sup>:

\_\_\_\_\_, New Mexico

in that on or about \_\_\_\_\_, \_\_\_\_\_ (date), the following noncompliance occurred:

*(describe the noncompliance specifically and in detail. Attach additional pages if necessary.)*

**First notice.** If this noncompliance is not corrected within seven (7) days from the date of delivery set out below, the rental agreement 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.

**Second notice.** You were given previous notice of noncompliance on \_\_\_\_\_ (date). Therefore you have been in material noncompliance twice or more within a six month period. As a result the rental agreement shall terminate seven (7) days from the date of delivery set out below. You must vacate the premises no later than \_\_\_\_\_ (date). Failure to vacate by this date will result in a legal action against you.

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<sup>3</sup>: \_\_\_\_\_

Mailed:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>3</sup>: \_\_\_\_\_

#### USE NOTE

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 12 units. See Subsection C of Section 47-10-2 NMSA 1978.

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, 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 AGREEMENT<sup>1</sup> (*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: \_\_\_\_\_  
By<sup>2</sup>: \_\_\_\_\_

Mailed:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>2</sup>: \_\_\_\_\_

USE NOTE

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 NOTICE<sup>1</sup>  
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 at<sup>2</sup>:

\_\_\_\_\_, 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: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

#### USE NOTE

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 at<sup>1</sup>:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, 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 NOTE

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.

**4-905. 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<sup>1</sup>**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

*(complete if service is by a person other than the sheriff or deputy<sup>3</sup>)*

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 form<sup>2</sup> in the following manner:

**(check and complete only if service by sheriff or deputy)<sup>3</sup>**

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<sup>2</sup> 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 oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by posting)<sup>4</sup>*

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 oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by mail.)<sup>5</sup>*

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 title<sup>3</sup>

#### USE NOTE

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.

**4-906. 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 NOTE

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 DEPOSIT<sup>1</sup>**

***(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 law<sup>2</sup>;
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 NOTE

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.

#### **4-909. 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)<sup>1</sup>***

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           | \$ _____ <sup>2</sup> |

(*check, if applicable, and complete*)

A writ of restitution be issued effective \_\_\_\_\_, \_\_\_\_\_ (*date*).<sup>3</sup>

(*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.*).<sup>2</sup>

3. If this case is appealed, the (*plaintiff*) (*defendant*) shall \_\_\_\_\_<sup>4</sup>

Dated: \_\_\_\_\_ Judge<sup>4</sup>

USE NOTE

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)<sup>1</sup>**

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           | \$ _____ <sup>2</sup> |

Plus \_\_\_\_\_ % interest per year until the judgment is paid.<sup>3</sup>

(*check, if applicable, and complete*)

A writ of restitution be issued effective \_\_\_\_\_, \_\_\_\_\_ (date).<sup>4</sup>

(*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.<sup>2</sup>

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 NOTE

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 Appeal<sup>1</sup> 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 NOTE

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:

[Approved, effective January 1, 1993.]

**4-916. Post-judgment writ of replevin.**

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

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

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

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

**POST-JUDGMENT WRIT OF REPLEVIN**

THIS MATTER having come before the court on the petition of the Plaintiff herein for a Writ of Replevin ordering the sheriff of \_\_\_\_\_ County to seize property for the benefit of Plaintiff; and the Court finding that the petition is well taken and should be granted;

NOW THEREFORE the Sheriff of \_\_\_\_\_ County is hereby ordered to seize and to return to the Plaintiff the property described in the Petition (Exhibit "A") attached hereto wherever it may be found within the State of New Mexico.

Judge

**RETURN OF WRIT OF REPLEVIN**

I certify that I served this Writ of Replevin as follows:

\_\_\_\_\_ No personal property listed in the writ was found.

\_\_\_\_\_ Personal property as specified in the Writ was recovered on \_\_\_\_\_, \_\_\_\_\_, and returned to the Plaintiff. A written inventory is attached.

Date of return:

Sheriff

STATE OF NEW MEXICO )

) ss.

COUNTY OF \_\_\_\_\_ )

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 RENT<sup>1</sup>  
(*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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

*(name of mobile home park)*  
*(mobile home address)*  
*(mobile home lot or space)*

The amount of rent and utilities owed is as follows:

|                                 |          |
|---------------------------------|----------|
| Rent:                           | \$ _____ |
| Late fee:                       | \$ _____ |
| Utilities:                      | \$ _____ |
| Other _____<br><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 notice<sup>2</sup>:

personally delivered to resident

posted on the mobile home on \_\_\_\_\_ (date) and mailed certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

#### USE NOTE

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]<sup>1</sup> TO QUIT<sup>2</sup> (*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 \_\_\_\_\_,  
\_\_\_\_\_.<sup>1</sup> This notice of termination is given for the following reasons<sup>3</sup>:

\_\_\_\_\_  
\_\_\_\_\_

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 notice<sup>4</sup>:

personally delivered to resident

posted on the mobile home on \_\_\_\_\_ (date) and mailed certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>5</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>5</sup>: \_\_\_\_\_

#### USE NOTE

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 at<sup>1</sup>:

\_\_\_\_\_, New Mexico  
\_\_\_\_\_.

2. Defendant entered into possession of the premises under a rental agreement and has breached the terms of the agreement as follows<sup>2</sup>:

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)*<sup>3</sup> 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 NOTE

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.]

### **4-924. 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:

\_\_\_\_\_ (name of mobile home park)  
\_\_\_\_\_ (mobile home address)  
\_\_\_\_\_ (mobile home lot or space)  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

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.<sup>1</sup>

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<sup>2</sup>**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

*(complete if service is by a person other than the sheriff or deputy<sup>3</sup>)*

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 form<sup>4</sup> in the following manner: *(check and complete only if service by sheriff or deputy)<sup>3</sup>*

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 oaths<sup>3</sup>

Official title

(To be completed if service is made by posting)<sup>5</sup>

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 oaths<sup>3</sup>

\_\_\_\_\_  
Official title  
*(To be completed if service is made by mail.)<sup>6</sup>*

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 title<sup>3</sup>

USE NOTE

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)<sup>1</sup>**

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 lienholder<sup>2</sup>.

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.)]<sup>3</sup>

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.]<sup>4</sup>

[6. If this case is appealed the (plaintiff) (defendant) shall \_\_\_\_\_.]<sup>5</sup>

Date:

Judge

#### USE NOTE

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:

\_\_\_\_\_ (name of mobile home park)  
\_\_\_\_\_ (mobile home address)  
\_\_\_\_\_ (mobile home lot or space)  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

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)<sup>1</sup>.

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 _____<br>(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

**RETURN<sup>2</sup>**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

***(complete if service is by a person other than the sheriff or deputy)<sup>3</sup>***

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)<sup>3</sup>***

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 NOTE**

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)

\_\_\_\_\_  
\_\_\_\_\_, New Mexico \_\_\_\_\_

for the purpose of storage.  
You are ordered to return this writ to this court by \_\_\_\_\_.

Dated: \_\_\_\_\_,  
\_\_\_\_\_. Judge

**RETURN ON WRIT OF RESTITUTION<sup>2</sup>**

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 NOTE**

- 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.]

**4-940. 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. Petition 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. \_\_\_\_\_

Petitioner.

**PETITION TO RESTORE RIGHT**

**TO POSSESS OR RECEIVE A FIREARM OR AMMUNITION**

I, \_\_\_\_\_ (*name*), am the Petitioner in this proceeding under Section 34-9-19(D) NMSA 1978 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 or finding (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.

Finding of incompetent to stand trial.

Finding of not guilty by reason of insanity at the time of the offense.

2. The Court entered the order or finding identified in Paragraph 1, above, in Case No. \_\_\_\_\_.

YES (required) I have attached a copy of the order or finding to this petition.

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 Petition 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 petition and for any other relief that the Court deems proper.

Respectfully submitted,

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Name of Petitioner (print)

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Telephone number

### VERIFICATION

I, the Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico the following:

(A) I am the petitioner in the above-entitled cause;

(B) I have read the petition to restore right to possess or receive a firearm or ammunition;

(C) The contents of the petition 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 petition, 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 or finding identified in Paragraph 1 of this petition 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 petition 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 petition.<sup>3</sup>

\_\_\_\_\_  
Date

\_\_\_\_\_  
Petitioner

USE NOTE

1. You must pay a filing fee to the court clerk in cash or money order at the time the petition 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 petition. 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 petition with you when you file the petition. 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 the original 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.]

**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 ABUSE<sup>1</sup>**

**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 weapons: \_\_\_\_\_

**3. [CHILD] [CHILDREN]<sup>2</sup>**

A. List minor [child] [children] of either party.

| 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**

\_\_\_\_\_  
\_\_\_\_\_

#### 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:

| <b>Type of Case</b> | <b>Year Filed<br/>(if known)</b> | <b>Case Number<br/>(if known)</b> | <b>Where Filed<br/>(city and state)</b> |
|---------------------|----------------------------------|-----------------------------------|---|
| _____               | _____                            | _____                             | _____                                   |
| _____               | _____                            | _____                             | _____                                   |

#### 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. 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



**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 my residence [and] [place of employment] [and] [school].

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 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:

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 relief is necessary*)

\_\_\_\_\_  
\_\_\_\_\_.

**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 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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 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 NOTE

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.]

### 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; 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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, 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 NOTE

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 NOTE**

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 ABUSE<sup>1</sup>**

#### **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 weapons: \_\_\_\_\_.

**3. [CHILD] [CHILDREN]?**

A. List minor [child] [children] of either party.

| 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**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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:

| <b>Type of Case</b> | <b>Year Filed</b><br><i>(if known)</i> | <b>Case Number</b><br><i>(if known)</i> | <b>Where Filed</b><br><i>(city and state)</i> |
|---------------------|--|---|---|
| _____               | _____                                  | _____                                   | _____   |
| _____               | _____                                  | _____                                   | _____   |

**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. 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

**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.  
other relief that is necessary to resolve this domestic abuse problem (*list or*  
[ describe what relief is necessary)  
] I.  
\_\_\_\_\_  
\_\_\_\_\_.

**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 is:

\_\_\_\_\_  
(street address)

\_\_\_\_\_  
(city and zip)

My telephone numbers are:

Home

Work

Message

\_\_\_\_\_

## 8. NOTICE TO PETITIONER

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.*)

[ A. ]

\_\_\_\_\_

[ 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 NOTE

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. 08-8300-40, 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, 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, Sections 40-13-1 to 40-13-8 NMSA 1978.]

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. 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.

Respondent shall not abuse the petitioner or the petitioner's household members in any way.  
"Abuse" means any incident by respondent against petitioner or 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.

2.

3.

Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.

4.

Respondent shall not go within \_\_\_\_\_ yards of the petitioner's home or school or work place.  
Respondent shall not go within \_\_\_\_\_ yards of the petitioner at all times except

\_\_\_\_\_  
If at a public place, such as a store, respondent shall not go within \_\_\_\_\_ yards of petitioner.

5.

\_\_\_\_\_ shall have temporary physical custody of the following child(ren):

6.

With respect to the child(ren) named in the preceding paragraph,  respondent  petitioner 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.

Contact with the child(ren), subject to:

B.

7.

Neither party shall remove the child(ren) named in the preceding paragraph 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.

8.

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).

9.  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.

10. Law enforcement officers or \_\_\_\_\_ shall accompany  respondent  petitioner to remove essential tools (*as specified in No. 13*), clothing, and personal belongings from the residence at \_\_\_\_\_.

11. 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.

12. 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.

13. Other:

14. 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.

**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. 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 respondent and a bench warrant may be issued for respondent's arrest. If petitioner willfully fails to appear at this hearing, the petition may be dismissed. This order remains in force until \_\_\_\_\_, \_\_\_\_\_.

**[ ] DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.**

**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.

**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 NOTE

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 that 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*, 7 N.M. 580, 583 (1894).

[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.]

## ANNOTATIONS

**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, Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT  
\_\_\_\_\_, Petitioner

v.

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

\_\_\_\_\_, Respondent

**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. Petitioner shall not write to, talk to, visit or contact the respondent in any way except through respondent's lawyer, if respondent has a lawyer.  
Petitioner shall not abuse the respondent or the respondent's household members in any way. "Abuse" means any incident by petitioner against respondent or 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 workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.
- 2.
3. Petitioner shall not ask or cause other persons to abuse the respondent or the respondent's household members.  
Petitioner shall not go within \_\_\_\_\_ yards of the respondent's home or school or workplace. Petitioner shall not go within \_\_\_\_\_ yards of the respondent at all times except
4. \_\_\_\_\_ . If at a public place, such as a store, petitioner shall not go within \_\_\_\_\_ yards of respondent.
5. \_\_\_\_\_ shall have temporary physical custody of the following child(ren):
6. With respect to the child(ren) named in the preceding paragraph, [ ] respondent [ ] petitioner 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:

7. Neither party shall remove the child(ren) named in the preceding paragraph 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.

8. 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).

9.  A. 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 petitioner from the residence at \_\_\_\_\_.

C. Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

10. Law enforcement officers or \_\_\_\_\_ shall accompany  respondent  petitioner to remove essential tools (as specified in No. 13), clothing, and personal belongings from the residence at \_\_\_\_\_.

11. 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.

12. 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.

13. Other:

14. While this order of protection is in effect, 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 Section 40-13-6(D) NMSA 1978, 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. 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 petitioner and a bench warrant may be issued for petitioner's arrest. If respondent willfully fails to appear at this hearing, the counter-petition may be dismissed. This order remains in force until \_\_\_\_\_,

**DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.  
ENFORCEMENT OF ORDER**

If the petitioner violates any part of this order, the petitioner 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 NOTE**

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 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*, 7 N.M. 580, 583 (1894).

[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.]

### ANNOTATIONS

**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 NOTE**

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.**

[Click here for PDF version of Order of Protection cover page]

|   |  |
|---|--|
| _____ Judicial<br>District<br>_____ County,<br>New Mexico<br>Case No.<br>_____                | <b>Order of Protection</b><br><input type="checkbox"/> Amended Order |
| PROTECTED PARTY ( <input type="checkbox"/> PETITIONER <input type="checkbox"/><br>RESPONDENT) | PROTECTED PARTY<br>IDENTIFIERS                                       |
| _____<br>First                      Middle                      Last                          | _____<br>Date of Birth of Protected<br>Party                         |
| And/or on behalf of minor family  | Other Protected  |

member(s): (list name and DOB)

Persons/DOB

**V.**

| RESTRAINED PARTY                 |        |      |     | RESTRAINED PARTY IDENTIFIERS  |      |                   |          |
|----------------------------------|--------|------|-----|-------------------------------|------|-------------------|----------|
|                                  | SEX    | RACE | DOB | HT                            | WT   |                   |          |
| First                            | Middle | Last |     |                               |      |                   |          |
| Relationship to Protected Party: |        |      |     | EYES                          | HAIR | SOCIAL SECURITY # |          |
|                                  |        |      |     | <b>Not used in New Mexico</b> |      |                   |          |
| Restrained Party's Address       |        |      |     | DRIVERS LICENSE #             |      | STATE             | EXP DATE |
|                                  |        |      |     |                               |      |                   |          |
| Distinguishing Features          |        |      |     |                               |      |                   |          |

**CAUTION:**

Weapon Involved

**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 ,  .

**WARNINGS TO 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 may be 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). 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, Sections 40-13-1 to 40-13-8 NMSA 1978.]

**ADDITIONAL PAGES<sup>1</sup> OF  
ORDER OF PROTECTION**

THIS MATTER came before the court on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ through a hearing on the [ ] petitioner's [ ] respondent's request for an  
order prohibiting domestic abuse.

The court further **FINDS, CONCLUDES AND ORDERS:**  
*(check only applicable paragraphs)*

**1. NOTICE, APPEARANCES AND STATUS**

[ ] Petitioner was present.

[ ] Petitioner was represented by counsel.

[ ] Respondent was present.

[ ] Respondent was represented by counsel.

[ ] Respondent was properly served with a copy of the petition, temporary order of  
protection prohibiting domestic abuse and order to appear.<sup>2</sup>

[ ] Respondent was properly served with a copy of the petition and order to appear.<sup>2</sup>

[ ] Respondent received actual notice of the hearing and had an opportunity to  
participate in the hearing.<sup>2</sup>

[ ] Petitioner was properly served with a copy of the counter-petition and order to  
appear.<sup>2</sup>

[ ] Petitioner was properly served with a copy of the temporary order and order to  
appear.

Petitioner received actual notice of the hearing and had an opportunity to participate in the hearing.<sup>2</sup>

The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section 921 (a)(32). (See 2(B) below)

## **2. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION**

Violation of this order by the  respondent  petitioner 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) or both. You may be found in contempt of court.

B. 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 fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

## **3. FINDING OF DOMESTIC ABUSE**

An act of domestic abuse was committed by  respondent  petitioner that necessitates an order of protection.  Petitioner  Respondent is the protected party under this order.

## **4. DOMESTIC ABUSE PROHIBITED**

Respondent  Petitioner 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 petitioner or 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 petitioner's or respondent's or a household member's residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

Respondent  Petitioner shall not ask or cause other persons to abuse the other party or any other household members.

**5. CONTACT PROHIBITIONS**

Respondent  Petitioner shall stay \_\_\_\_\_ yards away from the other party, the other party's home and any workplace at all times, unless at a public place, where the  respondent  petitioner shall remain \_\_\_\_\_ yards away from the other party except as specifically permitted by this order.

Respondent  Petitioner 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;

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's addresses**

\_\_\_\_\_ (home address)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (if applicable, tribe or pueblo)  
\_\_\_\_\_ (state and zip code)

**6. COUNSELING**

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.

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.

Respondent shall report to \_\_\_\_\_, for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Petitioner shall report to \_\_\_\_\_, for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

[ ] Other counseling requirements:

.

## **7. 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.<sup>3</sup>

## **8. 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.<sup>3</sup>

## **9. PROPERTY, DEBTS AND PAYMENTS 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.<sup>3</sup>

## **10. 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 Section 40-13-6 (D) NMSA 1978, only the restrained party can be arrested for violation of this order.

## **11. 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<sup>4</sup>:

.

## **12. NOTICE TO LAW ENFORCEMENT AGENCIES ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

[ ] Respondent [ ] Petitioner 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.

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 weeks before the order expires.

**14. 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

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date)<sup>5</sup>.

A copy of this order was  hand delivered  faxed  mailed to  petitioner  
 petitioner's counsel on \_\_\_\_\_ (date).

Signed

Title

#### USE NOTE

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 respondent received actual notice and at which respondent had an opportunity to participate if 18 U.S.C. Section 922 is to apply to this order.

3. See Form 4-967 NMRA for the Custody, Support and Division of Property Order attachment.

4. If appropriate, an order providing for restitution may be included in this paragraph.

5. Respondent or petitioner should be served at the time this order is issued, before leaving the courthouse. If a default order is issued, service upon the non-attending party shall be made by mail or by personal service. See Section 40-13-6(A) NMSA 1978.

[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.]

**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. Section 40-13-6(C) NMSA 1978.

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. *Eg. State v. Luna*, 93 N.M. 773, 777, 606 P.2d 183, 187 (1980). The "exigent circumstances" requirement is mandated by the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 159, 870 P.2d 117, 121 (1994) ("[F]or 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 v. State*, 117 N.M. 155, 158, 870 P.2d 117, 120 (1994). 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 (Section 40-13-6(D) NMSA 1978), 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. . . ." Section 40-13-6(B) NMSA 1978. 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 Section 40-13-5(C) NMSA 1978. 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.*

## ANNOTATIONS

**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.

#### **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 <sup>1</sup>**

**1. CUSTODY**

- [  ] Petitioner [  ] Respondent shall have temporary legal custody of the following child(ren): \_\_\_\_\_
- [  ]A. \_\_\_\_\_
- [  ] 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<sup>2</sup>:

\_\_\_\_\_

**4. ADDITIONAL PROVISIONS REGARDING CUSTODY, SUPPORT AND DIVISION OF PROPERTY**

IT IS FURTHER ORDERED<sup>3</sup>:

\_\_\_\_\_

**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 NOTE

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 against respondent.

[Click here for PDF version of Order of Protection cover page]

|   |  |
|---|--|
| _____ Judicial<br>District<br>_____ County,<br>New Mexico<br>Case No.<br>_____                | <b>Order of Protection</b><br><input type="checkbox"/> Amended Order |
| PROTECTED PARTY ( <input type="checkbox"/> PETITIONER <input type="checkbox"/><br>RESPONDENT) | PROTECTED PARTY<br>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 |      |                               |          |
|----------------------------------|------|------|-----|------------------------------|------|-------------------------------|----------|
| First                            | SEX  | RACE | DOB | HT                           | WT   |                               |          |
| Middle                           | Last |      |     |                              |      |                               |          |
| Relationship to Protected Party: |      |      |     | EYES                         | HAIR | SOCIAL SECURITY #             |          |
| Restrained Party's Address       |      |      |     |                              |      | <b>Not used in New Mexico</b> |          |
|                                  |      |      |     | DRIVERS LICENSE #            |      | STATE                         | EXP DATE |
|                                  |      |      |     |                              |      |                               |          |

Distinguishing Features

**CAUTION:**

Weapon Involved

**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 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 may be 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). 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 PAGES<sup>1</sup> OF  
STIPULATED ORDER OF PROTECTION  
AGAINST RESPONDENT**

The court further **FINDS, CONCLUDES AND ORDERS:**

**1. 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 USC Section 921(a)(32). (See 2 below)

**2. 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 sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found to be in contempt of court.

B. 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 fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

**3. DOMESTIC ABUSE PROHIBITED**

The respondent shall not abuse the petitioner or members of the petitioner's household.

"Abuse" means any incident by respondent against the petitioner or petitioner's household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by respondent causing imminent fear of bodily injury to petitioner or petitioner's household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by petitioner's or petitioner's 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. Respondent shall not ask or cause other persons to abuse the petitioner or petitioner's household members.

#### 4. CONTACT PROHIBITIONS

Respondent shall stay \_\_\_\_\_ yards away from the petitioner and the petitioner's home and workplace at all times, unless at a public place, where the respondent shall remain \_\_\_\_\_ yards away from the petitioner except as specifically permitted by this order.

Respondent shall not telephone, talk to, visit or contact petitioner 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 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)*

#### 5. COUNSELING

Petitioner shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

Respondent shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

Petitioner shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Respondent shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Other counseling requirements:

## **6. CUSTODY<sup>2</sup>**

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.

## **7. PROVISIONS RELATING TO SUPPORT<sup>2</sup>**

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.

## **8. PROPERTY, DEBTS, PAYMENTS OF MONEY<sup>2</sup>**

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.

## **9. 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<sup>3</sup>:

## **10. PETITIONER SHALL NOT CAUSE VIOLATION**

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 Section 40-13-6(D) NMSA 1978 only the restrained party can be arrested for violation of this order.

**11. NOTICE TO LAW ENFORCEMENT AGENCIES**  
**ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

Respondent 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.

**12. NOTICE TO PETITIONER AND RESPONDENT**

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

**13. 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 2.

Petitioner's signature

Respondent's signature

Petitioner's counsel, if any

Respondent's counsel, if any

Date

Date

**14. 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

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date).<sup>3</sup>

A copy of this order was  hand delivered  faxed  mailed to  petitioner  petitioner's counsel on \_\_\_\_\_ (date).

Signed

#### USE NOTE

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. Respondent may be served at the time this order is issued. If respondent is not present at the time this order is issued, service upon respondent shall be made by delivering a copy to the party. See Section 40-13-6(A) NMSA 1978.

[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.]

**Committee commentary.**— This Stipulated Order of Protection against Respondent is not the same as an Order of Protection entered pursuant to 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..." Section 40-13-6(B) NMSA 1978. 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 Section 40-13-5(C) NMSA 1978. 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 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 respondent.

[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, 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. Stipulated order of protection against petitioner.

[Click here for PDF version of Order of Protection cover page]

|  |  |
|--|--|
| _____ Judicial<br>District<br>_____ County,<br>New Mexico<br>Case No.<br>_____ | <b>Order of Protection</b><br><input type="checkbox"/> 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 |     |      |      |                               |
| Relationship to Protected Party: |        |      |     | EYES | HAIR | SOCIAL SECURITY #             |
|                                  |        |      |     |      |      | <b>Not used in New Mexico</b> |

Restrained Party's Address

|                      |       |             |
|----------------------|-------|-------------|
| DRIVERS<br>LICENSE # | STATE | EXP<br>DATE |
|                      |       |             |

Distinguishing Features

**CAUTION:**

Weapon Involved

**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 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 may be 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). 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 PAGES<sup>1</sup> OF  
STIPULATED ORDER OF PROTECTION  
AGAINST PETITIONER**

The court further **FINDS, CONCLUDES AND ORDERS:**  
(check only applicable paragraphs)

**1. 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 USC Section 921(a)(32). (See 2 below)

**2. 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 sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found to be in contempt of court.

B. 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 fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

**3. DOMESTIC ABUSE PROHIBITED**

The petitioner shall not abuse the respondent or members of the respondent's household. "Abuse" means any incident by petitioner against the respondent or respondent's household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by petitioner causing imminent fear of bodily injury to respondent's or respondent's household members; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by respondent's or respondent's household members' residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

Petitioner shall not ask or cause other persons to abuse the respondent or respondent's household members.

**4. CONTACT PROHIBITIONS**

Petitioner shall stay \_\_\_\_\_ yards away from the respondent and the respondent's home and workplace at all times, unless at a public place, where the petitioner shall remain \_\_\_\_\_ yards away from the respondent except as specifically permitted by this order.

Petitioner shall not telephone, talk to, visit or contact respondent in any way except as follows:

The parties may contact each other by telephone regarding medical emergencies of minor 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)

**5. COUNSELING**

Petitioner shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

Respondent shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

Petitioner shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Respondent shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Other counseling requirements:  
.

**6. CUSTODY<sup>2</sup>**

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.

**7. PROVISIONS RELATING TO SUPPORT<sup>2</sup>**

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.

**8. PROPERTY, DEBTS, PAYMENTS OF MONEY<sup>2</sup>**

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.

**9. 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<sup>3</sup>:

**10. RESPONDENT SHALL NOT CAUSE VIOLATION**

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 Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

**11. NOTICE TO LAW ENFORCEMENT AGENCIES  
ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

Petitioner 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.

**12. NOTICE TO PETITIONER AND RESPONDENT**

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

**13. 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 2.

Petitioner's signature

Respondent's signature

Petitioner's counsel, if any

Respondent's counsel, if any

Date

Date

**14. 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

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date).<sup>4</sup>

A copy of this order was  hand delivered  faxed  mailed to  petitioner  petitioner's counsel on \_\_\_\_\_ (date).

Signed

**USE NOTE**

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. Petitioner may be served at the time this order is issued. If petitioner is not present at the time this order is issued, service upon petitioner shall be made by delivering a copy to the party. See Section 40-13-6(A) NMSA 1978.

[Approved, effective April 9, 2002; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**Committee commentary.** — See Committee Comment to Civil Form 4-970 NMRA.

### ANNOTATIONS

**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 the first sentence 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; 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 the sentence 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, in the bold, italicized paragraph, changed "respondent's" to "the protected party's" and deleted "address of residence and employment for the respondent"; in Paragraph 4, changed "Petitioner's addresses" to "Protected party's addresses" and deleted the blanks for the Respondent'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 the sentence 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 NMRA should be used and if a hearing is held on other matters, Form 4-967 NMRA 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 10 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.

**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 ABUSE<sup>1</sup>**

**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 NOTE

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.  
Law enforcement officers or \_\_\_\_\_
- D. 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 NOTE

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 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.

**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.

**The 2000 amendment**, effective August 29, 2000, substituted the bold heading "Return of Service" for "Affidavit of Service" and took out the entry for a notary public signature and date his commission expires.

#### **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 NOTE

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. 08-8300-40, 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, 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, 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, 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, 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.