

PROCEDURE FOR APPLYING FOR FREE PROCESS
(Waiver of Filing Fee for CIVIL Cases)

This packet contains the forms you need to complete if you are unable to pay fees payable to the court or the cost of service of process and you are seeking that the court waive such fees. This packet and the forms are provided to assist you in the application process, but are not a guarantee that the court will grant your request. Those decisions are made by the Judge assigned to your case on a case-by-case basis in light of the unique facts and circumstances involved.

This packet contains:

1. These instructions. Completely read these instructions.
2. Rule 23-114 NMRA, “Free process in civil cases.” Thoroughly read the rule concerning eligibility and the filing procedure for free process.
3. Form 4-222 NMRA, “Application for free process and affidavit of indigency.” You must complete and submit this form.
4. Affirmation form. This is a form you can attach to your application and is only needed if you cannot access a notary to notarize your signature on the application.
5. Form 4-223 NMRA, “Order on application for free process.” You must complete part of this form and submit it when you submit the application.

Please read the provided copy of Rule 23-114, “Free process in civil cases.” The Rule explains eligibility for free process and the procedure to follow when seeking free process. Please also make sure to thoroughly complete the forms.

1. Complete the application for free process and affidavit of indigency. Form 4-222. Complete the case caption which is located on the upper third of the first page of the application.

A. Caption. Type or print legibly the caption in the following format:

(Your Name) _____,
Plaintiff,
v.
(The person you are suing),
Defendant.

B. Fill in all blanks completely and accurately throughout this form.

C. **Notarized signature options.** In the presence of a notary sign your name on the signature block on the last page. Notary service is available in the Clerk's Office, Room 119 of the District courthouse, but you can also go to any available notary public of your choosing. You must have picture identification with you.

*****As a COVID-19 safety measure, notarization of this document is temporarily suspended such that you have options available to you if you cannot access a notary or the court clerk. See #2 below, “Complete the affirmation form, if necessary.”**

2. Complete the affirmation form, if necessary. Please note, you must still sign the application and have the option to satisfy the notary requirement if you sign your application in the presence of the court clerk with proper photo identification. However, if you are unable to present yourself to the court clerk or access a notary for your signature on the application, then you may complete the affirmation form and attach it to your application. **Complete the affirmation form, enter the date, sign and print your name and other information in the blanks provided. Attach the affirmation form to the back of your application for free process and affidavit of indigency. Your complete address and phone number are required. If you do not have a telephone, you may indicate "NONE."**
3. Complete part of the Order on application for free process. Form 4-223.
 - A. Caption Only. Type or print legibly the caption as you did on the Application.
 - B. DO NOT WRITE ANYTHING ELSE. The Judge will fill in the rest of the Order.
4. IF YOU ARE REPRESENTED BY AN ATTORNEY IN THIS CASE
Have your attorney fill out ATTORNEY'S AFFIDAVIT SUPPORTING INDIGENCY. If you are not represented by an attorney DO NOT submit this form.
5. SUBMIT COMPLETED FORMS TO THE CIVIL COURT CLERK: Attach these completed forms to the case opening pleading you wish to file (for example your Complaint, Application, Petition, etc.), then take them to the Second Judicial District Court Civil Clerk's office. You may ask when you might check back to see if the Judge has reviewed your Application. The Clerk will inform you whether to wait for the Judge to rule on the application or whether you should instead expect the Clerk's office to contact you when the Judge has ruled on the application. Please note, it may take two (2) business days or more for the Judge to rule on the application. The Judge may also ask for additional information.
6. If your Free Process Application has been approved, you may file it with your case opening pleading (Complaint, Application, Petition, etc.) in the Civil Clerk's Office on the First Floor, Room 119 between the hours of 8:00 A.M. and 4:00 P.M., Monday - Friday. Be sure to carefully read your Free Process Order. NOTE: Free Process does not mean that your entire case is free. Even if the Judge waives your filing fee, you might still be responsible to pay for service of process and other court fees. Although Free Process might include service fees by a sheriff within Bernalillo County, YOU are responsible for arranging for service. Other costs normally not covered by Free Process are listed at the bottom of the Order.
7. If the Judge did not grant Free Process, you must pay the filing fee of \$132.00. Acceptable forms of payment include cash, cashier's check, money order and credit/debit card. Credit and Debit card payments are subject to a 2.4% service fee (\$135.17 approximately). Personal checks are not accepted.

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

_____,
Plaintiff

v.

No. _____

_____,
Defendant

APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY

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

My marital status is: Single _____ Married _____ Divorced _____ Separated _____ Widowed _____

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

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

A. PUBLIC ASSISTANCE

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

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

_____ Temporary Assistance for Needy Families (TANF)

_____ Food Stamps

_____ Medicaid

_____ General Assistance (GA)

_____ Supplemental Security Income (SSI)

_____ Social Security Disability Income (SSDI)

_____ Public Housing

_____ Disability Security Income (DSI)

_____ Department of Health Case Management Services (DHMS)

_____ Other (please describe _____)

B. EMPLOYMENT/UNEMPLOYMENT

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

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

_____ I have no income because I am unemployed.

_____ I am employed. I am paid \$ _____ per hour and work _____ hours per week.
My employer's name, address and phone number is:

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

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

_____ I am married, and my spouse is employed. My spouse is paid \$ _____ per hour and works _____ hours
a week.

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

C. OTHER SOURCES OF INCOME (Check all that apply)

_____ I have income from another source not mentioned above.

_____ Child Support \$ _____
_____ Alimony \$ _____
_____ Investments \$ _____
_____ Community property from my spouse \$ _____
_____ Other _____ \$ _____

_____ I do not have any other sources of income.

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

_____ Child Support \$ _____
_____ Alimony \$ _____
_____ Investments \$ _____
_____ Other _____ \$ _____
_____ Other _____ \$ _____

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

_____ Another adult contributes to household income in the following amount: \$ _____.

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

Cash on hand \$ _____
Bank accounts \$ _____
Stocks/bonds \$ _____
Income tax refund \$ _____
Other assets (describe below):

_____ \$ _____
_____ \$ _____

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

E. MONTHLY EXPENSES

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

F. HOUSEHOLD

I live at _____,

and the head of the household is _____,

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

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

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

(Signature)

(Print Name)

_____ *Plaintiff* _____ *Defendant*

_____ *(Pro Se)* _____ *Pro Se*

(Street Address)

(City, State, Zip Code)

(Telephone)

State of _____)
) ss

County of _____)

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

 Notary

My Commission expires: _____

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

I, _____, hereby certify that I have not received any attorney fee to

(Name of attorney)

represent _____ . If any attorney fee is paid to me, I understand

(Name of applicant)

that I shall pay to the court clerk from such attorney fee any court fees and costs that may be waived by the court.

(Attorney signature)

(Address)

(City, State, Zip Code)

(Telephone/Fax Number)

**AFFIRMATION IN SUPPORT OF
APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY**

I, _____, (*print Petitioner name*), declare under penalty of perjury under the laws of the State of New Mexico that the statements made in my Application for Free Process and Affidavit of Indigency are true and correct.

Date: _____

Petitioner signature

Petitioner printed Name

Check applicable:

_____ *Plaintiff* _____ *Defendant*

Petitioner street address

_____ *City* _____ *State* _____ *Zip Code*

Petitioner telephone number

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

Plaintiff

v.

No. _____

Defendant

ORDER ON APPLICATION FOR FREE PROCESS

THIS MATTER having come before the court on Plaintiff's application for free process and affidavit of indigency, or on Plaintiff's attorney's certificate supporting indigency and free process under Rule 23-114(B)(2) NMRA, and the court being otherwise advised in the premises,

FINDS that:

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

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

the applicant's annual gross income does not exceed _____ of the federal poverty guidelines, and the applicant is, therefore, entitled to free process.

the applicant's annual gross income exceeds _____ of the federal poverty guidelines, but the applicant is not reasonably able to pay fees or costs and is, therefore, entitled to free process.

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

the applicant is not entitled to free process for the forgoing reason(s):

THE COURT ORDERS that:

the filing fee is waived.

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

the applicant is granted free service of process by the Sheriff in Bernalillo County, New Mexico for 1 2 3 4 5 or _____ summons(es), if the applicant first attempts service in accordance with Rule 1-004(E)(3) NMRA.

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

the applicant is to pay the filing fee on _____, 20____.

interpretation services shall be provided to the applicant.

free process is denied.

Other:

Unless specifically granted above, this order of free process does not include the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this lawsuit and collects money by judgment or settlement, the court may order reimbursement for any waived costs. If the applicant is represented by an attorney who is paid an attorney fee, any fees or costs waived by this order must be deducted from the attorney fee and paid to the court clerk. *This order is subject to revision, modification or rescission by the judge assigned to your case.*****

JUDGE – Second Judicial District Court