

PATERNITY

✓ Contested (Parents do not agree)

Packet I- Stage 1

THIS PACKET IS NOT A SUBSTITUTE FOR PROFESSIONAL LEGAL ADVICE

Inside are fill-in-the-blank forms created by the New Mexico State Supreme Court for Self-Represented Litigants. They do not deal with every situation. Paternity 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.

PACKET I

CONTESTED PARENTAGE

This packet is for parents who have a minor child or children together but were not married when their child or children were born.

WHEN YOU FILE COURT PAPERS OR APPEAR IN COURT AS A SELF-REPRESENTED PERSON, YOU ARE YOUR OWN LAWYER. GET THE HELP YOU NEED BEFORE YOU CHOOSE, FILL OUT OR SUBMIT ANY OF THESE FORMS.

This packet has forms that have been approved for use in the Eleventh Judicial District Court in McKinley County. You may not need every form that is provided in this packet and you may need forms that are not included. As a self-represented litigant, it is your responsibility to decide which instructions and forms apply to your case. The court clerk cannot advise you about those decisions. Carefully consider what forms are appropriate for your case.

Your case is called **contested** because you and the other parent **DO NOT** agree about one or more of these things: Parentage • Custody • Timesharing • Child support

IF YOU AND THE OTHER PARENT AGREE ABOUT PARENTAGE, CHILD CUSTODY AND CHILD SUPPORT, THIS IS THE WRONG PACKET FOR YOU. ASK FOR PACKET G-UNCONTESTED PATERNITY



Type or print in ink all of the information required to be completed on forms filed with the court. Where the forms require it, they must be signed in front of a notary or other official authorized to administer oaths, and the notary or official must fill out the notarization.



Whatever you write in a document filed with the Court is required to be true and complete. All applicable parts of the forms must be filled in.



This packet contains only one copy of each form. You are responsible for making or obtaining from the clerk enough copies of everything you file so that you will have an original, one copy for yourself, and one for the other party. The clerk can make copies for a charge.



As the person filing the case, you are called the PETITIONER. The other parent is the RESPONDENT. Those terms will be used to identify you and the other parent throughout the case.

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

NO LEGAL ADVICE

Although the Court wants to be responsive to your needs, the court staff *cannot* give you *any* legal advice.

Your first choice should be to obtain legal advice from 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 (for example, a business, land or retirement plans) and/or have significant debts.

SELF-HELP SESSIONS

You should attend one of the Court's Free *Pro Se* Self-Help Clinics. Court staff can give you the date, time and location of the next clinic.

At the Self-Help Clinic, general explanations are provided, assistance is available for calculating child support and assistance with obtaining and using required forms. There is also an attorney available to give some limited advice on completing forms.

If you are cannot afford an attorney, there are sources available where you may get help. If there is domestic violence in your relationship, you may also qualify for assistance at DNA Legal Services, New Mexico Legal Aid or Battered Families Services.

DISTRICT COURT INFORMATION



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 AM to Noon and 1:00 PM to 5 PM weekdays except holidays and other special times.

IMPORTANT RULES

When you are appearing *pro se*, you are held to the same standards as attorneys as to knowledge of 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 don't, your case may be decided without your input.

BE ON TIME for 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 Courtroom of the hearing. Allow yourself plenty of travel time to appear for your hearing on time.

Matters before the Court are sometimes scheduled on a trailing docket. That means several cases are set for hearing at the same time and the Court deals with them one at a time. You may have to be in Court for several hours or the entire day. Please be sure to make arrangements to do so.



Children are not allowed in the courtroom, and there are no child care facilities at the Court. You should make other arrangements for children for the time you will be at Court.

Do not call or write to the judge or hearing officer. As a general rule, evidence, documents and testimony can be read or heard by the judge or hearing officer only in the presence of both parties.

Telephonic appearances at Court hearings may be acceptable, but **only** if requested in writing with good cause and **only** if approved by the Court prior to the hearing date. It is best to be present in person if at all possible. If you must ask to appear by telephone, you should do so well in advance of the hearing.

Bring at least four (4) copies of any documents that you intend to offer into evidence.

HOW TO BEHAVE WHEN AT COURT

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 a question, or evidence, or 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. If the witness is testifying you will be able to ask the witness questions directly while he or she is testifying. You will be given an opportunity to be heard if you 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 wearing clean, neat clothing. Remove your hat and sunglasses before entering the courtroom.

FOOD, DRINKS, AND CELL PHONES

Do not bring any food or beverage into the courtroom and do not chew gum or tobacco, or eat candy or other food in the courtroom.



Do not bring any cell phones into the courtroom. If your cell phone rings or is used in the courtroom it may be taken from you and you may be held in contempt by the Court.

THANK YOU.

Bradley Keeler District Judge

Douglas W. Decker, District Judge

R. David Pederson, District Judge

4A-101. Domestic relations information sheet.

DOMESTIC RELATIONS INFORMATION SHEET¹

NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET

*Type or print responses. Required in all domestic relations cases.²
(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:

NAME: _____

Other names (e.g. maiden name):

Address: _____

City: _____

State: _____

Zip code: _____

Date of birth: _____

Social Security number³: _____

RESPONDENT:

NAME: _____

Other names (e.g. maiden name):

Address: _____

City: _____

State: _____

Zip code: _____

Date of birth: _____

Social Security number³: _____

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)

Date of birth: _____

Social Security number: _____

2. NAME: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

3. NAME: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

4. NAME: _____

(Last name, first, middle)

Date of birth: _____

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.⁴ 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) 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.]

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT COURT

Petitioner,

v.

Case No. D-1113-_____

Respondent

PETITION TO
ESTABLISH PARENTAGE, CUSTODY AND CHILD SUPPORT

Whenever there is not enough space to answer a question use the extra pages attached to this Petition or make copies to complete the answer.

1. Names of parties:

Petitioner: *(full legal name)* _____

Respondent: *(full legal name)* _____

2. Names of Children Involved in this Case. For each child who is involved in this case, give the full legal name, age and year of birth *(If a child of Petitioner and Respondent is not yet born, list the child as "Unborn" and the expected due date.)*

Name <i>(full legal name)</i>	Age	Year of Birth

3. Standing and Jurisdiction:

A. Petitioner has standing to bring this action because Petitioner is: *(Check the correct box and fill in space)*

☐ The mother of the child(ren).

☐ A man whose paternity of the child(ren) is to be adjudicated.

☐ The child(ren) whose parent is to be determined.

☐ Other: *(explain)* _____

_____.

B. The Court has personal jurisdiction over the Respondent because: *(check ALL boxes which apply and fill in the information.)*

☐ Respondent resides in New Mexico.

☐ Respondent currently does not reside in New Mexico, but used to reside in New Mexico with the child(ren) involved in this case. *(If Respondent DID NOT reside in New Mexico with ALL the children, list names of children whom Respondent DID RESIDE with in New Mexico):* _____

☐ Respondent currently does not reside in New Mexico, but used to reside in New Mexico and provided prenatal expenses or support for the child(ren) . *(If Respondent DID NOT both live in New Mexico AND ALSO provide prenatal expenses or support for ALL the children, list names of children for whom Respondent DID provide for):* _____

☐ Respondent engaged in sexual intercourse in this state and the child(ren) who are involved in this case may have been conceived by this. *(If not all the children were conceived in New Mexico, list the names of the children who WERE conceived in New Mexico):* _____

☐ The child(ren) involved in this case reside now in New Mexico as a result of the acts or directives of Respondent. *(If this does not apply to all the children, list the names of the children to whom it DOES apply):* _____

[] The Respondent asserted paternity of a child or children in the putative father registry maintained in New Mexico. (List the names of the children which this applies to.): _____

[] Other reason: _____

4. For each child listed in Paragraph Number 2, give the following information: (State physical address, number, street city and State or location description,; NOT post office box, and the persons with whom the child is and was living.)

A. Child (name) _____

All places and persons where this child IS LIVING now AND where he or she has lived during the last FIVE years:

Place/address	Names of persons living with	When (from m/y to m/y)
(currently) _____	_____	_____

(previously) _____	_____	_____
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(Provide the same information about ALL other child(ren) on the extra page for Paragraph 4 provided at the end of the Petition.)

B. Are YOU or Respondent or ANY child listed in paragraph 2 an ENROLLED MEMBER of any tribe or pueblo OR is he or she ELIGIBLE to become an enrolled member?

[] Yes. [] No. (If the answer is "yes" then for each party and/or child who is or is eligible to become a member fill out all of the following information: (Circle the correct answer for each.)

Name:	Name of tribe or pueblo:	Enrolled member?	Eligible to be enrolled?
You:	_____	(yes/no)	(yes/no)
Respondent:	_____	(yes/no)	(yes/no)
Child: _____	_____	(yes/no)	(yes/no)

Child: _____ (yes/no) (yes/no)
 Child: _____ (yes/no) (yes/no)
 Child: _____ (yes/no) (yes/no)

5. Reservation or Indian Country Residence:

Have either YOU or Respondent or ANY child involved in this case lived on a reservation, in any pueblo, in a “checkerboard” area or in “Indian Country” AT ANY TIME in the past six months? This includes grazing leases, home site leases, tribal trust land, allotments, fee land within tribal or pueblo jurisdiction, dependent Indian communities and possibly others.

☐ Yes. ☐ No. *(If the answer is “yes”, then for each party and/or child involved in this case who has lived in such a place fill out the following information):*

Name:	Name of tribe or pueblo:	Physical address:	Dates (m/y to m/y)?
You:	_____	_____	_____
Respondent:	_____	_____	_____
Child _____	_____	_____	_____
Child _____	_____	_____	_____
Child _____	_____	_____	_____
Child _____	_____	_____	_____

6. Venue:

A. Do ALL the child(ren) involved in this case reside in, or are they found in, McKinley County at this date?

☐ Yes ☐ No *(If the answer is “No”, List the names of all children who ARE now residing or found in McKinley County)* _____

B. Does the Respondent reside in, or is he or she found in, McKinley County?

☐ Yes ☐ No *(Give Respondent’s address (including City, County and State))* _____

7. Genetic testing/ Dispute of Paternity: *(Check which boxes apply and fill in blank if needed.)*

☐ Parentage is not in dispute. ☐ Petitioner and Respondent are the parents of the child(ren)

named in Number 2 above. ☐ Respondent is the _____ of the child(ren) listed in Number 2 above. Genetic testing is not necessary.

☐ Parentage is or may be in dispute. Genetic testing is requested.

☐ Parentage is or may be in dispute. However, genetic testing is not requested because:

8. Have there been or are there other court cases? (*Check ALL boxes which apply*):

Has there ever been another case in any court of any state, tribe, pueblo or other jurisdiction involving child custody, visitation, or child support for ANY of the child(ren)?

☐ NO. There *have never been* any other court cases involving ANY of the child(ren) named in Number 2 above.

☐ YES. There *has been* one or more other cases involving custody, visitation or support of one or more of the children.

☐ Petitioner (*check applicable box*) ☐ is participating or has participated ☐ is not participating or has not participated, as a party, witness, or in some other way, in *another* court case concerning custody, visitation, or child support of one or more children named in Paragraph Number 2 above.

☐ Respondent (*check applicable box*) ☐ is participating or has participated ☐ is not participating or has not participated, as a party, witness, or in some other way, in *another* court case concerning custody, visitation, or child support of one or more children named in Paragraph Number 2 above.

9. List the other court cases. (*If the question in Number 8 is answered "Yes", please provide this information for EACH CASE*):

Name(s) of child or children _____

Court _____ Address _____ Case number _____

_____ Subject matter of court case (child support, domestic violence, etc.):

Name(s) of child or children _____

Court _____ Address _____ Case number _____
_____ Subject matter of court case (child support, domestic violence, etc.):

Name(s) of child or children _____
Court _____ Address _____ Case number _____
_____ Subject matter of court case (child support, domestic violence, etc.):

10. Other people claiming custody or visitation. (*Check ONE of the following*):

☐ ANOTHER person besides the Petitioner or Respondent:

(a) has physical custody of any child named in Paragraph Number 2 above, OR

(b) claims to have any right of legal custody, physical custody, visitation, or
guardianship with any child named in Paragraph Number 2 above.

Give the following information for EVERY other person who has physical custody, or
claims to have any right of legal custody, physical custody, visitation, or guardianship of ANY
child):

Name of person	Address	Name of Child	Relationship to Child
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ NO OTHER person besides the Petitioner or Respondent:

(a) has physical custody of any child named in Number 2 above, OR

(b) claims to have any right of legal custody, physical custody, visitation, or
guardianship with any child named in Paragraph Number 2 above.

11. Custody and time-sharing. (*Check ALL boxes that apply and fill in information*):

☐ We do not have an agreement yet about child custody or time-sharing.

☐ We have an agreement about child custody and time-sharing which is outlined in
the Custody Plan filed with this petition.

☐ We should share joint custody of any child(ren).

☐ Sole custody of the child(ren) should be granted to _____ because:

☐ A court order involving custody of or time-sharing with ANY of the child(ren) has already been issued by a court: *(For each child for whom an order has been issued fill in the following information):*

Name of child: _____ Name of Court: _____ Case number: _____

12. Child support/medical support. *(Please mark ALL boxes that apply. Fill in all information for each box that applies. Add additional pages if necessary):*

☐ We do not yet have an agreement about child and medical support. Child support should be ordered to be paid according to law.

☐ We have an agreement about child and medical support. The agreement is set forth in the Child Support Obligation form and completed guideline worksheet which are filed with this petition.

☐ Child support is already being considered in another case for the following child(ren):
(For each child for whom there is a case fill in the following information):

Name of child: _____ Name of Court: _____ Case number: _____

☐ A court order involving child support for ANY of the child(ren) has already been issued by a court: *(For each child for whom an order has been issued fill in the following information):*

Name of child: _____ Name of Court: _____ Case number: _____

- [] Child support is in the process of being established, in CSED account number _____
_____ for (name child(ren): _____
- [] Child support has been established by another agency for (name child(ren): _____
_____ in (name of
agency AND case number) _____
- [] Retroactive child support and/or medical and birth expenses should be awarded.
- [] The parties should be ordered to provide medical and dental insurance for the child(ren) in
accordance with law.
- [] Other (explain): _____

13. Public Assistance. (Check all boxes which apply and fill in all information)

- [] No one (including Petitioner, Respondent or any other person) is receiving or has received
Medicaid, TANF, or any other public assistance or benefits for the benefit of any of the
child(ren).
- [] (List names of persons receiving or who have received public assistance or benefits):
_____ is/are
NOW RECEIVING public assistance or benefits for the following child(ren) (List names
of each child for whom aid is being received) _____
_____ from (list name(s) of agencies or governmental units from which aid is being received and
any case numbers) _____

- [] The following person(s) have received IN THE PAST public support or aid for the child(ren)
(List names of persons who received aid or support) (List names of each child for whom
aid is being received) _____
_____ from (list name(s) of agencies or governmental units from which aid was being received
and any case numbers) _____

14. Birth record:

Upon determination of Paternity the Department of Vital Statistics should be ordered to change the birth record of the minor child(ren) listed in Number 2 above to reflect the determination of this Court or if the Respondent is not listed as a parent on the birth certificate.

WHEREFORE, the Petitioner requests that the Court:

- A. Determine that _____ is the parent of the child(ren) identified in Number 2 above;
- B. Approve any agreements filed with this petition;
- C. Make appropriate orders regarding child custody, visitation, child support, medical support, birth record, name change and related matters; and
- D. Enter any other orders that the Court believes to be fair and just.

Petitioner is signing this Petition

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 statements contained in the above Petition are true to the best of my knowledge and belief.

Signature of Petitioner

Date

Address

**Telephone
number:**

EXTRA PAGES ABOUT ADDITIONAL CHILDREN
(SEE PARAGRAPH 4 PARENTAGE PETITION)

Child (name)_____ Present address: _____

The child lives with these people now: _____

The child has lived with these people and at these places during the last FIVE years:

Place (city, state)	Names of persons living with	When (from m/y to m/y)
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Child (name)_____ Present address: _____

The child lives with these people now: _____

The child has lived with these people and at these places during the last FIVE years:

Place (city, state)	Names of persons living with	When (from m/y to m/y)
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Child (name)_____ Present address: _____

The child lives with these people now: _____

The child has lived with these people and at these places during the last FIVE years:

Place (city, state)	Names of persons living with	When (from m/y to m/y)
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**MORE INFORMATION ABOUT PARAGRAPHS OR ANSWERS IN
PARENTAGE PETITION**

Paragraph Number: _____ Additional Information: _____

Paragraph Number: _____ Additional Information: _____

Paragraph Number: _____ Additional Information: _____

Paragraph Number: _____ Additional Information: _____

4-206. Summons. Parentage Action-to Respondent (Defendant) [For use with District Court Civil Rule 1-004 MRA]

SUMMONS	
District Court: Eleventh Judicial District McKinley County New Mexico Court Address: 207 W. Hill Ave., Rm 200 Gallup, NM 87301 Court Telephone Number: (505)863-6816	Case Number: D-1113- _____ Judge: _____
Petitioner(s): _____ v. Respondent(s): _____	Respondent: Name: _____ Address: _____

TO THE ABOVE NAMED RESPONDENT: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 MRA) 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. The district court complies with the Americans with Disabilities Act. It is counsel's or 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 the appropriate accommodations can be made. The court must be notified as to the appropriate type of accommodation which will be necessary.
8. 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; 1-800-876-6227; or 1-505-797-6066.

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 NMRA OF THE NEW MEXICO RULE OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

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 petition attached, in the following manner:

(check one box and fill in appropriate blanks)

[] to the respondent _____ (used when defendant accepts a copy of summons and petition or refuses to accept the summons and petition)

[] to the respondent 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 petition on the respondent by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of petition attached, in the following manner:

() to _____, a person over fifteen (15) years of age and residing at the usual place of abode of respondent _____, (used when the respondent is not presently at place of abode) and by mailing by first class mail to the respondent at _____ (insert respondent's last known mailing address) a copy of the summons and petition.

[] to _____, the person apparently in charge at the actual place of business or employment of the respondent and by mailing by first class mail to the respondent at _____ (insert respondent's business address) and by mailing the summons and petition by first class mail to the defendant at _____ (insert respondent's last known mailing address).

[] to _____ an agent authorized to receive service of process for respondent

[] to _____ [parent] [guardian] [custodian] [conservator] [guardian ad litem] of respondent
_____ (used when respondent 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 _____, _____

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.]

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.]