

# DIVORCE

✓ **Contested (Spouses do not agree)**

✓ **With Children**

## PACKET B—Stage 1

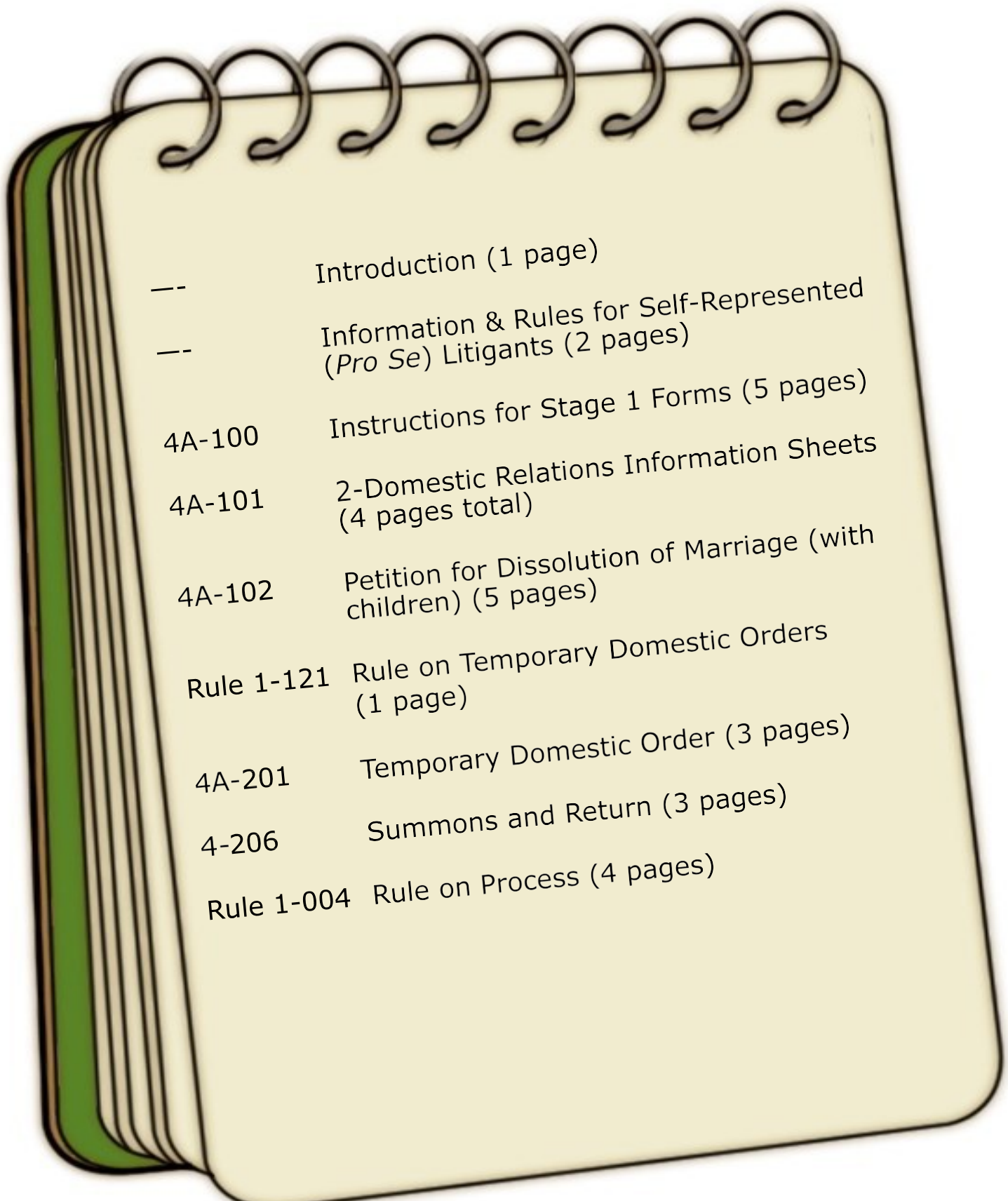
### INSTRUCTIONS AND STARTING FORMS

**If you do not have a lawyer, you must use the forms in this packet to start your divorce**

**THIS PACKET IS NOT A SUBSTITUTE FOR PROFESSIONAL LEGAL ADVICE**

Inside are fill-in-the-blank forms mandated by the New Mexico State Supreme Court for Self-Represented Litigants. They do not deal with every situation. **Divorce** can be complicated and using legal forms without a lawyer's help can harm your legal rights. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents.

# In this packet you will find . . .

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- Introduction (1 page)
  - Information & Rules for Self-Represented (*Pro Se*) Litigants (2 pages)
  - 4A-100 Instructions for Stage 1 Forms (5 pages)
  - 4A-101 2-Domestic Relations Information Sheets (4 pages total)
  - 4A-102 Petition for Dissolution of Marriage (with children) (5 pages)
  - Rule 1-121 Rule on Temporary Domestic Orders (1 page)
  - 4A-201 Temporary Domestic Order (3 pages)
  - 4-206 Summons and Return (3 pages)
  - Rule 1-004 Rule on Process (4 pages)

## PACKET B – STAGE 1

### CONTESTED DIVORCE - WITH CHILDREN

Since you and your spouse DO NOT AGREE about the custody and support of your children and/or you DO NOT AGREE about the division of property or some other issue, the case is *contested* and the dissolution of marriage (“divorce”) takes place in 3 stages, as follows, each of which requires you to purchase and use a packet of forms:



**Stage 1 forms:** must be used to file a dissolution of marriage case.

Stage 2 forms: OPTIONAL FORMS

After\* the case is filed and while it is pending, these forms are used to request temporary assistance from the court **IF** you need temporary assistance. (If you do not need temporary assistance from the court, it will not be necessary for you to purchase this packet.)

\*Temporary assistance may also be requested at the time the case is filed/opened.

Stage 3 forms: must be used to complete a dissolution of marriage case by presenting proposed final orders for court approval.

#### Forms included in Packet B – **Stage 1:**

- Information and Rules for Self-Represented (*Pro Se*) Litigants (2 pages)
- 4A-100 Instructions (5 pages)
- 4A-101 Domestic Relations Information Sheet; 2 copies, 2 pages each (4 pages)
- 4A-103 Petition for Dissolution of Marriage (with children) (5 pages)
- Rule 1-121 Rule on Temporary Domestic Orders (1 page)
- 4A-201 Temporary Domestic Order (3 pages)
- 4-206 Summons and Return (3 pages)
- Rule 1-004 Rule on Service of Process (4 pages)

Forms NOT included in Packet B – Stage 1 that you may require, such as the following, are available at the Courthouse or may be obtained on line at [www.nmcompcomm.us](http://www.nmcompcomm.us). Under the “Public Access Law” tab, look for “Rules of Practice and Procedure.”

- 4-209 Motion for Service by Publication
- 4-209A Order for Service of Process by Publication in a Newspaper
- Rule 1-103 Rule on requesting (and cancelling a request for) an interpreter for a court hearing
- 4-115 Request for court interpreter
- 4-116 Cancellation of court interpreter

## INFORMATION AND RULES FOR SELF-REPRESENTED (*PRO SE*) PARTIES

- Although we want to be responsive to your needs, the court staff **cannot** give you **any** legal advice.
- You should attend the Court’s Self-Represented Litigants Legal Advice Clinic. At each clinic, volunteer attorneys are available to give legal advice and can help you complete your forms. Visit our website at [eleventhdistrictcourt.nmcourts.gov](http://eleventhdistrictcourt.nmcourts.gov) for the date, time and location of the next clinic or ask court staff for a list of clinics.
- Your first choice should be to consult with an attorney. There is good reason for anyone seeking legal remedies to do so, but especially those who have been married a long time; have children; have significant property (land or retirement plans) and/or significant debts.
- If you are unable to afford an attorney, there are sources available where you may get help. Please ask the clerk for a *Pro Se* resource list. If there is domestic violence in your relationship, you may qualify for assistance at DNA Legal Services, New Mexico Legal Aid or Battered Families Services.
- The District Court Clerk’s Office is located at 207 West Hill Ave., Room 200, Gallup, New Mexico, 87301. The District Court Clerk’s Office and Courtrooms are located on the second floor. The telephone number for the District Court Clerk’s Office is 505-863-6816. The Office and the Court are open from 8:00 a.m. to Noon and 1:00 p.m. to 5:00 p.m. weekdays except holidays and other special times. If the weather is bad, the Court’s hours follow the Gallup-McKinley County Schools’ cancellation and delay of classes schedule.
- Remember that when you are appearing *pro se*, you are held to the same standards as attorneys and are expected to know the rules of evidence and courtroom procedure. The judges and hearing officer cannot help you present your case.
- **You must provide a complete mailing address** in your court case file and you must update it whenever there are changes. If you do not do so, your case may be decided without your input.
- Be on time for your Court hearings. If you do not appear on time, your case may be decided without you or a bench warrant may be issued for your arrest. Be sure to check any notices you receive from the Court carefully for the time and location of your hearing. Allow yourself adequate travel time to get to the Court on time.
- Hearings are often scheduled on a “trailing docket” which means that a number of cases are set for hearing at the same time. If this happens in your case, please be sure to arrange

to be in Court for several hours or the entire day while the judge or hearing officer deals with each case one at a time.

- Children are not allowed in the courtroom without the judge’s permission. There are no child care facilities at the Court. Please make other arrangements for your children for the time you will be at Court.
- You are expected to come to your Court hearings in person. Appearing by telephone is only acceptable if you ask the Court’s permission in writing ahead of time (there is a form for this) and only if the Court approves your request. (Appearing at a Court hearing by telephone is called a “telephonic appearance.”)
- **DO NOT CALL OR WRITE TO THE JUDGE OR HEARING OFFICER.** As a general rule, documents and testimony can be read or heard by the judge or hearing officer only in the presence of both parties.
- Be courteous. Other than to make appropriate objections, do not interrupt anyone who is speaking during the hearing. If you are representing yourself and you have an objection to something a witness says, merely stand and say “Objection,” and the Court will allow you to state the nature of your objection.
- Do not make faces or gestures at the opposing party, his or her attorney, witnesses or the judge while in the courtroom. Speak directly to the judge, not the opposing party or a witness. You will be given an opportunity to be heard if you will wait your turn.
- Treat all Court personnel with respect, including bailiffs, judicial assistants, clerks, judges and hearing officers.
- Show your respect for the Court by dressing appropriately and wearing clean, neat clothing. Wearing hats, sunglasses, shorts or pajamas in the courtroom is not allowed.
- Do not bring any food or beverage into the courtroom and do not chew gum or tobacco, or eat candy in the courtroom.
- Cell phones are usually allowed in the courtroom but only if they are turned off. If your phone rings while you are in the courtroom, the judge has the authority to fine you or to take your phone away from you.
- Bring at least four (4) copies of any documents that you intend to offer into evidence.

THANK YOU.

Louis E. DePauli, Jr., District Judge  
Robert A. Aragon, District Judge R.  
R. David Pederson, District Judge

**4A-100. Domestic relations forms; INSTRUCTIONS FOR STAGE 1 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 the 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.

(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 the respondent 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 the 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](http://www.nmcourts.gov)) and the New Mexico compilation commission ([www.nmcc.gov](http://www.nmcc.gov)).

[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-101. Domestic relations information sheet.**

**DOMESTIC RELATIONS INFORMATION SHEET<sup>1</sup>**

**NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET**

*Type or print responses. Required in all domestic relations cases.<sup>2</sup>  
(Do not use in domestic violence cases.)*

**A. Petitioner's attorney information.** *(Complete only if Petitioner has an attorney.)*

Petitioner's name: \_\_\_\_\_  
Attorney's name: \_\_\_\_\_  
Attorney's address: \_\_\_\_\_  
City: \_\_\_\_\_ State \_\_\_\_\_ Zip code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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

**PETITIONER:**

**RESPONDENT:**

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

Other names (e.g. maiden name):  
\_\_\_\_\_

Other names (e.g. maiden name):  
\_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

Social Security number<sup>3</sup>: \_\_\_\_\_

Social Security number<sup>3</sup>: \_\_\_\_\_

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

1. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

2. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

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

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

Social Security number: \_\_\_\_\_

Social Security number: \_\_\_\_\_

3. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

4. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

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

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

Social Security number: \_\_\_\_\_

Social Security number: \_\_\_\_\_

**D. Request to limit access to information.** *(Optional - complete only if applicable)*

The [petitioner] [respondent] has reason to fear domestic violence or child abuse. For this reason, please limit access to information about the [petitioner] [respondent] in the Child Support & Paternity Case Registry to the extent possible.<sup>4</sup> The [petitioner] [respondent] realizes that this request may make it more difficult to assist in collecting child support. The [petitioner] [respondent] understands that the other party and the public might still view information about this case under some circumstances.

I affirm that this request is legitimately made and not designed to harass or intimidate the other party or mislead the court.

\_\_\_\_\_  
Signature of [Petitioner] [Respondent]

USE NOTES

1. The Domestic Relations Information Sheet is 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 Information Sheet with the initial pleading, and the document need not be served.

In all other contested domestic relations cases each attorney representing a petitioner, or the petitioner proceeding pro se, in a contested case must submit 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.supremecourt.nm.org](http://www.supremecourt.nm.org)) 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. 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.

3. 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.

4. The Child Support & Paternity Case Registry is a required, nationwide database of child support and paternity orders. Access to registry information is strictly limited to court and child support administrative personnel. Requesting that your registry information be "nondisclosed" does not prevent authorized parties from reviewing the information. Rather, it alerts courts and child support administrative personnel to act with caution when viewing your information. However, be aware that requesting "nondisclosure" of registry information does not limit access to your official district court case file which is a public record. If you are concerned about such access, ask your lawyer, or the court clerk if you do not have a lawyer, about ways in which the court may restrict access to your court file.

[Provisionally approved as 4-211 NMRA, effective November 1, 1999 until November 1, 2000; approved, as amended, effective November 1, 2000; as amended 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 cases filed on or after December 31, 2014.]

**4A-101. Domestic relations information sheet.**

**DOMESTIC RELATIONS INFORMATION SHEET<sup>1</sup>**

**NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET**

*Type or print responses. Required in all domestic relations cases.<sup>2</sup>  
(Do not use in domestic violence cases.)*

**A. Petitioner's attorney information.** *(Complete only if Petitioner has an attorney.)*

Petitioner's name: \_\_\_\_\_  
Attorney's name: \_\_\_\_\_  
Attorney's address: \_\_\_\_\_  
City: \_\_\_\_\_ State \_\_\_\_\_ Zip code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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

**PETITIONER:**

**RESPONDENT:**

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

Other names (e.g. maiden name):  
\_\_\_\_\_

Other names (e.g. maiden name):  
\_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

Social Security number<sup>3</sup>: \_\_\_\_\_

Social Security number<sup>3</sup>: \_\_\_\_\_

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

1. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

2. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

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

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

Social Security number: \_\_\_\_\_

Social Security number: \_\_\_\_\_

3. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

4. NAME: \_\_\_\_\_  
*(Last name, first, middle)*

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

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

Social Security number: \_\_\_\_\_

Social Security number: \_\_\_\_\_

**D. Request to limit access to information. (Optional - complete only if applicable)**

The [petitioner] [respondent] has reason to fear domestic violence or child abuse. For this reason, please limit access to information about the [petitioner] [respondent] in the Child Support & Paternity Case Registry to the extent possible.<sup>4</sup> The [petitioner] [respondent] realizes that this request may make it more difficult to assist in collecting child support. The [petitioner] [respondent] understands that the other party and the public might still view information about this case under some circumstances.

I affirm that this request is legitimately made and not designed to harass or intimidate the other party or mislead the court.

\_\_\_\_\_  
Signature of [Petitioner] [Respondent]

USE NOTES

1. The Domestic Relations Information Sheet is 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 Information Sheet with the initial pleading, and the document need not be served.

In all other contested domestic relations cases each attorney representing a petitioner, or the petitioner proceeding pro se, in a contested case must submit 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.supremecourt.nm.org](http://www.supremecourt.nm.org)) 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. 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.

3. 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.

4. The Child Support & Paternity Case Registry is a required, nationwide database of child support and paternity orders. Access to registry information is strictly limited to court and child support administrative personnel. Requesting that your registry information be "nondisclosed" does not prevent authorized parties from reviewing the information. Rather, it alerts courts and child support administrative personnel to act with caution when viewing your information. However, be aware that requesting "nondisclosure" of registry information does not limit access to your official district court case file which is a public record. If you are concerned about such access, ask your lawyer, or the court clerk if you do not have a lawyer, about ways in which the court may restrict access to your court file.

[Provisionally approved as 4-211 NMRA, effective November 1, 1999 until November 1, 2000; approved, as amended, effective November 1, 2000; as amended 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 cases filed on or after December 31, 2014.]

**4A-103. Petition for dissolution of marriage (with children).**

**STATE OF NEW MEXICO  
COUNTY OF MCKINLEY  
ELEVENTH JUDICIAL DISTRICT COURT**

\_\_\_\_\_,  
**Petitioner,**  
v.

No. **D-1113-DM**

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

**PETITION FOR DISSOLUTION OF MARRIAGE  
(WITH CHILDREN)**

Petitioner, \_\_\_\_\_, asks this Court for a *Final Decree of Dissolution of Marriage*, and states:

1. The parties, or at least one party, is a resident of \_\_\_\_\_ County, State of New Mexico.
2. At least one party has resided in the state of New Mexico for at least six (6) months immediately preceding the filing of this Petition and has domicile in New Mexico as defined by Section 40-4-5 NMSA 1978.
3. The parties were married on \_\_\_\_\_ (date-mm/dd/yyyy) in \_\_\_\_\_ (city), \_\_\_\_\_ (state), and have remained spouses since that date.
4. A state of incompatibility and irreconcilable differences exists and the parties are not likely to reconcile.
5. The parties have \_\_\_\_\_ child/children:

Name	Year of Birth	Age
A. _____	_____	_____
B. _____	_____	_____
C. _____	_____	_____
D. _____	_____	_____
6. Choose only one:  
\_\_\_\_\_ There are no more children expected.  
\_\_\_\_\_ The parties are expecting another child/children.

7. The minor child/children have been residents of the state of New Mexico for at least the past six (6) months and jurisdiction to determine custody issues is present in the state of New Mexico. New Mexico is the home state of the child/children.

8. Petitioner's current address is: \_\_\_\_\_  
\_\_\_\_\_.

Respondent's current address is: \_\_\_\_\_  
\_\_\_\_\_.

The current address of each child under the age of eighteen (18) is: *(list name and address of each child)*

	Child's Name	Address
A.	_____	_____
B.	_____	_____
C.	_____	_____
D.	_____	_____

9. For the last five (5) years, list the names of the persons with whom each child under the age of eighteen (18) named in paragraph 6 above has resided, and the dates at each residence for each child:

Person's Name	Dates
_____	_____
_____	_____
_____	_____
_____	_____

10. Petitioner has information about custody proceeding(s) involving the minor child/children either pending or in the past in a court in this state or any other state. *(Choose one)*

\_\_\_\_\_ No

\_\_\_\_\_ Yes If yes, provide court information:

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



11. Choose only one:

\_\_\_\_\_ Petitioner has not participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the minor child/children in New Mexico or in any other jurisdiction and/or state.

OR

\_\_\_\_\_ Petitioner has participated as a party, witness, or in some other capacity in other litigation concerning the custody of the minor child/children. List all case names including names of parties, name of court, location of the court, and court case number:

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

12. Someone other than Respondent and me has physical custody of the minor child/children or claims to have custody or visitation rights with respect to the minor child/children. (Choose one)

\_\_\_\_\_ No

\_\_\_\_\_ Yes If yes, list the name of any such individual(s):

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

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

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

13. Choose only one:

\_\_\_\_\_ Petitioner and Respondent are fit and proper persons to have joint legal custody of the minor child/children, with the rights and responsibilities identified in Paragraphs F and J of Section 40-4-9.1 NMSA 1978, and subject to a parenting plan that is consistent with the best interests of the child/children.

OR

\_\_\_\_\_ Petitioner is a fit and proper person to have sole legal custody of the child/children and is able to show the Court why sole legal custody is appropriate for the child/children.

14. The parties should be ordered to contribute to the support and maintenance of the parties' child/children pursuant to the New Mexico Child Support Guidelines.

15. Any sole and separate property or debts of the parties should be confirmed by the Court.

16. Any community property of the parties should be equitably divided.

17. Any community debts of the parties should be equitably allocated.

18. **CIRCLE ONE**: My spouse [IS] [IS NOT] a member of the military.
19. **OPTIONAL (Cross out if this does not apply to you)**: Petitioner is in need of spousal support (alimony) to be paid to him/her by Respondent.
20. **OPTIONAL (Cross out if this does not apply to you)**: Petitioner wishes to be restored to his/her former name:

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

Petitioner asks that the Court:

- A. Enter a *Final Decree of Dissolution of Marriage* on the grounds of incompatibility;
- B. (*Choose only one*)

\_\_\_\_\_ Award joint legal custody of the child/children and adopt a parenting plan in the child/children's best interests;

OR

\_\_\_\_\_ Award sole legal custody of the child/children to Petitioner/Respondent (*circle one*), with visitation for the other parent that is consistent with the best interests of the child/children;

- C. Order the parties to contribute to the support and maintenance of the parties' minor child/children pursuant to the New Mexico Child Support Guidelines;
- D. Confirm the separate property and separate debts of the parties;
- E. Equitably divide the community property and community debt of the parties;
- F. Order the Respondent to pay spousal support (*cross out if this does not apply*);
- G. Order that Petitioner's name be restored to his/her former name of \_\_\_\_\_ (*cross out if this does not apply*); and
- H. Provide for such other and further relief as the Court may deem just and proper.

Submitted by:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street/mailling address

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

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

**VERIFICATION**

I, \_\_\_\_\_, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause, and I know and understand that the contents contained in the above Petition are true to the best of my knowledge and belief. I have read and understand the Temporary Domestic Order as described in Rule 1-121 NMRA. I understand that upon the filing of this Petition with the Court that I am bound by the contents of the Temporary Domestic Order.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Date

[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.]

### **1-121. Temporary domestic orders.**

A. **Temporary domestic orders required.** Except as provided in this rule, in all original domestic relations actions where a summons has been issued, the court shall enter a temporary domestic order, unless:

- (1) the action was filed by the state regarding child support; or
- (2) otherwise ordered by the court.

B. **Approved form.** If a temporary domestic order is issued it shall be substantially in the form approved by the Supreme Court. Any prohibition or limitation on the parties not included in the Supreme Court approved form shall only be approved after notice and hearing by the court.

C. **Issuance.** Coincident with the issuance of summons, the clerk shall file a temporary domestic order, and deliver an endorsed copy of the order to the person obtaining the summons. The petitioner shall cause to be served an endorsed copy of the temporary domestic order on the respondent. If served with the summons and petition, the return of summons shall include a statement that the temporary domestic order was served with the petition.

D. **Effective date of temporary domestic orders.** The verification to the petition shall include a statement that the petitioner understands the content of the temporary domestic order. The temporary domestic order shall be binding upon the petitioner at the time the petition is filed and upon the respondent at the time it is personally served on the respondent. Actions taken by either party that are contrary to the terms of the temporary domestic order are subject to redress by the court, including costs and attorney fees.

E. **Applicability.** Unless the court orders otherwise, this rule shall not apply to domestic relations actions or proceedings filed:

- (1) pursuant to Section 40-4-20 NMSA 1978 to divide or distribute property;
- (2) after entry of the final order or decree;
- (3) pursuant to the Uniform Interstate Family Support Act;
- (4) pursuant to the Uniform Parentage Act; or
- (5) as a third party custody action.

F. **Temporary restraining orders.** This rule shall not preclude a party from requesting the entry of a temporary restraining order under Rule 1-066 of these rules.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 17-8300-017, effective for all pleadings and papers filed on or after December 31, 2017.]

**Committee commentary.** - The summons and petition may be served in accordance with Rule 1-004 NMRA. [As amended by Supreme Court Order No. 17-8300-017, effective for all pleadings and papers filed on or after December 31, 2017.]

**4A-201. Temporary domestic order.** [For use with Rule 1-121 NMRA]

**STATE OF NEW MEXICO  
COUNTY OF MCKINLEY  
ELEVENTH JUDICIAL DISTRICT COURT**

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

**v.**

**No. D-1113-DM**

\_\_\_\_\_  
**Respondent.**

**TEMPORARY DOMESTIC ORDER<sup>1</sup>**

This order is issued pursuant to Rule 1-121 NMRA. This is not an order of protection under federal or state law. It is otherwise fully enforceable. It applies to both parties. This order will continue in effect until modified. The procedure for modification of this order is described below.

**THE COURT ORDERS THE PARTIES AS FOLLOWS:**

(1) **Do not** injure or physically or mentally abuse, molest, intimidate, threaten or harass the other party or any child of either party.

(2) **Do not** interfere with the relationship of your spouse with any child of either party. If you are living apart, you shall each continue to have frequent contact and communication with any minor child of both parties, personally and by telephone. A party shall notify the other party of any change of address or telephone number within twenty-four (24) hours of the change.

(3) **Do not** change a child's school, religion, child care, doctor, dentist, physical or mental treatment or recreational activities in which the child has been participating.

(4) **Do not** remove, cause or permit the removal of any minor child of both parties from the State of New Mexico without court order or written consent of the other party.

(5) **Do not** make the other party leave the family home, whether it be community or separate property, without court order. You should attempt to resolve the question of who leaves the home in a fair manner. If you cannot agree, you must ask the court to decide.

(a) Whoever moves from the family home may return to pick up personal belongings at a reasonable time as you may agree. Personal belongings do not include furniture unless you agree or the court permits. If an order prohibiting domestic violence has been entered,

you must arrange to have a law enforcement officer present to monitor the removal of personal belongings. The party moving out of the residence is not prejudiced by reason of the move in any way with respect to custody of any minor child, with respect to a claim of any interest in the family residence or the personal property in or on the premises.

(b) Whoever leaves the family residence shall notify the other party, within twenty-four (24) hours of an address where the vacating party can receive mail.

(c) At a reasonable time, you are entitled to examine the contents of the marital residence and to have access to all properties owned by either of you, for inspection, valuation or appraisal. If you ask, the other party must provide access to the home within fifteen (15) days after the date of the request.

(6) **Do not** incur unreasonable or unnecessary debts. Any debt that does not contribute to the benefit of both spouses or the minor children of the parties which is incurred after you have separated, may be the separate debt of the party who incurs the debt.

(7) **Do not** sell, remove, transfer, dispose of, hide, encumber or damage any property, real or personal, community or separate, except in the usual course of business or for the necessities of life. Keep an accounting of any transactions to show to the court.

(8) **Do not** drop or cancel any insurance policy, including automobile or other vehicle insurance, household insurance, medical or dental insurance or life insurance.

(9) **Do not** terminate or change the beneficiaries of any existing life insurance policy.

(10) **Do not** close any financial institution account<sup>2</sup> or cancel any credit cards nor remove the other party from any credit card account during pendency of this case, unless the parties otherwise agree in writing.

(11) **Do not** liquidate, cash out, remove funds from or take loans against any retirement account, including but not limited to PERA, pension, IRA, Roth IRA, SARSEP, SEP, profit sharing, 401(k), 403(b), defined benefit, money purchase, employee stock ownership (ESOP), or 457 or 409A accounts, unless the parties otherwise agree in writing, except in the usual course of business or for the necessities of life. Keep an accounting of any transactions to show to the court.

### **MODIFICATION BY COURT<sup>3</sup>**

This order may be modified by the court upon request of either party. To request the court to modify this order, a motion must be filed with the clerk of the court. The motion must include reference to each paragraph number the party is requesting to be modified or terminated. The party making the request must provide the other party with a copy of the motion requesting the change. If the other party agrees with the request, an order approving the request, which has been initialed by both parties as “approved,” shall be filed with the motion.

## WAIVER BY PARTIES

The parties may modify a specific provision of this order by entering into a written agreement and filing it with the court. The parties may also waive a provision of this order on a specific occasion if both parties sign an agreement to waive the provision. A waiver must include the paragraph number of each paragraph waived by the parties.

## OTHER ORDERS

If an order of protection from a domestic violence case has been served on either party or if there is any other order in effect governing the relationship of the parties, and there is a conflict between this order and the other order, the other order controls unless the court specifically orders otherwise.

## VIOLATIONS

Violation of this court order may result in the imposition of a fine or imprisonment. This order is binding on the petitioner at the time the petition is filed. This order is effective on the respondent immediately upon service. The parties are cautioned that actions taken by either party that are contrary to the terms of this order are subject to redress by the court, including costs and attorney fees.

\_\_\_\_\_  
Date

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

## USE NOTE

1. A scheduling order may be issued at the time a domestic relations case is docketed and served with the petition, however, the scheduling order must be issued as a separate order.
2. See NMSA 1978, Section 58-1-7 notice to any bank of an adverse claim to a bank account.
3. Within two (2) days after service of this order, a party may file a motion requesting a hearing to dissolve this order. If the court finds the motion was frivolous or was not filed in good faith, it may assess the party filing the motion with costs and attorney fees.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2002; 4A-112 recompiled and amended as 4A-201 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. 17-8300-017, effective for all pleadings and papers filed on or after December 31, 2017.]

Committee commentary. – This form deviates from the forms used by some judicial districts; however, the changes are necessary to comply with due process requirements. *See* Rules 1-121 and 1-066(B) NMRA.

# SUMMONS

District Court: Eleventh Judicial District McKinley County, New Mexico 207 West Hill Ave., Room 200 Gallup, New Mexico 87301 505-863-6816	Case Number: <b>D-1113-</b> _____ Judge: _____
Plaintiff(s)/Petitioner: _____ v. Defendant(s)/Respondent: _____	Defendant/Respondent: 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](http://www.nmbar.org); 1-800-876-6227; or 1-505-797-6066.
8. The district court complies with the **Americans With Disabilities Act**. It is counsel's or a pro se party's obligation to notify the clerk of the court at least five (5) days before any hearing of the anticipated attendance of a disabled person so that appropriate accommodations can be made. The court must be notified as to the appropriate type of accommodation which will be necessary.

Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CLERK OF COURT

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

Attorney for Plaintiff/Petitioner or  
Plaintiff/Petitioner pro se:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.



**RETURN<sup>1</sup>**

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

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

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

- to the defendant \_\_\_\_\_ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)
- to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

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

- to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint.
- to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address).
- to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.
- to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).
- to \_\_\_\_\_ (name of person), \_\_\_\_\_, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

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

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

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

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

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

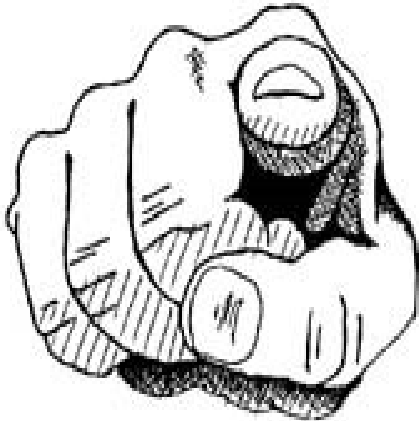
\_\_\_\_\_  
Official title

## USE 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 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; 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; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

# Giving Legal Notice



**YOU . . .** are called the **PETITIONER**

**THEY . . .** are called the **RESPONDENT**

**YOU . . .** must legally notify the respondent that you filed a petition against him/her. This is called “service of process” or “serving the respondent.”

**YOU . . .** must file proof with the court that you “served” the respondent.

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

To “serve” the respondent, YOU must arrange to have a copy of all the paperwork you filed, and a copy of all the paperwork the court issued when you filed your petition, delivered to the respondent.

## 1. LEGAL NOTICE BY PERSONAL SERVICE

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



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



A Sheriff's officer or a process server can deliver a copy of all the paperwork to the respondent.

## 2. LEGAL NOTICE BY MAIL

If you have a good mailing address for the respondent



The postman can deliver a copy of all the paperwork to the respondent. The respondent must sign the green card. Restricting delivery to the respondent can help.

## 3. LEGAL NOTICE BY PUBLICATION

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



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

Your case will **NOT** move forward unless you legally notify the respondent that you filed a petition against him/her. You may want to see a lawyer for advice.

This information sheet only highlights the 3 most common ways to serve the respondent. For details, read Rule 1-004 of the New Mexico Rules of Civil Procedure

## Rule 1-004. Process.

A. (1) **Scope of rule.** The provisions of this rule govern the issuance and service of process in all civil actions including special statutory proceedings.

(2) **Summons; issuance.** Upon the filing of the complaint, the clerk shall issue a summons and deliver it to the plaintiff for service. Upon the request of the plaintiff, the clerk shall issue separate or additional summons. Any defendant may waive the issuance or service of summons.

B. **Summons; execution; form.** The summons shall be signed by the clerk, issued under the seal of the court and be directed to the defendant. The summons shall be substantially in the form approved by the Supreme Court and must contain:

(1) the name of the court in which the action is brought, the name of the county in which the complaint is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed;

(2) a direction that the defendant serve a responsive pleading or motion within thirty (30) days after service of the summons and file a copy of the pleading or motion with the court as provided by Rule [1-005 NMRA](#);

(3) a notice that unless the defendant serves and files a responsive pleading or motion, the plaintiff may apply to the court for the relief demanded in the complaint; and

(4) the name, address and telephone number of the plaintiff's attorney. If the plaintiff is not represented by an attorney, the name, address and telephone number of the plaintiff.

C. **Service of process; return.**

(1) If a summons is to be served, it shall be served together with any other pleading or paper required to be served by this rule. The plaintiff shall furnish the person making service with such copies as are necessary.

(2) Service of process shall be made with reasonable diligence, and the original summons with proof of service shall be filed with the court in accordance with the provisions of Paragraph L of this rule.

D. **Process; by whom served.** Process shall be served as follows:

(1) if the process to be served is a summons and complaint, petition or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action;

(2) if the process to be served is a writ of attachment, writ of replevin or writ of habeas corpus, service may be made by any person not a party to the action over the age of eighteen (18) years designated by the court to perform such service or by the sheriff of the county where the property or person may be found;

(3) if the process to be served is a writ other than a writ specified in Subparagraph (2) of this paragraph, service shall be made as provided by law or order of the court.

E. **Process; how served; generally.**

(1) Process shall be served in a manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

(2) Service may be made, subject to the restrictions and requirements of this rule, by the methods authorized by this rule or in the manner provided for by any applicable statute, to the extent that the statute does not conflict with this rule.

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule "signs" includes the electronic representation of a signature.

**F. Process; personal service upon an individual.** Personal service of process shall be made upon an individual by delivering a copy of a summons and complaint or other process:

(1)

(a) to the individual personally; or if the individual refuses to accept service, by leaving the process at the location where the individual has been found; and if the individual refuses to receive such copies or permit them to be left, such action shall constitute valid service; or

(b) by mail or commercial courier service as provided in Subparagraph (3) of Paragraph E of this rule.

(2) If, after the plaintiff attempts service of process by either of the methods of service provided by Subparagraph (1) of this paragraph, the defendant has not signed for or accepted service, service may be made by delivering a copy of the process to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process; or

(3) If service is not accomplished in accordance with Subparagraphs (1) and (2), then service of process may be made by delivering a copy of the process at the actual place of business or employment of the defendant to the person apparently in charge thereof and by mailing a copy of the summons and complaint by first class mail to the defendant at the defendant's last known mailing address and at the defendant's actual place of business or employment.

**G. Process; service on corporation or other business entity.**

(1) Service may be made upon:

(a) a domestic or foreign corporation, a limited liability company or an equivalent business entity by serving a copy of the process to an officer, a managing or a general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. If the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

(b) a partnership by serving a copy of the process to any general partner;

(c) an unincorporated association which is subject to suit under a common name, by serving a copy of the process to an officer, a managing or general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. If the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association.

(2) If a person described in Subparagraph (a), (b) or (c) of this subparagraph refuses to accept the process, tendering service as provided in this paragraph shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge.

(3) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

**H. Process; service upon state and political subdivisions.**

(1) Service may be made upon the State of New Mexico or a political subdivision of the state:

(a) in any action in which the state is named a party defendant, by delivering a copy of the process to the governor and to the attorney general;

(b) in any action in which a branch, agency, bureau, department, commission or institution of the state is named a party defendant, by delivering a copy of the process to the head of the branch, agency, bureau, department, commission or institution and to the attorney general;

(c) in any action in which an officer, official, or employee of the state or one of its branches, agencies, bureaus, departments, commissions or institutions is named a party defendant, by delivering a copy of the process to the officer, official or employee and to the attorney general;

(d) in garnishment actions, service of writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau,

department, commission or institution. A copy of the writ of garnishment shall be delivered or served on the defendant employee in the manner and priority provided in Paragraph F of this rule;

(e) service of process on the governor, attorney general, agency, bureau, department, commission or institution may be made either by serving a copy of the process to the governor, attorney general or the chief operating officer of an entity listed in this subparagraph or to the receptionist of the state officer. A cabinet secretary, a department, bureau, agency or commission director or an executive secretary shall be considered as the chief operating officer;

(f) upon any county by serving a copy of the process to the county clerk;

(g) upon a municipal corporation by serving a copy of the process to the city clerk, town clerk or village clerk;

(h) upon a school district or school board by serving a copy of the process to the superintendent of the district;

(i) upon the board of trustees of any land grant referred to in Sections [49-1-1](#) through [49-10-6 NMSA 1978](#), process shall be served upon the president or in the president's absence upon the secretary of such board.

(2) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

**I. Process; service upon minor, incompetent person, guardian or fiduciary.**

(1) Service shall be made:

(a) upon a minor, if there is a conservator of the estate or guardian of the minor, by serving a copy of the process to the conservator or guardian in the manner and priority provided in Paragraph F, G or J of this rule as may be appropriate. If no conservator or guardian has been appointed for the minor, service shall be made on the minor by serving a copy of the process on each person who has legal authority over the minor. If no person has legal authority over the minor, process may be served on a person designated by the court.

(b) upon an incompetent person, if there is a conservator of the estate or guardian of the incompetent person, by serving a copy of the process to the conservator or guardian in the manner and priority provided by Paragraph F of this rule. If the incompetent person does not have a conservator or guardian, process may be served on a person designated by the court.

(2) Service upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner and priority for service as provided in Paragraphs F, G or J of this rule as may be appropriate.

**J. Process; service in manner approved by court.** Upon motion, without notice, and showing by affidavit that service cannot reasonably be made as provided by this rule, the court may order service by any method or combination of methods, including publication, that is reasonably calculated under all of the circumstances to apprise the defendant of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.

**K. Process; service by publication.** Service by publication may be made only pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.

(1) Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.

(2) The notice of pendency of action shall contain:

(a) the caption of the case, as provided in Rule [1-008.1](#) NMRA, including a statement which describes the action or relief requested;

(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;

(c) the name, address and telephone number of plaintiff's attorney; and

(d) a statement that a default judgment may be entered if a response is not filed.

(3) If the cause of action involves real property, the notice shall describe the property as follows:

(a) If the property has a street address, the name of the municipality or county address and the street address of the property.

(b) If the property is located in a Spanish or Mexican grant, the name of the grant.

(c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.

(4) In actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons" followed by the names of the deceased persons whose unknown heirs are sought to be served. As to parties named in the alternative, the notice shall be given to "the following named defendants by name, if living; if deceased, their unknown heirs" followed by the names of the defendants. As to parties named as "unknown claimants", notice shall be given to the "unknown persons who may claim a lien, interest or title adverse to the plaintiff" followed by the names of the deceased persons whose unknown claimants are sought to be served.

**L. Proof of service of process.** The party obtaining service of process or that party's agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New Mexico county, proof of service shall be made by affidavit. Proof of service by mail or commercial courier service shall be established by filing with the court a certificate of service which shall include the date of delivery by the post office or commercial courier service and a copy of the defendant's signature receipt. Proof of service by publication shall be by affidavit of publication signed by an officer or agent of the newspaper in which the notice of the pendency of the action was published. Failure to make proof of service shall not affect the validity of service.

**M. Service of process in the United States, but outside of state.** Whenever the jurisdiction of the court over the defendant is not dependent upon service of the process within the State of New Mexico, service may be made outside the State as provided by this rule.

**N. Service of process in a foreign country.** Service upon an individual, corporation, limited liability company, partnership, unincorporated association that is subject to suit under a common name, or equivalent legal entities may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(b) as directed by the foreign authority in response to a letter rogatory or letter of request;

or  
(c) unless prohibited by the laws of the United States or the law of the foreign country, in the same manner and priority as provided for in Paragraph F, G or J of this rule as may be appropriate.

[As amended, effective January 1, 1987; October 1, 1998; March 1, 2005; as amended by Supreme Court Order No. 11-8300-050, effective for cases filed on or after February 6, 2012.]