

# **INSTRUCTIONS FOR RESPONDING TO A**

## **PETITION FOR DIVORCE**

It is very important to file a response to any Petition or Complaint you are served with. You need to get it filed within thirty (30) days from when you are served. Your Response lets the Court know *your position*. There are consequences for not filing a Response, as well as consequences for filing it late. First off, the Court could grant a default judgment in favor of the other side and give them everything they asked for. Since it is a Court Order, they could get other help that isn't in their Petition. For example, if the Petition states that you have already divided all the property and that both parties have their separate property but you have been deployed and haven't been home for over 6 months a default judgment would mean that anything you didn't pack for deployment could now be gone. Your bank account might now be closed. It is very important that you file a Response, and file it on time. If you have children the Court determines who gets custody, what visitation occurs, and who pays what in support.

### **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 document and what to do next.

**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 the site should be construed as legal advice. If you require legal assistance you should CONSULT AN ATTORNEY. The 7<sup>th</sup> 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.

**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](http://www.nmbar.org/nmstatebar/Directory/Other_Legal_Service_Providers/Nmstatebar/For_Public/Other_Legal_Service_Providers.aspx)

The 7<sup>th</sup> 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 7<sup>th</sup> District Staff Attorney

The steps for filing a Response are:

- Prepare the Response, Form 4A-104 NMRA, and make at least two (2) copies
- Fill out an Entry of Appearance, Form 4A-105 NMRA, and make at least two (2) copies
- Get a copy to the opposing party, the petitioner or their attorney
- File the Response and Entry with the court clerk

Each step has several details that you need to be aware of so that you get it right. In the next few pages each step will be explained.

## Preparing the Response

If you are representing yourself the New Mexico Supreme Court has mandated that you use specific forms. You can download a blank Response from this Court's [website](#) or you can print one from the Supreme Court's website at:

<https://lawlibrary.nmcourts.gov/official-new-mexico-court-forms.aspx>

or from the New Mexico State Judiciary self-help website:

<http://www.nmcourts.gov/Self-Help/self-help-guide.aspx>

You must use Form 4A-104 NMRA for your Response. If you print it make sure you use good quality 8 ½ " X 11" white paper, and print it single-sided. See Rule 1-100 NMRA

<p><b><u>Step 1</u></b></p> <p><b><i>The Caption</i></b></p> <p>Rule 1-008.1 NMRA Rule 1-120 NMRA</p> <p>Form 4A-104 NMRA</p>	<p>Make sure you have the same caption as the Petition. For all Domestic Relations cases, such as a divorce, it will have a DM case number. It must have the names of the parties, the case number and the court heading. For example, in Socorro County it will look like:</p> <p>STATE OF NEW MEXICO COUNTY OF SOCORRO SEVENTH JUDICIAL DISTRICT</p> <p><u>(Name of other party)</u>, Petitioner,</p> <p>v. D-725-DM-2015-00027</p> <p><u>(Your name)</u>, Respondent.</p> <p>If there is something wrong here, such as your name is spelled wrong or you are the wrong person entirely you can explain that in the body of your Response. Whatever the case, the heading needs to be exactly the same as on the Petition you were served with.</p>
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## **Step 2**

### ***The Body of the Response***

Rule 1-008  
NMRA

Form 4A-100  
NMRA

Form 4A-104  
NMRA

This is where you get to say your Response. Remember, this is a factual Response to the Petition. Keep it simple. Do not get emotional or angry. You need to respond to each allegation in the Petition. This is NOT the hearing, so your responses should be simple and to the point. If you have evidence to support your Response you can attach copies of it to your Response or wait until the hearing to show you evidence to the Court. The Response is NOT the place for argument. If you have witnesses that will back up your Response bring them to the hearing. Do not put that John Doe knows that the Petitioner is lying.

What you put in your Response is just like testimony so whatever you put must be truthful. If what is stated in a paragraph of the Petition is true you must admit it. If what is stated in a paragraph is wrong then deny it. If some of it is true but some of it is wrong then admit what is true and deny what is wrong.

If the Petition states something that is not true and you don't specifically deny it then the Rules say that that is the same as admitting it. See paragraph D of Rule 1-008 NMRA.

You don't have to get fancy with your Responses. Your responses need to have enough detail so that the judge knows what your position is. Don't get emotional and don't go on about how wrong something is. The Rule says that your responses need to be simple, concise and direct. Make sure that you respond to every allegation in the Petition. See paragraph E of Rule 1-008 NMRA.

Form 4A-104 makes it fairly simple to do. Section 1 gives you space to list the numbers of the paragraphs that you agree with, or admit to. Paragraph 2 gives you space to list the paragraph numbers you know are wrong.

The last part of the Response before the signature section talks about what you want the Court to do. The details of the "Final Decree", property division, property division and child support will be written out in the Marriage Settlement Agreement and the Parenting Plan. These are referred to as the Stage Three (3) Divorce Forms and will be covered in the Stage 3 Instructions section of the website.

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**You can also go to the section of the Court website called "Places for Legal Help" for more.**

<p style="text-align: center;"><b><u>Step 3</u></b></p> <p style="text-align: center;"><b><i>Signature</i></b></p> <p>Rule 1-011(A) NMRA Rule 1-120(C) NMRA</p>	<p>Rule 1-011 NMRA says that every pleading that is filed with the Court has to be signed and the signer’s address and phone number have to be listed as well. If it is not signed it “...shall be stricken unless...” it is signed as soon as the party that forgot to sign it is notified that they forgot.</p> <p>Your signature is basically the same thing as an oath. The Rule states very plainly that your signature “...constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer’s knowledge, information, and belief there is good ground to support it;...” It used to be that you had to get your signature notarized as well, and even though certain papers still need to be notarized before you file them, the Response is not one. You have to sign the Response and the Verification section. The signature part has places for your name, mailing and physical addresses, telephone number and a place to put the date you signed the pleading.</p>
<p style="text-align: center;"><b><u>Step 4</u></b></p> <p style="text-align: center;"><b><i>Entry of Appearance</i></b></p> <p>Form 4A-105 NMRA</p>	<p>You can download a blank Entry of Appearance, Form 4A-105 NMRA, from the website or either of the links above. Fill it out and sign it. This gives the Court information about where to send notices for hearings and other proceedings. When you serve a copy on the opposing party, it gives them an address to send copies of any pleadings they file. You are entitled to a copy of any papers or documents they file.</p>
<p style="text-align: center;"><b><u>Step 5</u></b></p> <p style="text-align: center;"><b><i>Filing the Response and Service on Petitioner</i></b></p> <p>Rule 1-005 NMRA</p>	<p>Once you have completed your Response and Entry you need to make 2 copies of each.</p> <p>Take 1 copy of each and send it to the Petitioner, or their attorney if they have one. Rule 1-005 NMRA gives the methods and what is required.</p> <p><b>NOTE:</b> If the Petitioner has an attorney, send the copies to the attorney. Do not send your Response and Entry to the Petitioner if they have an attorney.</p> <p>Fill in the section under Verification of Service on the original with how and when you sent a copy to the Petitioner.</p> <p>Now take the originals and your copies and file them with the Court. The clerk will stamp, (endorse), all the documents and give you the copies back. The clerk will keep the originals and put them in the court file.</p>