

Instructions for Divorce Forms

<u>Step 1</u> Starting your action Completing and filing the forms with the court	Complete the following forms that are in the packet: • Domestic Relations Information Sheet • Petition for Dissolution of Marriage • Summons Prepare your forms for filing: Make two (2) sets of copies of the Petition and Summons. Sort each document according to title (as listed above on step 1), placing the original on top of its copies and paper clip them together. For example: Place the original Petition on top of its stapled copies and then paper clip them together. NOTE: The Domestic Relations Clerk can make copies for a cost of \$.35 cents per page. Submit your originals, copies and filing fee of \$137.00 to the Domestic Relations Clerks Office, Room 240, Second Floor, between 8:00 a.m. to 5:00 p.m. located at the Second Judicial District Court, 400 Lomas, NW, Albuquerque, NM 87102. NOTE: Payment methods for filing fee include cash, money order, or cashier's check. Personal checks or credit cards are not accepted! When you file your documents, the clerk will randomly assign your case a judge and a case number. The originals will be stamped and copies endorsed. In addition you may be given a Temporary Domestic Order which is directed to both parties. The clerk will issue the Summons for preparation of Service of Process (notifying the other party of this legal process).
<u>STEP 2</u> Service on the respondent Read the Service of Process Information Sheet	Preparing for Service of Process: per NMRA 4A-100 (J)(1)(2) Domestic Relations Forms; <i>J. Serving the summons packet.</i> <i>(1) After a divorce petition and summons and TDO are filed with the court, copies of all papers must be served on the person named as the respondent in the divorce petition (this is known as service of process). Attach the divorce petition and temporary domestic order to a copy of the original summons to assemble a summons packet (see Service Information Sheet for additional information).</i> <i>(2) The summons packet may be served by hand-delivery to your spouse by a person who is over the age of eighteen (18) and is not a party to the divorce proceeding. The petitioner cannot be the person who serves the respondent. Have someone deliver the summons packet to the respondent as required by Paragraph F of Rule 1-004 NMRA. It is the sole responsibility of the petitioner to have the summons packet served on the respondent (your spouse) and to provide proof that the service was completed. The court is not responsible for serving documents on any party.</i>
<u>STEP 3</u>	The Respondent has 30 days to respond to the petition after service. Has Respondent filed a response? If yes, proceed with <u>STEP 4.</u> If no, proceed with to Step 5 (Default). If yes, proceed to <u>STEP 5</u>
<u>STEP 4</u> Finalizing your case	Following, you have several options. You can: A) Prior to the issuance of a final decree, you may request assistance on a temporary basis. You may file a motion for award of a temporary order for custody, timesharing, child support, or a temporary allocation of community resources, etc. To complete this step, see the temporary motions in this packet. or B) You may file a Motion for Referral to Mediation (Child Custody, Timesharing, or Visitation) <i>OR</i> a Motion for Referral to Mediation (Child Support or Other Financial Issues). This may be used when you believe that the other party is willing to reach an agreement with the assistance of a mediator. This may or may not involve fees that can be divided by the parties. To complete this step, see the temporary

	<i>motions in this packet.</i> or C) If both parties are in agreement to all the issues, and are willing to sign the <i>Marital Settlement Agreement</i> and the <i>Final Decree of Dissolution of Marriage</i>, submit the documents to the Domestic Relations Clerk's Office. In cases involving minor children, you must also submit a <i>Child Custody Plan</i>, <i>Child Support Obligation</i>, <i>Child Support Worksheet</i> and <i>Wage Withholding Order</i>. Prepare your forms for filing: Make two (2) sets of copies of the each form listed above. Sort each document according to title (as listed above on step 1), placing the original on top of its copies and paper-clip them together. For example: Place the original Marital Settlement Agreement on top of its stapled copies and then paper-clip them together. NOTE: The Domestic Relations Clerk can make copies for a cost of \$.35 cents per page. Submit your originals and copies to the Domestic Relations Clerks Office, Room 240, Second Floor, between 8:00 a.m. to 5:00 p.m. located at the Second Judicial District Court, 400 Lomas, NW, Albuquerque, NM 87102. Return to the Domestic Relations Clerks Office within seven (7) to ten (10) business days to pick up your Final Decree and all other documents. The Court may sign the Final Decree of Dissolution of Marriage without further notice, or it may order you and your spouse to appear for a hearing. If the Final Decree has been approved and signed by the judge, the clerk will file your originals and endorse your copies. Your endorsed copies are a record that your divorce is final. WARNING: ONCE THE COURT SIGNS AND FILES THE FINAL DECREE OF DISSOLUTION OF MARRIAGE, YOUR DIVORCE WILL BE FINAL, AND THE TERMS OF THE MARITAL SETTLEMENT AGREEMENT (AND THE CUSTODY PLAN AND CHILD SUPPORT OBLIGATION) WILL BE BINDING ON BOTH PARTIES! or D) If both parties do not agree, the only way to resolve the case is to ask the judge to decide for you. You must file a request for hearing/notice of hearing form and request a Hearing on the Merits. Submit addressed, stamped envelopes for each party along with your request for hearing. The hearing will be scheduled several months following your request. The Court will set one or more hearings to resolve remaining disagreements. You must complete your <i>Marital Settlement Agreement (Custody Plan, Child Support Obligation, and Child Support Worksheet</i> if there are children involved) and <i>Final Decree of Dissolution of Marriage</i>, and bring them with you to the hearing. To complete this step, complete the Request for Hearing/Notice of Hearing included within this packet. ***Note: When filing a motion, review the <i>Procedure for Filing a Motion and Request for Hearing</i>. To obtain proper forms and procedure please return to the Second Judicial District Court, Center for Self Help and Dispute Resolution.
<u>STEP 5</u> Default	Respondent failed to file a response with the court. You may file a: DEFAULT: Asking the court to grant all of what you have asked for in your petition because the opposing party failed to respond and it has been more than 30 days since he/she has been served. OR: MOTION: You may choose to file a Motion to address issues that may not be resolved by obtaining a default judgment. The Court will set one or more hearings to resolve remaining disagreements. You must complete your <i>Marital Settlement Agreement (Custody Plan, Child Support Obligation, and Child Support Worksheet</i> if there are children involved) and <i>Final Decree of Dissolution of Marriage</i> and bring them with you to the hearing. *** To complete this step, please return to the Second Judicial District Court, Center for Self Help and Dispute Resolution for proper forms and further instruction.

4A-100. Domestic relations forms; instructions and cautions regarding use of forms.

A. **Short title.** These forms, compiled as Forms 4A-100 through 4A-403 NMRA, shall be known as the Domestic Relations Forms and shall be cited by their New Mexico Rules Annotated set and form number, as in Form 4A-____ NMRA.

B. **Mandatory acceptance of forms by district court.** The New Mexico Supreme Court has approved these Domestic Relations Forms for use in domestic relations actions by self-represented litigants and attorneys appearing in the district courts. As provided by Rule 1-120 NMRA, these forms supersede conflicting local district court domestic relations forms and shall be accepted by the district courts.

C. **Responsibility of self-represented parties.** A self-represented person shall abide by the same rules of procedure and rules of evidence as lawyers. It is the responsibility of a self-represented person to determine what needs to be done and to take the necessary action. A self-represented person involved in a divorce proceeding may need the advice of an attorney or other appropriate professional during the process and is responsible for finding an attorney or other appropriate professional for advice or representation.

(1) All notices from the court will be mailed to you at the last address on file with the court. If you move, you must file a Notice of Change of Address so that you receive your mail from the court.

(2) Rule 1-005 NMRA requires that you provide a copy of anything you file in court to the other party on the same day you file it. This is what the Certificate of Service confirms.

D. **Definitions.** The following definitions apply to the terms used in the Domestic Relations Forms:

(1) “contested divorce proceeding” means a divorce proceeding in which the parties cannot reach an agreement on one or more decisions that must be made to finalize a divorce, including but not limited to the division of property, debts, spousal support, child custody, time sharing, visitation, or child support, and therefore are unable to file all of the required forms at the same time;

(2) “creditor” means a person, agency, bank, or business to whom a debt is owed;

(3) “custody plan” means Form 4A-302 NMRA, which sets forth the type of legal custody and includes a parenting plan, when required by law;

(4) “debt” means separate or community debt as defined in Section 40-3-9 NMSA 1978.

Debt is an amount of money owed to a creditor that may include, but is not limited to: loans (signature, car, school, payday), mortgages, credit card balances, balances owed on bills (utilities, phone, cell phone, cable television), and federal and state tax bills. The party whose name is on the debt may not be the only party responsible for payment of the debt;

(5) “default” means the process to get relief from the court in the form of an order when a party fails to respond or defend a case (either party is subject to a default judgment for failure to respond). See Rule 1-055 NMRA for more information;

(6) “dissolution of marriage” means a divorce;

(7) “divorce proceeding” means the judicial process used to get a divorce;

(8) “minor child” means a child who is under eighteen (18) years of age and who is the child of both parties to a divorce. For the purposes of support only, a child who is under the age of nineteen (19) and attending high school full time may be considered a minor child;

(9) “parenting plan” means a plan as defined by Section 40-4-9.1 NMSA 1978, setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement. For an example of a parenting plan, see Form 4A-302(II)(B) NMRA;

(10) “party” means a spouse named in a divorce proceeding;

(11) “petition for dissolution of marriage” means the document that requests a divorce;

(12) “petitioner” means the first party named on a petition for dissolution of marriage. This person is referred to as a “petitioner” solely for purposes of identifying the parties in the court system;

(13) “property” means the types of property the parties to a divorce may own, including community, separate, or quasi-community as defined in Section 40-3-8 NMSA 1978. Property includes, but is not limited to: homes, land, livestock, cars/vehicles, furniture, savings and checking accounts, retirement accounts, jewelry, inheritances, tools, and art. The name of the party on the title to the property may not be the sole owner of the property. Questions about whether property is separate or community should be referred to a private attorney or the court, as appropriate;

(14) “respondent” means the second party named on a petition in a domestic relations proceeding;

(15) “service” or “service of process” means having a person eighteen (18) years or older, who is not a party to the action, give papers to a named party in a case by personally handing the paperwork to the person, or having the papers delivered to a named party in a case by some other way as described in Rule 1-004 NMRA;

(16) “summons” means a notice to the respondent that a lawsuit has started. The summons notifies the respondent to respond to the divorce petition within the specified deadline.

The summons is a two-part form. On the first part, the summons has information about the court, names and addresses of the parties, the deadline for a response, and notice that a default may happen for failure to respond. The second part of the summons is the return. The summons is served on the respondent. Once the respondent is served, the return must be filled out by the person who did the service of process and signed by that person with a notarized signature. When the original summons, including the return, is completely filled out and signed, the petitioner is responsible for filing it with the district court. The summons form is Form 4-206 NMRA. Filing the completed summons and return lets the court know that the respondent has been served;

(17) “summons packet” means a copy of the summons (Form 4-206 NMRA), petition for dissolution of marriage (Form 4A-102 or 4A-103 NMRA), temporary domestic order (Form 4A-201 NMRA), and a blank copy of the Domestic Relations Information Sheet (Form 4A-101 NMRA). See Paragraph E below for more information. The summons packet is served on the respondent;

(18) “temporary domestic order” means an order issued by the court when a divorce proceeding is filed that instructs the parties on how to conduct themselves regarding interactions with each other, finances, children, and property until the divorce is final. The temporary domestic order is Form 4A-201 NMRA;

(19) “time sharing and order for support and care of children” means one or more orders of the court to include a parenting plan as defined in Paragraph L of Section 40-4-9.1 NMSA 1978 containing the duties of the parents of minor children relating to child custody, time sharing, visitation, and support, including support of a child under nineteen (19) years of age who is attending high school;

(20) “uncontested divorce proceeding” means a divorce proceeding in which the parties are in complete agreement as to all the decisions that must be made to finalize a divorce, including but not limited to decisions regarding the division of property, debts, spousal support, child custody, timesharing, visitation, and child support, and present the following required forms, completed and signed by both parties, for filing at the same time:

(a) *Without children.* If the parties do not have minor children, the following forms must be filed in an uncontested divorce proceeding:

- (i) Domestic relations information sheet, Form 4A-101 NMRA
- (ii) Petition for dissolution of marriage (without minor children), Form 4A-102 NMRA;
- (iii) Marital settlement agreement, Form 4A-301 NMRA; and
- (iv) Final decree of dissolution of marriage (without minor children), Form 4A-305 NMRA.

(b) *With children.* If the parties have minor children, the following forms must be filed in an uncontested divorce proceeding:

- (i) Domestic relations information sheet, Form 4A-101 NMRA;
- (ii) Petition for dissolution of marriage (with minor children), Form 4A-103 NMRA;
- (iii) Marital settlement agreement, Form 4A-301 NMRA;
- (iv) Custody plan and order, Form 4A-302 NMRA;
- (v) Child support obligation and order, Form 4A-303 NMRA, with attached child support worksheet as described in Section 40-4-11.1 NMSA 1978; and
- (vi) Final decree of dissolution of marriage (with minor children), Form 4A-306 NMRA; and

(21) “wage withholding order” means an order that requires child support to be withheld from the wages of the named parent.

E. STARTING THE DIVORCE PROCESS; CONTESTED. These are the first forms that must be filed with the court. When starting this process, each spouse must be named as a party on the forms. One spouse is the petitioner and the other is the respondent. The spouse starting the lawsuit is the named petitioner. The other spouse is the respondent. The claims or rights of either party are not determined on the basis of being named as the petitioner or respondent. See Paragraph F of this rule for instructions on completing forms and next steps after these forms are filled out. In a divorce proceeding, the case is started by filing the following completed forms with the court:

(1) **Domestic Relations Information Sheet.** Form 4A-101 NMRA shall be submitted to the court in all cases. This form is used to provide the court with essential information about the parties to the divorce proceeding, such as addresses, social security numbers, dates of birth, and the names and ages of the children of the parties. Although this form is required to be turned into the court, it is not a public record and is not part of the court file; and

(2) **Divorce Petition (Petition for Dissolution of Marriage).** Depending on whether there are minor children of both parties, one of the following two forms are used to request a divorce:

(a) Form 4A-102 NMRA is used if the parties do not have any minor children together; or

(b) Form 4A-103 NMRA is used if the parties have minor children together.

(3) **Summons.** The Summons Form is Form 4-206 NMRA. The petitioner must complete this form. When the petitioner completes the contact information, the court will fill in additional information to complete the summons and return the original summons to the petitioner. A copy of the summons shall be served on the respondent as part of the Summons Packet. See Paragraph J of this rule for serving the Summons Packet. It is the responsibility of the petitioner to file the original summons with a completed return with the court.

(4) **Temporary Domestic Order (TDO).** The TDO is Form 4A-201 NMRA. Each judicial district has different procedures about who provides the standard form and how a TDO is issued. Some courts provide the form when the lawsuit is filed and others require the party starting the lawsuit to complete the form. Check with the court where you are filing your lawsuit to find out if you need to bring a TDO form with you. The contents of the TDO form shall not be changed by any person. The form requires only the completion of the court caption on the first page. If the court where you are filing your lawsuit does not issue its own TDO, bring additional copies of the TDO with you when filing your lawsuit.

F. **Completion of forms.** When filling out any forms, please do the following:

(1) **Type or print.** You must type or print all of the information required to be completed on forms filed with the court. If there is not enough room on the form to provide all of the information required, add a separate page for the information and include the page with the rest of the form before making copies and filing the form with the court. Your handwriting should be clear and easy to read.

(2) **Signing the forms and other papers.** Your signature on a form or other paper filed with the court means the following:

(a) you have read and understand the form or paperwork;

(b) the information provided by you on the form is factually correct to the best of your knowledge; and

(c) the information in the paperwork is accurate and true. Some forms may need to be signed in front of a notary public and notarized.

G. **Required number of copies to file with the court.** After completing and signing any required forms, take the original and two copies of each form to the court clerk for filing. The clerk will file the originals and return stamped copies to you. One copy is for you, and you must provide the other copy to the other party.

H. **Pay the filing fee.** A filing fee must be paid to the court clerk in cash or money order at the time the divorce case is opened. A divorce case is opened by filing a domestic relations information sheet, divorce petition, and summons. If you cannot afford to pay the filing fee, you may ask the court to allow you to file for free or a reduced rate by filing an application for free process. The application for free process is Form 4-222 NMRA.

I. **Filing the first forms with the court.** After completing the Summons Packet, take the original and two (2) copies of each completed form to file in the district court. The court clerk will sign and stamp the original summons and give the original and two (2) copies of it back to you with a copy of your filed divorce petition so that a copy of the summons can be served on the respondent. The clerk may also give you two (2) copies of the TDO or will endorse (stamp) copies of a TDO provided by you. One copy of the temporary domestic order must be served on your spouse as part of the summons packet.

J. **Serving the summons packet.**

(1) After a divorce petition and summons and TDO are filed with the court, copies of all papers must be served on the respondent. This is known as service of process.

(2) The summons packet and any other documents the clerk instructs you to serve may be served on the respondent by hand-delivery by a person who is over the age of eighteen (18) and is not a party to the divorce proceeding. The petitioner cannot be the person who serves the respondent. Have someone deliver the summons packet to the respondent as required by Rule 1-004(F) NMRA. It is the sole responsibility of the petitioner

to have the summons packet served on the respondent and to provide proof that the service was completed. The court is not responsible for serving documents on any party.

(a) If you and respondent are not living together and you know the respondent's current mailing address, the summons packet may also be served by certified mail, return receipt requested. If served by certified mail, the respondent must sign a receipt indicating that he or she received the summons packet for service to be completed. The return receipt from the certified mailing must be filed with the district court.

(b) There are other ways of serving the summons packet on the respondent. Read Rule 1-004 NMRA to learn more about those methods.

(c) Service of process may be done by a private process server, law enforcement, or any other person who is over eighteen (18) and not a party to the lawsuit. You may have to pay a fee to someone to do the service of process for you. Check with your local law enforcement or look in the phone book for resources for service of process.

(3) If you cannot find the respondent after reasonable attempts to find him or her to serve the summons packet, you may file a motion with the court asking permission to serve the summons packet by publication in a newspaper. If you need to serve the summons packet by publication in a newspaper, use Forms 4-209 and 4-209A NMRA.

(4) After successful service on the respondent, the petitioner is responsible for making sure that the original summons with the completed return is filed with the court to prove that the respondent was served.

K. **Responding to the petition.** In a contested divorce proceeding, the respondent must file a written response to the divorce petition. Form 4A-104 NMRA may be used to respond to the divorce petition. The response must be filed with the court and a copy mailed to the petitioner within thirty (30) days after the summons packet was served on the respondent. Failure to file a response to the divorce petition within the thirty (30) days can result in serious consequences, including entry of a default judgment against the respondent.

L. **Issues not addressed by the forms.** The Domestic Relations Forms may not address all domestic relations issues relevant to you. The forms address only the most common divorce issues. If there are issues that are not addressed in the forms, you are responsible for bringing those issues to the attention of the court or you should seek the assistance of an attorney. You may need to get other forms that are not provided in these rules to finish the transfer of property, businesses, etc. For example, the forms **do not** include the following:

(1) federal and state tax treatment of income, expenses, and deductions both before and after a divorce, or as a result of a child support order, for claiming children as dependents, or for paying or receiving alimony;

(2) how to transfer title to property or assets;

(3) how to divide a business or retirement income;

(4) how to divide or transfer other complicated assets; or

(5) how to divide or transfer debts.

M. **Keeping Records.** Any party to an action should make copies of all documents, paperwork, or forms filed with the court for his or her own records.

N. **Paying Creditors.** These forms, including the final decree of dissolution of marriage, do not change the legal responsibility of the parties to pay their creditors.

O. **Role of judge, clerk, and court.** Court clerks can only help you with filing forms with the court; they cannot help you complete them. The judge makes decisions in your case, but neither the judge nor the judge's staff can give advice to either party, including how to fill out the forms. If you need assistance or have questions about how to complete the forms, you may seek help from an attorney. The court clerks may give you information about resources for legal assistance. See Rule 23-113 NMRA, which provides more guidance on what information and assistance court staff may give to self-represented litigants. You may also want to use your local library to get information about the forms or legal citations in these rules, which may include internet searches of New Mexico court websites (www.nmcourts.gov) and the New Mexico compilation commission (www.nmcompcomm.us).

[Approved by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No.14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases filed or pending on or after December 31, 2014.]

4A-200. Domestic relations forms; instructions for stage two (2) forms.

A. **Temporary orders.** After your petition for dissolution of marriage has been filed but before the court issues a final decree, you may request assistance on a temporary basis using Form 4A-202 NMRA. The court may provide such assistance by issuing one of the following temporary orders:

(1) **Temporary domestic order.** See Subparagraphs (D)(18) and (E)(4) of Form 4A-100 NMRA for an explanation of when to request a temporary domestic order from the court. For the temporary domestic order, see Form 4A-201 NMRA;

(2) **Temporary division of property.** You may request this relief when you need assistance from the court with access to property such as a home (e.g., a house, apartment) or a vehicle;

(3) **Temporary division of income and debts.** You may request this relief when you cannot agree about how bills will be paid, or you are having trouble paying the bills with only your income. This relief will include child support if you and your spouse have minor children together;

(4) **Temporary custody of minor children.** You may request this relief when you cannot agree on important decisions about the children, including decisions about medical treatment and where the children will go to school. For more information about child custody, see Section 40-4-9.1 NMSA 1978;

(5) **Temporary order establishing timesharing or visitation schedule.** You may request this relief when you cannot agree on a schedule of how much time each parent will spend with the child and when the child will be with each parent;

(6) **Temporary child support and request for wage withholding.** If you have not already requested a temporary division of property and debts as provided in Paragraph (A)(3) of this rule, you may request this relief when you cannot agree on the amount of money that one party should pay the other party to help support the children. If the court grants a temporary child support order, the child support payment may be taken from the paying party's paycheck pursuant to a wage withholding order. For more information about a wage withholding order, see Form 4A-300(D)(2)(b) NMRA. For the wage withholding order, see Form 4A-304 NMRA; and

(7) **Temporary allocation of community resources to permit both parties to hire an attorney.** You may request this relief when you need money to hire an attorney and there is money or credit available from either or both of the parties.

B. **Motion to modify temporary order.** You may file this motion (Form 4A-203 NMRA) if you have a temporary order and you want to change it. In your motion, you must state specific reasons why the temporary order should be changed.

C. **Motion for referral to mediation (child custody, timesharing, or visitation).** You may file this motion (Form 4A-204 NMRA) when you believe that there is a reasonable likelihood that you will be able to reach an agreement about child custody or visitation with the assistance of a mediator. Requesting a referral for mediation on child custody does not require the issue of child support to be resolved at the same time. To mediate child support, the parties must have exchanged all documentation required by Rule 1-123 NMRA, as provided by Paragraph D of this rule.

D. **Motion for referral to mediation (child support or other financial issues).** You may file this motion (Form 4A-205 NMRA) only if each of the following circumstances has been met:

(1) the parties have exchanged all documentation required by Rule 1-123 NMRA (see the appendix to this Rule for more information);

(2) you believe that there is a reasonable likelihood that you can reach a final agreement on some or all of the matters in your divorce other than child custody or visitation, such as child support, division of income and debt, or division of a retirement account. See Form 4A-202 NMRA (Motion for temporary order) for other matters that may be mediated; and

(3) the judicial district that you are filing in has a mediation program for this purpose, or the parties have funds available to pay for a private mediator.

E. **General instructions for filing motions.**

(1) Either party may file a motion seeking help from the court. When you file a motion, it must be filed with the Court Clerk's Office. You must fill out and bring a Request for Hearing (Form 4A-206 NMRA) to the court to be filed at the same time as your motion. You may be required to bring an original,

completed Notice of Hearing (Form 4A-207 NMRA) with self-addressed stamped envelopes for both parties. The court will send each party a Notice of Hearing that will include your assigned hearing date and time in the self-addressed stamped envelopes you provided. **WARNING:** Generally, this rule must be followed when filing a motion; however, many courts have special rules when the parties need a hearing. You should inquire at the Court Clerk's Office to determine if special rules apply when you request a hearing.

(2) If the motion relates to money (see Subparagraphs (1), (2), (3), (6) and (7) of Paragraph A, above), you must take the steps required by Rule 1-123 NMRA and file a Notice of Compliance with Rule 1-123 NMRA (Form 4A-208 NMRA), with the Court Clerk's Office. For further information on Rule 1-123 NMRA, please refer to the appendix to this rule.

(3) There may be other motions that you want to file. You should follow these general instructions with all motions. Any response to a motion should be served on the other party as set forth in Form 4A-100(J) NMRA.

(4) **WARNING:** All forms include a verification of service which tells the court that you gave a copy of your motion to the other party. Your motion cannot be heard by the court unless you have properly served a copy on the other party.

F. **Special instructions; verified motion for order to show cause.** You may file a verified motion for order to show cause (Form 4A-209 NMRA) when you want to ask the court for help because you believe the other party is not following a court order. You should be very specific when completing the motion; tell the court what the court order says and what the other person is doing or not doing that is violating the order. State only serious violations and be as complete as possible. Attach a copy of the order you believe the other person is not following. Together with the Verified Motion for an Order To Show Cause, you must submit a proposed Order To Appear and Show Cause (Form 4A-210 NMRA) at the same time.

Take the original signed motion and at least two copies to the court for filing. If the case has been closed, a filing fee may be required to reopen, unless the order being violated is an order for child support. The clerk will file the original motion and give you at least one endorsed copy back for your records. You will also submit the Order To Appear and Show Cause to the clerk after the Verified Motion for Order To Show Cause is filed.

If the court grants the motion, you will receive a copy of an Order To Appear and Show Cause. Alternatively, you may receive a notice of hearing on the Verified Motion for Order To Show Cause. The order or notice will contain the date, time, and place of your hearing. You should ask the clerk when you file your motion if the papers will be mailed to you or if you will need to pick them up from the court.

WARNING: The Verified Motion for Order To Show Cause and the Order To Appear and Show Cause must be personally served on the other party at least five (5) days prior to the hearing. Refer to Form 4A-100(J) NMRA for instructions about service of process. After the motion and order to show cause are served on the other party, the person who served these documents must fill out an affidavit of service. You must file the original affidavit of service with the court. Keep at least one copy of the original affidavit of service.

You must appear at any hearing that you request. Be prepared to show the court how the other party is not following the court order by bringing all evidence with you, such as papers, pictures, or witnesses.

G. **Hearings.** You will receive a notice of hearing from the court mailed to you in the self-addressed stamped envelope that you or your spouse provided to the court when filing the motion. See the appendix to this rule for instructions about how to prepare for the hearing. If someone you need to be your witness does not want to go to the hearing, you will need to request a subpoena from the court before the hearing. If a subpoena is issued by the court, the person will be ordered to appear at the court at the date, time, and place of your hearing. You are responsible for getting the subpoena served on the witness and for filing the return of service with the Clerk of the Court. For further information about subpoenas, see Rule 1-045 NMRA.

H. **Hearing officers.** From time to time, the judge may appoint a hearing officer to preside over your hearing. The hearing officer is required to prepare a Hearing Officer Report within thirty (30) days after your hearing, which contains findings of fact and recommendations to the judge on how the court should rule. The court will mail each party a copy of the Hearing Officer Report and a Notice of Filing. If you do not agree with the hearing officer's recommendations, you must complete and file written objections within ten (10) days after service of the recommendations using Form 4A-211 NMRA. You must send a copy of the written objections to the other party. If no written objections are received by the district court, then the recommendations of the hearing officer

may be adopted by the court without further notice to you. If the court receives written objections to the recommendations, the court will decide whether to set a hearing or to enter its own order. The court will notify you of the action it has taken. For further information about hearing officers in domestic relations actions, *see* Rule 1-053.2 NMRA.

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4A-300. Domestic relations forms; instructions for stage three (3) forms.

A. **Stage three (3) forms; scope.** The stage three (3) forms are the last forms that you must complete to dissolve your marriage (i.e., get a “divorce”). Once approved by the Court, the agreements and promises that you have made in these forms will settle financial matters between you and the other party, and will control your rights as a parent. When both parties sign the Marital Settlement Agreement (Form 4A-301 NMRA), the Custody Plan and Order (Form 4A-302 NMRA), and the Child Support Obligation and Order (Form 4A-303 NMRA), they may be enforced by either party as contracts. When the Court signs a Final Decree of Dissolution of Marriage (Form 4A-305 or 4A-306 NMRA), you will be divorced, and the Marital Settlement Agreement, the Custody Plan and Order, and the Child Support Obligation and Order will become legally binding on both of you. Any important changes to these agreements should be in writing and signed by both parties. These changes should be filed with the Court. You should be careful when filling out these forms, and be as complete as possible. It is highly recommended that you consult with an attorney.

B. **Marital Settlement Agreement.** A Marital Settlement Agreement (“MSA”) must be completed, signed by both parties, and filed with the Court in every dissolution of marriage case. (Use Form 4A-301 NMRA.) Although the MSA is called an “Agreement,” if the parties do not agree on its terms, the Court may use the terms of either party’s proposed MSA in its final order after a hearing. The MSA describes how you and the other party will divide your property and debts, and how you will settle any other financial matters, including whether one party will pay spousal support or make a cash payment to the other. When the parties sign the MSA or the Court signs and files a Final Decree of Dissolution of Marriage, the MSA is legally binding on both parties. See Paragraph A, above.

If you and the other party cannot agree on some or all of the terms of the MSA, you may request the assistance of a mediator, if available, by completing and filing a Motion for Referral to Mediation (child support or other financial issues) (Form 4A-205 NMRA) with the Court. If you do not believe a mediator will be helpful, you may complete and file a Request for Hearing (Form 4A-206 NMRA), and the Court will make a decision for you. For more information about how to request a hearing, see Subparagraph (1) of Paragraph E of Form 4A-200 NMRA.

The MSA includes the following sections:

(1) **Property we are dividing.** This is where you describe how you will divide your property, including personal property, real property, bank and investment accounts, retirement plans, vehicles, and any other property. Examples of each type of property are included on the form. Complete the Personal Property List (Attachment A) to identify any personal property you own that is valuable to you and to show how you will divide it. If you have real property other than the home you lived in while you were married, complete the Real Property List (Attachment B) to identify the property and to show how you will divide it;

(2) **Debts we are dividing.** This is where you describe how you will divide your debts (e.g., credit cards, loans, etc.), cancel joint credit cards, file your taxes, and handle any issues that may come up with tax returns that were filed while you were married. Complete the Debt List (Attachment C) to identify each of your debts and to show how you will divide them;

(3) **Cash payment.** This is where you show any dollar amount that you have agreed one party should pay the other to settle the division of your property and debts. This amount will be included in the Final Decree of Dissolution of Marriage as a judgment in favor of the party who is to receive the cash payment. This judgment may be enforced as provided by law;

(4) **Spousal support.** This is where you show any dollar amount that you have agreed one party should pay the other as monthly spousal support. If the Court approves this section, the amount and timing of spousal support can be modified only by a court order. For more information on spousal support, see Section 40-4-7 NMSA 1978;

(5) **Other statements by parties.** This is where you promise to do what is necessary to carry out your agreements in the MSA and how you will resolve any arguments you may have about the MSA in the future; and

(6) **Verification.** This is where you affirm the truth of the statements in the MSA and sign it under penalty of perjury.

C. **Custody plan and order.** A Custody Plan and Order must be completed and filed with the Court in every dissolution of marriage case when the parties are the parents of one or more children under eighteen (18) years of age or under the age of nineteen (19) and attending high school. (Use Form 4A-302 NMRA.) This document describes decisions that have been made, and how decisions will be made in the future, about the children.

When the Court signs and files a Final Decree of Dissolution of Marriage, the Custody Plan and Order is legally binding on both parties. See Paragraph A, above.

If you and the other party cannot agree on the terms of a Custody Plan and Order, you may request the assistance of a mediator by completing and filing a Motion for Referral to Mediation (child custody, timesharing, or visitation) (Form 4A-204 NMRA) with the Court. If you do not believe that a mediator will be helpful, you may complete and file a Request for Hearing (Form 4A-206 NMRA), and the Court will make a decision for you. For more information about how to request a hearing, see Form 4A-200(E)(1) NMRA. Some courts will not set a hearing on custody matters until the parties have tried mediation but failed to reach an agreement. Check with the Court before you request a hearing to find out if mediation is required.

The Custody Plan and Order includes the following sections:

(1) **Identification and contact information.** This is where you list the names and contact information of the parties and the children who are covered by the form;

(2) **Custody of the children.** This is where you describe the agreement you have reached about how you will make decisions and who will have custody of your children. If you choose sole legal custody, you must provide the specific reason why sole legal custody is in the best interests of the children. Also describe how often, when, and where the non-custodial parent will be allowed to visit the children, if at all. If you choose joint legal custody, you must complete the parenting plan in Subparagraphs one (1) through five (5) of Paragraph B to describe how you will share the custody of your children; and

(3) **Verification.** This is where you affirm the truth of the statements in the Custody Plan and Order and sign it under penalty of perjury.

D. **Child support obligation and Order.** A Child Support Obligation and Order must be completed and filed with the Court in every dissolution of marriage case when the parties are the parents of one or more children under eighteen (18) years of age or under the age of nineteen (19) and attending high school. (Use Form 4A-303 NMRA.) This document describes how you will divide the expenses of raising the children, including child support and health insurance, and tax issues relating to the children. When the Court signs and files a Final Decree of Dissolution of Marriage, the Child Support Obligation and Order will become legally binding on both parties. See Paragraph A, above.

If you and the other party cannot agree on the terms of the Child Support Obligation and Order, you may request the assistance of a mediator by completing and filing a Motion for Referral to Mediation (child support or other financial issues) (Form 4A-205 NMRA) with the Court. If you do not believe that a mediator will be helpful, you may complete and file a Request for Hearing (Form 4A-206 NMRA), and the Court will make a decision for you. For more information about how to request a hearing, see Form 4A-200(E)(1) NMRA.

The Child Support Obligation and Order includes the following sections:

(1) **Identification and contact information.** This is where you list the names and contact information of the parties and the children who are covered by the form;

(2) **Child support.** This is where you describe how you will share the expenses of raising your children. This portion of the form refers to these additional documents:

(a) **Child support worksheet.** To complete Paragraph A of this section, you must complete and attach a child support worksheet to your Child Support Obligation and Order. The worksheet will help you figure out the amount of child support required by law. The worksheet is available at Section 40-4-11.1 NMSA 1978, or you can find an interactive version at www.nmcourts.com by clicking on the “Family Law Forms” link and selecting “Child Support Worksheet.” The interactive worksheet will automatically calculate the monthly child support obligation. The amount shown on the child support worksheet will be awarded by the Court. If the parties need to deviate from the amount shown on the child support worksheet, they must request a different amount, explain why that amount is necessary, and the deviation must be approved by the Court; and

(b) **Wage withholding order.** Under Paragraph D of this section, you must tell the Court how you will begin wage withholding for child support. Payment of child support by wage withholding is mandatory unless otherwise agreed by the parties or ordered by the Court. Wage withholding will not take effect until the parties complete a Wage Withholding Order (Form 4A-304 NMRA) and submit it to the Court for filing, or until the Court signs and files the Child Support Obligation and Order and the parties open a case with the New Mexico Human Services Department, Child Support Enforcement Division (“CSED”). CSED can issue a notice of wage withholding for the parties on full service cases. You may request the Court to order wage withholding by attaching a completed Wage Withholding Order to the Child Support Obligation and Order; and

(3) **Verification.** This is where you affirm the truth of the statements in the Child Support

Obligation and Order and sign it under penalty of perjury.

E. **Final decree of dissolution of marriage.** When the Court signs and files a Final Decree of Dissolution of Marriage, you and the other party will be divorced. You may request a Final Decree of Dissolution of Marriage as follows:

(1) **Uncontested.** If you and the other party agree on the terms of your MSA (and Custody Plan and Order and Child Support Obligation and Order, if you have children), you may request a Final Decree of Dissolution of Marriage by doing the following:

(a) filing your completed MSA (and completed Custody Plan and Order and Child Support Obligation and Order, if you have children) with the Court Clerk's Office; and

(b) submitting a completed Final Decree of Dissolution of Marriage (Form 4A-305 (without children) or 4A-306 (with children) NMRA) to the judge for approval.

The Court may sign the Final Decree of Dissolution of Marriage without further notice, or it may order you and the other party to appear for a hearing. **WARNING:** Once the Court signs and files the Final Decree of Dissolution of Marriage, your divorce will be final, and the terms of the MSA (and the Custody Plan and Order and Child Support Obligation and Order) will be binding as a court order on both parties. See Paragraph A, above;

(2) **Contested.** If you and the other party do not agree on the terms of your MSA (and Custody Plan and Order and Child Support Obligation and Order, if you have children) and you cannot submit completed forms to the Court, you should request a trial in your case by submitting a Request for Hearing (Form 4A-206 NMRA). For more information about how to request a hearing, see Form 4A-200(E)(1) NMRA.

The Court will set one or more hearings to resolve the remaining disagreements over the terms of the MSA (and the Custody Plan and Order and Child Support Obligation and Order, if you have children). *You must complete your own proposed MSA (and Custody Plan and Order and Child Support Obligation and Order if you have children) and Final Decree of Dissolution of Marriage (Form 4A-305 (without children) or Form 4A-306 (with children) NMRA) and bring them with you to the hearing.* Once the Court has decided the terms of the MSA (and the Custody Plan and Order and Child Support Obligation and Order if you have children), it will sign and file a Final Decree of Dissolution of Marriage, and you will be divorced from the other party; or

(3) **Default.** If more than thirty (30) days have passed since you filed and served the Petition for Dissolution of Marriage and the other party has not filed an answer or otherwise responded to your petition, you may be able to request a Final Decree of Dissolution of Marriage without the other party's participation. This is called a default judgment. See Form 4A-310 NMRA for instructions on how to request a default judgment and Final Decree of Dissolution of Marriage.

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