

# CIVIL FORMS

## ARTICLE 1 GENERAL PROVISIONS

### 4-101. Notice of excusal (Constitution or Code of Conduct).

[2-106, 3-106]

STATE OF NEW MEXICO

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

State of New Mexico

v.

No.

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

#### NOTICE OF EXCUSAL

(CONSTITUTION OR CODE OF CONDUCT)

The undersigned believes that the impartiality of the Honorable

\_\_\_\_\_ may reasonably be questioned because:

\_\_\_\_\_

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

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

\_\_\_\_\_

Signature of party

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

#### ANNOTATIONS

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

#### 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.

[2-106, 3-106]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_

\_\_\_\_\_ COUNTY

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

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

#### NOTICE OF EXCUSAL

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

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

\_\_\_\_\_

(Party or attorney for party)

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

#### ANNOTATIONS

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

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

[2-106, 3-106]

STATE OF NEW MEXICO

IN THE \_\_\_\_\_ COUNTY

\_\_\_\_\_ COUNTY

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

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

#### NOTICE OF RECUSAL

You are notified that I have recused myself from presiding over the above-captioned case. The parties are further notified

that if within ten (10) days they do not file with the court a stipulation agreeing to another judge to hear the case, another judge will be assigned to hear the case.

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

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

**ANNOTATIONS**

**The 1995 amendment**, effective November 1, 1995, substituted "You are notified that I have recused myself" for "The undersigned hereby notifies the parties that he is recusing himself", "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".

**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:

\_\_\_\_\_, 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]

\_\_\_\_\_  
Add

\_\_\_\_\_  
Code [print]

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

\_\_\_\_\_  
phone Number

\_\_\_\_\_  
Tele

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

[Magistrate Court - Metropolitan Court]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_  
COUNTY

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

\_\_\_\_\_  
\_\_\_\_\_, 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]

Add

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

Code [print]

City, State and Zip

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

phone Number

Tele

**4-204. Civil summons.**

[2-202, 3-202]



STATE OF NEW MEXICO

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

COURT

COUNTY

v.

No.

\_\_\_\_\_

Judge

assigned:

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

CIVIL SUMMONS

TO:

\_\_\_\_\_  
Defendant 1

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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Clerk

R E T U R N

STATE OF NEW MEXICO )  
 ) ss

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

**(complete the following, unless service by sheriff or deputy) 3**

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, a copy of the complaint and an answer (*indicate below how served*):

**(complete if service by sheriff or deputy) 3**

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

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

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to the defendant, \_\_\_\_\_ (*used when defendant receives copy of summons or refuses to receive summons*).

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

[ ] by posting a copy of the summons, complaint and an answer form in the most public part of the usual place of abode of \_\_\_\_\_ (*name 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, complaint and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)*

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

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

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

[ ] by service by mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Judge, notary or other officer  
authorized to administer oaths

---

Official title3

#### USE NOTES

1. *A separate summons must be used for each defendant.*
2. *An answer form must be attached to the summons at the time of service. For answer forms, see 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

\_\_\_\_\_  
and Zip Code

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

\_\_\_\_\_  
phone Number

\_\_\_\_\_  
Tele

[Adopted, effective July 1, 1988.]

**4-206. Summons.**

[1-004]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT

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

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

No.

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

SUMMONS

THE STATE OF NEW MEXICO

TO: \_\_\_\_\_, Defendant (s)  
ADDRESS: \_\_\_\_\_

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the complaint within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Attorney or attorneys for plaintiff:

\_\_\_\_\_  
Address of attorneys for plaintiff:  
(or of plaintiff, if no attorney)

\_\_\_\_\_  
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 Complaint attached, in the following manner:

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

to Defendant \_\_\_\_\_ (used when Defendant 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 Defendant \_\_\_\_\_, who at the time of such service was absent therefrom.

by posting a copy of the Summons and Complaint in the most public part of the premises of Defendant \_\_\_\_\_ (used if no person found at dwelling house or usual place of abode)

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)

to \_\_\_\_\_ (name of person), \_\_\_\_\_, (title of person authorized to receive service) (used when Defendant is corporation or 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 \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, Notary or Other Officer

Ti

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.

[Adopted, effective August 1, 1988.]

**4-207. Notice and receipt of summons and complaint notice.**

[1-004]

STATE OF NEW MEXICO  
IN THE DISTRICT COURT

\_\_\_\_\_ (JUDICIAL DISTRICT)

No.

\_\_\_\_\_

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

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

NOTICE AND RECEIPT OF SUMMONS AND COMPLAINT

NOTICE

TO:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_ The enclosed summons and complaint are served pursuant to Rule 1-004 of the New Mexico 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 to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your position or title.

If you do not complete and return the form to the above court within twenty (20) days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within thirty (30) days of the date upon which this notice was mailed, which appears below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Receipt of Summons and Complaint was mailed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
\_\_\_\_\_  
Date  
of Signature

RECEIPT OF SUMMONS AND COMPLAINT

I received a copy of the summons and complaint in the above-captioned matter at (insert address).

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
\_\_\_\_\_  
Relationship to Entity/  
to Receive Service of Process Authority

\_\_\_\_\_  
Date of Signature  
[Adopted, effective August 1, 1989.]

**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.

**4-211. Domestic relations cover sheet.**

DOMESTIC RELATIONS COVER SHEET1

Type or print responses. Required for attorneys only.

(Do not use in domestic violence cases.)

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THIS SECTION FOR OFFICIAL USE ONLY2

Case number: \_\_\_\_\_ Assigned judge: \_\_\_\_\_ Free  
process: Y N

---

**Information for court clerk's use.**

**A. Parties' names and petitioner's attorney information.**

**Petitioner's information**

Petitioner's name: \_\_\_\_\_

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

Attorney address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

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

Respondent's name: \_\_\_\_\_

---

**B. Case tracking (select codes from page 3)3**

Primary case type. (Insert three letter  
code) \_\_\_\_\_.

Primary claim for relief (cause of action) (Insert three  
letter code) \_\_\_\_\_.

Other claims for relief (cause of action) (insert three letter  
codes)4: \_\_\_\_\_.

C. Type of pleading (mark only one)

\_\_\_\_\_ FIRST PLEADING for this party (*petition*)  
\_\_\_\_\_ RE-OPENED (*Post judgment decree, motions, petitions for enforcement or modification*)

Information for judge's use. (*mark all that apply*)

Has mediation or settlement facilitation been attempted?

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

Are there any pending or closed cases, including any domestic violence or children's court cases, involving the same parties or children? \_\_\_\_\_ Yes \_\_\_\_\_ No.

END OF COVER SHEET. GO TO INFORMATION SHEET.5

NOTE TO CLERK: PLACE THE COVER SHEET IN THE COURT FILE.6

NOTE TO COURT CLERK: DO NOT FILE THE INFORMATION SHEET.6

DOMESTIC RELATIONS INFORMATION SHEET

Case number: \_\_\_\_\_ Assigned judge: \_\_\_\_\_

The following information is required by New Mexico law and federal law for child support enforcement. The information also is needed to identify and monitor the case.

**1. Information regarding petitioner and respondent. (*Do not use an attorney's mailing address. Use a separate sheet if necessary.*)**

**Petitioner**

**Respondent**

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

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

(*Last name, first, middle*)  
middle)

(*Last name, first,*

Other names (*e.g. maiden name*):  
maiden name):

Other names (*e.g.*

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

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

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

Zip code: \_\_\_\_\_

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

Date of

Social Security number7: \_\_\_\_\_  
Security number7:

Social

**2. Parties' minor children. (*Provide the date of birth and social security number for each minor child, if any. Use a separate sheet if necessary.*)**



Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 \_\_\_\_\_ (Last name, first, middle) (Last name, first, middle)  
 Date of birth: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
 Social Security number: \_\_\_\_\_ Social Security number: \_\_\_\_\_  
 Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 \_\_\_\_\_ (Last name, first, middle) (Last name, first, middle)  
 Date of birth: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
 Social Security number: \_\_\_\_\_ Social Security number: \_\_\_\_\_  
 Has any court made an order for child support? \_\_\_\_\_ Yes  
 \_\_\_\_\_ No  
 Has any court changed the amount of child support you requested? \_\_\_\_\_ Yes \_\_\_\_\_ No  
 If you answered "Yes" to either question, what state and what court issued the order? \_\_\_\_\_ State  
 \_\_\_\_\_ Court.

**END OF INFORMATION SHEET**

NOTE TO ATTORNEYS: DO NOT SUBMIT INFORMATION BELOW THIS LINE TO THE CLERK.5

**CLAIMS FOR RELIEF (CAUSES OF ACTION)**

Select the primary case type, primary claim for relief and all other claims for relief from the following list. Primary case types are in bold print and are either underlined or appear in italics. "Claims for relief" appear in regular lettering to the left and below each "primary case type". Write the appropriate codes in the appropriate blank spaces on the cover sheet.

**PRIMARY  
 CASE TYPE**

<i>ESTABLISH DISSOLUTION - MINOR CHILDREN</i>		<i>DDC</i>
ANNULMENT with custody	DAC	
DIVORCE with custody	DDC	
LEGAL SEPARATION with custody		DLC
NOT MARRIED with children	DNC	
<i>ESTABLISH DISSOLUTION - NO MINOR CHILD</i>		<i>DDN</i>
ANNULMENT no minor child	DAN	
DIVORCE no minor child	DDN	
LEGAL SEPARATION no minor child		DLN
NOT MARRIED no minor child	DNN	
<i>ESTABLISH CUSTODY OR VISITATION</i>		<i>DCV</i>
PARENTAL CUSTODY OR VISITATION		DCV

GRANDPARENT VISITATION	DGC	
OTHER CUSTODY VISITATION	DOC	
<i>ENFORCE - MODIFY CUSTODY, VISITATION OR SUPPORT</i>	<i>DDC</i>	
ENFORCE INCOMING RECIPROCAL	EIR	
ENFORCE OUTGOING RECIPROCAL	EOR	
ENFORCE SUPPORT - private attorney		EPV
ENFORCE SUPPORT - state attorney		EST
MODIFY INCOMING RECIPROCAL	EIR	
MODIFY OUTGOING RECIPROCAL	EOR	
MODIFY SUPPORT - private attorney		EPV
ENFORCE OR MODIFY PARENTAL CUSTODY		ECV
ENFORCE OR MODIFY GRANDPARENT VISIT		EGC
ENFORCE, MODIFY OTHER CUSTODY OR VISIT		EOC
<i>MISCELLANEOUS OR OTHER</i>	<i>DMS</i>	
SECTION 40-4-7 PROPERTY DIVISION		DPD
ENFORCE OR MODIFY PROPERTY DIV.		EPD
MISC. DOMESTIC MATTERS	DMS	
ENFORCE - MODIFY MISC. DOM. REL. MATTER		EMS
<i>ESTABLISH PARENTAGE OR PATERNITY</i>		<i>DPA</i>
ESTABLISH PARENTAGE OR PATERNITY		DPA
<i>CHILD SUPPORT</i>	<i>DCS</i>	
CHILD SUPPORT - private attorney		DPV
CHILD SUPPORT - state attorney		DST

#### USE NOTES

1. The Domestic Relations Cover Sheet and the Domestic Relations Information Sheet are not required in domestic violence, commitment, guardianship, probate or adoption actions; or if you are filing a pleading that does not change or add to the first pleading.

In uncontested domestic relations matters, the parties may submit one set of documents with the initial pleading, and the documents need not be served.

In all other contested domestic relations cases each attorney representing a petitioner in a contested case must submit both the cover sheet and the information sheet and serve a blank copy of the information sheet on the respondent. Respondents must submit the completed information sheet with their first responsive pleading.

The information submitted on these forms does not replace or supplement the filing and service of pleadings or other papers required by law. These forms, approved by the Supreme Court of New Mexico, are required to initiate domestic relations cases and are used by the courts for case management.

Forms are available from the court clerks and the NMRA. Electronic copies may be obtained from the Supreme Court's internet site ([www.technet.nm.net/menu/sup-ct.htm](http://www.technet.nm.net/menu/sup-ct.htm)) and New Mexico Law on Disc. If re-keying the form it must appear substantially in the same format as the Supreme Court approved form. Type or print only. If using a word processing system, please print your answers in bold.

2. The information contained in the "official use only" section of the domestic relations cover sheet, including the case number and assigned judge, and free process information will be filled in by the court clerk. The court clerk will also fill in the case number and assigned judge information requested on the Domestic Relations Information Sheet.

3. The identification of case types, primary and other claims for relief is for court data keeping purposes only and is not binding for any purpose. There is no wrong answer as long as the codes are taken from the attached list of codes. Insert the code for the primary case type (e.g. DVC for custody or visitation) and the primary claim for relief (e.g. DGC for grandparent visitation) using the codes listed on page three (3) of the cover sheet. It is possible for the case type and case codes to be the same. Please insert both. For statistical purposes, you can list only one primary case type and one primary claim or cause of action.

4. Other claims for relief. If you have other claims, type or print the codes for those claims as indicated.

5. The cover sheet is to be submitted to the clerk on one page. Unless there are more than four children, the information sheet is to be submitted on a single page. The clerk will key-enter the information on the cover sheet and place it in the court file. Only the cover sheet will be filed. The clerk will key-enter the information on the information sheet. The information sheet will not be filed in the court file.

6. Please print and include the "notes" to the clerk on the form submitted to the clerk.

7. If the party has more than one social security number, please include it. Pursuant to Sections 27-1-10 and 27-1-11 NMSA 1978 and federal law, each party must submit the social security number of each party as well as the name, date of birth and social security number for each minor child. This information will be provided to the State Case Registry and, upon request, to child support enforcement agencies. The parties' addresses and social security numbers are also used to accurately identify and track court users, obtain feedback from court users on a periodic basis and to issue process in contempt proceedings. Addresses provided on this page will not be made a part of the

public record unless that party is or becomes self-represented.

[Approved, effective November 1, 1999 until November 1, 2000.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**4-212. Domestic relations information sheet.**

DOMESTIC RELATIONS INFORMATION SHEET

*(for self-represented people)*

\_\_\_\_\_

*THIS SECTION FOR OFFICIAL USE ONLY1*

Case number: \_\_\_\_\_

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

\_\_\_\_\_

*The following information is required by New Mexico law and federal law for child support enforcement. The information also is needed to identify and keep up with your case. If child support is not paid, this information will help the court get the money for your child(ren).*

**1. Information regarding petitioner and respondent. (Look at the paperwork you are giving to the court to see who is listed at the top as petitioner and respondent. Use a separate sheet if necessary.)**

**Petitioner**  
Name: \_\_\_\_\_

**Respondent**  
Name: \_\_\_\_\_

*(Last name, first, middle)  
middle)*

*(Last name, first,*

**Other names (e.g. maiden name):**  
**maiden name):**

**Other names (e.g.**

\_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ City: \_\_\_\_\_  
State: \_\_\_\_\_ State: \_\_\_\_\_  
Zip code: \_\_\_\_\_ Zip code: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Social Security number2: \_\_\_\_\_ Social Security number2: \_\_\_\_\_

2. Parties' minor children. (Provide the date of birth and social security number for each minor child, if any. Use a separate sheet if necessary.)

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
(Last name, first, middle) (Last name, first, middle)

Date of birth: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_ Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
(Last name, first, middle) (Last name, first, middle)

Date of birth: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_ Social Security number: \_\_\_\_\_

Has any court made an order for child support? \_\_\_\_\_ Yes  
\_\_\_\_\_ No

Has any court changed the amount of child support you requested? \_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer is "Yes" to either question, what state and what court are they located in \_\_\_\_\_ State  
\_\_\_\_\_ Court.

NOTE TO COURT CLERK:

DO NOT PLACE THIS INFORMATION SHEET IN THE COURT FILE.3

#### DOMESTIC RELATIONS INFORMATION SHEET INSTRUCTIONS

If you need more space to write, you can attach a separate sheet with the information.

**To Petitioner:**

If you and your spouse or the other person who owes child support have agreed on everything before this case was filed, then you must give the *Information Sheet* to the court clerk with your petition.

If you do not agree it means the case is *contested*. If the case is contested, you MUST do two things:

1. give the information sheet to the court clerk; and
2. have a sheriff or process server give a blank copy of the *Information Sheet* to your spouse or other person who owes child support.

**To Respondent:**

You must submit the information sheet when you file your first paper with the court. You must write the name of the judge and the case number on the *Information Sheet*. You can find that information on the papers the petitioner gave you.

After you fill out this form, you will need to submit the other paper work required by law.

If you choose to represent yourself in a claim, you may still wish to talk with an attorney to discuss your rights. The people who work in the court cannot give you legal advice.

**Purpose:**

You must give the information requested on the sheet for the State Case Registry. This information is required by Federal and State law. The information is needed to identify and keep up with your case. If your child(ren) do not receive the child support ordered, this information will help the court get the money for your child(ren).

If you have more than one social security number, include all social security numbers. Social security numbers will be given to state and federal agencies which are required by law to collect the information. Social security numbers will not be given to the public.

Your addresses are used by the court to obtain feedback from both of you.

USE NOTES

1. The information contained in the "official use only" section of the Domestic Relations Information Sheet including the case number and assigned judge will be filled in by the court clerk.
2. If the party has more than one social security number, please include it.
3. Unless there are more than four children, the information sheet is to be submitted on a single page. The clerk will key-

enter the information on the information sheet. The information sheet will not be filed in the court file. **The Domestic Relations Information Sheet Instructions are not submitted to the court clerk.**

[Approved, effective November 1, 1999 to November 1, 2000.]

### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

## ARTICLE 3 PLEADINGS AND MOTIONS

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

[2-302, 3-302]

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

#### ANSWER TO CIVIL COMPLAINT

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.)*

---

---

Date  
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.)*

[As amended, effective January 1, 1995.]

### ANNOTATIONS

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



**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] \_\_\_\_\_  
\_\_\_\_\_  
ress [print] \_\_\_\_\_ Add  
\_\_\_\_\_  
Code [print] \_\_\_\_\_ City, State and Zip  
\_\_\_\_\_  
phone Number \_\_\_\_\_ Tele

*(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.**

[2-303, 3-303]

STATE OF NEW MEXICO

No.

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

\_\_\_\_\_  
COUNTY

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

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

\_\_\_\_\_,'

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

(A copy of this must be mailed to 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, effective October 1, 1987.]

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

[2-305, 3-305]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_  
\_\_\_\_\_ COUNTY

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

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

STIPULATION OF DISMISSAL

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

\_\_\_\_\_  
\_\_\_\_\_  
for Plaintiff

Plaintiff or Attorney

\_\_\_\_\_  
\_\_\_\_\_  
for Defendant

Defendant or Attorney

THIS ACTION is dismissed (with) (without) prejudice.

\_\_\_\_\_  
\_\_\_\_\_  
Judge

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

[2-305, 3-305]

STATE OF NEW MEXICO

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

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

\_\_\_\_\_

\_\_\_\_\_ COUNTY

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

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

NOTICE OF DISMISSAL OF COMPLAINT

Plaintiff hereby dismisses its complaint without prejudice.

\_\_\_\_\_

Plaintiff or Attorney

for Plaintiff

THIS ACTION is dismissed without prejudice.

\_\_\_\_\_,

\_\_\_\_\_

\_\_\_\_\_

Judge

**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. Order dismissing action.**

[General Form for Use in Magistrate or

**Metropolitan Court]**

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_

\_\_\_\_\_ COUNTY

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

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

ORDER DISMISSING ACTION

This matter having come on for hearing on the motion of the (Plaintiff) (Defendant) in the above styled cause and the court having considered the argument presented, find that the above cause of action should be dismissed (with) (without) prejudice.

IT IS ORDERED that this action is dismissed (with) (without) prejudice.

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

Judge

[Adopted, effective September 1, 1989.]

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

[2-306, 3-307]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff  
against  
\_\_\_\_\_, Defendant

NOTICE OF PRETRIAL CONFERENCE

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

A pretrial conference will be held in this case on \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ m.,

before this 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.

YOU ARE ORDERED to appear at the above time and place.

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

\_\_\_\_\_

Ju

dge or Clerk

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

**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.

**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).

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

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.

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

Ju

dge or Clerk

## **ARTICLE 5 DISCOVERY AND PRETRIAL MATTERS**

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

[2-501, 3-501]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT  
\_\_\_\_\_

No.

\_\_\_\_\_ COUNTY

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

\_\_\_\_\_, 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

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

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

(Defendant)

(A copy of this must be mailed or delivered to the other party or attorney for the other party.)

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

[2-501, 3-501]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_  
\_\_\_\_\_ COUNTY

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

against

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

ORDER FOR PRODUCTION

The (plaintiff) (defendant) demanded production and the court finds that good cause exists for production;

IT IS ORDERED that (defendant) (plaintiff) produce for inspection and copying at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ (a.m.) (p.m.), the following records, papers, documents or other tangible evidence in the (defendant) (plaintiff)

(describe briefly): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Judge

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

[As amended, effective January 1, 1996.]

**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".

**4-503. Subpoena.**

[2-502, 3-502]

STATE OF NEW MEXICO

\_\_\_\_\_ COURT

No.

\_\_\_\_\_  
\_\_\_\_\_ COUNTY

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

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

SUBPOENA

TO:

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

YOU ARE ORDERED TO APPEAR before this Court located at

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_\_, at the  
hour of \_\_\_\_\_ m. and to testify in this action at the  
request of (Plaintiff) (Defendant). IF YOU DO NOT APPEAR and  
testify you may be held in contempt of Court and punished by  
fine or imprisonment.

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

dge or Clerk

Ju

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

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

\_\_\_\_\_  
\_\_\_\_\_ Deputy Sheriff

De

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 said  
County, I served this subpoena on \_\_\_\_\_ by  
delivering a copy of the subpoena to such person.

\_\_\_\_\_  
\_\_\_\_\_ Making Service

Person

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_

Other Officer  
Administer Oaths

Judge, Notary or  
Authorized to

Fees:  
*THIS SUBPOENA issued at request of*

\_\_\_\_\_  
(Telephone) \_\_\_\_\_ (Name) (Address)

**4-504. Reserved.**

**4-505. Subpoena.**

[1-045]

STATE OF NEW MEXICO  
\_\_\_\_\_ COURT No.  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff  
v.  
\_\_\_\_\_, Defendant

SUBPOENA

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

- APPEARANCE OF PERSON FOR**  **DEPOSITION**  **TRIAL**
- SUBPOENA FOR DOCUMENTS OR OBJECTS<sup>2</sup>**
- INSPECTION OF PREMISES<sup>2</sup>**

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows: PLACE:

DATE: \_\_\_\_\_, TIME: \_\_\_\_\_  
(a.m.) (p.m.) to:  
 testify at the taking of a deposition in the above case  
 testify at trial  
 permit inspection of the following described documents or  
objects \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[ ] permit the inspection of the premises located at:

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

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

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, a witness fee in the amount of \_\_\_\_\_ and mileage in the amount of \$ \_\_\_\_\_3.

\_\_\_\_\_

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

RETURN FOR COMPLETION BY OTHER PERSON

MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the \$75.00 witness fee and mileage as provided by law in the amount of \$ \_\_\_\_\_3.

\_\_\_\_\_

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



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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths  
THIS SUBPOENA issued by or at request of:

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

CERTIFICATE OF SERVICE BY ATTORNEY4

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

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

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

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

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

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

TO BE PRINTED ON EACH SUBPOENA

1. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear

*for deposition, hearing or trial.*

*3. If a person's attendance is commanded one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts.*

*4. To be completed only if the subpoena is commanding production of documents and things or inspection of premises before trial. If the subpoena is commanding production of documents and things or inspection of premises before trial, it must be served on each party in the manner provided by Rule 1-005. If service is by a party, an affidavit of service must be used instead of a certificate of service.*

#### PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

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

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

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

any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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

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

If a subpoena:

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

#### DUTIES IN RESPONDING TO SUBPOENA

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

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

[Adopted effective January 1, 1998.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 10, 1997, this form is effective on and after January 1, 1998.

**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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Ju  
dge 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.

\_\_\_\_\_  
\_\_\_\_\_  
De  
puty Sheriff

**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  
(if allowable) \$ \_\_\_\_\_

Attorney fee  
(if allowable) \$ \_\_\_\_\_

Costs \$ \_\_\_\_\_

TOTAL JUDGMENT \$ \_\_\_\_\_

(check if appropriate)

that plaintiff have possession of:  
the premises at

\_\_\_\_\_  
(for forcible entry or detainer)

or

the following personal property:

\_\_\_\_\_  
(for replevin actions)

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Judge \_\_\_\_\_

#### USE 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)

\_\_\_\_\_



\_\_\_\_\_  
Notary or Other)  
My commission expires:  
(SEAL)  
Administer Oaths

(Signature of Judge,

Officer Authorized to

\_\_\_\_\_  
ficial Title

Of

### 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 (if allowable)	\$ _____
Attorney Fee (if allowable)	\$ _____
Costs	\$ _____
TOTAL JUDGMENT	\$ _____

(check if appropriate)

[Plaintiff] [Defendant] have possession of:

the premises at

\_\_\_\_\_ (for forcible entry or  
detainer)

or

the following personal property:

\_\_\_\_\_ (for replevin and restitution actions)

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

Judge

[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.**

[2-702, 3-702]

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

\_\_\_\_\_

\_\_\_\_\_ COUNTY

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

\_\_\_\_\_, 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)

*(A copy of this must be mailed or delivered to the other party or attorney for the other party.)*

**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.

\_\_\_\_\_

\_\_\_\_\_ COUNTY

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

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

SATISFACTION OF JUDGMENT

Receipt of \$ \_\_\_\_\_ in (full) (partial) satisfaction of the judgment in this case.

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

\_\_\_\_\_

Party

or Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
State, Zip Code

City,

**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 APPEAL1

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

Appeal bond is hereby set at \$ \_\_\_\_\_

\_\_\_\_\_  
Judge

USE NOTES

*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

[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  
[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.

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

dge or clerk

Ju

(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.

#### 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.*

[Effective July 1, 1992; 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.

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

[1-065.1, 2-801, 3-801]

STATE OF NEW MEXICO

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

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



\_\_\_\_\_ COUNTY  
\_\_\_\_\_, 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 said premises to Plaintiff, 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, and return this writ to me within thirty (30) days.

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

I certify that I carried out this order to levy, 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 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

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

[As amended, effective July 1, 1992.]

**ANNOTATIONS**

**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.

**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**

\_\_\_\_\_  
\$ \_\_\_\_\_  
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  
judgment debtor

Printed name of

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address  
or P.O. box

Street address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City, state & zip code  
state & zip code

City,

\_\_\_\_\_

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

*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 to the extent that a detailed comparison would be impracticable.

**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.

### **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 to the extent that a detailed comparison would be impracticable.

**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

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

\_\_\_\_\_  
(seal)

Notary or other officer authorized  
to administer oaths

[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.

**4-806. Writ of garnishment.**

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_  
\_\_\_\_\_ COUNTY

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

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

\_\_\_\_\_  
Garnishee  
\_\_\_\_\_

Address

Balance Due Upon Application for Writ: \$ \_\_\_\_\_

Includes Interest at \_\_\_\_\_ %

Through \_\_\_\_\_ , \_\_\_\_\_

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 which 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 support, you shall pay the judgment debtor  
only

A. 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 times the federal  
minimum hourly wage rate;  
whichever is greater.

If the debt is for child support payments, you shall pay the  
judgment debtor 50% of the debtor's disposable earnings (*salary  
less social security, federal and state withholding*).

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 Regulations and Licensing Department, 725 St. Michaels Drive, Santa Fe, New Mexico 87503.)

3. If you have any property which belongs to the judgment debtor including any rights, credits, bonds, bills, notes, drafts and other rights to property or money which 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, 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's fees in connection with the writ of garnishment in addition to \$ \_\_\_\_\_, the "Balance Due Application for Writ".

**THIS IS A COURT ORDER.** If you fail to file the answer, or if you disobey any of these orders, a judgment may be entered against you for the full amount of the unpaid judgment in this case.

(Seal)

\_\_\_\_\_  
Judge or clerk

RETURN

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )  
**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:**

I certify that I served this writ in said county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor and a copy of the claim of exemption form for each judgment debtor to \_\_\_\_\_ garnishee.

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

[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, rewrote this form to the extent that a detailed comparison would be impracticable.

**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.

#### 4-807. Answer by garnishee.

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff  
against \_\_\_\_\_, 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 Percent 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 which belongs to the judgment debtor:

<i>(description)</i>	<i>(approximate value)</i>
_____	\$ _____
_____	\$ _____
_____	\$ _____

**4. Wage withholding**

*(check and complete 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 which 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.)*

**5. Money other than wages**

[ ] I have been served with other writs or orders to withhold money owed to the above judgment debtor which 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. Attorneys fees**

[ ] The garnishee has incurred \$ \_\_\_\_\_ in attorney's 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.

\_\_\_\_\_  
Printed name of person signing

\_\_\_\_\_  
Garnishee

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.]

**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 1992 amendment**, effective July 1, 1992 for use in the district, magistrate and metropolitan courts, made a gender neutral substitution in Item 1; rewrote Item 6; added the present Item 7 designation and inserted therein "or delivered" and "and judgment debtor"; and redesignated former Item 7 as present Item 8.

**The 1996 amendment**, effective January 1, 1996, rewrote the form.

#### **4-808. Notice of right to claim exemptions (Garnishment).**

[1-065.2, 2-802, 3-802]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_ COUNTY

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

against

\_\_\_\_\_, 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 which 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 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.]

### 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.

### **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) 1 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.)*

R E T U R N

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 sworn2 to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

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

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

USE NOTE

1 *Strike out the inapplicable alternative.*

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

[As amended effective January 1, 1993; May 1, 1994; January 1, 1996.]

**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





\_\_\_\_\_  
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  
\_\_\_\_\_ (p.m.) (a.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

**Effective dates.** - Pursuant to a court order dated June 18, 1999, this form is effective on and after August 1, 1999.

**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  
IN THE \_\_\_\_\_  
COURT No. \_\_\_\_\_  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff (Judgment creditor)  
v.  
\_\_\_\_\_, 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 \_\_\_\_\_ % 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 support**

[ ] The judgment being other than for child 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) 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) any amount each week equal to forty 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 which creates disposable earnings based upon the formula set forth above.

**4. Wage withholding for child support**

[ ] **No prior writ or order.** The order or decree being for child 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 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 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 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 which creates disposable earnings based upon the formula set forth above.

[ ] **Prior child support writ.** Upon motion of the judgment debtor, this court orders the distribution of the judgment debtor's child support obligations as follows:

---

---

If the moneys being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceed 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 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 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's fee, the same to be paid by the \_\_\_\_\_. If paid by the judgment debtor said sum shall be paid from the first moneys otherwise payable to the judgment creditor but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

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

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; October 15, 1999.]

**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.

**4-812. Judgment on writ of garnishment, claim of exemption and order to pay.**

[2-802, 3-802]

STATE OF NEW MEXICO

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

No.

\_\_\_\_\_

COUNTY

\_\_\_\_\_, Plaintiff  
(Judgment Creditor)  
against

\_\_\_\_\_, 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 which 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 15% 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 support**

The judgment being other than for child 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) 75% of his disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period;

OR

(b) any amount each week equal to forty 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 which creates disposable earnings based upon the formula set forth above.

If the moneys being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceed 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 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 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's fee the same to be paid by the \_\_\_\_\_. If paid by the judgment debtor said sum shall be paid from the first moneys otherwise payable to the judgment creditor but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

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

Judge

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

### 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.

### **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 APPEARANCE1

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

1 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.

**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:                      Mailed:

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

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

By3: \_\_\_\_\_                      By3: \_\_\_\_\_

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**

[Section 47-8-33 NMSA 1978]

THREE-DAY NOTICE OF SUBSTANTIAL VIOLATION  
OF RENTAL AGREEMENT

*(Uniform Owner-Resident Relations Act)*

To: \_\_\_\_\_

\_\_\_\_\_ and all other occupants

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

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

\_\_\_\_\_ You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement concerning the premises at:

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

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

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

This conduct occurred on or within 300 feet of the premises and includes (check all that apply):

- possession, use, sale, distribution or manufacture of a controlled substance, other than misdemeanor possession and use;
- unlawful use of a deadly weapon;
- unlawful action causing serious physical harm to another person;
- sexual assault or sexual molestation of another person;
- entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;
- theft or attempted theft of the property of another person by use or threatened use of force; or
- intentional or reckless damage to property in excess of one thousand dollars (\$1,000.00).

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

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

\_\_\_\_\_  
\_\_\_\_\_  
(Owner) (Agent)

Service of notice2:  
 personally delivered to resident  
 posted and mailed certified mail, return receipt requested  
 mailed by certified mail, return receipt requested  
 Delivered  posted Mailed:  
Time: \_\_\_\_\_ Time: \_\_\_\_\_

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

By3: \_\_\_\_\_



By3:

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) 1

*(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 at2:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, 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			
<input type="checkbox"/>	personally delivered to resident		
<input type="checkbox"/>	posted		
<input type="checkbox"/>	mailed certified mail, return receipt requested		
<input type="checkbox"/>	Delivered	<input type="checkbox"/>	posted: Mailed:
Time: _____		Time: _____	
_____			
Date: _____		Date: _____	
_____			
By3: _____		By3: _____	
_____			

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 monthly 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:

Mailed:

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

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

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

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

By2: \_\_\_\_\_

By2: \_\_\_\_\_

\_\_\_\_\_

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.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated January 4, 2000, this form is effective March 1, 2000.

**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			
<input type="checkbox"/>			personally delivered to resident
<input type="checkbox"/>			posted
<input type="checkbox"/>			mailed by certified mail, return receipt requested
<input type="checkbox"/>	Delivered	<input type="checkbox"/>	posted
			Mailed:
Time: _____		Time: _____	
Date: _____		Date: _____	
By3: _____		By3: _____	

---

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 (Uniform Owner-Resident Relations Act).**

[Sections 47-8-42 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO  
\_\_\_\_\_ COURT No.  
\_\_\_\_\_  
\_\_\_\_\_ COUNTY  
\_\_\_\_\_, 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 B.  
(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;  
(check only if applicable)
- [ ] 6. A civil penalty as provided by law;
7. Such other relief as the court may deem reasonable.

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

---

Signed

---

Name (print)

---

Address (print)

---

City, state and zip code (print)

---

---

Telephone number

USE NOTE

1. *If the leased premises is an apartment, include the name of the apartments and the apartment number.*
2. *The owner must bring a copy of any written rental agreement to court for the hearing on the petition for restitution.*

[Former Rule 4-905 SCRA 1986; recompiled as Rule 4-904 and amended, effective September 2, 1997; April 6, 1998.]

**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.

**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.**

RETURN1

STATE OF NEW MEXICO )  
) ss

COUNTY OF \_\_\_\_\_ )  
(complete if service is by a person  
other than the sheriff or deputy3)

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form2 in the following manner:

**(check and complete only if service by sheriff or deputy) 3**

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of the summons, a copy of the petition and an answer form2 in the following manner:

**(person serving summons must check one of following boxes and fill in appropriate blanks)**

[ ] by delivering a copy of this summons, a copy of the petition and an answer form to the defendant \_\_\_\_\_ (used when defendant receives copy of summons or refuses to receive summons).

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

[ ] by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ (address). (Used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must

check and complete the certificate of mailing at the end of this summons.)

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

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

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

[ ] by service by mail.

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

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

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

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

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer 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 title3

#### USE NOTES

1. *A separate summons must be used for each defendant.*
2. *An answer form must be attached to the summons at the time of service. For answer forms, see Rule 4-907 NMRA.*
3. *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.*
4. *For use when service is by posting.*
5. *If service is by mail, Civil Form 4-208 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]

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No.

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

PETITION BY RESIDENT FOR RELIEF

*(Uniform Owner-Resident Relations Act)*

The plaintiff alleges:

1. Plaintiff is lawfully entitled to possession of the premises located at:

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

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

2. Defendant let plaintiff have possession of the premises under a rental agreement and the defendant is now in default under the terms of such agreement, 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. The return of \$ \_\_\_\_\_ of the plaintiff's money being held by the defendant;
3. Damages as may be determined by the court;
4. Costs of this action;
5. Reasonable attorneys fees;  
(check only if applicable)
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

[Rule 4-906 SCRA 1986; as amended, effective September 2, 1997.]

### ANNOTATIONS

**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.



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 \$

\_\_\_\_\_]2

*(check, if applicable, and complete)*

A writ of restitution be issued effective

\_\_\_\_\_, \_\_\_\_\_ *(date)*.3

*(check, if applicable, and complete)*

The court further orders

\_\_\_\_\_ *(other relief)*.

*(check, if applicable, and complete)*

A hearing on the issue of damages will be held by this court on

\_\_\_\_\_, \_\_\_\_\_ *(date)* at \_\_\_\_\_ (a.m.) (p.m.).2

3. If this case is appealed, the (plaintiff) (defendant) shall

\_\_\_\_\_.

Dated:

\_\_\_\_\_  
Judge4

### USE NOTES

1. *This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*

2. *Use Civil Form 4-701 if damages are determined at a separate hearing.*

3. *Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.*

4. *Section 47-8-47 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

Time: \_\_\_\_\_ (a.m.) (p.m.)

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. \_\_\_\_\_

\_\_\_\_\_ COUNTY  
\_\_\_\_\_, Plaintiff  
against  
\_\_\_\_\_, Defendant

PETITION FOR POST-JUDGMENT WRIT OF REPLEVIN

Comes now the Plaintiff, petitioner herein, and alleges:

1. Plaintiff has a judgment against the Defendant in this matter dated \_\_\_\_\_, \_\_\_\_\_, with a present value including post-judgment costs and accrued interest totaling \$\_\_\_\_\_, the terms of which include Plaintiff's right to recover following personal property

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

\_\_\_\_\_ (attach exhibit

*if necessary)*

2. Plaintiff believes that the property may be found at \_\_\_\_\_ which is within the jurisdiction of this court;

3. This court has jurisdiction to issue a writ of replevin returning to Plaintiff the property described;

4. The specific facts upon which a writ of replevin is requested are that Plaintiff holds a valid, unsatisfied judgment against Defendant, declaring that property formerly in the possession of Plaintiff has been wrongfully taken or retained by Defendant and Defendant refuses to return it to Plaintiff or pay the judgment amount;

WHEREFORE Plaintiff prays for an order of this court requiring the sheriff of \_\_\_\_\_ county to take possession of the property and return it to the Plaintiff.

\_\_\_\_\_

Signed

\_\_\_\_\_

Name [print]

\_\_\_\_\_

Address [print]

Add

\_\_\_\_\_

Code [print]

City, State and Zip

\_\_\_\_\_

phone Number

Tele

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

\_\_\_\_\_  
County  
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: \_\_\_\_\_  
[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 notice2:

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

Delivered  posted: Mailed:  
Time: \_\_\_\_\_ Time: \_\_\_\_\_

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

By3: \_\_\_\_\_ By3: \_\_\_\_\_

USE 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] 1

TO QUIT 2

(Mobile Home Park Act)

To: \_\_\_\_\_

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

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

You are notified that the undersigned terminates the rental agreement for a mobile home located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_ (name of mobile home park)

\_\_\_\_\_ (mobile home address)

\_\_\_\_\_ (mobile home lot or space)

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

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

You are to remove your mobile home from the premises by \_\_\_\_\_, \_\_\_\_\_ 1. This notice of termination is given for the following reasons 3:

\_\_\_\_\_

\_\_\_\_\_

Failure to vacate by this date will result in a legal action being filed against you.

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

\_\_\_\_\_  
(owner) (manager) (agent)

Service of notice4:

[ ] personally delivered to resident  
[ ] posted on the mobile home on \_\_\_\_\_ (date) and  
mailed certified mail, return receipt requested

[ ] Delivered [ ] posted: Mailed:  
Time: \_\_\_\_\_ Time: \_\_\_\_\_

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

By5: \_\_\_\_\_ By5: \_\_\_\_\_

#### USE NOTES

1. See Section 47-10-3 NMSA 1978. The tenant must be given a period of not less than thirty days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises. If the mobile home is a multisection mobile home and the tenant is the owner of the mobile home, the tenant must be given sixty (60) days from the end of the rental period to move the mobile home from the premises. However, if the multisection mobile home is being leased to or occupied by a person other than its owner a thirty-day notice is all that is required.

2. Use Civil Form 4-921 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 1:

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

\_\_\_\_\_.

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

\_\_\_\_\_.

A copy of the rental agreement is attached as Exhibit A.

3. The mobile home (is) (is not) subject to the security interest of a first lienholder.

(If there is a first lien, complete the following.)

The lienholder is \_\_\_\_\_ and the address of the lienholder is \_\_\_\_\_.

4. Plaintiff gave written:

[ ] notice of non-payment of rent and the defendant has failed to pay all amounts owed;

[ ] (thirty) (sixty) 3 day notice to quit on \_\_\_\_\_, \_\_\_\_\_ (date), and defendant has failed to vacate the premises.

A copy of the written notice is attached as Exhibit B.

(check and complete if applicable)

[ ] 5. The amount of rent and utilities owed is as follows:

Unpaid rent \$ \_\_\_\_\_  
Rent per day until the mobile home  
is moved from the premises \$ \_\_\_\_\_  
Late fee \$ \_\_\_\_\_  
Utilities \$ \_\_\_\_\_  
Other \_\_\_\_\_

(explain) \$ \_\_\_\_\_

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

[ ] 6. Plaintiff holds \$ \_\_\_\_\_ of defendant as a damage deposit under the rental agreement.

[ ] 7. Plaintiff requests separate trials on the issues of termination and damages.

Plaintiff requests judgment against defendant, as follows:

1. Immediate [removal of the mobile home from the premises] [possession of the above described premises];

2. Unpaid rent of \$ \_\_\_\_\_ plus \$ \_\_\_\_\_ per day to date of restitution;

3. Damages as may be determined by the court;
4. Costs of this action;
5. Reasonable attorney fees;
6. Such other relief as the court may deem reasonable.

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

\_\_\_\_\_  
Signed

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

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

\_\_\_\_\_  
City, state and zip code (print)

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

#### USE NOTE

1. Section 47-10-4 NMSA 1978 provides that the property description is deemed legally sufficient if it states the name of the landlord or of the mobile home park, the mailing address of the property, the location or space number upon which the mobile home is situated and the county in which the mobile home is situated.

2. The reasons for termination are set forth in Sections 47-10-5 and 47-10-6 NMSA 1978. One of these reasons must be described for termination.

3. Sixty days notice is required if the mobile home is a multisection mobile home. See Subsection C of Section 47-10-4 NMSA 1978.

[Adopted, effective September 2, 1997.]

### **4-924. Summons and notice of trial on petition for termination of tenancy (Mobile Home Park Act).**

[Sections 47-10-4 and 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No.

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

SUMMONS

AND NOTICE OF TRIAL ON

PETITION FOR TERMINATION OF TENANCY

*(Mobile Home Park Act)*

To: \_\_\_\_\_  
\_\_\_\_\_, defendant  
Address: \_\_\_\_\_

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

You are notified that an action has been filed to terminate the rental agreement or lease of a mobile home space located in \_\_\_\_\_ County, New Mexico at:

\_\_\_\_\_ (name of mobile home park)

\_\_\_\_\_ (mobile home address)

\_\_\_\_\_ (mobile home lot or space)

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

You are ordered to appear for trial before the Honorable \_\_\_\_\_, Judge, Div. \_\_\_\_\_, located at \_\_\_\_\_, New Mexico on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ .m. to show cause and present all evidence you may have why the tenancy should not be terminated.<sup>1</sup>

Your failure to appear at the time and place specified above

may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

**FOR USE ONLY IN METROPOLITAN COURT CASES**

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

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

\_\_\_\_\_

Judge

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

\_\_\_\_\_ Clerk

**THIS IS YOUR NOTICE OF TRIAL  
and will be the only notice  
that you will receive.**

RETURN2

STATE OF NEW MEXICO )  
 ) ss

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

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

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form4 in the following manner:

*(check and complete only if service by sheriff or deputy)*3

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

*(person serving summons must check one of following boxes and fill in appropriate blanks)*

[ ] by delivering a copy of this summons, a copy of the petition and an answer form to the defendant \_\_\_\_\_  
*(used when defendant receives copy of summons or refuses to receive summons).*

[ ] by delivering a copy of this summons, a copy of the

petition and an answer form to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, located at \_\_\_\_\_ (address) (used when defendant is not presently at the abode).

[ ] by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ (address). (used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

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

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

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

[ ] by service by mail.

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

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

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

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

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

\_\_\_\_\_  
served) \_\_\_\_\_ (name of person  
\_\_\_\_\_  
mailed) \_\_\_\_\_ (address where  
\_\_\_\_\_  
\_\_\_\_\_ (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:

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Official title3

USE NOTES

1. *The trial setting must be not less than seven (7) nor more than ten (10) days after service of this summons. See Section 47-8-43 NMSA 1978.*
2. *A separate summons must be used for each defendant.*
3. *If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.*
4. *An answer form must be attached to the summons at the time of service. See Rule 4-925 NMRA for answer to petition for termination of tenancy.*
5. *For use when service is by posting. See Section 47-10-4 NMSA 1978 for service by posting under the Mobile Home Park Act. This form requires service by mail in addition to posting.*
6. *If service is by mail, Civil Form 4-208 must be completed and mailed with this summons.*

[Adopted, effective September 2, 1997.]

**4-925. Answer to petition for termination of tenancy (Mobile Home Park Act).**



[Sections 47-8-30, 47-8-41 to 47-8-43, 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No.

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

ANSWER

TO PETITION FOR TERMINATION OF TENANCY

*(Mobile Home Park Act)*

1. Defendant is not in default because:

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

2. The amount of rent that the plaintiff states is owed is not correct because:

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

3. The damages claimed by the plaintiff are not owed to the plaintiff because:

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

4. The defendant asserts the following counterclaim or setoff against the plaintiff: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(check if applicable)*

5. [ ] Defendant requests separate trials on the issues of restitution and damages.

\_\_\_\_\_  
\_\_\_\_\_  
Signed

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

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

\_\_\_\_\_  
City, state and zip code *(print)*

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

[Adopted, effective September 2, 1997.]

**4-926. Judgment for possession (Mobile Home Park Act).**

[Sections 47-10-9, 47-8-40 and 47-8-41 NMSA 1978]

STATE OF NEW MEXICO

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

\_\_\_\_\_ COUNTY

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

v.

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

**JUDGMENT FOR POSSESSION**

**(Mobile Home Park Act)1**

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.)]3

4. A writ of restitution be issued effective  
\_\_\_\_\_, \_\_\_\_\_ (date).

*(The following paragraph is used*

*if there is a security interest of*

*a first lienholder on the mobile home)*

[5. The plaintiff will promptly serve notice of this judgment on the first lienholder in accordance with civil form 4-928. The cost of removal by the first lienholder shall be paid by the first lienholder.]4

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

Dated:

\_\_\_\_\_  
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 to the extent that a detailed comparison would be impracticable.

**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:

\_\_\_\_\_ *(name of mobile home park)*

\_\_\_\_\_ *(mobile home address)*

\_\_\_\_\_ *(mobile home lot or space)*

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

\_\_\_\_\_  
Without additional notice to you, the sheriff will serve a writ of restitution on or after 8:00 a.m. on \_\_\_\_\_ *(date)* for the removal of the mobile home on or before \_\_\_\_\_ *(date)*1.

2. You have thirty (30) days from the date of receipt of this

notice to pay the rent and charges permitted by law and to advise the landlord in writing whether you intend to pay the rent and other charges under the terms of the rental agreement.

3. If you want to remove the mobile home at your expense before the date set for removal, you may do so by paying the landlord all rent, utility and other removal costs provided by law. The amount of rent, utility charges and other charges as of \_\_\_\_\_ (date) is as follows:

Rent: \$ \_\_\_\_\_  
Utilities: \$ \_\_\_\_\_  
Removal and storage charges \$ \_\_\_\_\_  
Other \_\_\_\_\_ \$ \_\_\_\_\_  
(explain)  
Total due: \$ \_\_\_\_\_  
Daily rent \$ \_\_\_\_\_

4. The tenant is required to pay rent on \_\_\_\_\_ (day of month) and utilities on \_\_\_\_\_ (day of month).

5. A copy of the lease and the landlord's rules and regulations are attached as Exhibits A and B.

6. This notice does not relieve you of complying with other applicable provisions of law relating to the repossession of the mobile home.

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

\_\_\_\_\_  
Judge

RETURN2

STATE OF NEW MEXICO )  
 ) ss

COUNTY OF \_\_\_\_\_ )  
(complete if service is by a person  
other than the sheriff or deputy)3

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

(check and complete only if service by sheriff or deputy)3



I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_ (date), by delivering a copy of the summons and a copy of the notice of judgment with Exhibits A and B attached in the following manner:

*(person serving summons must check one of following boxes and fill in appropriate blanks)*

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to the defendant \_\_\_\_\_ *(used when defendant receives copy of summons or refuses to receive summons).*

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, located at \_\_\_\_\_ *(address) (used when defendant is not presently at the abode).*

by posting a copy of the summons and the notice of judgment with Exhibits A and B attached in the most public part of the premises of defendant \_\_\_\_\_ located at \_\_\_\_\_ *(address) (This alternative is used if no person found at dwelling house or usual place of abode.) (If service is by posting a copy of the summons, the notice of judgment with Exhibits A and B attached must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)*

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, an agent authorized to receive service of process for defendant.

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_, *(parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).*

by delivering a copy of this summons and a copy of the notice of judgment with Exhibits A and B attached to \_\_\_\_\_ *(name of person), \_\_\_\_\_, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).*

by service by certified mail, return receipt requested.

CERTIFICATE OF SERVICE BY ATTORNEY

(for service on a party)

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

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

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

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

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

\_\_\_\_\_  
Attorney for landlord

\_\_\_\_\_  
Signature

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

USE NOTE

1. A writ of restitution directs the sheriff to restore the premises to the plaintiff. A copy of the writ need not be served on the lienholder unless the lienholder intervenes as a party.

2. If the lienholder is a party or has entered an appearance in the proceedings, service may be made in the manner provided by the rules of civil procedure for the service of papers on a party subsequent to service of the original pleading. See, however, Subsection J of Section 47-10-9 NMSA 1978 for statutory notice.

3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized. If service is made on a party by an attorney the signature of the attorney need not be notarized.

[Adopted effective September 2, 1997; as amended effective April 6, 1998.]

**ANNOTATIONS**

**The 1998 amendment**, effective April 6, 1998, in the notice to lienholder, substituted "permitted by law" for "accrued to the date of this notice" in Paragraph 2, substituted "provided" for "permitted" in Paragraph 3, in the return portion, inserted "This alternative is" in the third paragraph of the list for the person serving summons, and substituted "to the plaintiff" for "on a specified date not less than three nor more than seven days after entry of the judgment" in Use Note 1.

**4-929. Writ of restitution (Mobile Home Park Act).**

[Sections 47-10-9 and 47-8-46 NMSA 1978]

STATE OF NEW MEXICO

\_\_\_\_\_  
\_\_\_\_\_  
COURT  
COUNTY

No.

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

WRIT OF RESTITUTION

*(Mobile Home Park Act)*

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

Judgment having been entered for the plaintiff, you are ordered to remove the tenant and to take possession of the following mobile home on or before \_\_\_\_\_ (date)1:

\_\_\_\_\_ (name of mobile home park)

\_\_\_\_\_ (mobile home address)

\_\_\_\_\_ (mobile home lot or space)

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

\_\_\_\_\_ for the purpose of storage.

You are ordered to return this writ to this court by

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

\_\_\_\_\_  
Judge \_\_\_\_\_

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

I certify that I carried out this writ of restitution by removing the defendant from the mobile home located at \_\_\_\_\_ and restoring possession of the premises to \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (a.m.) (p.m.). The mobile home is now located at \_\_\_\_\_ (address).

Date of return: \_\_\_\_\_

Sheriff of \_\_\_\_\_

\_\_\_\_\_  
County, State of New Mexico

By \_\_\_\_\_

\_\_\_\_\_  
Sheriff or deputy sheriff

USE NOTE

1. See Section 47-8-46 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.**

[Standard simplified petition form,  
Family Violence Protection Act,  
Sections 40-13-1 to 40-13-8 NMSA 1978.]



\_\_\_\_\_

B. List address and with whom the child(ren) are currently living. (List each child separately if child(ren) do not reside with same person.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C. List each address where child(ren) have lived during the last 3 years. (List each child separately if child(ren) did not reside with same person.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D. Does anyone else have physical custody of the child(ren) or claim to have custody or visitation rights? [ ] yes [ ] no.  
If yes, complete the following for the child(ren):

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:

Type of Case Number	Year Filed (if known)	Where Filed (if city and state)	Case
_____	_____	_____	_____
_____	_____	_____	_____

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

\_\_\_\_\_  
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, place of employment and school.

[ ] B. (1) that the respondent shall immediately leave [ ] my [ ] our residence.

OR

[ ] (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(ren) listed in this petition.

[ ] F. that until the court hearing:

[ ] respondent shall have the following contact with the child(ren):  
\_\_\_\_\_

\_\_\_\_\_  
[ ] respondent shall have no contact with the

child(ren).

G. that the respondent shall pay:

support for the child(ren)

support for me.

H. that the respondent shall pay me for the damage and medical bills resulting from the abuse.

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

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

**7. INFORMATION ABOUT THE PETITIONER (ME)**

*(If you do not want the respondent to know your address and phone number, do not include it on this form. Tell the court clerk that you need to complete two other forms (Forms 4-961A and 4-961B) for your name and address and request that the clerk place your address under seal.)*

A. **I DO NOT WANT RESPONDENT TO KNOW MY ADDRESS NOW OR AFTER THE HEARING FOR THE FINAL ORDER OF PROTECTION. I HAVE COMPLETED FORM 4-961B AND GIVEN IT TO THE COURT CLERK.**

OR

B. My physical address is:

\_\_\_\_\_ in the  County  Indian  
Country of \_\_\_\_\_, State of New Mexico.

My mailing address is:

\_\_\_\_\_ (*street address*)  
\_\_\_\_\_ (*city and zip*)

My telephone numbers are:

Home                      Work                      Message

\_\_\_\_\_

**8. NOTICE TO RESPONDENT**

A. I have not told respondent that I am filing this petition.

If you have not notified the respondent, what immediate and irreparable (*unfixable*) harm might you suffer if the respondent is notified prior to the judge signing an order of protection from domestic abuse? (*Describe immediate and irreparable (unfixable) harm, loss or damage that will result if an order is not signed before the respondent can be heard in opposition to your request.*) \_\_\_\_\_

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



[ ] B. I have told respondent that I am filing this petition.

**9. LOCATION OF RESPONDENT**

Respondent may be found at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (state and zip code)  
\_\_\_\_\_ (if in Indian Country, please name tribe or pueblo).

Respondent's:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (social security number)  
\_\_\_\_\_ (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 have read this petition for order of protection from domestic abuse 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  
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 40-10-10 NMSA 1978 of the Child Custody Jurisdiction 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 3 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.

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 NMSA 1978 provides that the petitioner in a domestic abuse case shall not be required to pay for the issuance or service of a protection order. This has been construed to mean that the petitioner is not required to pay a docket or other filing fees or fee for service of process.

[Approved, effective November 1, 1999 until November 1, 2000.]

### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

### **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.]

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

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

\_\_\_\_\_  
Respondent

SERVICE OF PROCESS INFORMATION FOR  
PETITION FOR ORDER OF PROTECTION FROM DOMESTIC ABUSE

AND

PETITION FOR EMERGENCY ORDER OF PROTECTION.1

**INFORMATION ABOUT THE RESPONDENT**

\_\_\_\_\_  
Respondent's name

\_\_\_\_\_  
Respondent's date of birth

\_\_\_\_\_  
Respondent's social security number

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.)

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 November 1, 2000.]

#### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form provisionally approved for twelve months effective November 1, 1999.

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

\_\_\_\_\_  
My commission

expires:

Notary  
Public

\_\_\_\_\_  
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 November 1, 2000.]

**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

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

### **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 add a section to this form titled "Counter Petition" and should include in it suitably-modified relevant provisions from Form 4-961.

[Approved, effective November 1, 1999 until November 1, 2000.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**4-963. Temporary order of protection and order to appear.**

[Standard simplified temporary order prohibiting domestic abuse,

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

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, that there is probable 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. 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 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 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.

4. Respondent shall not go within \_\_\_\_\_ yards of the petitioner's home or school or work place. Respondent shall not go within \_\_\_\_\_ yards of the petitioner at all times except \_\_\_\_\_. If at a public place, such as a store, respondent shall not go within \_\_\_\_\_ yards of petitioner.

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

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

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

A. No contact with the child(ren) until further order of this court and shall stay \_\_\_\_\_ yards away from the child(ren)'s school.

B. Contact with the child(ren), subject to:

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

7. The court shall 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).

8.

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.

[ ] 9. Law enforcement officers or \_\_\_\_\_ shall assist respondent to remove essential tools (as specified in No. 12), clothing, and personal belongings from the residence at \_\_\_\_\_

\_\_\_\_\_  
[ ] 10. 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.

[ ] 11. This order supersedes inconsistent prior order in Cause No. \_\_\_\_\_ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

[ ] 12. Other:

\_\_\_\_\_  
[ ] 13. Petitioner shall refrain from any affirmative act the purpose or effect of which is to cause respondent to violate this order.

**14. 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 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.**

**15. 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.

**16. 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**

The Temporary Order of Protection and Order to Appear requires a proof of return of service. The Committee has been informed that each local law enforcement agency has its own return of service form which will be used for this purpose.

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 November 1, 2000.]

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**4-964. Order to appeal.**

[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) 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 November 1, 2000.]

### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

#### 4-965. Order of protection against respondent.

[Standard simplified order of protection, 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 OF PROTECTION<sup>1</sup>

AGAINST RESPONDENT

*This order is an order of protection under 18 U.S.C. Section 922, 18 U.S.C. Section 2265 and Section 40-13-6(D) NMSA 1978. This order shall be accorded full faith and credit by the courts of every state and Indian Tribe and shall be enforced as if it were the order of such other State or Tribe.*

THIS MATTER came before the court on the \_\_\_\_\_ day of



\_\_\_\_\_, \_\_\_\_\_ through a hearing on the petitioner's request for an order prohibiting domestic abuse.

The court, having determined that it has legal jurisdiction over the parties and the subject matter, **FINDS, CONCLUDES AND ORDERS:**

*(check only applicable paragraphs)*

**1. NOTICE AND APPEARANCES**

- 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.
- Respondent was properly served with a copy of the petition and order to appear.

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

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

Violation of an order of protection by the respondent 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 364 days and a fine of up to \$1,000.

B. If you are an "intimate partner" of petitioner (the spouse of petitioner, an individual who lives with or has lived with petitioner, or if you and petitioner 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 10 years and a fine of up to \$250,000.

C. If you are not a citizen of the United States, entry 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 that necessitates an order of protection.

**4. DOMESTIC ABUSE PROHIBITED**

- The respondent shall not abuse the petitioner or members of petitioner's household. "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 by respondent causing imminent fear of bodily injury to petitioner or any household member; (5) criminal trespass; (6) criminal damage to property;

(7) repeatedly driving by petitioner's or a household member's residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

[ ] Respondent shall not ask or cause other persons to abuse the petitioner or any other household members.

**5. CONTACT PROHIBITIONS**

[ ] Respondent shall stay \_\_\_\_\_ yards away from petitioner, petitioner's home and petitioner's 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 the petitioner in any way except as follows:

1. The parties may contact each other by telephone regarding medical emergencies of minor children;

2. \_\_\_\_\_  
\_\_\_\_\_

[ ] The parties may attend joint counseling sessions at the counselor's discretion.

*(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)

**6. COUNSELING**

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

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

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

[ ] Other counseling requirements:  
\_\_\_\_\_

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**7. PROVISIONS RELATING TO CHILDREN**

[ ] The court's findings regarding the minor child(ren) are addressed in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup> of this Mutual Order of Protection.

**8. PROVISIONS RELATING TO SUPPORT**

[ ] Temporary support shall be paid by respondent to petitioner in the amount of \$ \_\_\_\_\_ per month payable

[ ] Respondent shall provide suitable alternative housing to petitioner and any children to whom the respondent owes a legal obligation of support.

This shall be provided as follows:

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**9. PROPERTY, DEBTS AND 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 court 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 set forth in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup>.

**10. PETITIONER SHALL NOT CAUSE VIOLATION**

Petitioner shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by respondent.<sup>4</sup>

**11. ADDITIONAL ORDERS**

IT IS FURTHER ORDERED<sup>5</sup>:

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**12. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**

This order is effective upon filing with the clerk of the court.

This order [with the exception of the orders in Counseling, Custody, Support and Division of Property Order<sup>3</sup>, if any] shall continue until \_\_\_\_\_ (date), or until modified or rescinded by the court.

**13. NOTICE TO LAW ENFORCEMENT AGENCIES**

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



petitioner as well as the respondent are not entitled to full faith and credit unless certain procedural requirements are met. See 18 U.S.C. Section 2265(c) and Section 40-13-6(D) NMSA 1978. To assure compliance with federal requirements, the court normally should enter separate orders unless the requirements for entry of a Mutual Order of Protection (Form 4-966A) are met. Form 4-966 provides an appropriate order of protection against petitioner. Two other forms, Form 4-970 and 4-971, are available for use in appropriate cases upon stipulation of the parties. However, neither Form 4-970 nor 4-971 is entitled to full faith and credit and neither form complies with the provisions of the "Brady Bill", 18 U.S.C. Section 922.

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 for the Counseling, Custody, Support and Division of Property Order.

4. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both.

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

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

[Approved, effective November 1, 1999 until November 1, 2000.]

**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

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

### 4-966. Order of protection against the petitioner.

[Standard simplified order of protection, 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 OF PROTECTION

AGAINST THE PETITIONER<sup>1</sup>

*This order is an order of protection under 18 U.S.C. Section 922, 18 U.S.C. Section 2265 and Section 40-13-6(D) NMSA 1978. This order shall be accorded full faith and credit by the courts of every state and Indian Tribe and shall be enforced as if it were the order of such other State or Tribe.*

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

The court, having determined that it has legal jurisdiction over the parties and the subject matter, **FINDS, CONCLUDES AND ORDERS:**

*(check only applicable paragraphs)*

**1. NOTICE AND APPEARANCES**

- Respondent was present.
- Respondent was represented by counsel.
- Petitioner was present.
- Petitioner was represented by counsel.
- Petitioner was properly served with a copy of the respondent's cross-petition, counter-petition or other pleading.

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

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

Violation of an order of protection by the 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 364 days and a fine of up to \$1,000.

B. If you are an "intimate partner" of respondent (the spouse of respondent, an individual who lives with or has lived with respondent, or if you and respondent 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 10 years and a fine of up to \$250,000.

C. If you are not a citizen of the United States, entry 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 petitioner that necessitates an order of protection of respondent.

**4. DOMESTIC ABUSE PROHIBITED**

[ ] The petitioner shall not abuse the respondent or members of respondent's household. "Abuse" means any incident by petitioner against respondent or another 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 or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by respondent's or a household member's residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

[ ] Petitioner shall not ask or cause other persons to abuse the respondent or any other household members.

**5. CONTACT PROHIBITIONS**

[ ] Petitioner shall stay \_\_\_\_\_ yards away from respondent, respondent's home and respondent's 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 the respondent in any way except as follows:

1. The parties may contact each other by telephone regarding medical emergencies of minor children;
2. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[ ] The parties may attend joint counseling sessions at the counselor's discretion.

*(Unless the court has entered an order sealing the respondent's address, include address of residence and employment for the respondent.)*

**Respondent's addresses:**

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

**6. COUNSELING**

[ ] The petitioner shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner



shall participate in, attend and complete counseling as recommended by the named agency.

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

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

Other counseling requirements:

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**7. PROVISIONS RELATING TO CHILDREN**

The court's findings regarding the minor child(ren) are addressed in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup> of this Mutual Order of Protection.

**8. PROVISIONS RELATING TO SUPPORT**

Temporary support shall be paid by petitioner to respondent in the amount of \$ \_\_\_\_\_ per month payable

Petitioner shall provide suitable alternative housing to respondent and any child(ren) to whom the petitioner owes a legal obligation of support.  
This shall be provided as follows:

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**9. PROPERTY, DEBTS AND 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 court 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 set forth in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup>.

**10. RESPONDENT SHALL NOT CAUSE VIOLATION**

Respondent shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by petitioner.<sup>4</sup>

**11. ADDITIONAL ORDERS**

IT IS FURTHER ORDERED<sup>5</sup>:

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**12. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**

This order is effective upon filing with the clerk of the court.

This order [with the exception of the orders in the attached Counseling, Custody, Support and Division of Property Order3, if any] shall continue until \_\_\_\_\_ (date), or until modified or rescinded by the court.

**13. NOTICE TO LAW ENFORCEMENT AGENCIES**

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

[ ] The 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.

**14. NOTICE TO PARTIES**

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

**15. RECOMMENDATIONS**

I have:

- [ ] reviewed the pleading for order of protection;
- [ ] conducted hearings on the merits of the request;
- [ ] after notice and hearing as indicated in this order I prepared this order as my recommendation to the district court judge regarding disposition of requests for order of protection.

---

Signed

---

Title

Court's telephone number:

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**SO ORDERED.**

---

District Judge

Date

[ ] A copy of this order was [ ] hand delivered [ ] faxed [ ] mailed to [ ] petitioner [ ] petitioner's counsel on \_\_\_\_\_ (date).6

[ ] A copy of this order was [ ] hand delivered [ ] faxed [ ]

mailed to [ ] respondent [ ] respondent's counsel on  
\_\_\_\_\_ (date).

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

#### USE NOTES

1. This order of protection is directed only against the petitioner. The court should use this form only when respondent has filed a counter-petition and the court determines that the counter-petition should be granted. So called mutual orders of protection binding on the respondent as well as the petitioner are not entitled to full faith and credit unless certain procedural requirements are met. See 18 U.S.C. Section 2261(c). To assure compliance with federal requirements, the court normally should enter separate orders unless the requirements for entry of a mutual order of protection (Form 4-966A) are met. Form 4-965 provides an appropriate order of protection against respondent. Form 4-970 may be used in appropriate cases when full faith and credit is not required. Form 4-971 may be used if the petitioner waives the right to a hearing by the court as to whether or not abuse has occurred.

2. This order may be entered only after a hearing of which petitioner received actual notice and at which petitioner had an opportunity to participate if 18 U.S.C. Section 922 is to apply to this order.

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

4. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both.

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

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

[Approved, effective November 1, 1999 until November 1, 2000.]

**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

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

### **4-966A. Mutual order of protection.**

[Standard mutual order of protection, 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.

MUTUAL ORDER OF PROTECTION<sup>1</sup>

*This order complies with the Violence Against Women Act, 18 U.S.C. Section 2265. This order shall be accorded full faith and credit by the courts of every state and Indian Tribe and shall be enforced as if it were the order of such other State or Tribe.*

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

The court, having determined that it has legal jurisdiction over the parties and the subject matter, **FINDS, CONCLUDES AND ORDERS:**

*(check only applicable paragraphs)*

**1. NOTICE AND APPEARANCES**

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

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

Respondent was present.

Respondent was properly served with a copy of the petitioner's petition.

Respondent was represented by counsel.

Petitioner was present.

Petitioner was represented by counsel.

Petitioner was properly served with a copy of the respondent's cross-petition, counter-petition or other pleading.

**2. FINDING OF DOMESTIC ABUSE**

An act of domestic abuse was committed by respondent that

necessitates an order of protection against respondent; and  
An act of domestic abuse was committed by petitioner that necessitates an order of protection against petitioner.

**3. DOMESTIC ABUSE PROHIBITED**

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

The petitioner shall not abuse the respondent or members of respondent'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 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 work place; (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 any other household members.

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

**4. CONTACT PROHIBITIONS**

The parties shall stay \_\_\_\_\_ yards away from each other, each other's homes and workplaces at all times, unless at a public place, where they shall remain \_\_\_\_\_ yards away from each other except as specifically permitted by this order.

[ ] Petitioner and respondent shall not telephone, talk to, visit or contact each other in any way except as follows:

1. The parties may contact each other by telephone regarding medical emergencies of minor child(ren);
2. \_\_\_\_\_

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

[ ] The parties may attend joint counseling sessions at the counselor's discretion.

*(Unless the court has entered an order sealing a party's address, include address of residence and employment for each party)*

**Petitioner's addresses**

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

**Respondent's addresses**

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

**5. COUNSELING**

[ ] The [parties] [petitioner] [respondent] shall participate in, attend and complete counseling at \_\_\_\_\_ prior to \_\_\_\_\_ (date) [as recommended by \_\_\_\_\_ (name of agency)].

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

[ ] Other counseling requirements:  
\_\_\_\_\_  
\_\_\_\_\_.

**6. PROVISIONS RELATING TO CHILDREN**

[ ] The court's findings regarding the minor child(ren) are addressed in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup> of this Mutual Order of Protection.

**7. PROVISIONS RELATING TO SUPPORT**

[ ] Temporary support shall be paid by respondent to petitioner in the amount of \$ \_\_\_\_\_ per month payable \_\_\_\_\_.

[ ] Temporary support shall be paid by petitioner to respondent in the amount of \$ \_\_\_\_\_ per month payable \_\_\_\_\_.

[ ] Respondent shall provide suitable alternative housing to petitioner and any child(ren) to whom the respondent owes a legal obligation of support.

This shall be provided as follows:  
\_\_\_\_\_  
\_\_\_\_\_.

[ ] Petitioner shall provide suitable alternative housing to respondent and any child(ren) to whom the petitioner owes a legal obligation of support.

This shall be provided as follows:  
\_\_\_\_\_  
\_\_\_\_\_.

**8. PROPERTY, DEBTS AND 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 court 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 set forth in the attached Counseling, Custody, Support and Division of Property Order<sup>3</sup>.

**9. PARTIES SHALL NOT CAUSE VIOLATION**

Petitioner and respondent shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by the other.<sup>4</sup>

**10. ADDITIONAL ORDERS**

IT IS FURTHER  
ORDERED:5 \_\_\_\_\_

---

**11. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**

This order is effective upon filing with the clerk of the court.

This order [with the exception of the orders in Counseling, Custody, Support and Division of Property Order<sup>3</sup>, if any] shall continue until \_\_\_\_\_ (date), or until modified or rescinded by the court.

**12. NOTICE TO LAW ENFORCEMENT AGENCIES**

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

[ ] The [petitioner] [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.

**13. NOTICE TO PETITIONER AND RESPONDENT**

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to 364 days and a fine of up to \$1000.00. A violation of that order may also result in a finding of civil contempt.

B. If you are "intimate partners" (you are married to each other, live with each other or have lived with each other, or if you 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.





Forms 4-965 and 4-966. This mutual order of protection is binding on the respondent as well as the petitioner and upon findings by the court of abuse by both petitioner and respondent is entitled to full faith and credit. See 18 U.S.C. Section 2261(c) and Section 40-13-6D NMSA 1978. Form 4-965 provides an appropriate order of protection against respondent and Form 4-966 provides an appropriate order against the petitioner. Form 4-970 is used instead of this Form 4-966A if a counter-petition is not filed or the court does not make a specific finding of abuse after a hearing of which the respondent received actual notice and had an opportunity to participate.

2. This order may be entered only after a hearing of which petitioner and respondent both received actual notice and at which both petitioner and respondent had an opportunity to participate. See 18 U.S.C. Section 922.

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

4. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both.

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

6. Unless the parties are present at the time this order is issued, service on the parties shall be made by delivering a copy to each party. See Section 40-13-6A NMSA 1978.

[Approved, effective November 1, 1999 until November 1, 2000.]

**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

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**Compiler's notes.** - This form is set out to correct an error appearing in the NMRA 2000 edition.

#### 4-967. Counseling, custody, support and division of property order.

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

\_\_\_\_\_  
Petitioner  
v.

No.

\_\_\_\_\_  
Respondent

COUNSELING, CUSTODY, SUPPORT AND

DIVISION OF PROPERTY ORDER1

This matter came before the court on the \_\_\_\_\_ day of \_\_\_\_\_, the court having determined that it has legal jurisdiction over the parties and subject matter, **FINDS,**

**CONCLUDES AND ORDERS:**

**1. NOTICE AND APPEARANCES**

- This order was entered on stipulation of the parties.
- This order was entered after a hearing by the court on notice to the parties.
- Respondent was present.
- Respondent was represented by counsel.
- Petitioner was present.
- Petitioner was represented by counsel.

**2. COUNSELING**

- The respondent shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.
- The petitioner shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.
- The respondent shall report to \_\_\_\_\_, for a  drug  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.
- The petitioner shall report to \_\_\_\_\_, for a  drug  alcohol screen by \_\_\_\_\_, \_\_\_\_\_ (date) with the results returned to this court.
- Other counseling requirements:  
\_\_\_\_\_  
\_\_\_\_\_

**3. CUSTODY**

- A. The [petitioner] [respondent] shall have temporary legal custody of the following child(ren):  
\_\_\_\_\_  
\_\_\_\_\_

- B. [Petitioner] [Respondent] shall have physical custody of the above child(ren) at all times, except that [respondent] [petitioner] shall have contact as follows:

- No contact, and stay \_\_\_\_\_ yards from the child(ren)'s school at all times.

Contact at the following specified times:

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

The child(ren) shall be exchanged for visitation at \_\_\_\_\_ on \_\_\_\_\_.

Referred to \_\_\_\_\_ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.

C. Custody, visitation and child support will be continued in accordance with the court order in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_.

D. Other \_\_\_\_\_

E. The [parties] [respondent] [petitioner] 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).

**4. PROVISIONS RELATING TO SUPPORT**

Temporary support shall be paid by respondent to petitioner in the amount of \$ \_\_\_\_\_ per month payable \_\_\_\_\_.

Respondent shall provide suitable alternative housing to 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).

**5. 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 set forth in the attached document.

[ ] [Petitioner] [Respondent] shall have temporary physical custody of the following physical assets2:

\_\_\_\_\_

**6. ADDITIONAL ORDERS**

IT IS FURTHER ORDERED3:

\_\_\_\_\_

\_\_\_\_\_

**7. EXPIRATION**

The provisions set forth in this order shall expire on \_\_\_\_\_, \_\_\_\_\_ (date) at 5:00 p.m., unless explicitly extended by court order.

**8. 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.

**9. AGREEMENT OF PARTIES**

*(Parties sign below only if the parties agree to this order.)*

The parties stipulate to the entry of this order.

\_\_\_\_\_

\_\_\_\_\_

Petitioner's signature

Respondent's signature

\_\_\_\_\_

\_\_\_\_\_

Petitioner's counsel, if any  
if any

Respondent's counsel,

\_\_\_\_\_

\_\_\_\_\_

Date Date

**10. RECOMMENDATIONS**

I have:  
[ ] reviewed the pleadings in this case;  
[ ] conducted hearings on the merits of the pleadings;  
[ ] I prepared this order as my recommendation to the district court judge regarding disposition of requests of petitioner.

---

Signed

---

Title  
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).

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

---

Signed

#### USE NOTE

1. This form may be modified as appropriate and entered upon stipulation of the parties or upon hearing by the court. It may be issued 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 November 1, 2000.]

#### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**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.]

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

\_\_\_\_\_  
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 have read this petition for order of protection from domestic abuse 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 party filing
this application

Signed and sworn before me on this \_\_\_\_\_ day of

\_\_\_\_\_,
Notary public \_\_\_\_\_.

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

[Approved, effective November 1, 1999 until November 1, 2000.]

ANNOTATIONS

Effective dates. - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

4-970. Stipulated mutual order of protection [non-registry].

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

\_\_\_\_\_
Petitioner
v.

No.

Respondent.

STIPULATED MUTUAL ORDER OF PROTECTION<sup>1</sup>

[NON-REGISTRY]

*This is not an order of protection under 18 U.S.C. Section 922 or 18 U.S.C. Section 2265.*

THIS MATTER came before the court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon agreement of the parties to the entry of an order.

The court, having determined that it has legal jurisdiction over the parties and the subject matter, **FINDS, CONCLUDES AND ORDERS:**

*(check only applicable paragraphs)*

**1. NOTICE AND APPEARANCES**

This order was entered on stipulation of the parties.<sup>2</sup>

**2. EFFECT OF STIPULATION TO MUTUAL 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 364 days and a fine of up to \$1,000.

B. You may be found to be in contempt.

C. If you are not a citizen of the United States, entry 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 petitioner's household.

The petitioner shall not abuse the respondent or members of respondent'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 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 work place; (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 any other household members.

Respondent shall not ask or cause other persons to abuse the

petitioner or any other household members.

**4. CONTACT PROHIBITIONS**

The parties shall stay \_\_\_\_\_ yards away from each other, each other's homes and workplaces at all times, unless at a public place, where they shall remain \_\_\_\_\_ yards away from each other except as specifically permitted by this order.

[ ] Petitioner and respondent shall not telephone, talk to, visit or contact each other in any way except as follows:

- 1. The parties may contact each other by telephone regarding medical emergencies of minor children;
- 2. \_\_\_\_\_

[ ] The parties may attend joint counseling sessions at the counselor's discretion.

*(Unless the court has entered an order sealing a party's address, include address of residence and employment for each party)*

**Respondent's addresses:**

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

**Petitioner's addresses**

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

**5. COUNSELING3**

[ ] The petitioner shall participate in, attend and complete counseling at \_\_\_\_\_ prior to \_\_\_\_\_ (date) [as recommended by \_\_\_\_\_ (name of agency)].

[ ] The respondent shall participate in, attend and complete counseling at \_\_\_\_\_ prior to \_\_\_\_\_ (date) [as recommended by \_\_\_\_\_ (name of agency)].

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

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

[ ] Other counseling requirements:

---

---

**6. CUSTODY**

[ ] A. The [petitioner] [respondent] shall have temporary legal custody of the following child(ren):

---

[ ] B. [Petitioner] [Respondent] shall have physical custody of the above child(ren) at all times, except that [respondent] [petitioner] shall have contact as follows:

[ ] No contact, and stay \_\_\_\_\_ yards from the child(ren)'s school at all times.

[ ] Contact at the following specified times:

---

[ ] The child(ren) shall be exchanged for visitation at \_\_\_\_\_ on \_\_\_\_\_.

[ ] Referred to \_\_\_\_\_ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.

[ ] C. Custody, visitation and child support will be continued in accordance with the court order in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_.

[ ] D. Other

---

[ ] E. The [parties] [respondent] [petitioner] 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).

**7. PROVISIONS RELATING TO SUPPORT**

[ ] Temporary support shall be paid by respondent to petitioner in the amount of \$ \_\_\_\_\_ per month payable \_\_\_\_\_.

[ ] Respondent shall provide suitable alternative housing to

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).

**8. PROPERTY, DEBTS, PAYMENTS OF MONEY<sup>3</sup>**

[ ] 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.

[ ] [Petitioner] [Respondent] shall have temporary physical custody of the following physical assets<sup>4</sup>:

---

**9. ADDITIONAL ORDERS**

IT IS FURTHER ORDERED<sup>5</sup>:

---

**10. PARTIES SHALL NOT CAUSE VIOLATION**

Petitioner and respondent shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by the other.<sup>6</sup>

**11. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**

This order is effective upon filing with the clerk of the court.

This order [with the exception of the orders in Form 4-967, "Custody, Support and Division of Property Order", if any] shall continue until \_\_\_\_\_ (date), or until modified or rescinded by the court.

**12. NOT TO BE ENTERED IN STATE OR FEDERAL REGISTRY**



A copy of this order was  hand delivered  faxed  mailed to  respondent  respondent's counsel on \_\_\_\_\_ (date).7

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

---

Signed

#### USE NOTES

1. This form may be used if both parties have stipulated to the entry of a stipulated mutual order of protection without any findings of abuse. This stipulated mutual order of protection is binding on the respondent as well as the petitioner.

This order is not entitled to full faith and credit under 18 U.S.C. Section 2265(c) or Section 40-13-6(D) NMSA 1978. If enforcement, other than that provided for by the Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978, is appropriate there are three orders which are entitled to full faith and credit each of which requires a finding of abuse. Form 4-965 is used for an order of protection against respondent and Form 4-966 is used for an order of protection against the petitioner. When a petition and a counter-petition have been filed and the court finds each party is entitled to an order of protection, the court may either use both Forms 4-965 and 4-966 or the court may use Form 4-966A. See also Section 40-13-6(D) NMSA 1978 for the requirements of state law relating to full faith and credit. This order is binding on the respondent as well as the petitioner.

2. This order may be entered only upon stipulation of the parties without a hearing. If a hearing is held on the issue of abuse, use Form 4-965, 4-966 or 4-966A, as appropriate. If a hearing is held on any other issue, Form 4-967 is used.

3. Complete this part only if the parties stipulate to Paragraphs 5, 6, 7, and 8 without a hearing. If a hearing is held on counseling, custody, support or property issues, Form 4-967, "Custody, Support and Division of Property Order" must be used.

4. List personal assets. A separate schedule may be attached to this order.

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

6. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both.

Section 40-13-6 NMSA 1978 also provides that a person convicted of violating an order of protection entered under the Family Violence Protection Act is guilty of a misdemeanor which is punishable by imprisonment of up to 364 days and a fine of up to \$1,000.

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

[Approved, effective November 1, 1999 until November 1, 2000.]

**Committee commentary.** - This Stipulated Mutual Order of Protection is not the same as a Mutual Order of Protection entered pursuant to Form 4-966A. This order provides three and sometimes four fewer protections to the parties than does the Form 4-966A Mutual 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 Mutual 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 Mutual Order of Protection.**

The core factual difference between the Form 4-966A Mutual Order of Protection and this Stipulated Mutual Order of Protection is that Form 4-966A 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 either party, 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 entered against that party in return for the entry of an order of protection against the other party.

### **Stipulated Mutual Order of Protection Not Entitled to Full Faith and Credit**



Because the use of this form does not require that the respondent file a counter petition seeking abuse, and also because the court "d[oes] not make specific findings that each party was entitled to such an order," 28 U.S.C. Section 2265(c)(1) and (c)(2), this Stipulated Mutual Restraining Order is not entitled to full faith and credit under federal law, 28 U.S.C. Section 2265. In addition, New Mexico law bars the grant of Full Faith and Credit to New Mexico orders under these circumstances. Section 40-13-6(D) NMSA 1978.

In reaching this conclusion, the committee acknowledges that the broad definition of a protective order in the statute, see 18 U.S.C. Section 2266, may be met by a stipulated order, but concluded that the additional requirement that the protective order must also include "specific findings" requirement of Section 2265(c)(2) is not satisfied by mere agreement of the parties to stipulate to the entry of an order of protection with no finding that either party has committed an act of abuse.

### **Stipulated Mutual Order of Protection Not Placed in any Federal, State or Tribal Registry**

New Mexico has a computerized registry of orders of protection available to law enforcement officials. The federal government also has a registry for orders of protection. Orders entered in the state registry are often forwarded to the federal registry. No statute mandates that all such orders be registered in the state registry or the federal registry. Placement of orders in the state or federal registry can have serious negative consequences for parties. The committee is of the view that parties (most often acting *pro se*) who stipulate to entry of a mutual order of protection without admitting abuse should not be subject to such consequences. For this reason, this form Stipulated Mutual Order of Protection directs that the order not be entered in any national, state or tribal registry.

### **Brady Bill Firearm Ban Does Not Apply if There is no Hearing**

The so-called "Brady Bill", 18 U.S.C. Section 922, prohibits a person who is the subject of a court order prohibiting abuse from possessing a firearm or ammunition if the order meets the requirements set forth in the act. The applicable provision does not require a finding of abuse, but merely an order that "explicitly prohibits the use of physical force against [an] intimate partner." 18 U.S.C. Section 922(g)(8)(c)(ii).

This Stipulated Order of Protection Against Respondent could qualify as a trigger for the federal firearm ban if a hearing is held prior to its entry. However, the act has a separate specific requirement that also must be met before the Brady Bill ban is effective: Only an Order that "was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate" will trigger the federal firearm ban. 18 U.S.C. Section 922(g)(8)(A).

**ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**4-971. Stipulated order of protection against respondent [non-registry].**

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

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

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

STIPULATED ORDER OF PROTECTION  
 AGAINST RESPONDENT<sup>1</sup>  
 [NON-REGISTRY]

*This is not an order of protection under 18 U.S.C. Section 922 or 18 U.S.C. Section 2265.*

THIS MATTER came before the court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon agreement of the parties to the entry of an order of protection against the respondent.

The court, having determined that it has legal jurisdiction over the parties and the subject matter, **FINDS, CONCLUDES AND ORDERS:**

*(check only applicable paragraphs)*

**1. NOTICE AND APPEARANCES**

This order was entered on stipulation of the parties.<sup>2</sup>

**2. EFFECT OF STIPULATION TO ORDER OF PROTECTION.**

Violation of a stipulated order of protection 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 364 days and a fine of up to \$1,000.

B. You may be found to be in contempt.

C. If you are not a citizen of the United States, entry 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 petitioner's household.

"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 by respondent causing imminent fear of bodily injury to petitioner or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by petitioner's or a household member's residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

The respondent shall not ask or cause other persons to abuse the petitioner or any other household members.

**4. CONTACT PROHIBITIONS**

[ ] Respondent shall stay \_\_\_\_\_ yards away from petitioner, petitioner's home and petitioner's 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 the petitioner in any way except as follows:

1. The parties may contact each other by telephone regarding medical emergencies of minor children;

2. \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
*(Unless the court has entered an order sealing a party'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)

**5. COUNSELING**

[ ] The respondent shall attend counseling at \_\_\_\_\_, contacting that office within five (5) days. The respondent shall participate in, attend and complete

counseling as recommended by the named agency.

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

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

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

Other counseling requirements:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**6. CUSTODY**

A. The [petitioner] [respondent] shall have temporary legal custody of the following child(ren):  
\_\_\_\_\_  
\_\_\_\_\_

B. [Petitioner] [Respondent] shall have physical custody of the above child(ren) at all times, except that [respondent] [petitioner] shall have contact as follows:

No contact, and stay \_\_\_\_\_ yards from the child(ren)'s school at all times.

Contact at the following specified times:  
\_\_\_\_\_  
\_\_\_\_\_

The child(ren) shall be exchanged for visitation at \_\_\_\_\_ on \_\_\_\_\_.

Referred to \_\_\_\_\_ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.

C. Custody, visitation and child support will be continued in accordance with the court order in \_\_\_\_\_ County, State of \_\_\_\_\_, Cause No. \_\_\_\_\_.

D. Other  
\_\_\_\_\_  
\_\_\_\_\_

E. The [parties] [respondent] [petitioner] 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).

**7. PROVISIONS RELATING TO SUPPORT**

[ ] Temporary support shall be paid by respondent to petitioner in the amount of \$ \_\_\_\_\_ per month payable \_\_\_\_\_.

[ ] Respondent shall provide suitable alternative housing to 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).

**8. 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.

[ ] [Petitioner] [Respondent] shall have temporary physical custody of the following physical assets:<sup>3</sup>

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

**9. ADDITIONAL ORDERS**

IT IS FURTHER ORDERED<sup>4</sup>:

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

**10. PETITIONER SHALL NOT CAUSE VIOLATION**

Petitioner shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by respondent.<sup>5</sup>

**11. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**





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

5. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both. Section 40-13-6 NMSA 1978 also provides that a person convicted of violating an order of protection entered under the Family Violence Protection Act is guilty of a misdemeanor which is punishable by imprisonment of up to 364 days and a fine of up to \$1,000.

6. See Form 4-967 for the Counseling, Custody, Support and Division of Property Order.

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

[Approved, effective November 1, 1999 until November 1, 2000.]

**Committee commentary.** - This Stipulated Order of Protection against Respondent is not the same as an Order of Protection (Form 4-965). This order provides two and sometimes three fewer protections to the parties than does the Order of Protection against Respondent, Form 4-965. The decreased protection is the result of the fact that the order is not based upon a finding of abuse, but is entered without reference to whether abuse has occurred. In addition a hearing is not held on whether abuse has occurred. Nonetheless, there may be occasions when the parties and the court are satisfied that this stipulated order provides adequate relief to the parties.

The general provisions of an order of protection, including injunctive orders, 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 Order of Protection and Stipulated Order of Protection**

The core factual difference between the Order of Protection against Respondent, Form 4-965, and this Stipulated Order of Protection against Respondent is that the former requires the court to make findings that respondent committed an act of domestic



abuse. In contrast, this Stipulated Order of Protection against Respondent is entered by the court with no finding of domestic abuse. It is based solely on the stipulation of the parties that, without respondent admitting to acts of abuse, each party is willing to have the order of protection entered against respondent without the necessity of a trial.

### **Stipulated Order of Protection is Entitled to Full Faith and Credit**

The broad definition of a protective order in the federal full faith and credit statute, see 18 U.S.C. Section 2266, is met by this stipulated order. If the court has jurisdiction and has provided respondent with valid notice and opportunity to be heard, the Stipulated Order Against Respondent will be entitled to full faith and credit. 18 U.S.C. 2265(b).

### **Stipulated Order of Protection against Respondent Not Placed in any Federal, State or Tribal Registry**

New Mexico has a computerized registry of Orders of Protection available to law enforcement officials. The federal government also has a registry for Orders of Protection. Orders entered in the state registry are often forwarded to the federal registry. No statute mandates that all such orders be registered in the state registry or the federal registry. Placement of orders in the state or federal registry can have serious negative consequences for parties. The committee is of the view that parties (most often acting *pro se*) who stipulate to entry of a protection order without admitting abuse should not be subject to such consequences. For this reason, this form Stipulated Order of Protection against Respondent directs that the order not be entered in any national, state or tribal registry.

### **Brady Bill Firearm Ban Does Not Apply if There is no Hearing**

The so-called "Brady Bill", 18 U.S.C. Section 922, prohibits a person who is the subject of a court order prohibiting abuse from possessing a firearm or ammunition if the order meets the requirements set forth in the act. The applicable provision does not require a finding of abuse, but merely an order that "explicitly prohibits the use of physical force against [an] intimate partner." 18 U.S.C. Section 922(g)(8)(c)(ii).

This Stipulated Order of Protection Against Respondent could qualify as a trigger for the federal firearm ban if a hearing is held prior to its entry. However, the act has a separate specific requirement that also must be met before the Brady Bill ban is effective: Only an Order that "was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate" will trigger the federal firearm ban. 18 U.S.C. Section 922(g)(8)(A).

## **ANNOTATIONS**

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

**4-972. Petition for emergency order of protection from domestic abuse.**

[Standard simplified 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  
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*) \_\_\_\_\_

\_\_\_\_\_ 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	Relationship of Child
------	---------	-----------------------





Respondent may be found at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(address)  
(city)  
(state and zip code)  
(if in Indian Country, please name tribe or pueblo).

Respondent's:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(social security number)  
(date of birth)  
(home telephone number)  
(work address)  
(work telephone number).

B. Is respondent in jail? [ ] yes [ ] no

\_\_\_\_\_ **Petitioner's initials**

VERIFICATION OF PETITIONER

STATE OF NEW MEXICO )  
COUNTY OF \_\_\_\_\_ )  
TRIBE OR PUEBLO \_\_\_\_\_ )

\_\_\_\_\_ (petitioner) was sworn and states: I have read this Petition for Emergency Order of Protection Against Respondent 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  
Signed and sworn before me on this \_\_\_\_\_ day of

\_\_\_\_\_  
' \_\_\_\_\_  
Notary public

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

VERIFICATION OF LAW ENFORCEMENT OFFICER

STATE OF NEW MEXICO )  
COUNTY OF \_\_\_\_\_ )  
TRIBE OR PUEBLO \_\_\_\_\_ )

\_\_\_\_\_ (name of law enforcement officer) was sworn and states: I have read this Petition for Emergency Order of Protection Against Respondent 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 law enforcement officer  
Signed and sworn before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.  
Notary public  
My commission expires: \_\_\_\_\_.

#### USE NOTES

1. Complete all information known by the officer.
2. Section 40-13-3.1 NMSA 1978 provides that the petitioner in a domestic abuse case shall not be required to pay for the issuance or service of a protection order. This has been construed to mean that the petitioner is not required to pay a docket or other filing fees or fee for service of process.

[Approved, effective November 1, 1999 until November 1, 2000.]

#### ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

#### **4-973. Emergency order of protection against respondent.**

[Standard simplified emergency order of protection,  
Family Violence Protection Act, Sections 40-13-3.2 NMSA 1978.]

\_\_\_\_\_  
JUDICIAL DISTRICT COURT  
COUNTY OF \_\_\_\_\_  
STATE OF NEW MEXICO  
\_\_\_\_\_  
Petitioner  
v.  
\_\_\_\_\_  
Respondent

No.

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 work place; (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 work place.

*(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**

Petitioner shall refrain from any affirmative act the purpose or effect of which is to cause respondent to violate 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.**





[Approved, effective November 1, 1999 until November 1, 2000.]

## ANNOTATIONS

**Effective dates.** - Pursuant to a court order dated October 27, 1999, this form is provisionally approved for twelve months effective November 1, 1999.

### 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
1.00	4-201
1.01	4-203
1.02	4-204
1.03	4-301
1.04	4-202
1.05	4-302
2.00	4-304
2.01	4-305
2.02	4-306
3.00	4-501
3.01	4-502
3.02	4-307
3.03	4-401
4.00	4-503
4.01	4-601
5.00	4-103
5.01	4-102
5.02	4-101
6.00	4-701
6.01	4-703
6.02	4-704
6.03	4-705
6.04	4-706
6.05	4-303
6.06	4-702

7.00	4-801
7.01	4-802
7.02	4-803
7.03	4-804
8.00	4-805
8.01	4-806
8.02	4-807
8.03	4-812
8.03A	4-811
8.04	4-813
8.05	4-814
8.06	4-808
8.07	4-809
8.08	4-810
9.00	4-707
9.01	4-708
10.00	4-901
10.01	4-902
10.02	4-903
10.03	4-904
10.04	4-905
10.05	4-906
10.06	4-907
10.07	4-908
10.08	4-909
10.09	4-910
10.10	4-911
10.11	4-912
10.12	4-913
10.13	4-914

NMRA	Former Form
4-101	5.02
4-102	5.01
4-103	5.00
4-104	None
4-201	1.00
4-202	1.04
4-203	1.01
4-204	1.02
4-205	None
4-206	None
4-207	None

4-208	None
4-301	1.03
4-302	1.05
4-303	6.05
4-304	2.00
4-305	2.01
4-306	2.02
4-306A	None
4-307	3.02
4-308	None
4-401	3.03
4-501	3.00
4-502	3.01
4-503	4.00
4-601	4.01
4-701	6.00
4-702	6.06
4-703	6.01
4-704	6.02
4-705	6.03
4-706	6.04
4-707	9.00
4-708	9.01
4-709	None
4-710	None
4-801	7.00
4-802	7.01
4-803	7.02
4-804	7.03
4-805	8.00
4-806	8.01
4-807	8.02
4-808	8.06
4-809	8.07
4-810	8.08
4-811	8.03A
4-812	8.03
4-813	8.04
4-814	8.05
4-901	10.00
4-902	10.01
4-903	10.02
4-904	10.03
4-905	10.04
4-906	10.05
4-907	10.06
4-908	10.07

4-909	10.08
4-910	10.09
4-911	10.10
4-912	10.11
4-913	10.12
4-914	10.13

## Set 4, Civil Forms, Court Orders

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO  
 IN THE MATTER OF THE REVISION AND ADOPTION :  
 OF CIVIL AND CRIMINAL FORMS FOR THE DISTRICT :  
 COURTS AND COURTS OF LIMITED :  
 JURISDICTION : 8000 Misc.

This matter coming on for the consideration by the court,  
 and the court being sufficiently advised, Mr. Chief Justice  
 Payne, Mr. Senior Justice Sosa, Mr. Justice Federici, Mr.  
 Justice Riordan and Mr. Justice Stowers concurring:

NOW, THEREFORE, IT IS ORDERED that the following Civil Form  
 6.06 be and the same is hereby approved for use in the  
 Magistrate and Metropolitan Courts;

IT IS FURTHER ORDERED that Criminal Form 4.24 be and the  
 same is hereby approved for use in the District Courts;

IT IS FURTHER ORDERED that Criminal Form 6.60 be and the  
 same is hereby approved for use in the District, Magistrate and  
 Metropolitan Courts;

IT IS FURTHER ORDERED the approval of the above forms shall  
 be effective for all cases filed in the above courts on or after  
 October 1, 1983;

IT IS FURTHER ORDERED that the clerk of the court be and she  
 hereby is authorized and directed to give notice of the approval  
 of the above described orders by publishing the same in the NMSA  
 1978.

DONE at Santa Fe, New Mexico this 25th day of April, 1983.

/s/ H. VERN PAYNE  
 Chief Justice

/s/ DAN SOSA, JR.  
 Senior Justice

/s/ WILLIAM R. FEDERICI  
 Justice

/s/ WILLIAM RIORDAN  
 Justice

/s/ HARRY E. STOWERS, JR.  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION AND :  
AMENDMENT OF CIVIL AND CRIMINAL  
FORMS : 8000 Misc.  
FOR THE DISTRICT COURT AND :  
COURTS OF LIMITED JURISDICTION :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Federici, Senior Justice Sosa, Justice Riordan, Justice Stowers, and Justice Walters concurring:

NOW, THEREFORE, IT IS ORDERED that Civil Form 2.02 is hereby amended;

IT IS FURTHER ORDERED that the following forms be and are hereby adopted: Civil Forms 1.04 and 1.05;

IT IS FURTHER ORDERED that the amendment and adoption of the above forms shall be effective on or after October 1, 1984;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of these amendments and adoptions by publishing the same in the NMSA 1978.

DONE at Santa Fe, New Mexico this 4th day of April, 1984.

/s/ WILLIAM R. FEDERICI  
Chief Justice

/s/ DAN SOSA, JR.  
Senior Justice

/s/ WILLIAM RIORDAN  
Justice

/s/ HARRY E. STOWERS, JR.  
Justice

/s/ MARY C. WALTERS  
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT OF :  
CIVIL FORMS 4-303 AND 4-703  
AND : 8000 Misc.  
THE APPROVAL OF FORM 4-104 :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Civil Forms 4-303 and 4-703 and the adoption of Civil Form 4-104 be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendment of Civil Forms 4-303 and 4-703 and the adoption of Civil Form 4-104 shall be effective for cases filed on or after October 1, 1987;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment and adoption of the above forms by publishing the same in the News and Views and in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 17th day of August, 1987.

/s/ TONY SCARBOROUGH  
Chief Justice  
/s/ DAN SOSA, JR.  
Senior Justice  
/s/ HARRY E. STOWERS, JR.  
Justice  
/s/ MARY C. WALTERS  
Justice  
/s/ RICHARD E. RANSOM  
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION OF :  
CIVIL FORMS 4-205 AND 4-  
308 : 8000 Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the adoption of Civil Forms 4-205 and 4-308 be and the same is hereby approved;

IT IS FURTHER ORDERED that the above approval of Civil Forms 4-205 and 4-308 shall be effective for cases filed on or after July 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the approval of the above forms by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 26th day of May, 1988.

/s/ TONY SCARBOROUGH  
Chief Justice

/s/ DAN SOSA, JR.  
Senior Justice

/s/ HARRY E. STOWERS, JR.  
Justice

/s/ MARY C. WALTERS  
Justice

/s/ RICHARD E. RANSOM  
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION OF :  
CIVIL FORM 4-

206 : 8000 Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that the adoption of Civil Form 4-206 be and the same is hereby approved;

IT IS FURTHER ORDERED that the above approval of Civil Form 4-206 shall be effective for cases filed on or after August 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the approval of the above forms by publishing the same in the Bar Bulletin and the 1986 SCRA.

DONE at Santa Fe, New Mexico this 1st day of June, 1988.

/s/ TONY SCARBOROUGH  
Chief Justice



/s/ DAN SOSA, JR.  
Senior Justice  
/s/ HARRY E. STOWERS, JR.  
Justice  
/s/ MARY C. WALTERS  
Justice  
/s/ RICHARD E. RANSOM  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION AND  
AMENDMENT OF CIVIL

:

FORMS

:

8000 Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Civil Forms 4-102, 4-204 and 4-307 be and the same is hereby approved;

IT IS FURTHER ORDERED that the adoption of Civil Forms 4-208 and 4-306A be and the same is hereby approved;

IT IS FURTHER ORDERED that the above approval of Civil Forms 4-102, 4-306A and 4-307 shall be effective for cases filed on or after September 1, 1989;

IT IS FURTHER ORDERED that the above approval of Civil Forms 4-204 and 4-208 shall be effective for cases filed on or after January 1, 1990;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the approval of the above forms by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 16th day of May, 1989.

/s/ DAN SOSA, JR.  
Chief Justice  
/s/ HARRY E. STOWERS, JR.  
Justice  
/s/ TONY SCARBOROUGH  
Justice  
/s/ RICHARD E. RANSOM  
Justice

/s/ JOSEPH F. BACA  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

IN THE MATTER OF THE ADOPTION :  
OF CIVIL FORM 4-  
207 : 8000 Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that the adoption of Civil Form 4-207 be and the same is hereby approved;

IT IS FURTHER ORDERED that the above approval of Civil Form 4-207 shall be effective for cases filed on or after August 1, 1989;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the approval of the above forms by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 31st day of May, 1989.

/s/ DAN SOSA, JR.  
Chief Justice  
/s/ HARRY E. STOWERS, JR.  
Justice  
/s/ TONY SCARBOROUGH  
Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ JOSEPH F. BACA  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :  
OF CIVIL  
FORMS : 8000  
Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Wilson concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Civil Forms 4-204 and 4-308 be and the same is hereby approved;

IT IS FURTHER ORDERED that the above amendments of the Civil Forms shall be effective July 1, 1990;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 14th day of February, 1990.

/s/ DAN SOSA, JR.  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ SETH D. MONTGOMERY  
Justice  
/s/ KENNETH B. WILSON  
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :  
OF CIVIL  
FORMS : 8000  
Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Franchini concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Civil Forms 4-204, 4-307 and 4-703 be and the same are hereby amended;

IT IS FURTHER ORDERED that new Civil Forms 4-709 and 4-710

be and the same are hereby approved;

IT IS FURTHER ORDERED that the above amendment and approval of new Civil Forms shall be effective October 1, 1991;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the 1986 SCRA.

DONE at Santa Fe, New Mexico this 9th day of May, 1991.

/s/ DAN SOSA, JR.

Chief Justice

/s/ RICHARD E. RANSOM

Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY

Justice

/s/ GENE E. FRANCHINI

Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :

WITHDRAWAL AND APPROVAL

OF : 8000 Misc.

CIVIL FORMS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Civil Forms 4-801, 4-802, 4-803, 4-804, 4-805, 4-806, 4-807, 4-808, 4-809, 4-811 and 4-812 be and the same are hereby amended;

IT IS FURTHER ORDERED that new Civil Forms 4-801A, 4-808A and 4-815 be and the same are hereby approved;

IT IS FURTHER ORDERED that Civil Form 4-810 be and the same is hereby withdrawn;

IT IS FURTHER ORDERED that amended Civil Forms 4-801 and 4-812 be and the same are hereby approved for use in the Magistrate and Metropolitan Courts;

IT IS FURTHER ORDERED that the amended and new Civil Forms 4-801A, 4-811 be and the same are hereby approved for use in the District Courts;

IT IS FURTHER ORDERED that amended and new Civil Forms 4-802, 4-803, 4-804, 4-805, 4-806, 4-807, 4-808, 4-808A, 4-809 and 4-815 be and the same are hereby approved for use in the District, Magistrate and Metropolitan Courts;

IT IS FURTHER ORDERED that the above amendment, withdrawal and approval of new Civil Forms shall be effective on and after July 1, 1992;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 15th day of April, 1992.

/s/ RICHARD E. RANSOM

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ STANLEY F. FROST

Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :  
AND APPROVAL OF CIVIL

FORMS : 8000 Misc.

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Civil Forms 4-204, 4-208, 4-808A, 4-907 and 4-908 be and the same are hereby amended;

IT IS FURTHER ORDERED that new Civil Forms 4-915 and 4-916 be and the same are hereby approved;

IT IS FURTHER ORDERED that the amended and new Civil Forms be and the same are hereby approved for use in the Magistrate and Metropolitan Courts;

IT IS FURTHER ORDERED that the above amendment and approval of Civil Forms shall be effective for cases filed in the

Magistrate and Metropolitan Courts on and after January 1, 1993;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 14th day of August, 1992.

/s/ RICHARD E. RANSOM

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ STANLEY F. FROST

Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

NO. 94-8300

IN THE MATTER OF THE  
AMENDMENT OF THE CIVIL  
FORMS

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Civil Forms 4-204, 4-803 and 4-808A be and the same hereby are amended;

IT IS FURTHER ORDERED that the above amendments of the Civil Forms shall be effective on and after May 1, 1994;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 17th day of February, 1994.

/s/ RICHARD E. RANSOM

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ SETH D. MONTGOMERY  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

NO. 94-8300  
IN THE MATTER OF THE ADOPTION OF  
CIVIL FORMS 4-820 AND 4-821

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Montgomery, Justice Ransom, Justice Baca, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED Civil Forms 4-820 and 4-821 be and the same hereby are adopted;

IT IS FURTHER ORDERED that the adoption of the above Civil Forms shall be effective on and after January 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the adoption of the above Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 19th day of September, 1994.

/s/ SETH D. MONTGOMERY  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

NO. 94-8300  
IN THE MATTER OF THE AMENDMENT  
OF CIVIL FORMS 4-201, 4-301 AND 4-801

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Seth D. Montgomery, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Gene E. Franchini and Justice Stanley F. Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Civil Forms 4-201, 4-301 and 4-801 be and the same hereby are amended;

IT IS FURTHER ORDERED that amended Civil Forms 4-201, 4-301 and 4-801 shall be effective on and after January 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the above amendments of the Civil Forms by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico this 30th day of September, 1994.

/s/ SETH D. MONTGOMERY  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 95-8300  
IN THE MATTER OF THE AMENDMENT OF  
THE CIVIL FORMS FOR COURTS OF  
LIMITED JURISDICTION

ORDER



This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that Civil Forms 4-101, 4-102, 4-103, 4-104, 4-921, and 4-922 for the Courts of Limited Jurisdiction be and the same hereby is approved;

IT IS FURTHER ORDERED that the above amendment of the Civil Forms for the Courts of Limited Jurisdiction shall be effective November 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the Civil Forms for Courts of Limited Jurisdiction by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 12th day of September, 1995.

/s/ JOSEPH F. BACA  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice  
/s/ PAMELA B. MINZNER  
Justice

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

No. 95-8300

IN THE MATTER OF AMENDMENT AND  
ADOPTION OF CIVIL FORMS FOR USE  
IN THE DISTRICT, MAGISTRATE AND  
METROPOLITAN COURTS

ORDER

This matter coming on for consideration by the Court, upon recommendation of the Rules of Civil Procedure for the District Courts Committee and the Courts of Limited Jurisdiction Committee to adopt amendments to Civil Forms 4-801, 4-801A, 4-803, 4-804, 4-805, 4-806, 4-807, 4-808, 4-808A, 4-809, 4-811 and 4-812 and to approve new Civil Form 4-810A of the Civil Forms, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment Civil Forms 4-801A, 4-803, 4-804, 4-805, 4-806, 4-807, 4-808, 4-808A, 4-809 and 4-811 of the Civil Forms are hereby approved for use in the District Courts, Civil Forms 4-801, 4-803, 4-804, 4-806, 4-807, 4-808, 4-808A, 4-809 and 4-812 of the Civil Forms are hereby approved for use in the Magistrate and Metropolitan Courts and new Civil Form 4-810A is hereby approved for use in the District, Magistrate and Metropolitan Courts;

IT IS FURTHER ORDERED that the amendment and adoption of the above-referenced Civil Forms shall be effective for cases filed on and after January 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the above-referenced amendments to the Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 6th day of November, 1995.

/s/ JOSEPH F. BACA  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice  
/s/ PAMELA B. MINZNER  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 95-8300  
IN THE MATTER OF THE  
AMENDMENT OF THE CIVIL

ORDER

This matter coming on for consideration by the Court, upon recommendation of the Courts of Limited Jurisdiction Committee to amend Civil Form 4-502, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Civil Form 4-502 be and the same hereby is approved;

IT IS FURTHER ORDERED that the amendment of Civil Form 4-502 shall be effective on and after January 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the above amendment of the Civil Forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 6th day of November, 1995.

/s/ JOSEPH F. BACA  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice  
/s/ PAMELA B. MINZNER  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 95-8300  
IN THE MATTER OF AMENDMENTS  
OF RULES 1-072, 1-073, 1-074,  
1-075, 1-076, 1-077, AND 1-081, AND  
FORMS 4-707, 4-707A, AND 4-830 OF  
THE RULES OF CIVIL PROCEDURE  
FOR THE DISTRICT COURTS

ORDER

This matter coming on for consideration by the Court, upon recommendation of the Rules of Civil Procedure for the District Courts Committee to adopt amendments to Rules 1-072, 1-073, 1-074, 1-075, 1-076, 1-077 and 1-081 and Forms 4-707, 4-707A and 4-830 of the Rules of Civil Procedure for the District Courts, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of the Rules 1-072, 1-073, 1-074, 1-075, 1-076, 1-077, and 1-081, and Forms 4-707, 4-707A, and 4-830 of the Rules of Civil Procedure for the District Courts are hereby approved;

IT IS FURTHER ORDERED that the amendments of Rules 1-072, 1-073, 1-074, 1-075, 1-076, 1-077, and 1-081, and Forms 4-707, 4-707A, and 4-830 of the Rules of Civil Procedure for the District Courts shall be effective for appeals and writs filed on and after January 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above rules and forms by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 15th day of November, 1995.

/s/ JOSEPH F. BACA  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ STANLEY F. FROST  
Justice  
/s/ PAMELA B. MINZNER  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300

IN THE MATTER OF THE AMENDMENTS OF RULES  
2-705, 3-706, 3-708, AND FORM 4-708 AND  
THE WITHDRAWAL OF RULES 3-707 3-709, 3-710,  
3-711, AND 3-712 OF THE MAGISTRATE COURT AND  
METROPOLITAN COURT RULES GOVERNING APPEALS

IN CIVIL CASES TO THE DISTRICT COURT

ORDER

This matter coming on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Rules 2-705, 3-706, 3-708 and Form 4-708, and to withdraw Rules 3-707, 3-709, 3-710, 3-711, and 3-712, and the Court being sufficiently advised, Chief Justice Stanley F. Frost, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Gene E. Franchini, and Justice Pamela B. Minzner concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-705, 3-706, 3-708, and Form 4-708 of the Magistrate Court and Metropolitan Court rules governing appeals in civil cases to the District Court hereby are approved;

IT IS FURTHER ORDERED that the withdrawal of Rules 3-707, 3-709, 3-710, 3-711, and 3-712, hereby is approved and effective July 1, 1996;

IT IS FURTHER ORDERED that the amendments of Rules 2-705, 3-706, 3-708, and Form 4-708 shall be effective for appeals filed on and after July 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the adoption of the above-referenced rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 18th day of April, 1996.

/s/ STANLEY F. FROST  
Chief Justice  
/s/ RICHARD E. RANSOM  
Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PAMELA B. MINZNER  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300  
IN THE MATTER OF THE AMENDMENT OF

ORDER

This matter coming on for consideration by the Court upon recommendation of the Courts of Limited Jurisdiction Rules Committee to adopt amendments to Form 4-701, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 4-701 of the Rules of Courts of Limited Jurisdiction be and the same hereby is amended;

IT IS FURTHER ORDERED that the above amendment of the rule shall be effective for cases filed in the Magistrate, Metropolitan, and Municipal Courts on and after October 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 26th day of August, 1996.

/s/ JOSEPH F. BACA

Chief Justice

/s/ RICHARD E. RANSOM

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ PAMELA B. MINZNER

Justice

/s/ DAN A. MCKINNON, III

Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300

IN THE MATTER OF THE AMENDMENTS  
OF LANDLORD-TENANT FORMS OF THE RULES  
FOR THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of Landlord-Tenant Forms 4-901, 4-901A, 4-902, 4-903, 4-904, 4-905, 4-906, 4-907, 4-908, 4-909, 4-910, 4-911, 4-912, 4-913, 4-914, 4-921, 4-922, 4-923, 4-924, 4-925, 4-926, 4-927, 4-928, and 4-929 of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced forms shall be effective on and after September 2, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 16th day of June, 1997.

/s/ GENE E. FRANCHINI

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ PAMELA B. MINZNER

Justice

/s/ PATRICIO M. SERNA

Justice

/s/ DAN A. MCKINNON, III

Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300

IN THE MATTER OF THE AMENDMENTS OF  
CIVIL FORMS 4-204 AND 4-208 FOR SUMMONS  
IN THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction

Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of the Civil Forms 4-204 and 4-208 for Summons for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced forms shall be effective on and after September 2, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 15th day of July, 1997.

/s/ GENE E. FRANCHINI

Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ PAMELA B. MINZNER

Justice

/s/ PATRICIO M. SERNA

Justice

/s/ DAN A. MCKINNON, III

Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300

IN THE MATTER OF THE AMENDMENT OF  
RULES 1-005, 1-026, 1-034, 1-037,  
1-045, 1-053.2 and 1-100 and  
FORM 4-505 NMRA OF THE RULES OF  
CIVIL PROCEDURE FOR THE DISTRICT COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna,



and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 1-005, 1-026, 1-034, 1-037, 1-045, 1-053.2, and 1-100 and Form 4-505 of the Rules of Civil Procedure for the District Courts hereby is approved;

IT IS FURTHER ORDERED that the amendment of Rules 1-005, 1-026, 1-034, 1-037, 1-045, 1-053.2, and 1-100 and Form 4-505 of the Rules of Civil Procedure for the District Courts shall be effective on and after January 1, 1998;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 10th day of October, 1997.

/s/ GENE E. FRANCHINI  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ PAMELA B. MINZNER  
Justice  
/s/ PATRICIO M. SERNA  
Justice  
/s/ DAN A. MCKINNON, III  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 98-8300  
IN THE MATTER OF THE AMENDMENT  
OF FORMS 4-901, 4-902, 4-903, 4-904,  
4-913, AND 4-928 OF THE RULES FOR  
THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of the

Forms 4-901, 4-902, 4-903, 4-904, 4-913, and 4-928 of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced forms shall be effective for cases filed on and after April 6, 1998;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 10th day of February, 1998.

/s/ GENE E. FRANCHINI  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ PAMELA B. MINZNER  
Justice  
/s/ PATRICIO M. SERNA  
Justice  
/s/ DAN A. McKINNON, III  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 98-8300  
IN THE MATTER OF THE AMENDMENT  
OF FORMS 4-909, 4-926, and 4-929  
OF THE RULES FOR THE COURTS OF  
LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments of the Forms 4-909, 4-926, and 4-929 of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced forms shall be effective for cases filed on and after

January 1, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 17th day of November, 1998.

/s/ GENE E. FRANCHINI  
Chief Justice

/s/ JOSEPH F. BACA  
Justice

/s/ PAMELA B. MINZNER  
Justice

/s/ PATRICIO M. SERNA  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300

IN THE MATTER OF THE AMENDMENTS  
OF FORM 4-810 NMRA OF THE RULES  
FOR THE COURTS OF LIMITED JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Form 4-810 of the Rules for Courts of Limited Jurisdiction hereby is approved;

IT IS FURTHER ORDERED that the amendment of Form 4-810 shall be effective on and after August 1, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of Form 4-810 by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 18th day of June, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice

/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PATRICIO M. SERNA  
Justice  
/s/ PETRA JIMENEZ MAES  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300  
IN THE MATTER OF THE AMENDMENT  
OF FORMS 4-811 and 4-901A NMRA  
OF THE RULES FOR COURTS OF LIMITED  
JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules for Courts of Limited Jurisdiction Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Forms 4-811 and 4-901A for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of Forms 4-811 and 4-901A shall be effective on October 15, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of Forms 4-811 and 4-901A by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 27th day of August, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PATRICIO M. SERNA

Justice  
/s/ PETRA JIMENEZ MAES  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300

IN THE MATTER OF THE *PROVISIONAL* APPROVAL OF  
DOMESTIC RELATIONS COVER SHEETS, NEW RULE 1-003.1  
AND FORMS 4-211 AND 4-212, FOR USE IN THE  
DISTRICT COURTS IN THE STATE OF NEW MEXICO

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure Committee to require use of cover sheets in domestic relations cases in all district courts in the State of New Mexico by adopting new Rule 1-003.1 and Forms 4-211 and 4-212, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the domestic relations cover sheets, new Rule 1-003.1 and Forms 4-211 and 4-212 hereby are *provisionally approved for twelve months effective November 1, 1999*; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the provisional adoption of the above-referenced rule and forms by publishing the same in the Bar Bulletin;

DONE at Santa Fe, New Mexico, this 27th day of October, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice  
/s/ JOSEPH F. BACA  
Justice  
/s/ GENE E. FRANCHINI  
Justice  
/s/ PATRICIO M. SERNA  
Justice

/s/ PETRA JIMENEZ MAES  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300

IN THE MATTER OF THE *PROVISIONAL* APPROVAL  
OF DOMESTIC VIOLENCE FORMS FOR USE IN THE  
DISTRICT COURTS IN THE STATE OF NEW MEXICO

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure Committee to require use of domestic violence forms in all district courts in the State of New Mexico, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes, concurring;

NOW, THEREFORE, IT IS ORDERED that the domestic violence forms hereby are *provisionally approved for twelve months effective November 1, 1999*; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the provisional adoption of the above-referenced forms by publishing the same in the Bar Bulletin;

DONE at Santa Fe, New Mexico, this 27th day of October, 1999.

/s/ PAMELA B. MINZNER  
Chief Justice

/s/ JOSEPH F. BACA  
Justice

/s/ GENE E. FRANCHINI  
Justice

/s/ PATRICIO M. SERNA  
Justice

/s/ PETRA JIMENEZ MAES  
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300  
IN THE MATTER OF THE AMENDMENTS  
OF RULES 2-203, 3-203, 4-902A,  
6-206, 7-206, 8-205, 6-209, 7-209,  
8-208, 6-505, 7-505, 8-505, AND  
AND FORMS 9-210 AND 9-212B NMRA OF  
THE RULES FOR THE COURTS OF LIMITED  
JURISDICTION

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Courts of Limited Jurisdiction Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 2-203, 3-203, 4-902A, 6-206, 7-206, 8-205, 6-209, 7-209, 8-208, 6-505, 7-505, 8-505, and Forms 9-210 and 9-212A of the Rules for Courts of Limited Jurisdiction hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms shall be effective on and after March 1, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rules and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 4th day of January, 2000.

/s/ PAMELA B. MINZNER  
Chief Justice

/s/ JOSEPH F. BACA  
Justice

/s/ GENE E. FRANCHINI  
Justice

/s/ PATRICIO M. SERNA  
Justice

/s/ PETRA JIMENEZ MAES  
Justice