

# Civil Forms

## ARTICLE 1 General Provisions

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

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Plaintiff

v.

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

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

#### NOTICE OF [EXCUSAL] FACTS REQUIRING RECUSAL (CONSTITUTION OR CODE OF CONDUCT)<sup>1</sup>

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

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

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

\_\_\_\_\_  
Signature of party

#### USE NOTE

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

[As amended, effective May 1, 1986; November 1, 1995; May 1, 2002.]

### ANNOTATIONS

The 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.

### 4-102. Certificate of excusal or recusal.

[2-105, 3-105]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

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

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

against

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

The parties have not filed a stipulation agreeing to another judge of the district to hear the case.

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

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

Judge

Division \_\_\_\_\_

[As amended, effective May 1, 1986; September 1, 1989; November 1, 1995.]

### ANNOTATIONS

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

#### 4-103. Notice of excusal.

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_, COURT  
\_\_\_\_\_, Plaintiff

v.

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

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

#### NOTICE OF EXCUSAL<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 party)

#### USE NOTE

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

[As amended, effective May 1, 1986; November 1, 1995; May 1, 2002.]

#### ANNOTATIONS

The 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.

#### 4-104. Notice of recusal.

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

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_, COURT  
\_\_\_\_\_, Plaintiff

v.

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

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

#### NOTICE OF 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

#### USE NOTE

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

[Approved, effective October 1, 1987; as amended, effective November 1, 1995; May 1, 2002.]

#### 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", "ten (10) days" for "five (5) days", "file with the court a stipulation agreeing to" for "agree upon", and "another judge will be assigned to hear the case" for "the clerk will request the district court to assign".

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

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

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

STATE OF NEW MEXICO

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

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

\_\_\_\_\_ COURT

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

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

v.

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

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

**ORDER APPROVING WITHDRAWAL**

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

[My] [Our] client

*(check and complete applicable alternative)*

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

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

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

*(check and complete applicable alternative)*

\_\_\_\_\_ (*name of attorney*) is entering an appearance to represent the above named party<sup>1</sup>.

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

\_\_\_\_\_ (*name of party*)

\_\_\_\_\_ (*mailing address*)

\_\_\_\_\_ (*city, county and zip code*)

\_\_\_\_\_ (*telephone number*)

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

**Withdrawing attorney**

\_\_\_\_\_

Signed

\_\_\_\_\_

Name (*print*)

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_

City, state and zip code (*print*)

\_\_\_\_\_

Telephone number

**Entry of appearance by new attorney<sup>1</sup>**

\_\_\_\_\_

Signed

\_\_\_\_\_

Name (*print*)

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_

City, state and zip code (*print*)

\_\_\_\_\_

Telephone number

**Last known address of pro se party**

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_

City, state and zip code (*print*)

\_\_\_\_\_

Telephone number

APPROVED:

\_\_\_\_\_

Attorney or pro se party

\_\_\_\_\_

Date

**CERTIFICATE OF SERVICE ON OPPOSING PARTY**

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

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

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

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

City, State

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

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

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

\_\_\_\_\_  
Signature of attorney or party

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

**CERTIFICATE OF SERVICE ON WITHDRAWING ATTORNEY'S CLIENT**

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

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

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

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

City, State

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

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

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



\_\_\_\_\_  
Signature of attorney

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

**WITHDRAWAL AND SUBSTITUTION OF ATTORNEY**

**[APPROVED] [DENIED]:**

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

**USE NOTE**

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

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**4-110. Request for hearing.**

[District Court Civil Rules]<sup>1</sup>

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

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

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

**REQUEST FOR HEARING**

Assigned judge: \_\_\_\_\_  
Matters to be heard: \_\_\_\_\_  
Hearings presently set: \_\_\_\_\_  
Time requested by plaintiff: \_\_\_\_\_  
Time requested by defendant: \_\_\_\_\_  
*(Provide names and addresses of parties who need to be notified – attach a list if necessary.)*

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

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

Hearing requested by:

\_\_\_\_\_  
Signature

Printed name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

#### USE NOTES

1. A local district court notice of hearing form that has been approved by the Supreme Court may be used instead of this form.
2. This request must be served on all other parties pursuant to Rule 1-005 NMRA. See also Rule 1-007.1 NMRA for how motions are presented to the court.

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

#### ANNOTATIONS

**Effective dates.** — This form was provisionally approved by the Supreme Court effective August 15, 2003 until August 31, 2004. This form was permanently approved by the Supreme Court effective October 14, 2004.

#### 4-111. Notice of hearing.

[District Court Civil Rules]<sup>1</sup>

STATE OF NEW MEXICO

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

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

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

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

v.

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

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

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

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

\_\_\_\_\_  
Administrative assistant to the judge

### USE NOTES

1. The district court complies with the Americans with Disabilities Act. Please notify the clerk of the court of the nature of any disability at least five (5) days before any hearing, so appropriate accommodations can be made.
2. A local district court notice of hearing form that has been approved by the Supreme Court may be used instead of this form.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004; as amended by Supreme Court Order 05-8300-20, effective December 15, 2005.]

### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on

August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective October 14, 2004.

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

**4-112. Request for hearing.**

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

[and Metropolitan Court Civil Rule 3-307 NMRA]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COUNTY

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

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

v.

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

**REQUEST FOR HEARING**

Assigned judge: \_\_\_\_\_

Matters to be heard: \_\_\_\_\_

Hearings presently set: \_\_\_\_\_

Time requested by plaintiff: \_\_\_\_\_

Time requested by defendant: \_\_\_\_\_

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

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

Hearing requested by:

---

Signature

Printed name: \_\_\_\_\_

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

\_\_\_\_\_

Telephone: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this  
\_\_\_\_\_ (*insert paper served, such as "answer" or "notice"*) was

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

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

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

City, State \_\_\_\_\_

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

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to  
\_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone  
number*). The transmission was reported as complete. The time and date of the  
transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party  
to accept electronic service. The transmission was reported as complete. The time and  
date of the transmission was \_\_\_\_\_ (p.m.) (a.m.) on \_\_\_\_\_  
(*date*).]

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

---

Signature of person sending paper

---

Date of signature

USE NOTES

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

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**4-113. Notice of hearing.**

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

[Metropolitan Court Civil Rule 3-307 NMRA]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COUNTY

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

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

v.

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

**NOTICE OF HEARING**

The Honorable \_\_\_\_\_ will hear the above cause in the \_\_\_\_\_ County courthouse located at \_\_\_\_\_ (street) in room \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (a.m.) (p.m.)<sup>1</sup>.

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

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

\_\_\_\_\_

Judge

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

2. Specify the matters to be heard.

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005.]

## **ARTICLE 2**

### **Commencement of Action**

#### **4-201. Civil complaint.**

[2-201, 3-201]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

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

against

\_\_\_\_\_, Defendant  
\_\_\_\_\_, Address  
\_\_\_\_\_, City

#### **CIVIL COMPLAINT**

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

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

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

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

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

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

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

[As amended, effective January 1, 1995.]

### ANNOTATIONS

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

### 4-202. Civil complaint.

[3-201]

STATE OF NEW MEXICO

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

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

\_\_\_\_\_ COUNTY

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

against

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

### CIVIL COMPLAINT

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

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



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

\_\_\_\_\_ .

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

\_\_\_\_\_ .

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

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

\_\_\_\_\_, \_\_\_\_\_ Signed

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Address [print]

\_\_\_\_\_  
City, State and Zip Code [print]

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

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

[Magistrate Court - Metropolitan Court]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

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

against

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

**COMPLAINT IN FORCIBLE ENTRY**

**OR UNLAWFUL DETAINER**

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

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

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

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

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

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

Signed

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Address [print]

\_\_\_\_\_  
City, State and Zip Code [print]

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

#### **4-204. Civil summons.**

[2-202, 3-202]

STATE OF NEW MEXICO

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

COURT  
COUNTY

v.

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

Judge assigned:  
\_\_\_\_\_

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

**CIVIL SUMMONS**

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

GREETINGS:

This summons notifies you that a complaint has been filed against you. A copy of the complaint and an answer form<sup>2</sup> are attached to this summons. You are required to serve and file an answer to the complaint, or a responsive pleading, within TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file the answer or responsive pleading with the clerk of the (Magistrate) (Metropolitan) Court and you must serve a copy of the answer or responsive pleading on the opposing party.

IF YOU DO NOT FILE AND SERVE AN ANSWER OR RESPONSIVE PLEADING WITHIN THE TWENTY (20) DAY PERIOD, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.

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

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

Your answer must be filed with the court which is located at:

\_\_\_\_\_ *(street address of court)*

A copy of your answer or responsive pleading must be mailed to: *(name and address of plaintiff or plaintiff's attorney)*

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

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

\_\_\_\_\_

\_\_\_\_\_



*person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)*

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

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

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

[ ] by service by mail.

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title *(if any)*

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(name of person served)*  
*(address where mailed)*  
*(county)*  
*(city, state and zip code)*

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title *(if any)*

\_\_\_\_\_  
Place of mailing

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

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

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

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

\_\_\_\_\_ *(name of person served)*

\_\_\_\_\_ *(address where mailed)*

\_\_\_\_\_ *(county)*

\_\_\_\_\_ *(city, state and zip code)*

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title *(if any)*

\_\_\_\_\_  
Place of mailing

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

---

Official title<sup>3</sup>

#### USE NOTES

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

[As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997.]

#### ANNOTATIONS

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

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

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

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

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

**4-205. Civil complaint for interpleader.**

[2-301, 3-301]

STATE OF NEW MEXICO

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

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

\_\_\_\_\_, Interpleader  
against  
\_\_\_\_\_, Defendant  
and  
\_\_\_\_\_, Defendant

**CIVIL COMPLAINT FOR  
INTERPLEADER**

Interpleader hereby complains against defendants,

\_\_\_\_\_ and \_\_\_\_\_  
as follows:

1. Interpleader is

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

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

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

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

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

WHEREFORE, Interpleader asks that:



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

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

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

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

[Adopted, effective July 1, 1988.]

**4-206. Summons.**

[1-004]

STATE OF NEW MEXICO

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

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

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

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

v.

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

**SUMMONS**

**THE STATE OF NEW MEXICO**

TO: \_\_\_\_\_, Defendant

ADDRESS: \_\_\_\_\_

You are required to serve upon \_\_\_\_\_ (*name of plaintiff or plaintiff's attorney*) an answer or motion in response to the complaint which is attached to this summons within thirty (30) days after service of this summons upon you, exclusive of the day of service, and file your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the complaint.

Attorney or attorneys for plaintiff:

\_\_\_\_\_

Address and telephone number of attorneys for plaintiff (*or of plaintiff, if no attorney*):

\_\_\_\_\_

(*Street or P.O. box*)

\_\_\_\_\_

(*City, state and zip code*)

\_\_\_\_\_

(*Telephone number*)

WITNESS the Honorable \_\_\_\_\_, district judge of the \_\_\_\_\_ judicial district court of the State of New Mexico, and the seal of the district court of \_\_\_\_\_ County, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Clerk of court

By \_\_\_\_\_

Deputy

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

**RETURN'**

STATE OF NEW MEXICO )

)ss

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

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

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

to the defendant \_\_\_\_\_ (*used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint*).

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

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

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

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

to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

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

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

Fees: \_\_\_\_\_

\_\_\_\_\_

Signature of person making service

\_\_\_\_\_

Title (if any)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_<sup>2</sup>

\_\_\_\_\_

Judge, notary or other officer

authorized to administer oaths

\_\_\_\_\_

Official title

#### USE NOTES

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007.]

#### ANNOTATIONS

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

those paragraphs with the amendment of Rule 1-004 NMRA also approved as of March 1, 2005.

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

4-207. Withdrawn.

### ANNOTATIONS

**Withdrawals.** — Civil Form 4-209 NMRA, relating to service of a summons and complaint by mail, has been withdrawn effective March 1, 2005. See Paragraph F of Rule 1-004 NMRA. See Civil Form 4-206 NMRA for service by mail.

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

[2-202, 3-202]

STATE OF NEW MEXICO

\_\_\_\_\_  
COURT

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

\_\_\_\_\_  
(COUNTY)  
\_\_\_\_\_, Plaintiff

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

#### NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

TO:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

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

You must sign and date the receipt. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, you must indicate

under your signature your relationship, position or title. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your relationship, position or title.

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

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

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

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

\_\_\_\_\_  
Signature of person mailing

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

**RECEIPT OF SUMMONS AND COMPLAINT**

I received a copy of the summons and complaint.

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

\_\_\_\_\_  
Signature of defendant  
or defendant's attorney

\_\_\_\_\_  
Position or title

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

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

**AFFIDAVIT OF SERVICE**

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

(1) \_\_\_\_\_

(Name of party)

\_\_\_\_\_

(Address)

(2) \_\_\_\_\_

(Name of party)

\_\_\_\_\_

(Address)

\_\_\_\_\_  
Signature of person mailing pleadings

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

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

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

**ANNOTATIONS**

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

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

#### **4-209. Motion for service by publication.**

[District Court Civil Rule 1-004]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

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

v.

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

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

#### **MOTION FOR SERVICE<sup>1</sup> BY PUBLICATION**

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

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

personal service;

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

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

service at the defendant's last known business address;

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

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



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

[ ] \_\_\_\_\_ (describe other attempts to locate  
defendant);

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

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

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

Date:

Signature of plaintiff

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

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

\_\_\_\_\_  
Notary

**CERTIFICATE OF SERVICE**

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

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

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

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

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

[e-mailed by \_\_\_\_\_ (name of person who transmitted) to  
\_\_\_\_\_ at \_\_\_\_\_ (electronic address of recipient)  
who agreed to service in this manner. The transmission was successful. The time and  
date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_]

\_\_\_\_\_ (date).]

\_\_\_\_\_  
Signature of attorney

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

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

**AFFIDAVIT OF SERVICE**

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

\_\_\_\_\_  
Signature of person who made service

Subscribed and sworn to before me

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

\_\_\_\_\_  
Signature

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

**USE NOTE**

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

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

**ANNOTATIONS**

**Effective dates.** — This form was provisionally approved by the Supreme Court effective August 15, 2003 until August 31, 2004. This form was permanently approved by the Supreme Court effective October 14, 2004.

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

[1-004]

STATE OF NEW MEXICO

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

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

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

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

v.

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

**ORDER FOR SERVICE OF PROCESS<sup>1</sup>  
BY PUBLICATION IN A NEWSPAPER**

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

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

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

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

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

\_\_\_\_\_

District Judge

USE NOTE

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

[Approved by Supreme Court Order 05-8300-01, effective March 1, 2005.]

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

[District Court Civil Rule 1-004]

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

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

v.

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

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

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

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

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

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

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

\_\_\_\_\_ (county)]<sup>1</sup>. The [plaintiff] [petitioner] shall file a proof of service with a copy of the affidavit of publication when service has been completed.

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

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

\_\_\_\_\_  
District Judge

#### USE NOTE

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

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

#### ANNOTATIONS

**Effective dates.** — This form was provisionally approved by the Supreme Court effective August 15, 2003 until August 31, 2004. This form was permanently approved by the Supreme Court effective October 14, 2004.

4-211. Recompiled.

#### ANNOTATIONS

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

4-212. Recompiled.

#### ANNOTATIONS

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

#### 4-213. Attorney's certificate.

[1-099]

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

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

v.

Judge: \_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY'S CERTIFICATE**

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

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

\_\_\_\_\_  
Attorney's signature

\_\_\_\_\_  
Attorney's name

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_

**FOR CLERK'S USE ONLY**

Fees Paid: [ ] Yes [ ] No [ ] Check [ ] Cash

Clerk:

\_\_\_\_\_

[Approved, effective August 1, 2001.]

**ANNOTATIONS**

**Effective dates.**— Pursuant to a court order dated May 24, 2001, this form is effective August 1, 2001.

**4-221. Certificate of service.**

[For use with Magistrate Court Rules 2-203, 2-204, 2-205 and  
Metropolitan Court Rules 3-203, 3-204, 3-205 NMRA]

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this  
[\_\_\_\_\_ (*insert paper served, such as "answer" or "notice"*)] was

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

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State \_\_\_\_\_  
and zip code \_\_\_\_\_  
Telephone: \_\_\_\_\_

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to  
\_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone  
number*). The transmission was reported as complete. The time and date of the  
transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party  
to accept electronic service. The transmission was reported as complete. The time and  
date of the transmission was \_\_\_\_\_ (p.m.) (a.m.) on \_\_\_\_\_  
(*date*).]

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

\_\_\_\_\_  
Signature of person sending paper

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

#### USE NOTE

This form may be used in the magistrate and metropolitan court to prepare a certificate or affidavit of service. Only the applicable parts should be used. See Rules 2-203 and 3-303 NMRA for service of papers after the complaint.

[As amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

#### ANNOTATIONS

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

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

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

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

v.

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

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



**APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY**

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

My marital status is: Single \_\_\_\_ Married \_\_\_\_ Divorced \_\_\_\_ Separated \_\_\_\_  
Widowed \_\_\_\_

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

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

**A. PUBLIC ASSISTANCE**

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

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

\_\_\_\_ Temporary Assistance for Needy Families (TANF)

\_\_\_\_ Food Stamps

\_\_\_\_ Medicaid

\_\_\_\_ General Assistance (GA)

\_\_\_\_ Supplemental Security Income (SSI)

\_\_\_\_ Social Security Disability Income (SSDI)

\_\_\_\_ Public Housing

\_\_\_\_ Disability Security Income (DSI)

\_\_\_\_ Department of Health Case Management Services (DHMS)

\_\_\_\_ Other (please describe \_\_\_\_\_)

**B. EMPLOYMENT/UNEMPLOYMENT**

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

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

\_\_\_ I have no income because I am unemployed.

\_\_\_ I am employed.

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

I am paid weekly \_\_\_ every other week \_\_\_ twice a month \_\_\_ once a month \_\_\_\_.  
When I am paid my net take-home pay minus deductions required by law like state and federal tax withholding and FICA is \$\_\_\_\_\_.

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

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

\_\_\_ I am married, and my spouse is employed.

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

My spouse is paid weekly \_\_\_ every other week \_\_\_ twice a month \_\_\_ once a month \_\_\_\_.  
When my spouse is paid his or her net take-home pay minus deductions required by law like state and federal tax withholding and FICA is \$\_\_\_\_\_.

**C. OTHER SOURCES OF INCOME**

\_\_\_ I have income from another source not mentioned above.

\_\_\_ Child Support \$\_\_\_\_\_

\_\_\_ Alimony \$\_\_\_\_\_

\_\_\_\_\_ Investments \$\_\_\_\_\_

\_\_\_\_\_ Community property from my spouse\$\_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_ \$\_\_\_\_\_

\_\_\_ I do not have any other sources of income.

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

\_\_\_\_\_ Child Support \$\_\_\_\_\_

\_\_\_\_\_ Alimony \$\_\_\_\_\_

\_\_\_\_\_ Investments \$\_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_ \$\_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_ \$\_\_\_\_\_

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

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

Cash on hand \$\_\_\_\_\_

Bank accounts \$\_\_\_\_\_

Income tax refund \$\_\_\_\_\_

Other assets (describe below):

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

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

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

**E. MONTHLY EXPENSES**

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

**F. HOUSEHOLD**

I live at \_\_\_\_\_ ,  
and the head of the household is \_\_\_\_\_ .

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

<u>Name</u>	<u>Age</u>	<u>Employment</u>	<u>I Support</u>
			( )
			( )
			( )
			( )
			( )
			( )
			( )

***This statement is made under oath. I hereby state that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the Court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies. If at any time the Court discovers that information in this application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, the Court may require me to pay for any costs or fees that were***

**waived under an order of free process that was granted based on the information in this application.**

(Signature)

(Print Name)

\_\_\_\_ Petitioner \_\_\_\_ Respondent

(Pro Se)

(Street Address)

(City, State, Zip Code)

(Telephone)

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

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

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

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

I, \_\_\_\_\_ hereby certify that I have not received any attorney fee to represent \_\_\_\_\_ (Name of attorney) . If any attorney fee is paid to me, I understand that I shall pay to the court clerk from such attorney fee any court fees and costs that may be waived by the court.  
(Name of applicant)

(Attorney signature)

*Address*

*City, State, Zip Code*

*Telephone/Fax Number*

[Adopted by Supreme Court Order 07-8300-43, effective February 25, 2008; as amended by Supreme Court Order No. 08-8300-31, effective November 17, 2008.]

### **ANNOTATIONS**

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

#### **4-223. Order for free process.**

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

v.

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

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

#### **ORDER ON APPLICATION FOR FREE PROCESS**

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

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

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

the applicant's annual income does not exceed one hundred and fifty percent (150%) of the federal poverty guidelines, and the applicant is, therefore, entitled to free process.

the applicant's annual income exceeds one hundred and fifty percent (150%) of the federal poverty guidelines, but the applicant is not reasonably able to pay fees or costs and is, therefore, entitled to free process.

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

**THE COURT ORDERS that:**

the filing fee is waived.

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

the applicant is granted free service of process by the Sheriff in \_\_\_\_\_ County, New Mexico for 1 2 3 4 5 or \_\_\_\_\_ summons(es), provided that the applicant first attempts service by certified mail pursuant to Rule 1-004 NMRA.

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

the applicant is to pay the filing fee on \_\_\_\_\_, 20\_\_\_\_\_.

interpretation services shall be provided to the applicant.

free process is denied.

Other:

**Unless specifically granted above, this order of free process does not include** the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this law suit and collects money by judgment or settlement, the court may order reimbursement for any waived costs. If the

applicant is represented by an attorney who is paid an attorney fee, any fees or costs waived by this order must be deducted from any such attorney fee and paid to the court clerk. ***This order is subject to revision, modification or rescission by the judge assigned to your case.***

\_\_\_\_\_  
JUDGE

[Adopted by Supreme Court Order 07-8300-43, effective February 25, 2008; as amended by Supreme Court Order No. 08-8300-31, effective November 17, 2008.]

### ANNOTATIONS

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-31, effective November 17, 2008, in the first paragraph, added the alternative recital that the matter came before the court upon the petitioner's attorney's certificate supporting indigency and free process pursuant to Rule 23-114(B)(2) NMRA; added the first and fourth findings; in the last paragraph, changed "is to be reimbursed" to "may order reimbursement"; and added the last sentence requiring that fees and costs that are waived be deducted from any fees paid to the applicant's attorney and paid to the clerk of the court.

### 4-224. Order for free process.

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

**STATE OF NEW MEXICO**

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

\_\_\_\_\_ COURT

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

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

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

### ATTORNEY'S CERTIFICATE SUPPORTING INDIGENCY AND FREE PROCESS

I, \_\_\_\_\_, hereby certify that I represent \_\_\_\_\_,

(Attorney name) (Client name)



and that my client is entitled to free process pursuant to Rule 23-114(B)(2) NMRA without the necessity of filing an application for free process or affidavit of indigency. I further certify that I have not, nor has any legal services organization under whose auspices I am representing my client, received any attorney fee for this representation. If any attorney fee is paid to me or said legal services organization, court fees and costs shall be paid to the clerk from such fee.

Respectfully submitted,

---

---

*(legal services organization or referring  
local pro bono committee)*

---

*Address*

---

*City, State, Zip Code*

---

*Telephone/Fax Number*

[Adopted by Supreme Court Order No. 08-8300-31, effective November 17, 2008.]

## **ARTICLE 3 Pleadings and Motions**

### **4-301. Answer to civil complaint.**

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**ANSWER TO CIVIL COMPLAINT<sup>1</sup>**

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

.

or

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

.

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

.

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

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

\_\_\_\_\_

Signed

\_\_\_\_\_

Name *(print)*

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_

City, state and zip code (*print*)

\_\_\_\_\_

Telephone number

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

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this  
\_\_\_\_\_ (*insert paper served, such as "answer" or "notice"*) was

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

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

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

City, State \_\_\_\_\_

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

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to  
\_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone  
number*). The transmission was reported as complete. The time and date of the  
transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party  
to accept electronic service. The transmission was reported as complete. The time and  
date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_  
(*date*).]

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

\_\_\_\_\_

Signature of person sending paper

\_\_\_\_\_

Date of signature

USE NOTES

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

[As amended, effective January 1, 1995; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

ANNOTATIONS

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

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

**4-302. Answer to civil complaint.**

[3-302]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

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

against

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

**ANSWER TO CIVIL COMPLAINT**

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

or

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

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

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

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

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Address [print]

\_\_\_\_\_  
City, State and Zip Code [print]

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

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

### **4-303. Motion for judgment on the pleadings.**

[For use with Magistrate Court Rule 2-303 and

Metropolitan Court Rule 3-303]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**MOTION FOR JUDGMENT ON THE PLEADINGS**

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

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

\_\_\_\_\_, \_\_\_\_\_ (date)

\_\_\_\_\_  
(Plaintiff) (Defendant)

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

**CERTIFICATE OF SERVICE**

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

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

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

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

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*). The transmission was  
successful. The time and date of the transmission was \_\_\_\_\_ (a.m) (p.m) on  
\_\_\_\_\_ (*date*).]

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

\_\_\_\_\_  
Signature of person sending paper

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

[As amended, effective October 1, 1987; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

### ANNOTATIONS

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

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

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

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

STATE OF NEW MEXICO

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

MAGISTRATE COURT

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

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

v.

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

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

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

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

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

Judge

Date of signature

**CERTIFICATE OF SERVICE**

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

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

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

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



[e-mailed to \_\_\_\_\_ (name of party or attorney) at \_\_\_\_\_ (electronic mail address of recipient). The transmission was successful. The time and date of the transmission was \_\_\_\_\_ (a.m) (p.m) on \_\_\_\_\_ (date).]

[delivered to \_\_\_\_\_ (Specify how service by delivery was made. See Rule 2-203 NMRA for the methods service may be made using this alternative.)  
.]

\_\_\_\_\_

Signature of person sending paper

\_\_\_\_\_

Date of signature

**OBJECTION**

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

I object because:

Signature of party

Printed name of party

Date of signature

[Approved by Supreme Court Order 07-8300-27, effective November 1, 2007.]

**4-304. Stipulation of dismissal.**

[2-305, 3-305]

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

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

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

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

**STIPULATION OF DISMISSAL**

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

\_\_\_\_\_  
Plaintiff or Attorney for Plaintiff

\_\_\_\_\_  
Defendant or Attorney for Defendant

[As amended, effective November 1, 2000.]

**ANNOTATIONS**

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

**4-305. Notice of dismissal of complaint.**

[For use with Magistrate Court Rule 2-305 and

Metropolitan Court Rule 3-305]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**NOTICE OF DISMISSAL OF COMPLAINT<sup>1</sup>**

Plaintiff hereby dismisses plaintiff's complaint without prejudice.

\_\_\_\_\_

Plaintiff or attorney for plaintiff

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

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ this  
\_\_\_\_\_ (*insert paper served, such as "answer" or "notice"*) was

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

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

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

City, State \_\_\_\_\_

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

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to  
\_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone  
number*). The transmission was reported as complete. The time and date of the  
transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party  
to accept electronic service. The transmission was reported as complete. The time and  
date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_  
(*date*).]

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

\_\_\_\_\_

Signature of person sending paper

\_\_\_\_\_

Date of signature

**USE NOTES**

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

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

[As amended, effective November 1, 2000; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

### ANNOTATIONS

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

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

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

[2-305, 3-305]

STATE OF NEW MEXICO

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

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

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

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

#### ORDER DISMISSING ACTION FOR FAILURE TO PROSECUTE

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

IT IS ORDERED that this action is dismissed without prejudice.

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

\_\_\_\_\_  
Judge

### 4-306A. Motion to dismiss action.

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**MOTION TO DISMISS ACTION**

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

.

\_\_\_\_\_

*(Plaintiff) (Defendant)*

**USE NOTE**

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

[As amended, effective November 1, 2000; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**ANNOTATIONS**

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

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

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

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

#### **4-306B. Order dismissing action.**

[General Form for Use in Magistrate or

Metropolitan Court]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

#### **ORDER DISMISSING ACTION**

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

the motion should be denied.

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

IT IS ORDERED that:

the motion to dismiss the action is denied.

this action is dismissed (*with*) (*without*) prejudice.

\_\_\_\_\_, \_\_\_\_\_ (*date*)

\_\_\_\_\_

Judge

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**4-307. Notice of pretrial conference.**

[2-306, 3-306]

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

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

v.

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

\_\_\_\_\_  
Defendant

**NOTICE OF PRETRIAL CONFERENCE<sup>1</sup>**

TO: \_\_\_\_\_, Plaintiff; and  
\_\_\_\_\_, Attorney.  
\_\_\_\_\_, Defendant; and  
\_\_\_\_\_, Attorney.

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

*(check only applicable alternatives)*

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

USE NOTE

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

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

**ANNOTATIONS**

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

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

**4-308. Order to interplead.**

[2-301, 3-301]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT

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

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Interpleader  
against

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

and

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

**ORDER TO INTERPLEAD**

The interpleader having filed complaint herein,



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

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

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

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

\_\_\_\_\_,  
Date

\_\_\_\_\_  
Judge

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

#### ANNOTATIONS

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

## ARTICLE 4 Parties

### 4-401. Notice of trial.

[Magistrate Court - Metropolitan Court]

STATE OF NEW MEXICO

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

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

\_\_\_\_\_ COUNTY

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

against

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

NOTICE OF TRIAL

TO:

\_\_\_\_\_,  
Plaintiff; and

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

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

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

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

The motion

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

\_\_\_\_\_, \_\_\_\_\_ Judge or Clerk

#### 4-402. Order of appointment for guardian ad litem.

[For use with District Court Rule 1-053.3]

STATE OF NEW MEXICO

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

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

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

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

v.

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

#### ORDER APPOINTING GUARDIAN AD LITEM

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

1. The court has jurisdiction over the parties and subject matter.

2. This action concerns the following minor [child] [children]:  
\_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
\_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
\_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
\_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_.

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

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. **Appointment and duties to the court:** \_\_\_\_\_ is hereby appointed as GAL. The GAL shall perform each of the following duties:

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

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

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

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

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

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

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

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

(i) in addition to the foregoing, the court directs the GAL to:

2. **Adoption of GAL recommendations:**

(a) If the parties are willing to adopt the GAL's recommendations, they shall submit a stipulated order adopting the recommendations within ten (10) days after the recommendations are filed.

(b) If one or both parties are not willing to adopt the recommendations, such party may file objections to the recommendations within ten (10) days after the recommendations are filed and a request and notice for hearing on the objections. The objections shall specifically state what recommendations are objected to and the basis for the objection. The court will set a hearing on the objections.

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

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

4. **Expiration of appointment.** This appointment shall expire on \_\_\_\_\_.

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

6. **Duties of parties.** The parties shall assist the GAL in carrying out the duties set forth in this order.

7. **GAL fees.**

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

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

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

(d) Either party or the guardian ad litem may request a hearing on the guardian ad litem fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed \_\_\_\_\_.

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

District court judge

**CERTIFICATE OF MAILING**

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

\_\_\_\_\_  
*(Name of petitioner)*

\_\_\_\_\_  
*(Name of petitioner's attorney)*

\_\_\_\_\_  
*(Name of respondent)*

\_\_\_\_\_  
*(Name of respondent's attorney)*

\_\_\_\_\_  
*(Name of guardian ad litem)*

\_\_\_\_\_  
*(Name of person signing certificate)*

[4A-342 NMRA; provisionally approved by Supreme Court Order 06-8300-29, effective January 15, 2007 until January 15, 2008; approved and recompiled by Supreme Court Order 07-8300-21, effective August 21, 2007.]

#### **ANNOTATIONS**

**Recompilations.** — Pursuant to Supreme Court Order 07-8300-21, effective August 21, 2007 former Domestic Relations form 4A-342 NMRA has been recompiled as a new Civil Form.

## **ARTICLE 5**

### **Discovery and Pretrial Matters**

#### **4-501. Motion for production.**

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

Metropolitan Court Rule 3-501 NMRA]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**MOTION FOR PRODUCTION**

[Plaintiff] [Defendant] asks the court to order that the other party produce for inspection and copying the following items of evidence:

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

Request has been made of the other party and the other party has failed to produce the evidence.

This inspection and copying is necessary in the preparation for trial of this case because

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

\_\_\_\_\_, \_\_\_\_\_ (date) \_\_\_\_\_  
(Plaintiff) (Defendant)

**CERTIFICATE OF SERVICE<sup>1</sup>**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this  
\_\_\_\_\_ (insert paper served, such as "answer" or "notice") was

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

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

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

City, State \_\_\_\_\_

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

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to \_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone number*). The transmission was reported as complete. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at \_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party to accept electronic service. The transmission was reported as complete. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

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

\_\_\_\_\_

Signature of person sending paper

\_\_\_\_\_

Date of signature

#### USE NOTE

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

[As amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

#### ANNOTATIONS

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

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

#### **4-502. Order for production.**

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

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_  
IN THE \_\_\_\_\_ COURT

\_\_\_\_\_  
Plaintiff

v.

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

\_\_\_\_\_  
Defendant

**ORDER FOR PRODUCTION**

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

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

\_\_\_\_\_, \_\_\_\_\_  
*Date*

\_\_\_\_\_  
Judge

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

**USE NOTE**

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

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

**ANNOTATIONS**

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

**The 2002 amendment**, effective May 1, 2002, deleted "The (plaintiff) (defendant) demanded production and the court finds that good cause exists for production;"



immediately following the form heading "Order For Production", deleted "in the (defendant) (plaintiff)" following "tangible evidence" in the form, and added the Use Note.

### **4-503. Subpoena.**

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

STATE OF NEW MEXICO

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

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

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

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

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

#### **SUBPOENA**

FOR APPEARANCE OF PERSON FOR  TRIAL  HEARING

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

FOR INSPECTION OF PREMISES OF A PARTY<sup>2</sup>

TO:

\_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place:

\_\_\_\_\_

Before Judge:

Date: \_\_\_\_\_, \_\_\_\_\_. Time: \_\_\_\_\_ (a.m.) (p.m.)  
to:

testify at trial

produce the following described books, documents or tangible things:

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

\_\_\_\_\_ (address).

YOU ARE ALSO COMMANDED to bring with you the following: *(describe document or objects to be produced)*

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

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

\_\_\_\_\_, \_\_\_\_\_ (date).

3

\_\_\_\_\_  
Judge, clerk or attorney

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

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

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON**

**MAKING SERVICE<sup>4</sup>**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
Person making service

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY<sup>4</sup>**

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

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

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

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

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

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

**TO BE PRINTED ON EACH SUBPOENA**

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

2. If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally

appear, may have a custodian of the books, documents or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.

3. The judge or clerk may issue a *pro se* party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.

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

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

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

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

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

If a subpoena

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

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

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

#### DUTIES IN RESPONDING TO SUBPOENA

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

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

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

#### ANNOTATIONS

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

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

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

#### **4-504. Subpoena.**

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

STATE OF NEW MEXICO

\_\_\_\_\_ COUNTY

METROPOLITAN COURT

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

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

v.

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

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

**SUBPOENA FOR APPEARANCE OF PERSON FOR A STATEMENT:**

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place:

Date: \_\_\_\_\_, \_\_\_\_\_. Time: \_\_\_\_\_ (a.m.) (p.m.)

to give a statement in the above case.

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

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

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

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE <sup>3</sup>**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
Person making service

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY<sup>3</sup>**

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

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

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

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

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

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

**TO BE PRINTED ON EACH SUBPOENA**

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

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

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

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

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

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

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

If a subpoena

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



**DUTIES IN RESPONDING TO SUBPOENA**

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

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

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

**ANNOTATIONS**

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

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

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

**4-505. Subpoena.**

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

STATE OF NEW MEXICO

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

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

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

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

v.

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

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

**SUBPOENA FOR APPEARANCE OF PERSON FOR<sup>2</sup>  
[ ] DEPOSITION [ ] TRIAL**

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place:

Date: \_\_\_\_\_, \_\_\_\_\_ Time: \_\_\_\_\_ (a.m.) (p.m.)

to:

[ ] testify at the taking of a deposition in the above case.

[ ] testify at trial.

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

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

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

\_\_\_\_\_  
Judge, clerk or attorney

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, a witness fee in the amount of \_\_\_\_\_ and mileage in the amount of \$ \_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
Deputy sheriff

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

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$ \_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
Person making service

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

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

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

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

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

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

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

**TO BE PRINTED ON EACH SUBPOENA**

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

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

3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

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

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

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

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

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

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

If a subpoena:

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

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

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

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

[Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20, 2005; as amended by Supreme Court Order No. 08-8300-02, effective March 15, 2008.]

#### **ANNOTATIONS**

**The 2002 amendment**, effective November 1, 2002, deleted the references for "subpoena for documents or objects" and "inspection of premises" under the heading "Subpoena"; deleted the Certificate of Service by Attorney section in the form; renumbered former Use Note 1 as present Use Note 2, inserted present Use Note 1; in

Use Note 3, inserted the second, third and sixth sentences, and deleted Use Note 4 which read "To be completed only if the subpoena is commanding production of documents and things or inspection of premises before trial. If the subpoena is commanding production of documents and things or inspection of premises before trial, it must be served on each party in the manner provided by Rule 1-005. If service is by a party, an affidavit of service must be used instead of a certificate of service"; deleted the second paragraph under the heading "Protection of Persons Subject to Subpoenas" which formerly read "A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial"; in the third paragraph, inserted "or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action" at the end of the first sentence, and, in the second sentence inserted "an objection is served or a motion to quash is filed and served on the parties".

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

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

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

#### **4-505A. Subpoena for production or inspection.**

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

STATE OF NEW MEXICO

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

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

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

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

v.

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

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

**SUBPOENA FOR**

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

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

TO:

YOU ARE HEREBY COMMANDED ON:

DATE: \_\_\_\_\_, \_\_\_\_\_ TIME: \_\_\_\_\_ (a.m.) (p.m.)

TO:

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

at (address).

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

ABSENT A COURT ORDER, THE ABOVE DATE SHALL NOT BE LESS THAN FIFTEEN (15) DAYS FROM THE DATE YOU RECEIVED THIS SUBPOENA. UNLESS ORDERED BY THE COURT, DO NOT RESPOND TO THIS SUBPOENA BEFORE THAT DATE.

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

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

**READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA".**

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

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

\_\_\_\_\_  
Judge, clerk or attorney

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the

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

\_\_\_\_\_  
Deputy sheriff

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

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$\_\_\_\_\_ (*insert the amount of fee tendered or, if no fee is tendered, "none"*).

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (*date*).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

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

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

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

(2) \_\_\_\_\_



*(Name of party)*

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

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

**TO BE PRINTED ON EACH SUBPOENA**

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

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

3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

**PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

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

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

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

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

If a subpoena:

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

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

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

#### DUTIES IN RESPONDING TO SUBPOENA

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

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

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

[Adopted, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-02, effective March 15, 2008.]

#### ANNOTATIONS

**Effective dates.**— Pursuant to a court order dated September 10, 2002, this form is effective November 1, 2002.

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

#### 4-506. Scheduling order.

[2-306, 3-306]

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

v.

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

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

**SCHEDULING ORDER<sup>1</sup>**

The parties shall comply with the following scheduling order:

1. Motions to amend the pleadings or to join parties must be filed by \_\_\_\_\_ (date)<sup>2</sup>.
2. Motions addressed to the pleadings must be filed by \_\_\_\_\_ (date).
3. Any permitted discovery must be completed by \_\_\_\_\_ (date).
4. All motions must be filed by \_\_\_\_\_ (date).
5. The plaintiff shall disclose to the defendant a witness list, including the names, addresses and telephone numbers of their witnesses, along with a summary of the testimony of each witness by \_\_\_\_\_ (date).
6. The defendant shall disclose to the plaintiff a witness list, including the names, addresses and telephone numbers of their witnesses, along with a summary of the testimony of each witness by \_\_\_\_\_ (date).
7. The plaintiff shall make all of plaintiff's exhibits available to each defendant for inspection or copying no later than \_\_\_\_\_ (date).
8. The defendant shall make all of defendant's exhibits available to each plaintiff for inspection or copying no later than \_\_\_\_\_ (date).
9. [Proposed jury instructions shall be submitted to the court by \_\_\_\_\_ (date).]<sup>3</sup>  
  
[Proposed findings of fact and conclusions of law shall be submitted to the court by \_\_\_\_\_ (date).]
10. Any party may request a pretrial conference by filing a written request stating the purpose of the conference. The parties shall advise the court promptly if the case is settled.  
[A settlement conference is scheduled on \_\_\_\_\_ (date).]  
[A motion hearing will be held on \_\_\_\_\_ (date).]  
[A pretrial conference will be held on \_\_\_\_\_ (date).]

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

This matter is set for [jury] [non-jury] trial on \_\_\_\_\_ (date).

If it is brought to the attention of the court that a party has failed to comply with this order, the court may: order such party to permit the discovery or inspection of materials not previously disclosed; grant a continuance; prohibit the party from calling a witness not disclosed; prohibit the party from introducing in evidence the material not disclosed; or enter such other order as it deems appropriate under the circumstances, including, but not limited to, holding an attorney or party in contempt of court.

Failure to comply with any provision of this order, may result in a finding of contempt of court and punished by fine or imprisonment.

\_\_\_\_\_  
Judge

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

USE NOTE

1. This form may be adapted to local practice. For example, the court may want to require settlement conferences or pretrial conferences, or may schedule docket calls, etc. Dates should be in consecutive order.
2. Dates should be calendar dates, not " \_\_\_\_\_ days after entry of this order", or " \_\_\_\_\_ days before trial".
3. The alternatives in this paragraph may be used only if a party is represented by an attorney.

[Approved, effective December 17, 2001.]

**ANNOTATIONS**

**Effective dates.**— Pursuant to a court order dated October 22, 2001, this form is effective December 17, 2001.

**4-507. Scheduling order.**

[District Court Civil 1-016]

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

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

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

v.

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

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

**SCHEDULING ORDER<sup>1</sup>**

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

1. Motions to amend the pleadings or to join parties shall be filed by \_\_\_\_\_ (date).
2. Motions addressed to the pleadings shall be filed by \_\_\_\_\_ (date).
- \*3. Plaintiffs shall file with the court a list of all lay witnesses who may be called to testify at trial by \_\_\_\_\_ (date).
- \*4. Defendants shall file with the court a list of all lay witnesses who may be called to testify at trial by \_\_\_\_\_ (date).
- \*5. Plaintiffs shall file with the court a list of all expert witnesses who may be called to testify at trial by \_\_\_\_\_ (date).
- \*6. Defendants shall file with the court a list of all expert witnesses who may be called to testify at trial by \_\_\_\_\_ (date).
7. Discovery shall be completed by \_\_\_\_\_ (date). Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably may comply with discovery requests prior to the deadline.
8. All other motions, except for motions *in limine*, shall be filed by \_\_\_\_\_ (date).
- \*9. All parties shall file with the court an exhibit list by \_\_\_\_\_ (date). The exhibit list shall state the reasonable place where such exhibits may be inspected and copied.
- \*10. All parties shall file specific objections to other parties' proposed exhibits by \_\_\_\_\_ (date).
- [11. Plaintiffs shall submit their portions of a pretrial order to defendants by \_\_\_\_\_ (date).  
Defendants shall file the proposed final pretrial order with the court by \_\_\_\_\_ (date).]

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

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

or

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

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

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

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

---

District Judge

#### USE NOTES

1. Dates should be in consecutive order.

2. Dates should be calendar dates, not "

\_\_\_\_\_ days after entry of this order", or "\_\_\_\_\_ days before trial".

3. Depending on the complexity of the case, the court may wish to use the paragraphs that are bracketed, which require submission of a pretrial report and final witness list.

4. This form may be adapted to local practice. For example, the court may want to require settlement conferences or pretrial conferences, or may schedule docket calls, etc.

5. If a scheduling order is not appropriate, the court shall enter an order indicating that no scheduling order will be entered, indicating the reason, and shall set the case for trial not later than eighteen (18) months after the filing of the complaint. Rule 1-016(B) NMRA.

[Approved, effective July 1, 2002.]

**ANNOTATIONS**

**Effective dates.**— Pursuant to a court order dated May 20, 2002, this form is effective July 1, 2002.

**ARTICLE 6  
Trials**

**4-601. Subpoena for jury service.**

[2-603, 3-603]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

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

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

**SUBPOENA FOR JURY SERVICE**

TO:

YOU ARE ORDERED TO APPEAR before this court located at  
, on

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

\_\_\_\_\_, \_\_\_\_\_  
Judge or Clerk

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

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



# ARTICLE 7 Judgment and Appeal

## 4-701. Judgment.

[2-701, 3-701]

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

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

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

against

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

### JUDGMENT

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

in favor of plaintiff and against defendant.

in favor of defendant and against plaintiff.

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

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

Damages	\$ _____
Interest to date ( <i>if allowable</i> )	\$ _____
Attorney fee ( <i>if allowable</i> )	\$ _____
Costs	\$ _____
TOTAL JUDGMENT	\$ _____

(check if appropriate)

that plaintiff have possession of:  
the premises at

\_\_\_\_\_  
(for forcible entry or detainer)

or

the following personal property:

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

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

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

USE NOTE

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

[As amended, effective October 1, 1996.]

**ANNOTATIONS**

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

**4-702. Motion for default judgment.**

[2-702, 3-702]

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

\_\_\_\_\_ COUNTY

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

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

**MOTION FOR DEFAULT JUDGMENT**

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

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

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

The defendant(s) \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (*have*) (*has*) not entered an appearance or filed an Answer or other responsive pleading to the Complaint.

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

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

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

\_\_\_\_\_

Attorney for Plaintiff

If the Plaintiff is not represented by an attorney, this motion must be sworn to by the plaintiff.

I, \_\_\_\_\_, upon my oath or affirmation do solemnly declare or affirm that this motion contains a complete, accurate statement of the facts to the best of my knowledge. I understand that if I make a material misstatement of fact, I may be prosecuted and punished for perjury.

\_\_\_\_\_  
Signature of Plaintiff

My commission expires:  
(SEAL)

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

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

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

[2-303, 2-702, 3-303, 3-702]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

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

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

**DEFAULT JUDGMENT  
JUDGMENT ON THE PLEADINGS**

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

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

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

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

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

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

in favor of plaintiff and against defendant.

in favor of defendant and against plaintiff.

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:  
(Plaintiff) (Defendant) recover the following:

Damages	\$
Other Damages	\$
Interest to Date <i>(if allowable)</i>	\$
Attorney Fee <i>(if allowable)</i>	\$
Costs	\$
TOTAL JUDGMENT	\$

*(check if appropriate)*

[Plaintiff] [Defendant] have possession of:

the premises at

*(for forcible entry or detainer)*

or

the following personal property:

*(for replevin and restitution actions)*

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

Judge

[As amended, effective October 1, 1987; October 1, 1991.]

### ANNOTATIONS

**The 1991 amendment**, effective October 1, 1991, inserted "on motion of (plaintiff) (defendant) (the court itself) and the court finding it has jurisdiction and that:" near the beginning; in the first group of alternatives, deleted "Upon motion of the (plaintiff)

(defendant) for a judgment on the pleadings, the court finds that" from the beginning of the third alternative and added the fourth alternative; and in the order, inserted the line for "Other damages" and inserted "[Defendant]" and "and restitution".

**4-704. Motion to set aside default judgment.**

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

STATE OF NEW MEXICO

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

\_\_\_\_\_ COURT

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

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

v.

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

**MOTION TO SET ASIDE DEFAULT JUDGMENT**

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

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

No appeal has been taken from the judgment; and

Undersigned has a defense to present; and

My excuse for being in default is:

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

*(Plaintiff) (Defendant)*

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

**CERTIFICATE OF SERVICE<sup>1</sup>**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this  
\_\_\_\_\_ (*insert paper served, such as "answer" or "notice"*) was

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

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

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

City, State \_\_\_\_\_

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

[faxed by \_\_\_\_\_ (*name of person who faxed document*) to  
\_\_\_\_\_ (*name of recipient*) at \_\_\_\_\_ (*telephone  
number*). The transmission was reported as complete. The time and date of the  
transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (*date*).]

[e-mailed to \_\_\_\_\_ (*name of party or attorney*) at  
\_\_\_\_\_ (*electronic mail address of recipient*) upon agreement of the party  
to accept electronic service. The transmission was reported as complete. The time and  
date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_  
(*date*).]

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

\_\_\_\_\_

Signature of person sending paper

\_\_\_\_\_

Date of signature

**USE NOTE**

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

[As amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**ANNOTATIONS**

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

**The 2005 amendment**, effective March 21, 2005, of this form added the certificate of service at the end of the form and substituted “motion must be served on” for “mailed or delivered to” in use Note 1.

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

[2-702, 3-702]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

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

against

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

**ORDER SETTING ASIDE DEFAULT JUDGMENT AND GIVING NOTICE OF TRIAL DATE**

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

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

Defendant shall file an Answer to the Complaint within \_\_\_\_\_ days.

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

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

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



**4-706. Satisfaction of judgment.**

[2-704, 3-704]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

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

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

**SATISFACTION OF JUDGMENT**

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

\_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_  
Party or Attorney

\_\_\_\_\_  
Address

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

**4-707. Notice of appeal.**

[1-072, 1-073, 2-706, 3-706]

STATE OF NEW MEXICO

IN THE DISTRICT COURT Dist. Court No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, JUDICIAL DISTRICT  
\_\_\_\_\_, COUNTY

**(Mag.) (Met.) Ct. No.** \_\_\_\_\_

\_\_\_\_\_, Plaintiff  
*(appellant) (appellee)*

against \_\_\_\_\_, Defendant  
*(appellant) (appellee)*  
\_\_\_\_\_, Garnishee (if applicable)

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

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

\_\_\_\_\_  
Signed

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

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

\_\_\_\_\_  
City, state and zip code (*print*)

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

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

**CERTIFICATE OF SERVICE BY ATTORNEY**

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

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

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

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

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

\_\_\_\_\_  
(*Attorney for appellant*)

\_\_\_\_\_  
Signature

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

**AFFIDAVIT OF SERVICE OF PARTY**

I declare under penalty of perjury that a copy of this notice of appeal was served on the following persons or entities by *(delivery)* *(mail)* on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ :

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

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

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

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

\_\_\_\_\_  
Signature of appellant

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

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

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

USE NOTES

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

[As amended, effective January 1, 1996.]

**ANNOTATIONS**

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

**4-707A. Appeal bond.**

[1-072, 1-073, 2-706, 3-706]

STATE OF NEW MEXICO

IN THE DISTRICT COURT

Dist. Court No. \_\_\_\_\_

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

\_\_\_\_\_ COUNTY

(Mag.) (Met.) Ct. No. \_\_\_\_\_

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

(appellant) (appellee)

against

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

(appellant) (appellee)

\_\_\_\_\_, Garnishee (if applicable)

**APPEAL BOND <sup>1</sup>**

Appeal bond is hereby set at \$ \_\_\_\_\_

\_\_\_\_\_  
Judge

USE NOTE

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

[Adopted, effective January 1, 1996.]

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

[2-705, 3-706]

STATE OF NEW MEXICO

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

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

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

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

\_\_\_\_\_, Garnishee

1. \_\_\_\_\_  
Name of plaintiff or plaintiff's attorney

\_\_\_\_\_  
Address of plaintiff or plaintiff's attorney

2. \_\_\_\_\_  
Name of defendant or defendant's attorney

\_\_\_\_\_  
Address of defendant or defendant's attorney

3. Attached: *(Please check appropriate boxes.)*

COMPLAINT

ANSWER

OTHER PAPERS AND PLEADINGS

JUDGMENT OR FINAL ORDER (with date of filing)

EXHIBITS

TRANSCRIPT OF THE PROCEEDINGS

\_\_\_\_\_  
Judge

[As amended, effective July 1, 1996.]

### ANNOTATIONS

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

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

[2-703, 3-704]

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

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

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

against

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

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

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

[ ] to the judgment creditor.

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

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

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

[Approved, effective October 1, 1991.]

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

[2-703, 3-704]

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

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

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

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

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

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

(*judgment*) (*order*) (*writ*):

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

[ ] is void because

*(set forth the reason the judgment is void)*

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

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

[It is further ordered that  
]

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

Dated:

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

[Approved, effective October 1, 1991.]

## **ARTICLE 8 Special Proceedings**

### **4-801. Writ of execution.**

[2-801, 3-801]

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

\_\_\_\_\_  
COUNTY

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

\_\_\_\_\_, Plaintiff  
\_\_\_\_\_, Plaintiff's Address

v.

\_\_\_\_\_, Defendant  
\_\_\_\_\_, Defendant's Address

**WRIT OF EXECUTION**

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

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

\_\_\_\_\_, \_\_\_\_\_ Judge or clerk

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

**RETURN**

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

The writ was served on judgment debtor on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

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

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

Property seized:

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

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

Date of return: \_\_\_\_\_

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



## USE NOTES

*The sheriff is obligated by law to make timely return.*

*Only non-exempt property may be seized. The sheriff may not seize any personal clothing, furniture or books or any jewelry unless the total value of all jewelry exceeds \$2500.*

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

## ANNOTATIONS

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

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

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

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

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

### **4-801A. Writ of execution.**

[1-065.1]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT

\_\_\_\_\_  
COUNTY

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

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

v.

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

**WRIT OF EXECUTION**

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

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

\_\_\_\_\_, \_\_\_\_\_ Judge or clerk

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

**RETURN**

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

*(check appropriate box or boxes and fill in blanks)*

The writ was served on judgment debtor on \_\_\_\_\_, \_\_\_\_\_, and

full payment was made

partial payment was made in the amount of \_\_\_\_\_

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

**Property seized:**

I levied upon the following real property

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

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

Date of return: \_\_\_\_\_

SHERIFF OF

COUNTY, State of New Mexico

By

Deputy or other authorized person

**USE NOTE**

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

*Only non-exempt property may be seized. The sheriff may not seize any personal clothing, furniture or books or any jewelry unless the total value of all jewelry exceeds \$2500.*

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

**ANNOTATIONS**

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

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

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

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

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

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

\_\_\_\_\_  
COUNTY

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

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

**WRIT OF EXECUTION IN FORCIBLE ENTRY OR DETAINER**

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

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

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

**RETURN**

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

SHERIFF OF  
COUNTY, State of New  
Mexico  
By  
Deputy

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

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

**ANNOTATIONS**

**Cross references.**— For statutory form of forcible entry or detainer, see 35-10-6 NMSA 1978.

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, in the Return, substituted "Property seized:" for "[ ] Levy and Sale:" near the middle and deleted from near the end, lines relating to date of sale, amount of interest, amount of accrued costs, amount received, and amount paid to judgment creditor.

**The 2003 amendment**, effective May 15, 2003, in the first paragraph, deleted "without unnecessary delay and to levy against personal property of the defendant in this county, the sum of \$ \_\_\_\_\_ plus interest at the rate of \_\_\_\_\_% per year, and your fees

thereon," following "restore possession of the premises to plaintiff" and substituted "the court" for "me within thirty (30) days" following "return this writ to"; in the second paragraph, deleted the language concerning service on judgment debtors and seizure of personal property.

#### **4-803. Claim of exemptions on execution.**

[1-065.1, 2-801, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

#### **CLAIM OF EXEMPTIONS ON EXECUTION**

**A JUDGMENT HAS BEEN ENTERED AGAINST YOU. ALL OF THE PROPERTY YOU POSSESS MAY BE SEIZED AND SOLD TO PAY THIS JUDGMENT. YOU MUST COMPLETE AND RETURN THIS FORM WITHIN TEN (10) DAYS TO CLAIM ANY STATUTORY EXEMPTION FROM THIS SEIZURE AND SALE.**

*(check only applicable boxes)*

#### **Part I. Homestead exemption**

*(This part is for use only in the district court.)*

Judgment debtor owns, leases or is purchasing a dwelling house which judgment debtor occupies and is entitled to hold exempt a homestead in the amount of thirty thousand dollars (\$30,000) under Section 42-10-9 NMSA 1978.

#### **Part II. Exemption in lieu of homestead exemption**

*(Parts II and III are for use in the district court, magistrate court and metropolitan court.)*

Judgment debtor is a resident of this state who does not claim a homestead exemption, but claims an exemption of real or personal property in the amount of two thousand dollars (\$2,000) under Section 42-10-10 NMSA 1978. The property claimed to be exempt is as follows:

**LIST PROPERTY**

**STATED VALUE**

\_\_\_\_\_  
\$  
\_\_\_\_\_  
\$  
*(Attach additional page if necessary)*

**Part III. Personal property exemptions**

Unless the judgment debtor files a written waiver of exemption, the sheriff may not seize the judgment debtor's personal clothing, furniture or books.

In addition to the property claimed or listed as exempt above, the judgment debtor hereby claims the following exemptions:

*(check only applicable boxes)*

- personal property worth up to \$500

**LIST ITEMS**

**STATED VALUE**

\_\_\_\_\_  
\$  
*(Attach additional page if necessary)*

- tools of the trade worth up to \$1,500.  
Occupation of judgment debtor: \_\_\_\_\_

**LIST ITEMS**

**STATED VALUE**

\_\_\_\_\_  
\$  
*(Attach additional page if necessary)*

- one motor vehicle worth up to \$4,000 or that amount of equity in a more valuable vehicle

**MAKE, MODEL AND YEAR OF VEHICLE**

**FAIR MARKET VALUE**

\_\_\_\_\_  
\$  
*(Attach additional page if necessary)*

Amount of any lien on vehicle: \$\_\_\_\_\_ .

- jewelry worth up to \$2,500

**LIST JEWELRY ITEMS**

**STATED VALUE**

\_\_\_\_\_  
\$  
*(Attach additional page if necessary)*

- medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession; (*Attach separate sheet setting forth items claimed and the name of the household member and the medical condition of the member.*)
- pensions or retirement funds;
- not more than \$5,000 in benefits from a benevolent association of which the judgment debtor is a member;
- building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978;
- worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;
- occupational health benefits as provided by Section 52-3-37 NMSA 1978;
- unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;
- public assistance and welfare benefits;
- cash surrender values and benefits of life insurance contracts;
- payment from life, accident and health insurance policies or annuity contracts;
- crime victims' reparation fund payments;
- fraternal benefit society benefits;
- the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- a family allowance to a decedent's surviving spouse and children subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;

**THIS LIST MAY NOT BE COMPLETE. YOU MAY CLAIM ANY OTHER EXEMPTION PERMITTED BY LAW BY COMPLETING THE FOLLOWING:**

other exemption (*specify*)

I am aware of my exemption rights:

I desire to claim my exemption rights

I waive my right to claim my exemption rights to the following property

**LIST ITEMS**

**STATED VALUE**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Attach additional page if necessary)

I understand that by waiving my statutory right to exempt property, this property may be seized and sold.

**YOU MUST RETURN A COMPLETED AND SIGNED COPY OF THIS FORM TO THE CLERK OF THE COURT WHOSE ADDRESS IS SHOWN BELOW. YOU MUST ALSO SERVE A COPY ON THE JUDGMENT CREDITOR.**

\_\_\_\_\_ , \_\_\_\_\_

Signature of judgment debtor

**Return to clerk of the court**

\_\_\_\_\_  
Name of court

Printed name of judgment debtor

\_\_\_\_\_  
Address

Street address or P.O. box

\_\_\_\_\_  
City, state & zip code

City, state & zip code

Telephone number

**USE NOTE**

*The judgment creditor may dispute any of the claimed exemptions. If the judgment creditor disputes claimed exemptions and files a request for hearing on the claimed exemptions, the clerk will schedule a hearing on the claimed exemptions.*

[As amended, effective January 1, 1986; July 1, 1992; May 1, 1994; January 1, 1996.]

**ANNOTATIONS**



**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

**The 1994 amendment**, effective May 1, 1994, rewrote the paragraph in Part I to increase the amount of the exemption from \$20,000 to \$30,000, and to expand the applicability of the former section exemption.

**The 1996 amendment**, effective January 1, 1996, added the bold instruction line at the beginning of the form, rewrote Part III, rewrote the bold instruction line at the end of the form, and rewrote the Use Note.

**Case law.** — The postjudgment execution statutes are unconstitutional as not providing adequate notice of allowable exemptions and the right to a hearing. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

By creating exemptions from execution, New Mexico has granted judgment debtors a property interest in retaining their exempt property. While the state need not grant such exemptions, once given, the property rights they create are entitled to due process protection. *Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991).

#### **4-804. Order on claim of exemption and order to pay in execution proceedings.**

[1-065.1, 2-801, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff

against  
\_\_\_\_\_, Defendant

#### **ORDER ON CLAIM OF EXEMPTION AND ORDER TO PAY IN EXECUTION PROCEEDINGS**

This matter coming before the court, THE COURT FINDS:

- [ 1. At the time the writ of execution was served on the judgment debtor, the amount of \$\_\_\_\_\_ was unpaid and owing to the judgment creditor.
- [ 2. As a result of this execution proceeding, judgment creditor has spent additional costs of \$\_\_\_\_\_ .

[ 3. The total amount of judgment and costs to date is  
] \$\_\_\_\_\_ plus interest of \_\_\_\_\_ % per year  
from \_\_\_\_\_, \_\_\_\_\_ .

[ 4. An affidavit of service or return of service of the writ of  
] execution, a notice of right to claim exemption form, and a claim  
of exemption form were served on the judgment debtor(s) or  
their attorney of record, if any.

[ 5. The judgment debtor:

[ ] has not filed a claim of exemption; or

[ ] has filed a claim of exemption and the judgment creditor has  
not disputed the claim of exemption for the following property  
and \_\_\_\_\_ such \_\_\_\_\_ property \_\_\_\_\_ is \_\_\_\_\_ therefore  
exempt:

\_\_\_\_\_ ;  
and

the following disputed property is not exempt and may be  
seized and sold by the sheriff

### THE COURT ORDERS:

[ 1. The judgment creditor is awarded, in addition to the amount of the  
] judgment, the sum of \$\_\_\_\_\_ as additional costs.

[ 2. The following property held by the sheriff is exempt from execution and the  
] writ of execution in this case is hereby released and discharged as to that  
property:

[ 3. The sheriff may seize and sell the property of the judgment debtor except  
] as set forth above.

\_\_\_\_\_, \_\_\_\_\_ Judge

[As amended, effective July 1, 1992; January 1, 1996.]

### ANNOTATIONS

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

**The 1996 amendment**, effective January 1, 1996, rewrote Paragraphs 4 and 5 of the findings, and rewrote Paragraphs 2 and 3 of the order.

#### **4-805. Application for writ of garnishment.**

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

#### **APPLICATION FOR WRIT OF GARNISHMENT**

\_\_\_\_\_ the judgment creditor, states:

(1) The judgment creditor has a judgment dated \_\_\_\_\_ against the judgment debtor whose name is \_\_\_\_\_, and whose last known address is \_\_\_\_\_. The total of the principal, interest, costs and attorney's fees awarded by the judgment was \$\_\_\_\_\_.

Since the judgment was entered, additional interest at the judgment rate of \_\_\_\_\_ % and costs totals \$\_\_\_\_\_.

Payments totaling \$\_\_\_\_\_ have been received.

The unpaid balance now due is \$\_\_\_\_\_ (*insert this amount on Rule 4-806 as "Balance Due upon Application for Writ"*) plus interest from the date this Application is executed. Under the statute, costs of 10% and fees of up to 10% may be allowed.

The estimated costs would equal \$\_\_\_\_\_ ; and the judgment creditor will seek \$\_\_\_\_\_ in attorney fees.

(2) Judgment debtor, to my knowledge, does not have sufficient property within New Mexico subject to execution to satisfy the judgment. (*This allegation is not necessary prior to garnishment of funds for child support or alimony obligations.*)

(3) I have reason to believe, and do believe, that the garnishee, (*name of garnishee*)  
(*address*),  
holds or controls money or personal property which belongs to the judgment debtor or is indebted to the judgment debtor. The money or property held by the garnishee is not exempt from garnishment.

Therefore judgment creditor requests a Writ of Garnishment.

Judgment creditor or  
attorney for judgment creditor

Judgment creditor's name printed

Address of judgment creditor

Printed name of person signing  
for judgment creditor

Telephone of judgment creditor

\_\_\_\_\_  
Printed name of judgment creditor's attorney  
(*if any*)

\_\_\_\_\_  
Mailing address of judgment creditor's attorney  
(*number and street or P.O. box*)

\_\_\_\_\_  
City, state, zip code

\_\_\_\_\_  
Telephone number of judgment creditor's attorney

**AFFIDAVIT**

*(application must be sworn to  
unless signed by an attorney)*

Subscribed and sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary or other officer authorized  
to administer oaths

(seal)

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996.]

### ANNOTATIONS

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, in Item (1), substituted "upon Application for Writ" for "per Application"; in Item (2), added the parenthetical at the end; and deleted former Item (4), relating to said garnishee being a commercial bank, savings and loan association, credit union or representative payee.

**The 1996 amendment**, effective January 1, 1996, deleted "and affidavit" from the form heading, and added the "Affidavit" heading and the parenthetical use note preceding the affidavit form.

### 4-805A. Application for writ of execution.

[For use with Magistrate Court Rule 2-801  
and Metropolitan Court Rule 3-801]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
IN THE \_\_\_\_\_ COURT

\_\_\_\_\_  
Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Defendant

### APPLICATION FOR WRIT OF EXECUTION

\_\_\_\_\_, the judgment creditor, states:

(1) The judgment creditor has a judgment dated \_\_\_\_\_ (*date judgment filed*) against the judgment debtor whose name is \_\_\_\_\_, and whose last known address is \_\_\_\_\_. The total of the principal, interest, costs and attorney's fees awarded by the judgment was \$\_\_\_\_\_. Since the judgment was entered, additional interest at the judgment rate of \_\_\_\_\_% and costs total \$\_\_\_\_\_.

Payments totaling \$\_\_\_\_\_ have been received.

The unpaid balance now due is \$\_\_\_\_\_ (*insert this amount on Civil Form 4-801 NMRA as "Balance Due upon Application for Writ"*) plus interest from the date this Application is executed.

The estimated costs would equal \$\_\_\_\_\_ ; and the judgment creditor will seek \$\_\_\_\_\_ in attorney fees.

(2) (*check one of the following*)

I served the judgment debtor with a notice of right to claim exemptions more than ten (10) days prior to filing this application for writ of execution and the judgment debtor has not filed a claim of exemption for the property to be seized and sold.<sup>1</sup>

The judgment debtor has filed a waiver of the right to claim exemption for the property to be seized and sold.<sup>2</sup>

The judgment debtor is not a natural person.

The judgment creditor requests the court to issue a Writ of Execution for non-exempt property for the judgment debt.

Judgment creditor or  
attorney for judgment creditor

Judgment creditor's name printed

Address of judgment creditor

Printed name of person signing for  
judgment creditor

Telephone of judgment creditor

\_\_\_\_\_  
Printed name of judgment creditor's attorney  
(if any)

\_\_\_\_\_  
Mailing address of judgment creditor's attorney  
(number and street or P.O. box)

\_\_\_\_\_  
City, State, zip code

\_\_\_\_\_  
Telephone number of judgment creditor's attorney

**AFFIDAVIT**

*(This application must be sworn to unless it is signed by an attorney.)*

I declare under penalty of perjury that the foregoing is true and correct.

Subscribed and sworn to before me this day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ (seal)

Notary or other officer authorized  
to administer oaths

USE NOTE

1. If the judgment debtor is a natural person Civil Form 4-808A NMRA, Notice of Right to Claim Exemptions from Execution, must have been served on the judgment debtor.
2. This alternative may be checked if the judgment debtor filed a waiver of the right to claim exemptions. See Civil Form 4-803, Claim of Exemptions, also contains the waiver form.

[Approved, effective May 15, 2003.]

**ANNOTATIONS**

**Effective dates.**— Pursuant to a court order dated March 21, 2003, this form is effective May 15, 2003.

**4-806. Writ of garnishment.**

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
[IN THE [MAGISTRATE] [METROPOLITAN] COURT]  
[\_\_\_\_\_ JUDICIAL DISTRICT]  
\_\_\_\_\_, Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

Balance Due Upon Application for Writ: \$ \_\_\_\_\_

Includes Interest at \_\_\_\_\_ %

Through \_\_\_\_\_, \_\_\_\_\_ (date)

**WRIT OF GARNISHMENT**

THE STATE OF NEW MEXICO to \_\_\_\_\_, garnishee.

\_\_\_\_\_ is the judgment debtor in this case and owes the amount set out above to the judgment creditor \_\_\_\_\_ whose address is \_\_\_\_\_.

The above judgment creditor believes that you hold or control money or property that belongs to the judgment debtor.

YOU ARE ORDERED to file a written answer with the \_\_\_\_\_ court located at \_\_\_\_\_ within twenty (20) days from the day you receive this writ. Your answer must be under oath and on the attached form (*answer by garnishee*).

YOU ARE FURTHER ORDERED, as follows:

1. If you owe the judgment debtor any money (other than wages), or become indebted to the judgment debtor before filing your answer, you must keep a sufficient amount of that money to satisfy the judgment and all costs and attorney fees due as a result of service of this writ and not pay it to the judgment debtor, unless this court enters an order releasing this writ of garnishment.

2. If the judgment debtor is an employee of yours, unless the debt is for child or spousal support, you shall pay your employee, the judgment debtor, only

A. seventy-five percent (75%) of the debtor's disposable earnings (salary less social security, federal and state withholdings, and any other deduction required by law) for any pay period;

OR

B. an amount each week equal to forty (40) times the federal minimum hourly wage rate;

whichever is greater.

If the debt is for child support or spousal support payments, you shall pay the judgment debtor fifty percent (50%) of the debtor's disposable earnings (*salary less social security, federal and state withholding*).



If employee's wages or salary are subject to more than one garnishment or wage withholding proceeding, the writs shall be satisfied in the order they have been served on you.<sup>1</sup>

In no event may you withhold from your employee's net disposable earnings more than fifty percent (50%) of the employee's net disposable earnings if one of the writs is for child or spousal support or more than twenty-five percent (25%) if none of the garnishments is for child or spousal support.<sup>2</sup>

Any wages you owe the employee in excess of that amount or that you may come to owe the employee in excess of that amount must be kept by you until further order of this court. *(A table giving equivalent exemptions for pay periods of other than one (1) week may be obtained from the Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michaels Drive, Santa Fe, New Mexico 87503.)*

3. If you have any property that belongs to the judgment debtor, including any rights, credits, bonds, bills, notes, drafts and other rights to property or money that belongs to the judgment debtor, or if you acquire any such property, money or rights to property or money before filing your answer, you must keep a sufficient amount of that property to satisfy the existing judgment and costs and not turn it over to the judgment debtor unless the court enters an order releasing the property or money.

4. If you hold property or money belonging to the judgment debtor, within four (4) business days after service of this writ, you are to mail or deliver a copy of this writ and the application for writ provided by the judgment creditor. If you hold property or money of the judgment debtor's other than wages and the debtor is a natural person, you shall also mail or deliver to the judgment debtor, the attached notice of right to claim exemptions and a copy of the attached claim of exemption forms to each person identified as a judgment debtor. You shall also send or deliver a copy of your answer to this writ to the judgment debtor and to the judgment creditor.

5. The court will be asked to enter an order awarding \$\_\_\_\_\_ for the judgment creditor's costs relative to the service of the writ of garnishment and \$\_\_\_\_\_ for judgment creditor's attorney fees in connection with the writ of garnishment in addition to \$\_\_\_\_\_, the "Balance Due Application for Writ".

**THIS IS A COURT ORDER.** If you fail to file the answer, or if you disobey any of these orders, a judgment may be entered against you for the full amount of the unpaid judgment in this case.

(Seal)

\_\_\_\_\_  
Judge or clerk

**RETURN**

STATE OF NEW MEXICO )

COUNTY OF \_\_\_\_\_ ) ss.  
\_\_\_\_\_ )

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:**

I certify that I served this writ in said county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor and a copy of the claim of exemption form for each judgment debtor to \_\_\_\_\_ garnishee.

***(For garnishment of wages, serve only copies of the application for writ of garnishment, writ of garnishment and answer form. For garnishment other than wages, if the judgment debtor is a natural person, serve the application for writ of garnishment, the writ of garnishment, a copy of the notice of right to claim exemptions, a copy of the claim of exemption form and a copy of the answer by garnishee. Judgment debtors who are not natural persons are not entitled to garnishment exemptions.)***

By \_\_\_\_\_

Name

\_\_\_\_\_

Title

Fees:

SHERIFF OF  
COUNTY, State of New Mexico

By

Deputy

**RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE:**

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this writ in said county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor and a copy of the claim of exemption form for each judgment debtor to \_\_\_\_\_ garnishee.

By \_\_\_\_\_

Name

\_\_\_\_\_

Title

Signature of private person  
making service

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Judge, notary or other officer  
authorized to administer oaths

Official title

#### USE NOTES

1. Section 35-12-9 NMSA 1978 provides that if an employee's wages are subject to more than one garnishment proceeding, the writs shall be satisfied in the order in which they are served on the garnishee.
2. Section 35-12-7(C) NMSA 1978 provides that the maximum amount that may be taken from a person's disposable earnings is fifty percent (50%) of the employee's disposable earnings.

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; December 3, 2001.]

#### ANNOTATIONS

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, rewrote this form.

**The 1996 amendment**, effective January 1, 1996, substituted "unless the court enters an order releasing this writ of garnishment" for "unless this court gives permission" in Paragraph 1, substituted "unless the court enters an order releasing the property or money" for "unless and until this court gives permission" in Paragraph 3, and rewrote Paragraph 4.

**The 2001 amendment**, effective December 3, 2001, in the introductory language in Paragraph 2, inserted "or spousal" following "for child", and "your employee" following "you shall pay"; in the first undesignated paragraph following Paragraph 2, inserted "or spousal support" following "child support"; added the second and third undesignated

paragraphs following Paragraph 2; inserted "and the debtor is a natural person" following "than wages" in Paragraph 4; inserted "For garnishment of wages, serve only copies of the application for writ of garnishment" in the second paragraph under "Return"; and added the Use Notes.

#### 4-807. Answer by garnishee.

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
[IN THE [MAGISTRATE] [METROPOLITAN] COURT]  
[\_\_\_\_\_ JUDICIAL DISTRICT]  
\_\_\_\_\_, Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

\_\_\_\_\_  
Garnishee

#### ANSWER BY GARNISHEE

In answer to the writ of garnishment, garnishee states:

*(Complete only applicable parts of this form.)*

#### 1. Wages

I do not employ the judgment debtor or pay the judgment debtor any wages.

The judgment debtor was my employee but is not any longer. Judgment debtor's employment was ended \_\_\_\_\_, \_\_\_\_\_, before I was served with the writ of garnishment.

I pay the judgment debtor \$ \_\_\_\_\_ *(per week) (per hour)*  
*(per \_\_\_\_\_) as wages.*

GROSS WAGES per pay period	\$
Federal income tax	\$
F.I.C.A.	\$
State income tax	\$
Other deduction required by law	\$

NET WAGES per pay period	\$
75% of net wages per pay period	\$
40 times weekly federal minimum wage for each week in pay period _____	\$

**2. Money other than wages**

I do not now owe the judgment debtor any money.

I owe the judgment debtor \$\_\_\_\_\_.

I did not owe the judgment debtor any money at the time of the service of the writ of garnishment; however, between the date of the service of the writ of garnishment and the date of filing this answer the sum of \$\_\_\_\_\_ belonging to the judgment debtor came into my possession.

On the date of this answer I do not now owe the judgment debtor any money.

**3. Property other than money**

I have no property of the judgment debtor in my possession and have not received any since receiving the writ of garnishment.

I have in my possession the following property that belongs to the judgment debtor:

<i>(description)</i>	<i>(approximate value)</i>
_____	\$
_____	\$

**4. Wage withholding**

*(check and complete all applicable alternatives)*

I am presently withholding \_\_\_\_\_% of the judgment debtor's net disposable earnings pursuant to the Support Enforcement Act. *(Attach a copy of order and file it with this answer.)*

I have been served with other writs or orders to withhold wages of the above judgment debtor that have not been satisfied. *(If you have been served with other writs of garnishment or court orders to withhold wages of the above judgment debtor, attach and file a copy of each writ or order with this answer.)*

The percent of the judgment debtor employee's net disposable earnings I am presently withholding for all garnishment proceedings is \_\_\_\_\_% of the debtor's net disposable earnings.

5. **Money other than wages**

I have been served with other writs or orders to withhold money owed to the above judgment debtor that have not yet been satisfied. (*Attach a copy of each order and file it with this answer.*)

6. **Service requirements compliance**

I have sent the following papers which have been provided to me by the judgment creditor to the judgment debtor:

**if wages withheld:** a copy of the application for a writ of garnishment; the writ of garnishment; and a copy of this answer have been mailed to each judgment debtor.

**if money or property other than wages withheld:** a copy of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form and a copy of this answer have been mailed to each judgment debtor.

I am not aware of the location or address of the judgment debtor and therefore am unable to serve the notices set forth in this paragraph.

A copy of this answer has been mailed or delivered to the judgment creditor.

7. **Attorney fees**

The garnishee has incurred \$ \_\_\_\_\_ in attorney fees in preparing this answer.

The undersigned, the named garnishee or an officer, partner or authorized representative of the named garnishee verifies that the foregoing answer by garnishee is true to the best of garnishee's knowledge and belief, that the undersigned is the custodian of the records upon which the answer is based and that the answer is true and correct based upon these records.

Signature of garnishee or attorney

Printed name of person signing

Address

City, state and zip code (print)

Telephone number

Subscribed and sworn to before  
me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Judge, notary or other officer  
authorized to administer oaths

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996;  
December 3, 2001.]

### ANNOTATIONS

**Cross references.**— For attorney fees and costs, see 35-12-16 NMSA 1978.

For garnishments, see 35-12-18 NMSA 1978.

For child support withholding, see 40-4A-4.1 NMSA 1978 and 40-4A-6 NMSA 1978.

For duties of payor, see 40-4A-8 NMSA 1978.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

**The 1996 amendment**, effective January 1, 1996, rewrote the form.

**The 2001 amendment**, effective December 3, 2001, in Paragraph 4, required that all alternatives be completed that were applicable and inserted the third alternative; and, at the end of the form, included the signature of the garnishee or attorney, including the address and telephone number.

### **4-808. Notice of right to claim exemptions (*garnishment*).**

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[ \_\_\_\_\_ JUDICIAL DISTRICT]  
\_\_\_\_\_, Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

**NOTICE OF RIGHT TO CLAIM EXEMPTIONS (GARNISHMENT)**

**1. THE JUDGMENT CREDITOR IS GARNISHING YOUR PROPERTY, WHICH MAY INCLUDE YOUR BANK ACCOUNT:**

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor has started to collect that money from your property, which may include your bank account.

**2. PURPOSE OF THIS NOTICE:**

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. These funds or property are protected under federal or state law. Money or property that may not be taken is called "exempt" property. You may claim an exemption by filing with the court a claim of exemption (*garnishment*) form. There are limits on how much of your wages may be taken. You do not need to file a claim of exemption form to protect your exempt wages.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt. YOU MAY WISH TO CONSULT AN ATTORNEY BEFORE COMPLETING AND FILING THIS FORM.

**3. PARTIAL LIST OF EXEMPTIONS:**

- a. social security benefits (OASDI, SSI);
- b. public assistance benefits (AFDC, welfare, GA);
- c. life, accident or health insurance proceeds;
- d. workers' compensation benefits (*part may be garnished for child or spousal support*);
- e. occupational health benefits;
- f. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978;
- g. veterans' benefits;
- h. pensions or retirement funds;



- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978;
- j. crime victims' reparation fund payments;
- k. a family allowance to a decedent's surviving spouse and children, subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- l. the minimum amount of shares necessary for certain cooperative associations as provided by Section 53-4-28 NMSA 1978;
- m. fraternal benefit society payments;
- n. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978.

#### **4. HOW TO PROTECT EXEMPT PROPERTY:**

A "claim of exemption (*garnishment*)" form is attached for you to complete and file with the court. YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions (*garnishment*) form within ten (10) days and attend the hearing, your money or property may be turned over to the judgment creditor.

DO NOT FILE THE CLAIM OF EXEMPTION FORM TO PROTECT ONLY WAGES.

**YOU SHOULD COMPLETE AND RETURN THE CLAIM OF EXEMPTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS FORM UPON YOU. MAKE A COPY OF THE COMPLETED FORM FOR YOUR RECORDS AND SERVE A COPY ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.**

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001.]

#### **ANNOTATIONS**

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, added the reference to Rule 1-065.1 at the beginning, rewrote

Items 3(e), 3(f), and 3(h), added Items 3(i) to 3(n), and, near the beginning of Item 4, substituted "three (3) copies" for "two (2) copies".

**The 1996 amendment**, effective January 1, 1996, in Paragraph 2, deleted the former second sentence in the first paragraph which read: "There are limits on how much of your wages can be taken", added the last sentence of the first paragraph, and added the last sentence of the second paragraph; and rewrote Paragraph 4.

**The 2001 amendment**, effective December 3, 2001, inserted "or spousal" in Subparagraph 3d.

#### **4-808A. Notice of right to claim exemptions from execution.**

[1-065.1, 2-801, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

#### **NOTICE OF RIGHT TO CLAIM EXEMPTIONS FROM EXECUTION**

#### **1. THE JUDGMENT CREDITOR (IS SEIZING) (HAS A RIGHT TO SEIZE) YOUR PROPERTY**

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor may collect that money from seizure and sale of your property.  
*(Before the judgment creditor has the sheriff seize your property, you may have a right to claim exemptions of certain property.)*

#### **2. PURPOSE OF THIS NOTICE:**

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. This property is protected under state law. The property which may not be taken is called "exempt property". YOU MUST FILE A CLAIM OF EXEMPTION FORM TO CLAIM ANY EXEMPT PROPERTY. YOU MAY WISH TO CONSULT WITH AN ATTORNEY BEFORE COMPLETING AND FILING THE CLAIM OF EXEMPTION FORM. Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

#### **3. PARTIAL LIST OF EXEMPTIONS FROM EXECUTION**

**Part I. Homestead exemption**

*(This exemption may only be used in the district court.)*

A judgment debtor who owns, leases or is purchasing a dwelling occupied by the judgment debtor is entitled to hold as exempt property a homestead in the amount of thirty thousand dollars (\$30,000) under Section 42-10-9 NMSA 1978.

**Part II. Exemption in lieu of homestead exemption**

*(Parts II and III are for use in the district court, magistrate court and metropolitan court.)*

Residents of this state who do not claim a homestead exemption are entitled to an exemption of real or personal property in the amount of two thousand dollars (\$2,000) under Section 42-10-10 NMSA 1978. You may not claim this exemption if you claimed a homestead exemption above.

**Part III. Personal property exemptions**

In addition to the property claimed as exempt above, judgment debtors are entitled to claim certain personal property exemptions. Most of those exemptions are listed below.

- a. personal property worth up to \$500;
- b. tools of the trade worth up to \$1,500;
- c. a motor vehicle worth up to \$4,000 or that amount of equity in a more valuable vehicle;
- d. jewelry worth up to \$2,500;
- e. clothing, furniture, books and medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession;
- f. pension or retirement funds;
- g. not more than \$5,000 in benefits from a benevolent association of which the judgment debtor is a member;
- h. building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978;
- j. worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;
- k. occupational health benefits as provided by Section 52-3-37 NMSA 1978;

- l. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;
- m. public assistance and welfare benefits;
- n. cash surrender values and benefits of life insurance contracts;
- o. payment from life, accident and health insurance policies or annuity contracts;
- p. crime victims' reparation fund payments;
- q. fraternal benefit society benefits;
- r. the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- s. the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- t. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- u. a family allowance to a decedent's surviving spouse and children, subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978.

You may not claim an exemption for personal property which is subject to a security interest under the Uniform Commercial Code given to the judgment creditor.

#### **4. HOW TO PROTECT EXEMPT PROPERTY.**

The sheriff may not seize your personal clothing, furniture and books or any jewelry unless the total value of all jewelry is more than \$2500. For other property, you must claim an exemption or it may be seized and sold. A claim of exemptions on execution form is attached for you to complete and file with the court.

**YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS ON EXECUTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS ON EXECUTION FORM ON THE JUDGMENT CREDITOR.**

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions on execution form within ten (10) days and attend the hearing, your property may be seized and sold by the sheriff.

**FAILURE TO COMPLETE AND FILE A CLAIM OF EXEMPTIONS ON EXECUTION FORM WITHIN TEN (10) DAYS AND SERVE A COPY ON THE JUDGMENT CREDITOR WILL RESULT IN THE LOSS OF YOUR RIGHT TO CLAIM AN EXEMPTION.**

*(The following proof of service may be used ONLY if the judgment debtor has entered an appearance in the case.)*

**AFFIDAVIT OF SERVICE**

I declare, under penalty of perjury, that this notice, a claim of exemptions on execution form and a copy of the judgment in the above cause of action were mailed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ from \_\_\_\_\_ (street address or post office branch) in \_\_\_\_\_, New Mexico.

Signature

Date of signature

*(If the judgment debtor has not entered an appearance, personal service of this notice must be made on the judgment debtor and the following Return of Service must be completed and filed with the court.)*

**RETURN**

STATE OF NEW MEXICO )

) ss

COUNTY OF )

\_\_\_\_\_

**(check one box and fill in appropriate blanks)**

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the notice of right to claim exemptions (*executions*) and a claim of exemptions on execution form (*in said county*) (*in \_\_\_\_\_ County*) on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy thereof, with copy of the judgment attached, in the following manner:

**(check only if service by sheriff or deputy)**

I certify that I served the Notice of Right to Claim Exemptions (*Execution*) (*in said county*) (*in \_\_\_\_\_ County*) on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy thereof, with copy of judgment attached in the following manner:

**(check one box and fill in appropriate blanks)**

to defendant \_\_\_\_\_

to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, who at the time of such service was absent therefrom. Abode located at .

by posting a copy of the Notice of Right to Claim Exemptions in the most public part of the premises of defendant \_\_\_\_\_ (*used if no person found at dwelling house or usual place of abode*). Abode located at .

to \_\_\_\_\_, an agent authorized to receive service of process for defendant .

to \_\_\_\_\_, (*parent*) (*guardian*) of defendant \_\_\_\_\_ (*used when defendant is a minor or an incompetent person*).

after due diligence I was unable to serve this notice.

Fees: \_\_\_\_\_

Signature of person making service

Title (*if any*)

Subscribed and sworn<sup>2</sup> to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

**USE NOTE**

1 *Strike out the inapplicable alternative.*

2        *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.*

[Adopted, effective July 1, 1992; as amended, effective January 1, 1993; May 1, 1994; January 1, 1996.]

### ANNOTATIONS

**The 1993 amendment**, effective January 1, 1993, deleted "(clerk) (judge)" adjacent to the signature line in the "Notice of Right to Claim Exemptions from Execution".

**The 1994 amendment**, effective May 1, 1994, amended the heading of the first paragraph to add "(HAS A RIGHT TO SEIZE) 1", to change "plaintiff" to "judgment creditor", to rewrite the second sentence and to add the last sentence of the paragraph; amended paragraph 3, Part I to increase the exemption from \$20,000 to \$30,000 and to substitute "A judgment debtor who owns, leases or is purchasing a dwelling occupied by the judgment debtor is" for "Married persons, widows, widowers and persons who are supporting another person".

**The 1996 amendment**, effective January 1, 1996, added the last sentence in Paragraph 2, deleted "state and local" preceding "pension" in Paragraph f of Part III, rewrote Paragraph 4, and substituted "a claim of exemptions on execution form" for "three copies of the claim of exemption form" in the Affidavit for Service form and in the first alternative in the Return form.

### 4-809. Claim of exemption from garnishment.

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

\_\_\_\_\_, Garnishee

#### CLAIM OF EXEMPTION FROM GARNISHMENT

Judgment debtor claims the following exemptions:  
(check box next to exemption)

- a.  social security benefits (OASDI, SSI);

- b. [ public assistance benefits (AFDC, welfare, GA);
- c. [ life, accident or health insurance proceeds;
- d. [ workers' compensation awards;
- e. [ unemployment compensation benefits;
- f. [ veterans' benefits;
- g. [ pensions and retirement funds;
- h. [ crime victims' reparation fund payments;
- i. [ allowances to surviving spouse and children from deceased's estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- j. [ the minimum amount of shares necessary for certain non-profit cooperative associations as provided by Section 53-4-28 NMSA 1978;
- k. [ fraternal benefit society payments as provided by Section 59A-44-18 NMSA 1978.

A completed and signed copy of this form must be returned to the Clerk of the Court whose address is

\_\_\_\_\_

\_\_\_\_\_

A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption, a court hearing will be scheduled to consider the disputed exemptions. At this hearing you must bring evidence supporting each of your claims of exemption.

\_\_\_\_\_  
Date

Signature of judgment debtor

Printed name of judgment debtor

Number and street or P.O. box

City, state, zip code



Telephone number

[As amended, effective July 1, 1992; January 1, 1995; January 1, 1996.]

### ANNOTATIONS

**The 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, inserted "from" in the heading, rewrote Item g, added Items h to k, added the two sentences preceding the signature lines, and added the parenthetical at the end.

**The 1996 amendment**, effective January 1, 1996, near the end of the form, substituted "A completed and signed copy" for "Two (2) copies", inserted "A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption", substituted "the disputed exemptions" for "the above exemptions", and deleted the former parenthetical use note relating to scheduling a hearing within 10 business days.

### 4-810. Motion for default judgment against garnishee.

[2-802, 3-802]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

\_\_\_\_\_, Garnishee

#### MOTION FOR DEFAULT JUDGMENT AGAINST GARNISHEE

Judgment creditor moves the court to enter a default judgment against the garnishee.

The Writ of Garnishment was served on the garnishee on \_\_\_\_\_ (*date*) and the return of service of the writ on the garnishee has been filed with the court.

The garnishee has not filed an answer or other responsive pleading with the court nor has the judgment creditor been served with a responsive pleading.

The judgment creditor requests the court to set a hearing on this motion on not less than three (3) days notice to the garnishee.

\_\_\_\_\_  
Date

Attorney for plaintiff

*If the plaintiff is not represented by an attorney, this motion must be sworn to or affirmed by the plaintiff.*

I, \_\_\_\_\_, upon my oath or affirmation do solemnly declare or affirm that this motion contains a complete, accurate statement of the facts to the best of my knowledge. I understand that if I make a material misstatement of fact, I may be prosecuted and punished for perjury.

Signature of plaintiff

Signature of Judge, Notary or Other  
Officer Authorized to Administer Oaths

Official title

My commission expires:

\_\_\_\_\_  
(SEAL)

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, this motion was

[mailed by United States mail, postage prepaid, and addressed to:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State  
and zip code: \_\_\_\_\_]

[faxed by \_\_\_\_\_ (name of person who faxed) to \_\_\_\_\_ (defendant or defendant's attorney). The transmission was reported as complete and without error. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

[e-mailed by \_\_\_\_\_ (name of person who transmitted) to \_\_\_\_\_ at \_\_\_\_\_ (electronic address

*of recipient*) who agreed to service in this manner. The transmission was successful. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

Signature of attorney

*If this notice was served by a person other than an attorney, the following must also be completed and filed with the court:*

**AFFIDAVIT OF SERVICE**

I declare under penalty of perjury that a copy of this motion was served by [mail] [fax] [electronic transmission] as described above on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of person who made service

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

[Approved, effective August 1, 1999.]

**ANNOTATIONS**

**Compiler's notes.**— Pursuant to a supreme court order dated April 15, 1992, former Form 4-810, providing the certificate of notice of garnishment, was withdrawn, effective on and after July 1, 1992.

**4-810A. Notice of dispute and request for hearing.**

[1-065.1, 1-065.2, 2-801, 2-802, 3-801, 3-802]

STATE OF NEW MEXICO  
IN THE \_\_\_\_\_ COURT  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

**NOTICE OF DISPUTE AND REQUEST FOR HEARING<sup>1</sup>**

- 1. Assigned Judge: \_\_\_\_\_
- 2. [Execution proceeding] [Garnishment proceeding]<sup>2</sup>

The judgment [creditor disputes the following claimed exemptions] [debtor disputes the following]<sup>2</sup> and requests a hearing be held on this dispute

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Judgment creditor or attorney

*(Requesting party shall attach a separate sheet listing the name, firm, capacity, address, and telephone number of each party entitled to notice and a stamped, addressed, plain (without return address) envelope for each party entitled to notice.)*

**NOTICE OF HEARING**

A hearing is scheduled on the [disputed claims of exemption] [dispute]<sup>2</sup> described above before the Honorable \_\_\_\_\_, at the \_\_\_\_\_ court located at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ .m.

\_\_\_\_\_, \_\_\_\_\_ Judge

*USE NOTES*

- 1. *A hearing must be held within 10 business days of the filing of this form. The clerk will file the request for hearing and endorse the copy for the assigned judge. The court shall give notice of the hearing on the disputed claim of exemption by mailing a copy of this form to the judgment debtor, judgment creditor and the garnishee, if any.)*
- 2. *Use applicable alternative.*

[Adopted, effective January 1, 1996.]

**4-811. Judgment on writ of garnishment, claim of exemption and order to pay.**

[1-065.2]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Plaintiff (*Judgment creditor*)

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant (*Judgment debtor*)  
\_\_\_\_\_, Garnishee

**JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF  
EXEMPTION AND ORDER TO PAY**

This matter coming before the court, the court finds:

- 1. At the time the writ of garnishment was served on the garnishee, the amount of \$\_\_\_\_\_ was unpaid and owing to the judgment creditor.
- 2. As a result of this garnishment proceeding, judgment creditor has spent additional costs and fees of \$\_\_\_\_\_.
- 3. The total amount of judgment and costs to date are \$\_\_\_\_\_ plus interest of \_\_\_\_\_% per year from \_\_\_\_\_, \_\_\_\_\_.
- 4. The garnishee is not an employer of the judgment debtor and has also certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; notice of right to claim exemptions and a claim of exemption form and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.
- 5. The judgment debtor:
  - has not filed a claim of exemption;
  - has filed a claim of exemption and the judgment creditor has not disputed the claim of exemption for the following property and such money or property is therefore exempt:

\_\_\_\_\_;

or

has filed a claim of exemption which has been  
disputed and after a hearing, the court finds that  
the following property is exempt from garnishment:

6. The garnishee:

is in default;

is indebted to the judgment debtor in the amount  
of \$\_\_\_\_\_;

is indebted to the judgment debtor for wages;

is not indebted to the judgment debtor;

holds property of the judgment debtor;

does not hold property of the judgment debtor.

7. Pursuant to the Support Enforcement Act, the  
garnishee:

is withholding \$\_\_\_\_\_ of the judgment  
debtor's income pursuant to a Notice to Withhold  
Income;

or

is not withholding any income of the judgment  
debtor pursuant to such a Notice.

8. Pursuant to Section 35-12-16 NMSA 1978, the  
judgment creditor:

is entitled to additional fees and costs of  
\$\_\_\_\_\_;

or

is not entitled to additional fees and costs.

THE COURT ORDERS:

1. **Default judgment against garnishee**

The judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_,  
plus \_\_\_\_\_ percent per annum interest from the date the application was  
executed, the garnishee having failed to answer the writ;

or

2. **Payment of money other than wages**

[ ] The judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_, which includes \_\_\_\_\_ percent per annum interest thereon from the date the application was executed to the date the answer was filed, such sum being held by garnishee other than as wages;

or

### 3. **Wage withholding other than child or spousal support**

[ ] The judgment being other than for child or spousal support, the judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages. The garnishee shall pay the judgment debtor only:

(a) seventy-five percent (75%) of judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period;

OR

(b) an amount each week equal to forty (40) times the federal minimum hourly wage rate;

whichever is greater.

The balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is satisfied, after this balance is first used to pay any prior garnishment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

### 4. **Wage withholding for child or spousal support**

[ ] **No prior writ or order.** The order or decree being for child or spousal support, the judgment creditor shall recover from the garnishee the sum of \$\_\_\_\_\_, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages. The garnishee shall pay the judgment debtor fifty percent (50%) of judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period. If there is no prior garnishment, the balance of the judgment debtor's disposable earnings each payday shall be paid to satisfy this judgment.

[ ] **Prior writ or order.** If there is a prior garnishment (*one that was served on the garnishee prior to the date and time the garnishment in this case was served*), up to fifty

percent (50%) of the judgment debtor's disposable earnings each pay period shall be paid as follows:

first, the amount provided for in the judgment entered on the prior writ of garnishment shall be applied to the prior garnishment. If a judgment has not yet been entered on the prior writ of garnishment, the garnishee shall withhold the amount ordered by the prior writ of garnishment to be applied to the prior writ of garnishment when the judgment is entered;

next, until all prior writs have been fully satisfied, the remainder of the balance of fifty percent (50%) of the judgment debtor's disposable earnings shall be paid to this judgment creditor to satisfy the child or spousal support order. Upon satisfaction of all prior writs of garnishment, the entire balance of the judgment debtor's disposable earnings shall be applied to satisfy this child or spousal support order judgment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

[ ] **Prior child or spousal support writ.** Upon motion of the judgment debtor, this court orders the distribution of the judgment debtor's child or spousal support obligations as follows:

If the money being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceeds the otherwise garnishable amounts, this garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages being withheld pursuant to a notice to withhold income under the Support Enforcement Act are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor until the child or spousal support notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

##### **5. Money or property other than wages**

[ ] The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money or property from the judgment debtor on account of that writ.

[ ] The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.



[ ] The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

**6. Costs and fees**

[ ] The judgment creditor is awarded, in addition to the above amounts, the sum of \$\_\_\_\_\_ as additional costs and fees pursuant to Section 35-12-16 NMSA 1978.

[ ] The garnishee shall be reimbursed \$\_\_\_\_\_ for its costs and \$\_\_\_\_\_ for its attorney fees, the same to be paid by the \_\_\_\_\_. If paid by the judgment debtor, said sum shall be paid from the first money otherwise payable to the judgment creditor, but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

**7. Payments**

Payments under this order shall be sent to:

\_\_\_\_\_  
*(name of judgment creditor)*

\_\_\_\_\_  
*(address of judgment creditor)*

\_\_\_\_\_  
*(city, state and zip code)*

\_\_\_\_\_, \_\_\_\_\_  
Date Judge

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; October 15, 1999; December 3, 2001.]

**ANNOTATIONS**

**Cross references.**— For attorney fees and costs, see 35-12-16 NMSA 1978.

For garnishments, see 35-12-18 NMSA 1978.

For support enforcement, see Chapter 40, Article 4A NMSA 1978.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

**The 1992 amendment**, effective July 1, 1992 for use in the district courts, deleted former Finding 4, relating to certification in writing by the judgment creditor that the latter had mailed copies of specified items; redesignated former Findings 5 to 9 as present Findings 4 to 8; rewrote present Finding 4; deleted "Civil Form" preceding

"Garnishment" at the fifth occurrence of that word in the fourth sentence of Order 4; and made several gender neutral substitutions.

**The 1996 amendment**, effective January 1, 1996, in the findings, substituted "a claim of exemption" for "three copies of the claim of exemption" in Paragraph 4, and added the second alternative in Paragraph 5 and inserted "which has been disputed" in the third alternative in Paragraph 5; and in the order, rewrote former Paragraphs 4 through 11 as Paragraphs 4 through 6.

**The 1999 amendment**, effective October 15, 1999, deleted "[15%]" following "plus" in Paragraph I of the court orders.

**The 2001 amendment**, effective December 3, 2001, inserted "or spousal" in Paragraphs 3 and 4 and added Paragraph 7 following the heading "THE COURT ORDERS."

#### **4-812. Judgment on writ of garnishment, claim of exemption and order to pay.**

[2-802, 3-802]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

IN THE [MAGISTRATE] [METROPOLITAN] COURT

\_\_\_\_\_, Plaintiff (*Judgment Creditor*)

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant (*Judgment Debtor*)

\_\_\_\_\_, Garnishee

#### **JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF**

#### **EXEMPTION AND ORDER TO PAY**

This matter coming before the court, the court finds:

- [ ] 1. At the time the writ of garnishment was served on the garnishee, the amount of \$\_\_\_\_\_ was unpaid and owing to the judgment creditor.

2. As a result of this garnishment proceeding, judgment creditor has spent additional costs and fees of \$\_\_\_\_\_.

3. The total amount of judgment and costs to date are \$\_\_\_\_\_ plus interest of \_\_\_\_\_% per year from \_\_\_\_\_, \_\_\_\_\_.

4. The garnishee is not an employer of the judgment debtor and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.

5. The judgment debtor:

- has not filed a claim of exemption;
- has filed a claim of exemption, and the judgment creditor has not disputed the claim of exemption for the following property and such money or property is therefore exempt:  
\_\_\_\_\_; or
- has filed a claim of exemption that has been disputed and after hearing, the

court finds that the following property is exempt from garnishment:

has not filed a

- claim of exemption;
- or

6. The garnishee:

- is in default;
- is indebted to the judgment debtor in the amount of \$\_\_\_\_\_;
- is indebted to the judgment debtor for wages;
- is not indebted to the judgment debtor;
- holds property of the judgment debtor;
- does not hold property of the judgment debtor.

7. Pursuant to the Support Enforcement Act, the garnishee:

- is withholding \$\_\_\_\_\_ of the judgment debtor's income pursuant to a notice to withhold income; or
- is not withholding any income of the judgment debtor pursuant to such a Notice.

8. Pursuant to Section 35-12-16 NMSA 1978, the judgment creditor:

- is entitled to additional fees and costs of \$\_\_\_\_\_;
- or
- is not entitled to additional fees and costs.

**THE COURT ORDERS:**

1. **Default judgment against garnishee**  
 The judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_, plus \_\_\_\_\_ percent per annum interest from the date the application was executed, the garnishee having failed to answer the writ;
- or
2. **Payment of money other than wages**  
 The judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_, which includes \_\_\_\_\_% per annum interest thereon from the date the application was executed to the date the answer was filed, such sum being held by garnishee other than as wages;
- or
3. **Wage withholding other than child or spousal support**  
 The judgment being other than for child or spousal support, the judgment creditor recover from the garnishee the sum of \$\_\_\_\_\_, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages.
- The garnishee shall pay the judgment debtor only:
- (a) seventy-five percent (75%) of the judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period;
- OR
- (b) an amount each week equal to forty (40) times the federal minimum hourly wage rate;
- whichever is greater.
- The balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is satisfied, after this balance is first used to pay any prior garnishment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall

increase to an amount that creates disposable earnings based upon the formula set forth above.

If the money being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceeds the otherwise garnishable amounts, this garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages being withheld pursuant to a notice to withhold income under the Support Enforcement Act are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor until the child or spousal support notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

4. **Money or property other than wages**

The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money or property from the judgment debtor on account of that writ.

The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.

The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

5. **Costs and fees**

The judgment creditor is awarded, in addition to the above amounts, the sum of \$\_\_\_\_\_ as additional costs and fees pursuant to Section 35-12-16 NMSA 1978

The garnishee shall be reimbursed \$\_\_\_\_\_ for its costs and \$\_\_\_\_\_ for its attorney fees the same to be paid by the \_\_\_\_\_. If paid by the judgment debtor, said sum shall be paid from the first money otherwise payable to the judgment creditor but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

6. **Payments**

Payments under this order shall be sent to:

\_\_\_\_\_  
(name of judgment creditor)

\_\_\_\_\_  
(address of judgment creditor)

\_\_\_\_\_  
(city, state and zip code)

\_\_\_\_\_, \_\_\_\_\_  
Date Judge

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001.]

### ANNOTATIONS

**Cross references.**— For attorney fees and costs, see 35-12-16 NMSA 1978.

For garnishments, see 35-12-18 NMSA 1978.

For support enforcement, see Chapter 40, Article 4A NMSA 1978.

For maximum allowable garnishment under federal law, see 15 U.S.C. § 1673.

For student loan requirements, see 20 U.S.C. § 1095a.

**The 1992 amendment**, effective July 1, 1992 for use in the magistrate and metropolitan courts, deleted former Finding 4, relating to certification by the judgment creditor that the latter had mailed copies of specified items; redesignated former Findings 5 to 9 as present Findings 4 to 8; and rewrote present Finding 4.

**The 1996 amendment**, effective January 1, 1996, in the findings, substituted "a claim of exemption" for "three copies of the claim of exemption" in Paragraph 4, and added the second alternative in Paragraph 5 and inserted "which has been disputed in the third alternative in Paragraph 5; and in the order, rewrote former Paragraphs 4 through 10 as Paragraphs 4 and 5.

**The 2001 amendment**, effective December 3, 2001, following the heading "THE COURT ORDERS", substituted the fill-in the blank percentage for "15%" in Paragraph 1, inserted "or spousal" in Paragraph 3, and added Paragraph 6.

### 4-813. Default judgment against garnishee.

[1-065.1, 2-802, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff  
against

\_\_\_\_\_, Defendant  
\_\_\_\_\_, Garnishee

**DEFAULT JUDGMENT AGAINST GARNISHEE**

This action was heard by the court. The court finds that the Garnishee is in default for failure to answer.

THE COURT ORDERS that the Judgment Creditor recover \$\_\_\_\_\_ from the Garnishee, together with interest from the date hereof.

\_\_\_\_\_, \_\_\_\_\_ Judge

[As amended, effective June 15, 1986.]

**4-814. Release of garnishment.**

[1-065.1, 2-802, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff  
against

\_\_\_\_\_, Defendant  
\_\_\_\_\_, Garnishee

**RELEASE OF GARNISHMENT**

The WRIT OF GARNISHMENT in this case is hereby released and discharged; and the Garnishee no longer has any obligation to withhold wages, money or property from the Judgment Debtor on account of that writ.

\_\_\_\_\_, \_\_\_\_\_ Judge

**4-815. Sheriff's report of sale of seized property.**

[1-065.1, 2-801, 3-801]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_



\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff  
v.  
\_\_\_\_\_, Defendant

**SHERIFF'S REPORT OF SALE OF SEIZED PROPERTY**

Description of property sold:

*(inventory may be attached)*

Date of sale: \_\_\_\_\_  
Date of judgment \_\_\_\_\_ Interest rate %  
Amount of judgment \$  
Amount of interest since date of judgment \$  
Amount of accrued costs since date of judgment \$  
Amount of sheriff's costs \$  
Total amount received from sale \$  
Amount paid to judgment creditor \$  
Date of return: \_\_\_\_\_

SHERIFF OF  
COUNTY, State of New Mexico  
By  
Deputy or other authorized person

*(The Sheriff is obligated by law to make timely return)*

[Adopted, effective July 1, 1992.]

**4-820. Certificate of Dean of law school.**

[1-094.1]

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 or more years. This law school credit will be earned during the period beginning \_\_\_\_\_ and ending \_\_\_\_\_. (Set forth beginning and ending dates of program not to exceed a four-month period.)

I further certify that the above-named law student meets the academic and moral standards required of a student in good standing at this institution.

\_\_\_\_\_, \_\_\_\_\_ Dean

[Adopted, effective January 1, 1995.]

#### **4-821. Order approving clinical law student appearance.**

[1-094, 1-094.1]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Plaintiff

against

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

#### **ORDER APPROVING CLINICAL LAW STUDENT APPEARANCE**

**If the clinical law student is enrolled in an out-of-state law school, the certificate of the dean of the law school must be filed with this order. See Rule 4-820.**

1

\_\_\_\_\_, a qualified supervising attorney participating in a clinical law program of the \_\_\_\_\_ School of Law, which meets the requirements of (Rule 1-094) (Rule 1-094.1) of the Rules of Civil Procedure for the District Courts has requested that \_\_\_\_\_, a law student enrolled in a qualified clinical law

program, be permitted to participate in this matter as authorized by (Rule 1-094) (Rule 1-094.1).

It is hereby ordered that the above-named law student may participate in this case as authorized by (Rule 1-094) (Rule 1-094.1).

Date

District Judge

[Adopted, effective January 1, 1995.]

**4-830. Writ of certiorari.**

[1-075]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT  
\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**WRIT OF CERTIORARI**

To: \_\_\_\_\_

*(name of administrative agency)*

The court has reviewed the petition for writ of certiorari filed in the above-styled case and finds:

1. That the court has jurisdiction over \_\_\_\_\_ *(name of administrative agency)*.

2. That the petitioner does not have a statutory right to an appeal or review from orders or decisions of the above administrative agency;

3. That the petition makes a prima facie showing that the petitioner may be entitled to the relief sought by the petition.

IT IS THEREFORE ORDERED that the petition for writ of certiorari in the above case be and hereby is granted.

IT IS FURTHER ORDERED that \_\_\_\_\_ (*name of administrative agency*) prepare and file with this court within thirty (30) days after the date of service of this writ on \_\_\_\_\_ (*name of administrative agency*) the record on appeal in compliance with Paragraph F of Rule 1-075 of the Rules of Civil Procedure for the District Courts.

IT IS FURTHER ORDERED that the review in this case shall proceed in compliance with Rule 1-075 of the Rules of Civil Procedure for the District Courts.

District Judge

Dated:

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of this writ of certiorari to be served on the following persons or entities by (*delivery*) (*certified mail, postage prepaid*) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ :

(1) \_\_\_\_\_  
(*Name of administrative agency*)

\_\_\_\_\_  
(*Address*)

(2) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(3) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(Petitioner) (Attorney for petitioner)

**AFFIDAVIT OF SERVICE OF PARTY**

I declare under penalty of perjury that I caused a copy of this writ of certiorari to be served on the following persons or entities by (*delivery*) (*certified mail, postage prepaid*) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ :

(1) \_\_\_\_\_  
(*Name of administrative agency*)

\_\_\_\_\_  
(Address)

(2) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(3) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(Petitioner)

[Adopted, effective January 1, 1996.]

## **ARTICLE 9**

### **Statutory Proceedings**

#### **4-901. Three-day notice of nonpayment of rent (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-33 NMSA 1978]

**THREE-DAY NOTICE OF  
NONPAYMENT OF RENT<sup>1</sup>**  
*(Uniform Owner-Resident Relations Act)*

To:

Address:

\_\_\_\_\_, New Mexico

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at<sup>2</sup>:

\_\_\_\_\_, New Mexico

by failure to pay rent as follows:

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Total due: \$ \_\_\_\_\_

If the amount due is not paid within three (3) days from the date of delivery set out below, the rental agreement shall be terminated.

Payment will be accepted only by:

cash  money order  
 cashiers or certified check  personal check

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Owner) (Agent)

Service of notice:

personally delivered to resident  
 posted  
 mailed certified mail, return receipt requested  
 mailed

Delivered  posted:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>3</sup>: \_\_\_\_\_

Mailed:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>3</sup>: \_\_\_\_\_

#### USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action.*
2. *If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*
3. *Include the name of the person delivering, posting or mailing the notice.*

[As amended, effective September 2, 1997; April 6, 1998.]

#### ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, deleted "rent as due" following "failure to pay" and added the entries for the different charges, added the payment

method choices, rewrote the service certification, added Use Notes 2 through 4, and made stylistic changes throughout.

**The 1998 amendment**, effective April 6, 1998, inserted "rent" following "by failure to pay", deleted the explanation of entries for different charges, substituted "amount due" for "rent", deleted "and mailed certified mail, return receipt requested" following "posted" in the service certification, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

**4-901A. Three-day notice of substantial violation of rental agreement (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-33 NMSA 1978]

**THREE-DAY NOTICE OF SUBSTANTIAL VIOLATION  
OF RENTAL AGREEMENT  
(*Uniform Owner-Resident Relations Act*)**

To: \_\_\_\_\_  
and all other occupants

Address: \_\_\_\_\_ Unit:  
\_\_\_\_\_, New Mexico

You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement concerning the premises at<sup>1</sup>:

\_\_\_\_\_  
\_\_\_\_\_, New Mexico  
\_\_\_\_\_

in that on or about \_\_\_\_\_, \_\_\_\_\_ (*date*), you, or someone with your consent, did the following:

\_\_\_\_\_  
\_\_\_\_\_

This conduct occurred on or within 300 feet of the premises and includes (*check all that apply*):

possession, use, sale, distribution or manufacture of a controlled substance, other than misdemeanor possession and use;

unlawful use of a deadly weapon;

- unlawful action causing serious physical harm to another person;
- sexual assault or sexual molestation of another person;
- entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;
- theft or attempted theft of the property of another person by use or threatened use of force; or
- intentional or reckless damage to property in excess of one thousand dollars (\$1,000.00).

As a result of this conduct, the rental agreement shall terminate three (3) days from the date of service set out below. You must vacate the premises no later than \_\_\_\_\_ (date). Failure to vacate by this date will result in a legal action against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Owner) (Agent)

Service of notice<sup>2</sup>:

- personally delivered to resident
- posted and mailed certified mail, return receipt requested
- mailed by certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

USE NOTE

1. *If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*

2. *If this notice is personally delivered to the resident, mailing or posting is not required. If posted, mailing by certified mail is also required by this form. A posted notice must be affixed to a door by taping all sides or placing it in a fixture or receptacle designed for notices. See Paragraph D of Section 47-8-13 NMSA 1978.*

*The party giving notice should retain two (2) copies for possible court action.*



3. Set forth the name of the person delivering, posting or mailing the notice.

[Adopted, effective September 2, 1997; as amended, effective October 15, 1999.]

**ANNOTATIONS**

**The 1999 amendment**, effective October 15, 1999, conforms this form with the 1999 amendment of 47-8-3 NMSA 1978 by Laws 1999, ch. 99, § 1.

**4-902. Seven-day notice of noncompliance with rental agreement (other than failure to pay rent) (*Uniform Owner-Resident Relations Act*).**

[Sections 47-8-27.1, 47-8-33, 47-8-37 NMSA 1978]

**SEVEN-DAY NOTICE OF NONCOMPLIANCE  
WITH RENTAL AGREEMENT  
(OTHER THAN FAILURE TO PAY RENT)<sup>1</sup>  
(*Uniform Owner-Resident Relations Act*)**

To:

Address: \_\_\_\_\_, New Mexico

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at<sup>2</sup>:

\_\_\_\_\_, New Mexico

in that on or about \_\_\_\_\_, \_\_\_\_\_ (*date*), the following noncompliance occurred:

*(describe the noncompliance specifically and in detail. Attach additional pages if necessary.)*

[ ] **First notice.** If this noncompliance is not corrected within seven (7) days from the date of delivery set out below, the rental agreement shall be terminated and you shall be required to vacate the premises. Regardless of whether this noncompliance is corrected, if a second material noncompliance with the rental agreement or any

separate agreement occurs within six (6) months of this initial noncompliance, the rental agreement will be terminated.

**Second notice.** You were given previous notice of noncompliance on \_\_\_\_\_ (date). Therefore you have been in material noncompliance twice or more within a six month period. As a result the rental agreement shall terminate seven (7) days from the date of delivery set out below. You must vacate the premises no later than \_\_\_\_\_ (date). Failure to vacate by this date will result in a legal action against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Owner) (Agent) (Resident)

Service of notice

- personally delivered to resident
- posted
- mailed certified mail, return receipt requested

Delivered  posted:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>3</sup>: \_\_\_\_\_

Mailed:  
Time: \_\_\_\_\_  
Date: \_\_\_\_\_  
By<sup>3</sup>: \_\_\_\_\_

#### USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action. If this form is used by the resident some modifications will be necessary.*
2. *If leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*
3. *Include the name of the person delivering, posting or mailing the notice.*

[As amended, effective September 2, 1997; April 6, 1998.]

#### ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, inserted "or separate agreement" near the beginning, inserted the entry for when the noncompliance occurred, designated the exist language as "First Notice" and added the language at the end of the First

Notice beginning "and you shall be", added the second notice, added "(Agent)" below the signature line, rewrote the certification of service, added the last sentence in Use Note 1, added Use Notes 2 through 4, and made stylistic changes throughout.

**The 1998 amendment**, effective April 6, 1998, deleted "and mailed, return receipt requested" following "posted" in the service certification, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

#### **4-902A. Resident's seven-day notice of abatement or termination of rental agreement (*Uniform Owner-Resident Relations Act*).**

[Sections 47-8-27.2 and 47-8-37 NMSA 1978]

**RESIDENT'S SEVEN-DAY NOTICE OF ABATEMENT OR TERMINATION  
OF RENTAL AGREEMENT<sup>1</sup>  
(*Uniform Owner-Resident Relations Act*)**

To:

Address: \_\_\_\_\_ (*include name and unit number if applicable*)  
\_\_\_\_\_, New Mexico \_\_\_\_\_ (*zip code*).

You are notified that you have breached the rental agreement or the Uniform Owner-Resident Relations Act concerning the premises at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (*include name and unit number if applicable*)  
\_\_\_\_\_, New Mexico \_\_\_\_\_ (*zip code*),

in that  
(*check all that apply*)

You failed to make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations;

You failed to keep common areas of the premises in a safe condition;

You failed to maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning or other facilities and appliances supplied by you;

You failed to provide and maintain appropriate receptacles for the removal of garbage and other waste and arrange for their removal from the appropriate receptacle;

You failed to supply running water and a reasonable amount of hot water at a reasonable temperature at all times;

The dwelling I rent from you does not substantially comply with the minimum housing codes that materially affect health and safety.

Specifically, the condition which needs to be remedied is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

*(describe the condition specifically and in detail. Attach additional pages if necessary.)*

This condition materially affects the health and safety or habitability of the dwelling I rent.

If reasonable steps are not taken to correct this condition within seven (7) days from the date of delivery set out below, I will:

*(check only one)*

Reside in the dwelling and withhold one third of my daily rent until the condition is corrected;

Temporarily move from the dwelling and withhold all of my rent until the condition is corrected;

Terminate the rental agreement and vacate the dwelling.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

*Resident*

Service of notice

personally delivered to owner

posted and mailed

mailed

mailed certified mail

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>2</sup>: \_\_\_\_\_

By<sup>2</sup>: \_\_\_\_\_

USE NOTE

1. The party giving notice should retain two (2) copies for possible court action.
2. Include the name of the person delivering, posting or mailing the notice.

[Approved, effective March 1, 2000; as amended by Supreme Court Order 08-8300-019, effective August 4, 2008.]

**ANNOTATIONS**

**The 2008 amendment**, effective August 4, 2008, changed the provision that provided for withholding of one-third of rent from monthly rent to daily rent if the landlord does not take reasonable steps to correct the landlord's default.

**4-903. Thirty-day notice to terminate rental agreement (*Uniform Owner-Resident Relations Act*).**

[Sections 47-8-33, 47-8-37 NMSA 1978]

**THIRTY-DAY NOTICE<sup>1</sup>**  
**TO TERMINATE RENTAL AGREEMENT**  
*(Uniform Owner-Resident Relations Act)*

To:

Address: \_\_\_\_\_, New Mexico

You are notified that the undersigned terminates the rental agreement concerning the premises at<sup>2</sup>:

\_\_\_\_\_, New Mexico

effective \_\_\_\_\_, \_\_\_\_\_ (*date*), and the premises are to be restored to the owner on that date. Prepaid rent and damage deposit, if any, will be dealt with in accordance with the Uniform Owner-Resident Relations Act and any agreement between the parties. Failure to vacate by this date will result in a legal action being filed against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Owner) (Agent) (Resident)

Service of notice

- personally delivered to resident
- posted
- mailed by certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action. This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978. If the residency is week-to-week, strike the words "Thirty-Day" in the title to this form, and insert the words "One-Week". If the residency is month-to-month, the thirty (30) day notice must be given at least thirty (30) days before the periodic rental date; for example, if the rent is due on the 1st, the notice must be given at least thirty (30) days before the 1st.*

2. *If the leased premises is an apartment, include the name of the apartments and the apartment number.*

3. *Include the name of the person delivering, posting or mailing the notice.*

[As amended, effective September 2, 1997; April 6, 1998.]

**ANNOTATIONS**

**The 1997 amendment**, effective September 2, 1997, added "Failure to vacate by this date will result in a legal action being filed against you", inserted "(Agent)" below the signature line, rewrote the certification of service, added Use Notes 2 through 4, and made stylistic changes throughout.

**The 1998 amendment**, effective April 6, 1998, deleted "and mailed certified mail, return receipt requested" following "posted" in the service certification, substituted "include" for "set forth" in Use Note 2, deleted Use Note 3, renumbered Use Note 4 as Use Note 3 and substituted "Include" for "Set forth" in Use Note 3.

**4-904. Petition by owner for restitution.**

[Sections 47-8-42 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**PETITION BY OWNER FOR RESTITUTION**

*(Uniform Owner-Resident Relations Act)*

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at1:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, New Mexico \_\_\_\_\_.

2. Defendant entered into possession of the premises under a rental agreement and has breached the terms of the agreement, as follows:

\_\_\_\_\_  
\_\_\_\_\_.

3. Plaintiff gave written notice of

termination

breach of the rental agreement

to defendant on \_\_\_\_\_, \_\_\_\_\_ (*date*), and defendant has failed to remedy the breach.

A copy of the written notice is attached as Exhibit A.

*(check and complete if applicable)*

4. Defendant is indebted to plaintiff in the sum of \$\_\_\_\_\_ for unpaid rent, plus \$\_\_\_\_\_ rent per day to date of restitution, plus damages as determined by the court.
5. Plaintiff holds \$\_\_\_\_\_ of defendant as a damage deposit under the rental agreement.
6. Plaintiff requests separate trials on the issues of restitution and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate possession of the premises;
2. Unpaid rent of \$\_\_\_\_\_, plus \$\_\_\_\_\_ per day to date of restitution;
3. Damages as may be determined by the court;
4. Costs of this action;
5. Reasonable attorneys fees;
6. A civil penalty as provided by law;
7. Such other relief as the court may deem reasonable.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signed

\_\_\_\_\_

Name (*print*)

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_



City, state and zip code (*print*)

---

Telephone number

### USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number.
2. The owner must bring a copy of any written rental agreement to court for the hearing on the petition for restitution.

[Former Rule 4-905 SCRA 1986; recompiled as Rule 4-904 and amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

### ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-905 NMRA; in the allegations, substituted "has breached" for "is now in default under" and added "A copy of the rental agreement is attached as Exhibit A" in Paragraph 2, substituted "gave" for "delivered" and added "termination" in Paragraph 3, substituted "damages as determined by the court" for a blank for specific amount for damage to the premises in Paragraph 4, and deleted former Paragraph 7 relating to demand for a jury trial; in the prayer for relief, substituted "damages as determined by the court" for a blank for specific amount for damage to the premises in Paragraph 3, added Paragraphs 5 and 6, and redesignated former Paragraph 5 as paragraph 7; and made stylistic changes throughout.

**The 1998 amendment**, effective April 6, 1998, in the allegations, deleted "A copy of the rental agreement is attached as Exhibit A." in Paragraph 2, substituted "include" for "set forth" in Use Note 1 and added Use Note 2.

**The 2005 amendment**, effective March 21, 2005, substituted "Exhibit A" for "Exhibit B" in Paragraph 3 of this form.

**Recompilations.**— Former Rule 4-904 NMRA, relating to summons and notice of trial on petition for writ restitution, has been recompiled as Rule 4-905 NMRA, effective September 2, 1997.

### **4-905. Summons and notice of trial on petition for writ of restitution (Uniform Owner-Resident Relations Act).**

[Section 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**SUMMONS AND NOTICE OF TRIAL  
ON PETITION FOR WRIT OF RESTITUTION  
(Uniform Owner-Resident Relations Act)**

To: \_\_\_\_\_, defendant

Address: \_\_\_\_\_, New Mexico

**GREETINGS:**

You are ordered to appear for trial before the Honorable \_\_\_\_\_, Judge, Div. \_\_\_\_\_, located at \_\_\_\_\_, New Mexico on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), at the hour of \_\_\_\_\_m. to show cause and present all evidence you may have why the plaintiff's petition for a writ of restitution for the property located at \_\_\_\_\_ should not be granted and why the plaintiff should not have judgment against you for any back rents or damages you caused to the property, in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

**FOR USE ONLY IN METROPOLITAN COURT CASES**

[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]

Dated:

\_\_\_\_\_ .

Judge

By: Clerk

**THIS IS YOUR NOTICE OF TRIAL  
and will be the only notice  
that you will receive.**

**RETURN<sup>1</sup>**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

*(complete if service is by a person  
other than the sheriff or deputy<sup>3</sup>)*

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form<sup>2</sup> in the following manner:  
***(check and complete only if service by sheriff or deputy)<sup>3</sup>***

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of the summons, a copy of the petition and an answer form<sup>2</sup> in the following manner:  
***(person serving summons must check one of following boxes and fill in appropriate blanks)***

by delivering a copy of this summons, a copy of the petition and an answer form to the defendant \_\_\_\_\_ (used when defendant receives copy of summons or refuses to receive summons).

by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, located at \_\_\_\_\_ (address) (used when defendant is not presently at the abode).

by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ (address). (Used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by

*posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)*

[ ] by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_, an agent authorized to receive service of process for defendant.

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_, (parent) (guardian) (custodian) of defendant *(used when defendant is a minor or an incompetent person).*

[ ] by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_ *(name of person)*, \_\_\_\_\_, *(title of person authorized to receive service)* *(used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).*

[ ] by service by mail.

Fees: \_\_\_\_\_

Signature of person making service

Title *(if any)*

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by posting)<sup>4</sup>*

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ *(name of person served)*  
\_\_\_\_\_ *(address where mailed)*  
\_\_\_\_\_ *(county)*  
\_\_\_\_\_ *(city, state and zip code)*

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by mail.)<sup>5</sup>*

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

\_\_\_\_\_ *(name of person served)*  
\_\_\_\_\_ *(address where mailed)*  
\_\_\_\_\_ *(county)*  
\_\_\_\_\_ *(city, state and zip code)*

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title<sup>3</sup>

USE NOTES

1. *A separate summons must be used for each defendant.*
2. *An answer form must be attached to the summons at the time of service. For answer forms, see Rule 4-907 NMRA.*
3. *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.*
4. *For use when service is by posting.*
5. *If service is by mail, Civil Form 4-208 must be completed and mailed with this summons.*

[Former Rule 4-904 SCRA 1986; recompiled as Rule 4-905 NMRA and amended, effective September 2, 1997.]

**ANNOTATIONS**

**The 1997 amendment**, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-904 NMRA, added the blanks for the name and address of the defendant, added the provisions relating to recording of the proceeding in metropolitan court cases, deleted the former certificate of service by sheriff and the affidavit of service by private citizen and added the return of service, added the use notes, and made stylistic changes throughout.

**Recompilations.**— Former Rule 4-905 NMRA, relating to petition by owner for restitution, has been recompiled as Rule 4-904 NMRA, effective September 2, 1997.

**4-906. Petition by resident for relief (*Uniform Owner-Resident Relations Act*).**

[Sections 47-8-42, 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

\_\_\_\_\_ COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**PETITION BY RESIDENT FOR POSSESSION**

*(Uniform Owner-Resident Relations Act)*

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, New Mexico \_\_\_\_\_.

2. Plaintiff is entitled to possession of the premises under a rental agreement and the defendant is now in default under the terms of such agreement by excluding plaintiff from the premises or otherwise interfering with plaintiff's right to occupy the premises, as follows:

\_\_\_\_\_  
\_\_\_\_\_.

3. Defendant owes plaintiff damages as may be determined by the court.

4. Plaintiff delivered written notice of breach of the rental agreement to defendant on \_\_\_\_\_, \_\_\_\_\_, (*date*) and defendant has failed to remedy the breach. (*A copy of the notice is attached as Exhibit A.*)

5. Defendant holds \$ \_\_\_\_\_ of plaintiff's money under the rental agreement.

6. Plaintiff requests separate trials on the issues of restitution and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate possession of the premises;
2. Damages as may be determined by the court;
3. Costs of this action;
4. Reasonable attorneys fees;

5. A civil penalty as provided by law;
6. Such other relief as the court may deem reasonable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name (*print*)

\_\_\_\_\_  
Address (*print*)

\_\_\_\_\_  
City, state and zip code (*print*)

\_\_\_\_\_  
Telephone number

#### USE NOTE

This petition may be only used for cases in which the resident is excluded from the dwelling unit or the landlord is interfering with the resident's right to occupy the premises. It should not be used when the resident primarily seeks monetary relief. This petition is to be scheduled for hearing within ten (10) days after it is filed.

[Rule 10-406 SCRA 1986; as amended, effective September 2, 1997; as amended by Supreme Court Order 05-8300-05, effective March 21, 2005.]

#### ANNOTATIONS

**Cross references.** — For rule governing computation of time for service of this form, see Rules 2-104 and 3-104 NMRA.

**The 1997 amendment**, effective September 2, 1997, in the allegations, substituted "damages as may be determined by the court" for a blank for specific amount in Paragraph 3, and deleted former Paragraph 7 relating to demand for jury trial; in the prayer for relief, substituted "damages as may be determined by the court" for a blank



for specific amount in Paragraph 3, added Paragraphs 5 and 6, and redesignated former Paragraph 5 as Paragraph 7; and made stylistic changes throughout.

**The 2005 amendment**, effective March 21, 2005, revised Paragraph 2 of the allegations to substitute "Plaintiff is entitled to" for "Defendant let Plaintiff have", added to Paragraph 2 "by excluding plaintiff from the premises or otherwise interfering with plaintiff's right to occupy the premises, deleted the request paragraph designated "2.", redesignated the requests paragraphs numbered 3 to 7 as paragraphs 2 to 6, deleted "(check only if applicable)" preceding the request that the court award "a civil penalty as provided by law" and added the Use Note at the end of the form.

**4-906A. Complaint by resident for return of deposit (*Uniform Owner-Resident Relations Act*)**

[Sections 47-8-42, 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

\_\_\_\_\_ COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**COMPLAINT BY RESIDENT FOR RETURN OF DEPOSIT<sup>1</sup>**

***(Uniform Owner-Resident Relations Act)***

The plaintiff alleges:

1. Plaintiff entered into a rental agreement with Defendant for property located at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, New Mexico \_\_\_\_\_.

2. As part of the rental agreement, plaintiff delivered to defendant one or more deposits totaling \$\_\_\_\_\_.

3. Plaintiff vacated the above premises on \_\_\_\_\_ (*date*), and defendant retained all of part of plaintiff's deposit.

4. Defendant

(*check one*)

mailed written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty (30) days after the date plaintiff vacated the premises or the date the rental agreement terminated. A copy of the notice is attached as Exhibit A of this complaint.

did not mail written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty days of the date plaintiff vacated the premises or the date the rental agreement terminated.

5. Defendant kept the following amount of the deposit: \$\_\_\_\_\_.

6. Plaintiff is asking for the return of the following amount: \$\_\_\_\_\_.

Plaintiff requests judgment against defendant, as follows:

1. Damages as may be determined by the court;
2. Costs of this action;
3. Reasonable attorneys fees;
4. A civil penalty if provided by law<sup>2</sup>;
5. Such other relief as the court may deem reasonable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name (*print*)

\_\_\_\_\_

Address (*print*)

\_\_\_\_\_

City, state and zip code (*print*)

\_\_\_\_\_

Telephone number

USE NOTE

1. This form is used for cases in which the resident is claiming a return of deposit. A complaint for return of deposit is not required to be heard within ten (10) days.

2. See Paragraph E of Section 47-8-18 NMSA 1978 for civil penalty.

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005.]

**4-907. Answer to petition for restitution (*Uniform Owner-Resident Relations Act*).**

[Sections 47-8-37, 47-8-40 to 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**ANSWER TO PETITION FOR RESTITUTION**

**(*Uniform Owner-Resident Relations Act*)**

1. Defendant should not have to vacate the premises because:

.

2. The amount of rent claimed by the plaintiff in this action is not owed because:

3. The damages claimed by the plaintiff in this action are not owed to the plaintiff because:  
.
4. The defendant asserts the following counterclaim or setoff against the plaintiff:  
.
5. Defendant requests separate trials on the issues of restitution and damages.

---

Signed

---

Name (*print*)

---

Address (*print*)

---

City, state and zip code (*print*)

---

Telephone number

[Rule 4-907 SCRA 1986; as amended, effective August 1, 1992; January 1, 1993; September 2, 1997.]

#### **ANNOTATIONS**

**The 1993 amendment**, effective January 1, 1993, inserted "on the issue of damages" in Item 5.

**The 1997 amendment**, effective September 2, 1997, substituted "should not have to vacate the premises" for "is not in default" in Paragraph 1, rewrote Paragraph 5 to delete language relating to demand for jury trial, and made stylistic changes throughout.

4-908. Withdrawn.

#### **ANNOTATIONS**

**Withdrawals.**— Pursuant to a court order dated June 16, 1997, this form, relating to answer by owner to petition by resident, is withdrawn effective on and after September 2, 1997. For present comparable provisions, see Rule 4-907 NMRA.

#### **4-909. Judgment for restitution.**

[Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT

\_\_\_\_\_ COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**JUDGMENT FOR RESTITUTION**

***(Uniform Owner-Resident Relations Act)***<sup>1</sup>

This matter was set for trial on \_\_\_\_\_, \_\_\_\_\_ (date) the plaintiff appeared *(in person) (and) (by attorney)* \_\_\_\_\_. The defendant *(did not appear) (appeared) (in person) (and) (by attorney)* \_\_\_\_\_. Having heard the evidence and argument presented, the court finds in favor of:

the plaintiff

the defendant.

IT IS THEREFORE ORDERED:

1. The premises at:

\_\_\_\_\_, New Mexico

be restored to *(plaintiff) (defendant)*;

2. The rental agreement (is) (is not) terminated;

*(check, if applicable, and complete)*

Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney's fees	\$ _____

Costs \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_] <sup>2</sup>

*(check, if applicable, and complete)*

[ ] A writ of restitution be issued effective

\_\_\_\_\_, \_\_\_\_\_ *(date)*.<sup>3</sup>

*(check, if applicable, and complete)*

[ ] The court further orders \_\_\_\_\_ *(other relief)*.

*(check, if applicable, and complete)*

[ ] A hearing on the issue of damages will be held by this court on

\_\_\_\_\_, \_\_\_\_\_ *(date)* at \_\_\_\_\_ *(a.m.) (p.m.)*.<sup>2</sup>

3. If this case is appealed, the *(plaintiff) (defendant)* shall.<sup>4</sup>

Dated: \_\_\_\_\_

Judge<sup>4</sup>

#### USE NOTES

1. *This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*

2. *Use Civil Form 4-701 if damages are determined at a separate hearing.*

3. *Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.*

4. *Section 47-8-47 NMSA 1978 provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. See Section 47-8-47 NMSA 1978 for appeals by the plaintiff.*

[Rule 4-909 SCRA 1986; as amended, effective September 2, 1997; January 1, 1999.]

#### ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, added "for restitution" in the heading, deleted "and against the plaintiff" following "court finds in favor of the plaintiff"

and added the alternative for finding for the defendant, added "[defendant]" in Paragraph 1 of the order, substituted "terminated" for "forfeited" in Paragraph 2, added Paragraphs 5, 6, and 7, and added the use notes.

**The 1998 amendment**, effective January 1, 1999, substituted "This matter was set" for "This matter came on" near the beginning and in Item 2 of the Order substituted "agreement (is) (is not) terminated" for "agreement is terminated" near the beginning and inserted the footnote 3 designation at the end.

4-910. Withdrawn.

#### ANNOTATIONS

**Withdrawals.**— Pursuant to a court order dated June 16, 1997, this form, relating to judgment for damages on default, is withdrawn effective on and after September 2, 1997. For present comparable provisions, see Rule 4-703 NMRA.

4-911. Withdrawn.

#### ANNOTATIONS

**Withdrawals.**— Pursuant to a court order dated June 16, 1997, this form, relating to judgment for damages on appearance by the parties, is withdrawn effective on and after September 2, 1997. For present comparable provisions, see Rule 4-701 NMRA.

4-912. Withdrawn.

#### ANNOTATIONS

**Withdrawals.**— Pursuant to a court order dated June 16, 1997, this form, relating to judgment for restitution reserving question of damages, is withdrawn effective on and after September 2, 1997. For present comparable provisions, see Rule 4-909 NMRA.

#### **4-913. Writ of restitution (*Restitution to owner*) (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**WRIT OF RESTITUTION**  
*(Restitution to owner)*  
*(Uniform Owner-Resident Relations Act)*

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff in this action, you are ordered to remove the defendant from the premises at \_\_\_\_\_ and to restore possession of the premises to plaintiff on or after \_\_\_\_\_ (*date*).

You are ordered to return this writ to this court immediately after its execution.

Dated: \_\_\_\_\_,

\_\_\_\_\_.

Judge

**RETURN ON WRIT OF RESTITUTION**

I certify that I carried out this writ of restitution by removing the defendant from the premises and restoring possession of the premises to the plaintiff on \_\_\_\_\_, \_\_\_\_\_ (*date*).

Date of return:

\_\_\_\_\_

Sheriff of  
County, State of New Mexico  
By  
Sheriff or deputy sheriff

[Rule 4-913 SCRA 1986; as amended, effective September 2, 1997; April 6, 1998.]

**ANNOTATIONS**

**The 1997 amendment**, effective September 2, 1997, deleted "and writ of execution" from the heading, inserted "(Restitution to owner)" following the heading, deleted language directing the sheriff to execute the writ, deleted "and execution" following "restitution" in the return heading and deleted language relating to the return of the execution, added Use Note 1 and designated the existing use note as Use Note 2, and made stylistic changes throughout.



The 1998 amendment, effective April 6, 1998, substituted "after" for "before" in the language of the restitution to owner, and deleted the Use Notes.

**4-914. Writ of restitution (*Restitution to resident*) (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff, resident

v.

\_\_\_\_\_, Defendant, owner

**WRIT OF RESTITUTION**  
**(*Uniform Owner-Resident Relations Act*)**  
**(*Restitution to resident*)**

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff, resident, in this action, you are to restore possession of the premises to \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (*date*).

You are to ordered to return this writ to the court by \_\_\_\_\_, \_\_\_\_\_ (*date*).

Date:

Judge

**RETURN ON WRIT OF RESTITUTION**

I certify that I carried out this writ of restitution by restoring possession of the premises to \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (*date*) at \_\_\_\_\_ (a.m.) (p.m.)

Date of return:

\_\_\_\_\_

Sheriff of

County, State of New Mexico

By  
Sheriff or deputy sheriff

*(The sheriff is obligated by law to make timely return.)*

[As amended, effective September 2, 1997.]

### ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, added "(Restitution to resident)" following the heading, and rewrote the form to delete language relating to removing the defendant from the premises and made stylistic changes throughout.

### **4-915. Petition for post-judgment writ of replevin.**

[35-11-1 to 35-11-3 NMSA 1978]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Plaintiff

against  
\_\_\_\_\_, Defendant

#### PETITION FOR POST-JUDGMENT WRIT OF REPLEVIN

Comes now the Plaintiff, petitioner herein, and alleges:

1. Plaintiff has a judgment against the Defendant in this matter dated \_\_\_\_\_, \_\_\_\_\_, with a present value including post-judgment costs and accrued interest totaling \$\_\_\_\_\_, the terms of which include Plaintiff's right to recover following personal property

*(attach exhibit if necessary)*

2. Plaintiff believes that the property may be found at \_\_\_\_\_ which is within the jurisdiction of this court;

3. This court has jurisdiction to issue a writ of replevin returning to Plaintiff the property described;

4. The specific facts upon which a writ of replevin is requested are that Plaintiff holds a valid, unsatisfied judgment against Defendant, declaring that property formerly in the possession of Plaintiff has been wrongfully taken or retained by Defendant and Defendant refuses to return it to Plaintiff or pay the judgment amount;

WHEREFORE Plaintiff prays for an order of this court requiring the sheriff of \_\_\_\_\_ county to take possession of the property and return it to the Plaintiff.

Signed

Name *(print)*

Address *(print)*

City, State and Zip Code *(print)*

Telephone number

Dated:

[Approved, effective January 1, 1993.]

#### **4-916. Post-judgment writ of replevin.**

[2-202, 3-202]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

against

\_\_\_\_\_, Defendant

#### **POST-JUDGMENT WRIT OF REPLEVIN**

THIS MATTER having come before the court on the petition of the Plaintiff herein for a Writ of Replevin ordering the sheriff of \_\_\_\_\_ County to seize property for the benefit of Plaintiff; and the Court finding that the petition is well taken and should be granted;

NOW THEREFORE the Sheriff of \_\_\_\_\_ County is hereby ordered to seize and to return to the Plaintiff the property described in the Petition (Exhibit "A") attached hereto wherever it may be found within the State of New Mexico.

Judge

**RETURN OF WRIT OF REPLEVIN**

I certify that I served this Writ of Replevin as follows:

\_\_\_\_\_ No personal property listed in the writ was found.

\_\_\_\_\_ Personal property as specified in the Writ was recovered on \_\_\_\_\_, \_\_\_\_\_, and returned to the Plaintiff. A written inventory is attached.

Date of return:

Sheriff

STATE OF NEW MEXICO )  
) ss.  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, personally known to me.

\_\_\_\_\_  
Notary Public or Other Officer Authorized to Take Oaths

My commission expires: \_\_\_\_\_

[Approved, effective January 1, 1993.]

**4-921. Three-day notice of nonpayment of rent (*Mobile Home Park Act*).**

[Sections 47-10-3 and 47-10-6 NMSA 1978]

**THREE-DAY NOTICE OF  
NONPAYMENT OF RENT<sup>1</sup>  
(*Mobile Home Park Act*)**

To:

Address: \_\_\_\_\_, New Mexico

You are notified that you have failed to pay rent as required by the agreement or separate agreement for a mobile home located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_ (name of mobile home park)  
\_\_\_\_\_ (mobile home address)  
\_\_\_\_\_ (mobile home lot or space)  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

The amount of rent and utilities owed is as follows:

Rent:	\$ _____
Late fee:	\$ _____
Utilities:	\$ _____
Other _____ (explain)	\$ _____
Total due:	\$ _____

If the total shown above is not paid within three (3) days from the date of delivery set out below, the rental agreement is terminated.

Payment will be accepted only by:

cash  money order  
 cashiers or certified check  personal check

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(owner, manager or agent)

Service of notice<sup>2</sup>:

personally delivered to resident  
 posted on the mobile home on \_\_\_\_\_ (date) and mailed certified mail, return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>3</sup>: \_\_\_\_\_

USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action.*
2. *Section 47-10-3 NMSA 1978 provides that service of a notice to quit shall be served by delivering the notice to the tenant personally or by posting the notice at the main entrance of the mobile home and sending a copy to the tenant by certified mail, return receipt requested. If this notice is personally delivered to the resident, mailing or posting is not required. The date of posting must be included on the posted notice and on the copy mailed to the mobile home tenant.*
3. *Set forth the name of the person delivering, posting or mailing the notice.*

[Adopted, effective September 2, 1997.]

**ANNOTATIONS**

**Recompilations.**— Former Rule 4-921 NMRA, relating to notice of judgment, has been recompiled as Rule 4-927 NMRA, effective September 2, 1997.

**4-922. [Thirty-day notice] [sixty-day notice] to quit (*Mobile Home Park Act*).**

[Section 47-10-3 NMSA 1978]

[THIRTY-DAY NOTICE] [SIXTY-DAY NOTICE]<sup>1</sup>  
 TO QUIT<sup>2</sup>  
 (*Mobile Home Park Act*)

To:

Address: \_\_\_\_\_ County \_\_\_\_\_, New Mexico

You are notified that the undersigned terminates the rental agreement for a mobile home located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_ (*name of mobile home park*)  
 \_\_\_\_\_ (*mobile home address*)  
 \_\_\_\_\_ (*mobile home lot or space*)  
 \_\_\_\_\_, New Mexico \_\_\_\_\_

effective \_\_\_\_\_, \_\_\_\_\_ (*date*).

You are to remove your mobile home from the premises by \_\_\_\_\_,  
 \_\_\_\_\_.<sup>1</sup> This notice of termination is given for the following reasons<sup>3</sup>:

---

---

Failure to vacate by this date will result in a legal action being filed against you.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(owner, manager or agent)

Service of notice<sup>4</sup>:

personally delivered to resident

posted on the mobile home on \_\_\_\_\_ (date) and mailed certified mail,  
return receipt requested

Delivered  posted:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>5</sup>: \_\_\_\_\_

Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By<sup>5</sup>: \_\_\_\_\_

USE NOTES

1. See Section 47-10-3 NMSA 1978. The tenant must be given a period of not less than thirty days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises. If the mobile home is a multisection mobile home and the tenant is the owner of the mobile home, the tenant must be given sixty (60) days from the end of the rental period to move the mobile home from the premises. However, if the multisection mobile home is being leased to or occupied by a person other than its owner a thirty-day notice is all that is required.

2. Use Civil Form 4-921 if termination is for non-payment of rent.

3. Set forth the reason for termination of the tenancy and the date, place and circumstances of any acts allegedly justifying the termination. See Section 47-10-5 NMSA 1978 for the reasons a mobile home park tenancy may be terminated.

4. Section 47-10-3 NMSA 1978 provides that service of a notice to quit shall be served by delivering the notice to the tenant personally or by posting the notice at the main entrance of the mobile home and sending a copy to the tenant by certified mail, return receipt requested. If this notice is personally delivered to the resident, mailing or posting is not required. The date of posting must be included on the posted notice and on the copy mailed to the mobile home tenant.

5. Set forth the name of the person delivering, posting or mailing the notice. The party giving notice should retain two (2) copies for possible court action.

[Adopted, effective September 2, 1997.]

**ANNOTATIONS**

**Recompilations.**— Former Rule 4-922 NMRA, relating to judgment, was recompiled as Rule 4-927 NMRA, effective September 2, 1997.

**4-923. Petition by landlord for termination of tenancy and judgment of possession (*Mobile Home Park Act*).**

[Sections 47-8-35, 47-10-4 to 47-10-6 and 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**PETITION BY LANDLORD FOR  
TERMINATION OF TENANCY AND  
JUDGMENT OF POSSESSION  
(*Mobile Home Park Act*)**

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at<sup>1</sup>:

\_\_\_\_\_, New Mexico  
\_\_\_\_\_.

2. Defendant entered into possession of the premises under a rental agreement and has breached the terms of the agreement as follows<sup>2</sup>:

.

A copy of the rental agreement is attached as Exhibit A.



3. The mobile home *(is) (is not)* subject to the security interest of a first lienholder. *(If there is a first lien, complete the following.)*

The lienholder is \_\_\_\_\_ and the address of the lienholder is \_\_\_\_\_

4. Plaintiff gave written:

notice of non-payment of rent and the defendant has failed to pay all amounts owed;

*(thirty) (sixty)*<sup>3</sup> day notice to quit on \_\_\_\_\_, \_\_\_\_\_ *(date)*, and defendant has failed to vacate the premises.

A copy of the written notice is attached as Exhibit B. *(check and complete if applicable)*

5. The amount of rent and utilities owed is as follows:

Unpaid rent	\$ _____
Rent per day until the mobile home is moved from the premises	\$ _____
Late fee	\$ _____
Utilities	\$ _____
Other _____ <i>(explain)</i>	\$ _____
Total due:	\$ _____

6. Plaintiff holds \$\_\_\_\_\_ of defendant as a damage deposit under the rental agreement.

7. Plaintiff requests separate trials on the issues of termination and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate [removal of the mobile home from the premises] [possession of the above described premises];

2. Unpaid rent of \$\_\_\_\_\_ plus \$\_\_\_\_\_ per day to date of restitution;

3. Damages as may be determined by the court;

4. Costs of this action;

5. Reasonable attorney fees;

6. Such other relief as the court may deem reasonable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name (*print*)

\_\_\_\_\_  
Address (*print*)

\_\_\_\_\_  
City, state and zip code (*print*)

\_\_\_\_\_  
Telephone number

USE NOTES

1. *Section 47-10-4 NMSA 1978 provides that the property description is deemed legally sufficient if it states the name of the landlord or of the mobile home park, the mailing address of the property, the location or space number upon which the mobile home is situated and the county in which the mobile home is situated.*

2. *The reasons for termination are set forth in Sections 47-10-5 and 47-10-6 NMSA 1978. One of these reasons must be described for termination.*

3. *Sixty days notice is required if the mobile home is a multisection mobile home. See Subsection C of Section 47-10-4 NMSA 1978.*

[Adopted, effective September 2, 1997.]

**4-924. Summons and notice of trial on petition for termination of tenancy (*Mobile Home Park Act*).**

[Sections 47-10-4 and 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
COURT  
\_\_\_\_\_  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**SUMMONS  
AND NOTICE OF TRIAL ON  
PETITION FOR TERMINATION OF TENANCY  
(Mobile Home Park Act)**

To: \_\_\_\_\_, defendant

Address: \_\_\_\_\_, New Mexico

You are notified that an action has been filed to terminate the rental agreement or lease of a mobile home space located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_ (name of mobile home park)  
\_\_\_\_\_ (mobile home address)  
\_\_\_\_\_ (mobile home lot or space)  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

You are ordered to appear for trial before the Honorable \_\_\_\_\_, Judge, Div. \_\_\_\_\_, located at \_\_\_\_\_, New Mexico on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_m. to show cause and present all evidence you may have why the tenancy should not be terminated.<sup>1</sup>

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

**FOR USE ONLY IN METROPOLITAN COURT CASES**

**[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]**

Dated: \_\_\_\_\_.

Judge

By:

Clerk

**THIS IS YOUR NOTICE OF TRIAL  
and will be the only notice  
that you will receive.**

**RETURN<sup>2</sup>**

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF                            )  
\_\_\_\_\_

*(complete if service is by a person  
other than the sheriff or deputy<sup>3</sup>)*

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form<sup>4</sup> in the following manner: *(check and complete only if service by sheriff or deputy)<sup>3</sup>*

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, (date), by delivering a copy of the summons, a copy of the petition and an answer form in the following manner:

*(person serving summons must check one of following boxes and fill in appropriate blanks)*

by delivering a copy of this summons, a copy of the petition and an answer form to the defendant \_\_\_\_\_ *(used when defendant receives copy of summons or refuses to receive summons).*

by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, located at \_\_\_\_\_ *(address) (used when defendant is not presently at the abode).*

by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ *(address). (used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)*

by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_, an agent authorized to receive service of process for defendant.

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_, *(parent) (guardian) (custodian)* of defendant *(used when defendant is a minor or an incompetent person)*.

[ ] by delivering a copy of this summons, a copy of the petition and an answer form to \_\_\_\_\_ *(name of person)*, \_\_\_\_\_, *(title of person authorized to receive service)* *(used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)*.

[ ] by service by mail.

Fees: \_\_\_\_\_

Signature of person making service

Title *(if any)*

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by posting)*<sup>5</sup>

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ *(name of person served)*  
\_\_\_\_\_ *(address where mailed)*  
\_\_\_\_\_ *(county)*  
\_\_\_\_\_ *(city, state and zip code)*

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by mail.)<sup>6</sup>*

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(name of person served)*  
*(address where mailed)*  
*(county)*  
*(city, state and zip code)*

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title<sup>3</sup>

#### USE NOTES

1. *The trial setting must be not less than seven (7) nor more than ten (10) days after service of this summons. See Section 47-8-43 NMSA 1978.*
2. *A separate summons must be used for each defendant.*

3. *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.*
4. *An answer form must be attached to the summons at the time of service. See Rule 4-925 NMRA for answer to petition for termination of tenancy.*
5. *For use when service is by posting. See Section 47-10-4 NMSA 1978 for service by posting under the Mobile Home Park Act. This form requires service by mail in addition to posting.*
6. *If service is by mail, Civil Form 4-208 must be completed and mailed with this summons.*

[Adopted, effective September 2, 1997.]

**4-925. Answer to petition for termination of tenancy (*Mobile Home Park Act*).**

[Sections 47-8-30, 47-8-41 to 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT  
 \_\_\_\_\_ COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**ANSWER  
 TO PETITION FOR TERMINATION OF TENANCY  
 (*Mobile Home Park Act*)**

1. Defendant is not in default because:  
 .
2. The amount of rent that the plaintiff states is owed is not correct because:  
 .
3. The damages claimed by the plaintiff are not owed to the plaintiff because:  
 .
4. The defendant asserts the following counterclaim or setoff against the plaintiff:  
 .

(check if applicable)

5.  Defendant requests separate trials on the issues of restitution and damages.

Signed

Name (print)

Address (print)

City, state and zip code (print)

Telephone number

[Adopted, effective September 2, 1997.]

**4-926. Judgment for possession (Mobile Home Park Act).**

[Sections 47-10-9, 47-8-40 and 47-8-41 NMSA 1978]

STATE OF NEW MEXICO

No. \_\_\_\_\_

\_\_\_\_\_ COUNTY

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**JUDGMENT FOR POSSESSION  
(Mobile Home Park Act)<sup>1</sup>**

This matter came on for trial on \_\_\_\_\_, \_\_\_\_\_ (date). The plaintiff appeared (in person) (and) (by attorney \_\_\_\_\_). The defendant (did not appear) (appeared) (in person) (and) (by attorney \_\_\_\_\_). Having heard the evidence and argument presented, the court finds in favor of:

the plaintiff



[ ] the defendant.

The court further finds that the mobile home:

[ ] is subject to the security interest of a first lienholder<sup>2</sup>.

[ ] is not subject to the security interest of a first lienholder.

IT IS THEREFORE ORDERED:

1. The premises located in \_\_\_\_\_ County, New Mexico at:  
 \_\_\_\_\_ (name of mobile home park)  
 \_\_\_\_\_ (mobile home address)  
 \_\_\_\_\_ (mobile home lot or space)  
 \_\_\_\_\_, New Mexico \_\_\_\_\_

be restored to plaintiff;

2. The rental agreement is terminated;

3. *(complete applicable)*

Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____

[A hearing on the issue of damages will be held by this court on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (a.m.) (p.m.)]<sup>3</sup>

4. A writ of restitution be issued effective \_\_\_\_\_, \_\_\_\_\_ (date).

*(The following paragraph is used if there is a security interest of a first lienholder on the mobile home)*

[5. The plaintiff will promptly serve notice of this judgment on the first lienholder in accordance with civil form 4-928. The cost of removal by the first lienholder shall be paid by the first lienholder.]<sup>4</sup>

[6. If this case is appealed the *(plaintiff) (defendant)* shall \_\_\_\_\_.]<sup>5</sup>

Date:

Judge

## USE NOTE

1. *Section 47-10-9 NMSA 1978 provides that not less than 48 hours after entry of a notice of judgment (Civil Form 4-926) and upon execution of a writ of restitution (Civil Form 4-929) the sheriff will oversee the removal of a mobile home.*
2. *Section 47-10-9 NMSA 1978 provides that prior to issuance of the writ of restitution the court shall make a finding of fact that the mobile home is or is not subject to the security interest of a first lienholder. In those cases where the court finds there is a security agreement on the mobile home, the landlord must give written notice to the first lienholder. See Civil Form 4-928 for notice to lienholder of mobile home judgment.*
3. *Use Civil Form 4-701 if damages are determined at a separate hearing.*
4. *Use this paragraph only if the court finds that the mobile home is subject to a first lien. Notice shall be substantially in the form approved by the Supreme Court. See Civil Form 4-928.*
5. *Section 47-8-47 NMSA 1978 of the Owner-Resident Relations Act provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. See Section 47-8-47 NMSA 1978 for appeals by the plaintiff.*

[Former Rule 4-921 SCRA 1986; adopted, effective November 1, 1995; recompiled as Rule 4-926 NMRA and amended, effective September 2, 1997; as amended January 1, 1999.]

## ANNOTATIONS

**The 1997 amendment**, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-921 NMRA, and rewrote the form.

**The 1998 amendment**, effective January 1, 1999, substituted "security interest" for "security agreement" at the second instance of the term and rewrote the first sentence in Item 5 of the Order, which read: "The plaintiff will promptly serve notice on the first lienholder that the first lienholder may pay the rent and charges due in accordance with the defendant's lease within thirty (30) days of receipt of the notice or, upon payment of the rent and charges owed, remove the mobile home".

### **4-927. Notice of judgment (*Mobile Home Park Act*).**

[Section 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**NOTICE OF JUDGMENT  
(Mobile Home Park Act)**

To: \_\_\_\_\_ (mobile home owner)

You are notified that:

1. A judgment has been entered against you and a writ of restitution will be issued effective \_\_\_\_\_ (date). Without additional notice to you, the sheriff will serve a writ of restitution on or after 8:00 a.m. on \_\_\_\_\_ (date).
2. You are to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires and otherwise making the mobile home safe and ready for highway travel. Your mobile home should be removed or ready for removal by the date and time specified in paragraph one of this notice.
3. If your mobile home is not removed from the landlord's land by the date and time specified in paragraph 1 of this notice, the landlord and sheriff shall have the right to take possession of your mobile home for purposes of removal and storage. If you have a property interest in the mobile home it is your responsibility to prevent weather damage to the mobile home.
4. You may be held responsible for utility charges, rents and reasonable removal and storage charges. Those charges constitute a lien on your mobile home. Any person who claims the mobile home will owe that sum to the person who paid it.

Date: \_\_\_\_\_

Judge

[Former Rule 4-921 SCRA 1986; adopted, effective November 1, 1995; recompiled as Rule 4-927 NMRA and amended, effective September 2, 1997.]

**ANNOTATIONS**

The 1997 amendment, effective September 2, 1997, recompiled this form, which was formerly compiled as Rule 4-922 NMRA, and rewrote the form.

**4-928. Notice to lienholder of mobile home judgment (*Mobile Home Park Act*).**

[Section 47-10-9 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**NOTICE TO LIENHOLDER  
OF MOBILE HOME JUDGMENT  
(*Mobile Home Park Act*)**

To: \_\_\_\_\_ (*lienholder or other security interest*)

You are notified that:

1. A judgment has been entered against \_\_\_\_\_ (*name of defendant*) and a writ of restitution will be issued effective \_\_\_\_\_ (*date*) to remove the mobile home from the premises located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, New Mexico \_\_\_\_\_.

Without additional notice to you, the sheriff will serve a writ of restitution on or after 8:00 a.m. on \_\_\_\_\_ (*date*) for the removal of the mobile home on or before \_\_\_\_\_ (*date*)<sup>1</sup>.

2. You have thirty (30) days from the date of receipt of this notice to pay the rent and charges permitted by law and to advise the landlord in writing whether you intend to pay the rent and other charges under the terms of the rental agreement.

3. If you want to remove the mobile home at your expense before the date set for removal, you may do so by paying the landlord all rent, utility and other removal costs provided by law. The amount of rent, utility charges and other charges as of \_\_\_\_\_ (date) is as follows:

Rent:	\$ _____
Utilities:	\$ _____
Removal and storage charges	\$ _____
Other _____ (explain)	\$ _____
Total due:	\$ _____
Daily rent	\$ _____

4. The tenant is required to pay rent on \_\_\_\_\_ (day of month) and utilities on \_\_\_\_\_ (day of month).

5. A copy of the lease and the landlord's rules and regulations are attached as Exhibits A and B.

6. This notice does not relieve you of complying with other applicable provisions of law relating to the repossession of the mobile home.

Date:

Judge

**RETURN<sup>2</sup>**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

**(complete if service is by a person other than the sheriff or deputy)<sup>3</sup>**

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, (date), by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached in the following manner:

**(check and complete only if service by sheriff or deputy)<sup>3</sup>**

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_ (date), by delivering a copy of the summons and a copy of the notice of judgment with Exhibits A and B attached in the following manner:

**(person serving summons must check one of following boxes and fill in appropriate blanks)**

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_ (used when defendant receives copy of summons or refuses to receive summons).

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, located at \_\_\_\_\_ (address) (used when defendant is not presently at the abode).

by posting a copy of the summons and the notice of judgment with Exhibits A and B attached in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ (address) (This alternative is used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, the notice of judgment with Exhibits A and B attached must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, (parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_ (name of person), \_\_\_\_\_, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

by service by certified mail, return receipt requested.

**CERTIFICATE OF SERVICE BY ATTORNEY  
(for service on a party)**

I certify that I caused a copy of this notice to be served on the following persons or entities by (delivery) (mail) (\_\_\_\_\_) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(2) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

Attorney for landlord

Signature

Date of signature

#### USE NOTES

1. *A writ of restitution directs the sheriff to restore the premises to the plaintiff. A copy of the writ need not be served on the lienholder unless the lienholder intervenes as a party.*

2. *If the lienholder is a party or has entered an appearance in the proceedings, service may be made in the manner provided by the rules of civil procedure for the service of papers on a party subsequent to service of the original pleading. See, however, Subsection J of Section 47-10-9 NMSA 1978 for statutory notice.*

3. *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized. If service is made on a party by an attorney the signature of the attorney need not be notarized.*

[Adopted, effective September 2, 1997; as amended, effective April 6, 1998.]

#### ANNOTATIONS

**The 1998 amendment**, effective April 6, 1998, in the notice to lienholder, substituted "permitted by law" for "accrued to the date of this notice" in Paragraph 2, substituted "provided" for "permitted" in Paragraph 3, in the return portion, inserted "This alternative is" in the third paragraph of the list for the person serving summons, and substituted "to the plaintiff" for "on a specified date not less than three nor more than seven days after entry of the judgment" in Use Note 1.

**4-929. Writ of restitution (*Mobile Home Park Act*).**

[Sections 47-10-9 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**WRIT OF RESTITUTION**  
**(Mobile Home Park Act)**

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of the above county:

Judgment having been entered for the plaintiff, you are ordered to remove the tenant and to take possession of the following mobile home on or before \_\_\_\_\_ (date):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, New Mexico \_\_\_\_\_  
*(name of mobile home park)*  
*(mobile home address)*  
*(mobile home lot or space)*

for the purpose of storage.

You are ordered to return this writ to this court by \_\_\_\_\_.

Dated: \_\_\_\_\_,  
\_\_\_\_\_.

Judge

**RETURN ON WRIT OF RESTITUTION<sup>2</sup>**

I certify that I carried out this writ of restitution by removing the defendant from the mobile home located at \_\_\_\_\_ and restoring possession of the premises to \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (a.m.) (p.m.). The mobile home is now located at \_\_\_\_\_ (address).

Date of return:  
\_\_\_\_\_

Sheriff of \_\_\_\_\_  
County, State of New Mexico

By  
Sheriff or deputy sheriff



USE NOTES

1. See Section 47-8-46 for service of the writ of restitution.
2. The sheriff is obligated by law to make timely return.

[Adopted, effective September 2, 1997; as amended, effective January 1, 1999.]

**ANNOTATIONS**

**The 1998 amendment**, effective January 1, 1999, amended this form to conform it with Form 4-913 NMRA.

**4-961. Petition for order of protection from domestic abuse.**

[Family Violence Protection Act,  
Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**PETITION FOR ORDER OF PROTECTION  
FROM DOMESTIC ABUSE<sup>1</sup>**

**1. COURT ASSISTANCE REQUEST**

We will need an interpreter in \_\_\_\_\_ to translate at hearings for [  
] me  the respondent.

We will need \_\_\_\_\_ (*describe other request for special help*).

**2. INFORMATION ABOUT THE RESPONDENT** (*the person I am filing against*)

A. The respondent is:

my husband or  my wife

my ex-husband or  my ex-wife

- [ the parent of my [child] [children]
- [ a family member
- [ \_\_\_\_\_ (describe the family relationship)
- [ a person with whom I have had a continuing personal relationship \_\_\_\_\_ (describe the relationship)
- [ a person who has sexually assaulted me
- [ a person who has stalked me

B. The respondent has the following weapons:  
 \_\_\_\_\_

**3. [CHILD] [CHILDREN]²**

A. List minor [child] [children] of either party.

Name	Date of Birth	Relationship of [Child] [Children]	
		To You	To Respondent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. List address and with whom the [child] [children] are currently living. (List each child separately if [child] [children] do not reside with same person.)

C. List each address where [child] [children] have lived during the last five (5) years. (List each child separately if [child] [children] did not reside with same person.)

D. Does anyone else have physical custody of the [child] [children] or claim to have custody or visitation rights? [ ] yes [ ] no

If yes, complete the following for the [child] [children]:

**Child's name**

\_\_\_\_\_  
\_\_\_\_\_

**Person claiming rights**

\_\_\_\_\_  
\_\_\_\_\_

#### 4. OTHER CASES

[ ] The following divorce, separation, order of protection, child support, paternity, abuse or neglect cases have been previously filed by me, the respondent or the state:

<b>Type of Case</b>	<b>Year Filed</b> <i>(if known)</i>	<b>Case Number</b> <i>(if known)</i>	<b>Where Filed</b> <i>(city and state)</i>
_____	_____	_____	_____
_____	_____	_____	_____

#### 5. DOMESTIC ABUSE

A. The respondent committed the following act(s) of domestic abuse against me or a member of my household: *(describe in detail what happened to you or to a member of your household and when and where.)*

**Physical abuse:**

**Threats which caused fear that you or any household member would be injured:**

**Other abuse:**

**Date of abuse:** .

**Place of abuse:** .

B. Others present during the abuse: .

C. Did drugs or alcohol play a role in the domestic abuse? [ ] yes [ ] no

D. Were weapons used during the abuse? [ ] yes [ ] no  
*If yes, what weapons?* .

E. Has there been prior domestic abuse? [ ] yes [ ] no

#### 6. REQUESTS TO THE COURT

I REQUEST THAT THE COURT ORDER *(check all that you want):*

[ A. that the respondent not contact me, not abuse me and that the  
] respondent stay away from my residence [and] [place of

employment] [and] [school].

- B. (1) that the respondent shall immediately leave  my  our residence at \_\_\_\_\_.
- (2) that the respondent provide me with temporary suitable alternative housing.
- C. that the respondent shall not sell, remove, pawn, hide, destroy or damage any property owned by me or the two of us jointly.
- D. that law enforcement officers assist me in retrieving my clothing and personal belongings from the residence at \_\_\_\_\_.
- E. that I be given temporary custody of the [child] [children] listed in this petition.
- F. that until the court hearing:
  - respondent shall have the following contact with the [child] [children]:  
\_\_\_\_\_.
  - respondent shall have no contact with the [child] [children].
- G. that the respondent shall pay:
  - support for the [child] [children].
  - support for me.
- H. that the respondent shall pay me for the damage and medical bills resulting from the abuse.  
other relief that is necessary to resolve this domestic abuse problem
- I. *(list or describe what relief is necessary):*  
\_\_\_\_\_.

**7. INFORMATION ABOUT THE PETITIONER (ME)**

*(If you do not want the respondent to know your address and phone number, do not include it on this form. Tell the court clerk that you need to complete two other forms (Forms 4-961A and 4-961B) for your name and address and request that the clerk place your address under seal.)*

- A. **I DO NOT WANT RESPONDENT TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

My physical address is:

[ ] B. \_\_\_\_\_ in the [ ] County  
[ ] Indian Country of \_\_\_\_\_, State of New Mexico.

My mailing address is:

\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city and zip)

My telephone numbers are:

Home \_\_\_\_\_ Work \_\_\_\_\_ Message \_\_\_\_\_

**8. NOTICE TO RESPONDENT**

[ ] A. I have not told respondent that I am filing a petition to ask the court for an order of protection because I believe irreparable harm would result if I told respondent before coming to court. *(Describe what might happen to you or what you are afraid might happen if the respondent knew you were asking for a court order of protection.)*

[ ] B. I have told respondent that I am filing this petition.

**9. LOCATION OF RESPONDENT**

A. Respondent may be found at:

\_\_\_\_\_ (address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (state and zip code)  
\_\_\_\_\_ (if in Indian Country, please name tribe or pueblo).

Respondent's:

\_\_\_\_\_ (date of birth)  
\_\_\_\_\_ (home telephone number)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (work telephone number)

B. Is respondent in jail? [ ] yes [ ] no

**VERIFICATION**

STATE OF NEW MEXICO }  
COUNTY OF }

\_\_\_\_\_  
TRIBE OR PUEBLO \_\_\_\_\_ }

The petitioner was sworn and states: I, the Petitioner, being duly sworn upon my oath, depose and state that I am the Petitioner in the above-entitled cause and I have read the petition for order of protection from domestic abuse. I state that the contents thereof are true and correct to the best of my information and belief.

*Date*

*Signature of Petitioner*

Signed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary public

\_\_\_\_\_  
My commission expires: \_\_\_\_\_.

#### USE NOTES

1. Petitioner should complete all information known by the petitioner.
2. This part must be completed if there are children. Section 40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information under oath as to the child's present address, the places where the child has lived within the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period. If a child lives with you now, but you do not want respondent to know your address, do not put your current address here, but do fill out Forms 4-961A and 4-961B NMRA.
3. Use Notes 1 and 2 are to be printed on pre-printed forms published for use by pro se petitioners. This note and Use Note 4 should not be printed on the form. This form has been approved by the Supreme Court of New Mexico for use in the courts of this state and distribution pursuant to Section 40-13-3 NMSA 1978. Pre-printed pro se forms should include a lined blank page at the end of the form for use by the petitioner if the pre-printed form does not include adequate space for a complete answer to a question.
4. Section 40-13-3.1(A)(4) NMSA 1978 provides that a victim in a domestic abuse case shall not be required to pay for "the filing, issuance or service of a petition for an order of protection".

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

#### ANNOTATIONS

**The 2001 amendment**, effective May 1, 2001, combined the provisions of the former second paragraph in item 8, "Notice to Respondent," into the first paragraph and, in Use Note 4, substituted "a victim" for "a petitioner" in the first sentence and inserted "or counter-petitioner in a domestic abuse case" in the second sentence.

**The 2003 amendment**, effective February 16, 2004, substituted "five (5)" for "3" in Paragraph C of item 3 and "40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement " for "40-10-10 NMSA 1978 of the Child Custody Jurisdiction" and "five (5)" for "3" in the second sentence of Use Note 2.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Subparagraph A of Paragraph 2, added that the respondent is "a person who has sexually assaulted me" and that the respondent is "a person who has stalked me"; in Subparagraph A of Paragraph 5, added the blank for "Date of abuse" and the blank for "Place of abuse"; in Item (1) of Subparagraph B of Paragraph 6, added the blank for the petitioner's residence location; in Subparagraph A of Paragraph 9, deleted the blank for the respondent's social security number; in the Verification section, added the initial statement that the petitioner, being duly sworn upon oath, deposes and states that the petitioner is the petitioner, deleted language that the petition is true to the best of the petitioner's knowledge and belief, and that the petitioner understands that the petitioner can be punished civilly and criminally if any information in the petition is false, and added the last sentence; in the Use Notes, in Paragraph 4, added the reference to Subparagraph (4) of Paragraph (A) of Section 40-13-3.1 NMSA 1978, changed "the issuance or service of a protection order" to "the filing, issuance or service of a petition for an order of protection", and deleted the sentence which stated that the former statement has been construed to mean that a petitioner or counter-petitioner in a domestic abuse case is not required to pay a docket fee or other filing fees, or fee for service of process.

**4-961A. Service of process information for petition for order of protection from domestic abuse and petition for emergency order protection.**

[For use with 4-961 and 4-972.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Petitioner

v. \_\_\_\_\_ No. \_\_\_\_\_  
\_\_\_\_\_, Respondent

SERVICE OF PROCESS INFORMATION FOR  
PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE  
AND  
PETITION FOR EMERGENCY ORDER OF PROTECTION<sup>1</sup>  
INFORMATION ABOUT THE RESPONDENT

\_\_\_\_\_  
Respondent's name

\_\_\_\_\_  
Respondent's date of birth

Is respondent in jail?  yes  no

If yes, where? \_\_\_\_\_

Respondent's physical address is:

\_\_\_\_\_ (street)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (county)  
\_\_\_\_\_ (state and zip code)

Tribe  Pueblo of \_\_\_\_\_

Respondent's workplace:

\_\_\_\_\_ (employer's name)  
\_\_\_\_\_ (street)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (county)  
\_\_\_\_\_ (state and zip code)

Tribe  Pueblo of \_\_\_\_\_

Respondent works the following hours:

\_\_\_\_\_ (a.m.) (p.m.) to \_\_\_\_\_ (a.m.) (p.m.)

Respondent's telephone numbers are:

Home	Work	Message
_____	_____	_____

What does respondent look like?

Hair \_\_\_\_\_ (color) Eyes \_\_\_\_\_ (color)

Height \_\_\_\_\_ Weight \_\_\_\_\_

Race - ethnicity: \_\_\_\_\_

Other physical characteristics or marks:

Do you consider the respondent to be dangerous?

yes  no. If yes, why?

Does respondent have any weapons?  yes  no.



If yes, please describe: .

Places where respondent can be found apart from physical address and workplace:

\_\_\_\_\_  
Date

*Signature of Petitioner*

*(Petitioner's street address  
unless petitioner files Form 4-961B)*

*(City, state and zip code  
unless petitioner files Form 4-961B)*

USE NOTE

1. This form should be used with Form 4-961 (Petition for Order of Protection from Domestic Abuse) and Form 4-972 (Petition for Emergency Order of Protection from Domestic Abuse). It should be distributed to *pro se* petitioners pursuant to Section 40-13-3 NMSA 1978. This use note need not be printed on pre-printed *pro se* forms.

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**ANNOTATIONS**

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, deleted the blank for the respondent's social security number and added blanks for the respondent's home, work and message telephone numbers.

**4-961B. Request for order to omit petitioner's address and telephone number from petition, to place references to petitioner's address under seal and for an order providing alternative means of service on petitioner.**

[Standard simplified request to seal petitioner's address form, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

\_\_\_\_\_  
JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent

**REQUEST FOR ORDER TO OMIT PETITIONER'S ADDRESS  
AND TELEPHONE NUMBER FROM PETITION,  
TO PLACE REFERENCES TO PETITIONER'S ADDRESS UNDER  
SEAL AND FOR AN ORDER PROVIDING  
ALTERNATIVE MEANS OF SERVICE ON PETITIONER**

1. I do not want my current address and telephone number to be made known to the respondent for the following reasons:

2. My current mailing address and telephone number are:

\_\_\_\_\_  
*(address)*

\_\_\_\_\_  
*(city, state and zip code)*

My telephone numbers are:

phone number	work phone	message phone
_____	_____	_____

3. I ask the court not to disclose my current address and telephone number.

4. I ask that if my request is granted, all process and papers be served on me by delivering them to the clerk of the court who shall serve me at my current address.

5. I agree that if either my address or telephone number change during this lawsuit, I will immediately file another form like this one giving my new address or telephone number.

**VERIFICATION**

STATE OF NEW MEXICO )  
COUNTY OF \_\_\_\_\_ ) ss  
TRIBE OR PUEBLO \_\_\_\_\_ )

The petitioner was sworn and states: I have read the above information and it is true to the best of my knowledge and belief. I understand that I can be punished both civilly and criminally if any information in this petition is false.

\_\_\_\_\_  
Date

*Signature of Petitioner*

*Petitioner's street address*

*City, state and zip code*

Signed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

I have reviewed this request

- I recommend that the request be granted.
- I recommend that the request be denied.

Signed

Title

Court's telephone number

Request of petitioner is granted. The respondent shall serve all pleadings and other papers required to be served by filing them with the clerk who will note on the pleading or papers the date and manner of service. The clerk shall promptly serve such pleadings and papers on the petitioner, noting in the court file the date and manner of service upon petitioner.

Request of the petitioner is denied. The petitioner shall place petitioner's name, address and phone number in the appropriate places on the petition prior to service of the petition upon the respondent.

District Judge

Date

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001.]

**Committee commentary.**— The committee assumes that the district court has inherent power to grant requests of this type under compelling circumstances when petitioner demonstrates a reasonable basis to believe that the petitioner's physical safety or that of a household member would be threatened if petitioner's current address is made available to respondent. The form provides an alternative means by which respondent can serve pleadings and other papers on petitioner.

### ANNOTATIONS

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

### **4-962. Response to petition for order of protection from domestic abuse.**

[Standard simplified response to petition form, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

\_\_\_\_\_ JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent

### RESPONSE TO PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE

Respondent in response to the allegations in the petition for order of protection from domestic abuse states: *(Set forth a response to each paragraph of the petition you do not agree with. Please include the paragraph number of the petition preceding each response.)*

*(If you need additional space, please attach additional pages.)*

Respondent requests that the court:

*(check and complete applicable alternatives)*

modify the temporary order of protection as follows:

.

terminate the temporary order of protection because:

.

hold an earlier hearing on the petition for protection order because:

.

hold a later hearing on the petition for protection order because:

.

dismiss the petition for protection order because:

.

*(Signature of respondent)*

*(Respondent's name printed)*

*(Respondent's address)*

*(Respondent's telephone number)*

**AFFIDAVIT OF SERVICE OF PARTY**

I declare under penalty of perjury that a copy of this response was served on the petitioner by:

*(check and complete applicable alternative)*

first class mail, postage prepaid on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ at the following address:

\_\_\_\_\_  
*(address)*

\_\_\_\_\_  
OR

the following means: \_\_\_\_\_  
OR

(check only if the petitioner's present address is unknown to respondent and not contained on the petition) service on the clerk of the court by filing two copies of this response with the clerk on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature of respondent

Date of signature

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

**SERVICE OF PETITIONER BY CLERK**  
*(to be completed by clerk when  
petitioner's address has been sealed  
by order of the court)*

I served this response on the petitioner by first class mail, postage prepaid on this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Clerk

USE NOTE

This Response to Petition gives respondent an opportunity to state defenses against the charges in the petition. This Response to Petition does **not** contain a counter petition charging the petitioner with an act of domestic abuse. If the respondent only wants to defend against the petitioner's charge of abuse, this form should be used as drafted. If the respondent wants both to defend against the petitioner's charge of domestic abuse and also to charge the petitioner with domestic abuse, the respondent should fill out this form and also fill out Form 4-962A NMRA. Respondent then should attach Form 4-962 and Form 4-962A.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001.]

### ANNOTATIONS

**The 2001 amendment**, effective May 1, 2001, substituted "fill out this form and also fill out Form 4-962A NMRA" for "add a section to this form titled "Counter Petition" and should include in it suitably modified relevant provisions from Form 4-961" in the next-to-last sentence in the Use Note and added the last sentence thereto.

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

### 4-962A. Counter-petition for order of protection from domestic abuse.

[Family Violence Protection Act,  
Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Petitioner

v. \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_, Respondent

#### COUNTER-PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE<sup>1</sup>

#### 1. COURT ASSISTANCE REQUEST

We will need an interpreter in \_\_\_\_\_ to translate at hearings for [ ] me [ ] the petitioner.

We will need \_\_\_\_\_ (*describe other request for special help*).

#### 2. INFORMATION ABOUT THE PETITIONER (*the person I am filing against*)

A. The petitioner is:

- my husband or  my wife
- my ex-husband or  my ex-wife
- the parent of my [child] [children]
- a family member \_\_\_\_\_ (describe the family relationship)
- a person with whom I have had a continuing personal relationship  
\_\_\_\_\_ (describe the relationship)
- a person who has sexually assaulted me
- a person who has stalked me

B. The petitioner has the following weapons: \_\_\_\_\_.

**3. [CHILD][CHILDREN]<sup>2</sup>**

A. List minor [child] [children] of either party.

Name	Date of Birth	Relationship of [Child] [Children]	
		To You	To Petitioner
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. List address and with whom the [child] [children] are currently living. (List each child separately if [child] [children] do not reside with same person.)

C. List each address where [child] [children] have lived during the last five (5) years. (List each child separately if [child] [children] did not reside with same person.)

D. Does anyone else have physical custody of the [child] [children] or claim to have custody or visitation rights?  yes  no  
If yes, complete the following for the [child] [children]:

Child's name	Person claiming rights
_____	_____



---

**4. OTHER CASES**

The following divorce, separation, order of protection, child support, paternity, abuse or neglect cases have been previously filed by me, the petitioner or the state:

<b>Type of Case</b>	<b>Year Filed</b> <i>(if known)</i>	<b>Case Number</b> <i>(if known)</i>	<b>Where Filed</b> <i>(city and state)</i>
_____	_____	_____	_____
_____	_____	_____	_____

**5. DOMESTIC ABUSE**

A. The petitioner committed the following act(s) of domestic abuse against me or a member of my household: *(describe in detail what happened to you or to a member of your household and when and where.)*

**Physical abuse:**

**Threats which caused fear that you or any household member would be injured:**

**Other abuse:**

**Date of abuse:** .

**Place of abuse:** .

B. Others present during the abuse: .

C. Did drugs or alcohol play a role in the domestic abuse?  yes  no

D. Were weapons used during the abuse?  yes  no.  
*If yes, what weapons?*

---

E. Has there been prior domestic abuse?  yes  no.

**6. REQUESTS TO THE COURT**

I REQUEST THAT THE COURT ORDER *(check all that you want):*

- A. that the petitioner not contact me, not abuse me and that the petitioner stay away from my residence [and] [place of employment] [and] [school].
- B. (1) that the petitioner shall immediately leave  my  our residence at .

- (2) that the petitioner provide me with temporary suitable alternative housing.
- OR
- C. that the petitioner shall not sell, remove, pawn, hide, destroy or damage any property owned by me or the two of us jointly.
- D. that law enforcement officers assist me in retrieving my clothing and personal belongings from the residence at \_\_\_\_\_.
- E. that I be given temporary custody of the [child] [children] listed in this petition.
- F. that until the court hearing:
  - petitioner shall have the following contact with the [child] [children]:  
\_\_\_\_\_.
  - petitioner shall have no contact with the [child] [children]:  
\_\_\_\_\_.
- G. that the petitioner shall pay:
  - support for the [child] [children]
  - support for me.
- H. that the petitioner shall pay me for the damage and medical bills resulting from the abuse.
- I. other relief that is necessary to resolve this domestic abuse problem (*list or describe what relief is necessary*):

**7. INFORMATION ABOUT THE RESPONDENT (ME)**

*(If you do not want the petitioner to know your address and phone number, do not include it on this form. Tell the court clerk that you need to complete two other forms (Forms 4-961A and 4-961B) for your name and address and request that the clerk place your address under seal.)*

- A. **I DO NOT WANT PETITIONER TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

- B. My physical address is: \_\_\_\_\_ in the [ ]  
County [ ] Indian Country of \_\_\_\_\_, State of New Mexico.  
My \_\_\_\_\_ mailing \_\_\_\_\_ address \_\_\_\_\_ is:  
\_\_\_\_\_  
\_\_\_\_\_  
*(street address)*  
*(city and zip)*

My telephone numbers are:  
 Home \_\_\_\_\_ Work \_\_\_\_\_ Message \_\_\_\_\_

**8. NOTICE TO PETITIONER**

- I have not told petitioner that I am filing a counter-petition to ask the court for an order of protection because I believe irreparable harm would result if I
- A. told petitioner before coming to court. *(Describe what might happen to you or what you are afraid might happen if the petitioner knew you were asking for a court order of protection.)*
- B. I have told petitioner that I am filing this counter-petition.

**9. LOCATION OF PETITIONER**

- A. Petitioner may be found at:
- \_\_\_\_\_ *(address)*  
 \_\_\_\_\_ *(city)*  
 \_\_\_\_\_ *(state and zip code)*  
 \_\_\_\_\_ *(if in Indian Country, please name tribe or pueblo).*
- Petitioner's:
- \_\_\_\_\_ *(date of birth)*  
 \_\_\_\_\_ *(home telephone number)*  
 \_\_\_\_\_ *(work address)*  
 \_\_\_\_\_ *(work telephone number).*
- B. Is petitioner in jail?  yes  no

**VERIFICATION**

STATE OF NEW MEXICO )  
 COUNTY OF \_\_\_\_\_ )  
 TRIBE OR PUEBLO \_\_\_\_\_ )

The respondent was sworn and states: I, the Respondent/Counter-Petitioner, being duly sworn upon my oath, depose and state that I am the Respondent/Counter-Petitioner in the above-entitled cause and I have read the counter-petition for order of protection from domestic abuse. I state that the contents thereof are true and correct to the best of my information and belief.

Date

Signature of Respondent

Signed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
Notary public

My commission expires: \_\_\_\_\_.

#### USE NOTES

1. Respondent should complete all information known by the respondent.
2. This part must be completed if there are children. Section 40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information under oath as to the child's present address, the places where the child has lived within the last five (5) five years and the names and present addresses of the persons with whom the child has lived during that period. If a child lives with you now, but you do not want petitioner to know your address, do not put your current address here, but do fill out Forms 4-961A and 4-961B NMRA.
3. Use Notes 1 and 2 are to be printed on pre-printed forms published for use by pro se respondents. This note and Use Note 4 should not be printed on the form. This form has been approved by the Supreme Court of New Mexico for use in the courts of this state and distribution pursuant to Section 40-13-3 NMSA 1978. Pre-printed pro se forms should include a lined blank page at the end of the form for use by the respondent if the pre-printed form does not include adequate space for a complete answer to a question.
4. Section 40-13-3.1(A)(4) NMSA 1978 provides that a victim in a domestic abuse case shall not be required to pay for "the filing, issuance or service of a petition for an order of protection".

[Approved, effective May 1, 2001; as amended, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

#### ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, substituted "(5) five" for "3" in Paragraph C of item 3 and "40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement " for "40-10-10 NMSA 1978 of the Child Custody Jurisdiction" and "(5) five" for "3" in the second sentence of Use Note 2.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Subparagraph A of Paragraph 2, added that the petitioner is "a person who has sexually assaulted me" and that the petitioner is "a person who has stalked me"; in Subparagraph A of Paragraph 5, added the blanks for "Date of abuse"

and for "Place of abuse"; in Item (1) of Subparagraph B of Paragraph 6, added the blank for the location of the respondent's residence; added Item (3) of Subparagraph B of Paragraph 6; in Subparagraph A of Paragraph 9, deleted the blank for the petitioner's social security number; in the Verification section, added the initial statement that the respondent, being duly sworn upon oath, deposes and states that the respondent is the respondent, deleted language that the counter-petition is true to the best of the respondent's knowledge and belief and that the respondent understands that the respondent can be punished civilly and criminally if any information in the counter-petition is false, and added the last sentence; in the Use Notes, in Paragraph 4, added the reference to Subparagraph (4) of Paragraph (A) of Section 40-13-3.1 NMSA 1978, changed "the issuance or service of a protection order" to "the filing, issuance or service of a petition for an order of protection", and deleted the sentence which stated that the former statement has been construed to mean that a petitioner or counter-petitioner in a domestic abuse case is not required to pay a docket fee or other filing fees, or fee for service of process.

**4-963. Temporary order of protection and order to appear.**

[Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO  
 COUNTY OF \_\_\_\_\_  
 \_\_\_\_\_ JUDICIAL DISTRICT  
 \_\_\_\_\_, Petitioner

v. \_\_\_\_\_ No. \_\_\_\_\_  
 \_\_\_\_\_, Respondent

**TEMPORARY ORDER OF PROTECTION  
 AND ORDER TO APPEAR**

The court has reviewed the sworn petition alleging domestic abuse. The court having considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court **ORDERS:**

- [ ] 1. Respondent shall not write to, talk to, visit or contact the petitioner in any way except through petitioner's lawyer, if petitioner has a lawyer.
- [ ] 2. Respondent shall not abuse the petitioner or the petitioner's household members in any way. "Abuse" means any incident by respondent against petitioner or petitioner's household member

resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

3. Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.

Respondent shall not go within \_\_\_\_\_ yards of the petitioner's home or school or work place.

4. Respondent shall not go within \_\_\_\_\_ yards of the petitioner at all times except

\_\_\_\_\_.

If at a public place, such as a store, respondent shall not go within \_\_\_\_\_ yards of petitioner.

5. \_\_\_\_\_ shall have temporary physical custody of the following child(ren):

6. With respect to the child(ren) named in the preceding paragraph,  respondent  petitioner shall have:

A. No contact with the child(ren) until further order of this court and shall stay \_\_\_\_\_ yards away from the child(ren)'s school.

Contact with the child(ren), subject to:

B.

7. Neither party shall remove the child(ren) named in the preceding paragraph from the State of New Mexico or disenroll the child(ren) from the child(ren)'s present school during the period of this temporary order of protection.

8. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work

related day-care costs and proof of medical insurance costs for the child(ren).

9.  A. Respondent is ordered to immediately leave the residence at \_\_\_\_\_ and to not return until further court order.
- B. Law enforcement officers are hereby ordered to evict respondent from the residence at \_\_\_\_\_.
- C. Respondent is ordered to surrender all keys to the residence to law enforcement officers.

10. Law enforcement officers or \_\_\_\_\_ shall accompany  respondent  petitioner to remove essential tools (*as specified in No. 13*), clothing, and personal belongings from the residence at \_\_\_\_\_.

11. Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all such changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

12. This order supersedes any inconsistent prior order in Cause No. \_\_\_\_\_ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

13. Other:

14. While this order of protection is in effect, petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

## HEARING

IT IS FURTHER ORDERED that the parties shall appear in the \_\_\_\_\_  
Judicial District Court, Room \_\_\_\_\_, at \_\_\_\_\_, before  
\_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date)  
for hearing on whether an extended order of protection against domestic abuse will be  
issued. Either party may bring witnesses or evidence and may be represented by  
counsel at this hearing. Respondent may file a Response to the Petition for Order of  
Protection from Domestic Abuse, see Form 4-962 NMRA, on or before the hearing. If  
the respondent fails to attend this hearing, an extended order may be entered by default  
against respondent and a bench warrant may be issued for respondent's arrest. If  
petitioner willfully fails to appear at this hearing, the petition may be dismissed. This  
order remains in force until \_\_\_\_\_, \_\_\_\_\_.

**[ ] DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR  
PERMISSION OF THE COURT.**

## ENFORCEMENT OF ORDER

If the respondent violates any part of this order, the respondent may be charged with a  
crime, arrested, held in contempt of court, fined or jailed.

## SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES

Upon the signing of this order by a district court judge, a law enforcement officer shall  
serve on the respondent a copy of this order and a copy of the petition.

**A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO  
ENFORCE THIS ORDER.**

**[ ]** I have reviewed the petition for order of protection and made recommendations  
to the district judge regarding its disposition.

*(Signed)*

Court telephone number

*(Title)*

**SO ORDERED:**

District Judge

Date and time approved

USE NOTE



1. The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form that will be used for this purpose.

2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the respondent of the content of the temporary order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

### ANNOTATIONS

**The 2001 amendment**, effective May 1, 2001, inserted "of petitioner" in the second sentence in the introductory paragraph, substituted "petitioner's household" for "another household" in the second sentence in item 1., substituted "may decide" for "shall decide" near the beginning of item 7., substituted "shall accompany respondent/petitioner" for "shall assist respondent" near the beginning of item 9., and rewrote item 13.

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 13 to change "shall refrain" to "should refrain" and added the last sentence providing Paragraph 13 does not create a mutual protection order.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in the Findings section, deleted language which provided that the petitioner or a household member of petitioner will suffer immediate and irreparable injury, loss or damage unless the court enters this order; added Paragraph 7; renumbered former Paragraphs 7 through 13 as Paragraphs 8 through 14; in Paragraph 14, added the last sentence; and in the Hearing section, added the reference to Form 4-962 NMRA.

### **4-963A. Temporary order of protection against petitioner and order to appear.**

[Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**TEMPORARY ORDER OF PROTECTION  
AGAINST PETITIONER  
AND ORDER TO APPEAR**

The court has reviewed the sworn counter-petition alleging domestic abuse. The court having considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court

**ORDERS:**

- 1. Petitioner shall not write to, talk to, visit or contact the respondent in any way except through respondent's lawyer, if respondent has a lawyer.  
Petitioner shall not abuse the respondent or the respondent's household members in any way. "Abuse" means any incident by petitioner against respondent or respondent's household members resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.
- 2.
- 3. Petitioner shall not ask or cause other persons to abuse the respondent or the respondent's household members.  
Petitioner shall not go within \_\_\_\_\_ yards of the respondent's home or school or workplace. Petitioner shall not go within \_\_\_\_\_ yards of the respondent at all times except
- 4. \_\_\_\_\_ . If at a public place, such as a store, petitioner shall not go within \_\_\_\_\_ yards of respondent.
- 5. \_\_\_\_\_ shall have temporary physical custody of the following child(ren):
- 6. With respect to the child(ren) named in the preceding paragraph, [ ] respondent [ ] petitioner shall have:
  - A. No contact with the child(ren) until further order of this court and shall stay \_\_\_\_\_ yards away from the child(ren)'s school.  
Contact with the child(ren), subject to:
  - B.
- 7. Neither party shall remove the child(ren) named in the preceding paragraph

from the State of New Mexico or disenroll them from the child(ren)'s present school during the period of this temporary order of protection.

8. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work-related daycare costs and proof of medical insurance costs for the child(ren).

9.  A. Petitioner is ordered to immediately leave the residence at \_\_\_\_\_ and to not return until further court order.

B. Law enforcement officers are hereby ordered to evict petitioner from the residence at \_\_\_\_\_.

C. Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

10. Law enforcement officers or \_\_\_\_\_ shall accompany  respondent  petitioner to remove essential tools (as specified in No. 13), clothing, and personal belongings from the residence at \_\_\_\_\_.

11. Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all such changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

12. This order supersedes any inconsistent prior order in Cause No. \_\_\_\_\_ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

13. Other:  
\_\_\_\_\_

14. While this order of protection is in effect, respondent should refrain from any act that would cause the petitioner to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

## HEARING

IT IS FURTHER ORDERED that the parties shall appear in the \_\_\_\_\_ Judicial District Court, Room \_\_\_\_\_, at \_\_\_\_\_, before \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date) for hearing on whether an extended order of protection against domestic abuse will be issued. Either party may bring witnesses or evidence and may be represented by counsel at this hearing. Petitioner may file a Response to the Petition for Order of

Protection from Domestic Abuse, see Form 4-962 NMRA, on or before the hearing. If the petitioner fails to attend this hearing, an extended order may be entered by default against petitioner and a bench warrant may be issued for petitioner's arrest. If respondent willfully fails to appear at this hearing, the counter-petition may be dismissed. This order remains in force until \_\_\_\_\_,

**DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.  
ENFORCEMENT OF ORDER**

If the petitioner violates any part of this order, the petitioner may be charged with a crime, arrested, held in contempt of court, fined or jailed.

**SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the petitioner a copy of this order and a copy of the counter-petition.

**A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

[ ] I have reviewed the counter-petition for an order of protection and made recommendations to the district judge regarding its disposition.

*(Signed)*

Court telephone number

*(Title)*

**SO ORDERED:**

District Judge

Date and time approved

USE NOTE

1. The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form will be used for this purpose.
2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the petitioner of the content of the temporary order will also suffice to bind the petitioner to comply with the order. *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).

[Approved, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

### ANNOTATIONS

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 13 to change "shall refrain" to "should refrain" and added the last sentence providing Paragraph 13 does not create a mutual protection order.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in the Findings section, deleted language which provided that the respondent or a household member of respondent will suffer immediate and irreparable injury, loss or damage unless the court enters this order; added Paragraph 7; renumbered former Paragraphs 7 through 13 as Paragraphs 8 through 14; in Paragraph 14, added the last sentence; and in the Hearing section, added the reference to Form 4-962 NMRA.

### 4-964. Order to appear.

[Standard simplified order to appear at hearing, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

\_\_\_\_\_  
JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent

### ORDER TO APPEAR

You are hereby ordered to appear in the \_\_\_\_\_ judicial district court, room \_\_\_\_\_, at \_\_\_\_\_ (address), before \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date) for hearing on whether an order of protection against domestic abuse will be issued. You may bring witnesses or evidence and may be represented by counsel at this hearing. You may file a Response to Petition for Order of Protection from Domestic Abuse (Form 4-962 NMRA) at or before the hearing.

If you fail to attend this hearing, an order of protection may be entered by default

against you and a bench warrant may be issued for your arrest.  
[ ] **DO NOT BRING ANY CHILDREN TO THE HEARING.**

District Judge

USE NOTE

This form is for use when petitioner does not seek a temporary order of protection and also when the petitioner seeks a temporary order of protection, but the court denies the request.

The date for hearing should be set in accordance with the mandate of Section 40-13-4(D) NMSA 1978 which provides that "if an ex parte order is not granted," the court "shall serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition."

The Order to Appear requires a proof of return of service. The Committee has been informed that each local law enforcement agency has its own return of service form which will be used for this purpose.

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001.]

**ANNOTATIONS**

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**4-965. Order of protection, mutual, non-mutual.**

_____ District _____ County, New Mexico Case No. _____	<b>Order of Protection</b> [ ] Amended Order
--	---

PROTECTED PARTY ([ ] PETITIONER [ ] RESPONDENT)			PROTECTED PARTY IDENTIFIERS
_____ First	_____ Middle	_____ Last	_____ Date of Birth of Protected Party
And/or on behalf of minor family member(s): (list name and DOB)			Other Protected Persons/DOB

V.

RESTRAINED PARTY				RESTRAINED PARTY IDENTIFIERS			
First	SEX	RACE	DOB	HT	WT		
	Middle	Last					
Relationship to Protected Party:				EYES	HAIR	SOCIAL SECURITY #	
						<i>Not used in New Mexico</i>	
Restrained Party's Address				DRIVERS LICENSE #		STATE	EXP DATE

Distinguishing Features

**CAUTION:**

Weapon Involved

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

**THE COURT HEREBY ORDERS:**

That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.

That the above named Restrained Party be restrained from any contact with the Protected Party.

Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until

**WARNINGS TO RESTRAINED PARTY:**

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of \_\_\_\_\_

*Judge's signature on last  
page*

[Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

**ADDITIONAL PAGES<sup>1</sup> OF  
ORDER OF PROTECTION**

THIS MATTER came before the court on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ through a hearing on the [ ] petitioner's [ ] respondent's request for an  
order prohibiting domestic abuse.

The court further **FINDS, CONCLUDES AND ORDERS:**  
*(check only applicable paragraphs)*

**1. NOTICE, APPEARANCES AND STATUS**

[ ] Petitioner was present.

[ ] Petitioner was represented by counsel.

[ ] Respondent was present.

[ ] Respondent was represented by counsel.

[ ] Respondent was properly served with a copy of the petition, temporary order of  
protection prohibiting domestic abuse and order to appear.<sup>2</sup>

[ ] Respondent was properly served with a copy of the petition and order to appear.<sup>2</sup>

[ ] Respondent received actual notice of the hearing and had an opportunity to  
participate in the hearing.<sup>2</sup>

[ ] Petitioner was properly served with a copy of the counter-petition and order to  
appear.<sup>2</sup>

[ ] Petitioner was properly served with a copy of the temporary order and order to  
appear.



Petitioner received actual notice of the hearing and had an opportunity to participate in the hearing.<sup>2</sup>

The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section 921 (a)(32). (See 2(B) below)

## **2. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION**

Violation of this order by the  respondent  petitioner can have serious consequences, including:

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found in contempt of court.

B. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

## **3. FINDING OF DOMESTIC ABUSE**

An act of domestic abuse was committed by  respondent  petitioner that necessitates an order of protection.  Petitioner  Respondent is the protected party under this order.

## **4. DOMESTIC ABUSE PROHIBITED**

Respondent  Petitioner shall not abuse the other party or members of the other party's household. "Abuse" means any incident by one party against the other party or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by petitioner or respondent causing imminent fear of bodily injury to the other party or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by petitioner's or respondent's or a household member's residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

Respondent  Petitioner shall not ask or cause other persons to abuse the other party or any other household members.

**5. CONTACT PROHIBITIONS**

Respondent  Petitioner shall stay \_\_\_\_\_ yards away from the other party, the other party's home and any workplace at all times, unless at a public place, where the  respondent  petitioner shall remain \_\_\_\_\_ yards away from the other party except as specifically permitted by this order.

Respondent  Petitioner shall not telephone, talk to, visit or contact the other party in any way except as follows:

.

The parties may contact each other by telephone regarding medical emergencies of minor children;

Other

.

The parties may attend joint counseling sessions at the counselor's discretion.

***(Unless the court has sealed the protected party's address, include it below.)***

**Protected party's addresses**

\_\_\_\_\_ (home address)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (if applicable, tribe or pueblo)  
\_\_\_\_\_ (state and zip code)

**6. COUNSELING**

Respondent shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

Petitioner shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

Respondent shall report to \_\_\_\_\_, for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

Petitioner shall report to \_\_\_\_\_, for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

[ ] Other counseling requirements:

.

## **7. CUSTODY**

[ ] The court's orders regarding the minor child(ren) are addressed in the Custody, Support and Division of Property Attachment of this order of protection.<sup>3</sup>

## **8. PROVISIONS RELATING TO SUPPORT**

[ ] The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.<sup>3</sup>

## **9. PROPERTY, DEBTS AND PAYMENTS OF MONEY**

[ ] The court's orders regarding property, debts and payment of money are found in the Custody, Support and Division of Property Attachment of this order of protection.<sup>3</sup>

## **10. PARTIES SHALL NOT CAUSE VIOLATION**

While this order of protection is in effect the protected party should refrain from any act that would cause the restrained party to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6 (D) NMSA 1978, only the restrained party can be arrested for violation of this order.

## **11. ADDITIONAL ORDERS**

[ ] Review hearing. The parties are ordered to appear for a review hearing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.). Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED<sup>4</sup>:

.

## **12. NOTICE TO LAW ENFORCEMENT AGENCIES ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

[ ] Respondent [ ] Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

[ ] Law enforcement officers or \_\_\_\_\_ shall be present during any property exchange.

This order supersedes prior orders in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_ to the extent that there are contradictory provisions.

**13. NOTICE TO PARTIES**

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

To make a request to extend this order, the protected party should return to the court with a copy of this order at least three weeks before the order expires.

**14. RECOMMENDATIONS**

I have:

reviewed the petition for order of protection;

reviewed the counter-petition for order of protection;

conducted hearings on the merits of the petition;

after notice and hearing, I prepared this order as my recommendation to the district court judge regarding disposition of the request for order of protection. If any party disagrees with the recommendations, that party may, but is not required to, file written objections and a request for hearing on those objections with the district court within ten (10) days. A copy of those objections and a request for hearing must be served by mail on the other party.

Signed

Title

Court's telephone number:

The court has reviewed the recommendations and adopts them. This order remains in effect unless and until it is modified by a district court judge or it expires. If objections are filed the court may conduct a hearing to resolve the objections. (See Rule 1-053.1(H)(1)(a) NMRA).

**SO ORDERED:**

District Judge

Date

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date)<sup>5</sup>.

A copy of this order was  hand delivered  faxed  mailed to  petitioner  
 petitioner's counsel on \_\_\_\_\_ (date).

Signed

Title

USE NOTES

1. The first page of this order of protection shall be in the uniform format preceding the heading for additional pages of the order.
2. This order may be entered only after a hearing at which respondent received actual notice and at which respondent had an opportunity to participate if 18 U.S.C. Section 922 is to apply to this order.
3. See Form 4-967 NMRA for the Custody, Support and Division of Property Order attachment.
4. If appropriate, an order providing for restitution may be included in this paragraph.
5. Respondent or petitioner should be served at the time this order is issued, before leaving the courthouse. If a default order is issued, service upon the non-attending party shall be made by mail or by personal service. See Section 40-13-6(A) NMSA 1978.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**Committee commentary.** — The Family Violence Protection Act provides that "a peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order" of protection entered pursuant to the Act. Section 40-13-6(C) NMSA 1978.

This statute would allow a warrantless misdemeanor arrest for conduct occurring outside the presence of the officer and would not require exigent circumstances in addition to probable cause. That a misdemeanor must occur in the presence of the arresting officer is a long standing common law requirement for a warrantless misdemeanor arrest. *Eg. State v. Luna*, 93 N.M. 773, 777, 606 P.2d 183, 187 (1980). The "exigent circumstances" requirement is mandated by the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 159, 870 P.2d 117, 121 (1994) ("[F]or a warrantless arrest to be reasonable it must be based upon both probable cause and sufficient exigent circumstances."). Absent the exigent circumstance that the misdemeanor is

committed in the presence of the officer, *id.*, ("If an officer observes the person arrested committing a felony, exigency will be presumed."), the New Mexico Constitution appears to bar blanket authority to make warrantless arrests for misdemeanors committed outside the presence of the officer.

The legislature, of course, lacks power to provide by statute for an arrest procedure that violates the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 158, 870 P.2d 117, 120 (1994). To avoid having the Supreme Court give approval to a form containing language of questionable constitutional validity, the committee did not use the statutory language in the portion of the final order describing the power of a law enforcement officer to make a warrantless arrest for the misdemeanor crime (Section 40-13-6(D) NMSA 1978), of violating the final order of protection. The committee substituted more general language, which does not prejudge the constitutional issue.

The general provisions of the order of protection, including injunctive orders, "shall continue until modified or rescinded . . . or until the court approves a subsequent consent agreement. . . ." Section 40-13-6(B) NMSA 1978. In contrast, "[a]n order of protection . . . involving custody or support shall be effective for a fixed period of time not to exceed six months". *Id.* The custody or support "order may be extended for good cause upon motion . . . for an additional period of time not to exceed six months", *id.*, unless "the order supersedes or alters prior orders of the court" pertaining to child custody or child support. See Section 40-13-5(C) NMSA 1978. In the latter situation, "the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action". *Id.*

## ANNOTATIONS

**The 2001 amendment**, effective May 1, 2001, substituted "Mutual/Non Mutual" for "Against Respondent" in the title of the order and rewrote the order to reflect the fact that the order addresses the actions of both parties in the protection order.

**Compiler's notes.** — Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 10 to change "shall refrain" to "should refrain"; added the last sentence providing Paragraph 13 does not create a mutual protection order; deleted Use Note 6 providing that a violation of the order may result in a finding of contempt of court; and renumbered the following paragraphs of the Use Notes.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, changed the title from "Order of Protection [] Mutual []Non-Mutual"

to "Additional Pages of Order of Protection"; deleted the former introductory paragraph which provided that the order was an order of protection under 18 U.S.C. §922, 18 U.S.C. §2265 and Section 40-13-6(D) NMSA 1978 and that the order shall be accorded full faith and credit and be enforced as if it were an order of the other state or Tribe; in the Findings section, deleted the provision that the court has legal jurisdiction over the parties and the subject matter; in Paragraph 1 added "And Status" to the title; in Paragraph 1, added the last item; in Subparagraph A of Paragraph 2, added "or both" at the end of the first sentence; in Subparagraph B of Paragraph 2, changed "spouse of the other party" to "spouse or former spouse of the other party", changed "lives" and "lived" to "cohabitates" and "cohabitated"; in Subparagraph C of Paragraph 2, changed "entry" to "violation"; in Paragraph 3, added the last sentence; in Paragraph 5, in the bold, italicized paragraph, changed "petitioner's or respondent's" to "the protected party's" and changed "address of residence and employment for the appropriate party or parties" to "it below"; changed "Respondent's addresses" to "Protected party's addresses", deleted the blanks for the Petitioner's addresses; in Paragraph 10, changed "petitioner" to "protected party" and "respondent" to "restrained party" and added the last sentence; in Paragraph 11, added the last sentence of the first paragraph; deleted former Paragraph 12 which provided for the effective date, extension and modification of the order; renumbered former Paragraphs 13 through 15 as Paragraphs 12 through 14; in Paragraph 13, added the last sentence; in Paragraph 14, added the last sentence of the last check item and added the last paragraph; in the Use Notes, in Paragraph 1, deleted the note which provided that the notes shall not be included in the order and added the current note; deleted former Paragraph 2 which provided that mutual orders of protection are binding on the petitioner and the respondent and are entitled to full faith and credit when certain procedural requirements are met and pursuant to 18 U.S.C. §2265(c) and Section 40-13-6(D) NMSA 1978; deleted former Paragraph 3 which provided that a mutual order may be entered only after a counter-petition has been filed and a hearing has been held; and renumbered former Paragraphs 5 through 7 as Paragraphs 3 through 5.

4-966. Withdrawn.

### ANNOTATIONS

**Withdrawals.**— Pursuant to a court order dated April 9, 2002, this form, an order of protection against the petitioner in a domestic abuse proceeding, is withdrawn, effective April 9, 2002.

4-966A. Withdrawn.

### ANNOTATIONS

**Withdrawals.**— Pursuant to a court order dated February 27, 2001, this form, pertaining to mutual order of protection, is withdrawn, effective May 1, 2001. See Form 4-965 NMRA.

## 4-967. Custody, support and division of property order attachment.

### CUSTODY, SUPPORT AND DIVISION OF PROPERTY ORDER ATTACHMENT<sup>1</sup>

#### 1. CUSTODY

- A.  Petitioner  Respondent shall have temporary legal custody of the following child(ren):
- B.  Petitioner  Respondent shall have physical custody of the above child(ren) at all times, except that  respondent  petitioner shall have contact as follows:
- No contact, and stay \_\_\_\_\_ yards from the child(ren)'s school at all times.
- No contact, and stay \_\_\_\_\_ yards from the child(ren)'s school at all times.
- Contact at the following specified times:
- \_\_\_\_\_
- The child(ren) shall be exchanged for visitation at \_\_\_\_\_ on \_\_\_\_\_.
- Referred to \_\_\_\_\_ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.
- C. Custody, visitation and child support will be continued in accordance with the court order in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_.
- D. Other
- E.  Petitioner  Respondent shall not hide the child(ren) from the other parent or permanently remove the child(ren) from the State of New Mexico. Neither parent should speak negatively about the absent parent in front of the child(ren) or question the child(ren) about the other parent.
- F. Each parent shall immediately notify the other parent about any emergency condition of the child(ren).

#### 2. PROVISIONS RELATING TO SUPPORT

- Temporary support shall be paid by  respondent  petitioner to  respondent  petitioner in the amount of \$\_\_\_\_\_ per month payable \_\_\_\_\_.



Respondent  Petitioner shall provide suitable alternative housing to  respondent  petitioner and any child(ren) to whom the respondent owes a legal obligation of support. This shall be provided as follows:

.

All child support payments shall be made by check or money order made payable to and sent to \_\_\_\_\_.

A separate wage withholding order shall be entered and directed to (*employer*) \_\_\_\_\_, at \_\_\_\_\_ (*address*).

### **3. PROPERTY, DEBTS, PAYMENTS OF MONEY**

Neither party shall transfer, conceal, encumber or otherwise dispose of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life. Each party shall account to the other party for all such transfers, encumbrances and expenditures made by that party after the order is entered.

This means that you shall not give away, hide, add debt to, sell or pawn the property.

The parties' property shall be temporarily distributed as follows:

.

Petitioner  Respondent shall have temporary physical custody of the following physical assets<sup>2</sup>:

.

### **4. ADDITIONAL PROVISIONS REGARDING CUSTODY, SUPPORT AND DIVISION OF PROPERTY**

IT IS FURTHER ORDERED<sup>3</sup>:

.

### **5. EFFECT OF ORDER**

If there is a pending or completed action relating to child custody or child support at the time this order is filed, the court may modify the order, but the portion of the order dealing with child custody or child support must then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

### **6. EXPIRATION**

The provisions set forth in this attachment shall expire on \_\_\_\_\_, \_\_\_\_\_ (*date*) at 5:00 p.m., unless explicitly extended by court order.

1. This form may be modified as appropriate and attached to an order of protection in any domestic violence proceeding.
2. List personal assets. A separate schedule may be attached to this order.
3. If appropriate, an order providing for restitution may be included in this paragraph.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001.]

### ANNOTATIONS

**The 2001 amendment**, effective May 1, 2001, rewrote this form, deleting provisions relating to the counseling of the respondent and the petitioner.

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

### **4-968. Application to modify, terminate or renew the order of protection from domestic abuse.**

[Standard simplified domestic abuse form, Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO  
 COUNTY OF \_\_\_\_\_  
 \_\_\_\_\_ JUDICIAL DISTRICT COURT  
 \_\_\_\_\_, Petitioner

v. \_\_\_\_\_ No. \_\_\_\_\_  
 \_\_\_\_\_, Respondent

#### **APPLICATION TO MODIFY, TERMINATE OR RENEW THE ORDER OF PROTECTION FROM DOMESTIC ABUSE**

Petitioner  Respondent asks the court:  
*(check and complete applicable alternatives)*

to modify the protection order as follows:

[ ] to terminate the protection order because:

[ ] to renew and extend the protection order for an additional \_\_\_\_\_ (days) (months) because:

The other party:

[ ] objects to the renewal, modification or termination of the protection order.

[ ] agrees to the renewal, modification or termination of the protection order.

[ ] has not told me whether (he) (she) objects or agrees to the renewal, modification or termination of the protection order.

**VERIFICATION**

STATE OF NEW MEXICO )  
COUNTY OF )  
\_\_\_\_\_)  
TRIBE OR PUEBLO \_\_\_\_\_ )

The (petitioner) (respondent) was sworn and states: I, the Petitioner/Respondent, being duly sworn upon my oath, depose and state that I am the Petitioner/Respondent in the above-entitled cause and I have read this application to modify, terminate or renew the order of protection from domestic abuse. I state that the contents thereof are true and correct to the best of my information and belief.

Date Signature of party filing this application

Signed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary public  
My commission expires: \_\_\_\_\_.

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ this application was [mailed by United States mail, postage prepaid, and addressed to:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State and zip code: \_\_\_\_\_]

[faxed by \_\_\_\_\_ (name of person who faxed document) to \_\_\_\_\_ (name of recipient) at \_\_\_\_\_ (telephone number). The transmission was reported as complete and without error. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

[e-mailed by \_\_\_\_\_ (name of person who transmitted) to \_\_\_\_\_ (name of recipient) at \_\_\_\_\_ (electronic mail address of recipient) who agreed to service in this manner. The transmission was successful. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

Signature of attorney

Date of signature

*If this notice was served by a person other than an attorney, the following must also be completed and filed with the court:*

**AFFIDAVIT OF SERVICE**

I declare under penalty of perjury that a copy of this application was served by [mail] [fax] [electronic transmission] as described above on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature of person who made service

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Judge, notary or other officer authorized to administer oaths

\_\_\_\_\_  
Official title

[Approved, effective November 1, 1999 until July 1, 2001; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**ANNOTATIONS**

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by

a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in the Verification section, added the initial statement that the petitioner, being duly sworn upon oath, deposes and states that the petitioner is the petitioner and that the petitioner has read the application to modify, terminate or renew the order; deleted the language that the petition is true to the best of the petitioner's knowledge and belief and that the petitioner understands that the petitioner can be punished civilly and criminally if any information in the petition is false, and added the last sentence; and added the Certificate of Service and the Affidavit of Service.

**4-970. Stipulated order of protection against respondent.**

_____ Judicial District _____ County, New Mexico Case No. _____	<b>Order of Protection [ ]</b> Amended Order
---	---

PROTECTED PARTY ( [ ] PETITIONER [ ]  
 RESPONDENT)

First	Middle	Last
And/or on behalf of minor family member(s): (list name and DOB)		

PROTECTED PARTY  
 IDENTIFIERS

Date of Birth of Protected Party
Other Protected Persons/DOB

**v.**

RESTRAINED PARTY

	SEX	RACE	DOB
First	Middle	Last	
Relationship to Protected Party:			
Restrained Party's Address			

RESTRAINED PARTY  
 IDENTIFIERS

	HT	WT		
	EYES	HAIR	SOCIAL SECURITY #	
			<b>Not used in New Mexico</b>	
	DRIVERS LICENSE #		STATE	EXP DATE

Distinguishing Features

**CAUTION:**

Weapon Involved

---

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

**THE COURT HEREBY ORDERS:**

That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.

That the above named Restrained Party be restrained from any contact with the Protected Party.

Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until

.

---

**WARNINGS TO RESTRAINED PARTY:**

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of \_\_\_\_\_

*Judge's signature on last page*

**ADDITIONAL PAGES<sup>1</sup> OF  
STIPULATED ORDER OF PROTECTION  
AGAINST RESPONDENT**

The court further **FINDS, CONCLUDES AND ORDERS:**

**1. NOTICE, APPEARANCES AND STATUS**

This order was entered on stipulation of the parties.

The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section 921(a)(32). (See 2 below)

## **2. EFFECT OF STIPULATION TO ORDER OF PROTECTION**

Violation of this order can have serious consequences, including:

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found to be in contempt of court.

B. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

## **3. DOMESTIC ABUSE PROHIBITED**

The respondent shall not abuse the petitioner or members of the petitioner's household. "Abuse" means any incident by respondent against the petitioner or petitioner's household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by respondent causing imminent fear of bodily injury to petitioner or petitioner's household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by petitioner's or petitioner's household members' residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above. Respondent shall not ask or cause other persons to abuse the petitioner or petitioner's household members.

## **4. CONTACT PROHIBITIONS**

Respondent shall stay \_\_\_\_\_ yards away from the petitioner and the petitioner's home and workplace at all times, unless at a public place, where the respondent shall remain \_\_\_\_\_ yards away from the petitioner except as specifically permitted by this order.

Respondent shall not telephone, talk to, visit or contact petitioner in any way except as follows:

*(check only applicable paragraphs)*

The parties may contact each other by telephone regarding medical emergencies of minor children;

[ ]

[ ] The parties may attend joint counseling sessions at the counselor's discretion.

***(Unless the court has entered an order sealing the protected party's address, include it below.)***

**Protected party's addresses:**

\_\_\_\_\_ (home address)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (if applicable, tribe or pueblo)  
\_\_\_\_\_ (state and zip code)

## **5. COUNSELING**

[ ] Petitioner shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

[ ] Respondent shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

[ ] Petitioner shall report to \_\_\_\_\_ for a [ ] drug [and] [ ] alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

[ ] Respondent shall report to \_\_\_\_\_ for a [ ] drug [and] [ ] alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.

[ ] Other counseling requirements:

## **6. CUSTODY<sup>2</sup>**

[ ] The court's orders regarding the minor [child] [children] of the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

## **7. PROVISIONS RELATING TO SUPPORT<sup>2</sup>**

[ ] The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

## **8. PROPERTY, DEBTS, PAYMENTS OF MONEY<sup>2</sup>**



The court's orders regarding property, debts and payment of money are addressed in the Custody, Support and Division of Property Attachment of this order of protection.

**9. ADDITIONAL ORDERS**

Review hearing. The parties are ordered to appear for a review hearing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m). Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED<sup>3</sup>:

**10. PETITIONER SHALL NOT CAUSE VIOLATION**

While this order of protection is in effect, the petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978 only the restrained party can be arrested for violation of this order.

**11. NOTICE TO LAW ENFORCEMENT AGENCIES  
ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

Respondent is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or \_\_\_\_\_ shall be present during any property exchange.

This order supersedes prior orders in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_ to the extent that there are contradictory provisions.

**12. NOTICE TO PETITIONER AND RESPONDENT**

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

**13. AGREEMENT OF PARTIES**

Without admitting that domestic abuse has occurred, the parties stipulate to the entry of this order and affirm that they have read and do understand the effects of this order as stated in Paragraph 2.

Petitioner's signature

Respondent's signature

Petitioner's counsel, if any

Respondent's counsel, if any

Date

Date

**14. RECOMMENDATIONS**

I have:

reviewed the pleading for order of protection;

prepared this order as my recommendation to the district court judge regarding disposition of requests for order of protection.

Signed

Domestic Violence Commissioner

Court's telephone number:

**SO ORDERED.**

\_\_\_\_\_  
District Judge

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date).<sup>3</sup>

A copy of this order was  hand delivered  faxed  mailed to  petitioner  petitioner's counsel on \_\_\_\_\_ (date).

Signed

**USE NOTES**

1. The first page of this stipulated order of protection form shall be in the uniform format preceding the heading for additional pages of the order.
2. See Form 4-967 NMRA, "Custody, Support and Division of Property Attachment".
3. If appropriate, an order providing for restitution may be included in this paragraph.

4. Respondent may be served at the time this order is issued. If respondent is not present at the time this order is issued, service upon respondent shall be made by delivering a copy to the party. See Section 40-13-6(A) NMSA 1978.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; April 9, 2002; as amended by Supreme Court Order 07-8300-20 effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**Committee commentary.**— This Stipulated Order of Protection against Respondent is not the same as an Order of Protection entered pursuant to Form 4-965 NMRA. This order provides fewer protections to the parties than does the Form 4-965 Order of Protection. The decreased protection is the result of the fact that the order is not based upon findings of abuse, but is entered without reference to whether abuse has occurred. Nonetheless, there may be occasions when the parties and the court are satisfied that this Stipulated Order of Protection provides adequate relief to the parties.

The general provisions of the order of protection, including injunctive orders, shall "continue until modified or rescinded ... or until the court approves a subsequent consent agreement...." Section 40-13-6(B) NMSA 1978. In contrast, "[a]n order of protection ... involving custody or support shall be effective for a fixed period of time not to exceed six months". *Id.* The custody or support "order may be extended for good cause upon motion ... for an additional period of time not to exceed six months", *id.*, unless "the order supersedes or alters prior orders of the court" pertaining to child custody or child support. See Section 40-13-5(C) NMSA 1978. In the latter situation, "the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action". *Id.*

### **Factual Distinction Between Mutual Order of Protection and Stipulated Order of Protection**

The core factual difference between the Form 4-965 NMRA order of protection and this stipulated order of protection is that Form 4-965 NMRA requires the court to make findings that each party has committed an act of domestic abuse. In contrast, this order is entered by the court with no finding of domestic abuse by respondent, but rather, is based solely on the stipulation of the parties that, without admitting to acts of abuse, each party is willing to have the restraining order issued against respondent.

[Amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

### **ANNOTATIONS**

**The 2001 amendment**, effective May 1, 2001, added the option of nonmutuality to the stipulated order and deleted provisions relating to child custody, support, and property,

debts, and payments of money, referring instead to the "Custody, Support and Division of Property Attachment of this Order of Protection".

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**The 2002 amendment**, effective April 9, 2002, specifically made this form a stipulated order of protection against respondent to compliment the new Form 4-971 which is a stipulated order against petitioner.

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 10 to change "shall refrain" to "should refrain"; added the last sentence providing Paragraph 13 does not create a mutual protection order; deleted Use Note 5 providing that a violation of the order may result in a finding of contempt of court; and renumbered former Use Note 6 as Use Note 5.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, added "Additional Pages Of" to the title and deleted the statement that this order is not an order under 18 U.S.C. §922; deleted language which provided that the matter came before the court by agreement of the parties to enter an order; deleted language which stated that the court has legal jurisdiction over the parties and the subject matter; in Paragraph 1, in the title, added "And Status"; in Paragraph 1 in the first sentence, deleted the statement that the order was entered in a proceeding that does not satisfy the requirements of 18 U.S.C. §922.2; in Paragraph 1, added the second sentence; in Subparagraph A of Paragraph 2, added "or both" in the first sentence and added the second sentence; in Subparagraph B of Paragraph 2, deleted language which provided that the parties may be found in contempt and added the current paragraph; in Subparagraph C of Paragraph 2, changed "entry" to "violation"; in Paragraph 4, changed "petitioner's" to "the protected party's" and changed "address of residence and employment for the petitioner" to "it below"; in Paragraph 4, deleted the blanks for the Respondent's addresses and changed "Petitioner's addresses" to "Protected party's addresses"; in Paragraph 9, added the last sentence in the checked item; in Paragraph 10, added the last sentence; deleted former Paragraph 11 which provided for the effective date, extension, and modification of the order; deleted former Paragraph 12 which provided that the order shall not be entered in the federal registry; renumbered former Paragraphs 13 through 16 as Paragraphs 11 through 14; in the Use Notes, in Paragraph 1, deleted language which provided that the form may be used if the parties stipulate to an order against respondent without any findings of abuse and added the current sentence; deleted former Paragraph 2 which provided that the order may be entered only upon a stipulation of the parties without a hearing on abuse, that if a hearing is held on abuse, Form 4-965 should be used and if a hearing is held on other matters, Form 4-967 may be attached to this order; and renumbered former Paragraphs 4 and 5 as Paragraphs 3 and 4.

**4-971. Stipulated order of protection against petitioner.**

_____ Judicial District _____ County, New Mexico Case No. _____	<b>Order of Protection</b> <input type="checkbox"/> Amended Order
--	--

PROTECTED PARTY ( PETITIONER  RESPONDENT)

First	Middle	Last
-------	--------	------

And/or on behalf of minor family member(s): (list name and DOB)

PROTECTED PARTY IDENTIFIERS

Date of Birth of Protected Party
Other Protected Persons/DOB

**V.**

RESTRAINED PARTY

First	SEX	RACE	DOB
	Middle	Last	

Relationship to Protected Party:

Restrained Party's Address

RESTRAINED PARTY IDENTIFIERS

HT	WT	
EYES	HAIR	SOCIAL SECURITY #
		<b>Not used in New Mexico</b>
DRIVERS LICENSE #	STATE	EXP DATE

Distinguishing Features

**CAUTION:**

Weapon Involved

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

**THE COURT HEREBY ORDERS:**

That the above named Restrained Party be restrained from committing further

acts of abuse or threats of abuse.

That the above named Restrained Party be restrained from any contact with the Protected Party.

Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until

---

## WARNINGS TO RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of \_\_\_\_\_

*Judge's signature on last page*

### ADDITIONAL PAGES<sup>1</sup> OF STIPULATED ORDER OF PROTECTION AGAINST PETITIONER

The court further **FINDS, CONCLUDES AND ORDERS:**  
*(check only applicable paragraphs)*

#### 1. NOTICE, APPEARANCES AND STATUS

This order was entered on stipulation of the parties.

The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section 921(a)(32). *(See 2 below)*

#### 2. EFFECT OF STIPULATION TO ORDER OF PROTECTION

Violation of this order can have serious consequences, including:

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found to be in contempt of court.

B. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred fifty-thousand dollars (\$250,000).

C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

**3. DOMESTIC ABUSE PROHIBITED**

The petitioner shall not abuse the respondent or members of the respondent's household. "Abuse" means any incident by petitioner against the respondent or respondent's household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by petitioner causing imminent fear of bodily injury to respondent's or respondent's household members; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by respondent's or respondent's household members' residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

Petitioner shall not ask or cause other persons to abuse the respondent or respondent's household members.

**4. CONTACT PROHIBITIONS**

Petitioner shall stay \_\_\_\_\_ yards away from the respondent and the respondent's home and workplace at all times, unless at a public place, where the petitioner shall remain \_\_\_\_\_ yards away from the respondent except as specifically permitted by this order.

Petitioner shall not telephone, talk to, visit or contact respondent in any way except as follows:

The parties may contact each other by telephone regarding medical emergencies of minor children;

The parties may attend joint counseling sessions at the counselor's discretion.

***(Unless the court has entered an order sealing the protected party's address, include it below.)***

**Protected party's addresses**

\_\_\_\_\_ (home address)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (city)

\_\_\_\_\_  
\_\_\_\_\_  
*(if applicable, tribe or pueblo)*  
*(state and zip code)*

**5. COUNSELING**

Petitioner shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

Respondent shall attend and complete counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

Petitioner shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ *(date)* with the results returned to this court.

Respondent shall report to \_\_\_\_\_ for a  drug [and]  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ *(date)* with the results returned to this court.

Other counseling requirements:  
.

**6. CUSTODY<sup>2</sup>**

The court's orders regarding the minor [child] [children] of the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

**7. PROVISIONS RELATING TO SUPPORT<sup>2</sup>**

The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.

**8. PROPERTY, DEBTS, PAYMENTS OF MONEY<sup>2</sup>**

The court's orders regarding property, debts and payment of money are addressed in the Custody, Support and Division of Property Attachment of this order of protection.

**9. ADDITIONAL ORDERS**

Review hearing. The parties are ordered to appear for a review hearing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m). Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED<sup>3</sup>:



**10. RESPONDENT SHALL NOT CAUSE VIOLATION**

While this order of protection is in effect, the respondent should refrain from any act that would cause the petitioner to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

**11. NOTICE TO LAW ENFORCEMENT AGENCIES  
ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or \_\_\_\_\_ shall be present during any property exchange.

This order supersedes prior orders in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_ to the extent that there are contradictory provisions.

**12. NOTICE TO PETITIONER AND RESPONDENT**

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

**13. AGREEMENT OF PARTIES**

Without admitting that domestic abuse has occurred, the parties stipulate to the entry of this order and affirm that they have read and do understand the effects of this order as stated in Paragraph 2.

Petitioner's signature

Respondent's signature

Petitioner's counsel, if any

Respondent's counsel, if any

Date

Date

**14. RECOMMENDATIONS**

I have:

reviewed the pleading for order of protection;

prepared this order as my recommendation to the district court judge regarding disposition of requests for order of protection.

Signed  
Domestic Violence Commissioner  
Court's telephone number:

**SO ORDERED.**

District Judge

A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date).<sup>4</sup>

A copy of this order was  hand delivered  faxed  mailed to  petitioner  petitioner's counsel on \_\_\_\_\_ (date).

Signed

**USE NOTES**

1. The first page of this stipulated order of protection form shall be in the uniform format preceding the heading for additional pages of the order.
2. See Form 4-967 NMRA, "Custody, Support and Division of Property Attachment".
3. If appropriate, an order providing for restitution may be included in this paragraph.
4. Petitioner may be served at the time this order is issued. If petitioner is not present at the time this order is issued, service upon petitioner shall be made by delivering a copy to the party. See Section 40-13-6(A) NMSA 1978.

[Approved, effective April 9, 2002; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**Committee commentary.** — See Committee Comment to Civil Form 4-970 NMRA.

**ANNOTATIONS**

**Compiler's notes.** — A court order dated February 27, 2001, would have withdrawn this form, pertaining to stipulated order of protection against respondent [non-registry] effective May 1, 2001. However, a court order dated April 9, 2002, and effective immediately, rewrote this form and continued it in effect.

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 10 to change "shall refrain" to "should refrain"; added the last sentence providing Paragraph 10 does not create a mutual protection order; deleted Use Note 5 providing that a violation of the order may result in a finding of contempt of court; and renumbered former Use Note 6 as Use Note 5.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, added "Additional Pages Of" to the title and deleted the statement that this order is not an order under 18 U.S.C. §922; deleted the first sentence which provided that the matter came before the court by agreement of the parties to enter an order; deleted language which stated that the court has legal jurisdiction over the parties and the subject matter; in Paragraph 1, in the title, added "And Status"; in Paragraph 1 in the first sentence, deleted the statement that the order was entered in a proceeding that does not satisfy the requirements of 18 U.S.C. §922; in Paragraph 1, added the second sentence; in Subparagraph A of Paragraph 2, added "or both" in the first sentence and added the second sentence; in Subparagraph B of Paragraph 2, deleted the sentence which provided that the parties may be found in contempt and added the current paragraph; in Subparagraph C of Paragraph 2, changed "entry" to "violation"; in Paragraph 4, in the bold, italicized paragraph, changed "respondent's" to "the protected party's" and deleted "address of residence and employment for the respondent"; in Paragraph 4, changed "Petitioner's addresses" to "Protected party's addresses" and deleted the blanks for the Respondent's addresses; in Paragraph 9, added the last sentence in the checked item; in Paragraph 10, added the last sentence; deleted former Paragraph 11 which provided for the effective date, extension, and modification of the order; deleted former Paragraph 12 which provided that the order shall not be entered in the federal registry; renumbered former Paragraphs 13 through 16 as Paragraphs 11 through 14; in the Use Notes, in Paragraph 1, deleted the sentence which provided that the form may be used if the parties stipulate to an order against respondent without any findings of abuse and added the current sentence; deleted former Paragraph 2 which provided that the order may be entered only upon a stipulation of the parties without a hearing on abuse, that if a hearing is held on abuse, Form 4-965 NMRA should be used and if a hearing is held on other matters, Form 4-967 NMRA may be attached to this order; and renumbered former Paragraphs 4 and 5 as Paragraphs 3 and 4.

#### **4-972. Petition for emergency order of protection from domestic abuse.**

[Family Violence Protection Act,  
Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO ON BEHALF OF:

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**PETITION FOR EMERGENCY ORDER OF PROTECTION  
FROM DOMESTIC ABUSE<sup>1</sup>**

**1. INFORMATION ABOUT THE RESPONDENT**

The respondent is:

- the husband of  wife of petitioner
- the ex-husband of  ex-wife of petitioner
- a family member of petitioner (*describe relationship*)
- a person with whom petitioner has had a continuing personal relationship (*describe relationship*)
- a person who has sexually assaulted me
- a person who has stalked me.

\_\_\_\_\_ **Petitioner's initials**

**2. CHILD(REN)**

List minor child(ren) who may be in immediate danger or in need of an order of temporary custody.

Name	Date of Birth	Relationship of Child	
		To Petitioner	To Respondent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_ **Petitioner's initials**

**3. DOMESTIC ABUSE**

A. The respondent committed the following act(s) of domestic abuse against petitioner or the petitioner's child(ren).

*(describe in detail what happened and when and where)*

**Physical abuse:**

**Threats which caused fear that \_\_\_\_\_ or any household member would be injured:**

**Other abuse:**

B. Others present during the abuse .

C. Did drugs or alcohol play a role in the domestic abuse?  yes  no

D. Were weapons used during the abuse?  yes  no  
*If yes, what weapons?*

E. Has there been prior domestic abuse?  yes  no

\_\_\_\_\_ **Petitioner's initials**

#### **4. REQUESTS TO THE COURT**

THE COURT IS REQUESTED TO ENTER AN EMERGENCY ORDER OF PROTECTION prohibiting respondent from abusing petitioner or any member of petitioner's household as follows:

*(check applicable)*

providing for law enforcement officers to assist  petitioner  respondent in retrieving  petitioner's  respondent's clothing and personal belongings from the residence at \_\_\_\_\_.

granting petitioner temporary custody of the child(ren) listed in this petition.

prohibiting respondent from contact with the child(ren) listed in this petition.

other relief that is necessary to resolve this domestic abuse problem *(list or describe what relief is necessary):*

\_\_\_\_\_ **Petitioner's initials**

#### **5. INFORMATION ABOUT THE PETITIONER (ME)**

*(If you do not want the respondent to know your address and phone number, do not include it on this form. Tell the court clerk that you need a separate form (Form 4-961B)*

NMRA) for your name and address and request that the clerk place your address under seal.)

A. **I DO NOT WANT RESPONDENT TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

B. My physical address is: \_\_\_\_\_ in the  County  Indian Country of \_\_\_\_\_, State of New Mexico.

My mailing address is:

\_\_\_\_\_  
(street address)

\_\_\_\_\_  
(city and zip)

My telephone numbers are:

Home

Work

Message

\_\_\_\_\_

\_\_\_\_\_ **Petitioner's initials**

## 6. LOCATION OF RESPONDENT

A. Respondent may be found at:

\_\_\_\_\_ (address)

\_\_\_\_\_ (city)

\_\_\_\_\_ (state and zip code)

\_\_\_\_\_ (if in Indian Country, please name tribe or pueblo).

Respondent's:

\_\_\_\_\_ (date of birth)

\_\_\_\_\_ (home telephone number)

\_\_\_\_\_ (work address)

\_\_\_\_\_ (work telephone number).

B. Is respondent in jail?  yes  no

\_\_\_\_\_ **Petitioner's initials**

### OATH OF PETITIONER

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF.**

Date

Signature of petitioner

**OATH OF LAW ENFORCEMENT OFFICER**

**I 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 if I make a false statement in this petition.**

Date

Signature of law enforcement officer

USE NOTES

1. Complete all information known by the officer.  
Section 40-13-3.1(A)(4) NMSA 1978 provides that the petitioner in a domestic abuse case shall not be required to pay for the "the filing, issuance or service of a petition for an order of protection".

[Approved, effective November 1, 1999 until July 1, 2001; as amended, effective August 29, 2000; approved, effective May 1, 2001; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

**ANNOTATIONS**

**Cross references.**— For crime of perjury, see 30-25-1 NMSA 1978.

For the need for an emergency order, see 40-13-3.2 NMSA 1978 which requires a sworn written statement setting.

**The 2000 amendment**, effective August 29, 2000, after Item 6, substituted "Oath of Petitioner" for "Verification of Petitioner" and "Oath of Law Enforcement Officer" for "Verification of Law Enforcement Officer" and deleted the notary public's signature and expiration of his commission in both places.

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Paragraph 1, added "a person who has sexually assaulted me" and "a person who has stalked me"; in Paragraph 6, deleted the blank for the respondent's social security number; in the Oath of Petitioner, deleted the last sentence which stated that the petitioner understands that it is a criminal offense subject to imprisonment if the petitioner makes a false statement in the petition; in the Use Notes,

added the reference to Subparagraph (4) of Paragraph A of Section 40-13-3.1 NMSA 1978; deleted the provision that the petitioner shall not be required to pay for the issuance or service of a protection order and the sentence that this has been construed to mean that the petitioner is not required to pay a docket fee or other filing fees, or fee for service of process; and added "the filing, issuance or service of a petition for an order of protection".

#### **4-973. Emergency order of protection against respondent.**

[Family Violence Protection Act, Section 40-13-3.2 NMSA 1978.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

#### **EMERGENCY ORDER OF PROTECTION AGAINST RESPONDENT**

The court has reviewed the sworn written statement for an emergency order of protection. The court having considered the statement, **FINDS** that the court has jurisdiction, that there is reasonable cause to believe that an act of domestic abuse has occurred and that petitioner or a household member will suffer immediate and irreparable injury, loss or damage unless the court enters this order. The court **ORDERS:**

#### **1. NO CONTACT**

A. Respondent shall not write to, talk to, visit or contact the petitioner in any way except through petitioner's lawyer, if petitioner has a lawyer.

B. Respondent shall not abuse the petitioner or the petitioner's household members in any way. "Abuse" means any incident by respondent against petitioner or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

C. Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.



D. Respondent shall not go within \_\_\_\_\_ yards of the petitioner's home or school or workplace.

***(Unless the court has entered an order sealing petitioner's address, include address of residence and employment for petitioner.)***

**Petitioner's addresses**

\_\_\_\_\_ (home address)  
\_\_\_\_\_ (work address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (if applicable, tribe or pueblo)  
\_\_\_\_\_ (state and zip code)

**2. CHILDREN**

A. Petitioner shall have temporary physical custody of the following child(ren):

.

B. Respondent shall [have] [not have] visitation with the child(ren) during the term of this order.

C. Neither party shall remove the child(ren) from the State of New Mexico or allow anyone else to do so.

**3. PROPERTY AND RESIDENCE**

A. Respondent is ordered to immediately leave the residence at \_\_\_\_\_, and to not return until further court order.

B. Law enforcement officers are hereby ordered to evict respondent from the residence at \_\_\_\_\_.

C. Respondent is ordered to surrender all keys to the residence to law enforcement officers.

D. Law enforcement officers or \_\_\_\_\_ shall assist respondent to remove essential tools, clothing, and personal belongings from the residence at \_\_\_\_\_.

E. Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all such changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

**4. OTHER ORDERS SUPERSEDED**

This order supersedes any other domestic relations order and domestic violence restraining orders between these two parties.

**5. PETITIONER'S DUTY**

While this order of protection is in effect, petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

**6. EFFECTIVE AND EXPIRATION DATE OF THIS ORDER**

A. Upon service of this order on respondent, this order becomes effective on respondent.

B. This order expires seventy-two (72) hours after the time approved by the judge or at 5:00 p.m. on the next business day of the court, whichever time is latest.

**7. PETITION FOR ORDER OF PROTECTION OR RESTRAINING ORDER**

Petitioner may file a petition for a temporary and permanent order of protection based on the same allegations of domestic abuse.

**8. ENFORCEMENT OF ORDER**

If the respondent violates any part of this order, the respondent may be charged with a crime, arrested, held in contempt of court, fined or jailed.

**9. SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the respondent a copy of this order and shall carry out the other provisions of this order.

**A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

**SO ORDERED:**

District Judge

Date and time approved

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT COURT

**RETURN OF SERVICE**

I, \_\_\_\_\_ (*name of law enforcement officer*) swear or affirm that I am a certified law enforcement officer for \_\_\_\_\_ (*name of agency*) and I personally served the respondent with a signed copy of this emergency order of protection against respondent upon the respondent in \_\_\_\_\_

County, New Mexico on this \_\_\_\_\_ day of \_\_\_\_\_,  
(date) at \_\_\_\_\_ (a.m.) (p.m.).

Signature of law enforcement officer

Title and agency

USE NOTE

1. This emergency order of protection against respondent requires an affidavit of service. See Section 40-13-3.2 NMSA 1978.
2. Personal service of the emergency order of protection will assure that the emergency order is fully enforceable. It is possible that actual notice to the respondent of the content of the emergency order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).
3. The person who serves the respondent with a copy of this order should also "immediately provide the petitioner with a signed copy of the order". See Section 40-13-3.2(B)(3) NMSA 1978.

[Approved, effective November 1, 1999 until July 1, 2001; as amended, effective August 29, 2000; approved, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

### ANNOTATIONS

**The 2000 amendment**, effective August 29, 2000, substituted the bold heading "Return of Service" for "Affidavit of Service" and took out the entry for a notary public signature and date his commission expires.

**Compiler's notes.**— Pursuant to a court order dated October 27, 1999, this form was provisionally approved for twelve months effective November 1, 1999. Subsequently, by a court order dated October 26, 2000, this form was provisionally approved for eight additional months, effective November 1, 2000. Then, by a court order dated February 27, 2001, this form was approved and adopted in its final form, effective May 1, 2001.

**The 2007 amendment**, effective September 17, 2007, amended Paragraph 5 to change "shall refrain" to "should refrain"; and added the last sentence providing Paragraph 5 does not create a mutual protection order.

**The 2008 amendment**, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, in Paragraph 5 of the Order, added the last sentence and in the Use Notes, deleted former Paragraph 4 which provided that although Section 40-13-3.2

NMSA 1978 authorizes law enforcement officers to prepare and sign an emergency order, a judge must sign this order.

**4-974. Order of dismissal.**

[Family Violence Protection Act, Section 40-13-3.2 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT COURT

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**ORDER OF DISMISSAL<sup>1</sup>**

This matter coming before the court on \_\_\_\_\_ (date) and the court having reviewed the pleadings and being sufficiently advised,

**FINDS AND ORDERS:**

*(check applicable)*

The petitioner failed to appear at the hearing and therefore failed to prosecute this case.

The petitioner appeared at the hearing and requested dismissal of this case.

The respondent has not been served despite reasonable attempts.

The allegations in the petition do not allege "domestic abuse" as defined in Section 40-13-2 NMSA 1978.

The allegations in the petition involve child custody and divorce issues which should be addressed in the proper court proceeding.

The allegations in the petition do not involve a "household member" as defined in Section 40-13-2 NMSA 1978.

Other \_\_\_\_\_.

The petition for order of protection from domestic abuse is denied.

This cause of action is dismissed without prejudice.

This cause of action is dismissed with prejudice.

### **RECOMMENDATIONS**

I have:

reviewed the petition for order of protection;

reviewed the counter-petition for order of protection;

conducted hearings on the merits of the petition;

after notice and hearing, I prepared this order as my recommendation to the district court judge regarding disposition of the request for order of protection. If any party disagrees with the recommendations, that party may, but is not required to, file written objections and a request for hearing on those objections with the district court within ten (10) days. A copy of those objections and a request for hearing must be served by mail on the other party.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

Court's telephone number:  
\_\_\_\_\_

The court has reviewed the recommendations and adopts them. This order remains in effect unless and until it is modified by a district court judge or it expires. If objections are filed the court may conduct a hearing to resolve the objections. (See Rule 1-053.1(H)(1)(a) NMRA).

### **SO ORDERED.**

\_\_\_\_\_  
District Judge

\_\_\_\_\_  
Date and time approved

### **USE NOTE**

1. This form may be modified and used for dismissal of a petition upon motion of the respondent.

[Approved, effective February 16, 2004; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

### ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-40, effective December 15, 2008, added the Recommendations section.

#### 4-981. Petition for order appointing kinship guardian.

[Simplified petition, Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978]<sup>1</sup>

\_\_\_\_\_ JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner<sup>2</sup>

v.

No. \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_  
Respondents<sup>3</sup>  
IN THE MATTER OF THE KINSHIP GUARDIANSHIP  
OF \_\_\_\_\_, born \_\_\_\_\_<sup>4</sup>

#### PETITION FOR ORDER APPOINTING KINSHIP GUARDIAN<sup>5</sup>

1. **INFORMATION ABOUT THE PETITIONERS** (the persons filing this petition requesting to be appointed to serve as a kinship guardian.)

A. The [petitioner is] [petitioners are] the child's<sup>2</sup>:

[ ] maternal [grandparents] [grandparent] (*child's mother's parents*);

[ ] paternal [grandparents] [grandparent] (*child's father's parents*);

[ ] aunt;

[ ] uncle;

[ ] brother;

[ ] sister;

[ ] a family member:

\_\_\_\_\_ (*describe the family relationship*);

[ ] an adult with whom the child has a significant bond:

\_\_\_\_\_ (*describe the relationship*).

B. The petitioner or petitioners reside at:

\_\_\_\_\_ (*street address*)

\_\_\_\_\_ (city, state, zip code)  
\_\_\_\_\_ (telephone number)  
\_\_\_\_\_ (fax number, if any)

C. Venue is proper because the child or children reside in this county or this county is the legal residence of the child or children.

(Check applicable alternative.)

- D. [ The above named child has lived with the petitioner or petitioners for ninety  
] (90) or more days immediately preceding the filing of this petition.  
[ Each respondent has consented to the appointment of kinship guardians. The  
] consent forms are attached to this petition.<sup>6</sup>

E. The petitioner or petitioners accept the duties and responsibilities of guardianship, including providing for the care, maintenance and supervision of the child.

F. The above child is not an Indian child and is not subject to provisions of the federal Indian Child Welfare Act.<sup>5</sup>

## 2. REQUEST FOR COURT TO NAME PETITIONERS AS KINSHIP GUARDIANS OF A MINOR CHILD

The petitioners request the court to enter an order appointing the [petitioner] [petitioners] as [guardian] [guardians] of the following child of \_\_\_\_\_<sup>7</sup> (father) and \_\_\_\_\_<sup>7</sup> (mother), who are the respondents in this case: (List the name and the date of birth of the child and each address of the child for the last five (5) years. Use a separate sheet if necessary.)<sup>8</sup>

Name: \_\_\_\_\_  
(last name, first and middle)

Date of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Present address:

\_\_\_\_\_ (street)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (state and zip code)

Next previous address:

\_\_\_\_\_ (street)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (state and zip code)

Next previous address:

\_\_\_\_\_ (street)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (state and zip code)

**3. INFORMATION ABOUT THE CHILD'S PARENTS**

**A. Information about mother:**

*(Check each applicable statement.)*

\_\_\_\_\_ (*mother's name*) is the mother of the child. Her current address is \_\_\_\_\_ (*city, county and state and zip code*).

The mother is living and has consented in writing<sup>9</sup> to [my] [our] appointment as kinship guardian. (*Attach consent form signed by child's mother.*)

The mother is deceased. (*Attach death certificate to this petition.*)

The mother is living but her parental rights have been terminated by an earlier court order. (*Attach a copy of the court order to this petition.*)

**B. Information about father:**

*(Check each applicable statement.)*

\_\_\_\_\_ (*father's name*) is the father of the child. His current address is \_\_\_\_\_ (*city, county and state and zip code*).

The father is living and has consented in writing<sup>6</sup> to [my] [our] appointment as kinship guardian. (*Attach consent form signed by child's father.*)

The father is deceased. (*Attach death certificate to this petition.*)

The father is living but his parental rights have been terminated by an earlier court order. (*Attach a copy of the court order to this petition.*)

Although the petitioner believes \_\_\_\_\_ (*name of alleged father*) to be the father of the child, he has not acknowledged that he is child's father.

The name of the father of the child is not known by the petitioners because: (*explain*) \_\_\_\_\_.

**4. INFORMATION ABOUT OTHER CASES (*complete if applicable*)**

A. The following divorce, separation, order of protection, child support, paternity, abuse or neglect<sup>10</sup> cases have been previously filed involving the above parents: (*complete if known*)

Type of Case	Year Filed	Case Number	Where Filed
--------------	------------	-------------	-------------



\_\_\_\_\_

B. (Complete if applicable.) The following persons, other than the petitioner or petitioners or the parents of the [child] [children], have or claim to have custody of the [child] [children] or visitation rights to the [child] [children]:  
 (List names of each guardian, custodian or person with visitation rights and circle applicable claim.)

\_\_\_\_\_ (name) [guardian] [custody] [visitation]  
 \_\_\_\_\_ (name) [guardian] [custody] [visitation]  
 \_\_\_\_\_ (name) [custody] [visitation]

**5. CHILD OVER FOURTEEN (14) YEARS OF AGE OR MARRIED**

(Complete if applicable.)

\_\_\_\_\_ (name of child) was born on \_\_\_\_\_ (date of birth) and at the time of the hearing on this petition will be at least fourteen (14) years of age.

\_\_\_\_\_ (name of child):

(Check if applicable.)

has signed an affidavit nominating \_\_\_\_\_ (name of person nominated) to be appointed as guardian. A copy of the signed nomination is attached and made a part of this petition.<sup>11</sup>

has been served with a copy of this petition and a copy of the nominating petition, but has failed or refused to sign the nomination form.

is married.

is not married.

**6. CHILD SUPPORT**

(Check applicable alternative.)

[I] [We] request that the court enter a child support order ordering \_\_\_\_\_ (name of parent or parents) to pay child support<sup>12</sup>.

[I] [We] do not request child support.

STATE OF NEW MEXICO }  
 } ss  
 COUNTY OF }  
 \_\_\_\_\_

The [petitioner was sworn and states] [petitioners were sworn and state]: [I] [We] have read this petition and it is true to the best of [my] [our] knowledge and belief. [I] [We] understand that [I] [We] can be punished both civilly and criminally if any information in this petition is false.

*Date*

*Signature of Petitioner*

*Date*

*Signature of Petitioner*

Signed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary public

\_\_\_\_\_  
My commission expires: \_\_\_\_\_.

#### **USE NOTES**

1. Civil Forms 4-981 to 4-992 NMRA may be used in the district courts of this State by persons who are representing themselves in uncontested kinship guardianship proceedings. Civil Forms 4-981 to 4-991 NMRA are not required to be used. Parties represented by an attorney may use other forms that serve the same purpose.

2. The petitioner must be a spouse, parent, stepparent, godparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", the spouse or former spouse of the child or an adult with whom the child has a significant bond. See Section 40-10B-5 NMSA 1978 for persons who may file as a petitioner pursuant to the Kinship Guardianship Act.

3. Unless the child's parent is deceased or the parent's parental rights have been terminated, the parent must be joined as a respondent. This petition must be served on each parent of the child in the manner provided by Rule 1-004 NMRA for personal service to Rule 1-004 NMRA, unless:

(a) a consent form has been signed by the parent;

(b) the parent is deceased and a death certificate is attached to this petition at the time it is filed;

(c) the parent's rights as a parent have been terminated by a court order and a copy of the order is attached to this petition at the time it is filed.

Civil Form 4-982, "Kinship Guardianship Summons" has been provided for use with this petition.

4. Insert the name or the initials of the minor child and the child's birthdate. This form may be modified to include additional minor children. The name of a child shall not be made available to the public on the internet.

5. This form cannot be used without revision if the child is an Indian child. In these cases, the form of the petition and the manner of notice must comply with federal law. The Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., defines "Indian child" as follows:

"Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(25 U.S.C. Section 1903(4)). If the child is enrolled or is eligible for enrollment in an Indian tribe, the form of the petition and the manner of the notice must comply with federal law. The parent or Indian custodian of an Indian child may have the right to have the child returned upon demand as may be determined by tribal law or custom.

6. See Forms 4-985 or Form 4-986 NMRA for parental consent forms.

7. If the parent is deceased, insert "deceased" instead of address and check the "deceased" box. A copy of the death certificate must be attached to this petition.

8. Section 40-10-10 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information under oath as to the child's present address, the places where the child has lived within the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period.

9. Attach a copy of each parent's Verified Parental Consent to Appointment of Guardian and Waiver of Service of Process to this petition. See Civil Forms 4-985 and 4-986 NMRA.

10. If an abuse or neglect or other proceeding has been filed by the Children, Youth and Families Department, that department must file a consent to the appointment of petitioners as kinship guardians. Attach a copy of such consent to this petition.

11. If the child is fourteen (14) years of age or older, the child must be served with a copy of this petition or a copy of the Nomination of Guardian Form, Civil Form 4-983 NMRA, must be attached to this petition at the time it is filed.

12. The child's mother may be ordered to pay child support. The respondent named as the child's father may be ordered to pay child support if the respondent father has admitted paternity or paternity has been established by another proceeding. See Civil Forms 4A-331 and 4A-332 NMRA for a petition to establish paternity and a final decree of paternity.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

### 4-982. Summons kinship guardianship proceedings.

[Summons, Kinship Guardianship Act, Section 40-10B-8 NMSA 1978, proceedings]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

### SUMMONS KINSHIP GUARDIANSHIP PROCEEDINGS<sup>1</sup>

#### THE STATE OF NEW MEXICO

TO: \_\_\_\_\_, Respondent

ADDRESS: \_\_\_\_\_

You are directed to serve a pleading or motion in response to the Petition for Order Appointing Kinship Guardian that is attached to this summons within thirty (30) days after service of this summons and file a copy of your response with this court.

You are notified that, unless you serve and file a responsive pleading or motion, the petitioners will apply to the court for the relief requested in the petition.

Petitioner:

\_\_\_\_\_  
Petitioner:

\_\_\_\_\_  
Address of petitioner:

\_\_\_\_\_

WITNESS the Honorable \_\_\_\_\_,  
 district judge of the \_\_\_\_\_ judicial district court of the State of New  
 Mexico, and the seal of the district court of \_\_\_\_\_ County, this \_\_\_\_\_  
 day of \_\_\_\_\_, \_\_\_\_\_.

Clerk

By Deputy

**RETURN**

STATE OF NEW MEXICO             )  
   )  
   )  ss  
 COUNTY OF                                 )  
 \_\_\_\_\_

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a  
 party to this lawsuit, and that I served the within summons in said county on the  
 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy thereof, with copy of  
 petition attached, in the following manner:  
*(check one box and fill in appropriate blanks)*

[to respondent \_\_\_\_\_ *(used when respondent receives copy  
of summons or refuses to receive summons).*]

[to \_\_\_\_\_, a person over fifteen (15) years of age and  
residing at the usual place of abode of respondent \_\_\_\_\_,  
who at the time of such service was absent therefrom.]

[to \_\_\_\_\_, (parent) (guardian) of respondent  
\_\_\_\_\_ *(used when respondent is a minor or an incompetent person).*]

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Making Service

\_\_\_\_\_  
Title (if any)

\*Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Judge, Notary or Other Officer Authorized to Administer Oaths

\_\_\_\_\_  
Official Title

*\*If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.*

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

### 4-983. Nomination of kinship guardian.

[Section 40-10B-8 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
[Respondent] [Respondents]  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

#### NOMINATION OF KINSHIP GUARDIAN

I, \_\_\_\_\_ (*list child's name*), was born on \_\_\_\_\_ and I am fourteen (14) years old or older.

I request the court to appoint \_\_\_\_\_ (*name of guardian*) [and \_\_\_\_\_ (*name of guardian*)] as my kinship [guardian] [guardians].

I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

\_\_\_\_\_  
Child's signature

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

Acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, the above-named child.  
My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**USE NOTE**

Section 40-10B-11 NMSA 1978 of the Kinship Guardianship Act provides that "the court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child". If a child is fourteen (14) years of age or older, this form is to be signed by the child prior to the filing of the petition and shall be attached to and served with the petition.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-984. Motion for appointment of temporary guardian.**

[Section 40-10B-7 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

**MOTION FOR APPOINTMENT OF TEMPORARY GUARDIAN**

The [petitioner requests] [petitioners request] the court to enter an order appointing them as kinship guardians pending a final hearing on the Petition for Order Appointment Kinship Guardian.

A temporary guardianship is necessary because:

We have attempted to notify the respondent by the following methods:

\_\_\_\_\_  
Signature of person filing motion  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-985. Parental consent to appointment of guardian and waiver of service of process (*paternity admitted*).**

[Kinship Guardianship Act, Sections  
40-10B-1 to 40-10B-14 NMSA 1978]



STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

No. \_\_\_\_\_

\_\_\_\_\_, Petitioner

v.

\_\_\_\_\_, Respondent

IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

**PARENTAL CONSENT TO APPOINTMENT OF GUARDIAN  
AND WAIVER OF SERVICE OF PROCESS  
(*Paternity admitted*)**

I, \_\_\_\_\_ (*name of parent*) upon my oath or  
affirmation state:

**1. PARENTS OF THE CHILD**

I, \_\_\_\_\_ (*list name*), am the [mother] [father]<sup>1</sup> of (*circle one*)  
of:

Name: \_\_\_\_\_ (*last name, first and  
middle*)

Date of birth: \_\_\_\_\_

Present address:

\_\_\_\_\_ (*street*)

\_\_\_\_\_ (*city*)

\_\_\_\_\_ (*state and zip code*)

**2. MY AGREEMENT TO GIVE THE KINSHIP GUARDIANS MY LEGAL RIGHTS  
AND DUTIES AS A PARENT**

I understand that by signing this paper:

A. I am giving \_\_\_\_\_ (*name of petitioner or  
petitioners*)

(1) my legal rights and duties as a parent, except for the right to consent to adoption  
and the duty to pay child support; and

(2) unless we have agreed upon visitation, the authority to make all decisions when  
and if I may visit with my [child] [children].

B. If I want to terminate the kinship guardianship of the above child, I will have to prove that the circumstances surrounding the signing of this paper have changed and that it is in the best interest of my [child] [children] that the guardianship be terminated.

C. I agree that it is in the best interest of the above child that the above named petitioners be named as kinship guardians for the above child.

**3. CHILD SUPPORT OBLIGATION**

I understand that the petitioners are not requesting child support in this proceeding.

I agree to pay child support as follows: .

I understand that the court may require me to pay child support and understand that the amount ordered can be changed by the court at any time in the future.

**4. CONSENT TO APPOINTMENT OF GUARDIAN**

I consent to the appointment of \_\_\_\_\_ (*list guardian's or guardians' names*) as [guardian] [guardians] of the above [child] [children].

**5. WAIVER OF RIGHT TO SERVICE OF SUMMONS AND PETITION**

I have copies of the Petition for Order Appointing Kinship Guardian filed in this case and waive service of the summons and additional pleadings.

I have not been given anything in exchange for signing this consent form.

**6. RIGHT NOT TO SIGN**

I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS CONSENT FORM AND THAT I HAVE THE RIGHT TO CONTEST THIS ACTION. I AM KNOWINGLY AND VOLUNTARILY SIGNING THIS FORM.

When I sign below, I am telling the judge that I have read this document and agree with everything in it. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

**7. RIGHT TO WITHDRAW CONSENT**

I understand that I may withdraw this consent at any time before the court enters an order granting the petition for kinship guardianship by filing with the court a motion notifying the court of my withdrawal of consent.<sup>2</sup>

---

Respondent's (parent's) signature

\_\_\_\_\_  
Printed name

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF NEW MEXICO            )  
  )    ss  
COUNTY OF \_\_\_\_\_        )

Acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, the petitioner.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**USE NOTES**

1. This form should be used only if both respondents admit that they are the parents of the child. If paternity has not been established, Civil Forms 4A-331 and 4A-332 NMRA may be used to establish paternity. It is not necessary to establish paternity for the court to enter a kinship guardianship order, however, child support may not be ordered to be paid by a respondent who has been named as the father of the child unless paternity has been established.
2. If a respondent wishes to withdraw consent prior to the final court order appointing the petitioner as kinship guardian, Form 4-991 NMRA may be used.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-986. Parental consent to appointment of guardian and waiver of service of process (*paternity not admitted*).**

[Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978]

\_\_\_\_\_ JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_ and

\_\_\_\_\_  
Respondents

IN THE MATTER OF THE GUARDIANSHIP OF

**PARENTAL CONSENT TO APPOINTMENT OF GUARDIAN  
AND WAIVER OF SERVICE OF PROCESS  
(*Paternity not admitted*)**

I \_\_\_\_\_ (name of parent) upon my oath or  
affirmation state:

**1. RESPONDENT**

I, \_\_\_\_\_ (list name), am a respondent in the above  
case and without admitting that I am the father of:

Name: \_\_\_\_\_ (*last name, first and  
middle*)

Date of birth: \_\_\_\_\_

Present address:

\_\_\_\_\_ (*street*)

\_\_\_\_\_ (*city*)

\_\_\_\_\_ (*state and zip code*)

I agree to the relief requested by the petitioners in the Petition for Order Appointing  
Kinship Guardian, a copy of which has been provided to me with this consent form.

**2. MY AGREEMENT**

I understand that by signing this paper:

A. I am giving the petitioners any legal rights and duties I have if it is later  
established that I am the father of the child;

B. if it is later determined that I am the father of the above child, I may be required  
to pay child support;

C. I will have no rights to visitation of the above child; and

D. if I want to terminate the kinship guardianship of the above child, I will have to prove that the circumstances surrounding the signing of this paper have changed and that it is in the best interest of my [child] [children] that the guardianship be terminated.

**3. WAIVER OF RIGHT TO SERVICE OF SUMMONS AND PETITION**

I have copies of the Petition for Order Appointing Kinship Guardian filed in this case and waive service of the summons and additional pleadings.

I have not been given anything in exchange for signing this consent form.

**4. RIGHT NOT TO SIGN**

I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS CONSENT FORM AND THAT I HAVE THE RIGHT TO CONTEST THIS ACTION. I AM KNOWINGLY AND VOLUNTARILY SIGNING THIS FORM.

When I sign below, I am telling the judge that I have read this document and agree with everything in it. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

**5. RIGHT TO WITHDRAW CONSENT**

I understand that I may withdraw this consent at any time before the court enters an order granting the petition for kinship guardianship by filing with the court a motion notifying the court of my withdrawal of consent.

\_\_\_\_\_  
Respondent's signature

\_\_\_\_\_  
Printed name

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF NEW MEXICO            )  
  )    ss  
COUNTY OF \_\_\_\_\_        )

Acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, the petitioner.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**USE NOTE**

This form should be used by a respondent who has not admitted paternity, but has no objection to an order appointing the petitioners as kinship guardians.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-987. Order appointing temporary kinship guardian.**

Section 40-10B-7 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

**ORDER APPOINTING TEMPORARY  
KINSHIP GUARDIAN**

The court has reviewed the sworn petition for appointment of \_\_\_\_\_ [and \_\_\_\_\_] as kinship [guardian] [guardians] of the above minor child and the [petitioner's] [petitioners'] motion to appoint a temporary kinship guardian.

The court having considered the petition and motion, FINDS that the court has jurisdiction and that:

1. The [petitioner is] [petitioners are] \_\_\_\_\_ (state the relationship) of the above named child.

2. The following extraordinary circumstances exist:
  
3. Appointment of the [petitioner] [petitioners] as temporary kinship [guardian] [guardians] is necessary.
  
4. Other:

This order shall automatically terminate one hundred eighty (180) days after the date set forth below or upon entry of an order on the Petition for Order Appointing Kinship Guardian, whichever date is earlier.

**IT IS SO ORDERED.**

Date

District court judge

**USE NOTE**

This form may be used with Civil Forms 4-981 and 4-984 NMRA.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-988. Order appointing kinship guardian by consent (*paternity admitted*).**

[Section 40-10B-8 NMSA 1978]

STATE OF NEW MEXICO  
 COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
 [Petitioner] [Petitioners]

\_\_\_\_\_  
Respondent  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

**ORDER APPOINTING KINSHIP GUARDIAN BY CONSENT<sup>1</sup>**  
*(paternity admitted)*

The court has reviewed the sworn petition for appointment of \_\_\_\_\_ [and \_\_\_\_\_] as kinship [guardian] [guardians] of above minor child and the consent of the respondents.

The court having considered the petition, **FINDS** that the court has jurisdiction and that:

1. The [petitioner is] <sup>2</sup> [petitioners are] \_\_\_\_\_  
*(state the relationship)* of the above named child.  
*(Check applicable alternative.)*

- 2.  The child's mother has consented to the appointment of [a guardian] [guardians] for her child and the consent is filed with the court.<sup>2</sup>
- The child's mother is deceased.
- The child's mother's parental rights have been terminated by a prior court order.

*( Check applicable alternative.)*

- 3.  The child's father has consented to the appointment of [a guardian] [guardians] for his child and the consent is filed with the court.<sup>2</sup>
- The child's father is deceased.
- The child's father's parental rights have been terminated by a prior court order.

4 The [petitioner] [petitioners] shall be appointed as the kinship [guardian] [guardians] of the child.

*( Check applicable alternative.)*

- 5.  The [petitioner has] [petitioners have] not requested child support.  
The parties have agreed to child support as follows:

The parties have agreed to the following visitation:



**IT IS SO ORDERED.**

Date

District court judge

**USE NOTES**

1. This form order may be used if both parents have signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process. It may also be used if one of the parents of the child is deceased or if the parent's parental rights have been terminated. If a parent is deceased, a copy of the death certificate must be filed in the kinship guardianship proceeding. If a parent's rights as a parent have been terminated by a court order, a copy of the order must be filed in the kinship guardianship proceeding. See Use Note 3 of Form 4-981 NMRA. See Forms 4-985 and 4-986 NMRA for parental consent forms.

2. Use only applicable alternative.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-989. Order appointing kinship guardian by consent (*paternity not admitted*).**

[Section 40-10B-8 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent

IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

**ORDER APPOINTING KINSHIP GUARDIAN BY CONSENT<sup>1</sup>**  
***(paternity not admitted)***

The court has reviewed the sworn petition for appointment of  
\_\_\_\_\_ [and \_\_\_\_\_] as kinship  
[guardian] [guardians] of above minor child and the consent of the respondents.

The court having considered the petition, FINDS that the court has jurisdiction and  
that:

1. The [petitioner is a grandparent] [petitioners are grandparents]  
[\_\_\_\_\_ (*state the relationship*)]<sup>2</sup> of the above named child.
2. The child's mother has consented to the appointment of [a guardian] [guardians]  
for her child and the consent is filed with the court.
3. \_\_\_\_\_ (*name of respondent*) has not contested the  
appointment of [a guardian] [guardians] for this child and the consent is filed with the  
court.
4. The [petitioner] [petitioners] shall be appointed as the kinship [guardian]  
[guardians] of the child.

*(Check and complete applicable alternative.)*

5. [ The [petitioner has] [petitioners have] not requested child support.  
[ The mother has agreed to child support as follows:  
[  
] ]  
The petitioners and \_\_\_\_\_ (*name of respondent*)  
[ have agreed to the following visitation:  
[  
] ]

**IT IS SO ORDERED.**

Date

District court judge

**USE NOTES**

1. This form order may be used if both parents have signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process.

2. See Section 40-10B-5 NMSA 1978 for persons who may file as a petitioner pursuant to the Kinship Guardianship Act. See also Domestic Relations Form 4A-981 NMRA for relationship of the petitioners.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

### 4-990. Order appointing kinship guardian without consent of both respondents.

[Section 40-10B-8 NMSA 1978]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
[Petitioner] [Petitioners]

v.

No. \_\_\_\_\_

\_\_\_\_\_  
Respondent  
IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_

#### ORDER APPOINTING KINSHIP GUARDIAN WITHOUT CONSENT OF BOTH RESPONDENTS<sup>1</sup>

The court has reviewed the sworn petition for appointment of  
\_\_\_\_\_ [and \_\_\_\_\_] as [guardian]  
[guardians] of above minor child.

The court having considered the petition, **FINDS** that the court has jurisdiction and that:

1. The [petitioner is] [petitioners are] \_\_\_\_\_ (*state the relationship*) of the above named child.

2. The child has resided with the petitioner without a parent for ninety (90) or more days immediately preceding the date the petition was filed.

3. (*Check and complete applicable alternative.*)

\_\_\_\_\_ (*name of respondent*) has been served with a summons and Petition for Order Appointing Kinship Guardian.<sup>2</sup>

\_\_\_\_\_ (*name of mother*) has been served by publishing notice of this proceeding as ordered by the court.<sup>3</sup>

The child's mother has not appeared in this proceeding and has not signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process.

The child's mother has consented to the appointment of [a guardian] [guardians] for her [child] [children] and the consent is filed with the court.

4. (*Check and complete applicable alternative.*)

\_\_\_\_\_ (*name of respondent*) has been served with a summons and Petition for Order Appointing Kinship Guardian.<sup>2</sup>

\_\_\_\_\_ (*name of father*) has been served by publishing notice of this proceeding as ordered by the court.<sup>3</sup>

The child's father has not appeared in this proceeding and has not signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process.

The child's father has consented to the appointment of [a guardian] [guardians] for his [child] [children] and the consent is filed with the court.

The child's father is unknown.

5. The [petitioner] [petitioners] shall be appointed as the kinship [guardian] [guardians] of the child.

(*Check and complete applicable alternative.*)

6.  The [petitioner has] [petitioners have] not requested child support.

The [petitioner] [petitioners] and \_\_\_\_\_ (*name of respondent*) have agreed to child support as follows:

The [petitioner] [petitioners] and \_\_\_\_\_ (*name of*

respondent) have agreed to visitation as follows:

**IT IS SO ORDERED.**

Date

District court judge

**USE NOTES**

1. Unless the parent's parental rights have been terminated or the parent is deceased, this form is to be used if a respondent has not appeared in the proceedings and has not signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process. Use Civil Form 4-986 NMRA if both parents have signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process.
2. See Rule 1-004 NMRA for personal service of process. See also Civil Form 4-982 NMRA for the form of summons used in kinship guardianship proceedings.
3. If the respondent has not been personally served with process, the court does not need to determine paternity of the child prior to signing this order.
4. See Rule 1-004 NMRA and Civil Forms 4-209 and 4-209A for service by publication.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

**ANNOTATIONS**

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

**4-991. Motion for revocation of kinship guardianship.**

[Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978.]

\_\_\_\_\_  
JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO

\_\_\_\_\_  
Petitioner (*kinship guardian or guardians*)

v.

No. \_\_\_\_\_<sup>1</sup>

\_\_\_\_\_ and \_\_\_\_\_  
Respondents (*parent or parents of child*)

IN THE MATTER OF THE GUARDIANSHIP  
OF \_\_\_\_\_<sup>2</sup>

**MOTION FOR REVOCATION OF KINSHIP GUARDIANSHIP**

**1. INFORMATION ABOUT THE PARENTS**

A. \_\_\_\_\_ (*mother's name*) is the mother of the  
above named child. Her current address is \_\_\_\_\_  
(*city, county and state and zip code*).

B. \_\_\_\_\_ (*father's name*) is the father of the  
child. His current address is \_\_\_\_\_  
(*city, county and state and zip code*).

C. The [respondent is] [respondents are] the child's:  
 parents  
 father  
 mother

D. The kinship guardianship should be revoked because of the following change of  
circumstances:

(*describe change of circumstances*)

**2. INFORMATION RELATING TO CHILD**

A. The [respondent requests] [respondents request] the court to enter an order  
terminating the kinship guardianship and to return the following child to  
\_\_\_\_\_ [and \_\_\_\_\_]<sup>3</sup>.

**3. TRANSITION PLAN.**

A transition plan that demonstrates how the child will be reintegrated into our home is  
attached to this motion.<sup>4</sup>

STATE OF NEW MEXICO     )  
  )    ss  
COUNTY OF                     )

\_\_\_\_\_

The [respondent was sworn and states] [respondents were sworn and state]: [I] [We] have read this motion and it is true to the best of [my] [our] knowledge and belief. [I] [We] understand that [I] [We] can be punished both civilly and criminally if any information in this motion is false.

*Date*

*Signature of Respondent*

*Date*

*Signature of Respondent*

Signed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public

My commission expires: \_\_\_\_\_.

#### USE NOTES

1. This form is to be filed in the same court as the court appointing the kinship guardians. The clerk will use the same docket number.
2. This form may be modified if there is more than one child who was subject to a kinship guardianship.
3. Service of this request shall also be made on the child if the child is fourteen (14) years of age or older.
4. A transition plan is required to be filed with this motion. A transition plan should include, but not be limited to, information about the child's health, doctors, dentists, special medical needs, school, extra-curricular activities, religious worship, all visitation rights of the parties and other persons and any other matters relevant to the best interests of the child and how the needs of the child will be met after the termination of the kinship guardianship. Domestic Relations Form 4A-313 NMRA, Parenting Plan and Child Support Obligation, may be modified and used as a "transition plan".

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

#### ANNOTATIONS

**Effective dates.** — Pursuant to a court order dated July 2, 2003, this form was provisionally approved effective August 15, 2003. The provisional adoption expired on August 31, 2004. Pursuant to a court order dated October 14, 2004, this form was permanently approved effective for all cases filed on or after January 20, 2005.

## Table Of Corresponding Forms

The first table below reflects the disposition of the former Civil Forms. The left-hand column contains the former form number, and the right-hand column contains the corresponding present Civil Form.

The second table below reflects the antecedent provisions in the former Civil Forms (right-hand column) of the present Civil Forms (left-hand column).

Former Form	NMRA	Former Form	NMRA
1.00	4-201	7.03	4-804
1.01	4-203	8.00	4-805
1.02	4-204	8.01	4-806
1.03	4-301	8.02	4-807
1.04	4-202	8.03	4-812
1.05	4-302	8.03A	4-811
2.00	4-304	8.04	4-813
2.01	4-305	8.05	4-814
2.02	4-306	8.06	4-808
3.00	4-501	8.07	4-809
3.01	4-502	8.08	4-810
3.02	4-307	9.00	4-707
3.03	4-401	9.01	4-708
4.00	4-503	10.00	4-901
4.01	4-601	10.01	4-902
5.00	4-103	10.02	4-903
5.01	4-102	10.03	4-904
5.02	4-101	10.04	4-905
6.00	4-701	10.05	4-906
6.01	4-703	10.06	4-907
6.02	4-704	10.07	4-908
6.03	4-705	10.08	4-909
6.04	4-706	10.09	4-910
6.05	4-303	10.10	4-911
6.06	4-702	10.11	4-912
7.00	4-801	10.12	4-913
7.01	4-802	10.13	4-914
7.02	4-803		
NMRA	Former Form	NMRA	Former Form



4-101	5.02	4-707	9.00
4-102	5.01	4-708	9.01
4-103	5.00	4-709	None
4-104	None	4-710	None
4-201	1.00	4-801	7.00
4-202	1.04	4-802	7.01
4-203	1.01	4-803	7.02
4-204	1.02	4-804	7.03
4-205	None	4-805	8.00
4-206	None	4-806	8.01
4-207	None	4-807	8.02
4-208	None	4-808	8.06
4-301	1.03	4-809	8.07
4-302	1.05	4-810	8.08
4-303	6.05	4-811	8.03A
4-304	2.00	4-812	8.03
4-305	2.01	4-813	8.04
4-306	2.02	4-814	8.05
4-306A	None	4-901	10.00
4-307	3.02	4-902	10.01
4-308	None	4-903	10.02
4-401	3.03	4-904	10.03
4-501	3.00	4-905	10.04
4-502	3.01	4-906	10.05
4-503	4.00	4-907	10.06
4-601	4.01	4-908	10.07
4-701	6.00	4-909	10.08
4-702	6.06	4-910	10.09
4-703	6.01	4-911	10.10
4-704	6.02	4-912	10.11
4-705	6.03	4-913	10.12
4-706	6.04	4-914	10.13