

SANTA FE COUNTY

HOW DO I GET A RESTRAINING ORDER?

A “Restraining Order” is unusual because it orders someone to stop something they’re doing and not to do it again BEFORE the judge has a hearing on your request. So, the law has very strict requirements.

- First:** Is the harm that you’re claiming very bad and likely to continue if the court doesn’t get involved?
- Second:** Is there some other way to remedy the problem, such as seeking money damages at a later time?
- Third:** If you are wrong, are you prepared to consider the possibility that you may be required to pay the other side their costs if the judge so orders?
-

If so, here’s what to do:

A. FILL in the COMPLAINT and APPLICATION for CIVIL RESTRAINING ORDER, SUMMONS and INTERPRETER FORM.

Be very detailed in the HARM that you’re claiming. Simply saying that the other person is “harassing” or “bothering” is not enough. Include details of the incidents, including the date and place.

And be detailed in the kind of RELIEF you want, such as “make the Defendant stay away from me” or “Stop the Defendant from coming onto my property.”

Sign the application before a NOTARY PUBLIC. This means that you swear that what you’ve written down is the truth.

It is mandatory to complete and file the Interpreter Form.

- B. File the COMPLAINT and APPLICATION and SUMMONS with the Clerk of the Court and pay the filing fee of \$132.00. The Clerk only accepts cash, cashier’s check, or money order. If you cannot afford the filing fee, you may complete and submit an Application for Free Process. You can get the Application for Free Process at the Clerk’s Office or the Self Help Center or at www.firstdistrictcourt.com. After your case is filed, the Clerk will then assign a Judge to hear your case.

The Clerk's Office will submit your Complaint and Application and a Temporary Restraining Order form to the judge. The judge will review your application. Be aware that the judge can deny your request for a restraining order. If this happens, you will lose the \$132.00 filing fee.

If the judge approves your Application:

- C. The Judge will set a DATE and TIME for a HEARING.
- D. The Clerk's Office will contact you when your forms have been signed and are ready for filing.
- E. FILE the signed TRO with the Clerk of the Court and ask for at least two (2) endorsed copies. Keep one copy for yourself.
- F. SERVE the other person the following papers:
 - 1. The endorsed Complaint and Application for Civil Restraining Order;
 - 2. The Summons;
 - 3. The endorsed Temporary Restraining Order

SERVICE IS VERY IMPORTANT, and it is YOUR RESPONSIBILITY

“Serve” means placing the Complaint and Application, Summons and the Temporary Restraining Order in the hands of the other party; in other words, service must be PERSONAL. Mailing the papers is NOT good enough, not even Certified Mail.

Anyone who is over 18 and who is not a party to the case may serve the papers. That means you, the Plaintiff, CANNOT serve the papers. The Sheriff's Office or a professional process server can serve the papers but they usually charge a fee. If the Court has granted the Plaintiff Free Process, the Sheriff will serve the papers for free.

To prove that the Defendant was served, ask the person who performed the service to complete the **RETURN OF SERVICE** and then make sure it is filed with the Clerk of the Court.

It is your responsibility to follow up with law enforcement regarding the service of your documents before your hearing date. You must provide an endorsed copy of the Return of Service to the Judge at the time of your hearing to prove you served the Defendant.

- G. ATTEND the hearing at the date and time set and bring evidence, such as witnesses or documents, and be prepared to prove your claim in court. Let the court know if you need an Interpreter.

Here are some useful telephone numbers:

Santa Fe Police 473-5080	Santa Fe Sheriff's 986-2455	District Court Clerk 455-8250
Rio Arriba Sheriff 753-3320	Los Alamos Sheriff 662-8028	

**STATE OF NEW MEXICO
COUNTY OF _____
FIRST JUDICIAL DISTRICT COURT**

CASE NO. D-_____-CV-_____

_____,
Plaintiff,

vs.

_____,
Defendant.

**COMPLAINT AND APPLICATION FOR
CIVIL RESTRAINING ORDER**

1. I live in _____ County, State of _____.
2. Defendant lives in _____ County, State of _____.
Defendant's address is _____.

[or] I do not know where Defendant lives but Defendant may be found at:

3. Defendant is not now and never has been a household member of mine. I am not married to Defendant, have never been married to Defendant, have no children with Defendant, and am not a parent or child or grandparent or grandchild of Defendant.

4. The injury, loss, or damage Defendant caused to me occurred on _____, 201____, in _____ County, State of _____.
The Defendant caused me injury, loss, or damage as described below. (If more space is needed, please add pages but do not write on back of pages.)

5. I am asking that a Temporary Restraining Order be entered without telling Defendant I am asking for one because:

_____ I am afraid that the Defendant will cause me immediate further injury, loss, or damage if the court does not act to stop him/her. [Or state other reason below]

6. I have no adequate remedy at law for the harm threatened by the Defendant, and if the Court does not act to stop the Defendant, I will suffer irreparable harm.

7. I should not be required to provide a bond or other security because:

- the Defendant will not be damaged financially if the Temporary Restraining Order is issued OR
- _____.

8. IN ACCORDANCE WITH RULE 1-066 NMRA, I ASK THE COURT TO:

a. Immediately issue a Temporary Restraining Order to stop the conduct described in Paragraph 3 of this Complaint and Application for Temporary Restraining Order.

b. Issue a Preliminary Injunction effective until a final decision is made on the merits.

c. Issue a Permanent Injunction effective until further notice from the court.

d. Waive the furnishing of security.

e. Order the Defendant not to threaten, harm, harass, or annoy me or my family or household members.

f. Order the Defendant to stay at least _____ feet away from me, my residence, my workplace, and my children's school.

g. Order the Defendant not to telephone me, text me, email me or contact me in any way, including contact with me or posting about me on Facebook or any other social media.

h. Order the Defendant not to block or follow me in public places or roads.

i. Order the Defendant to pay me back for the costs and expenses I incurred in bringing this case.

j. (optional) Order the Defendant to pay me the amount of \$ _____
for (check all that apply):

- medical expenses I incurred from injury the Defendant caused
- damage to property of mine caused by the Defendant
- replacement of property destroyed or taken by the Defendant
- other: _____

k. (optional) Return the following personal property taken by Defendant:

l. For any other relief that the Court thinks proper and appropriate.

RESPECTFULLY SUBMITTED:

Signature of Plaintiff

Print Name

Address

City/State/Zip

Telephone Number

Email (if you wish the Court to email pleadings to you.)

STATE OF NEW MEXICO) ss.
COUNTY OF _____)

I, the Plaintiff, being first duly sworn upon my oath, depose and state that I am the Plaintiff in the above-entitled cause. I have read the Application for Restraining Order. I state that the contents thereof are true and correct to the best of my information and belief.

Signature: _____

SUBSCRIBED AND SWORN TO before me this date: _____

My Commission Expires:

NOTARY PUBLIC

4-206. Summons.

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

SUMMONS	
District Court: _____ _____ County, New Mexico Court Address: Court Telephone No.:	Case Number: Judge:
Plaintiff(s): v. Defendant(s):	Defendant Name: Address:

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

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

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

KATHLEEN VIGIL
CLERK OF COURT

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

By: _____
Deputy

trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

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

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

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

**STATE OF NEW MEXICO
COUNTY OF _____
FIRST JUDICIAL DISTRICT COURT**

Plaintiff,

vs.

Case No.: D-_____-CV-_____

Defendant.

TEMPORARY RESTRAINING ORDER

THIS MATTER came before the Court on Application and the Court, being fully advised, FINDS:

1. Immediate and irreparable injury will result to the Plaintiff if a restraining order is not issued immediately as requested by Plaintiff.
2. No notice need be given to Defendant as required by the Rules of Civil Procedure.
3. There are good grounds to show a preliminary injunction may be needed in this case.
4. This order shall be effective for a period of ten days unless extended or modified.
5. No bond is necessary.

IT IS THEREFORE ORDERED that:

____ Defendant not threaten, harm, alarm or annoy Plaintiff.

____ Defendant not threaten, harm, alarm or annoy Plaintiff or Plaintiff's family and household as named here: _____

____ Defendant stay at least _____ yards away from Plaintiff and from Plaintiff's residence, workplace and children's school.

____ Defendant not telephone Plaintiff or contact Plaintiff in any way, either directly or through others;

____ Defendant not block Plaintiff in public places or roads;

____ Further, Defendant is ordered not to do the following:

_____.

IT IS FURTHER ORDERED that Defendant appear and show cause before the Court why the Temporary Restraining Order should not be extended or a preliminary injunction issued as Plaintiff requests by appearing before the Court in the **Judge Steve Herrera Judicial Complex, 225 Montezuma Ave., Santa Fe, New Mexico** as follows:

Date: _____

Time: _____

In the Courtroom of the Honorable Judge _____.

District Judge

Date Issued: _____

Time Issued: _____

**STATE OF NEW MEXICO
COUNTY OF _____
FIRST JUDICIAL DISTRICT COURT**

Plaintiff,

vs.

Case No.: D-_____-CV-_____

Defendant.

PRELIMINARY INJUNCTION

THIS MATTER having come before the Court on its Temporary Restraining Order, and the Court having considered the pleadings and having heard the testimony and being otherwise advised, FINDS:

1. This court has jurisdiction over the parties and subject matter of this action.
2. Irreparable injury will result to the Plaintiff if a preliminary injunction and restraining order is not issued.
3. Plaintiff has no adequate remedy at law.
4. The burden on Defendant is reasonable under the circumstances.

WHEREFORE, IT IS ORDERED that the Temporary Restraining Order issued in this case be and is continued in full force and effect until a final decision on the merits, or until further notice of this court.

District Court Judge

Copies to Both Parties

STATE OF NEW MEXICO
COUNTY OF _____
FIRST JUDICIAL DISTRICT COURT

Plaintiff,

vs.

Case No.: D- _____ -CV- _____

Defendant.

PERMANENT INJUNCTION

THIS MATTER came before the Court for hearing and the Court, having considered the pleadings and heard the testimony and being otherwise advised, FINDS:

1. The court has jurisdiction over the parties and subject matter of this action.
2. Irreparable injury will result if a permanent injunction is not issued.
3. Plaintiff has no adequate remedy at law.
4. The burden on Defendant is reasonable under the circumstances.

IT IS THEREFORE ORDERED that:

_____ Defendant not harm or threaten to harm Plaintiff.

_____ Defendant not harm or threaten to harm Plaintiff or Plaintiff's family and household as named below: _____

_____ Defendant stay at least _____ yards away from Plaintiff.

_____ Not telephone Plaintiff or contact Plaintiff any way.

_____ Not block Plaintiff in public places or roads.

_____ Further, Defendant is ordered not do the following: _____

IT IS SO ORDERED.

District Judge

Date: _____

**STATE OF NEW MEXICO
COUNTY OF _____
FIRST JUDICIAL DISTRICT COURT**

Plaintiff,

vs.

Case No.: D-_____ -CV-_____

Defendant.

INFORMATION SHEET

(The information needed on this form is the Defendants information)

Name: _____ **A/K/A** _____

Date of Birth _____ **Height** _____ **Weight** _____

Hair Color _____ **Eye Color** _____ **Glasses? Yes** [] **No** []

Marks, Tattoos or Scars: _____

Languages Spoken: English [] **Spanish** [] **Other** [_____]

Mailing Address: _____

Work Location: _____

Telephone Number at Home _____ **Work** _____

Describe Vehicle: _____ **License No.** _____

Probable Location at this time: _____

Most Likely Time of Availability _____

Please draw a MAP of the home or workplace location in the space below, if needed:

Giving Legal Notice



YOU ... are called the **PLAINTIFF**

THEY ... are called the **DEFENDANT**

YOU ... must legally notify each defendant that you filed a complaint against them

YOU ... must file proof with the court that you did so.

The court **WILL NOT** do this for you.

To give legal notice, **YOU** must have a copy of all the paperwork you filed, and a copy of all the paperwork the court issued when you filed your complaint, delivered to each defendant.

1. LEGAL NOTICE BY PERSONAL SERVICE

If you **KNOW** where the defendant lives, works, lives, or can be found



THIS IS OKAY

A friend or family member (they must be over 18) delivers a copy of all the paperwork to the defendant.



THIS IS BETTER

A Sheriff's officer or a process server delivers a copy of all the paperwork to the defendant.

2. LEGAL NOTICE BY MAIL

If you have a good mailing address for the defendant



The postman delivers a copy of all the paperwork to the defendant. They must sign the green card. Restricting delivery to them helps.

3. LEGAL NOTICE BY PUBLICATION

If you **DON'T** know where the defendant works, lives, or can be found



You can publish a notice in the newspaper **BUT** you have to ask the court's permission first.

Your case will **NOT** move forward unless you legally notify each defendant that you filed a complaint against them. You may want to see a lawyer for advice.

This information sheet only highlights the 3 most common ways to serve the defendant. For details, read Rule 1-004 NMRA.