

# **GETTING A DIVORCE: STAGE 1 INSTRUCTIONS**

## **With Children**

### **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.
  - **Petition for Dissolution of Marriage:** This is the document that you will fill out and file with the Court to get your divorce 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 your spouse.
  - **Summons and Return of Service:** This is what you use to show the Court that you gave your spouse legal notice of the Petition and inform her or him that you have filed for a divorce.
  - **Response:** This document is filled out by your spouse 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.

**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.

**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](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

**Step 1**

***Forms  
needed to  
File for a  
Divorce***

Rule 1-004  
NMRA  
Rule 1-005  
NMRA  
Rule 1-120  
NMRA

Form 4A-100  
NMRA  
Form 4A-101  
NMRA  
Form 4A-102  
NMRA  
Form 4A-104  
NMRA  
Form 4A-105  
NMRA  
Form 4-206  
NMRA

*Name change is  
in Paragraph 11  
of the Petition  
OR  
Paragraph 4F of  
the Response*

Form 4A-100 NMRA contains instructions, definitions and warnings regarding the Stage 1 forms. The actual forms that you need to fill out and file with the Court are numbered 4A-101 through 4A-105. The Stage 2 forms are numbered 4A-200 through 4A-215, and the Stage 3 forms are numbered 4A-300 through 4A-315. Some you will need, some you may not. Before you start any stage, read the first Form. It will contain instructions and cautions. This step-by-step guide is a supplement to the information you can get from the New Mexico Judiciary Self-Help Guide and the instructions contained in the forms. If you have questions as to what to put in a form, or what you should do, ***ask an attorney!*** The court clerks, like this guide, can tell you what forms are available, can tell you how to look up Rules and Statutes and tell you what the Rules and Statutes say. The clerks CANNOT tell you what to put in a form, or whether a Rule or Statute applies in your case.

You need to complete the following forms and file them with the court clerks:

- Petition for Dissolution of Marriage with children, Form 4A-103 NMRA
- Domestic Relations Information Sheet, Form 4A-101 NMRA
- Summons, Form 4-206 NMRA
- Entry of Appearance Pro Se, Form 4A-105 NMRA

**You** are the **Petitioner**  
**Your Spouse** 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.

***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** (Form 4-222 NMRA). You can get these forms from the court clerks. 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

<p style="text-align: center;"><b><u>Step 2</u></b></p> <p><i>Service of Process</i></p> <p>Rule 1-004 NMRA Rule 1-005 NMRA Form 4A-100 NMRA</p>	<p>You are responsible for getting Notice to the Respondent.</p> <p><b><u>Before you start this Step, READ the “Giving Legal Notice” advisory</u></b></p> <p>To complete Service of Process you need to serve the following documents on the Respondent:</p> <ul style="list-style-type: none"> <li>• An endorsed copy of the Petition for Dissolution of Marriage, Form 4A-103 NMRA</li> <li>• An endorsed copy of the Temporary Domestic Order, Form 4A-201 NMRA</li> <li>• An endorsed Entry of Appearance Pro Se, Form 4A-105 NMRA</li> <li>• Signed Summons, Form 4-206 NMRA</li> <li>• A blank Response Form, Form 4A-104 NMRA</li> <li>• A blank Domestic Relations Information Sheet, Form 4A-101 NMRA</li> </ul> <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>The Response Form, Form 4A-104 NMRA needs to be filled out by your spouse and filed with the court. Your spouse, the Respondent must do this. You also need to include a blank Domestic Relations Information Sheet. See Form 4A-100(D)(17) NMRA.</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 style="text-align: center;"><b><u>Step 3</u></b></p> <p>Wait for the Response</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. The Court will mail a copy of the Return of Service to the address you provided in the Domestic Relations Information Sheet.</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 Divorce Decree. The Default Divorce Decree Packet can be downloaded from the 7<sup>th</sup> District’s website or picked up from the court clerks.</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 Divorce Decree. The Default Divorce Decree packet can be picked up from the court clerks.</p>

<p><b><u>Step 4</u></b></p> <p>Motions</p> <p>For more detailed information go to the Stage 2 Instructions, starting at Step 2</p>	<p>A <b>Motion</b> is a written request for the Court to enter an Order. There are many types of motions. The court clerks have a packet you can get called <i>Filing Motions During Your Divorce</i>.</p> <p>Some examples are:</p> <ul style="list-style-type: none"> <li>• Motion for an Order for a Temporary Division of Property</li> <li>• Motion for an Order for a Temporary Domestic Order that establishes who can have access to what property and when while the divorce is pending</li> <li>• Motion for an Order for Mediation so that you and the Respondent can work out the details of the final property settlement.</li> <li>• Motion for an Order to Show Cause in the event one party ignores or violates an Order from the Court</li> </ul> <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. This is explained in more detail in Rule 23-113 NMRA, which you can read in the Stage 2 Instructions.</p> <p>The TDO that is issued when you file the initial Petition contains provisions for what happens with the children during the divorce proceedings. If you and the Respondent agree that some provision does not work AND you agree regarding what would work there are instructions for waiving a provision. If you cannot agree there are two options: request a hearing and let the Court decide the issue for you or request mediation and attempt to work out an agreement. More information for both options is contained in the Stage 2 Instructions.</p>
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<p><b><u>Step 5</u></b></p> <p>When you and the Respondent have agreed on the issues</p> <p>For more detailed information go to the Stage 3 Instructions</p>	<p>In some cases the parties reach agreements on the property and other issues. If you have talked to the Respondent and have come to an agreement on all property and support issues you will need to complete a <b>Marital Settlement Agreement</b>, a <b>Custody Plan and Order</b>, and a <b>Final Decree</b>. You can get these forms from the court clerks by requesting them from the Court Clerks or they are available to download by Form Name on this website. For information about which forms and what supporting documents are needed go to the Stage 3 Instructions on this website.</p> <p>The signatures for some of the forms no longer have to be notarized, and you can sign those forms without using a Notary Public. However, the Marital Settlement Agreement and the Final Decree still need to have the signatures notarized. You will need to get two (2) large envelopes with enough postage to mail one set of documents to each of you. You can take the documents to the post office and they will let you know the correct postage for mailing each set of documents. Make sure the addresses are correct and there is enough postage on each envelope. <i>Please read the instructions for the Stage 3 Forms on this <a href="#">website</a> and/or:</i></p> <p><a href="http://www.nmcourts.gov/Self-Help/self-help-guide.aspx">http://www.nmcourts.gov/Self-Help/self-help-guide.aspx</a></p> <p>under the “Divorce Forms” heading. See Form 4A-300 NMRA.</p> <p>The court clerks will submit the documents to the judge to review. If the documents are completed correctly, and the judge approves the agreements, the judge will sign the Final Decree.</p> <p>Once the judge signs the Final Decree the court clerks will file the documents and send both you and the Respondent endorsed copies in the envelopes that you provided.</p> <p>You will then be divorced.</p>
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# 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 Divorce.

If you are trying to get a Divorce from your spouse you have to let them 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**,  
**YOUR SPOUSE** 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 for Dissolution of Marriage
- 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 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 9<sup>th</sup> St., Estancia, NM, or mail it all to P.O. Box 498, Estancia, NM 87016

<p style="text-align: center;"><b>Mail</b></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"> <li>• Signed Summons and Return of Service</li> <li>• Endorsed Petition for Dissolution of Marriage</li> <li>• Blank Response Form</li> <li>• Blank Domestic Relations Information Sheet</li> <li>• Temporary Domestic Order</li> </ul> <p>You <b>MUST</b> have the documents sent:</p> <ul style="list-style-type: none"> <li>• Certified</li> <li>• Restricted delivery to the Respondent <b>ONLY</b></li> <li>• Return Receipt with the Respondent’s signature on the card</li> </ul> <p>Then <b>YOU</b> 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;"><b>Publication</b></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.**