

# **DOMESTIC VIOLENCE AND THE NEW MEXICO FAMILY VIOLENCE PROTECTION ACT**

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For basic information about representing yourself in District Court, see also the [Appendix of this publication](#).

In New Mexico, there are several laws that protect someone from domestic violence and domestic abuse. This section is about protection under the New Mexico Family Violence Protection Act. You will find this Act at [Sections 40-13-1 through 40-13-12 NMSA 1978](#).

## **WHAT IS DOMESTIC VIOLENCE?**

In general, domestic violence is abusive behavior by one person to control and dominate another person within a close relationship. It can include physical assault and psychological abuse, as well as other behaviors (like keeping close control of money or your identification documents) that are part of a pattern of asserting power and control over you. It also can include behaviors that cause you to fear for your safety.

The New Mexico Family Violence Protection Act allows a victim of domestic violence to get an “Order of Protection” against the “household member” (see page 2) who committed the “domestic abuse.”

## **DOMESTIC ABUSE + HOUSEHOLD MEMBER = ORDER OF PROTECTION**

“Domestic abuse” includes stalking, sexual assault, actual or threatened physical harm to you or to your children, emotional distress, harassment, and other behaviors. Read more at [Section 40-13-2 NMSA 1978](#).

## **WHAT IS AN ORDER OF PROTECTION?**

It is an enforceable court order that requires the abuser to stop the violence and abuse.

People commonly call it a “restraining order.”

In New Mexico it is called an “Order of Protection.”

## **HOW WILL AN ORDER OF PROTECTION HELP ME?**

It can order the abuser to:

- Stay away from you and your children
- Stop contacting you
- Not have weapons or ammunition
- Move out of your house
- Obey orders about property

The court is also allowed to award:

- Child custody and visitation (temporarily)
- Child support (temporarily)

Spousal support (temporarily)

## **WHO CAN ASK FOR AN ORDER OF PROTECTION?**

Anyone who believes they are a victim of sexual assault or stalking; or

Anyone who believes they experienced domestic abuse from a “household member.” Household member includes:

A spouse or former spouse,

A parent, stepparent, or parent in-law,

A grandparent, or grandparent-in-law,

A child, stepchild, or grandchild,

The co-parent of your child or children,

A person with whom you have a continuing personal relationship (including boyfriend/girlfriend or dating partner).

Read more about household members at [Section 40-13-2 NMSA 1978](#).

## **CAN I ASK FOR AN ORDER OF PROTECTION IF I'M NOT SURE THAT I QUALIFY UNDER THIS ACT?**

Yes, you can always ask for an Order of Protection, but it is up to the judge to decide if it's granted or not.

If you do not think you qualify, talk to a lawyer, law enforcement, or to a local domestic violence organization. There may be other laws that protect you from domestic abuse.

## **CAN I ASK FOR AN ORDER OF PROTECTION IF I AM NOT IN THE U.S. LEGALLY?**

Yes. The New Mexico Family Violence Protection Act protects anyone who is a victim of domestic abuse, regardless of immigration status.

## **HOW DO I ASK FOR AN ORDER OF PROTECTION?**

First, you start a court case by filling out these forms:

[Form 4-961 NMRA](#) – petition for order of protection from domestic abuse and

[Form 4-961A NMRA](#) – service of process information for petition for order of protection from domestic abuse and petition for emergency order protection.

Domestic violence forms are available online for free at <https://nmsupremecourt.nmcourts.gov>. If you do not have a computer, most courts will give you the forms for free.

Take your completed forms to the clerk's office. They will file your petition for free.

## **HOW SOON WILL I GET THE ORDER OF PROTECTION?**

Within one business day, the judge will either approve or deny your petition. When you file your petition, ask the court clerk how they will notify you about the judge's decision.

If approved – the judge issues a **temporary** Order of Protection and schedules a date for everyone to come to the court. This is called a “court hearing.” At the court hearing, the judge decides if the temporary order will

become a permanent order.

If denied – the court clerk cannot tell you why the judge denied your petition or what to do about it. You may wish to see a lawyer to help you.

### **HOW WILL THE OTHER PERSON KNOW IF THE JUDGE ISSUES A TEMPORARY ORDER OF PROTECTION?**

The other person must receive a copy of your Petition and a copy of the Temporary Order of Protection. This is called "serving" your court papers. One thing is very important - **you** do not serve these court papers on the other person; your job is to arrange for someone else to do this for you. Check with your local clerk's office. In some districts, the court clerk can help you with this step.

### **HOW WILL THE OTHER PERSON KNOW TO COME TO THE COURT HEARING?**

The date and time of the court hearing is listed in the Temporary Order of Protection.

### **I'VE BEEN ACCUSED OF DOMESTIC VIOLENCE. HOW DO I TALK TO THE JUDGE ABOUT IT?**

You cannot talk to the judge until the court hearing.

If you've received a petition and a temporary Order of Protection, you can fill out and file a response to the petition ([Form 4-962 NMRA](#)). This is how you tell the judge your side of what happened. You can also file a counter-petition ([Form 4-962A NMRA](#)). This is how **you** ask the judge for an Order of Protection against the other person.

Take your completed forms to the clerk's office. They will file your response or petition for free.

### **DO I HAVE TO GO TO THE COURT HEARING?**

Yes.

Petitioner – if you do not go, your order might be canceled.

Respondent – if you do not go, the judge can make the Order of Protection permanent against you. The judge can also issue a warrant for your arrest.

### **CAN I CANCEL OR CHANGE THE ORDER OF PROTECTION?**

Even if you both agree to cancel or change the Order of Protection, only the judge can make that decision. And usually it means another court hearing.

You can ask the judge to cancel or change the order by filling out and filing an Application to Modify, Terminate, or Extend an Order of Protection ([Form 4-968 NMRA](#)). Ask if your local court also needs a "request for hearing" form.

### **CAN I EXTEND THE ORDER OF PROTECTION?**

You can ask the judge to extend the Order of Protection by filling out and filing an Application to Modify, Terminate, or Extend an Order of Protection ([Form 4-968 NMRA](#)). Ask if your local court also needs a request

for hearing form.

### **WHAT IF THE ORDER OF PROTECTION IS VIOLATED?**

Call law enforcement if you think you are at risk.

Violating an Order of Protection can have serious consequences; it can be a criminal offense or can change the violator's immigration status.

You can file paperwork to tell the court about the violation. Currently there is not a NM Supreme Court form for this. Ask your local court if they have a form. Also ask if your local court requires a request for hearing form.

### **WHAT IF I DON'T SPEAK ENGLISH?**

When you file your petition, tell the court clerk.

Fill out [Form 4-115 NMRA](#) to reserve an interpreter at the court hearing for free.

## **APPENDIX: REPRESENTING YOURSELF – BASIC INFORMATION**

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### **WHO THIS GUIDE IS INTENDED TO HELP**

This guide is intended to help individuals who are representing themselves, either as a plaintiff/petitioner or a defendant/respondent in a civil lawsuit or a domestic matter filed in a New Mexico State District Court.

That means this guide is not intended to be used for any other type of court, including Metropolitan Court, Magistrate Court or Municipal Court. It does not have information about appeals from these courts. It is not to be used by defendants in a criminal case.

### **HOW THIS GUIDE IS INTENDED TO HELP YOU**

This guide is intended to be an informative and practical resource guide to understanding the basic practices of the court and the most common procedures encountered by people representing themselves without a lawyer (known as “self-represented litigants” or “pro se litigants”). It **IS NOT** a substitute for legal advice; it will not answer all your questions about what you need to do to represent yourself.

### **A WORD OF WARNING**

Because the law is constantly changing, the court does not guarantee the legal sufficiency of this information guide nor does it guarantee that it meets your specific needs. If you represent yourself in a court case, you are acting as your own lawyer. That means you are expected to know and follow the law and court rules. The potential risks associated with representing yourself are not always obvious. That is why the court encourages anyone who is thinking about representing themselves to talk to a lawyer first.

If you are a tribal member, please be aware that this guide does not address tribal law. Your rights and responsibilities in state court may be different than your rights and responsibilities in tribal court.

### **GETTING HELP**

Court employees are not lawyers and cannot tell you what you should do or how the law applies to your situation. Read more about what court employees can and cannot do at [Rule 23-113 NMRA](#).

Some courts have a resource center where court employees can help you with court procedures. They cannot give you legal advice. Check with your local district court to see what services are available to you.

While some courts offer packets of forms for certain kinds of court cases, there are not forms for every issue. Look for forms on the New Mexico Supreme Court website at <https://nmsupremecourt.nmcourts.gov> or check with your local district court to see what forms they offer. Sometimes you will need a lawyer to create legal documents for you.

To read about free and low-cost legal help, please go to the Resource List section of this guide.

## **ABOUT NEW MEXICO’S LAWS, RULES OF PROCEDURE, LOCAL RULES AND FORMS**

As a person representing yourself, you should be familiar with the laws (called “statutes”), rules, local rules, and forms that govern or must be used in your court case. But, court employees cannot help you with this. New Mexico laws, rules, and forms are referred to using a very specific format. You will see four common formats in this guide.

For New Mexico Laws (Statutes) the format looks like this: Section 40-8-1 NMSA 1978

For New Mexico Rules of Procedure, the format looks like this: Rule 23-112 NMRA

For Local District Court Rules, the format looks like this: LR1-306 NMRA

For New Mexico Supreme Court Approved forms, the format looks like this: Form **4-209** NMRA

For more information about New Mexico’s Laws, Rules, Local Rules, and Forms, contact the New Mexico Supreme Court Law Library by telephone at 505-827-4850, by email at [libref@nmcourts.gov](mailto:libref@nmcourts.gov), by regular mail at P.O. Drawer L, Santa Fe, New Mexico 87504-0848, or visit their website at [supremecourtlawlibrary.org](http://supremecourtlawlibrary.org). If you are viewing the electronic version of this guide, you can click on the number of any statute, rule, or form that is mentioned in this guide to see the text of that statute, rule, or form. You can also get free access to all New Mexico state statutes, rules, and forms on the New Mexico Compilation Commission’s public access website. The New Mexico Compilation Commission is the official legal publisher for the State of New Mexico. Directions for how to find and navigate the Compilation Commission’s public access website can be found at the end of this section of the guide (page 6).

### **STARTING A COURT CASE**

The pleading that starts a court case is called a “complaint.” Depending on the type of case, this first pleading can also be called a “petition” or an “application.”

The court case is started when a complaint is filed with the court. **Filing** a complaint requires a filing fee. Filing fees vary; check with the clerk’s office at your local district court for more information about filing fees. If your income is below a certain level, you may be entitled to a waiver of the filing fee. This is called “free process.” Ask the clerk’s office at your local district court for more information about free process.

Once a court case is started, the plaintiff must “serve” each defendant with a copy of all the court papers they filed.

### **SERVING THE COMPLAINT**

Each defendant must be notified that a lawsuit has been filed against them through a process that is specified under the law. Whether you are trying to serve a person, a business or a governmental agency, this can be a complicated process. Please read [Rule 1-004 NMRA](#) carefully for the steps to follow when serving a complaint.

Even if you can’t find the defendant, you still have to serve them. You may have to ask the court for permission to publish a notice in the newspaper by using New Mexico Supreme Court approved [Forms 4-209](#) and [4-209A NMRA](#). Again, please read [Rule 1-004 NMRA](#) carefully for more details.

One thing is very important – **you** do not serve the defendant; your job is to **arrange** for someone else to serve the complaint for you.

## **ANSWERING A COMPLAINT THAT HAS BEEN FILED AGAINST YOU**

It is important to file an “Answer” to the Complaint within 30 days from the date you are served. The date you are considered served with the Summons is determined by [Rule 1-004 NMRA](#). Otherwise, the plaintiff can ask the court for a judgment against you without you knowing anything is happening.

An “Answer” is a pleading. There are New Mexico Supreme Court approved Answer forms available for divorce and civil cases. Some courts offer a packet with the form used to answer a complaint; check with your local district court for more information.

There is no fee to file an Answer.

## **TALKING DIRECTLY TO A JUDGE, HEARING OFFICER, OR THEIR STAFF**

Communicating with a judge or hearing officer without the opposing party being present is not allowed. This is why a judge or hearing officer cannot read your letters or answer your calls.

The judge’s or hearing officer’s personal staff – the Trial Court Administrative Assistant – can answer questions about scheduling but cannot give legal advice or tell you how a judge will rule on your case.

## **MONITORING THE PROGRESS OR STATUS OF YOUR CASE**

The clerk’s office maintains a computerized “register of actions” for each court case. Every time something happens in your court case, whether you file a pleading, have a court hearing, or the court enters an order, it is added to the register of actions in your case. You can look up the register of actions at any time at [www.nmcourts.gov](http://www.nmcourts.gov). Select “On-Line Case Lookup” and follow the directions.

## **FILING MOTIONS**

Asking the judge to take a specific action in your case requires filing a “motion.” A motion is the pleading you use to tell the judge your problem and to explain what action you want the judge to take. Some courts offer a packet of forms needed to file a motion. Check with your local district court for more information. Additionally, you must send a copy of any motion you file to all other parties (or their lawyer, if they have one). It may also be necessary for you to send a copy of the motion directly to the judge so the judge will know it has been filed. Read the local rules for your district carefully to determine how and when to send the motion to the judge.

## **TRIAL**

You are entitled to a jury trial in many, but not all, types of lawsuits. If you are entitled to a jury trial, you must ask for one in writing and pay a jury fee. Read [Rule 1-038 NMRA](#) for more information about asking for a jury trial.

## **HEARINGS**

How to ask for a Hearing:

- Asking a judge to schedule a hearing requires filing a pleading called a “Request for Hearing.” It is also called a “Request for Setting.”
- There are rules you must follow when you file a Request for Hearing. For example, when you file the request, you also deliver a copy to all other parties (or their lawyer, if they have one). Read more at [Rule 1-005 NMRA](#).



- Some courts require you to provide addressed-stamped envelopes with your request for hearing. Check the Local Rules or with your local district court for more information.
- Always check the Local Rules or with the court to see if you are required to turn in other forms in addition to the Request for Hearing.

#### Rescheduling a Hearing:

- Asking a judge to reschedule a hearing is called asking for a “continuance.” It means continuing the hearing to another date and time.
- Asking a judge for a continuance requires filing a motion. Some courts offer a packet of forms needed to file a motion; some even have a packet specifically designed to ask for a continuance. Check with your local district court for more information.

#### What happens at a hearing:

- At the hearing, each party will have a chance to tell the judge their side of the issue.
- It is important to bring your evidence, witnesses, and anything else that will help you prove your case. Because there are specific rules about presenting your evidence to the judge, you may wish to consult with a lawyer about how to present your case.

#### Helpful hints about hearings:

- **SHOW UP** – it is always important to show up to court. **If you are not in the courtroom when your case is announced, you may lose your case.**
- **BE ON TIME** – plan to be at the courthouse **early**. Remember that you will need to park, clear the security check, and find the courtroom. **If you are not in the courtroom when your case is announced, you may lose your case.**
- **Practice** – go to the court on a day before your hearing. Practice how long it takes you to get to the court, park, and find the courtroom. Go and see what the courtroom looks like. Go to a court hearing to see what happens.
- **How to dress** – dress neat and clean. Each court has a dress code. The judge can order you to be removed from the courtroom if you violate the dress code; **if you are not in the courtroom, you may lose your case.**
- **How to act** – court hearings are not like TV. Be respectful to the judge and to the opposing party at all times.
- **Talking to the judge** – stand when talking to the judge. Call the judge “your Honor.” Speak clearly and loudly enough to be heard. Do not interrupt the judge. Stay calm.
- **Cell phones** – each court has a cell phone policy. Check with your local district court about cell phones.
- **Children** – do not bring children into the courtroom unless the judge has given you permission to do so. Courts do not have a place where children can wait unattended.
- **Take notes** – bring a pad of paper and a pen to the hearing. Write down any orders the judge makes.

## ORDERS AND JUDGMENTS

A “court order or judgment” is the judge’s instructions telling someone what they can or cannot do.

Creating an order or judgment – usually, at the end of a hearing, the judge will say who is to create the court order or judgment. Most courts do not create this paperwork for you. If you are instructed to create the court order or judgment, you may need to hire a lawyer to create one for you.

Enforcing an order – some courts offer a packet of forms needed to ask a judge to enforce a court order. Check with your local district court for more information.

## IF YOU HAVE A DISABILITY



If you have a disability and need assistance, notify the court as soon as possible before any hearing or trial.

### **IF YOU NEED AN INTERPRETER**

The court provides an interpreter in any language for free at court hearings or trials.

You are responsible for notifying the court that you need an interpreter, so make sure you reserve an interpreter in advance of any hearing or trial.

Use [Form 4-115 NMRA](#) to **reserve** an interpreter.

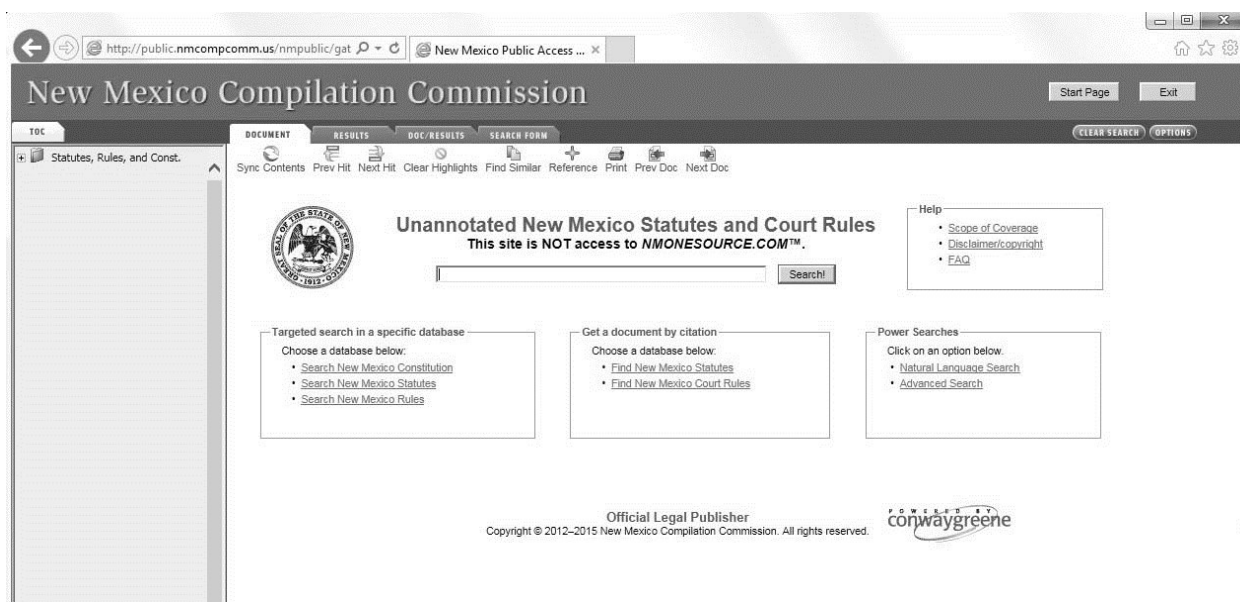
If you reserved an interpreter and then find out you don't need one (for example, if a hearing or trial was rescheduled), be sure to **cancel** the interpreter. Use [Form 4-116 NMRA](#) to **cancel** an interpreter.

## HOW TO FIND STATUTES, COURT RULES AND FORMS ON THE PUBLIC ACCESS SITE PUBLISHED BY THE NEW MEXICO COMPILATION COMMISSION

The New Mexico Compilation Commission publishes the statutes, court rules and forms online for public use at the public access site located at: <http://public.nmcompcomm.us/nmnxtadmin/NMPublic.aspx>



Select **Desktop** or **Tablet/Smartphone** and click **OK** to enter the public access site.



This is the Start Page where you will begin the retrieval of statutes, court rules and forms. For step-by-step directions from the Start Page, consult the Help section in the upper right hand corner of the Start Page for the “Self Help Guide: How to Find Statutes, Court Rules and Forms.”