

MOTION FOR TEMPORARY ORDERS

THIS PACKET IS FOR PARTIES IN A CASE THAT
HAS BEEN FILED WHO WANT THE COURT TO
TAKE A TEMPORARY ACTION

- Advisory
- Instructions
- Motion form
- Proposed order
- Request for hearing
- Notice of hearing

STOP

Please read this ADVISORY

1. REMEMBER – you are responsible for your case:
 - You must fill out the paperwork correctly,
 - You must request and attend hearings,
 - You must check whether the opposing party is filing paperwork
 - You must keep track of deadlines, etc.
2. Please, READ the instructions. They are there to help you fill out these forms.
3. Please, TAKE YOUR TIME filing out the forms. This paperwork will have some legal impact on your life.
4. If you do not read the instructions and take your time when completing these forms, you may have to repeat steps.
5. Please, always use your case caption (example: Jane Doe v. John Doe, D-1329-DM-201300194) on all court papers, letters, and with the clerk's and judge's offices.
6. Please seek the advice of an attorney if:
 - a. you do not understand the forms
 - b. you are unsure about what to do
 - c. are uncomfortable with the information you must put on a form.

Need Help? The 13th Judicial District Court has a Free Court Clinic each month. See the Court Clerk for days and times in your County

Instructions for Filing a Motion

IMPORTANT - PLEASE READ

- Do you have a parentage/divorce case filed with the court? (you have a case number)
 - If yes, continue
 - If no, STOP AND DO NOT USE THIS PACKET
- Is your case closed?
 - If yes, you may have to pay a re-open fee
- If you can't afford a filing fee, fill out an Application for Free Process form (available from the court clerks or the court's website: thirteenthdistrictcourt.nmcourts.gov)

A "motion" is a written request to the Court to enter an order. The motion is your chance to tell the judge in your case what you want and why you should get it.

<p>✓ STEP 1 – FILL OUT THE MOTION FORM</p>	<p>Here's what to do:</p> <ol style="list-style-type: none"> 1. Write in the name of the county 2. Write in the names of the Plaintiff/Petitioner and Defendant/Respondent – these are always written the <u>same way no matter who is filing the motion</u> 3. Fill in the case number 4. Check the box that tells the court what the Order says NOW. 5. In the first lined paragraph, tell the judge what you want 6. In the second lined paragraph, tell the judge the reasons you should get what you want 7. Sign the motion, and include your mailing address and phone number
<p>✓ STEP 2 – FILE THE MOTION & SEND A COPY TO THE OTHER PARTY</p>	<ol style="list-style-type: none"> 1. In the <i>certificate of mailing</i> box, list the names and mailing addresses of the parties or attorneys to whom you must mail a copy of your motion 2. File your motion with the Court 3. When you file your motion, also bring enough <u>copies</u> for you and for any other party 4. Remember, you must <u>mail</u> copies of your filed motion to all the other parties or their attorneys
<p>✓ STEP 3 – FILL OUT THE PROPOSED ORDER</p>	<p>✓ You should propose an order for the judge to sign. This helps the judge understand exactly what you want.</p>

✓ **STEP 4 -
REQUEST A
HEARING**

YOU ARE NOT DONE YET!

The judge is likely to **never** make a **decision** on your motion if you do not request a hearing.

1. Write in the name of the county, parties, and case number
2. Write in the name of the judge assigned to your case
3. Write in the type of case (for example, civil, criminal, appeal, divorce, parentage)
4. List the date and time of any hearing that is already scheduled in your case (if no hearings are already scheduled, write "none")
5. The "Matter to be heard" is the same as the name of your motion (for example, "Motion to Set Aside Default Judgment," "Motion to Dismiss," etc.)
6. It is **your** job to guess how long the hearing on your motion should be. There needs to be enough time for you to talk, for the other sides in the case to talk, and for the judge to ask you and the other parties questions
7. Fill in the names, mailing addresses, and phone numbers of all the parties in the case (including yourself)
8. **YOU** must provide **stamped envelopes** addressed to each party in the case (including yourself). The judge's assistant will use these to mail out notice of the hearing

4A-202. Motion for temporary order (domestic relations actions).

[For use with Rules 1-121 and 1-122 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v. _____ No. _____

_____,
Respondent.

MOTION FOR TEMPORARY ORDER
(domestic relations actions)¹

I, _____ (*name of Petitioner or Respondent*) request the court to enter the following temporary order(s): (*check all that apply*)

- (1) temporary domestic order;²
- (2) temporary division of property;
- (3) temporary division of income and debts;
- (4) temporary custody of minor children;
- (5) temporary order establishing timesharing or visitation;
- (6) temporary child support and request for wage withholding;
- (7) temporary allocation of community resources to permit both parties to hire an attorney;
- (8) _____ (other).

I have tried to talk to _____ (*name of the other party or the other party's attorney if represented*). This is what happened: (*You MUST check one of these boxes.*)

- The other party AGREES with my motion.
- The other party DOES NOT AGREE with my motion.
- The other party WILL NOT TALK TO ME about my motion.
- I CANNOT TALK TO THE OTHER PARTY because there is a protective order between us and the other party does not have a lawyer.
- I HAVE NOT TALKED TO THE OTHER PARTY because:

_____.

Signature of party

Name (*print*)

Mailing address (*print*)

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

Telephone number

VERIFICATION OF SERVICE

I affirm under penalty of perjury under the laws of the State of New Mexico that on _____ (*date*), I (*check the applicable item below and fill in all information*)

- [] mailed a copy of this motion by United States mail, postage prepaid, to:
Name: _____
Mailing address: _____
City, state, and zip code: _____;
- [] delivered a copy of this motion to _____ (*the other party or the other party's attorney*); or
- [] faxed a copy of this motion to _____ (*the other party or the other party's attorney*) using the following fax number: _____. The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m) (p.m) on _____ (*date*).

Signature of party

Date of signature

USE NOTE

1. See Committee Commentary to Rule 1-120 NMRA for what constitutes a domestic relations action.

2. See Rule 1-121 NMRA and Form 4A-201 NMRA for the Supreme Court approved Temporary Domestic Order.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; 4A-111 recompiled and amended as 4A-202 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-213. Interim order allocating income and expenses.

[For use with Rule 1-122 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v. No. _____

_____,
Respondent.

INTERIM ORDER ALLOCATING INCOME AND EXPENSES¹

This matter having come on for a hearing by the court and the court being sufficiently advised **FINDS, CONCLUDES, AND ORDERS:**

1. NOTICE AND APPEARANCES

(check only applicable paragraphs)

- Petitioner was present.
- Petitioner was represented by counsel.
- Respondent was present.
- Respondent was represented by counsel.
- Respondent was properly served with a copy of the notice of hearing on the motion for temporary order dividing income and expenses.

2. The parties have agreed to the income and expenses of the parties except:
_____.

3. The parties shall receive the income and pay the expenses as listed on the Interim Monthly Income and Expense Statement.

4. Each party shall presumptively be responsible for any debts the party incurs during the pendency of this case.

5. Any assets obtained by either party after the entry of this order from that party's share of net spendable income are presumptively the separate property of the obtaining party.

6. Each party shall use the party's share of the income to pay the party's respective expenses for food, clothing, telephone, utilities, gasoline, car maintenance, entertainment, meals

out, haircuts, attorney fees, ordinary medical and dental expenses, and other personal expenses.

7. _____ (*name of party*) shall pay to _____ (*name of party*) _____ dollars (\$_____)² per month by check or money order, delivered or postmarked on or before the _____ of each month during the pendency of this case.
8. The medical and dental expenses of the child or children not covered by insurance shall be paid one-half by each party.
9. Notwithstanding entry of this order, all claims and defenses are preserved.
10. This order shall remain in effect during the pendency of this case except as modified by court order.
11. Disobedience of this order can constitute contempt of court and subject the violator to fine, imprisonment, and other sanction, plus payment of attorney fees and costs to the other party.

District judge

Recommended by:

Hearing officer

USE NOTE

1. This form is used with Form 4A-212 NMRA.
2. For the amount to be transferred or paid, *see* Line 12 of Form 4A-212 NMRA.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; 4A-123 recompiled and amended as 4A-213 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.]

e.	Medicare	\$ _____	\$ _____	\$ _____
f.	Health insurance	\$ _____	\$ _____	\$ _____
g.	Life and disability insurance	\$ _____	\$ _____	\$ _____
h.	Union dues	\$ _____	\$ _____	\$ _____
i.	Mandatory retirement	\$ _____	\$ _____	\$ _____
j.	Other _____	\$ _____	\$ _____	\$ _____
4.	Total payroll deductions (Add items in #3)	\$ _____	\$ _____	\$ _____
5.	Net monthly income (Subtract Line 4 from Line 2)	\$ _____	\$ _____	\$ _____
6.	Monthly fixed expenses ⁴ :			
a.	Residence ⁵	\$ _____	\$ _____	\$ _____
b.	Utilities ⁶	\$ _____	\$ _____	\$ _____
c.	Car payments	\$ _____	\$ _____	\$ _____
d.	Insurance premiums	\$ _____	\$ _____	\$ _____
	(1) Car or other vehicle	\$ _____	\$ _____	\$ _____
	(2) Life ⁷	\$ _____	\$ _____	\$ _____
	(3) Health ⁷	\$ _____	\$ _____	\$ _____
	(4) Homeowners ⁸ or renters	\$ _____	\$ _____	\$ _____
	(5) Other	\$ _____	\$ _____	\$ _____
e.	Day care ⁹	\$ _____	\$ _____	\$ _____
f.	Credit card payments ¹⁰	\$ _____	\$ _____	\$ _____
g.	Loan payments	\$ _____	\$ _____	\$ _____
h.	Child support payments ¹¹	\$ _____	\$ _____	\$ _____
i.	Medical	\$ _____	\$ _____	\$ _____
j.	Other _____	\$ _____	\$ _____	\$ _____
7.	Total monthly fixed expenses (Add items in #6 and #7) ¹²	\$ _____	\$ _____	\$ _____
8.	Net spendable income (Line 5 minus Line 7)	\$ _____	\$ _____	\$ _____
9.	1/2 of combined net spendable income (1/2 of Line 8 Column 3) ¹³	\$ _____	\$ _____	
10.	Amount transferred and received ¹⁴	\$ _____	\$ _____	
11.	Child support adjustment ¹⁵ (see table, Use Note 15)	\$ _____	\$ _____	
12.	Total to be transferred ¹⁶	\$ _____	\$ _____	

I, _____, affirm under penalty of perjury under the laws of the State of New Mexico that I am the [] Petitioner (or) [] Respondent in the above-entitled cause, and I know and understand that the contents of this Statement are true to the best of my knowledge and belief.

Signature

Date

USE NOTE

1. This form is to be used with an Interim Order Allocating Income and Expenses, Form 4A-213 NMRA. Unless, upon motion of a party, the court orders the division of separate income and expenses, only community income and expenses should be included on this form. In minimal or negative income cases, the court will have discretion to fashion an appropriate order.

2. "Gross monthly income" is income from all sources except child support received from a prior court order. For self-employed individuals, gross monthly income means gross receipts less reasonable and ordinary business expenses. For varying income and expenses use the average of the last three (3) months' income and expenses.

Gross monthly income is to be computed by using one of the following: hourly wage x average hours worked per week x 52 divided by 12; weekly wage x 52 divided by 12; every two weeks wage x 26 divided by 12; twice monthly x 2. For varying wages, use the average of the last three months' income.

3. "Deductions" are payroll deductions for taxes, social security, health insurance, union dues, retirement and other employer-related deductions. Payroll deductions are to be computed on a monthly basis as described in Use Note 2.

4. "Monthly fixed expenses" include periodic expenses even though paid quarterly, semiannually or yearly. Fixed expenses are to be computed on a monthly basis by using one of the following: annual income or expenses divided by 12. For varying expenses, use the average of the last three months' receipts or expenses.

5. Residence fixed expense is mortgage or rent actually paid. If a party receives free rent, *e.g.*, by living with parents, that party's rent is imputed as zero. If residence expense is a mortgage payment for the residence of a party, unless already separately stated, include insurance and taxes.

6. Include monthly average payments for gas, electricity, water, sewer, refuse, and basic telephone bill, if not paid as part of rent. Use average for last 12 months if known.

7. Do not include medical, dental, liability, life, or other insurance that is deducted by payroll deduction.

8. Do not include homeowners insurance premiums if the premium is included as part of the residence expense, Line 6(a).

9. Day care fixed expense is work-related day care and does not include baby-sitting or occasional day care.

10. "Credit card payments" is listed as a fixed expense and includes only the minimum monthly payment as of the date of the filing of the petition.

11. Any regular monthly payment ordered by a prior order of child support or

alimony, which is actually paid, is a fixed expense.

12. Line 8. "Net spendable income" and "combined net spendable income" are determined by subtracting Line 7, "total monthly fixed expenses," from Line 5, "net monthly income."

Negative combined net spendable income. If the "combined net spendable income" (Line 8, Column 3) is a negative number, and there are no children, adjust the allocations of income or expenses between the parties, or transfer an amount from one party to another so that the amount of net spendable income for the petitioner and respondent on Line 9 is equal. Do not complete Lines 10, 11, and 12. If Line 8, Column 3 has a negative or minimal "combined net spendable income," and there are children, the court will need to fashion an appropriate form to divide interim income and expenses of the parties.

13. Line 9. Equalizing spendable income. If "net spendable income" on Line 8, Column 3, is a positive number, divide "combined net spendable income" by two and enter the result in each column of Line 9.

14. Line 10. Amount transferred and received. The party with the larger net spendable income will transfer an equalizing amount to the party with the smaller net spendable income. To determine the amount of the transfer or receipt, subtract Line 9 (one-half of combined net spendable income) from Line 8, "net spendable income" and enter the amount on Line 10. This is the amount to be transferred by the party with the larger net spendable income to the party with the lower net spendable income.

For example, if the petitioner has a net spendable income of \$1,000.00 per month and the respondent has a net spendable income of \$500.00 per month, divide the total, \$1,500.00, by two. Since the petitioner has the larger net spendable income, enter the result, \$750.00, on Line 9, under Column 1. To determine the amount the petitioner transfers, subtract Line 9 of Column 1 from Line 8 of Column 1 ($\$1,000.00$ minus $\$750.00 = \250.00) and this amount ($\$250.00$) will be transferred each month by the petitioner to the respondent.

15. Line 11. Children. If Line 8, Column 3, is a positive number, an adjustment for child support is made by multiplying the amount on Line 8, Column 3 (combined "net spendable income") by the applicable percentage in the table below and enter the amount in the party column of the party with primary custody of the child or children. Do not count children who are covered by a prior child support order.

One child	10%
Two children	15%
Three children	19%
Four children	22%
Five children	25%
Six children	28%

If more than six children, add three percent (3%) for each additional child.

For example, if the combined "net spendable income" of the petitioner and respondent (Column 3, Line 8) is \$1,500.00 and there is one child, multiply Column 3, Line 8 ($\$1,500.00$) by ten percent (10%) and enter the result ($\$150.00$) on Line 11 in the petitioner and respondent columns.

16. Line 12. Total amount transferred. Line 11 is used to adjust the amount to be

transferred by a party or received by a party on Line 10 by the parties. Using the example in Use Notes 14 and 15, if there is one child and the combined net spendable income of the parties is \$1,500.00, an adjustment of ten percent (10%) of \$1,500.00 (\$150.00) is made for child support.

If the respondent has primary custody, the respondent will receive another \$150.00. If the petitioner has primary custody, subtract \$150.00 from the amount the respondent is to receive on Line 10. Using the example in Use Notes 14 and 15, if the respondent has primary custody, the petitioner will transfer \$400.00 to the respondent. If the petitioner has primary custody, the petitioner will transfer \$100.00 to the respondent.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; 4A-122 recompiled and amended as 4A-212 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-207. Notice of hearing (domestic relations actions).

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v. _____ No. _____

_____,
Respondent.

NOTICE OF HEARING
*(domestic relations actions)*¹

NOTICE IS HEREBY GIVEN that a hearing in this case has been set as follows:

Date of hearing: _____
Time of hearing: _____
Place of hearing: _____

Matter(s) to be heard: _____
Comments: _____
Length of hearing: _____
Judicial Officer: _____

If this hearing requires more or less time than the court has designated, or if this hearing conflicts with any prior setting, please contact us immediately as continuances may not be granted on late notice. The District Court complies with the American with Disabilities Act. Counsel or self-represented litigants may notify the Clerk of the Court of the nature of the disability at least five (5) days before ANY hearing so appropriate accommodations may be made. Please contact us if an interpreter will be needed.

CLERK OF THE DISTRICT COURT

CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of _____ County, New Mexico, do hereby certify that I served a copy of this document to all parties listed on the attached page on _____ (date).

By: _____

PARTIES ENTITLED TO NOTICE

(The party requesting the hearing must list the name, address, and phone number of every party entitled to notice, including the requesting party. If a party has an attorney, list the name and address of the attorney.)

Party's name: _____

Mailing address: _____

Telephone number: _____

Party's name: _____

Mailing address: _____

Telephone number: _____

(Repeat as necessary.)

USE NOTE

1. This form may be used anywhere in this state to give notice of a hearing in a domestic relations action.

[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-206. Request for hearing (domestic relations actions).

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v. _____ No. _____

_____,
Respondent.

**REQUEST FOR HEARING
(domestic relations actions)¹**

Assigned judge: _____

Matters to be heard: _____

Hearings presently set: _____

Amount of time requested: _____

(Provide names, mailing addresses, and telephone numbers of parties who need to be notified — attach a list if necessary.)

Hearing requested by:

Signature of party

Name (*print*)

Mailing address (*print*)

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

Telephone number

VERIFICATION OF SERVICE

I affirm under penalty of perjury under the laws of the State of New Mexico that on

_____ (date), I (check the applicable item below and fill in all information)

- [] mailed a copy of this request by United States mail, postage prepaid, to:
Name: _____
Mailing address: _____
City, state, and zip code: _____;
- [] delivered a copy of this request to _____ (the other party or the other party's attorney); or
- [] faxed a copy of this request to _____ (the other party or the other party's attorney) using the following fax number: _____. The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m) (p.m) on _____ (date).

Signature of party

Date of signature

USE NOTE

1. This form may be used anywhere in this state to request a hearing in a domestic relations action.

[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.]