

# KINSHIP GUARDIANSHIP AND THE NEW MEXICO KINSHIP GUARDIANSHIP 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 affect guardianship of a child. This section is about guardianship under the New Mexico Kinship Guardianship Act. You will find this Act at [Sections 40-10B-1 through 40-10B-15 NMSA 1978](#). Read more about where to find New Mexico’s laws and rules in the Representing Yourself – Basic Information section of this guide.

Since there are other laws that govern the care of a child, you may wish to talk to a lawyer to make sure this is the right procedure for your situation.

## **WHAT IS A KINSHIP GUARDIANSHIP?**

When a parent has left a child in the care of an adult who is not the child’s parent, that adult can ask the court to create a legal relationship between them and the child. This is called a kinship guardianship.

A kinship guardianship suspends most of the rights and duties of a child’s parents and transfers those rights and duties to another adult, who is called the “legal guardian.” There are some things the legal guardian cannot do, like agree to the child’s adoption or take over any parental rights or duties that a court orders the parents to keep. Read more at [Section 40-10B-13 NMSA 1978](#).

## **WHO CAN FILE A KINSHIP GUARDIANSHIP CASE?**

An adult can file a kinship guardianship case if they are one of these:

- The child’s kinship caregiver – an adult who is not the child’s parent and the child has been living with them for at least 90 days immediately before filing the kinship guardianship case. Read more at [Sections 40-10B-3, 40-10B-5 and 40-10B-8 NMSA 1978](#).
- A caregiver who is at least 21 years old, and the child has been living with them for 90 days immediately before filing the kinship guardianship case **and** the child has asked for them to be their legal guardian. This only applies if the child is at least 14 years old. Read more at [Section 40-10B-5 NMSA 1978](#).
- A caregiver that the child’s parent has chosen **in writing**. If both parents consent, the child does not have to live with the caregiver for 90 days immediately before filing the kinship guardianship case. Read more at [Section 40-10B-5 NMSA 1978](#).

## **HOW DO I BECOME A KINSHIP GUARDIAN?**

To become a child’s legal guardian, you must file a court case for kinship guardianship in the district court where the child lives or where the parent(s) live. Kinship guardianship forms are available on the New Mexico Supreme Court’s website at <https://nmsupremecourt.nmcourts.gov> and on many district courts’ websites. You can also check with your local district court to see if they offer a packet of forms for kinship guardianship.

## **FORMS USED IN A KINSHIP GUARDIANSHIP COURT CASE**

If you are starting a court case for kinship guardianship, use this form:

- [Form 4-981 NMRA](#) – petition for order appointing kinship guardian

If the parents agree to the kinship guardianship, each parent fills out one of these forms. Pick the form that best fits your situation:

- [Form 4-985 NMRA](#) – parental consent to appointment of guardian and waiver of service of process (paternity admitted)
- [Form 4-986 NMRA](#) – parental consent to appointment of guardian and waiver of service of process (paternity not admitted)

If the parents do not agree to the kinship guardianship, fill out one of these forms for **each** parent:

- [Form 4-982 NMRA](#) – summons kinship guardianship proceedings

Optional – if the child is 14 years old or older, they can fill out this form:

- [Form 4-983 NMRA](#) – nomination of kinship guardian

The judge will need **one** of these forms. Pick the form that best fits your situation:

- [Form 4-988 NMRA](#) – order appointing kinship guardian by consent (paternity admitted)
- [Form 4-989 NMRA](#) – order appointing kinship guardian by consent (paternity not admitted)
- [Form 4-990 NMRA](#) – order appointing kinship guardian without consent of both respondents

Courts also require a form that asks the judge to schedule a court date (called a “hearing”). You will have to provide a request for hearing form and notice of hearing form. Ask your local district court for more information.

### **DO-IT-YOURSELF STEPS:**

Step 1: Fill out the forms – choose the forms that fit your situation.

Step 2: File the forms – take the original and 3 copies of all documents to the clerk’s office for filing. Check with your local district court for the filing fee. You can also ask the court clerk about having the filing fee, or part of the fee waived. The court keeps the originals, stamps the copies and gives them back to you. One copy is for you and one copy is for each parent.

Step 3: Serve your court papers – each parent must receive a copy of your court papers. This is called "serving" your court papers. For more information about serving kinship guardianship papers, read [Sections 40-10B-5 and 45-1-401 NMSA 1978](#). Even if you do not know where to find one or both parents, you still have to serve them your court papers. You may have to ask the court for permission to publish a notice in the newspaper. Please read [Rule 1-004 NMRA](#) carefully for more details.

One thing is very important – **you** do not serve these court papers on each parent; your job is to arrange for someone else to do this for you.

Step 4: Go to your hearing – you will get a notice with your court date in the mail. Bring any documents that support your case. If you have any witnesses, make sure they come.

### **HOW LONG BEFORE I GET A HEARING?**

You should get a hearing on the petition between 30 and 90 days from when you filed the guardianship. If you

also request a temporary guardianship, you should have a hearing on that request within 20 days of filing it.

### **I THINK THIS IS AN EMERGENCY – CAN I GET GUARDIANSHIP RIGHT AWAY?**

Under certain circumstances you may be able to file for guardianship on an emergency basis. Once you file for guardianship then you can file for temporary guardianship. The judge may grant the motion for temporary guardianship with or without a hearing. Use all the forms listed in “How Do I Become a Kinship Guardian” plus:

- [Form 4-984 NMRA](#) – motion for appointment of temporary guardian
- [Form 4-987 NMRA](#) – order appointing temporary kinship guardian

### **I’VE BEEN GIVEN A PETITION FOR KINSHIP GUARDIANSHIP – HOW DO I TALK TO THE JUDGE ABOUT IT?**

You can’t talk to the judge until you go to the court hearing but you can file a Response to the Petition within 30 days after service of the Petition. Read more at [Rule 1-012 NMRA](#). Currently, there is no New Mexico Supreme Court approved form available for a response to a kinship guardianship petition. You can answer each paragraph in the petition. Check with your local district court to see if they offer a form.

If you do not file a response within the 30 days, a “Judgment by Default” may be entered against you. Read more at [Rule 1-055 NMRA](#).

### **CAN I CANCEL THE KINSHIP GUARDIANSHIP?**

Canceling the guardianship is called “revoking” the guardianship. You will have to prove to the judge that circumstances have changed and that revoking the guardianship is in the best interests of the child. If you believe that it is time to revoke the guardianship, use this form:

- [Form 4-991 NMRA](#) – motion for revocation of kinship guardianship

Courts may also require a form to ask for a court date (called a “request for hearing”). Check with your local district court.

You must serve your motion on the guardians and other parent. One thing is very important - *you* do not serve these court papers; your job is to arrange for someone else to do this for you.

## **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.

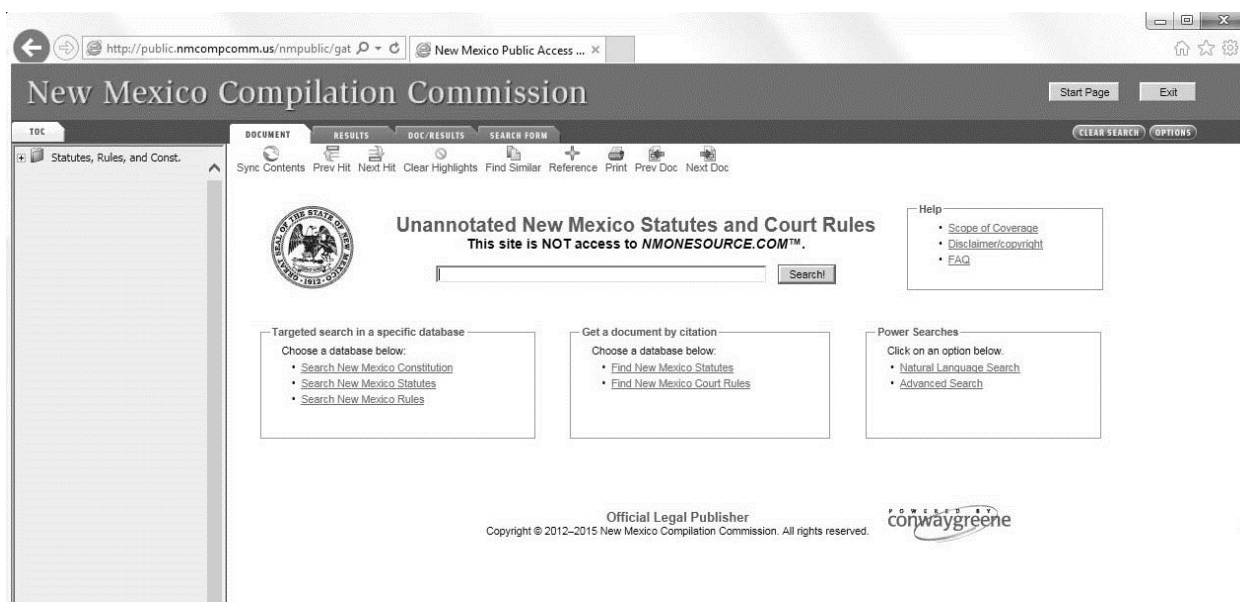


## HOW TO FIND STATUTES, COURT RULES AND FORMS ON THE PUBLIC ACCESS SITE PUBLISHED BY THE NEW MEXICO COMPILATION COMMISSION

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.”