

# Criminal Forms

## ARTICLE 1 General Provisions

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

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

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

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

Signature of party

#### USE NOTE

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

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

### ANNOTATIONS

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

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

### 9-102. Certificate of excusal or recusal.

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

STATE OF NEW MEXICO

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

IN THE DISTRICT COURT

STATE OF NEW MEXICO

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

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

### CERTIFICATE OF EXCUSAL OR RECUSAL

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

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

\_\_\_\_\_, \_\_\_\_\_

Date Judge

### USE NOTE

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

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

**ANNOTATIONS**

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

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

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

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

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

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

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

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

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

**9-102A. Certificate of excusal or recusal.**

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

STATE OF NEW MEXICO

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

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

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

## CERTIFICATE OF EXCUSAL OR RECUSAL

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

I request that another judge be designated according to law.

\_\_\_\_\_

Date    Judge

### USE NOTE

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

[Approved by Supreme Court Order 07-8300-34, effective January 22, 2008; as amended by Supreme Court Order No. 09-8300-027, effective September 10, 2009.]

### ANNOTATIONS

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

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

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

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

### **9-102B. Certificate of recusal.**

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

STATE OF NEW MEXICO

CITY OF \_\_\_\_\_

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[CITY OF \_\_\_\_\_]

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

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

### CERTIFICATE OF RECUSAL

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

I request that another judge be designated according to law.

\_\_\_\_\_  
Date Judge

### USE NOTE

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

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

[Approved by Supreme Court Order 07-8300-34, effective January 22, 2008; as amended by Supreme Court Order No. 09-8300-037, effective November 16, 2009.]

### ANNOTATIONS

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

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

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

### 9-103. Notice of excusal.

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

No.

STATE OF NEW MEXICO

v.

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

**NOTICE OF EXCUSAL**

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

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

Party or attorney for the party

**USE NOTE**

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

[As amended, effective May 1, 1986; November 1, 1995; May 1, 2001; as amended by Supreme Court Order 07-8300-34, effective January 22, 2008.]

**ANNOTATIONS**

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

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

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

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

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

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

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

**9-103A. Notice of excusal.**

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
v.  
\_\_\_\_\_, Defendant

**NOTICE OF EXCUSAL<sup>1</sup>**

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

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

Party or attorney for the party

**OPTIONAL STIPULATION**

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

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

Party or attorney for the party

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

Party or attorney for the party

**USE NOTES**

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

[Approved by Supreme Court Order 07-8300-34, effective January 22, 2008.]

**ANNOTATIONS**

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

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

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

**9-103B. Notice of recusal.**

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

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

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

**NOTICE OF RECUSAL**

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

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

Judge \_\_\_\_\_ has been assigned to the case.

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

\_\_\_\_\_

Clerk

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

**9-103C. Notice of assignment.**



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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

### NOTICE OF ASSIGNMENT

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

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

\_\_\_\_\_

Clerk

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

### 9-104. Waiver of appearance.

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.

**WAIVER OF APPEARANCE**

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

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

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

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

(check applicable boxes)

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

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

(check one, if applicable)

- guilty.
- not guilty.
- no contest.

Signature of defendant

**CERTIFICATE OF DEFENSE COUNSEL**

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

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

Defense counsel

Date

**APPROVAL OF JUDGE**

Permission to waive appearance is

granted under the following conditions \_\_\_\_\_ (*list any conditions*).

denied.

Judge

Date

**USE NOTE**

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

[As amended, effective November 1, 1996; November 1, 2000; May 15, 2003; as amended by Supreme Court Order 06-8300-08, effective May 1, 2006.]

**ANNOTATIONS**

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

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

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

**The 2006 amendment**, approved by Supreme Court Order 06-8300-08, effective May 1, 2006, approved this form for use in the district court.

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.

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

**REQUEST FOR AUDIO OR  
AUDIO-VISUAL APPEARANCE**

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

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

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

*(check applicable alternative)*

telephone or other audio communication

simultaneous audio-visual communication

for the following proceedings:

*(check applicable boxes)*

all proceedings in this case;

all pretrial proceedings in this case;

entry of a plea; [and]

setting or amending bail or conditions of release; [and]

trial; [and]

[ ] imposition of sentence.

Signature of defendant

**CERTIFICATE OF DEFENSE COUNSEL**

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

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

Defense counsel

Date

**APPROVAL OR DENIAL OF JUDGE**

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

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

Judge

Date

**USE NOTE**

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

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

**ANNOTATIONS**

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

**9-104B. Waiver of appearance and entry of a plea penalty assessment misdemeanor.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v. No.

\_\_\_\_\_,  
(name of person cited)

**WAIVER OF APPEARANCE  
AND ENTRY OF A PLEA  
PENALTY ASSESSMENT MISDEMEANORS**

I understand that I am charged with the following [motor vehicle] [game and fish] offense or offenses under the law of the (State of New Mexico) (City of \_\_\_\_\_): \_\_\_\_\_ (list all offenses charged).

I understand that I am entitled to personally appear before the court for trial.

I have received and read a copy of the citation or had the citation read to me. I understand the offense or offenses charged and the fine provided by law.

After reading and understanding the above, I give up my right to personally appear.

I enter a plea of [ ] guilty [ ] no contest to each of the offenses charged.

Signature of party

**APPROVAL OF JUDGE**

Permission to waive appearance is:  
[ ] granted under the following conditions \_\_\_\_\_ (list any conditions).  
[ ] denied.

Judge

**USE NOTE**

This form may only be used to enter a plea of guilty within thirty (30) days after issuance of a penalty assessment misdemeanor citation. Do not use this form if the person cited failed to appear as required or failed to pay the fine, fees and any costs within the time required by law or order of the court. For any other plea of guilty, Form 9-104A may be used to request an audio or audio-visual appearance.

[Approved, effective May 15, 2001.]

**ANNOTATIONS**

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

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

**9-105. Notice of recusal.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**NOTICE OF RECUSAL**

You are notified that I have recused myself from presiding over the above-captioned case. The parties are further notified that if within ten (10) days they do not file with the

court a stipulation agreeing to another judge to hear the case, another judge will be assigned to hear the case.

\_\_\_\_\_ , \_\_\_\_\_

Judge

Division

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

### ANNOTATIONS

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

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

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

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



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

**Withdrawing attorney**

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

**Attorney entering appearance**

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

**CERTIFICATE OF SERVICE ON OPPOSING PARTY**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this motion was

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and zip code: \_\_\_\_\_

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

[e-mailed by \_\_\_\_\_ (*name of person who transmitted*) to \_\_\_\_\_ at \_\_\_\_\_ (*electronic address of recipient*) which address is on file with the clerk of the Supreme Court. The

transmission was successful. The time and date of the transmission was \_\_\_\_\_  
(a.m.) (p.m.) on \_\_\_\_\_ (date).]

Signature of attorney or party

Date of signature

**CERTIFICATE OF SERVICE ON DEFENDANT**

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and zip code: \_\_\_\_\_]

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

Signature of attorney

Date of signature

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

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

**USE NOTE**

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

[Approved, effective February 16, 2004.]

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**NOTICE OF SUBSTITUTION OF COUNSEL  
FOR LEGAL REPRESENTATION OF \_\_\_\_\_**

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

Dated: \_\_\_\_\_

**Withdrawing attorney**

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

**Attorney entering appearance**

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

**APPROVED:**

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

**CERTIFICATE OF MAILING**

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

Date of Mailing: \_\_\_\_\_, \_\_\_\_\_.

By:

**USE NOTE**

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

[Approved, effective February 16, 2004.]

**ARTICLE 2**  
**Initiation of Proceedings**

**9-201. Criminal complaint.**

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

v.

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

**CRIMINAL COMPLAINT**

CRIME:

*(common name of offense or offenses)*

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

*(here state the essential facts)*

contrary to Section(s)  
NMSA 1978.

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

Complainant

Title (if any)

Approved:

Title

*Note: This complaint may not be filed without the prior payment of a filing fee unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not otherwise required.*

[As amended, effective September 1, 1990; April 1, 1991; November 1, 1991.]

**ANNOTATIONS**

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

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

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

## 9-202. Criminal complaint.

[For use with Metropolitan Court Rule 7-201 and  
Municipal Court Rule 8-201]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

### CRIMINAL COMPLAINT

CRIME:  
(*common name of offense or offenses*)

The undersigned, under penalty of perjury, complains and says that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the City of \_\_\_\_\_, State of New Mexico, the above-named defendant(s) did:  
(*here state the essential facts*)

contrary to Sections(s)  
NMSA 1978

(*set forth applicable section number of municipal code or municipal ordinance and date of adoption*).

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

Complainant

Title (if any)

Approved:

Title

[As amended, effective September 1, 1990; November 1, 1991.]

**ANNOTATIONS**

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

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

**9-203. Criminal information.**

[For use with District Court Rules 5-201]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

Crime: \_\_\_\_\_  
( common name of offense)

**CRIMINAL INFORMATION**

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

contrary to Section(s) \_\_\_\_\_ NMSA 1978.

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

District Attorney

**9-204. Grand jury indictment.**

[For use with District Court Rule 5-201]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT

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

Crime: \_\_\_\_\_  
( common name of offense)

STATE OF NEW MEXICO  
v.

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

**GRAND JURY INDICTMENT**

THE GRAND JURY CHARGES:

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

contrary to Section(s) \_\_\_\_\_ NMSA 1978.



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

I hereby certify that the foregoing indictment is a \_\_\_\_\_ Bill.

Foreperson

Dated:

APPROVED:

\_\_\_\_\_  
District Attorney

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

[For use with District Court Rule 5-201]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

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

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

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

Acknowledged by:

Attorney for Defendant

Defendant

**9-206. Notice of preliminary examination.**

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**NOTICE OF PRELIMINARY  
EXAMINATION**

TO: \_\_\_\_\_  
*(Defendant's attorney or if no attorney, defendant)*  
\_\_\_\_\_  
*(Address)*  
\_\_\_\_\_  
*(District Attorney)*  
\_\_\_\_\_  
*(Address)*

You are ordered to appear for a preliminary examination on the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ [a.m.] [p.m.], at the  
\_\_\_\_\_ court located at \_\_\_\_\_.  
If you fail to appear, a warrant may be issued for your arrest.

\_\_\_\_\_  
Date

(Judge) (Clerk)

**USE NOTE**

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

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

**ANNOTATIONS**

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

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

### **9-207. Bind-over order.**

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

#### **BIND-OVER ORDER**

I hereby ORDER that the defendant(s) (is) (are) bound over for trial in the district court on the: *(please check appropriate box)*

offenses charged in the complaint.

offenses charged in the complaint and the following additional offenses:

*(Here set forth the common name of the additional offenses and, if applicable, a specific section of the New Mexico statutes which defines the offenses.)*

following offenses:

*(check one)*

A preliminary examination on the offenses set forth in the complaint was waived.

A preliminary examination was held on the offenses set forth in the complaint.

I find that there is probable cause to believe that the above offenses have been committed and that the defendant committed them.

Date

Judge

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

**9-207A. Probable cause determination.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**PROBABLE CAUSE DETERMINATION**

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

**Finding of Probable Cause**

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

It is ordered that the defendant shall be released:

[ ] on personal recognizance.

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

**Failure to Make Showing of Probable Cause**

[ ] I find that probable cause has not been shown that a crime has been committed and that the above named defendant committed it. It is therefore ordered that the

complaint against the defendant be and the same is hereby dismissed without prejudice and the defendant be immediately discharged from custody.

Date

Judge

Unless the defendant has been released on personal recognizance, the amount of bail set and any conditions of release prescribed by a designee must also be reviewed. This form is not necessary if the finding of probable cause is endorsed by the judge on the criminal complaint or on a statement of probable cause.

[Approved effective September 1, 1990.]

**9-208. Criminal summons.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**CRIMINAL SUMMONS**

To: (Defendant)

(Address)

You are notified that a Complaint, a copy of which is attached hereto, has been filed in this court charging that you committed the offense of \_\_\_\_\_ (common name and description of offense charged).

You are ordered to appear before the undersigned on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ m. at \_\_\_\_\_ in the \_\_\_\_\_

(County of) (City of) \_\_\_\_\_ State of New Mexico, to plead to the above charge(s).

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

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

Judge or Clerk

Name of the Law Enforcement Entity  
Filing the Criminal Complaint

BY: \_\_\_\_\_  
Prosecuting Attorney  
Law Enforcement Officer

Address  
\_\_\_\_\_

**CERTIFICATE OF MAILING**

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

Signature

Title (if any)

Date

**RETURN**

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

*(check one box and fill in appropriate blanks)*

*(if full-time salaried law enforcement officer)*

I certify that I served the above Summons on \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy thereof, with copy of complaint attached, in the (county) (municipality) named above in the following manner:

I, \_\_\_\_\_, being duly sworn, upon my oath, say that I am over the age of eighteen (18) years and that I served the within summons the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy thereof, with a copy of complaint attached, in the (county) (municipality) named above in the following manner:

*(check one box and fill in appropriate blanks)*

to the defendant

*(if the defendant was absent)*

to \_\_\_\_\_ (name of person), a person over the age of fifteen (15) residing at the usual place of abode of defendant

*(if no person is found at defendant's dwelling)*

by posting a copy on the \_\_\_\_\_  
*(describe place — most public part of premises)*

*(if a corporation)*

to \_\_\_\_\_ (name of officer and title) of \_\_\_\_\_  
*(corporation)*

Signature [of Affiant]  
of Person Making Service

Title (if any)

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

\_\_\_\_\_  
Judge, Notary Public or Other Officer  
Authorized to Administer Oaths

\_\_\_\_\_  
Official Title

If Notary Public:

My commission expires: \_\_\_\_\_

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

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

### ANNOTATIONS

**Cross references.** — As to service of warrants by police officers, see 3-13-2 NMSA 1978.

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

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

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

### 9-209. Affidavit for arrest warrant.

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**AFFIDAVIT FOR ARREST WARRANT**



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

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

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

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

*(print/type) Affiant's Name*

Signature of Affiant

Official Title *(if any)*

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

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

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

## **9-210. Warrant for arrest.**

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**WARRANT FOR ARREST**

THE [STATE OF NEW MEXICO] [CITY OF \_\_\_\_\_]

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT<sup>1</sup>:

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE COMMANDED to arrest the above-named defendant and bring the defendant without unnecessary delay before this court<sup>2</sup>: to answer the charge of (*here state common name and description of offense charged*):

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

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

The person obtaining this warrant shall cause it to be entered into a law enforcement information system<sup>3</sup>:

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

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

Judge

**RETURN WHERE DEFENDANT IS FOUND**

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

Signature

Title

**USE NOTES**

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

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

**ANNOTATIONS**

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

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

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

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

No.

Warrant No.

Judge

STATE OF NEW MEXICO  
v. \_\_\_\_\_, Defendant

**WARRANT FOR ARREST**

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT<sup>1</sup>:

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE COMMANDED to arrest the above-named defendant and bring the defendant without unnecessary delay before this court<sup>2</sup> to answer the charge of *(here state common name and description of offense charged)*:

contrary to Section(s) \_\_\_\_\_ NMSA 1978.

**Bond provisions:**

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

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

Judge

**Description of defendant:**

Name \_\_\_\_\_

Alias \_\_\_\_\_

Date of birth \_\_\_\_\_

Social Security No. \_\_\_\_\_

Address \_\_\_\_\_

Sex *(male) (female)* Height \_\_\_\_\_ Weight \_\_\_\_\_

Hair color \_\_\_\_\_ Eyes \_\_\_\_\_

Scars, marks and tattoos:

\_\_\_\_\_

---

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

---

**Extradition information:**

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

from any contiguous state

from anywhere in the continental United States

from any other State

from anywhere

Prosecuting attorney: \_\_\_\_\_

By: \_\_\_\_\_

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

Originating officer \_\_\_\_\_

Originating agency \_\_\_\_\_

**RETURN WHERE DEFENDANT IS FOUND**

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

Signature

Title

**USE NOTES**

1. An arrest warrant may be directed to a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, or an Indian tribal or pueblo law enforcement officer.
2. If the judge is unavailable, defendant must be brought before designee for setting of conditions of release. A defendant accused of a bailable offense may not be held without the setting of conditions of release.

[Approved, effective June 1, 1999.]

**9-211. Affidavit for bench warrant.**

[For use with District Court Rule 5-209,  
Magistrate Court Rule 6-207,

Metropolitan Court Rule 7-207 and  
Municipal Court Rule 8-206]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**AFFIDAVIT FOR BENCH WARRANT**

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

*(check appropriate box or boxes)*

- failed to appear at the time and place ordered by this court
- failed to appear as required by a subpoena issued by this court
- failed to appear in accordance with the conditions of release imposed by this court
- should appear for review of conditions of release previously imposed
- failed to pay fines or costs previously imposed
- failed to comply with conditions of probation
- \_\_\_\_\_ *(describe contempt)*

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

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

Affiant's name *(print/type)*

Signature of affiant

Official title *(if any)*

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

\_\_\_\_\_  
Judge, Notary or Other Officer  
Authorized to Administer Oaths

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

[As amended, effective January 1, 1996.]

### ANNOTATIONS

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

### 9-212. Bench warrant.

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

### BENCH WARRANT

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

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

grand jury indictment filed on \_\_\_\_\_ (date) on the following charges:

failure to appear at the time and place ordered by this court.

- failure to appear as required by a subpoena issued by this court.
- failure to appear in accordance with the conditions of release imposed by this court.
- conditions of release previously imposed should be revoked or reviewed.
- contempt of court.
- failure to pay fines or costs previously imposed.
- failure to comply with conditions of probation.
- other:

**Bond provisions:**

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

Judge

**Description of defendant:**

Name \_\_\_\_\_  
 Alias \_\_\_\_\_  
 Date of birth \_\_\_\_\_  
 Social Security No. \_\_\_\_\_  
 Address \_\_\_\_\_  
 Sex (*male*) (*female*) Height \_\_\_\_\_ Weight \_\_\_\_\_  
 Hair color \_\_\_\_\_ Eyes \_\_\_\_\_  
 Scars, marks and tattoos:

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

**Extradition Information:**

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

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



Prosecuting attorney: \_\_\_\_\_  
By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Originating officer: \_\_\_\_\_  
Originating agency: \_\_\_\_\_

**RETURN**

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

Signature

Title

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

**ANNOTATIONS**

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

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

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

**9-212A. Bench warrant.**

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE METROPOLITAN COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.  
\_\_\_\_\_, Defendant

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

S.S.# \_\_\_\_\_

**BENCH WARRANT**

THE [STATE OF NEW MEXICO] [MUNICIPALITY OF \_\_\_\_\_]

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

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

*(check applicable box and describe facts below)*

failure to appear as ordered by this court on \_\_\_\_\_;

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

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

conditions of release previously imposed should be revoked or reviewed;

contempt of court for \_\_\_\_\_;

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

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

failure to appear at first offender program on \_\_\_\_\_;

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

*(check and complete, if applicable)*

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

OR

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

OR

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

**THIS WARRANT MAY BE EXECUTED:**

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

The clerk of this court shall cause this warrant to be entered into a law enforcement information system<sup>2</sup>:

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

Date

Judge

**RETURN**

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

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

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

Signature

Title

#### USE NOTES

1. A \$100 bench warrant fee is assessed in the metropolitan court pursuant to Section 34-8A-12 NMSA 1978.
2. All metropolitan court felony misdemeanor and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.

[Effective, January 1, 1993; as amended, effective January 1, 1995; January 1, 1996; July 1, 1999; as amended by Supreme Court Order 07-8300-34, effective January 22, 2008.]

#### ANNOTATIONS

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

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

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

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

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

**9-212B. Juvenile traffic bench warrant.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

S.S.# \_\_\_\_\_

**JUVENILE TRAFFIC BENCH WARRANT<sup>1</sup>**

*(check applicable box)*

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

**UNRESTRICTED WARRANT.<sup>3</sup> A children's court judge has approved the arrest and incarceration of this juvenile.**

THE (STATE OF NEW MEXICO) (MUNICIPALITY OF \_\_\_\_\_)

TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

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

*(check applicable box and describe facts below)*

failure to appear as ordered by this court on \_\_\_\_\_;

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

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

conditions of release previously imposed should be revoked or reviewed;

contempt of court for  
\_\_\_\_\_

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

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

failure to appear at first offender program on \_\_\_\_\_;

other .

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

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

*(check and complete, if applicable)*

The defendant failed to appear either on a traffic citation (*other than a citation issued for a violation listed in Section 66-8-122 or 66-8-125 NMSA 1978*) or a citation issued by an official authorized by law and may be released on a plea of guilty and payment of \$\_\_\_\_\_ plus a \$100 bench warrant fee<sup>4</sup>;

OR

The defendant failed to pay fines and costs and defendant may be released upon payment of the outstanding fine and court costs in the amount of \$\_\_\_\_\_ plus a \$100 bench warrant fee<sup>4</sup>;

OR

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

**THIS WARRANT MAY BE EXECUTED:**

in any jurisdiction;

anywhere in this state;

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

The clerk of this court shall cause this warrant to be entered into a law enforcement information system<sup>5</sup>:

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

Date

Judge

**RETURN**

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

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

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

Signature

Title

**USE NOTES**

1. This form may be used in municipal, magistrate or metropolitan court traffic cases.
2. Check this alternative unless a children's court judge has authorized the incarceration of the juvenile. See Section 32A-2-29 NMSA 1978 for the procedure to be followed when a child is to be incarcerated.
3. Check this alternative if a children's court judge has authorized that the juvenile be arrested and incarcerated pursuant to Section 32A-2-29 NMSA 1978.
4. A \$100 bench warrant fee is assessed in the metropolitan court pursuant to Section 34-8A-12 NMSA 1978 and in the magistrate court pursuant to Section 35-6-5 NMSA 1978.

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

[Approved, effective March 1, 2000.]

### 9-212C. Bench warrant.

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant  
DOB: \_\_\_\_\_  
Address: \_\_\_\_\_  
S.S.# \_\_\_\_\_

#### BENCH WARRANT

THE (STATE OF NEW MEXICO) (MUNICIPALITY OF \_\_\_\_\_)  
TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

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

*(check applicable box and describe facts below)*

- failure to appear as ordered by this court on \_\_\_\_\_;
- failure to appear as required by a subpoena issued by this court for \_\_\_\_\_;
- failure to appear in accordance with the conditions of release imposed by this court for \_\_\_\_\_;
- conditions of release previously imposed should be revoked or reviewed;



contempt of court for \_\_\_\_\_;

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

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

failure to appear at first offender program on \_\_\_\_\_;

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

*(check and complete, if applicable)*

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

OR

2. Payment: The defendant failed to appear either on a traffic citation (*other than a citation issued for a violation listed in Section 66-8-122 or 66-8-125 NMSA 1978*) or a citation issued by an official authorized by law and may be released on a plea of guilty and payment of \$\_\_\_\_\_ plus a \$100 bench warrant fee<sup>1</sup>.

OR

3. Payment: The defendant failed to pay fines and costs as ordered by the court and defendant may be released upon payment of the outstanding fine and court costs in the amount of \$\_\_\_\_\_ plus a \$100 bench warrant fee<sup>1</sup>.

**THIS WARRANT MAY BE EXECUTED:**

in any jurisdiction;

anywhere in this state;

anywhere in this county;

anywhere in this city.

The clerk of this court shall cause this warrant to be entered into a law enforcement information system<sup>2</sup>:

maintained by the state police.

\_\_\_\_\_ (*identify other law enforcement information system*).

Date

Judge

**RETURN**

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

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

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

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

Signature

Title

**USE NOTES**

1. A \$100 bench warrant fee is assessed in the magistrate court pursuant to Section 35-6-5 NMSA 1978.
2. All magistrate court felony misdemeanor and driving while under the influence of intoxicating liquor or drugs warrants must be entered into a law enforcement information system.
3. The warrant may be executed in "any jurisdiction" only if it is a felony warrant.
4. If the court checks alternative 2, it must also check alternative 1. If the court checks alternative 3, it may but is not required to check alternative 1.

[Approved by Supreme Court Order 07-8300-34, effective January 22, 2008.]

**ANNOTATIONS**

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

**9-213. Affidavit for search warrant.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**AFFIDAVIT FOR SEARCH WARRANT**

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

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

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

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

Signature of Affiant

Official Title (if any)

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

\_\_\_\_\_  
Judge, Notary or Other Officer  
Authorized to Administer Oaths

\_\_\_\_\_  
Official Title

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

**9-214. Search warrant.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

**SEARCH WARRANT**

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

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

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

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

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

Judge

**AUTHORIZATION FOR NIGHTTIME SEARCH**

I further find that reasonable cause has been shown for nighttime execution of this Warrant. I authorize execution of this Warrant at any time of the day or night for the following reasons:

*(set forth reasons why a nighttime search is necessary)*

Judge

**RETURN AND INVENTORY**

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

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

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

*(attach separate inventory if necessary)*

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

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

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

Signature of Officer

Signature of Owner of Property or Other  
Witness

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

(Judge) (Clerk)

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

Officer

Date

**9-215. Statement of probable cause.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**STATEMENT OF PROBABLE CAUSE**

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

\_\_\_\_\_ (continued on attached sheet)

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

(Date)

(Signature)

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

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

#### **ANNOTATIONS**

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

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

v.

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

**CRIMINAL SUMMONS**

**FAILURE TO APPEAR OR COMPLY WITH COURT ORDERS**

To: \_\_\_\_\_ (Defendant)

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

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

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

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

**BRING THIS SUMMONS WITH YOU WHEN YOU APPEAR.**

Judge or Clerk

**CERTIFICATE OF MAILING**

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

(Signature)

(Title)

(Date)

**USE NOTE**

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

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



[Adopted, effective January 1, 1995.]

## 9-217. Subpoena.

[For use with District Court Rule 5-511]

STATE OF NEW MEXICO  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_ JUDICIAL DISTRICT

No.

STATE OF NEW MEXICO

v.

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

### SUBPOENA

#### SUBPOENA FOR<sup>1</sup>

APPEARANCE OF PERSON FOR  
 STATEMENT  DEPOSITION  TRIAL

SUBPOENA FOR DOCUMENTS OR OBJECTS<sup>2</sup>

INSPECTION OF PREMISES<sup>2</sup>

TO:

\_\_\_\_\_  
YOU ARE HEREBY COMMANDED TO APPEAR as follows:

PLACE:

DATE: \_\_\_\_\_, \_\_\_\_\_ TIME: \_\_\_\_\_ [a.m.] [p.m.]

to:

testify at the taking of a deposition in the above case

testify at trial

permit inspection of the following described documents or objects

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

give a statement.

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

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

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

Judge, clerk or attorney

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, [a witness fee in the amount of \$\_\_\_\_\_ and mileage in the amount of \$\_\_\_\_\_]<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, [a witness fee in the amount of \$\_\_\_\_\_ and mileage as provided by law 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<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. *A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.*

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

3. *Payment of per diem and mileage for subpoenas issued by the district attorney, attorney general, public defender or an attorney appointed by the court, district attorney, attorney general or public defender is made pursuant to regulations of the Administrative Office of the Courts. The bracketed language should be deleted if the subpoena is issued by the state or the public defender.*

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

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

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

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

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

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

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

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in

order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

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

(4) subjects a person to undue burden.

If a subpoena:

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

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

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

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

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

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

[Approved, effective May 15, 2000.]

### **9-218. Target notice.1**

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

\_\_\_\_\_  
\_\_\_\_\_  
*(Include the name, date and applicable statutory citation for each offense the prosecutor intends to*

present to the grand jury)<sup>2</sup>: which are alleged to have occurred on \_\_\_\_\_  
(date) in \_\_\_\_\_ County, New Mexico. Other possible charges  
may arise from the grand jury investigation.

You have the following rights with respect to this investigation:

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

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

(3) You have a right not to testify.

(4) You have a right to submit evidence to the prosecution<sup>3</sup>.

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

You or your attorney may submit proposed questions and exhibits to the district  
attorney at least twenty four (24) hours prior to the grand jury proceeding. If you or your  
attorney wishes to submit proposed questions or exhibits, call \_\_\_\_\_  
(person to be notified) at \_\_\_\_\_ (telephone number).

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

Signature of attorney

Title

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

(Signature of person providing notice)

(Title)

**USE NOTES**

1. This form may be used for a grand jury target notice. See Sections 31-6-4 and 31-6-11 NMSA 1978.
2. Include each offense the district attorney or attorney general intends to present to the grand jury.
3. Section 31-6-4 NMSA 1978 provides that, at least twenty-four (24) hours before grand jury proceedings begin, a target's attorney may submit proposed questions and exhibits to the district attorney or attorney general.
4. Section 31-6-11 NMSA 1978 provides that unless otherwise ordered by the presiding judge or unless the target agrees to testify earlier, a target has a right to testify no earlier than:
  - (a) four (4) days after receiving the target notice, if the target is in custody; or
  - (b) ten (10) days after receiving the target notice, if the target is not in custody.

[Approved, effective June 1, 2004.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated March 29, 2004, this rule is effective June 1, 2004.

**9-221. Certificate of service.**

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this notice was

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State

and zip code: \_\_\_\_\_

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

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

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

\_\_\_\_\_

Signature of attorney

\_\_\_\_\_

Date of signature

*If this notice was served by a person*

*other than an attorney, the following*

*must also be completed and filed with the court:*

### **AFFIDAVIT OF SERVICE**

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

\_\_\_\_\_

Signature of person who made service

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Judge, notary or other officer

authorized to administer oaths



---

Official title

### USE 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. If a paper is served by an attorney, a certificate of service is attached to the paper filed with the court. If a paper is served by any other party, an affidavit of service must be attached to the paper. See Rule 7-209 NMRA for service of papers after the citation or complaint.

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

### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated March 22, 2002, this form is effective May 1, 2002.

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

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

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

### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this notice was

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State

and zip code: \_\_\_\_\_

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

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

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

\_\_\_\_\_

Signature of attorney

\_\_\_\_\_

Date of signature

*If this notice was served by a person*

*other than an attorney, the following*

*must also be completed and filed with the court:*

### **AFFIDAVIT OF SERVICE**

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

\_\_\_\_\_

Signature of person who made service

Subscribed and sworn to before me

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

\_\_\_\_\_

Judge, notary or other officer

authorized to administer oaths

\_\_\_\_\_

Official title

### USE NOTE

This form may be used in the magistrate and municipal courts to prepare a certificate or affidavit of service. Only the applicable parts should be used. If a paper is served by an attorney, a certificate of service is attached to the paper filed with the court. If a paper is served by any other party, an affidavit of service must be attached to the paper. See Rules 6-209 and 8-208 NMRA for service of papers after the citation or complaint.

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

### **9-222. Court's certificate of service.**

[For use by Magistrate Court and Municipal Court staff]

### **CERTIFICATE OF SERVICE**

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

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

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

## **ARTICLE 3 Release Provisions**

### **9-301. Withdrawn.**

### **ANNOTATIONS**

**Compiler's notes.** — Pursuant to a court order dated March 7, 1990, this form, relating to record of responses to questions at release hearing, is withdrawn for cases filed on or after September 1, 1990.

### 9-302. Order setting conditions of release and appearance bond.

[For use with District Court Rule 5-401 NMRA,  
Magistrate Court Rule 6-401 NMRA,  
Metropolitan Court Rule 7-401 NMRA and  
Municipal Court Rule 8-801 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**ORDER SETTING CONDITIONS OF RELEASE  
AND  
APPEARANCE BOND**

*(This form is to be used if the defendant is to be released on personal recognizance or an unsecured appearance bond.)*

*(check applicable alternatives)*

**Release on personal recognizance.** It is ordered that the defendant be released without bail on the defendant's promise to appear and subject to the conditions checked below.

**Release on unsecured appearance bond.** It is ordered that the defendant be released on bail in the amount of \_\_\_\_\_ dollars (\$) \_\_\_\_\_) provided that the defendant executes an unsecured appearance bond and agrees to the conditions checked or set forth below.

**Third-party custodian.** It is ordered that the defendant report to (*name*)

*(set forth designated entity or pretrial services agency agreeing to supervise the defendant)*

\_\_\_\_\_ *(set forth telephone number of entity).*

**APPEARANCE BOND**

I \_\_\_\_\_, defendant in the above-entitled matter, do hereby bind myself to the following conditions of release:

I agree to appear before the above court on \_\_\_\_\_, at \_\_\_\_\_ [a.m.] [p.m.] in courtroom \_\_\_\_\_ and at such other places as I may be required to appear, in accordance with any and all orders and directions relating to my appearance in the above-entitled matter as may be given or issued by the above court or any magistrate, district or appellate court to which above entitled case may be filed, removed or transferred.

*(check and complete if applicable)*

I further agree to pay the [State of New Mexico] [City of \_\_\_\_\_] the full amount of the bail set forth above in the event that I fail to appear as required.

**Agreement to Comply with All Additional Conditions of Release**

*(complete and check only applicable conditions prior to signature of this bond by the defendant)*

I further agree that:

I will remain in the custody of the above named third-party custodian who has agreed to report any violation of a release condition to the court;

I understand that my release is subject to my maintaining my employment. If my employment is terminated I agree to immediately report such termination to the court;

I will actively seek employment;

I will attend classes at \_\_\_\_\_;

I will not associate with the following persons  
\_\_\_\_\_;

I will not leave the [city of \_\_\_\_\_] [this county] [the county of \_\_\_\_\_] [this state] [the state of \_\_\_\_\_] without further permission of the court;

I will reside at \_\_\_\_\_ unless otherwise agreed to by the court;

I will avoid all contact with \_\_\_\_\_ and \_\_\_\_\_ (set forth the names of the alleged crime victim or any potential witness to the crime);

I will not leave my residence between the hours of \_\_\_\_\_ [p.m.] and \_\_\_\_\_ [a.m.] without prior permission of the court;

I will not possess a firearm, destructive device or other dangerous weapon without prior permission of the court;

I will:

refrain from excessive consumption of beer, wine and other alcoholic beverages;

not drink any alcoholic beverages;

I will not take or use any narcotic drugs without a prescription by a licensed medical practitioner;

I will submit to any urine analysis or alcohol test upon the request of \_\_\_\_\_;

I agree to the following [medical] [psychological or psychiatric] treatment for \_\_\_\_\_ (*set forth treatment such as treatment for drug or alcohol dependency*);

I will remain at \_\_\_\_\_ (*set forth name of institution*) for the following treatment \_\_\_\_\_ for a period of \_\_\_\_\_;

I agree that if I am released for the purpose of [employment] [schooling], I will return to \_\_\_\_\_ (*set forth place of detention*) each day immediately after [work] [school] [classes].

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

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

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

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

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

Defendant

Address

City and State

Telephone Number

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

*(Judge) (Designee)*

Date

[As withdrawn and approved, effective September 1, 1990; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

### **ANNOTATIONS**

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

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

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised the last paragraph of the "Appearance Bond" to delete "or comply with the additional conditions checked below".

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

### **9-303. Order setting conditions of release bail bond.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**ORDER SETTING CONDITIONS OF RELEASE  
BAIL BOND**

*(This form is to be used if the defendant is to be released on a secured appearance bond or bail bond. If a surety provides bond for the defendant, Form 9-304 must also be completed. If the defendant personally deposits cash as required, no other form is required.)*

It is ordered that the defendant be released on bail in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) provided that the defendant executes this order and agreement and:

*(check and complete applicable alternatives)*

deposits with the court the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in cash being \_\_\_\_\_% of the required bond to secure its performance. *(A paid surety may post cash with the court provided the paid surety executes an agreement that upon forfeiture the paid surety will pay the balance of the full amount of the bail set forth above.)*

executes a bail bond on a form approved by the supreme court in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) or deposits with the clerk of the court, in cash, one-hundred percent (100%) of the amount of the bail set. *(If a surety posts bond for the defendant the defendant and the surety must also execute Form 9-304 NMRA.)*

It is ordered that the defendant report to *(name)* \_\_\_\_\_ *(set forth designated entity or pretrial services agency agreeing to supervise the defendant)* \_\_\_\_\_ *(set forth telephone number of entity)*.

**DEFENDANT'S BOND**



I \_\_\_\_\_, defendant in the above-entitled matter, do hereby bind myself to the following conditions of release:

*(court or designee must complete before the defendant reads and signs this bond)*

I agree to appear before the above court on \_\_\_\_\_, at \_\_\_\_\_ [a.m.] [p.m.] in courtroom \_\_\_\_\_ and at such other places as I may be required to appear, in accordance with any and all orders and directions relating to my appearance in the above-entitled matter as may be given or issued by the above court or any magistrate, district or appellate court to which the above entitled case may be removed or the cause transferred.

I further agree to pay the [State of New Mexico] [City of \_\_\_\_\_] the full amount of the bail set forth above in the event that I fail to appear as required.

**Agreement to Comply with All Additional Conditions of Release**

I further agree that:

*(court or designee must complete applicable conditions prior to signature by the defendant)*

I will remain in the custody of the above named third-party custodian who has agreed to report any violation of a release condition to the court;

I understand that my release is subject to my maintaining my employment. If my employment is terminated I agree to immediately report such termination to the court;

I will actively seek employment;

I will attend classes at \_\_\_\_\_;

I will not associate with the following persons  
\_\_\_\_\_;

I will not leave the [city of \_\_\_\_\_] [this county] [the county of \_\_\_\_\_] [this state] [the state of \_\_\_\_\_] without further permission of the court;

I will reside at \_\_\_\_\_ unless otherwise agreed to by the court;

I will avoid all contact with \_\_\_\_\_ and \_\_\_\_\_ (set forth the names of the alleged crime victim or any potential witness to the crime);

I will not leave my residence between the hours of \_\_\_\_\_ [p.m.] and \_\_\_\_\_ [a.m.] without prior permission of the court;

I will not possess a firearm, destructive device or other dangerous weapon without prior permission of the court;

I will:

refrain from excessive consumption of beer, wine and other alcoholic beverages;

not drink any alcoholic beverages;

I will not take or use any narcotic drugs without a prescription by a licensed medical practitioner;

I will submit to any urine analysis or alcohol test upon the request of \_\_\_\_\_;

I agree to the following [medical] [psychological or psychiatric] treatment for \_\_\_\_\_ (set forth treatment such as treatment for drug or alcohol dependency);

I will remain at (set forth institution) \_\_\_\_\_ for the following treatment \_\_\_\_\_ for a period of \_\_\_\_\_;

I agree that if I am released for the purpose of [employment] [schooling], I will return to \_\_\_\_\_ (set forth place of detention) each day immediately after [work] [school] [classes].

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

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

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

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

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

Defendant

Address

City and State

Telephone Number

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

---

(Judge) (Designee)

---

Date

[Approved, effective September 1, 1990; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

### ANNOTATIONS

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

**The 2007 amendment,** approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised the last paragraph of the "Defendant's Bond" to delete "or comply with the additional conditions checked below".

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

### 9-303A. Release Order and Bond.

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**RELEASE ORDER AND BOND**

It is ordered that the defendant be released from custody subject to the following conditions:

*(check and complete applicable alternatives)*

- Personal recognizance
- Unsecured appearance bond of \$ \_\_\_\_\_
- Third party custodian:      *(name)*  
\_\_\_\_\_ *(address)*  
\_\_\_\_\_ *(city & zip code)*  
\_\_\_\_\_ *(telephone)*
- Secured bond of \$ \_\_\_\_\_:
- cash at \_\_\_\_\_% of a bond
- bail bond executed on Rule 9-304
- property bond executed on Rule 9-304

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

I further agree:

- not to possess firearms or dangerous weapons;
- not to possess or consume alcohol or enter liquor establishments;
- not to violate any federal, state or local criminal law;
- to notify the court of any change of address;

not to leave the (*county of \_\_\_\_\_*) (*State of \_\_\_\_\_*)  
without prior permission of the Court;

to maintain contact with my attorney;

to avoid all contact with the alleged victim or anyone who may testify in this case;

(*other conditions*)

**Judicial approval of conditions:**

Date ordered

(*Judge*) (*designee*)

**Defendant's approval of conditions:**

I UNDERSTAND THE ABOVE CONDITIONS OF RELEASE AND AGREE TO THEM. If I fail to appear, I understand that bond will be forfeited and I agree to pay the amount of the bond to the state. I understand that additional criminal charges may be filed if I violate conditions of release.

Date of signature

Defendant's signature

Date of release

Address (*mailing*)

Time of release

City, state, zip

Defendant's telephone number

**USE NOTE**

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

This form may be used instead of Rule 9-303 if the defendant is to be released on a secured or unsecured appearance bond or bail bond. It has been designed for printing on one page. It may be modified to include any of the conditions set forth on Rule 9-303.

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

A paid surety may post cash with the court provided the paid surety executes an agreement that upon forfeiture the paid surety will pay the balance of the full amount of the bail set forth above.

[Adopted, effective January 1, 1995; as amended by Supreme Court Order 08-8300-17, effective October 15, 2008.]

### ANNOTATIONS

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-17, effective October 15, 2008, deleted language in the defendant's approval of conditions which stated that the defendant understood that if the defendant violated a condition of release, the bond would be forfeited.

### 9-304. Bail bond.

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

### BAIL BOND

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

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



Signature of surety

Signature of surety

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me in the above-named [county] [city] of the State of New Mexico \_\_\_\_\_ and \_\_\_\_\_, known to me to be the persons described in and who on their oath executed the above and foregoing justification and acknowledged to me that they executed the bond as their free act and deed.

Notary public  
Approved:

Judge or authorized person

#### USE NOTE

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

[As amended, effective May 15, 1991; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

#### ANNOTATIONS

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

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, deleted the last sentence of the first paragraph of the conditions of release providing that the defendant is not to depart from the State and requiring the defendant to surrender himself after any judgment and revised the bond to eliminate the bond from continuing on appeal after a finding of guilty or not guilty.

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

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



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

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

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

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

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

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

1. Property bondsman's name:
2. License number:
3. Bondsman's business address:  
*(Street, City, State, zip code)*
4. Date of this list:
5. Legal description of property securing bond *(may be attached)*:

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

7. Current outstanding bonds written against property.

---

Amount of Bond	Name and Location of Court	Date Posted	Case Number	Name of Defendant
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I HEREBY CERTIFY UNDER PENALTY OF PERJURY that the above information is true and correct as of the above date.

Property Bondsman

### 9-306. Commitment for preliminary hearing.

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

#### COMMITMENT FOR PRELIMINARY HEARING

The above-named defendant having been brought before me under a warrant charging the defendant with the crime of \_\_\_\_\_, and having failed to give bail for his appearance, is committed to the sheriff of the county of \_\_\_\_\_, to await Preliminary Hearing on the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock, at which time you will have his body before me at my office. Bail is fixed in the amount of \$\_\_\_\_\_.

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

Judge

Division

**9-307. Notice of forfeiture and order to show cause.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

\_\_\_\_\_, Defendant  
and  
\_\_\_\_\_, (surety)  
\_\_\_\_\_, (surety)

**NOTICE OF FORFEITURE AND  
ORDER TO SHOW CAUSE**

TO:

defendant	address
surety	address
surety	address

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

IT IS ORDERED that you appear on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ [a.m.] [p.m.], before this court at \_\_\_\_\_, New Mexico, to show cause, if any you have, why judgment should not be entered against you, jointly and severally, for the amount of the bond or bonds posted herein.

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

IT IS FURTHER ORDERED that this Notice of Forfeiture and Order to Show Cause be forthwith mailed by the clerk of the court to each of the persons named above at their last known addresses and to the district attorney.

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

Judge

[Adopted, effective October 1, 1987; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

### ANNOTATIONS

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, deleted the provision of the notice providing for a notice of forfeiture if the defendant violates a condition of release.

### **9-308. Order setting aside bail bond forfeiture.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

\_\_\_\_\_, (*surety*)

\_\_\_\_\_, (*surety*)

**ORDER SETTING ASIDE  
BAIL BOND FORFEITURE**

A hearing having been held by the court upon the order to show cause why a judgment of default should not be entered on the defendant's bail bond:

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

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

*(check appropriate alternative)*

the defendant was incarcerated in \_\_\_\_\_ located at \_\_\_\_\_

the defendant was hospitalized at the time of the hearing in \_\_\_\_\_ hospital located at \_\_\_\_\_

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

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

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

IT IS ORDERED that the forfeiture previously entered by this court be and the same is hereby set aside.

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

Judge

[Adopted, effective, October 1, 1987.]

**9-309. Default judgment on bond.**

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

\_\_\_\_\_, Defendant  
and  
\_\_\_\_\_, (surety)  
\_\_\_\_\_, (surety)

**DEFAULT JUDGMENT ON BOND**

*(Not to be used for Cash Bonds)*

This matter coming on for hearing before this court,

**THE COURT FINDS:**

The defendant [and the defendant's sureties] previously signed an [appearance] [bail] bond agreeing that the defendant would appear at such times and places as may be required by this court;

The defendant failed to appear as required;

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

The clerk of the court mailed to the defendant [and the defendant's sureties] the Notice of Forfeiture and Order to Show Cause why default judgment should not be entered on the forfeited bond;

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

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant and his sureties are jointly and severally liable for the payment of the bail bond into this court in full.

IT IS FURTHER ORDERED that if the full amount of the bail bond is not paid into this court within ten (10) days after entry of this order, execution on this judgment will issue against the defendant and the defendant's sureties.

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

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

Date

Judge

[Effective October 1, 1987; as amended, effective August 1, 1989; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

#### **ANNOTATIONS**

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

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, deleted the provision of the default judgment on a bail bond upon a finding that the defendant violated a condition of release.

#### **9-310. Default judgment on cash bond.**

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

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

\_\_\_\_\_, Defendant  
and  
\_\_\_\_\_, (*surety*)  
\_\_\_\_\_, (*surety*)

**DEFAULT JUDGMENT ON CASH BOND**

This matter coming on for hearing before this court,

**THE COURT FINDS:**

The defendant [and the defendant's sureties] previously signed an [appearance] [bail] bond agreeing that the defendant would appear at such times and places as may be required by this court;

The defendant failed to appear as required;

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

The clerk of the court mailed to the defendant [and the defendant's sureties] the Notice of Forfeiture and Order to Show Cause why default judgment should not be entered on the forfeited bond;

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

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby entered against the defendant [and the defendant's sureties] for the full amount of the cash bond previously deposited with the court.

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

Judge

[Adopted, effective August 1, 1989; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]



**ANNOTATIONS**

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, removed the provision that permitted a default judgment on a cash bond upon a condition that the defendant violated a condition of the bond.

**9-311. Irrevocable letter of credit.**

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

**IRREVOCABLE LETTER OF CREDIT**

To: \_\_\_\_\_ ( judge, clerk, court administrator)  
\_\_\_\_\_ (address)

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

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

The total amount of credit is \$\_\_\_\_\_.

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

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

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

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

Financial institution

By     Signature

Its     Title

[Approved, effective September 1, 1990.]

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

[For use in the metropolitan court]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE METROPOLITAN COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

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

**Defendant information:**

Arrest date: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social security number: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
City, state & zip code: \_\_\_\_\_  
Address (*physical*): \_\_\_\_\_  
City, state & zip code: \_\_\_\_\_

**Bond information:**

Date bond posted: \_\_\_\_\_  
Amount posted: \_\_\_\_\_  
Bond posted by<sup>1</sup>: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social security number<sup>1</sup>: \_\_\_\_\_  
Person paying bond's mailing address <sup>1</sup>: \_\_\_\_\_

City, state & zip code<sup>1</sup>: \_\_\_\_\_

**PERSON OTHER THAN DEFENDANT PAYING BOND:**

*(check applicable alternative and sign)*

I agree

I do not agree

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

Signature of person posting cash

**DEFENDANT:** *(check applicable alternative and sign)*

I agree to appear in the \_\_\_\_\_ court on \_\_\_\_\_,  
\_\_\_\_\_ (date) at \_\_\_\_\_ (a.m.) (p.m.).

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

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

Signature of defendant

**BOND RECEIVED BY:**

Signature of clerk or bail designee

Title

Date

**COURT EMPLOYEE RECEIVING PAYMENT:**

Signature

Title

Date

**USE NOTES**

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

[Approved, effective August 1, 1999; as amended by Supreme Court Order 07-8300-34, effective January 22, 2008.]

**ANNOTATIONS**

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

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

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

**9-312A. Cash receipt.**

[For use in the magistrate and municipal courts]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**CASH RECEIPT**

**Defendant information:**

Arrest date: \_\_\_\_\_  
Date of birth: \_\_\_\_\_

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

City, state & zip code: \_\_\_\_\_

Address (*physical*) ( *if  
different from mailing  
address*): \_\_\_\_\_

City, state & zip code: \_\_\_\_\_

***(include current mailing address in case a refund is due)***

***(to be filled in only if \$10,000 or more is tendered in cash; required by Internal Revenue Service)***

Social Security number of Defendant:

**Complete if person posting cash is not Defendant**

**Cash information:**

Date  
cash  
posted: \_\_\_\_\_

Amount  
posted: \_\_\_\_\_

Cash  
posted  
by: \_\_\_\_\_

Mailing  
address  
of  
person  
paying  
cash: \_\_\_\_\_

City,  
state &  
zip  
code: \_\_\_\_\_

***(include current telephone number or contact information in case a refund is due)***

**PERSON OTHER THAN DEFENDANT PAYING CASH:**

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

to a refund, regardless of what I have checked below. If the court has not ordered that the defendant will only be released upon payment of fines, fees, and costs,

I agree

I do not agree

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

Signature of person posting cash  
(required)

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

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

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

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

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

Signature of defendant

**CASH RECEIVED BY:**

Signature of clerk or bail designee

Date

**COURT EMPLOYEE RECEIVING PAYMENT:**

Signature

Date

[Approved by Supreme Court Order 07-8300-34, effective January 22, 2008.]

### ANNOTATIONS

**Cross references.** — For bench warrants issued by the magistrate court, see 6-207 NMRA.

For bench warrants issued by the municipal court, see 8-206 NMRA.

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

## ARTICLE 4

### Arrest and Preparation for Trial

#### 9-401. Waiver of counsel.

[For use with District Court Rule 5-301]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

#### WAIVER OF COUNSEL

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

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

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

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

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

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

Defendant

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

Judge

Date:

[As amended, effective January 1, 1999.]

### ANNOTATIONS

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

### 9-401A. Waiver of counsel.

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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.



[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

**WAIVER OF COUNSEL**

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

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

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

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

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

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

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

Defendant

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

Judge

Date:

[Adopted, effective September 15, 1997.]

**ANNOTATIONS**

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

**9-402. Withdrawn.**

**ANNOTATIONS**

**Compiler's notes.** — This form, relating to the record of responses to questions at hearing to determine indigency and for the affidavit of the defendant, was withdrawn, effective for cases filed on or after July 1, 1988, by a supreme court order dated March 16, 1988.

**9-403. Eligibility determination for indigent defense services.**

[For use in the District Court, Magistrate Court and Metropolitan Court]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
v.

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

**ELIGIBILITY DETERMINATION FOR INDIGENT  
DEFENSE SERVICES**

Name: \_\_\_\_\_ D.O.B.: \_\_\_\_\_ Age: \_\_\_\_\_  
AKA : \_\_\_\_\_ Sex: Male Female SSN: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Charges: \_\_\_\_\_  
DC# \_\_\_\_\_ MC# \_\_\_\_\_  
\_\_\_\_\_

Lives alone: \_\_\_\_ Lives with: spouse \_\_\_\_ children \_\_\_\_ parent \_\_\_\_ friend \_\_\_\_ other \_\_\_\_  
Marital status: Single \_\_\_\_ Married \_\_\_\_ Divorced \_\_\_\_ Separated \_\_\_\_ Widowed \_\_\_\_

Number of dependents in household: \_\_\_\_\_  
[ ] Defendant is in jail. [ ] Defendant is not in jail.

**PRESUMPTIVE ELIGIBILITY:**

\_\_\_\_\_ I currently do not receive public assistance.

\_\_\_\_\_ I currently receive the following type of public assistance in \_\_\_\_\_

County:

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

AFDC \$ \_\_\_\_\_ Food Stamps \$ \_\_\_\_\_ Medicaid \$ \_\_\_\_\_

DSI \$ \_\_\_\_\_ Public Housing \$ \_\_\_\_\_

**NET INCOME:**

Employer's Name

**SELF**

**SPOUSE**

\_\_\_\_\_

\_\_\_\_\_

Employer's Phone

\_\_\_\_\_

\_\_\_\_\_

Pay Period

(weekly, every second week, twice monthly, monthly)

\_\_\_\_\_

\_\_\_\_\_

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

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

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

Other income sources (*please specify*)

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

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

**SCREENING USE ONLY**

**TOTAL ANNUAL INCOME**

\$ \_\_\_\_\_ +

\_\_\_\_\_ =  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ A

**ASSETS:**

Cash on hand

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

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

Bank accounts

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

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

Real estate (equity)

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

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

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

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

Motor vehicles (equity)

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

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

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

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

Other personal property: (equity):  
(*describe and set forth equity*)

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

**SCREENING USE ONLY**

**TOTAL ASSETS**

\$ \_\_\_\_\_ +

\_\_\_\_\_ =  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ B

**EXCEPTIONAL EXPENSES** (total exceptional expenses of dependents):

Medical expenses (not covered by insurance) \$ \_\_\_\_\_  
 Court-order support payments/alimony \$ \_\_\_\_\_  
 Child-care payments (e.g. day care) \$ \_\_\_\_\_  
 Other (describe) \$ \_\_\_\_\_  
 \$ \_\_\_\_\_

**SCREENING USE ONLY**

**TOTAL EXCEPTIONAL EXPENSES** \$ \_\_\_\_\_  
 = \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_ C

I UNDERSTAND THAT IF IT IS DETERMINED THAT I AM NOT INDIGENT, I MAY APPEAL TO THE COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED OF THIS DECISION.

\_\_\_\_ I wish to appeal.

\_\_\_\_ I do not wish to appeal.

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

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 screening agent, district defender and the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies.

Date \_\_\_\_\_ Signature of applicant \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

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

Notary

(Seal, if any)

My commission expires:

**COLUMN "A" (net income) plus COLUMN "B" (assets)**      **SCREENING USE ONLY**  
**minus COLUMN "C" (exceptional expenses)**              **AVAILABLE FUNDS**

equals AVAILABLE FUNDS ..... = / \_\_\_\_\_

- \_\_\_\_\_ The applicant is indigent.
- \_\_\_\_\_ The applicant is *not* indigent.
- \_\_\_\_\_ The applicant [has] [has not] paid the statutory application fee.

Receipt number: \_\_\_\_\_

Signature of screening agent

Title

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

*(Complete the following only if the court has determined that the applicant is unable to pay the statutory indigency application fee).*

\_\_\_\_\_ I find that the applicant is unable to pay the statutory indigency application fee, and I therefore waive the payment of the indigency application fee.

Judge or authorized designee

### **GUIDELINES FOR DETERMINING ELIGIBILITY**

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

#### **I. APPLICATION FEE**

A person shall pay a non-refundable application fee for each case in the amount set in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender for representation. The application fee may be waived when an applicant is homeless or incarcerated and unable to pay the fee.

#### **II. PRESUMPTION OF INDIGENCY**

An applicant is presumed indigent if the applicant is a current recipient of state or federally administered public assistance programs for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), food stamps, medicaid, disability security income (DSI), public assisted housing or Department of Health, Case Management Services (DHMS). Proof of assistance must be attached to the application and no further inquiry is necessary. Home equity, etc. is not to be taken into account if the applicant is a current recipient of one of the six programs described above.

If the interviewer is unable to complete the indigency application or believes the information to be unreliable because of communication or other problems associated with a mental disability of the applicant, indigency will be presumed. If because of the mental disability of the applicant, the interviewer is unable to complete the indigency application or believes the information is unreliable, the Department of Health, Case Management Services (DHMS) section should be checked.

### **III. FINANCIAL RESOURCES**

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

Net Income, Paragraph A;

Assets, Paragraph B; and

Exceptional Expenses, (Paragraph C).

#### **A. Net Income**

The screening agent shall include total salary and wages for the applicant and the applicant's spouse minus deductions required by law (*FICA, state and federal withholding*). In order to calculate the salary of an individual, the screening agent shall use one of the two methods:

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

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

(3) Any person that has been incarcerated for six (6) months or more is also presumed to be indigent. Proof must be provided, i.e., proof of incarceration, jail release

form. An individual incarcerated in a Department of Corrections facility in any state automatically qualifies.

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

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

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

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

## **B. Assets**

The screening agent shall consider all assets of the applicant and the applicant's spouse that are readily convertible into cash within a reasonable period of time. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit and tax refunds. Real estate shall be valued at fair market value less any outstanding obligations against the property.

## **C. Exceptional Expenses**

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

In order to be included as an exceptional expense:

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

(2) family support expense obligations must be court ordered and actually paid on a regular basis; and

(3) child care must be paid on a regular basis. If the applicant says that child support or child care is paid when the applicant can, the payments do *not* qualify as exceptional expenses.

The applicant must provide proof of the exceptional expense incurred and proof that payment is being made on a regular basis. If proof is provided, the regular monthly payment for the exceptional expense is multiplied by twelve (12) months and the calculated amount can be deducted from total income.

Other exceptional expenses shall include: payroll garnishments, internal revenue service claims, court ordered attorney fees or other court ordered payments and funeral expenses not covered by insurance.

An approved filing from a bankruptcy proceeding of a potential client can be considered in determining indigency.

#### **IV. INDIGENCY FORMULA**

An applicant is indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

The screening agent shall calculate the amount of available funds by adding the total for net income for the household (Column A) together with the total for assets for the household (Column B) and subtracting the total for exceptional expenses (Column C). If the available funds exceed one hundred fifty percent (150%) of the applicable federal poverty level guideline, the applicant is not indigent.

If the applicant does not know the applicant's spouse's income or assets, the applicant is presumed not indigent and is not eligible for free representation unless the applicant produces the necessary information within two (2) working days after the interview.

#### **V. APPEAL**

If the applicant is found by the screening agent or the court not to be indigent, the applicant may appeal the decision to the district defender in those districts with public defender offices. If the applicant wishes to appeal the decision of the district defender, the applicant shall appeal to the district court. In those districts without public defender offices, the applicant may appeal directly to the court. If the applicant wishes to appeal a finding that the applicant is not indigent:

(1) in those districts with district public defender offices, the screening agent shall notify the public defender of the appeal;



(2) in those districts without public defender offices, the screening agent shall notify the court of the appeal.

All appeals shall be filed within ten (10) working days after the date of the decision.

## **VI. REIMBURSEMENT**

Any applicant who is ineligible for free representation but is unable to hire private counsel may sign a contract for public defender representation on a reimbursement basis. The reimbursement cost shall cover all charges for legal fees, expert witness, and private investigation costs. Reimbursement fees shall be governed by the schedule adopted by the Public Defender Department.

First payment under a reimbursement contract shall be due thirty (30) days from the date of execution of the contract. If the applicant is incarcerated on the date of execution of the contract, the date of payment shall be thirty (30) days from the date of the applicant's release from incarceration.

If a court enters an order appointing the Public Defender Department to represent a defendant and ordering the defendant to reimburse the state for representation, the defendant shall execute a contract for reimbursement in the appropriate amount under the department's schedule. If the defendant fails to execute a reimbursement contract, the order of appointment shall be forwarded to Public Defender administration for collection along with the documentation stating the amount owing for representation. If the defendant refuses to provide information necessary to determine net income or eligibility, the reimbursement fee shall be the maximum contract rate allowable for the crimes charged under the schedule set by the department.

## **VII. NEW CHARGES**

If an applicant has applied for public defender services within six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is not necessary, but the applicant shall be required to pay the application fee. A copy of the last eligibility determination form should be placed in the new file being opened. If an applicant has applied for public defender services and been found eligible more than six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is necessary. An applicant must pay the application fee for each case for which the applicant seeks representation regardless of whether completion of a new eligibility documentation form is required, unless the fee has been waived.

[Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1, 1993; February 14, 1997; November 1, 2004.]

## **ANNOTATIONS**

**Cross references.** — For duty of public defender to adopt indigency standard, see 31-15-7 NMSA 1978.

For indigency determination, see 35-15-12 NMSA 1978.

**The 1989 amendment,** effective for cases filed on or after August 1, 1989, rewrote this form.

**The 1993 amendment,** effective December 1, 1993, rewrote the form and guidelines.

**The 1997 amendment,** effective February 14, 1997, revised the Indigency Table and added the second sentence in the italicized instruction following the Indigency Table.

**The 2004 amendment,** effective November 1, 2004, relocated the oath formerly following “Total Exceptional Expenses” to follow the time limit to appeal if not indigent language; replaced the Indigency Table with the Indigency Formula Part IV; and provided “statutory” for “\$10.00” and added “Receipt number: \_\_\_\_\_” in the language preceding the signature line of the screening agent, and substituted “statutory indigency” for “\$10.00”, “statutory” for “\$10.00” and “indigency” for “\$10.00” in the language preceding the judge or authorized designee signature line. The amendment also, in the Guidelines for Determining Eligibility, added present Guideline I, redesignated former Guidelines I through VI as present Guidelines II through VII, substituted “temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI)” for “aid to families of dependent children (AFDC)” in the first sentence of the first paragraph and deleted “until the applicant’s competency to stand trial and indigency is determined by the public defender or court” following “presumed” at the end of the first sentence in the second paragraph of Guideline II, added “Paragraph A”, “Paragraph B” and “(Paragraph C)” in the introductory paragraph and rewrote former Paragraph A(2) so as to create present Paragraphs A(2) and (3) in Guideline III, substituted “that are readily” for “which are” in the first sentence and rewrote the last sentence of Paragraph B of that guideline, and, in Paragraph C of that guideline, substituted “that” for “which” in the first sentence of the first paragraph, deleted “or child care” following “support” in Subparagraph (3) of the second paragraph, and added the last paragraph. The amendment further added the first paragraph and substituted the present last sentence for the former last two sentences in the second paragraph of Guideline IV, substituted the present first paragraph for the former first four paragraphs and the present last paragraph for the former last paragraph in Guideline VI, and, in the second paragraph of that guideline, inserted “under a reimbursement contract” in the first sentence and “the applicant’s” in the second sentence and substituted “execution” for “completion” and deleted “and note” following “contract” in each sentence, and, in Guideline VII, added “but the applicant shall be required to pay the application fee” in the first sentence, rewrote the third sentence and added the last sentence.

## **9-403A. Order of appointment.**

[Sections 34-6-46, 34-8A-11 and 35-5-8 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
v.  
\_\_\_\_\_, Defendant

**ORDER OF APPOINTMENT**

This matter having come before the court, the court finds:  
*(please check appropriate box or boxes)*  
THE COURT FINDS THAT:

- the defendant is incarcerated.
- the defendant is not incarcerated.

THE COURT FURTHER FINDS THAT:

- the defendant is indigent and unable to obtain counsel.
- the defendant is not indigent, but is unable to obtain counsel.

IT IS THEREFORE ORDERED THAT:

the Public Defender Department is appointed to represent the defendant in the above-entitled case.

\_\_\_\_\_, an attorney on contract with the Public Defender Department, shall represent the defendant in the above-entitled case.

the defendant shall reimburse the State of New Mexico in an amount of no less than \$\_\_\_\_\_ for legal representation and related expenses.

IT IS FURTHER ORDERED THAT:

- the application fee is waived.
- the application fee is required.

(Magistrate Judge)  
(District Judge)

**CERTIFICATE OF MAILING**

I certify that I mailed a copy of this order to the above-named defendant at \_\_\_\_\_ (set forth address), and to the public defender on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Judge ) (Clerk)

Date

[Adopted, effective July 1, 1988; as amended, effective January 1, 1996.]

**ANNOTATIONS**

**The 1996 amendment**, effective January 1, 1996, added "THE COURT FINDS THAT" heading and added the alternatives under that heading; added "THE COURT FURTHER FINDS THAT:" heading and deleted "desires counsel" following "indigent" in the second alternative under that heading; substituted "the Public Defender Department is appointed to represent" for "Public Defender shall represent" in the first alternative of the order; substituted "no less than" for "not less than" in the third alternative in the order; and added the "IT IS FURTHER ORDERED THAT" heading and added the alternatives under that heading.

**9-404. Transfer order.**

[For use with Magistrate Court Rule 6-507,  
Metropolitan Court Rule 7-507 and  
Municipal Court Rule 8-507]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**TRANSFER ORDER**

*(please check appropriate box or boxes)*

The defendant having entered a plea of not guilty by reason of insanity.

An issue having been raised as to the mental competency of the defendant to stand trial.

I hereby ORDER that the defendant be transferred to the district court for further proceedings.

Judge

Date

*(Attach copy of Complaint; any Warrants issued; any Appearance Bond or Bail Bond; Order Specifying Conditions of Release; all pleadings, including any record of proceedings made by the Court; and any exhibits.)*

**9-405. Waiver of arraignment - Entry of plea of not guilty.**

[For use with District Court Rule 5-303 NMRA]

STATE OF NEW MEXICO

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

IN THE DISTRICT COURT

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

STATE OF NEW MEXICO

v.

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

**WAIVER OF ARRAIGNMENT<sup>1</sup>**

**ENTRY OF PLEA OF NOT GUILTY**

I understand that I am charged with the following criminal offense or offenses under the law of the State of New Mexico: \_\_\_\_\_ (list all offenses charged).

I understand that I am entitled to personally appear before the district court and enter my plea to the crime or crimes charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I further understand that: I have a right to trial by jury; I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the state compel witnesses of my choosing to appear and testify; I have a right to remain silent and that any statement made by me may be used against me; I have a right to trial by jury and that all jurors must agree on my guilt of the crime charged beyond a reasonable doubt for me to be found guilty.

After reading and understanding the above, I hereby give up my right to personally appear before the district court for arraignment and I hereby enter a plea of not guilty to all criminal offenses charged in the above-styled cause.

I understand that any conditions of release previously imposed remain in effect.

I further understand that the district court may impose additional conditions of release, and, if no conditions of release have been previously set, the district court may impose conditions of release and may require me to attend a hearing to address conditions of release.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Defendant

I have explained to the defendant the defendant's right to personally appear before the district court to enter a plea of not guilty and to have the defendant's rights explained to the defendant by the judge and I am satisfied that the defendant understands the waiver of this right.

I certify that I served a copy of this waiver on opposing counsel. I also certify that:

if conditions of release were previously imposed, a copy of the order imposing those conditions of release is attached to this waiver; or

the parties have entered into a stipulated order setting conditions of release, which is attached to this waiver for the court's approval; or

the parties request a hearing to consider conditions of release.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense counsel

**ADDITIONAL PROVISIONS<sup>2</sup>**

Defendant shall appear on \_\_\_\_\_ to review conditions of release.

Release on personal recognizance. It is ordered that the defendant be released without bail on the defendant's promise to appear and subject to the conditions checked below.

Third party custody release to: \_\_\_\_\_.

Bond is continued as set in Magistrate Court and shall be transferred to District Court.

Bond is set in the sum of: \_\_\_\_\_ dollars (\$), and the defendant and their sureties will execute a bond binding them to pay the State of New Mexico the amount set in the event that the defendant fails to appear as required. The bond shall be posted in the manner indicated below:

Secured by signature – by the defendant and their sureties.

Cash only - the posting of the entire amount of the bond set.

Corporate surety – the posting of a security for the full amount by a certified and approved bonding company.

10% cash deposit – the deposit of not more than 10% of the bond in cash into the court registry.

Property – the posting of unencumbered real estate to cover the amount of the bond.

Defendant must contact their attorney \_\_\_\_\_ (*frequency, e.g., weekly*).

Pre-trial conference date is: \_\_\_\_\_.

Docket call date is: \_\_\_\_\_.

- Trial date is: \_\_\_\_\_.
- Defendant must sign Waiver of Extradition.
- Defendant is not to leave the jurisdiction of the court.
- Defendant is not to consume any alcoholic beverages or non-prescription drugs.
- Defendant is not to have contact with any co-defendants, victims or any witnesses.
- Defendant is to obey all law of the United States and the State of New Mexico.
- Defendant is to be booked at \_\_\_\_\_ county detention center and released.
- Other: \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Judge

**USE NOTE**

1. This waiver must be served on the state in time for the state to notify victims and others that an arraignment will not be held. This waiver shall not be filed and is not effective unless signed by the district court judge.
2. If the court decides to impose new or additional conditions of release prior to accepting the waiver of arraignment, the court shall issue a notice of hearing to all parties to address conditions of release.

[As amended, effective September 1, 2005; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

**ANNOTATIONS**

**The 2005 amendment**, approved by Supreme Court Order 05-8300-12, effective September 1, 2005, deleted the requirement that a district judge approve a waiver of arraignment by the defendant.

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, added the certificate of service by defense counsel, the additional certificate of defense counsel and added the court order at the end of the form that has been designated as "Additional Provisions<sup>2</sup>".

**9-405A. Waiver of first appearance.**



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

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**WAIVER OF FIRST APPEARANCE**

*(For cases not within magistrate or  
metropolitan court trial jurisdiction)*

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

I understand that I am entitled to personally appear before the [magistrate]  
[metropolitan] court to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I understand that entry of a plea agreement may have an effect upon my immigration or naturalization status, as well as my legal rights and personal opportunities, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of a plea agreement.

*(Domestic violence or felony cases only)* I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978], and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I further understand that: I have a right to bail; I have a right to trial by jury; I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed

attorney, to be furnished free of charge, if I cannot afford one; I have the right to remain silent and understand that any statement made by me may be used against me; and I have a right to a preliminary hearing.

After reading and understanding the above, I hereby give up my right to personally appear before the above court for a first appearance to have my rights explained and bail set or reviewed.

Name of Defendant

Date

I have explained to the defendant his right to personally appear before the above court and have his rights explained to him by the judge and I am satisfied that he understands the waiver of this right.

Defense Counsel

Date

[Approved effective September 1, 1990; as amended by Supreme Court Order 07-8300-30, effective December 15, 2007.]

### ANNOTATIONS

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**The 2007 amendment**, approved by Supreme Court Order 07-8300-30, effective December 15, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

### 9-406. Guilty plea proceeding.

[For use with District Court Rule 5-303 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT  
No.

STATE OF NEW MEXICO

v.

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

**GUILTY PLEA PROCEEDING**

The defendant personally appearing before me, I have ascertained the following facts, noting each by initialing it.

*Judge's  
Initial*

- \_\_\_\_\_ 1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
- \_\_\_\_\_ 2. That the defendant understands the range of possible sentence for the offenses charged, from a suspended sentence to a maximum of \_\_\_\_\_.
- \_\_\_\_\_ 3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [guilty but mentally ill]:
- \_\_\_\_\_ (a) the right to trial by jury, if any;
  - \_\_\_\_\_ (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
  - \_\_\_\_\_ (c) the right to confront the witnesses against him and to cross-examine them as to the truthfulness of their testimony;
  - \_\_\_\_\_ (d) the right to present evidence on his own behalf, and to have the state compel witnesses of his choosing to appear and testify;
  - \_\_\_\_\_ (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.
- \_\_\_\_\_ 4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.
- \_\_\_\_\_ 5. That there exists a basis in fact for believing the defendant is [guilty] [guilty but mentally ill] of the offenses charged and that an independent record for such factual basis has been made.
- \_\_\_\_\_ 6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms. (*Indicate "NONE" if a plea agreement has not been signed.*)
- \_\_\_\_\_ 7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
- \_\_\_\_\_ 8. That under the circumstances, it is reasonable that the defendant plead [guilty] [guilty but mentally ill].
- \_\_\_\_\_ 9. That the defendant understands that a plea of guilty or no contest may have an effect upon the defendant's immigration or

naturalization status, and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.

\_\_\_\_\_ 10. *(Domestic violence or felony cases only)* That the defendant understands that a plea of guilty or no contest for a crime of domestic violence or felony will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

\_\_\_\_\_ 11. That, if the defendant is represented by counsel and the defendant has entered a plea of guilty or no contest to a crime for which registration as a sex offender is or may be required, the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978].

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [guilty but mentally ill] to the above charges and accept such plea. A copy of this affidavit shall be made a part of the record in the above-styled case.

District Judge

Date

**CERTIFICATE BY DEFENDANT**

I certify that the judge personally advised me of the matters noted above, that I understand the constitutional rights that I am giving up by pleading [guilty] [guilty but mentally ill] and that I desire to plead [guilty] [guilty but mentally ill] to the charges stated.

Defendant

I have conferred with my client with reference to the execution of this certificate and I have explained to my client its contents in detail.

Defense Counsel

**USE NOTE**

For use in the district court when there is no plea and disposition agreement.

[As amended, effective September 1, 1990; withdrawn, effective May 1, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

## ANNOTATIONS

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**The 1990 amendment**, effective for cases filed on or after September 1, 1990, substituted "the defendant" for "he" in Facts 3, 3(b), and 4; substituted "the right" for "his right" in Facts 3(a) through 3(e); inserted "is" preceding "(guilty)" in Fact 5; added Fact 9; and substituted "such plea" for "his plea" at the end of the next-to-last sentence.

**The 1998 amendment**, effective May 1, 1998, deleted "6-502, 7-502, 8-502" following "5-303" in the caption of the form; substituted "trial" for "all stages of the proceeding" in item 3(b); and rewrote the defense counsel certification.

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised paragraph 9 relating to immigration and added paragraphs 10 and 11.

**No mention is made of conditional discharge or deferred sentencing** in this form. *Vigil v. N.M. Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

### 9-406A. Guilty plea or no contest plea proceeding.

[For use with Magistrate Court Rule 6-502 NMRA,  
Metropolitan Court Rule 7-502 NMRA and  
Municipal Court Rule 8-502 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

#### GUILTY PLEA OR NO CONTEST PLEA PROCEEDING<sup>1</sup>

The defendant personally appearing before me, I have ascertained the following facts:

1. That the defendant understands the charges set forth in the complaint and agrees to plead [guilty] [no contest] to the following charges:

2. That the defendant understands the range of possible sentences for the offense charged, [a mandatory minimum of \_\_\_\_\_ and] up to a maximum of \_\_\_\_\_.

3. That, if pleading no contest, the defendant has been advised and understands that a plea of no contest has the same effect as a plea of guilty in this court.

4. That the defendant has been advised and understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:

(a) the right to trial;

(b) the right to trial by jury, if any;<sup>2</sup>

(c) the right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;

(d) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;

(e) the right to present evidence and to have the court compel witnesses to appear and testify;

(f) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt;

(g) the right to appeal the conviction.

5. That the defendant wishes to give up those constitutional rights of which the defendant has been advised.

6. That there is a factual basis for the plea.

7. That the plea is voluntary and not the result of force, threats or promises (other than a plea agreement).

8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].

9. That the defendant understands that a plea of guilty or no contest may have an effect upon the defendant's immigration or naturalization status, as well as the defendant's legal rights and personal opportunities, and that, if the defendant is

represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.

***(For use only in Magistrate and Metropolitan Court.)***

10. *(Domestic violence cases only)* That the defendant understands that a plea of guilty or no contest for a crime of domestic violence will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

***(For use only in Magistrate and Metropolitan Court.)***

11. That, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act (Sections 29-11A-1 through 29-11A-10 NMSA 1978).

The judge advised me of the matters noted above. I understand the constitutional rights that I am giving up and plead [guilty] [no contest] to the charges specified above.

Date

Defendant

I certify that prior to the defendant's entry of a plea of guilty or no contest in this case:<sup>3</sup>

I have discussed this case with my client in detail and I have advised my client of my client's constitutional rights and all possible defenses.

I explained the consequences of a plea of guilty or a plea of no contest.

In my opinion the plea of [guilty] [no contest] was voluntarily and understandingly made.

Date

Attorney for defendant

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the specified charges and accept such plea.

Date

Judge

1. This form is to be used if the defendant may be incarcerated in jail. This form may be used in all cases in which the defendant is charged with a domestic violence offense, a battery, a violation of substance abuse laws, driving while under the influence or with an offense which has a mandatory minimum jail term.
2. 4(b) is not applicable to municipal court and may be eliminated because there is no right to a trial by jury in municipal court.
3. To be completed if the defendant has not signed a written waiver of counsel.

[Adopted, effective September 1, 1990; May 1, 1997; May 15, 2003; as amended by Supreme Court Order 07-8300-30, effective December 15, 2007; by Supreme Court Order No. 08-8300-48, effective December 31, 2008.]

### ANNOTATIONS

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**The 2003 amendment**, effective May 15, 2003, deleted "(jail sentence to be imposed)" following the title of the form; in the second numbered paragraph, inserted "a mandatory minimum of \_\_\_\_\_ and" following "the offense charged"; in the eighth numbered paragraph, substituted "including immigration or naturalization, and the defendant's legal rights and personal opportunities" for "or rights" following "legal status"; following the eighth numbered paragraph, deleted language concerning the alternatives of plea agreements and conditional pleas; transferred the sentence concerning the judge's conclusion from above the attorney's certification to below it, and rewrote the first use note.

**The 2007 amendment**, approved by Supreme Court Order 07-8300-30, effective December 15, 2007, added paragraph 3 relating to no contest pleas; renumbered paragraphs 3 through 8 as paragraphs 4 through 9; revised paragraph 9 relating to the consequences of a plea on the defendant's immigration status; added paragraphs 10 and 11 relating to the consequences of a plea in domestic violence and sex offender cases; and deleted the last sentence of use note 1 that prohibited the use of this form when there is a written plea agreement.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-48, effective December 31, 2008, added the phrase "or no contest plea" to the title of the rule; added the phrase "OR NO CONTEST PLEA" to the title; in Paragraph 10, deleted the phrase "or felony" following the phrase "domestic violence"; and in Paragraph 11, changed the citation to the Sex Offender Registration and Notification Act from "29-11A-1 NMSA" to "Sections 29-11A-1 through 29-11A-10 NMSA 1978".



**No mention is made of conditional discharge or deferred sentencing** in this form.  
Vigil v. N.M. Motor Vehicle Div., 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

**9-407. Plea of no contest.**

[For use in the Magistrate Court,  
Metropolitan Court and Municipal Court]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**PLEA OF NO CONTEST**

The defendant in the above-styled cause hereby enters an appearance in the above-styled cause and enters a plea of no contest on the following understandings, terms and conditions:

1. that he has a right to trial and gives up this right;
2. that he has a right to be represented by an attorney and gives up this right;
3. that he has a right to present evidence in his own behalf and have the City compel witnesses of his choosing to appear and testify and gives up this right;

The defendant understands that a plea of NO CONTEST has the same effect as a plea of guilty in this court.

The defendant hereby enters a plea of NO CONTEST and agrees to pay a fine of \_\_\_\_\_ (\$\_\_\_\_\_).

Defendant

**9-408. Plea and disposition agreement.**

[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_ JUDICIAL DISTRICT

No.

STATE OF NEW MEXICO

v.

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

DOB: \_\_\_\_\_

SSN: \_\_\_\_\_

**PLEA AND DISPOSITION AGREEMENT<sup>1</sup>**

The State of New Mexico and the defendant hereby agree to the following disposition of this case:

**Plea:**

The defendant agrees to plead [guilty] [no contest] [guilty but mentally ill] to the following offenses: \_\_\_\_\_.

**Terms:**

This agreement is made subject to the following conditions:

[1. **Agreement as to sentence.** That the following disposition will be made of the charges:

] <sup>2</sup>

[1. **No agreement as to sentence.** There are no agreements as to sentencing. The maximum penalties for these charges are:

*(set forth maximum penalties<sup>3</sup> .]*

2. **Additional charges.** The following charges will be dismissed, or if not yet filed, shall not be brought against the defendant<sup>4</sup>:

.

[3. **Restitution.** The defendant agrees to pay restitution as follows:

.]

4. **Effect on charging document.** That this agreement, unless rejected or withdrawn, serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

5. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, the defendant gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement. The defendant waives the right to appeal the conviction that results from the entry of this plea agreement.

6. **Withdrawal permitted if agreement rejected.** If after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

*(Domestic violence or felony cases only)* I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] [guilty but mentally ill] I will be giving up my right to a trial by jury, to confront, cross-examine and compel the attendance of witnesses and my privilege against self-incrimination.

I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

Date

Defendant

**DEFENSE COUNSEL REVIEW**

I have reviewed the plea and disposition agreement with my client. I have discussed this

case with my client and I have advised my client of my client's constitutional rights and possible defenses.

Defense counsel

Date

**PROSECUTOR REVIEW**

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor

Date

**DISTRICT COURT APPROVAL**

The defendant personally appearing before me and I have concluded as follows:

1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
2. That the defendant understands the range of possible sentences for the offenses charged, from probation to a maximum of .
3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest] [guilty but mentally ill]:
  - (a) the right to trial by jury, if any;
  - (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
  - (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
  - (d) the right to present evidence on the defendant's own behalf, and to have the state compel witnesses of the defendant's choosing to appear and testify;

(e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.

4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.

5. That there exists a basis in fact for believing the defendant [is [guilty] [guilty but mentally ill] of] [committed] the offenses charged and that an independent record for such factual basis has been made.

6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.

7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.

8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest] [guilty but mentally ill].

9. That the defendant understands that a conviction may have an effect upon the defendant's immigration or naturalization status and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.

10. That the defendant understands that a conviction may require the defendant to register as a sex offender under the Sex Offender Registration and Notification Act and that if the defendant is represented by counsel, the defendant has been advised by counsel of the requirement to register.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] [guilty but mentally ill] to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.

District Judge

Date

**USE NOTE**

1. This form is used instead of Form 9-406 NMRA if there is a plea agreement. This form is not used for conditional plea. See Criminal Form 9-408C NMRA if there is a conditional plea.

2. Use appropriate alternative.

3. An example of a description of maximum penalties is as follows: "Unlawful taking of a vehicle is a fourth degree felony with a basic sentence of 18 months and a fine of \$5000.00, followed by 1 year parole. Any basic sentence may be altered up to one third for aggravating and mitigating circumstances".

4. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

[As amended, effective September 1, 1990; May 1, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

### ANNOTATIONS

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**The 1998 amendment,** effective May 1, 1998, rewrote the form.

**The 2007 amendment,** approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised the form to include in the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

**Strict adherence to form not required.** — Failure to utilize the form set out in this rule did not invalidate a guilty plea where there were adequate indicia that the plea was knowing and voluntary. *State v. Jonathan B.*, 1998-NMSC-003, 124 N.M. 620, 954 P.2d 52, cert. denied, 525 U.S. 865, 119 S. Ct. 155, 142 L. Ed. 2d 127 (1998).

### 9-408A. Plea and disposition agreement.

[For use with Magistrate Court Rule 6-502 NMRA,  
Metropolitan Court Rule 7-502 NMRA and  
Municipal Court Rule 8-502 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

## PLEA AND DISPOSITION AGREEMENT

The [state] [county] [city] and the defendant hereby agree to the following disposition of this case:

### **Plea:**

The defendant agrees to plead [guilty] [no contest] to the following offenses:

### **Terms:**

On the following understandings, terms and conditions:

1. That the following disposition will be made of the charges:
2. That the following charges will be dismissed, or if not yet filed, shall not be brought against the defendant:
3. That this agreement, unless rejected or withdrawn, serves to amend the complaint to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.
4. Unless this plea is rejected or withdrawn, that the defendant hereby gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement.
5. That, if after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement shall be null and void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury,<sup>1</sup> to confront, cross-examine, and compel the attendance of witnesses, my privilege against self-incrimination, and my right to appeal my conviction. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this agreement, I am granted probation, a suspended sentence or a deferred sentence by the court, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, as well as my legal rights and personal opportunities, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

***(For use only in Magistrate and Metropolitan Court.)***

*(Domestic violence cases only)* I understand that an entry of a plea for a crime of domestic violence will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

***(For use only in Magistrate and Metropolitan Court.)***

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act (Sections 29-11A-1 through 29-11A-10 NMSA 1978), and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

***(Check and complete if applicable.)***

**Conditional plea**

[ ] I understand that the plea of guilty that I have entered is conditioned upon my appeal. If I file an appeal on the issue of \_\_\_\_\_ *(describe pre-trial motion upon which appeal will be based)* and I win my appeal on this issue I may withdraw my plea.

Date

Defendant

I have discussed this case with my client in detail and I have advised my client of my client's constitutional rights and all possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date

Defense counsel

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date

Prosecutor

Approved:

Date

Judge

USE NOTE



1. The list of rights the defendant is giving up may exclude the right to a trial by jury in municipal court.

[Adopted, effective May 1, 1997; as amended May 15, 2003; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007; as amended by Supreme Court Order No. 08-8300-48, effective December 31, 2008.]

### ANNOTATIONS

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**The 2003 amendment,** effective May 15, 2003, following the fifth numbered paragraph, deleted the two statements concerning conditional pleas; substituted the present sentence concerning immigration or naturalization for the former sentence which read "I understand that a conviction may have an effect upon my immigration or naturalization status" and deleted the use note that read "plea and disposition agreements should not be used to close the original case and to open another case".

**The 2007 amendment,** approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

**The 2008 amendment,** approved by Supreme Court Order No. 08-8300-48, effective December 31, 2008, in the first provision for use only in Magistrate or Metropolitan Court, deleted the phrase "or felony" following the phrase "domestic violence"; in the second provision for use only in Magistrate or Metropolitan Court, changed the citation to the Sex Offender Registration and Notification Act from "29-11A-1 NMSA" to "Sections 29-11A-1 through 29-11A-10 NMSA 1978"; and at the end of the second provision for use only in Magistrate or Metropolitan Court, deleted the phrase "For use only in on the record cases in the Metropolitan Court".

### 9-408C. Conditional plea.

[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**CONDITIONAL PLEA**

I, \_\_\_\_\_ (*name of defendant*), with the approval of the court, am entering a plea of [guilty] [no contest] [guilty but mentally ill] to

\_\_\_\_\_

The maximum penalties for the above charges are (*set forth offense and statutory sentence*):

Count 1.

Count 2.

Count 3.

I understand my plea is conditioned upon the filing of an appeal on the issue of \_\_\_\_\_ (*describe pretrial motion upon which appeal will be based*).

I understand that, if the judge approves my plea of [guilty] [no contest] [guilty but mentally ill], a judgment and sentence will be entered and that I may appeal on the issue specified above in the manner provided by the Rules of Appellate Procedure.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest] [guilty but mentally ill].

I understand that a conviction may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

*(Domestic violence or felony cases only)*

I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that a conviction may require me to register as a sex offender under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] [guilty but

mentally ill], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

Date

Defendant

#### **DEFENSE COUNSEL REVIEW**

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and possible defenses.

Defense counsel

Date

#### **PROSECUTOR APPROVAL**

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor

Date

Approved:

District Judge

[Adopted, effective January 15, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007.]

#### **ANNOTATIONS**

**Cross references.** — See Civil Form 4-970 NMRA for a discussion of the consequences of a conviction under the Family Violence Protection Act, 40-13-1 NMSA 1978, and the so-called "Brady Bill", 18 U.S.C. Section 922.

**Preferred procedure for appeal to Court of Appeals after conditional plea is entered** in magistrate court is for the district court to issue a final and appealable order dismissing the appeal or to issue an order granting the motion to suppress. *State v. Celusniak*, 2004-NMCA-070, 135 N.M. 728, 93 P.3d 10.

**The 2007 amendment**, approved by Supreme Court Order 07-8300-29, effective December 10, 2007, revised the provision relating to the consequences of a plea on the defendant's immigration status and added the provisions relating to the consequences of a plea in domestic violence and sex offender cases.

**9-409. Motion for production.**

[For use with Magistrate Court Rule 6-504,  
Metropolitan Court Rule 7-504 and  
Municipal Court Rule 8-504]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.

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

**MOTION FOR PRODUCTION**

\_\_\_\_\_ (*Prosecutor*) (*Defendant*) asks the Court to order that the other party produce for inspection and copying the following items of evidence:

Request has been made of the other party and the other party has failed to produce the evidence.

This inspection and copying is necessary in the preparation for trial of this case because

\_\_\_\_\_, \_\_\_\_\_ (Prosecutor) (Defendant)

*(A copy of this must be mailed or delivered to the other party or attorney for the other party.)*

**9-409A. Motion to compel discovery.**

[For use with Magistrate Court Rule 6-504 NMRA  
and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

### MOTION TO COMPEL DISCOVERY

The [defendant] [prosecution] has previously requested the following discovery \_\_\_\_\_ (*provide description*) and the [defendant] [prosecution] failed to provide the discovery.

The [defendant] [prosecution] requests the court to:

order the [defendant] [prosecution] to produce the discovery or inspection of materials not previously disclosed.

grant a continuance of the trial setting on \_\_\_\_\_ (*date*) to allow the completion of discovery;

\_\_\_\_\_ (*describe other relief*).

I acknowledge that the filing of this motion does not diminish my continuing duty to fully comply with the pretrial scheduling order or rules of procedure.

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

[Prosecutor] [Defendant]

[Approved by Supreme Court Order 07-8300-25, effective November 1, 2007.]

### ANNOTATIONS

**Cross references.** — For subpoenas in the metropolitan court, see Rule 7-606 NMRA.

For order of production, see Criminal Form 9-410 NMRA.

**9-410. Order for production.**

[For use with Magistrate Court Rule 6-504 NMRA,  
Metropolitan Court Rule 7-504 NMRA and  
Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

#### ORDER FOR PRODUCTION

It appearing to the court that the defendant has requested production of certain tangible evidence in the possession of or available to the prosecution and that good cause exists therefor;

IT IS ORDERED that the prosecution produce for inspection and copying at \_\_\_\_\_ (address) at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_, \_\_\_\_\_, the following records, papers, documents or other tangible evidence in its possession or available to it:  
(describe briefly)

Judge

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

[As amended, effective January 1, 1996; as amended by Supreme Court Order 07-8300-25, effective November 1, 2007.]

#### ANNOTATIONS

**The 1996 amendment**, effective January 1, 1996, substituted the parenthetical at the end for "Failure to obey this order may constitute a contempt of court".

**Cross references.** — For motion to compel discovery, see Criminal Form 9-409A NMRA.

**9-411. Notice of pretrial conference.**

[For use with Magistrate Court Rule 6-505,  
Metropolitan Court Rule 7-505 and  
Municipal Court Rule 8-505]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.

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

**NOTICE OF PRETRIAL CONFERENCE**

TO: \_\_\_\_\_

*(Names of parties ordered to appear)*

You are ordered to appear for a pretrial conference on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.), at the \_\_\_\_\_ court located at \_\_\_\_\_, at which time the court will consider such matters that may expedite the disposition of the case.

Date

(Judge) (Clerk)

**USE NOTE**

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

[As amended, effective January 1, 1995; December 17, 2001.]

**ANNOTATIONS**

**The 1995 amendment**, effective January 1, 1995, added the certificate of mailing.

**The 2001 amendment**, effective December 17, 2001, in the first paragraph under the heading "NOTICE OF PRETRIAL CONFERENCE" substituted "You are ordered to appear for a pretrial conference" for "Please take notice that a pretrial conference will be held in the above entitled action" and deleted "attempt to clarify the pleadings and will" following "court will" and substituted "such matters that may expedite" for "such other

matters as may aid in"; and deleted the second paragraph which read "You are hereby ordered to appear at the above time and place"; deleted the "Certificate of Mailing" part of the form; and added the Use Note.

**9-412. Certificate of disclosure of information.**

[For use with District Court Rules 5-501, 5-502]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**CERTIFICATE OF DISCLOSURE OF INFORMATION**

I hereby certify that all information required to be produced pursuant to Rule 5-501 or 5-502 NMRA has been produced except for the following:<sup>1</sup>

I acknowledge that I have a continuing duty to disclose any additional information to which the (*defendant*) (*prosecution*) is entitled under Rule 5-501 or 5-502.

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

[Prosecutor] [Defendant]

**USE NOTE**

1. If information is not disclosed pursuant to Paragraph E of Rules 5-501, the reason for the failure to disclose such information shall be given by the prosecutor.

**9-412A. Certificate of disclosure of information.**

[For use with Magistrate Court Rule 6-504 NMRA  
and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]



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

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**CERTIFICATE OF DISCLOSURE OF INFORMATION**

I hereby certify that all information required to be produced pursuant to Rule [6-504 NMRA] [7-504 NMRA] [8-504 NMRA] has been produced except for the following:

.

I hereby certify I have disclosed the witnesses the [prosecution] [defendant] may call to testify at trial and that the status of interviews is as follows:

- no interview requested
- all interviews requested by and scheduled by [defendant] [prosecution]
- all interviews completed
- other \_\_\_\_\_ (*describe*).

I acknowledge that I have a continuing duty to disclose any additional information which the [defendant] [prosecution] is entitled to receive under Rule [6-504 NMRA] [7-504 NMRA] [8-504 NMRA].

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

[Prosecutor] [Defendant]

[Approved by Supreme Court Order 07-8300-25, effective November 1, 2007.]

**9-412B. Motion to sanction for non-compliance.**

[For use with Magistrate Court Rule 6-504  
and Municipal Court Rule 8-504 NMRA]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]

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

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**MOTION TO SANCTION FOR NON-COMPLIANCE**

I certify that the [defendant] [prosecution] failed to comply with this court's pretrial scheduling order in a timely manner as follows:

A motion to compel was filed on \_\_\_\_\_ (date) with the following results:  
\_\_\_\_\_ (describe results).

Because of the failure to comply the [defendant] [prosecution] requests the court to:

- order the party to provide discovery as requested
- grant a continuance until \_\_\_\_\_ (date) to allow for the completion of discovery
- prohibit introduction into evidence of the material not disclosed
- enter an order holding \_\_\_\_\_ (attorney or party) in contempt of court
- \_\_\_\_\_ (other).

I acknowledge that the filing of this certificate does not diminish my continuing duty to fully comply with the pretrial scheduling order.

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

[Prosecutor] [Defendant]

[Approved by Supreme Court Order 07-8300-25, effective November 1, 2007.]

**9-413. Supplemental certificate of disclosure of information.**

[For use with District Court Rules 5-501 and 5-502]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**SUPPLEMENTAL CERTIFICATE OF DISCLOSURE OF INFORMATION**

I certify that the following information specifically excepted from the original certificate of disclosure of information has been furnished to the (defendant) (prosecution):

I acknowledge that the filing of this supplemental certificate does not diminish my continuing duty to disclose additional information.

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

(Prosecutor) (Defendant)

**9-414. Order dismissing criminal complaint with prejudice.**

[For use with Magistrate Court Rule 6-506,  
Metropolitan Court Rule 7-506 and  
Municipal Court Rule 8-506]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**ORDER DISMISSING CRIMINAL COMPLAINT  
WITH PREJUDICE**

This matter having been regularly brought on for hearing upon the motion of the defendant that the above-styled cause be dismissed with prejudice for failure of the (state) (city) to prosecute and the Court finding that the defendant was not responsible for the failure to complete the disposition of the criminal proceeding.

It is hereby ordered that the complaint filed in the above-styled cause be dismissed with prejudice.

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

Judge

**9-415. Notice of dismissal - non-felony case.**

[For use with Magistrate Court Rule 6-506,  
Metropolitan Court Rule 7-506 and  
Municipal Court Rule 8-506]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]

[CITY OF \_\_\_\_\_]

v.

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

**NOTICE OF DISMISSAL**

The complaint filed in this case is dismissed without prejudice.

Prosecutor or complainant

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this notice was

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
City, State and zip code: \_\_\_\_\_]

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

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

Signature of attorney

Date of signature

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

**AFFIDAVIT OF SERVICE**

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

Signature of person who made service

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

**USE NOTE**

This form may be used to dismiss or *nolle prosequi* a non-felony case without prejudice. Use Criminal Form 9-415A for felony cases.

[As amended, effective August 1, 1999.]

**ANNOTATIONS**

**The 1999 amendment**, effective on and after August 1, 1999, rewrote the form, adding the certificate of service and affidavit of service in which notice can be given by fax, email or postage prepaid mail.

**9-415A. Notice of dismissal - felony case.**

[For use with Magistrate Court Rule 6-506, and Metropolitan Court Rule 7-506]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**NOTICE OF DISMISSAL**

The complaint filed in this case is dismissed without prejudice pending further investigation. Criminal charges may be refiled at a later time.

Prosecutor

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this notice was

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

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State  
and zip code: \_\_\_\_\_]

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

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

Signature of attorney

Date of signature

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

**AFFIDAVIT OF SERVICE**

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

Signature of person who made service

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

**USE NOTE**

This form may be used to dismiss or nolle prosequi a felony case without prejudice. Use Criminal Form 9-415 NMRA for a non-felony case.

[Approved, effective August 1, 1999.]

**9-416. Stipulated discovery order.**

[For use with Magistrate Court Rule 6-603,  
Metropolitan Court Rule 7-603 and  
Municipal Court Rule 8-603]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.

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

**STIPULATED DISCOVERY ORDER**

The *(state) (city)* and the defendant stipulate to the following order:

1. That should the materials discovered under this order reasonably be calculated to lead to other material which is discoverable evidence, the *(state) (city)* will assist the defendant in obtaining such evidence.

2. All disputed matters not covered by this order will be decided by the court.

3. The *(state) (city)*, through the \_\_\_\_\_, is ordered to produce:

a complete copy of the police report and officer's statement;

a list of all witnesses to be called whose names and addresses do not appear on the police report;

the BAT card;

the defendant's record;

4. The *(state) (city) (police) (county sheriff)* is ordered to produce:

the calibration and maintenance records of the machine used to test defendant's breath for a period of \_\_\_\_\_ days before and \_\_\_\_\_ after the date of the offense;

the name and address of the manufacturer of the machine;

the conversion ratio used by the machine;

the date of purchase and the date of initial certification of the machine;

the instrument log for the machine used in defendant's test covering the shift during which the test was given;

any information known about radio frequency testing involving this machine.



IT IS ORDERED THAT:

1. The *(district) (city)* attorney's office send an endorsed copy of this order to the *(state) (city) (police) (county sheriff)* and to defendant's attorney.
2. The *(state) (city) (police) (county sheriff)* schedule an appointment with defendant's attorney within fifteen (15) days after the date of service of this stipulated discovery order.
3. Defendant's attorney shall attend the scheduled appointment or reschedule within three (3) days of notification of the appointment.
4. The *(state) (city)*, through its agencies, is ordered to make available the following items for inspection with copying at defendant's expense.
5. For purpose of the six-month rule, time will run against the party which causes the appointment to be later than three (3) days before the trial setting.
6. The parties comply with the terms of the stipulated discovery order as set forth above.

Judge

The above stipulation and order  
is hereby agreed to:

\_\_\_\_\_  
(District) (City) Attorney

\_\_\_\_\_  
Attorney for Defendant

Information needed to expedite compliance:

Date of offense:

Approximate time:

Police report number:

BAT instrument no.:

Trial setting date:

Time:

Judge:

[Adopted, effective October 1, 1987.]

**9-417. Witness list.**

[For use with Magistrate Court Rule 6-504,  
Metropolitan Court Rule 7-504 and  
Municipal Court Rule 8-504]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**WITNESS LIST**

The [prosecution] [defendant] notifies the opposing party that the following potential witnesses may be called to testify at trial.

Name	Address <sup>1</sup>	Tel. No. <sup>1</sup>	Statement <sup>2</sup>	
			(yes)	(no)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**EXHIBIT LIST**

The [prosecution] [defendant] notifies the opposing party that the following exhibits may be used at trial.

Exhibit <sup>2</sup>	Location of exhibit

Signature

Title

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this notice was

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

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

City, State and zip code: \_\_\_\_\_]

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

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

[delivered to \_\_\_\_\_. (*If delivered to someone other than the party, describe how service was made.*) \_\_\_\_\_<sup>4</sup>]

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<sup>3</sup>**

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

Signature of person who made service

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

#### USE NOTES

1. Provide the address and telephone number to be used to contact the witness. This address may be the address and telephone number of the district attorney or defense counsel.
2. All witness statements and exhibits shall be disclosed and made available for inspection and copying as provided by the rules of criminal procedure. Statements and exhibits are not filed with the court unless entered into evidence.
3. The certificate of service information must also be completed except for the signature lines.
4. In addition to service by mail, fax and e-mail, Rules 2-203 and 3-303 NMRA permit service by delivery to a party by any of the following means:
  - (a) handing it to the attorney or to the party;
  - (b) leaving it at the attorney's or party's office with a clerk or other person in charge, or, if there is no one in charge, leaving it in a conspicuous place in the office;
  - (c) if the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there; or
  - (d) placing a copy in a box maintained by the attorney for purposes of serving the attorney.

[Approved, effective December 17, 2001.]

#### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated October 22, 2001, this form is effective December 17, 2001.

**9-418. Scheduling order.**

[For use with Magistrate Court Rule 6-505,  
Metropolitan Court Rule 7-505 and  
Municipal Court Rule 8-505]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

### SCHEDULING ORDER<sup>1</sup>

The parties shall comply with the following scheduling order:

1. Motions must be filed by \_\_\_\_\_ (date)<sup>2</sup>.
2. Discovery must be **completed** by \_\_\_\_\_ (date).
3. The prosecution shall disclose to the defendant its witnesses and the names, addresses and telephone numbers of its witnesses by \_\_\_\_\_ (date).
4. The defendant shall disclose to the prosecution the names, addresses and telephone numbers of the defendant's witnesses by \_\_\_\_\_ (date).
5. The prosecution shall disclose and make available for inspection, copying and photographing its exhibits to defendant no later than \_\_\_\_\_ (date).
6. The defendant shall disclose and make available for inspection, copying and photographing its exhibits to the prosecution no later than \_\_\_\_\_ (date).
7. [The parties shall submit their proposed initial jury instructions to the court by \_\_\_\_\_ (date).]<sup>3</sup>
8. Any party may request a pretrial conference by filing a written request stating the purpose of the conference.
9. If this case is dismissed or if the parties have agreed on a plea or proposed disposition, the parties shall promptly advise the court.
10. A pretrial conference is scheduled for this case on \_\_\_\_\_ (date).

11. A motion hearing will be held on \_\_\_\_\_ (*date*).

[12. This matter is set for [jury] [non-jury] trial on \_\_\_\_\_ (*date*).]<sup>4</sup>

When this order states that a document shall be disclosed by a certain date, that means that it must be received by the recipient by that date.

If it is brought to the attention of the court that a party has failed to comply with this order, the court may: order such party to permit the discovery or inspection of materials not previously disclosed; grant a continuance; prohibit the party from calling a witness not disclosed; prohibit the party from introducing in evidence the material not disclosed; or enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

Failure to comply with any provision of this order may result in a finding of contempt of court and punished by fine or imprisonment.

Judge

Date of Signature

#### USE NOTES

1. Use of this form is in the discretion of the judge. This form may be modified as appropriate by the judge. For example, the court may want to require settlement conferences or pretrial conferences or may schedule docket calls. Dates should be in consecutive order.

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

3. This paragraph may be used only if a party is represented by an attorney. The parties may submit additional instructions at the close of the evidence.

4. This paragraph and Paragraph 7 have been included for use in the magistrate and metropolitan court if the trial is by jury.

[Approved, effective December 17, 2001.]

#### ANNOTATIONS

**Cross references.** — For the disclosure of witnesses, records, papers and documents by the prosecution and defendant, see Rules 6-504, 7-504 and 8-504 NMRA.

For instructions to the jury, see Rules 6-609 and 7-609 NMRA.

# ARTICLE 5

## Trials

### 9-501. Notice of [trial] [hearing].

[For use in the Magistrate,  
Metropolitan and Municipal Courts]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

#### NOTICE OF [TRIAL] [HEARING]

TO: \_\_\_\_\_ Prosecution  
\_\_\_\_\_ Defendant

YOU ARE ordered to appear for [trial] [a hearing] before the Honorable  
\_\_\_\_\_, at the \_\_\_\_\_ court located at  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at  
\_\_\_\_\_ (a.m) (p.m.).

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

Date of this notice:

\_\_\_\_\_, \_\_\_\_\_  
Date

*(Judge) (clerk)*

#### USE NOTE

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

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

**ANNOTATIONS**

**The 1995 amendment**, effective January 1, 1995, added the certificate of mailing.

**The 2002 amendment**, effective May 1, 2002, inserted "[Hearing]" in the form heading and changed the requirement from being notified for trial to ordering to appear for trial or hearing, added the sentence concerning the failure to appear and added the Use Note.

**9-502. Waiver of trial by jury - Misdemeanor offenses.**

[For use with District Court Rule 5-605,  
Magistrate Court Rule 6-602 and  
Metropolitan Court Rule 7-602]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**WAIVER OF TRIAL BY JURY – MISDEMEANOR OFFENSES**

**Instructions:**

The purpose of this form is to advise you of your right to trial by jury and to allow you to give up that right if you so choose.

**READ THE ENTIRE FORM CAREFULLY BEFORE SIGNING IT.**

**RIGHT TO TRIAL BY JURY**

I understand that I am charged with the crime of \_\_\_\_\_, which is a misdemeanor under the law of New Mexico, and that if I am found guilty I can be punished by imprisonment, fine or other penalty.

I understand that I have a right to trial by jury and that all jurors must agree on my guilt of the crime beyond a reasonable doubt for me to be found guilty.

I understand that once I have made the decision to give up my right to jury trial, I may change my mind *only* with the permission of the court.

**CERTIFICATION AND WAIVER**



After reading and understanding the above, I hereby give up my right to trial by jury and consent to have my guilt or innocence determined by a judge.

Date

Defendant  
I have explained to the defendant his right to trial by jury and I am satisfied that the defendant understands the waiver of this right.

Defense Counsel  
I consent to waiver of trial by jury in this case.

Prosecutor  
Approved:

Judge

**9-503. Subpoena.**

[For use with Magistrate Court Rule 6-606  
Metropolitan Court Rule 7-606 and  
Municipal Court Rule 8-602]

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
[COUNTY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**SUBPOENA**

- FOR APPEARANCE OF PERSON:
  - FOR TRIAL
  - FOR HEARING
  - TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL
- TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

PLACE: \_\_\_\_\_

BEFORE JUDGE: \_\_\_\_\_

DATE: \_\_\_\_\_, \_\_\_\_\_ TIME: \_\_\_\_\_ (a.m.) (p.m.) to:

testify at trial

produce for trial or hearing the following described books, documents or tangible things

YOU ARE ALSO COMMANDED to bring with you the following (*describe document or objects to be produced*)

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

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

(Judge) (Clerk) (Attorney)

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in said (*county*) (*city*), I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, a witness fee in the amount of \_\_\_\_\_ and mileage in the amount of \$\_\_\_\_\_<sup>1</sup>.

Name of law enforcement officer

Title

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE<sup>2</sup>**

**CERTIFICATE OF SERVICE**

I certify that I served the above subpoena on \_\_\_\_\_ (*name of person served*) on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy to the person named a copy of the subpoena, a witness fee in the amount of \_\_\_\_\_ and mileage in the amount of \$\_\_\_\_\_<sup>1</sup>.

Person making service

Title *(if any)*

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Judge, Notary or Other Officer  
Authorized to Administer Oaths

Fees: \_\_\_\_\_

THIS SUBPOENA issued at request of:

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

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

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

\_\_\_\_\_

*(Address)*

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

\_\_\_\_\_

*(Address)*

Attorney

Signature

Date of signature

**USE NOTES**

- 1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts.
- 2. If service is by someone other than an attorney, an affidavit of service must be used instead of a certificate of service.

[As amended, effective May 1, 2002.]

**ANNOTATIONS**

**The 2002 amendment**, effective May 1, 2002, rewrote the form by deleting the "Greetings" section of the form and added "Return for Completion by Sheriff or Deputy", "Certificate of Service", and "Certificate of Service by Attorney" to the form and added the Use Notes.

**9-504. Order for production.**

[For use with Magistrate Court Rule 6-504  
Metropolitan Court Rule 7-504 and  
Municipal Court Rule 8-504]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**ORDER FOR PRODUCTION**

TO:  
**GREETINGS:**

You are hereby commanded to appear in the \_\_\_\_\_ Court for the  
(County of \_\_\_\_\_) (City of \_\_\_\_\_) located at

\_\_\_\_\_ (address of court) on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ [a.m.] [p.m.] and bring with you and produce at the time and place set forth in this subpoena the following:

(describe document or object to be produced) then and there to testify on the part of the \_\_\_\_\_, and this you must do under penalty of law.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Judge) (Clerk)

[As amended, effective May 1, 2002.]

### ANNOTATIONS

**The 2002 amendment**, effective May 1, 2002, substituted "[6-504, 7-504, 8-504]" for "[6-606, 7-606, 8-602]" in the reference line and substituted "Order for Production" for "Subpoena to Produce Document or Object" in the form heading.

### 9-505. Report of blood alcohol analysis.

[For use with Magistrate Court Rule 6-607, Metropolitan Court Rule 7-607 and Municipal Court Rule 8-603]

(Insert name of laboratory)

#### REPORT OF BLOOD ALCOHOL ANALYSIS

Laboratory number:

Date received:

Time received:

#### PART A

INFORMATION IN THIS BLOCK TO BE  
FILLED IN BY ARRESTING OFFICER

SEND LAB ANALYSIS REPORT TO:

Name: \_\_\_\_\_  
(Complete name of your agency)

Address: \_\_\_\_\_  
(Street or P.O. box) (City, state and zip code)

**SEND COPY TO DONOR:**

**Donor's identification:**

Name: \_\_\_\_\_  
(Last) (first) (middle)

Address: \_\_\_\_\_  
(Street or post office box number)

\_\_\_\_\_  
(City, state and zip code)

Social security number: \_\_\_\_\_

Driver's license number: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Sex: \_\_\_\_\_ Weight: \_\_\_\_\_

**BLOOD DRAW INFORMATION**

Date blood drawn: \_\_\_\_\_

Time blood drawn: \_\_\_\_\_ (a.m.) (p.m.)

Place drawn: \_\_\_\_\_

Blood drawn by: \_\_\_\_\_

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

Blood draw witnessed by:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

Remarks:

**ARREST INFORMATION**

Reason for law enforcement contact:

Erratic driving \_\_\_\_\_

Accident:  Fatal  Great bodily injury  
 (other) \_\_\_\_\_

Other \_\_\_\_\_

Investigated or witnessed by:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

Arresting officer's identification:

Department: \_\_\_\_\_

Date of arrest: \_\_\_\_\_

Place of arrest: \_\_\_\_\_

County: \_\_\_\_\_

Arrest time: \_\_\_\_\_ (a.m.) (p.m.)

Arresting officer:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

**INFORMATION BELOW IS TO BE FILLED IN BY DRAWER OF ANY BLOOD SAMPLE**

I certify that on the date, time and place indicated above, I drew blood samples from the above named donor and that I marked and sealed the samples with the donor's name.

*(For use in implied consent cases)*

\_\_\_\_\_ *(initials)* I certify that the blood was collected using the entire contents of a state scientific laboratory division approved blood collection kit in accordance with scientific laboratory division's approved instructions.

\_\_\_\_\_  
Signature of blood drawer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Employer name

PART B

----- LABORATORY USE ONLY -----

CERTIFICATE OF RECEIVING EMPLOYEE

Specimen of  Blood  Other \_\_\_\_\_  
Received from

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

In person  via mail  other

\_\_\_\_\_  
Seal intact: Yes  No . If No, explain:

Other Remarks:

I certify that on the date shown in the "date received" blank above, I received the sample which accompanied this report and followed the procedures set out on the reverse of this report, and that the statements in this block are correct.

Receiving employee

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

CERTIFICATE OF ANALYST

The seal of this sample was received intact and was broken in the laboratory:

Yes

No

If No, explain:

RESULT OF ANALYSIS

**Blood Sample:** \_\_\_\_\_ gms/100 ml alcohol  
concentration in sample.

REMARKS:

I certify that I followed the procedures set out on the reverse of this report, and that the statements in this block are correct. The concentration of alcohol in the sample is based



on the grams of alcohol in one hundred milliliters of blood.

Date of analysis: \_\_\_\_\_

Analyzed by:

\_\_\_\_\_  
Print name of analyst

\_\_\_\_\_  
Signature of analyst

**CERTIFICATE OF REVIEWER**

I certify that the analyst who conducted the analysis in this case meets the qualifications required by the director of this laboratory to properly conduct such analyses; the supervisor of analysts is also qualified to conduct such analyses; and that the established procedure has been followed in the handling and analysis of the sample in this case.

\_\_\_\_\_  
Date

Reviewer:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

**CERTIFICATE OF MAILING**

I certify that on this date I mailed a legible copy of this report to the donor, in accordance with the mailing procedure set out on the reverse of this report.

\_\_\_\_\_, \_\_\_\_\_  
Date

Laboratory employee:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

**PROCEDURE**

*(To be printed on the reverse side of report)*

1. The laboratory named on the front of this report is a laboratory authorized or certified by the scientific laboratory division of the health department to perform blood and alcohol tests. The agency has established formal procedures for receipt, handling and testing of blood samples to assure integrity of the sample, a formal procedure for conduct and report of the chemical analysis of the samples by the gas chromatographic

method ( \_\_\_\_\_ ) (*specify, if other method used*) and quality control procedures to validate the analyses. The quality control procedures include semi-annual proficiency testing by an independent agency. The procedures have the general acceptance and approval of the scientific community, including the medical profession, and of the courts, as a means of assuring a chemical analysis of a blood sample that accurately discloses the concentration of alcohol in the blood. The same procedures are applicable for samples other than blood if submitted for alcohol analysis. The analyst who conducts the analysis in this must meet the qualifications required by the director of this laboratory to properly conduct such analyses. The supervisor of analysts must also be qualified to conduct such analyses.

2. When a blood sample is received at the laboratory, the receiving employee examines the sample container and:

- (a) determines that it is a standard container of a kit approved by the director of the laboratory;
- (b) determines that the container is accompanied by this report, with Part A completed;
- (c) determines that the donor's name and the date that the sample was taken have already been entered on this report and on the container and that they correspond;
- (d) makes a log entry of the receipt of the sample and of any irregularity in the condition of the container or its seals;
- (e) places a laboratory number and the date of receipt on the log, on the container, and on this report, so that each has the same laboratory number and date of receipt;
- (f) completes and signs the Certificate of Receiving Employee, making specific notations as to any unusual circumstances, discrepancies, or irregularities in the condition or handling of the sample up to the time that the container and report are delivered to the analysis laboratory;
- (g) personally places the container with this report attached in a designated secure cabinet for the analyst or delivers it to the analyst.

3. When the blood sample is received by the analyst, the analyst:

- (a) makes sure the laboratory number on the container corresponds with the laboratory number on this report;
- (b) makes sure the analysis is conducted on the sample which accompanied this report at the time the report was received by the analyst;
- (c) conducts a chemical analysis of the sample and enters the results on this report;

- (d) retains the sample container and the raw data from the analysis;
- (e) completes and signs the Certificate of Analyst, noting any circumstance or condition which might affect the integrity of the sample or otherwise affect the validity of the analysis;
- (f) delivers this report to the reviewer.

4. The reviewer checks the calculations of the analysis, examines this report, signs the Certificate of Reviewer, and delivers the report to a laboratory employee for distribution.

5. An employee of the agency mails a copy of this report to the donor at the address shown on this report, by depositing it in an outgoing mail container which is maintained in the usual and ordinary course of business of the laboratory. The employee signs the certificate of mailing to the donor, and mails the original of this report to the submitting law enforcement agency.

6. The biological sample will be retained by the testing laboratory for a period of at least six (6) months pursuant to regulations of the scientific laboratory division.

#### **USE NOTE**

This form, after appropriate modifications, may also be used for controlled substance and other test reports.

[As amended, effective October 1, 1991; July 1, 1999; November 1, 2004.]

#### **ANNOTATIONS**

**Cross references.** — For Implied Consent Law, see 66-8-105 to 66-8-112 NMSA 1978.

See Rule 7.33.2.12 NMAC for sample blood collection regulations.

**The 1999 amendment**, effective July 1, 1999, rewrote this form.

**The 2004 amendment**, effective November 1, 2004, in Part A, required the middle name of the donor under identification, deleted certain information regarding the arrest under donor's identification, inserted "Blood Draw Information" heading, deleted "sample" twice preceding "drawn", inserted "blood" and required the name be printed of the person drawing the blood and witnessing the blood draw under that heading, inserted "Arrest Information" heading, substituted "for law enforcement contact" for "suspect stopped", added "Investigated or" and required the name be printed under that heading, inserted "Arresting officer's identification" heading and all the information lines thereunder, and inserted all the language for use in implied consent cases. The amendment also, in Part B, required the printed name and signature twice under the

Certificate of Receiving Employee heading, required the printed name of the analyst under the Result of Analysis heading, required the printed name and signature under the Certificate of Reviewer heading, and required the printed name and signature under the Certificate of Mailing heading, added Paragraph 6 under Procedure, and inserted "and other" in the Use Note.

**Use of this form is intended** to simplify the foundational requirement the State must satisfy in moving the admission of the results of a blood alcohol test. State v. Dedman, 2004-NMSC-037, 136 N.M. 561, 102 P.3d 628.

### **9-506. Office of the Medical Investigator - Case disposition and report certification.**

[For use with Magistrate Court Rule 6-608 and Metropolitan Court Rule 7-608]

#### **OFFICE OF THE MEDICAL INVESTIGATOR**

#### **CASE DISPOSITION AND REPORT CERTIFICATION**

Remains Received:

Received from: \_\_\_\_\_

Officer

\_\_\_\_\_ Dept.

Received by: \_\_\_\_\_

Medical Investigator

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

The remains were held in the exclusive custody and control of the Office of Medical Investigator from the date of receipt through the date of return:

\_\_\_\_\_ YES \_\_\_\_\_ NO

Disposition of remains:

Returned by: \_\_\_\_\_

Medical Investigator

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

**CERTIFICATION**

In accordance with Paragraph A of Rule 11-902 of the Rules of Evidence, the attached report is a record of the Office of the Medical Investigator, is duly authenticated under the seal of such office to be admitted into evidence without extrinsic evidence of authenticity and the contents of the report are true and correct to the best of my knowledge.

Medical Investigator

[SEAL]

**9-507. Laboratory - Case disposition and report certification.**

[For use with Magistrate Court Rule 6-608 and  
Metropolitan Court Rule 7-608]

**LABORATORY  
CASE DISPOSITION AND REPORT CERTIFICATION**

**Evidence received:**

**Received from:**

\_\_\_\_\_ *(name of person)*

\_\_\_\_\_ *(title)*

\_\_\_\_\_ *(name of entity)*

**Received by:**

\_\_\_\_\_ *(name of person)*

\_\_\_\_\_ *(title)*

\_\_\_\_\_ *(name of laboratory receiving  
evidence)*

**Date received:**

This evidence was held in the exclusive custody and control of the \_\_\_\_\_ (name of laboratory).

(Complete only applicable alternative.)

- The evidence was retained at the above named laboratory.
- The evidence was:

(If this alternative is applicable complete all of the following.)

Returned to:

\_\_\_\_\_ (name of person)

\_\_\_\_\_ (title)

\_\_\_\_\_ (name of entity)

Returned by:

\_\_\_\_\_ (name of person)

\_\_\_\_\_ (title)

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

**CERTIFICATION**

The attached report is a record of \_\_\_\_\_ (name of laboratory), and the contents of the report are true and correct to the best of my knowledge.

Name

Title

Date

[As amended, effective January 1, 1997.]

**ANNOTATIONS**

**The 1997 amendment**, effective January 1, 1997, substituted "laboratory" for "NMSP Crime Lab" in the form heading and throughout the form, rewrote the "received by" and "received from" items, added the alternatives relating to retaining or returning the evidence, and rewrote the certification.

**9-508. Order declaring mistrial upon jury disagreement.**

[For use with District Court Rule 5-611,  
Magistrate Court Rule 6-610 and  
Metropolitan Court Rule 7-610]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**ORDER DECLARING MISTRIAL UPON JURY DISAGREEMENT**

The jury having deliberated a reasonable time and having reported to the court that they are unable to agree upon a verdict herein and the court having polled the jury in accordance with (Rule 5-611 NMRA) (Rule 6-610 NMRA) (Rule 7-610 NMRA) of the Rules of Criminal Procedure;

IT IS THEREFORE ORDERED, as follows:

1. The jury found the defendant not guilty of the charges of

and it is adjudged that the defendant is not guilty of these charges.

2. A mistrial based on jury disagreement is declared as to the \_\_\_\_\_ (*common name of count or highest degree of offense upon which the jury could not agree*).

3. The power to retry the charges upon which the mistrial is declared is reserved.

4. The jury is discharged from the further consideration of this cause.

Judge

[As amended, effective October 1, 1996.]

**ANNOTATIONS**

**The 1996 amendment**, effective October 1, 1996, added "6-610, 7-610" in the authority bracket at the top of the form and in the body of the form, substituted "\_\_\_\_\_

Court" for "District Court" in the caption, substituted "jury found the defendant not" for "defendant is not" and "the defendant" for "he" in Paragraph 1, and deleted "District" preceding "Judge" under the signature line.

**9-509. Demand for jury trial - Petty misdemeanor offenses.**

[For use with Magistrate Court Rule 6-602 and Metropolitan Court Rule 7-602]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**DEMAND FOR JURY TRIAL  
PETTY MISDEMEANOR OFFENSES**

Pursuant to Section \_\_\_\_\_ NMSA 1978, I demand a trial by jury in the above-styled cause.

\_\_\_\_\_  
Date

Defendant

Prosecutor

[Approved, effective September 1, 1990.]

**9-510. Order permitting transcription of testimony agreement of party to limit use of recording.**

[For use with Magistrate Court Rule 6-601, Metropolitan Court Rule 7-601 and Municipal Court Rule 8-601]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.



[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

**ORDER PERMITTING TRANSCRIPTION OF TESTIMONY  
AGREEMENT OF PARTY TO LIMIT USE OF RECORDING**

Upon request of \_\_\_\_\_ (*name of person with a claim arising out of same transaction or occurrence giving rise to above criminal proceedings*), this court permits a transcription to be made of the testimony in the above proceeding.

It is ordered that any transcription of testimony in this case be used only in civil proceedings when permitted by Paragraph A of Rule 1-032 NMRA of the Rules of Civil Procedure for the District Courts and criminal proceedings when permitted by Paragraph N of Rule 5-503 NMRA of the Rules of Criminal Procedure for the District Courts. The transcription shall not be broadcast or reproduced except as specifically permitted by this order.

It is further ordered that the person permitted to make a transcription of testimony make the transcription available to all parties in this case.

It is further ordered that any person who receives a transcription of testimony of the proceedings shall not use it or permit its use by others, except as specifically provided by this order.

Date

Judge

AGREEMENT TO LIMIT USE OF TRANSCRIPTION OF PROCEEDINGS

I agree to these terms and I understand that if I violate this order I may be held in contempt of court and punished by fine and imprisonment.

SIGNATURES OF ALL PERSONS REQUESTING COPIES OF TRANSCRIPTION

Signature

Date

Signature

Date

Signature

Date

[Adopted, effective September 2, 1997.]

**9-511. Waiver of six month trial rule.**

[For use with Magistrate Court Rule 6-506 NMRA and Municipal Court Rule 8-506 NMRA.]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_

**WAIVER OF SIX MONTH TRIAL RULE**

I understand that I have a right to have the trial in this case begin within one hundred eighty-two (182) days after my arraignment. I understand my signature on this form means I give up my right to have the charges in this case dismissed with prejudice if the trial does not begin within one hundred eighty-two (182) days after my arraignment, as by provided by rule.

I further understand that I am not giving up any right to a speedy trial under either the United States or New Mexico constitutions.

After reading and understanding all of the above, and consulting with counsel, I knowingly and voluntarily give up my right to have the trial in this case begin within the time limits provided by court rule.

Signature of defendant

**CERTIFICATE OF DEFENSE COUNSEL**

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

I have explained to the defendant the right to trial within one-hundred eighty two (182) days and that this right may be waived by the defendant and I am satisfied that the defendant understands the waiver of the right to trial within the time provided by court rule.

Defense counsel

Date

**APPROVAL OF JUDGE**

Permission to waive trial within the time limits provided by court rule is:

granted under the following conditions \_\_\_\_\_ (*list any conditions*).

denied.

Judge

Date

**USE NOTE**

This form is to be used when the defendant wishes to permanently waive rights under Rule 6-506 NMRA or Rule 8-506 NMRA.

[Approved by Supreme Court Order 07-8300-33, effective November 15, 2007.]

**9-512. Extension of time for commencement of trial.**

[For use with Magistrate Court Rule 6-506 NMRA and Municipal Court Rule 8-506 NMRA.]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
IN THE \_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_

**EXTENSION OF TIME FOR COMMENCEMENT OF TRIAL**

The court orders the following:

*(check and complete applicable alternative)*

\_\_\_\_\_ The court approves the stipulation of the parties to extend the time for commencement of trial for \_\_\_\_\_ days (*not to exceed sixty (60) days*).

\_\_\_\_\_ The court finds good cause and therefore grants defendant's motion to extend the time for commencement of trial for \_\_\_\_\_ days (*not to exceed 30 thirty days*).

Trial must be commenced on or before \_\_\_\_\_, \_\_\_\_\_ (*date*).

The time for commencement of trial expires on \_\_\_\_\_, \_\_\_\_\_ (*date*).

Date

Judge

**APPROVED:**

\_\_\_\_\_  
Defendant or counsel

\_\_\_\_\_  
Prosecutor<sup>1</sup>

**USE NOTES**

1. Signature of the prosecutor is not necessary for approval by the court of a motion to extend the time for trial for thirty (30) days.
2. This form is to be used when the defendant agrees to a limited extension under Rule 6-506 NMRA or Rule 8-506 NMRA.

[Approved by Supreme Court Order 07-8300-33, effective November 15, 2007.]

## **ARTICLE 6**

### **Judgment and Appeal**

#### **9-601. Judgment and sentence (Commitment or probation).**

[For use with Magistrate Court Rule 6-701 and 6-702,  
Metropolitan Court Rules 7-701 and 7-702 and  
Municipal Court Rules 8-701 and 8-702]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

v.

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

**JUDGMENT AND SENTENCE**  
**(COMMITMENT OR PROBATION) <sup>1</sup>**

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the defendant appeared in person and was represented by attorney \_\_\_\_\_, *(set forth name of attorney)*. \_\_\_\_\_ *(name of officer or prosecutor)* appeared on behalf of the *(state) (city)*.

*(Complete one of the following)*

**1. PLEA**

*(Plea of not guilty)*

The defendant having entered a plea of NOT GUILTY and the *(court) (jury)*<sup>2</sup> finding the defendant GUILTY of the following charge(s)

*(Plea of guilty)*

The defendant having entered a plea of:

guilty, the court so finds the defendant guilty of the following charges:

no contest, the court accepts the plea as an admission of guilt for the purposes of this action only, of the following charges:

**2. FINDINGS OF THE COURT DWI CASES**

*(complete if applicable)*

THE COURT FINDS:

This conviction is the defendant's

first  second  third  fourth or more conviction for driving while under the influence.

**3. JUDGMENT OF COURT**

IT IS ADJUDGED that the defendant is guilty of (such) (the following) charges and convicted. *(If the defendant has been found not guilty of one or more charges, set forth crimes defendant has committed)*

IT IS ADJUDGED that the defendant is not guilty of the following charges:

**IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that:**

*(check and complete only applicable boxes)*

the defendant be committed to the *(county) (city) (jail) (detention center)*  
\_\_\_\_\_ *(specify any other place)*  
for \_\_\_\_\_ days with \_\_\_\_\_ days suspended for a jail term of  
\_\_\_\_\_ days for the crime of \_\_\_\_\_;  
for \_\_\_\_\_ days with \_\_\_\_\_ days suspended for a jail term of  
\_\_\_\_\_ days for the crime of \_\_\_\_\_;  
such sentences to run *(consecutively) (concurrently)*.

Work release is *(authorized) (not authorized)*.

Work release to be served on weekends.

The defendant is ordered to report to \_\_\_\_\_ by no later than \_\_\_\_\_  
(a.m.) (p.m.) the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The defendant shall pay to the *(magistrate) (metropolitan) (municipal)* court the following fine(s):

\$ \_\_\_\_\_ for \_\_\_\_\_

\$ \_\_\_\_\_ for \_\_\_\_\_

The defendant shall pay to the *(magistrate) (metropolitan) (municipal)* court the following costs and fees:

*(complete applicable costs and fees)<sup>3</sup>*

court costs	\$ _____
automation fee	\$ _____
corrections fee	\$ _____
laboratory fee	\$ _____
traffic safety fee	\$ _____
judicial education fee	\$ _____
DWI prevention fee	\$ _____
screening & treatment costs	\$ _____
brain injury services fee	\$ _____
court facilities fee	\$ _____
other _____	\$ _____

Total fees and costs \$\_\_\_\_\_

*(complete applicable parts of the following if the sentence is to be deferred or suspended)*

The above sentence is hereby:

deferred

suspended

on the following terms and conditions:

*(supervised) (unsupervised)* probation for \_\_\_\_\_ days with the following special conditions:

the defendant will enter and participate in:

an *(alcohol) (drug)* treatment program

*(alcohol) (drug)* screening and complete counseling or other treatment as required by the screening program

a first offender program

driver improvement school

petty larceny school

\_\_\_\_\_ *(other)*

the defendant performs \_\_\_\_\_ *(hours) (days)* of community service as follows:

the defendant makes restitution to *(set forth name of person or entity)*

in the amount of \$\_\_\_\_\_ on or before the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

defendant pays all court costs and fees including: laboratory fees; automation fee; traffic safety fee; corrections fee; DWI school fee; alcohol evaluation screen fees; and counseling fees;

**IT IS FURTHER ORDERED** THAT the defendant's cash bond is to be:  
 returned to defendant  
 applied to the payment of court costs, court fees and fines

**IT IS FURTHER ORDERED** (*other*)

**THE DEFENDANT IS ORDERED TO REPORT TO**

Probation services

Educational services

(*specify other*)

on or before \_\_\_\_\_ (a.m.) (p.m.) the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

(*complete if applicable*)

**COMMITMENT. THE DEFENDANT IS HEREBY COMMITTED** to the custody of the (*county*) (*city*) in \_\_\_\_\_ (*set forth place of detention*) for imprisonment for a period of \_\_\_\_\_ (*days*) (*months*), subject to credit for time spent in confinement while awaiting the outcome of these proceedings. **IT IS ORDERED** that a copy of this judgment and commitment be delivered to an authorized full-time salaried law enforcement officer, and that this copy be the order of commitment of the defendant.

### **FAILURE TO COMPLY**

FAILURE TO REPORT OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.

### **APPEAL**

You are hereby advised that you may have a new trial in the district court by filing a notice of appeal within fifteen (15) days from the date of entry of this judgment and sentence. You are further advised that if you appeal you must obtain a trial date before the district court within six (6) months of the date of the filing of the notice of appeal. If your case is not tried by the district court within six (6) months your appeal will be dismissed and this conviction will be affirmed.

**APPEAL BOND** \$ \_\_\_\_\_.

### **OTHER CONDITIONS OF RELEASE.**

If the defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the district court:

Dated \_\_\_\_\_, \_\_\_\_\_



## Judge

### USE NOTES

1. This form may be used in the magistrate, metropolitan and municipal courts. This form, Form 9-602 and Form 9-603 should be modified as appropriate. Provisions in Form 9-603 may be used as part of this form.
2. This form should be modified by municipal courts to eliminate this alternative as there is no right to trial by jury in municipal court.
3. Not all fees and costs are applicable to all courts of limited jurisdiction. See Section 35-14-11 NMSA 1978 for municipal corrections fee; Section 66-8-102 NMSA 1978 for assessment of costs for court ordered alcohol or drug screening and treatment program; Section 31-12-7 NMSA 1978 for magistrate, metropolitan court and municipal court crime laboratory fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee, court automation fee, traffic safety fee, judicial education fee, brain injury services fee, court facilities fee and other fees and costs to be assessed upon conviction.

[As amended, effective September 1, 1989; January 1, 1997; February 1, 1999.]

### ANNOTATIONS

**The 1989 amendment**, effective for cases filed on or after September 1, 1989, rewrote this form.

**The 1997 amendment**, effective January 1, 1997, rewrote Paragraph 3 relating to judgment of court, added the provision for appeal bond and other conditions of release, and made stylistic changes throughout the form, and added Use Note 1.

**The 1999 amendment**, effective February 1, 1999, in Item 3, Judgment of Court, in the sixth entry for applicable costs and fees, added "brain injury services fee" and "court facilities fee" as part of the fee schedule; in Use Note 3, substituted "court education fee, traffic safety fee, judicial education fee, brain injury services fee, court facilities fee" for "and automation fee".

### **9-602. Judgment and sentence.**

[For use with District Court Criminal 5-201,  
Magistrate Court Criminal 6-201,  
Metropolitan Court Criminal 7-201 and  
Municipal Court 8-202.]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**JUDGMENT AND SENTENCE<sup>1</sup>**

This case came before the court on \_\_\_\_\_, \_\_\_\_\_. The defendant appeared:  
 with an attorney  pro se  waiver signed

The defendant entered a plea of:  
 guilty  no contest  
 not guilty and was tried by  court  jury  
 jury waived

The court finds the defendant GUILTY of:  
  
and NOT GUILTY of:

**SENTENCE AND COMMITMENT:**

**FEES<sup>2</sup>:** The defendant shall pay the following fees:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> docket         | <input type="checkbox"/> judicial education          | <input type="checkbox"/> correction     |
| <input type="checkbox"/> automation     | <input type="checkbox"/> laboratory                  | <input type="checkbox"/> traffic safety |
| <input type="checkbox"/> DWI prevention | <input type="checkbox"/> screening & treatment costs |   |
| <input type="checkbox"/> other          |  |   |

**Total fees:** \_\_\_\_\_

**IF YOU PLED NOT GUILTY AND WERE FOUND GUILTY, YOU MAY APPEAL TO THE DISTRICT COURT BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS FROM THE DATE OF ENTRY OF THIS JUDGMENT.**

Appeal bond \$

Dated

Judge

**USE NOTES**

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

1. This form may be used in the magistrate, metropolitan and municipal courts. This form, Form 9-601 NMRA and Form 9-603 NMRA should be modified as appropriate. Provisions in Form 9-603 NMRA may be used as part of this form.

2. Not all fees and costs are applicable to all courts of limited jurisdiction. See: Section 35-14-11 NMSA 1978 for municipal corrections fee; Section 66-8-102 NMSA 1978 for assessment of costs for court ordered alcohol or drug screening and treatment program; Section 31-12-7 NMSA 1978 for magistrate, metropolitan court and municipal court crime laboratory fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee and automation fees and other fees and costs to be assessed upon conviction.

[Adopted, effective January 1, 1995; as amended, effective January 1, 1997; February 16, 2004.]

**ANNOTATIONS**

**The 1997 amendment**, effective January 1, 1997, added the blank for the screening & treatment costs in the Fees Item.

**The 2003 amendment**, effective February 16, 2004, substituted "if you pled not guilty and were found guilty, you may appeal" for "you may appeal this decision" following "total fees."

**Compiler's notes.** — Pursuant to a court order dated April 24, 1989, the former form, relating to judgment and sentence (commitment or probation), is withdrawn for cases filed on or after September 1, 1989.

**9-603. Final order on criminal complaint.**

[For use with Magistrate Court Rule 6-701 and 6-702, Metropolitan Court Rules 7-701 and 7-702 and Municipal Court Rules 8-701 and 8-702]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.  
\_\_\_\_\_, Defendant

**FINAL ORDER ON CRIMINAL COMPLAINT <sup>1</sup>**

*(If the sentence involves imprisonment or probation, use  
Criminal Form 9-601)*

**1. PLEA**

*(Plea of not guilty)*

The defendant having entered a plea of NOT GUILTY, a jury was

- |                 |  |  |
|-----------------|--|--|
| (a) (check one) | <input type="checkbox"/> impaneled               | <input type="checkbox"/> waived                      |
| (b) (check one) | <input type="checkbox"/> the jury finding        | <input type="checkbox"/> the court finding           |
| (c) (check one) | <input type="checkbox"/> the defendant<br>GUILTY | <input type="checkbox"/> the defendant<br>NOT GUILTY |

of the following charge(s):

*(Plea of guilty)*

The defendant having entered a plea of guilty, the court so finds the defendant guilty of the following charges:

The defendant having entered a plea of nolo contendere, the court accepts the plea as an admission of guilt, for the purposes of this action only, of the following charges:

**2. JUDGMENT OF COURT**

IT IS ADJUDGED THAT the defendant is

- GUILTY
- NOT GUILTY  
of such charges.

**3. SENTENCE OF COURT**

IT IS THE SENTENCE of this court that the defendant pay a fine to the (State of New

Mexico) (City of \_\_\_\_\_) in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) as follows:

\$\_\_\_\_\_ for \_\_\_\_\_

\$\_\_\_\_\_ for \_\_\_\_\_

\$\_\_\_\_\_ for \_\_\_\_\_

**4. COURT COSTS AND FEES**

Court costs of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) are assessed against the defendant as follows:

court costs \$\_\_\_\_\_

automation fee \$\_\_\_\_\_

corrections fee \$\_\_\_\_\_

other \$\_\_\_\_\_ <sup>2</sup>

*(complete only if applicable)*

IT IS FURTHER ORDERED that the defendant's cash bond is to be:

returned to defendant  applied to the payment of court costs, court fees

applied to the payment of court costs, court fees and fines).

THE DEFENDANT IS ORDERED to pay the above fines and costs on or before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FAILURE TO COMPLY**

FAILURE TO REPORT OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.

**APPEAL BOND** \$\_\_\_\_\_.

**OTHER CONDITIONS OF RELEASE.**

If the defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the district court:

Date

Judge

**USE NOTES**

1. Since there is no right to a trial by jury in the municipal court, this form must be modified for use in the municipal courts.

2. Not all fees and costs are applicable to all courts of limited jurisdiction. See: Section 35-14-11 NMSA 1978 for municipal corrections fee; and Section 35-6-1 NMSA 1978 for magistrate and metropolitan court corrections fee and automation fees and

other fees and costs to be assessed upon conviction. Other fees would include the Metropolitan Court mediation fee (35-6-1 NMSA 1978).

3. It is recommended that this form not be pre-printed by the Administrative Office of the Courts. It may be used as guidance in modifying Form 9-602.

[As amended, effective September 1, 1989; January 1, 1995; January 1, 1997.]

### ANNOTATIONS

**The 1989 amendment**, effective for cases filed on or after September 1, 1989, added the Item 4 and Item 4 designations; in Item 3, added the language beginning "(City of "; and, in Item 4, added the language beginning "as follows".

**The 1995 amendment**, effective January 1, 1995, added Use Note 3.

**The 1997 amendment**, effective January 1, 1997, added the provision for appeal bond and other conditions of release.

### 9-603A. Final order on criminal complaint.

[For use with Magistrate Court Rule 6-701,  
Metropolitan Court Rules 7-701 and  
Municipal Court Rules 8-701]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

### FINAL ORDER ON CRIMINAL COMPLAINT

*(Deferred Sentence)*

This court having previously found the defendant guilty and having deferred sentencing of the defendant on the following charge(s)

*(set forth only charges for which a deferred sentence was entered)*

It now appearing to the court that the defendant has fulfilled all of the terms and conditions of the deferred sentence.

IT IS THEREFORE ORDERED that the criminal charges set forth above be and the same are hereby dismissed.

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

Judge

[Adopted, effective September 1, 1989.]

**9-604. Judgment and sentence.**

[For use with District Court Rule 5-701]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT

STATE OF NEW MEXICO  
v. No. \_\_\_\_\_  
\_\_\_\_\_, Defendant

**JUDGMENT AND SENTENCE<sup>1</sup>**

This case came before the court on \_\_\_\_\_, \_\_\_\_\_.

The defendant appeared:

with an attorney  pro se  waiver signed

The defendant entered a plea of:

guilty  no contest

not guilty and was tried by  court  jury

jury waived

The court finds the defendant GUILTY of:

and NOT GUILTY of:

**SENTENCE AND COMMITMENT:**

**COSTS AND FEES<sup>2</sup>:** The defendant shall pay the following costs and fees:

**RESTITUTION:** The defendant is ordered to pay restitution as follows:

Dated

District Judge

USE NOTE

- 1. This form should be modified as appropriate.

[Approved, effective December 1, 1998; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009.]

ANNOTATIONS

**Bracketed material.** — The bracketed material in the Use Note was inserted by the compiler; it was not enacted by the legislature, and it is not a part of the law. Subsection K of Section 66-8-102 was redesignated as Subsection L by Laws 1999, ch. 61, § 1. Subsection L was subsequently redesignated as Subsection N by Laws 2002, ch. 82, § 1, effective January 1, 2003.

**The 2009 amendment,** approved by Supreme Court Order 09-8300-008, effective May 6, 2009, deleted Paragraph 2 of the "USE NOTES", which governed assessment of costs for court ordered alcohol or drug screening and treatment programs.

**Compiler's notes.** — Pursuant to a court order dated April 24, 1989, a former Criminal Form 9-604 relating to final order on criminal complaint, was withdrawn for cases filed on or after September 1, 1989.

**9-605. Agreement to pay.**

[For use with Magistrate Court Rule 6-701 and Metropolitan Court Rule 7-701]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
v.  
\_\_\_\_\_, Defendant

**AGREEMENT TO PAY**

I have been convicted of \_\_\_\_\_ and assessed \$ \_\_\_\_\_ fine and \$ \_\_\_\_\_ fees and costs. I am unable to pay the (*fine*), (*fees*) (*and*) (*costs*) at this time. I promise



[to pay in the following manner:

]
[and] [or]
[in lieu of the above (fines) (fees) (and) (costs) to perform \_\_\_\_\_ hours of
community service].

I fully understand that if I fail to [pay the fine, fees and costs] [or] [perform community
service] in accordance with this agreement:

I may be prosecuted for contempt of court.

If a bench warrant is issued for failure to pay fines or fees or for failure to perform
community service, an additional \$100.00 administrative fee may result.

I may be confined in jail.

Date

Defendant

Witness: \_\_\_\_\_

USE NOTE

Section 31-12-3 NMSA 1978 authorizes the judge to permit payment of fine, fees or
costs in installments or if the defendant is unable to pay to order community service in
lieu of all or any part of the fine, fees and costs. Credit toward the fine, fees or costs
must be given at the prevailing federal hourly minimum wage rate.

[As amended, effective November 1, 1995.]

ANNOTATIONS

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

9-605A. Community service work program.

[For use with Magistrate Court Rule 6-701,
Metropolitan Court Rule 7-701 and
Municipal Court Rule 8-701]

STATE OF NEW MEXICO
[COUNTY OF \_\_\_\_\_]
[CITY OF \_\_\_\_\_]
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.  
\_\_\_\_\_, Defendant

**COMMUNITY SERVICE WORK PROGRAM**

It is hereby ordered that \_\_\_\_\_ (*name of defendant*) complete \_\_\_\_\_ hours of community service.

\_\_\_\_\_  
Date

Judge

TO: \_\_\_\_\_ (*agency*)

After completion of community service, please sign and date this form and return it to the court to indicate that the order has been completed. If the defendant does not successfully complete community service, please contact the court immediately.

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

Signature

Title

[Adopted, effective November 1, 1995.]

**9-606. Agreement to pay.**

[For use with Municipal Court Rule 8-701]

STATE OF NEW MEXICO  
CITY OF \_\_\_\_\_  
\_\_\_\_\_ COURT

No.

CITY OF \_\_\_\_\_

v.  
\_\_\_\_\_, Defendant

**AGREEMENT TO PAY**

I have been convicted of \_\_\_\_\_ and assessed \$ \_\_\_\_\_.  
fine. I am unable to pay the (*fine*), (*fees*) (*and*) (*costs*) at this time. I promise

to pay in the following manner:

[and] [or]  
[in lieu of the above (*fin*es) (*fees*) (*and*) (*costs*) to perform \_\_\_\_\_ hours of  
community service] .

I fully understand that if I fail to [pay the fine, fees and costs] [or] [perform community  
service] in accordance with this agreement:

I may be held in contempt of this court.

I may be confined in jail.

Dated:  
Defendant

Witness: \_\_\_\_\_

**USE NOTE**

Section 31-12-3 NMSA 1978 authorizes the judge to permit payment of fine, fees or  
costs in installments or if the defendant is unable to pay to order community service in  
lieu of all or any part of the fine, fees and costs. Credit toward the fine, fees or costs  
must be given at the prevailing federal hourly minimum wage rate.

[As amended, effective November 1, 1995.]

**ANNOTATIONS**

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

**9-607. Notice of appeal.**

[For use with Magistrate Court Rule 6-703,  
Metropolitan Court Rule 7-703 and  
Municipal Court Rule 8-703]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

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

District Court No. \_\_\_\_\_

[Magistrate] [Metropolitan] [Municipal] No. \_\_\_\_\_

**NOTICE OF APPEAL**

(Defendant) (The state) (The City of \_\_\_\_\_) appeals to the district court from the *(judgment) (final order)* of the *(magistrate) (metropolitan) (municipal)* court entered in the above cause on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The *(defendant) (state) (city)* requests a trial setting within six months from the date of filing of this notice of appeal.

Signed

Name *(print)*

Address *(print)*

City, state and zip code *(print)*

Telephone number

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

**CERTIFICATE OF SERVICE BY ATTORNEY**

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

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

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

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

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

Attorney for appellant

Signature

Date of signature

**AFFIDAVIT OF SERVICE OF A PARTY**

**(To be completed by a party who is not represented by an attorney)**

I declare under penalty of perjury that a copy of this notice of appeal was served on the following persons or entities by *(delivery)* *(mail)* on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_:

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

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

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

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

Signature of appellant

Date of signature

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

**USE NOTES**

1. A copy of this notice of appeal must be filed with the court from which this appeal is being taken after it has been endorsed by the district court.

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

[As amended, effective May 1, 1986, October 1, 1991; January 1, 1995; January 1, 1997.]

### ANNOTATIONS

**The 1997 amendment**, effective January 1, 1997, rewrote the form and added the second paragraph of the Use Note.

### 9-608. Title page of transcript of criminal proceedings.

[For use with Magistrate Court Rule 6-703,  
Metropolitan Court Rule 7-703 and  
Municipal Court Rule 8-703]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.  
District Court No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.  
\_\_\_\_\_, Defendant

#### TITLE PAGE OF TRANSCRIPT OF CRIMINAL PROCEEDINGS

1. Defendant's name or defendant's attorney's name:

*(If defendant represented by an attorney, check applicable):*

2. Defendant is represented by an attorney:

- Appointed
- Retained
- Public defender.

3. Address of defendant or defendant's attorney

4. Attached: *(check appropriate boxes.)*  
 COMPLAINT  
 OTHER PAPERS AND PLEADINGS  
 JUDGMENT OR FINAL ORDER *(with date of filing noted thereon)*  
 EXHIBITS  
 TRANSCRIPT OF THE PROCEEDINGS *(if appeal on record)*  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Clerk

[As amended, effective January 1, 1997.]

**ANNOTATIONS**

**The 1997 amendment**, effective January 1, 1997, deleted "and certificate" from the form heading and rewrote the form.

**9-609. Defendant's waiver of appeal.**

[For use with District Court Rule 5-702]

STATE OF NEW MEXICO  
 COUNTY OF \_\_\_\_\_  
 IN THE DISTRICT COURT  
 No.

STATE OF NEW MEXICO  
 v.  
 \_\_\_\_\_, Defendant

**DEFENDANT'S WAIVER OF APPEAL**

I, \_\_\_\_\_, *(defendant)* being duly sworn on my oath, state that I have been advised by my trial attorney that I have the right to appeal and that if I do not have the money to pay for an appeal, I am entitled to proceed with an appeal at state expense, including the services of an attorney to represent me on the appeal. Understanding my rights, I do not desire to appeal the final order of the court and hereby voluntarily, knowingly and intelligently waive my right to appeal.

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
 \_\_\_\_\_

Witnessed:

Attorney for Defendant

Notary Public, Judge  
or Other Officer Authorized  
to Administer Oaths

**9-610. Vehicle immobilization order.**

[Section 66-5-39 NMSA 1978]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**VEHICLE IMMOBILIZATION ORDER**

This matter coming before the Court pursuant to Section 66-5-39 NMSA 1978 upon the defendant's conviction of driving a motor vehicle with a suspended or revoked driver's license:

IT IS THEREFORE ORDERED that the defendant's vehicle, (State of New Mexico) ( \_\_\_\_\_ ) license number \_\_\_\_\_ be immobilized by the (sheriff of this county) (city police) at the defendant's expense for a period of thirty (30) days at such place as may be designated by the (sheriff) (city police).

Vehicle Description:

Dated \_\_\_\_\_ , \_\_\_\_\_

Judge

**RETURN**



The undersigned, being a duly certified law enforcement officer, hereby certifies that the vehicle described in the above order was immobilized for a period of thirty (30) days as follows:

Place and manner of immobilization

Beginning date \_\_\_\_\_ Ending date

Signature of officer

Title

Upon good cause shown, this order is rescinded.  
Dated \_\_\_\_\_ , \_\_\_\_\_

Judge

[Adopted, effective September 1, 1989; as amended, effective November 1, 1995.]

### ANNOTATIONS

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

**Recompilations.** — The above form was adopted as Rule 9-611 in 1989 but was recompiled as Rule 9-610 in 1990.

### 9-611. Order to show cause.

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

SSN: \_\_\_\_\_

DOB: \_\_\_\_\_

and

\_\_\_\_\_, (surety)  
\_\_\_\_\_, (surety)

**ORDER TO SHOW CAUSE**

TO: \_\_\_\_\_ (defendant)  
\_\_\_\_\_ (address)

YOU ARE HEREBY ORDERED to appear before the Honorable

\_\_\_\_\_, \_\_\_\_\_  
judge, at the \_\_\_\_\_ court located at  
\_\_\_\_\_, on the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock  
\_\_\_\_\_.m., to show cause, why you should not be held in contempt of court for:

failure to pay fine(s), fee(s) (and) (court costs) in the amount of  
\$ \_\_\_\_\_

failure to register for school

failure to comply with the first offender program

failure to comply with probation

failure to perform community service hours

failure to appear

This hearing may be cancelled if you immediately pay all fines, fees and costs and show the clerk that you have complied with all court orders.

**FAILURE TO APPEAR WILL RESULT IN A WARRANT FOR YOUR ARREST AND AN ADDITIONAL \$100.00 ADMINISTRATIVE WARRANT FEE.**

Judge

**CERTIFICATE OF MAILING**

I certify that on this date I mailed a copy of this order to  
\_\_\_\_\_ (name) at the address indicated above.

Date of Mailing:

\_\_\_\_\_, \_\_\_\_\_ (Judge) (Clerk)

**USE NOTE**

*(Use Note is not to be printed on pre-printed forms)*

This form may be modified to meet the needs of individual courts.

[Effective, October 1, 1991; as amended, effective January 1, 1995.]

**ANNOTATIONS**

**The 1995 amendment**, effective January 1, 1995, rewrote the form.

**Recompilations.** — Former Rule 9-611, relating to vehicle impoundment order, was recompiled as Rule 9-610 in 1990.

**9-612. Order on direct criminal contempt.**

[For use with Magistrate Court Rules 6-201 and 6-111 NMRA and Municipal Court Rules 8-201 and 8-110 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

\_\_\_\_\_

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

\_\_\_\_\_

&

In the Matter of the Direct Criminal Contempt of

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

**ORDER ON DIRECT CRIMINAL CONTEMPT1**

This matter came before the Court on \_\_\_\_\_ (*month/day/year*).  
\_\_\_\_\_ was represented by \_\_\_\_\_ (*name and title*). \_\_\_\_\_ was present [pro se] [represented by \_\_\_\_\_, Esq.] (*name of attorney*).

THE COURT FINDS that the contemnor, in the presence of this Court

\_\_\_\_\_ (*State the action which constitutes direct criminal contempt.*)<sup>2</sup> The Court finds that the contemnor committed direct criminal contempt of this Court.

THE COURT HEREBY ORDERS the contemnor is sentenced to \_\_\_\_\_ days in the \_\_\_\_\_ (*name of detention center*). \_\_\_\_\_ days are suspended. The contemnor is placed on \_\_\_\_\_ days [supervised] [unsupervised] probation to begin on \_\_\_\_\_ (*month/day/year*), with the following conditions:

- 1)
- 2)
- 3)

The contemnor shall report to the \_\_\_\_\_ (*name of detention center*) on \_\_\_\_\_ (*month/day/year*). This sentence shall run [consecutive] [concurrent] with \_\_\_\_\_ (*Cause No.*).

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and court costs:

Fines in the amounts following are hereby suspended:

\_\_\_\_\_

Date    Judge

#### USE NOTE

1. See NMSA 1978, § 35-3-9 (1991) on contempt. See *City of Bernalillo v. Aragon*, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See *State v.*

Diamond, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See Rule 5-902 NMRA for a discussion of contempt.

2. Include a full statement of the facts, including any warnings given to contemnor.

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

### **9-613. Judgment and sentence on indirect criminal contempt.**

[For use with Magistrate Court Rules 6-201 and 6-111 NMRA and Municipal Court Rules 8-201 and 8-110 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

\_\_\_\_\_

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

\_\_\_\_\_

&

In the Matter of the Indirect Criminal Contempt of

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

#### **JUDGMENT AND SENTENCE ON INDIRECT CRIMINAL CONTEMPT1**

This matter came before the Court on \_\_\_\_\_  
(month/day/year). \_\_\_\_\_ was represented  
by \_\_\_\_\_ (name and title). \_\_\_\_\_ was present  
[pro se] [represented by \_\_\_\_\_, Esq.] (name of attorney).

A trial having been held, THE COURT FINDS that the contemnor is guilty of indirect criminal contempt of this Court.

THE COURT HEREBY ORDERS the contemnor is sentenced to \_\_\_\_\_ days in the  
\_\_\_\_\_ (name of detention center). \_\_\_\_\_ days are suspended.  
The contemnor is placed on [supervised] [unsupervised] probation to begin on

\_\_\_\_\_ (month/day/year) for \_\_\_\_\_ days, with probation conditions as follows:

- 1)
- 2)
- 3)

The contemnor shall report to the \_\_\_\_\_ (name of detention center) on \_\_\_\_\_ (month/day/year) at \_\_\_\_\_ (time). This sentence shall run [consecutive] [concurrent] with \_\_\_\_\_ (Cause No.).

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and court costs:

Fines in the amounts following are hereby suspended:

\_\_\_\_\_

Date Judge

#### USE NOTE

See NMSA 1978, § 35-3-9 (1991) on contempt. See State v. Diamond, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See City of Bernalillo v. Aragon, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See Rule 5-902 NMRA for a discussion of contempt.

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

### **9-614. Order on direct civil contempt.**

[For use with Magistrate Court Rule 2-110 NMRA]

STATE OF NEW MEXICO

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

IN THE MAGISTRATE COURT

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

\_\_\_\_\_  
&

In the Matter of the Direct Civil Contempt of  
\_\_\_\_\_, Contemnor.

**ORDER ON DIRECT CIVIL CONTEMPT1**

This matter came before the Court on \_\_\_\_\_ (month/day/year).  
\_\_\_\_\_ was represented by \_\_\_\_\_ (name and  
title). \_\_\_\_\_ was present [pro se] [represented by  
\_\_\_\_\_, Esq.] (name of attorney).

THE COURT FINDS that the contemnor, in the presence of this Court

\_\_\_\_\_  
(State the action which constitutes  
direct civil contempt.)<sup>2</sup> The Court finds that the contemnor committed direct civil  
contempt of this Court. Furthermore, this order shall be in effect until such time as the  
following condition(s) have been met:

THE COURT HEREBY ORDERS:

(Specify remedial action required.)

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and  
court costs:

---

Date Judge

USE NOTE

1. See NMSA 1978, § 35-3-9 (1991) on contempt. See *City of Bernalillo v. Aragon*, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See *State v. Diamond*, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See Rule 5-902 NMRA for a discussion of contempt.

2. Include a full statement of the facts, including any warnings given to contemnor.

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

**9-615. Order on indirect civil contempt.**

[For use with Magistrate Court Rule 2-110 NMRA]

STATE OF NEW MEXICO

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

IN THE MAGISTRATE COURT

\_\_\_\_\_

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

\_\_\_\_\_

&

In the Matter of the Indirect Civil Contempt of

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

**ORDER ON INDIRECT CIVIL CONTEMPT1**

This matter came before the Court on \_\_\_\_\_ (*month/day/year*).  
\_\_\_\_\_ was represented by \_\_\_\_\_ (*name and title*). \_\_\_\_\_ was present [pro se] [represented by \_\_\_\_\_, Esq.] (*name of attorney*).

A hearing was held and sufficient evidence offered so as to satisfy the conscience of the Court that the contemnor committed indirect contempt by



\_\_\_\_\_ (*State the action which constitutes indirect civil contempt.*)<sup>2</sup> THE COURT FINDS that the contemnor is guilty of indirect civil contempt of this Court. Furthermore, this order shall be in effect until such time as the following condition(s) have been met:

THE COURT HEREBY ORDERS:

(*Specify remedial action required.*)

THE COURT HEREBY ORDERS the contemnor shall pay the following fines and court costs:

\_\_\_\_\_  
Date Judge

#### USE NOTE

1. See NMSA 1978, § 35-3-9 (1991) on contempt. See *State v. Diamond*, 94 N.M. 118, 607 P.2d 656 (Ct. App. 1980) regarding indirect contempt. See *City of Bernalillo v. Aragon*, 100 N.M. 547, 673 P.2d 831 (Ct. App. 1983) regarding direct contempt. See Rule 5-902 NMRA for a discussion of contempt.

2. Include a full statement of the facts, including any warnings given to contemnor.

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

### **9-616. Conditional discharge order.**

[For use with Magistrate Court Rule 6-701 NMRA and Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

**CONDITIONAL DISCHARGE ORDER**

This matter came before the court

upon the court's acceptance of defendant's plea<sup>1</sup> of  guilty or  no contest, OR

pursuant to a finding of guilt by a  judge or  jury<sup>2</sup>,

to the following charges:

It appearing that good cause exists for the entry of a conditional discharge, the court hereby orders a conditional discharge without entering an adjudication of guilt as to the above charges. The court further orders that defendant shall be placed on \_\_\_\_\_ months  supervised  unsupervised probation pursuant to  Sections 31-20-13 and 31-20-5 NMSA 1978 or  Section 30-31-28 NMSA 1978.3

**(OPTIONAL)**

Probation costs of \_\_\_\_\_ per day shall be assessed. In addition, pursuant to Section 31-20-6 NMSA 1978, the defendant shall make a \_\_\_\_\_ contribution of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00),

to be paid in monthly installments of not less than five dollars (\$5.00), to a local crime stopper program, a local domestic violence prevention or treatment program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court no later than \_\_\_\_\_ (*month/day/year*) and shall provide proof to this court.

Conditions of probation are as follows:

If the defendant successfully completes probation, the defendant shall be discharged and the charges shall be dismissed.

\_\_\_\_\_

Judge

#### USE NOTE

1. No plea shall be accepted unless the court has complied with the requirements of Rules 6-502 and 8-502 NMRA, and Form 9-406A NMRA.
2. Municipal court jurisdiction to grant conditional discharges is governed by municipal ordinance. Municipal courts do not have jurisdiction to hold jury trials.
3. The court shall designate whether the conditional discharge is pursuant to Sections 31-20-13 and 31-20-5 NMSA 1978, or Section 30-31-28 NMSA 1978.
4. No conditional discharge may be given for the offense of DWI, in any court. See Subsection C of Section 31-20-13 NMSA 1978.
5. A defendant may only use a conditional discharge once in his or her lifetime. See Subsection A of Section 31-20-13 NMSA 1978.
6. Court costs shall not be collected on conditional discharges. See Subsection D of Section 35-6-1 NMSA 1978.

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

### **9-617. Final order of discharge.**

[For use with Magistrate Court Rule 6-701 NMRA and Municipal Court Rule 8-701 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

### FINAL ORDER OF DISCHARGE

Without entering an adjudication of guilt, the court entered a conditional discharge order in this case. THE COURT FINDS that defendant has successfully met all obligations imposed by the court's order entered \_\_\_\_\_, \_\_\_\_\_.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant is discharged from any further obligations pursuant to this matter and the charges in the case are hereby dismissed.

\_\_\_\_\_  
Judge

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

### 9-618. Order finding no violation of probation.

[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

**ORDER FINDING NO VIOLATION OF PROBATION**

This matter came before the court on \_\_\_\_\_ (*date*), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, \_\_\_\_\_ (*name of counsel*). The prosecution was represented by \_\_\_\_\_ (*name and title*).

The Court having heard the evidence, **FINDS** that Defendant did not violate probation.

**It is hereby ORDERED, ADJUDGED AND DECREED** that all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.

\_\_\_\_\_

Judge

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

**9-619. Order finding probation violation and continuing sentence.**

[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

### ORDER FINDING PROBATION VIOLATION AND CONTINUING SENTENCE

This matter came before the court on \_\_\_\_\_ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, \_\_\_\_\_ (name of counsel). The prosecution was represented by \_\_\_\_\_ (name and title).

Defendant having denied the probation violation and a hearing having been held,

Defendant having admitted the probation violation,

the Court **FINDS** that Defendant violated probation.

**It is hereby ORDERED, ADJUDGED AND DECREED** that all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.

\_\_\_\_\_

Judge

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

### 9-620. Probation violation, judgment, and sentence.

[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

\_\_\_\_\_ COURT

[STATE OF NEW MEXICO]

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]

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

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

### PROBATION VIOLATION, JUDGMENT, AND SENTENCE

This matter came before the court on \_\_\_\_\_ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, \_\_\_\_\_ (name of counsel). The prosecution was represented by \_\_\_\_\_ (name and title).

Defendant having denied the probation violation and a hearing having been held,

Defendant having admitted the probation violation,

the Court **FINDS** that Defendant violated probation.

**It is hereby ORDERED, ADJUDGED AND DECREED** that Defendant's probation is revoked and the following sentence is imposed:

**Count 1:** \_\_\_\_\_ (name of count) \_\_\_\_\_ days in \_\_\_\_\_ detention center, \_\_\_\_\_ days suspended. \_\_\_\_\_ days to serve in the \_\_\_\_\_ County Detention Center. Credit for \_\_\_\_\_ days served in jail and \_\_\_\_\_ days served on probation. \_\_\_\_\_ days remaining to serve in the \_\_\_\_\_ County Detention Center to begin on \_\_\_\_\_ (date). Defendant to pay \_\_\_\_\_ in fines. \_\_\_\_\_ amount suspended. \_\_\_\_\_ days [supervised] [unsupervised] probation to begin on \_\_\_\_\_ (date).

Such sentence is to run  consecutively  concurrently.

**Count 2:** \_\_\_\_\_ (name of count) \_\_\_\_\_ days in \_\_\_\_\_ detention center, \_\_\_\_\_ days suspended. \_\_\_\_\_ days to serve in the \_\_\_\_\_ County Detention Center. Credit for \_\_\_\_\_ days served in jail and \_\_\_\_\_ days served on probation. \_\_\_\_\_ days remaining to serve in the \_\_\_\_\_ County Detention Center to begin on \_\_\_\_\_ (date). Defendant to pay \_\_\_\_\_ in fines. \_\_\_\_\_ amount suspended. \_\_\_\_\_ days [supervised] [unsupervised] probation to begin on \_\_\_\_\_ (date).

Such sentence is to run  consecutively  concurrently.

**Count 3:** \_\_\_\_\_ (name of count) \_\_\_\_\_ days in \_\_\_\_\_ detention center, \_\_\_\_\_ days suspended. \_\_\_\_\_ days to serve in the \_\_\_\_\_ County

Detention Center. Credit for \_\_\_\_\_ days served in jail and \_\_\_\_\_ days served on probation. \_\_\_\_\_ days remaining to serve in the \_\_\_\_\_ County Detention Center to begin on \_\_\_\_\_ (date). Defendant to pay \_\_\_\_\_ in fines. \_\_\_\_\_ amount suspended. \_\_\_\_\_ days [supervised] [unsupervised] probation to begin on \_\_\_\_\_ (date).

Such sentence is to run  consecutively  concurrently.

**It is hereby ORDERED, ADJUDGED AND DECREED** that

Defendant is to report to the \_\_\_\_\_ DETENTION CENTER at \_\_\_\_\_, \_\_\_\_\_ (location), no later than \_\_\_\_\_ (date), to serve \_\_\_\_\_ days.

Work release is authorized.

This sentence shall be served on weekends.

Defendant is to pay a one-hundred dollar (\$100.00) bench warrant fee. Defendant is now ordered to

pay \_\_\_\_\_ in fines and \_\_\_\_\_ in fees. Defendant shall receive credit for \_\_\_\_\_ already paid.

All provisions of the original judgment and sentence not specifically modified herein remain in effect.

Defendant is placed on \_\_\_\_\_ days [supervised] [unsupervised] probation to begin on \_\_\_\_\_ (date), with conditions as specified in the attached **Standard Order of Probation Conditions** in effect in the \_\_\_\_\_ court, which is specifically incorporated herein, and special conditions as follows:

IT IS FURTHER ORDERED THAT Defendant's cash bond is to be

returned to Defendant.

applied to the payment of court costs, court fees, and fines.



[ ] Defendant IS HEREBY ORDERED to report to probation services as follows:

[ ] \_\_\_\_\_ DWI Compliance Program,  
\_\_\_\_\_ (address),  
\_\_\_\_\_ (city), New Mexico, \_\_\_\_\_ (telephone number) with  
proof of

enrollment to the Court no later than \_\_\_\_\_ (date).

[ ] Adult probation service no later than \_\_\_\_\_ (date).

[ ] \_\_\_\_\_ county misdemeanor compliance service no later than  
\_\_\_\_\_ (date).

**IT IS ORDERED** that a copy of this judgment and commitment be delivered to the  
\_\_\_\_\_ **Detention Center**, and that this copy be the order of  
commitment of Defendant.

#### **FAILURE TO COMPLY**

FAILURE TO REPORT, COMPLY WITH CONDITIONS OF PROBATION, OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR DEFENDANT'S ARREST.

#### **APPEAL**

Defendant is hereby advised that this Order and Amended Sentence may be appealed to the district court by filing a notice of appeal in the district court within fifteen (15) days from the date of entry of this Judgment and Sentence. In accordance with Supreme Court Rule 6-802 NMRA, "the only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the magistrate court." Defendant is further advised that if Defendant appeals, Defendant must obtain a hearing date before the district court within six (6) months of the date of the filing of the notice of appeal. If Defendant's case is not heard by the district court within six (6) months, Defendant's appeal will be dismissed and this conviction will be affirmed.

#### **OTHER CONDITIONS OF RELEASE**

If Defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the District Court:

Appeal bond is set at \$\_\_\_\_\_

\_\_\_\_\_  
Judge

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

## **ARTICLE 7**

### **Special Proceedings**

#### **9-701. Petition for writ of habeas corpus.**

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE DISTRICT COURT

*For Official Use Only*  
No.  
*(To be supplied by the  
clerk of the court)*

\_\_\_\_\_,  
*(Full name of prisoner)*  
Petitioner,

v.

\_\_\_\_\_,  
*(Name of warden, jailor  
or other person having  
power to release the  
petitioner)*

Respondent.

#### **PETITION FOR WRIT OF HABEAS CORPUS**

*Instructions – Read Carefully*

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

1. \_\_\_\_\_ (*name of person in custody*) is imprisoned or otherwise restrained at \_\_\_\_\_ (*name of facility and county of detention*) by \_\_\_\_\_ (*name and title of person having custody*).

2. This petition

seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (*This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole*).

3. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

4. Have the grounds being raised in this petition been raised previously in any other proceeding? If so, explain the result. If not, explain why not:

5. Briefly describe the relief requested:

6. State the nature of the court proceeding resulting in the confinement (*i.e., criminal prosecution, civil commitment, etc.*), the case name, docket number, name of judge, and name and location of the court in which the proceeding was held:

7. State the date of the final judgment, order or decree for confinement and a summary of its terms:

8. Attach a copy of the judgment, order or decree. If not, explain why you are not doing so.

9. Was the conviction the result of:

\_\_\_\_\_ Guilty plea

\_\_\_\_\_ No Contest plea (*nolo contendere*)

\_\_\_\_\_ Finding of guilty by judge or jury

10. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

11. If you answered "yes" to (10), list the name and address of each attorney who represented the confined person:

12. Was an appeal taken?

\_\_\_\_\_ Yes (*Go to 13*)

\_\_\_\_\_ No (*Go to 14*)

13. If you answered "yes" to (12), list:

(a) The name of each court to which an appeal was taken, the case name and docket number, and date: (*Attach a copy of each opinion or order*)

(b) A summary of the grounds upon which each appeal was based:

(c) The result of each appeal:

(d) The name and address of the attorney on appeal:

14. If you answered "no" to (12), state the reasons for not appealing:

15. Apart from any appeals listed in (13), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

\_\_\_\_\_ Yes (*Go to 16*)

\_\_\_\_\_ No (*Go to 17*)

16. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

(b) The name and date of each case, the docket number, the court, the administrative agency, or institutional grievance committee from which relief was sought, and the result of each proceeding. (Attach a copy of each decision.)

(c) The issues raised in each proceeding:

(d) State whether a hearing was held in connection with each of these proceedings:

(e) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

17. Do you seek the appointment of counsel to represent you?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you would like the court to appoint counsel to represent you, are you able to pay the lawyer appointed to represent you?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you are not able to pay the lawyer appointed to represent you, you must complete Form 9-403.

**VERIFICATION**

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

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On \_\_\_\_\_, \_\_\_\_\_ (*date*), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

\_\_\_\_\_ Court (*name of court*)

\_\_\_\_\_ (*city*), New Mexico, \_\_\_\_\_ (*zip code*).

(Signature)

(Address)

PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by

\_\_\_\_\_  
(name of petitioner)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires:

#### CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by \_\_\_\_\_ (*describe manner of service*), this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(*Signature of petitioner*)

#### USE NOTE

After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

[Adopted, effective August 1, 1989; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009.]

#### ANNOTATIONS

**Compiler's notes.** — Pursuant to a court order dated May 16, 1989, former Form 9-701 is withdrawn and the above form is enacted, effective for cases filed on or after August 1, 1989.

**The 2009 amendment,** approved by Supreme Court Order No. 09-8300-008, effective May 6, 2009, under "Instructions – Read Carefully", replaced "You should exercise care to assure" with "Make sure"; in item 12, added "(Go to 13)" after "Yes" and "(Go to 14)" after "No"; in item 14, before "state" at the beginning of the sentence, added "If you answered "no" to (12),"; in item 15, after "Yes", added "(Go to 16)" and after "No", added "(Go to 17)". The amendment, in item 16(b), added "or" before "institutional"; and under "VERIFICATION", added "On \_\_\_\_\_, \_\_\_\_\_ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the

following address: \_\_\_\_\_ Court (name of court), \_\_\_\_\_ (city), New Mexico,  
\_\_\_\_\_ (zip code)."

## ARTICLE 8 Statutory Proceedings

### 9-801. Application for inspectorial search order.

[For use in the district, magistrate,  
metropolitan and municipal courts]  
[Sections 24-1-16 to 24-1-19 NMSA 1978]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

#### APPLICATION FOR INSPECTORIAL SEARCH ORDER

\_\_\_\_\_, being duly sworn, on his oath, states that:

1. he is an officer authorized by law to make inspectorial searches;
2. inspection of the following described (*check appropriate box*)

premises:

(*describe premises to be searched as particularly as possible*)

vehicle:

(*describe vehicle as particularly as possible*)

is necessary for the purpose of ascertaining the existence or nonexistence of the following described conditions

(*set forth purpose or reason for search, and facts*)

in accordance with the requirements prescribed by (*check appropriate box or boxes*)

fire  housing  sanitation  welfare  zoning requirements;

(*check if appropriate; complete if checked*)

3.  permission to inspect at night is requested for the following reasons:



(set forth reasons search may be reasonably conducted at night)

(check appropriate box)

4.  he has been refused consent to make an inspectorial search after having given seven days' notice of the time and purpose of the proposed inspectorial search;

an inspectorial search by consent of the owner of the (premises) (vehicle) is not obtainable within a reasonable period of time;

(check if appropriate and complete)

it is necessary that the applicant be accompanied at the time of any search by one or more law enforcement officers

(set forth reason)

Subscribed and sworn to before me in the above-named [county] [city] of the State of New Mexico this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Signature of Affiant

\_\_\_\_\_  
Judge, Notary or Other Officer  
Authorized to Administer Oaths

Title

**9-802. Inspection order.**

[For use in the district, magistrate,  
metropolitan and municipal courts]  
[Sections 24-1-16 to 24-1-19 NMSA 1978]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.  
\_\_\_\_\_, Defendant

**INSPECTION ORDER**

THE (STATE OF NEW MEXICO) (CITY OF \_\_\_\_\_)

TO ANY OFFICER AUTHORIZED TO MAKE AN INSPECTORIAL SEARCH OF  
PREMISES OR VEHICLES:

An application for an inspectorial search order, which is attached to and hereby made a part of this order, having been submitted to me by \_\_\_\_\_, who has made a sufficient showing that inspection of the *(check appropriate box)*  premises  vehicle described in the application is in accordance with reasonable legislative or administrative standards.

*(check appropriate box)*

I am satisfied that seven (7) days' notice has been given to the owner of the *(premises) (vehicle)* described in the application and consent has not been given to make an inspectorial search.

I am satisfied that an inspectorial search by consent of the owner of the *(premises) (vehicle)* described in the application is not obtainable within a reasonable period of time.

*(check if appropriate)*

Inspection of the *(premises) (vehicle)* at night is reasonable under the circumstances described in the application.

YOU ARE HEREBY COMMANDED TO SEARCH FORTHWITH:

*(check one or both)*

the premises  the vehicle

described in the application

between the hours of 6:00 a.m. and 10:00 p.m.

at any time of the day or night

*(check if appropriate)*

You are hereby authorized to be accompanied by one or more law enforcement officers.

You are to return this order within three (3) days after the search is completed to make a sworn report of the circumstances of the execution or failure to execute this order.

Judge

**RETURN**

\_\_\_\_\_, being duly sworn, on his oath, states that:

he received the attached order on \_\_\_\_\_, \_\_\_\_\_, and searched the  
(premises) (vehicle) described at \_\_\_\_\_ o'clock (a.m.) (p.m.) on  
\_\_\_\_\_, \_\_\_\_\_

The following is a report of the circumstances of execution or failure to execute the  
order of the court:

*(set forth record of proceedings taken subsequent to issuance of order)*

Signature of Affiant  
Inspection Officer

Title

Subscribed and sworn to before  
me in the above-named (City)  
(County) of the State of New Mexico  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Judge, Notary or Other Officer  
Authorized to Administer Oaths

Official Title

**9-803. Waiver of extradition.**

[Section 31-4-22 NMSA 1978]

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

No.

STATE OF NEW MEXICO  
v.

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

**WAIVER OF EXTRADITION**

I, \_\_\_\_\_, in open court do hereby freely and voluntarily state that I am the identical \_\_\_\_\_, against whom a criminal proceeding charging me with \_\_\_\_\_ has been initiated in the county of \_\_\_\_\_, State of \_\_\_\_\_, and I further hereby freely, voluntarily without threats or promises of reward agree to return to that county and state, without legal process.

I further acknowledge that I will be held without bond while awaiting the agent of the state of \_\_\_\_\_ to take me into custody.

I further acknowledge that I have been informed of my rights to legal counsel, to require the issuance and service of a warrant of extradition as provided in Section 31-4-22 NMSA 1978 and my right to contest said warrant of extradition through a writ of habeas corpus as provided in Section 31-4-10 NMSA 1978.

This waiver is not an admission of guilt. I agree to return to the state of \_\_\_\_\_, with any peace officer who may be sent to take me to that state for trial.

This statement and waiver (*made in quadruplicate*), done at \_\_\_\_\_, \_\_\_\_\_ County, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the presence of a judge of the \_\_\_\_\_ Court of that county.

Attorney for Defendant

Defendant

Assistant District Attorney

I hereby certify that the foregoing was executed in my presence and that I informed the defendant of his rights to require the issuance and service of a warrant of extradition as provided by the laws of New Mexico, and his right to contest said warrant of extradition through a writ of habeas corpus. I do hereby direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent of the demanding state, together with a copy of this waiver, and that the original hereof shall forthwith be forwarded to the office of the governor of the State of New Mexico for filing.

Judge

Original - Governor  
2nd & 3rd - Agent  
4th - File

**9-804. Order for extradition on waiver.**

[Section 31-4-22 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**ORDER FOR EXTRADITION ON WAIVER**

THIS MATTER coming before the Court, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pursuant to § 31-4-22, NMSA 1978, the defendant, \_\_\_\_\_, being present in Court with counsel, \_\_\_\_\_; the Court having advised the defendant that he is charged with \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_; the Court having advised the defendant of his rights pursuant to § 31-4-10 NMSA 1978, and the defendant, with the advice of counsel, having waived each of the rights therein granted; and the Court being fully satisfied in the premises;

IT IS, THEREFORE, ORDERED that the defendant, \_\_\_\_\_, be, and he is hereby, ordered extradited to the aforesaid County and State, and is remanded to the authorities thereof.

IT IS FURTHER ORDERED that the officer in custody is directed to deliver the defendant to the duly accredited agent of the demanding state, together with a copy of this order and the waiver of extradition. The authorities of the demanding State take custody of the defendant not later than \_\_\_\_\_.

Judge

**9-804A. Order for extradition on waiver.**

[Section 31-4-22 NMSA 1978,  
Magistrate Court Rule 6-811 and  
Metropolitan Court Rule 7-811]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO

v.

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

**ORDER FOR EXTRADITION ON WAIVER**

The defendant appeared before the above court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pursuant to Section 31-4-22 NMSA 1978 and the court advised the defendant that:

1. the defendant has been arrested for having committed \_\_\_\_\_  
(*set forth criminal offense*) in the County of \_\_\_\_\_, State of \_\_\_\_\_;
2. the above county and state have demanded the defendant be returned to that state;
3. the defendant has a right to extradition on an arrest warrant issued by the governor of this state;
4. the defendant has a right to retain the assistance of counsel; and
5. the defendant has a right to appear before the district court on a writ of habeas corpus to test the legality of the defendant's arrest.

The defendant, after being advised of the above rights, consented to return to the demanding state and signed a waiver of extradition.

IT IS, THEREFORE, ORDERED that the above defendant be extradited to the demanding state and ordered held without bond pending delivery to the agent of the demanding state.

IT IS FURTHER ORDERED that the officer in custody of the defendant deliver the defendant to the agent of the demanding state together with a copy of this order and the waiver of extradition. The authorities of the demanding state shall take custody of the defendant not later than \_\_\_\_\_ (*date*).

Judge

**USE NOTE**

A copy of this order and a copy of the defendant's consent to extradition is mailed by the court to the governor.

[Adopted, effective October 1, 1996.]

**ANNOTATIONS**

**Cross references.** — For Uniform Criminal Extradition Act, see Chapter 31, Article 4 NMSA 1978.

**9-805. Fugitive complaint.**

[For use with Magistrate Court Rule 6-810 and Metropolitan Court Rule 7-810]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**FUGITIVE COMPLAINT**

The State of New Mexico alleges that the above-named defendant is subject to extradition from this state to the State of \_\_\_\_\_.  
*(check applicable alternative)*

- The defendant is charged in the State of \_\_\_\_\_ with the crime of \_\_\_\_\_.
- The defendant has been convicted in the above state of the crime of \_\_\_\_\_ and has
- escaped from confinement.
- violated terms of release or bail.
- violated terms of probation.
- violated terms of parole.

The reason I believe that the defendant is the person identified in the fugitive warrant is:  
*(check all that apply)*

- a copy of an NCIC message, teletype, warrant, indictment, information, affidavit, judgment of conviction or sentence so indicating is attached.

- the mode of transportation of the defendant.
- the physical description of the defendant.
- the date of birth of the defendant.
- the name of the defendant.
- Other:

---

*(set forth other aspects showing that the defendant is the person sought in the other state)*

The crime with which the defendant was charged or convicted is punishable in the above state by death or by imprisonment of more than one year.

The defendant was arrested on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) and is confined in the \_\_\_\_\_ (county) (city) jail.

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THIS FUGITIVE COMPLAINT IS TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A FUGITIVE COMPLAINT.**

\_\_\_\_\_,  
Date

Officer's signature  
Title

**USE NOTE**

This form may be used only if the defendant is charged with a felony. If the defendant is charged with a misdemeanor a complaint and arrest warrant must be used.

[Adopted, effective October 1, 1996.]

**ANNOTATIONS**

**Cross references.** — For Uniform Criminal Extradition Act, see Chapter 31, Article 4 NMSA 1978.

**9-806. Motion to extend time.**



[For use with Magistrate Court Rule 6-811 and  
Metropolitan Court Rule 7-811]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT  
No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

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

**MOTION TO EXTEND TIME**

\_\_\_\_\_ (*name and title of prosecutor*) moves the court  
to extend the time for extradition in this case for \_\_\_\_\_ days after  
\_\_\_\_\_ (*date previously granted*) because the demanding state has  
been unable to perfect its extradition within the time allotted.

Prosecutor

I hereby certify that a copy of  
the foregoing pleading was sent  
to \_\_\_\_\_

\_\_\_\_\_, N.M.  
on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

Prosecutor

[Adopted, effective October 1, 1996.]

**ANNOTATIONS**

**Cross references.** — For Uniform Criminal Extradition Act, see Chapter 31, Article 4  
NMSA 1978.

**9-807. Order granting extension of time.**

[For use with Magistrate Court Rule 6-811 and  
Metropolitan Court Rule 7-811]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**ORDER GRANTING EXTENSION OF TIME**

This matter coming before the court on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ on motion of \_\_\_\_\_ (*name and title*);

IT IS ORDERED that the time for completion of extradition in this case be extended  
\_\_\_\_\_ days and shall expire on \_\_\_\_\_ (*date*).

Judge

Approved:

\_\_\_\_\_  
Prosecutor, if any

\_\_\_\_\_  
Attorney for the defendant, if any

[Adopted, effective October 1, 1996.]

**ANNOTATIONS**

**Cross references.** — For Uniform Criminal Extradition Act, see Chapter 31, Article 4 NMSA 1978.

**9-808. Transfer order extradition proceedings.**

[For use with Magistrate Court Rule 6-812 and  
Metropolitan Court Rule 7-812]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**TRANSFER ORDER EXTRADITION PROCEEDINGS**

The defendant has been arraigned on a fugitive warrant. In response to questioning by the court, the defendant has advised the court that the defendant does not wish to sign a waiver of extradition.

It is ordered that the fugitive action be transferred to the district court for further proceedings.

Judge

Date

*(Attach copy of fugitive complaint and other pleadings and papers filed with the court.)*

[Adopted, effective October 1, 1996.]

**ANNOTATIONS**

**Cross references.** — For Uniform Criminal Extradition Act, see Chapter 31, Article 4 NMSA 1978.

**ARTICLE 9**  
**Clinical Law Student Appearances**

**9-901. Certificate of dean.**

[For use with District Court Criminal Rule 5-110.1]

CERTIFICATE OF DEAN OF \_\_\_\_\_ SCHOOL OF LAW

I hereby certify that I am the dean of the \_\_\_\_\_ School of Law and that this school of law is an American Bar Association accredited law school that complies with the current standards of the American Bar Association regarding field placement programs.

I further certify that \_\_\_\_\_ (*name of student*) is a regularly enrolled student of the above-named law school who has received a passing grade in law school courses aggregating thirty (30) or more semester hours or their equivalent.

I further certify that the above-named student is participating in a clinical law program and will receive law school credit hours for work performed in the State of New Mexico under the direction or supervision of \_\_\_\_\_ (*name of supervising attorney or judge*), a member of the State Bar of New Mexico who has been

admitted to practice law for a period of five (5) or more years. This law school credit will be earned during the period beginning \_\_\_\_\_ and ending \_\_\_\_\_. (Set forth beginning and ending dates of program not to exceed a four month period.)

I further certify that the above-named law student meets the academic and moral standards required of a student in good standing at this institution.

\_\_\_\_\_, \_\_\_\_\_, Dean

[Adopted, effective October 1, 1995.]

**9-902. Order approving clinical law student appearance.**

[For use with District Court Criminal Rule 5-110.1]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT  
No.

STATE OF NEW MEXICO  
v.  
\_\_\_\_\_, Defendant

**ORDER APPROVING CLINICAL LAW STUDENT APPEARANCE**

\_\_\_\_\_, a qualified supervising attorney participating in a clinical law program of the \_\_\_\_\_ School of Law, which meets the requirements of Rule 5-110.1 NMRA of the Rules of Criminal Procedure for the District Courts has requested that \_\_\_\_\_, a law student enrolled in a qualified clinical law program, be permitted to participate in this matter.

It is hereby ordered that the above-named law student may participate in this case.

Date

District Judge

**USE 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 9-901.

[Adopted, effective October 1, 1995.]

## Table Of Corresponding Forms

The first table below reflects the disposition of the former Criminal Forms. The left-hand column contains the former form number, and the right-hand column contains the corresponding present Criminal Form.

The second table below reflects the antecedent provisions in the former Criminal Forms (right-hand column) of the present Criminal Forms (left-hand column).

Former Form	NMRA	Former Form	NMRA
1.00	9-201	5.45	9-103
1.01	9-202	5.46	9-101
1.15	9-203	5.50	9-206
1.18	9-204	5.55	9-412
2.00	9-208	5.56	9-413
2.20	9-209	6.00	9-503
2.22	9-211	6.02	9-504
2.30	9-210	6.09	9-409
2.32	9-212	6.10	9-410
2.40	9-213	6.20	9-207
2.45	9-801	6.30	9-404
2.50	9-214	6.40	9-414
2.55	9-802	6.50	9-508
3.00	9-301	6.60	9-804
3.10	9-302	7.00	9-408
3.20	9-303	7.10	9-605
3.25	9-304	7.11	9-606
3.26	9-305	8.00	9-406
3.30	9-306	8.02	9-407
4.00	9-401	8.10	9-601
4.10	9-502	8.11	9-602
4.20	9-405	8.15	9-603
4.21	9-104	8.16	9-604
4.22	9-803	9.00	9-607
4.23	9-205	9.10	9-608
4.24	9-609	9.50	9-701
5.10	9-411	10.00	9-505
5.20	9-501	10.01	9-506
5.30	9-415	10.02	9-507

5.40 9-102  
5.44 9-402

NMRA	Former Form	NMRA	Former Form
9-101	5.46	9-408	7.00
9-102	5.40	9-409	6.09
9-103	5.45	9-410	6.10
9-104	4.21	9-411	5.10
9-201	1.00	9-412	5.55
9-202	1.01	9-413	5.56
9-203	1.15	9-414	6.40
9-204	1.18	9-415	5.30
9-205	4.23	9-501	5.20
9-206	5.50	9-502	4.10
9-207	6.20	9-503	6.00
9-208	2.00	9-504	6.02
9-209	2.20	9-505	10.00
9-210	2.30	9-506	10.01
9-211	2.22	9-507	10.02
9-212	2.32	9-508	6.50
9-213	2.40	9-601	8.10
9-214	2.50	9-602	8.11
9-301	3.00	9-603	8.15
9-302	3.10	9-604	8.16
9-303	3.20	9-605	7.10
9-304	3.25	9-606	7.11
9-305	3.26	9-607	9.00
9-306	3.30	9-608	9.10
9-401	4.00	9-609	4.24
9-402	5.44	9-701	9.50
9-403	new	9-801	2.45
9-404	6.30	9-802	2.55
9-405	4.20	9-803	4.22
9-406	8.00	9-804	6.60
9-407	8.02		