

INSTRUCTIONS FOR FILING A CONTESTED CUSTODY

PETITION

THIS PACKET CONTAINS:

- **Advisory:** Please Read This Carefully!

- **Step by Step Flowchart:** A step by step guide with notes and explanations for the information required in each of the required documents and what to do next.
 - **Petition to Establish Parentage:** This is the document that you will fill out and file with the Court to get your custody case started.

 - **Domestic Relations Information Sheet:** This is where you list the names, addresses and contact information of the parties to the case. A blank one also goes to the other parent of your child(ren), the Respondent.

 - **Parenting Plan:** This document sets out who has the child(ren) and when, how exchanges are done, what to do if a change is necessary.

 - **Child Support Worksheets:** Documents that have each party's income and expenses and costs for childcare and insurance so that the child support amount can be determined.

 - **Summons and Return of Service:** This is what you use to show the Court that you gave the Respondent legal notice of the Petition and inform her or him that you have filed for this case.

 - **Response:** This document is filled out by the Respondent and filed with the court. It lets the Court know whether they agree or disagree with what you wrote in the Petition.

- **Giving the required LEGAL NOTICE:** This will explain what legal notice is and what you have to do in order to comply with the court rules.

Getting an enforceable Order that determines custody, time-sharing and child support between people that are not married and have children requires the filing of several documents with the Court. You have to open a case and serve the other parent with the petition and have a hearing. This instruction packet contains instructions for the process to be started. If at all possible you need to talk to a lawyer because the process is quite complicated. If you represent yourself the Court will hold you responsible for following the same rules that the attorneys must follow.

Court personnel CANNOT give you any legal advice. Court personnel CANNOT tell you what you need to put in any of the forms. They can help you with what forms are necessary, give you the statute and rule numbers that you have to follow, and give you web addresses for where you can read them for yourself. Rule 23-113 NMRA explains that court staff can answer questions about how to act in court, how to file documents or request hearings, and where you might get help, but they cannot interpret any case ruling or statute or rule. They cannot tell you what to say or answer. They cannot tell you what you should or should not do in your case and they will NEVER help you talk to a judge.

There are several resources for help with the forms and legal advice. If you have any questions about what you need to write in the forms, what you need to ask for, or any legal questions about custody, CONSULT AN ATTORNEY! If you are a low-income New Mexican you can call Law Access New Mexico at 1-800-340-9771 and speak to an attorney for a free telephone consultation. You can visit their [website](#) and get more information. If you live in Torrance County you might be able to get free legal help through [New Mexico Legal Aid](#) and the Family Justice Project. You can also get information about how to represent yourself and how to fill out some of the forms like the child support worksheets. You can also see a list of resources at the [NM State Judiciary Self-Help Website](#).

DISCLAIMER: This instruction set is for informational purposes only. Every effort has been made to ensure that the information available here is correct and up to date. However, this document is not a substitute for legal advice, and nothing contained in this document or the website should be construed as legal advice. If you require legal assistance you should CONSULT AN ATTORNEY. The 7th Judicial District Court of the State of New Mexico is not liable for any errors or omissions in the information provided.

ADVISORY

Please read the following carefully!

When you represent yourself, **YOU ARE RESPONSIBLE FOR YOUR CASE!** You are the one responsible for making sure the paperwork is filled out correctly. You are responsible for making sure the other party has NOTICE. You are responsible for making sure that all paperwork is filed by the deadlines. You are responsible for requesting **AND** attending all hearings.

ALWAYS USE YOUR CASE CAPTION. Any document you file with the court requires a case caption. The caption is supposed to look like:

STATE OF NEW MEXICO
COUNTY OF TORRANCE
SEVENTH JUDICIAL DISTRICT COURT

John Doe,
Petitioner,

v.

D-722-DM-_____

Jane Doe,
Respondent.

The caption has to have the name of the court, the names of the parties and the case number for it to be correct. If it is wrong it will not be filed, or may be filed in the wrong case, and you will have to correct it before the court will file it or act on it.

Please read and follow all the instructions. Take your time. These are legal documents. They will affect your life. What they say is what the court will enforce. Mistakes have consequences.

IF YOU DO NOT UNDERSTAND SOMETHING OR YOU ARE NOT SURE WHAT YOU SHOULD PUT IN YOUR DOCUMENTS, PLEASE CONSULT AN ATTORNEY!

Need legal Assistance? The New Mexico State Bar website contains a list of resources for legal assistance and can be found at:

http://www.nmbar.org/nmstatebar/Directory/Other_Legal_Service_Providers/Nmstatebar/For_Public/Other_Legal_Service_Providers.aspx

The 7th Judicial District offers assistance in what documents you need to file in your case. Contact the court clerks for the date of the next clinic or how to arrange an appointment with the 7th District Staff Attorney

Step 1

***Forms
needed to
File for a
Contested
Child
Custody
Proceeding***

Rule 1-004

NMRA

Rule 1-005

NMRA

Rule 1-011

NMRA

Rule 1-026

NMRA

Rule 1-120

NMRA

Rule 1-123

NMRA

Rule 1-124

NMRA

Form 4A-101

NMRA

Form 4A-104

NMRA

Form 4A-105

NMRA

Form 4-206

NMRA

Form 4A-208

NMRA

Child custody cases, when the parents are not married, are for the most part covered by Chapter 40, Articles 10A and 11A of the New Mexico Statutes in the Uniform Child-Custody Jurisdiction and Enforcement and the New Mexico Uniform Parentage Acts. A domestic relations custody case can be started when it is necessary to get an order to establish who the father is or to change the child's birth certificate. A domestic relations custody case can be started when there is a situation where the mother does not allow the father to see the child, or the father denies that he is the father, or one parent refuses to help support the child. Chapter 40, Article 4 contains the standards and guidelines for determining custody and child support.

In order to start the process you need to complete the following forms and file them with the court clerks:

- Petition to Establish Parentage, Custody, Time-Sharing and Child Support
- Domestic Relations Information Sheet, Form 4A-101 NMRA
- Summons, Form 4-206 NMRA
- Entry of Appearance Pro Se, Form 4A-105 NMRA

You will also need to fill out:

- Child Support Worksheets
- An affidavit of disclosure listing income, taxes and expenses related to the child/children such as insurance, medical bills and daycare
- Documents proving your income, taxes and child related expenses
- And, unless you are awarded Sole Custody, a Parenting Plan for time-sharing and visitation.

These will be discussed below.

To get the process started:

Fill out the Petition, a Domestic Relations Information Sheet, a Summons and an Entry of Appearance. You can download the forms from the 7th Judicial District Court's website, or get copies from the court clerk's office for \$.35/page. Make sure the documents are signed correctly and endorsed when needed.

**You are the Petitioner
The Other Parent is the Respondent**

Bring one (1) original and at least two (2) copies of each form when you file.

Once you have completed all the forms **you will need \$137.00 for the filing fee.** This has to be in cash (**exact change is required**) or a money order. Personal checks will not be accepted.

Step 1
(continued)

§40-4-8
through
§40-4-11.6
NMSA 1978

§40-10A-101
through
§40-10A-403
and
§40-11A-101
through
§§40-11A-903
NMSA 1978

If you cannot afford the filing fee you can apply for free process. You will need to fill out an **Application for Free Process** and an **Affidavit of Indigency**. You can get these forms from the court clerks. (Cost \$2.10). You will need to fill out the application and affidavit and file them with the court clerk. Once the judge reviews them the Court will decide whether you have to pay the fees or not. This will take a few days, possibly a week or more.

Once you have paid the filing fee, or after the fees have been waived by the Court, the court clerks will do the following when you file your documents:

- Assign a case number and a Judge for the case.
- Date stamp all the documents. The clerk will hand you back your copies.
- Sign off on the Summons Form.
- Issue a TEMPORARY DOMESTIC ORDER

Now you need to make sure you have all the forms required for proper service:

- An endorsed copy of the Petition
- A blank Response form (you will fill out the caption)
- A blank Domestic Relations Information Sheet
- A Summons and Return
- An Endorsed Entry of Appearance

Make sure the Petition and Entry are endorsed and that you have filled out the caption on the blank Response and Domestic Relations Information Sheet. Now make arrangements to get the Respondent served. After that you will need to make sure you get all the other required forms filled out so that you are prepared for the next steps.

Getting the Respondent served is explained in Step 2.

Once you have that done there are several documents you need to fill out. Both you and the Respondent need to agree to what is in the documents. One thing to consider if you cannot come to an agreement is mediation or some other 3rd party help. (See Form 4A-300(C) NMRA, Rule 1-124 NMRA.) Having someone familiar with the law on custody and trained in dispute resolution can help.

New Mexico has a preference for both parents to be involved in the children's lives. (See §40-4-9.1 NMSA 1978) Joint custody means that both parents are involved in the decision making process regarding school, doctors, religion and activities that the child participates in such as 4-H, Girl Scouts, football,..... You can download a set of instructions with an example Parenting Plan and other information from the website for the 7th District.

<p><u>Step 2</u></p> <p><i>Service of Process</i></p> <p>Rule 1-003 through Rule 1-005 NMRA</p>	<p>NOTICE: You are responsible for getting Notice to the Respondent. Before you can bring someone to court you need to “Give them Legal Notice.” The law requires it. So, read the following carefully.</p> <p><u>Before you start this Step, READ the “Giving Legal Notice” advisory</u></p> <p>Legal Notice requires Service of Process of the following documents:</p> <ul style="list-style-type: none"> • Summons • An endorsed copy of the Petition • An endorsed copy of the Temporary Domestic Order • A blank Domestic Relations Information Sheet • A blank Response Form <p>An endorsed copy is one that is stamped by the court clerk with the court stamp showing when the document was filed.</p> <p>If you do not know where the Respondent can be served you may have to file a Motion to serve Respondent by Publication. You can get the forms from the court clerks.</p>
<p><u>Step 3</u></p> <p><i>Wait for the Response</i></p>	<p>Once the Respondent has been served he or she has thirty (30) days to respond. A Return of Service will be filed with the Court after the Respondent has been personally served. Remember, you are responsible for making sure that the Return of Service is filed with the Court. If the person you get to serve the Respondent doesn’t file the Return of Service with the Court you may not be able to prove that the Respondent was served.</p> <p>If the Respondent is personally served and a Response is filed within 30 days from the Date of Service, go to Step 4.</p> <p>If the Respondent is personally served and no Response is filed after thirty (30) days from the Date of Service you may want to consider filing for a Default Order. There are forms available for this that you can get on the website but a Default Order is not something to take lightly, so CONSULT AN ATTORNEY.</p> <p>If the Respondent was served by publication and no Response is filed after thirty (30) days from the Date of Publication you may want to consider filing for a Default Order. Again, a Default Order in a custody proceeding is something that needs to be carefully considered so CONSULT AN ATTORNEY.</p>

<p style="text-align: center;"><u>Step 4</u></p> <p><i>Motions and Developing a Parenting Plan</i></p> <p>Form 4A-302 NMRA</p> <p>Form 4A-303 NMRA</p> <p>Rule 1-124 NMRA</p> <p>§40-4-8 NMSA 1978</p> <p>§40-4-9 NMSA 1978</p> <p>§40-4-9.1 NMSA 1978</p> <p>§40-4-11.1 through §40-4-11.6 NMSA 1978</p> <p>§40-12-1 Through §40-12-6 NMSA 1978</p>	<p>A Motion is a written request for the Court to enter an Order. There are many types of motions. Several that might be appropriate here are a Motion to Compel Production of Documents in order to get the necessary information for filling out the child support worksheets, or a Motion for a Referral to Mediation. Motions for the appointment of a Guardian Ad Litem and for a Rule 11-706 Expert are fairly common in custody cases. Normally when these are used the case has some complicated issue. If a motion for a GAL or 11-706 expert is filed you should seriously consider talking to an attorney.</p> <p>Creating the Parenting Plan can be hard. Both parties have to sign the agreement, and it is an <i>agreement</i>, enforceable as a contract. If you cannot come to an agreement the Court can order binding arbitration or mediation. The Court can appoint an attorney to represent the child/children, a Guardian Ad Litem. If there has been any domestic or child abuse the Court can order the parties to counseling and/or appoint an 11-706 expert to do an evaluation of the entire situation. Also, if the child/children is/are over the age of 14 the Court can ask the child/children what she/he/they want. The 7th District Court's website has a set of instructions and an example parenting plan that you can download.</p> <p>The income information for the Child Support Worksheets is REQUIRED from both parties. The amount one party has to pay the other party is set by statute. Any deviation from the guidelines must have a Court finding that the guidelines would create a situation that would be unjust or inappropriate. You can fill out the worksheets online and then print them, or download and print copies from the 7th District Court's website and fill them out by hand.</p> <p>The court clerks are NOT attorneys, so if you have questions regarding whether you need to file a motion TALK TO AN ATTORNEY. The Staff Attorney for the Court CANNOT advise you whether to file a motion.</p>
<p style="text-align: center;"><u>Step 5</u></p> <p><i>Finalizing</i></p>	<p>Once you have a Parenting Plan, the Child Support worksheets and Orders filled out you can request a hearing to get a Final Order. You will need to use Form 4A-206 to request the hearing and Form 4A-207 NMRA for notice. You will need to print the forms , fill in the names and addresses of both parties, get stamped and pre-addressed envelopes and take it all to the court clerk so that a hearing can be set and notice can be sent to both parties of when and where the hearing will be held. Please read the Self-Help Guide before you go to court.</p>

GIVING LEGAL NOTICE

Anytime you ask the Court to do something, everyone that it will affect is entitled to *Notice*. Notice is covered by Rule 1-004 NMRA. There are consequences for failing to give Notice. Not giving Notice can be thought of like a violation of Constitutional Due Process Rights. See the Committee Commentary for Rule 1-004 NMRA. Say, for example, a bank Petitions the Court for an Order to garnish your paycheck for a loan that you had paid off. If the bank never gave you Notice you would be deprived of the opportunity to show your evidence to the Court. You would be denied Due Process. Court proceedings require Notice. This includes a Custody Petition.

If you are trying to get a Custody Order you have to let the other parent know by giving them *notice*. There are several ways you can give *notice*. The best is Personal Service. Below is a list of several ways to give notice and what is required to show the Court that you did.

Remember, **YOU** are the **PETITIONER**,
THE OTHER PARENT is the **RESPONDENT**

Personal Service





This is the BEST way to give legal notice. If you know where the Respondent can be found, where they live or where they work, you can get a Sheriff's Deputy, or someone over the age of 18 that has no interest in the divorce, to give a copy of the following to the Respondent:

- Signed Summons and Return of Service
- Endorsed Petition
- Blank Response Form
- Blank Domestic Relations Information Sheet
- Temporary Domestic Order

The person that "serves" a copy of the documents on the Respondent will then file a Return of Service with the Court.

To get a Torrance County Sheriff's Deputy:

- Make sure all the documents that need to be endorsed by the court clerk are endorsed by the court clerk;
- Make sure the addresses are correct, and if possible include a phone number, DO NOT USE P.O. Boxes for the address;
- **Get a money order for \$35** made out to the Torrance County Sheriff's Office;
- Take it all to the Sheriff's Office at: 205 9th St., Estancia, NM, or mail it all to P.O. Box 498, Estancia, NM 87016

<p style="text-align: center;">Mail</p> 	<p>You can serve the Respondent by mail. You must have a good address, and you also have to file the Return of Service yourself. You have to include copies of the following documents:</p> <ul style="list-style-type: none"> • Signed Summons and Return of Service • Endorsed Petition • Blank Response Form • Blank Domestic Relations Information Sheet • Temporary Domestic Order <p>You MUST have the documents sent:</p> <ul style="list-style-type: none"> • Certified • Restricted delivery to the Respondent ONLY • Return Receipt with the Respondent’s signature on the card <p>Then YOU have to file the Return of Service with the Court and attach the signature card to the Return of Service.</p>
<p style="text-align: center;">Publication</p> 	<p>IF, and only if, you do not know where the Respondent lives or works you can provide Legal Notice by Publication. This is the most problematic. You have to get the Court’s permission. You have to publish in the correct paper, which can vary depending on the jurisdiction. AND, if the Respondent doesn’t see it until at some later time, the Respondent can dispute any and all court findings for lack of notice.</p> <p>However, if this is the only option you have you can get the forms to request permission from the Court from the court clerks.</p>

REMEMBER: Whatever method you use, proof of service is required. The proof has to be filed with the Court. The thirty (30) day time for the Respondent to file a response does not start until the Service has been properly made. **You are responsible for making sure this is done and done right. You are responsible for filing the Return of Service.**