

GETTING A DIVORCE: STAGE 2 INSTRUCTIONS

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. This includes instructions for:
 - **Temporary Orders:** These are Orders that set out what each party can do with property and debts until the Final Decree is signed by the judge. The Orders also establish custody and visitation for the children until the Final Decree is signed by the judge.
 - **Motions:** Motions are used to request things from the Court. When you need a hearing you have to request a hearing. When you and your spouse disagree about settlement terms, custody or visitation issues you can request mediation. When you and your spouse have reached an agreement on all the issues you can request a hearing for the judge to sign or reject your settlement agreements.
- **Applicable Rules from the NMRA:** The Rules that govern how a Divorce is done.
- **Rule 23-113 NMRA:** This Rule explains what information court staff can and CANNOT provide to pro se parties.

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 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 CAREFULLY

After the Petition has been filed and served, but before the Final Decree is signed by the Judge and your divorce is final there are the Settlement Agreement documents that have to be filled out and filed. **IF YOU HAVE QUESTIONS ABOUT WHAT TO DO CONSULT AN ATTORNEY.** There are several places you can go in order to get answers to questions such as “Do I have to give my wife half of the money my grandmother left me?”, or “Do I have to give my husband half of my retirement?” You can go to the Legal Help section of the website for phone numbers and web addresses for several organizations that provide free help. You can also go to:

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

The Courts have also made the New Mexico State Judiciary Self-Help Website so that pro se parties can get instructions for how to go about getting all the Stage 2 documents completed and filed. This is available at:

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

You can click on Dissolution of Marriage under Self-Help Guide Topics. You can also get a printout of the Self-Help Guide from the court clerks.

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| <p><u>Step 1</u></p> <p><i>Disclosure</i></p> <p>Rule 1-122 NMRA</p> <p>Rule 1-123 NMRA</p> <p>Form 4A-200 NMRA</p> | <p>Neither party is allowed to “hide” things from the other. Form 4A-212 NMRA, Interim Monthly Income and Expenses Statement, needs to be filled out and given to the other party. Instructions for how to fill this form out can be found in the “USE NOTE” right after the signature line in the form. This form will help to let you know how much child support is to be paid until the divorce is finalized. You must serve this form on the other party.</p> <p>If both parties can agree to how the income should be divided and how the bills will be paid a stipulation can be filed that lays out what the parties have agreed to.</p> <p>If the parties cannot agree then either party “...may file a motion requesting the court to enter an interim order allocating income and expenses,...” See Rule 1-122(C) NMRA. A Request for Hearing must also be filed. The Rule states that at least 5 days before the hearing both parties must exchange the information in Form 4A-212.</p> |
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Step 2

Temporary Orders

Rule 1-121

NMRA

Rule 1-122

NMRA

Rule 1-123

NMRA

Temporary Orders cover everything from who lives where, who has access to what property, where the children live, where the money goes, and who gets to visit the children when. The Temporary Orders are meant to promote a peaceful and orderly transition from married to divorced.

The first order is commonly called the TDO, Temporary Domestic Order. This is Form 4A-201 NMRA. It is issued when the Petition is filed, and sets out that neither party is to injure, intimidate, harass or abuse the other party or any of the children,

If both parties can agree to how everything will be done until the divorce is finalized, skip to Step 4. If an item in the TDO doesn't quite work, but both parties agree to a modification that will work, the TDO has provisions for Waiver by Parties for any variations from the TDO: *“The parties may modify a specific provision of this order by entering into a written agreement and filing it with the court. The parties may also waive a provision of this order on a specific occasion if both parties sign an agreement to waive the provision. A waiver must include the paragraph number of each paragraph waived by the parties.”*

If the TDO works for both parties, and both parties can agree to how everything is handled until the divorce is finalized, skip to Step 4. If not, continue with Step 2.

**PLEASE CONSULT AN ATTORNEY
IF YOU HAVE QUESTIONS**

Form 4A-200 NMRA lists 6 more Temporary Orders for situations where you cannot agree to things like how the bills are to be paid or who gets what time with the children.

Form 4A-202 NMRA is a Motion for Temporary Order. It has check boxes for any of the Temporary Orders listed in Form 4A-200 NMRA, as well as boxes for whether both parties agree, disagree, or have other issues that prevent the parties from talking. If one party files this form they must also file a Request for Hearing using Form 4A-206 NMRA. The Court will set a date for the hearing and both parties must attend.

WARNING! Form 4A-200 (E) NMRA contains very detailed instructions that you have to follow when you file a motion. If a hearing is requested both parties need to have all documentation that relates to the issue in the request.

Step 2
(continued)

**Temporary
Orders**

Rule 1-121
NMRA
Rule 1-122
NMRA
Rule 1-123
NMRA

WARNING! *If the issue has anything to do with money or property both parties need to bring all the documents required by Form 4A-212 NMRA. You also have to file a Notice of Compliance with Rule 1-123 NMRA using Form 4A-208 NMRA.*

You also MUST provide Notice of Hearing forms, (Form 4A-207 NMRA), with pre-addressed and stamped envelopes for the court clerk to mail them in. Details for filing a Motion for Temporary Order are listed in Step 3.

Filing a Motion for Temporary Order lets the Court know that you can't agree on some issue, and the Court can, and will, make an Order that both parties MUST follow. The other option is to use Form 4A-204 or 4A-205 NMRA for a referral to mediation. If you would like to try mediation go to Step 3, Motions Part 2 below.

Most of the time the hearing will be in front of a hearing officer. See Rule 1-053.2 NMRA for the duties and obligations of Hearing Officers. Form 4A-200(H) NMRA explains what to do if you disagree with the Hearing Officer's Report.

There are only four motions that are appropriate at this stage:

- Motion for Temporary Order, (TDO)
- Motion to Modify Temporary Order
- Motion for Referral to Mediation
- Motion for Order to Show Cause

Each motion has items that need to be included to file them correctly. In the 7th Judicial District a standard TDO, Form 4A-201 NMRA, is issued when the Petition is filed. No motion is required to get the TDO. That leaves three motions that may be appropriate at this stage in the divorce.

REMEMBER: If you represent yourself you are expected to comply with all the Rules and use the appropriate forms. Form 4A-100 NMRA is still in effect at this stage. In paragraph C it states "A self-represented person shall abide by the same rules of procedure and rules of evidence as lawyers. It is the responsibility of a self-represented person to determine what needs to be done and to take the necessary action. A self-represented person involved in a divorce proceeding may need the advice of an attorney or other appropriate professional during the process and is responsible for finding an attorney or other appropriate professional for advice or representation."

Step 3

***Motions
Part 1***

***Motion to
Modify***

Rule 1-122
NMRA
Rule 1-123
NMRA

Form 4A-200
NMRA
Form 4A-200
Appendix NMRA

**READ THE
RULES AND
FORM 4A-
200 NMRA
AND THE
APPENDIX
CAREFULLY**

If you need to modify any Temporary Order you will use Form 4A-203 NMRA, Motion to Modify Temporary Order. This form is pretty simple to fill out. It has places for you to check regarding what you want the Court to change and places to write why you want the court to change it.

Next, the form has boxes for you to check regarding whether the other party agrees, does not agree, will not talk to me, cannot talk to me, or write why you have not talked to the other party.

If any box you check on the Motion to Modify Temporary Order form has to do with money you also need to have the following forms filled out:

Form 4A-208 NMRA, Notice of Compliance with Rule 1-123 NMRA
Form 4A-212 NMRA, Interim monthly income and expenses statement
Form 4A-214 NMRA, Community property and liabilities schedule
Form 4A-215 NMRA, Separate property and liabilities schedule

Form 4A-200 Appendix NMRA has directions for what is required with these forms. You do not file them with the Court. You do need to exchange the information between parties. Make copies of all supporting documentation and bring the forms and supporting documents to the hearing.

If any box you check on form 4A-203 NMRA, Motion to Modify Temporary Order, has to do with child support you also need the child support worksheet completed. This is based on §40-4-11.1 NMSA 1978. You can complete a child support worksheet at:

http://www2.nmcourts.gov/cgi/prose_lib/csw2008.htm

The website will walk you through all the needed information, explain what you need to enter, and then will calculate the child support payment for you. If you have a printer hooked up you can then click the print button and get a copy of the worksheet.

The hearings on Motions to Modify can be complicated depending on the amount of documents that are required. If you represent yourself make sure you have everything to support what you are asking for, be organized, and on time for court.

IF YOU HAVE ANY QUESTIONS CONSULT AN ATTORNEY

Step 3

***Motions
Part 2***

***Motion for
Referral to
Mediation***

Rule 1-122
NMRA
Rule 1-123
NMRA
Rule 1-125
NMRA

Form 4A-200
NMRA
Form 4A-200
Appendix NMRA

**READ THE
RULES AND
FORM 4A-
200 NMRA
AND THE
APPENDIX
CAREFULLY**

The Motion for a Referral to Mediation is discussed in Forms 4A-200(C) and 4A-200(D) NMRA. If the issue is child custody, timesharing or visitation you will use Form 4A-204 NMRA. This can have an impact on child support but does not require the filing of a Notice of Compliance with Rule 1-123 NMRA.

Rule 1-125 NMRA is the Domestic Relations Mediation Act programs Rule. Section B states that if the parties to a divorce proceeding, (specifically “a domestic relations action involving minor children”), have not filed a parenting plan the court may order the parties to, for example, attend an information session, meet with a counselor designated by the court or even participate in mediation. What is said in mediation stays in mediation, unless it is something they would be required by law to report to law enforcement. The Parties are expected to participate in good faith, but if no agreement is reached there is no sanction. Sometimes a neutral party can help reach an agreement.

If the issue involves property or money Form 4A-205 NMRA is the correct form to request mediation. If you use this form you also need to make sure that you have all the supporting documentation for complying with Rule 1-123 NMRA. There are detailed instructions in the Appendix for Form 4A-200 NMRA for what you need. ***Read the instructions carefully, and if you have any questions about what you should do CONSULT an ATTORNEY!***

There are a few definitions you need to be aware of. There are legal definitions for community property and debt as well legal definitions of separate property and debt. §40-3-8 and §40-3-9 NMSA 1978 define separate property and debt first. Both statutes are clear that community property or debt is property or debt that was acquired during the marriage that does not fit specific criteria. For example, separate debt is debt that was incurred before or after the marriage, debt incurred during the marriage that was specifically identified to the creditor as separate debt when it was incurred, or debt that the Court says is separate. §40-3-9(A) NMSA 1978 lists six (6) possibilities. Then the statute states that any debt contracted or incurred by either party during the marriage that is not separate debt is community debt. One exception is gambling debts. Gambling debts are the separate debt of whichever party incurred the debt.

Community property or debt belongs to each party equally.

Separate property or debt belongs to a single party.

A trained mediator can be helpful in reaching agreements regarding custody, visitation and property settlements.

Step 3

***Motions
Part 3***

***Motion for
Order to Show
Cause***

**Rule 1-004
NMRA**

**Form 4A-200
NMRA**

**Form 4A-209
NMRA**

**Form 4A-210
NMRA**

The Last motion that applies during Stage 2 is the Motion for an Order to Show Cause. This is the motion to file when one party is not doing what the Court ordered. You will use Form 4A -209 NMRA. This motion requires extra items to be completed and filed for the Court to hear your motion. The requirements are listed in Form 4A-200(F) NMRA.

The steps you need to take are as follows:

1. Fill out the Motion for an Order to Show Cause, Form 4A-209 NMRA. Attach a copy of the Order that the other party is violating. Form 4A-200 (F) NMRA is clear that you should “State only serious violations and be as complete as possible.”
2. Fill in the Caption part of Form 4A-210 NMRA. This is the proposed Order to Appear and Show Cause.
3. Make 2 copies of each and take them to the Court Clerk to be filed. The clerk will hand you back stamped copies of the motion.
4. The clerk will keep the copies of the proposed Order to Appear, and once the hearing officer, or judge’s office, has a date for the hearing they will mail you the endorsed copies of the Order to Appear.
5. Once you receive copies of the Order to Appear you must get the other party served. You will need to get someone, possibly a Sheriff’s Deputy, to serve the other party with 1.) A copy of your motion, 2.) A copy of the order you state they are violating AND 3.) A copy of the Order to Appear.
6. The person you get to serve the other party will complete an Affidavit of Service. You must then file the original Affidavit of Service with the court clerk. This is covered in Rule 1-004 NMRA. Refer to the Instructions for Starting a Divorce in the Giving Legal Notice section. The Sheriff’s Office in each county have schedules of the fees for serving someone.

The other party MUST be served at least 5 days prior to the date of hearing. At the hearing you will need to have all the documents and evidence that the other party is not following the Court’s Order. Also make sure that you have a copy of all the documents that you filed.

Be prepared, organized and on time for the hearing. The hearing is for the Order to Show Cause. Stay on topic. If your motion was based on paying the agreed upon bills, don’t bring up visitation. Orders to Show Cause are for serious violations only.

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| <p><u>Step 3</u> <i>Part 4</i></p> <p><i>Requesting Hearings</i></p> <p>Form 4A-200 NMRA Form 4A-200 Appendix NMRA Form 4A-206 NMRA Form 4A-207 NMRA</p> | <p>When you file a Motion that requires a ruling from the Court you have to request a hearing. The process has several parts. First you have to get the Motion filled out. Then you have to get copies to the other party. If there are any documents for to support your motion you need to get copies of those to the other party as well. You need to file a Request for Hearing, Form 4A-206 NMRA. You will also have to fill in all of the party information in Form 4A-207 NMRA and give this form to the court clerk when you file the Request for Hearing.</p> <p>When you file the request for hearing you also need to get envelopes that have the correct postage on them and address one to each party. They will be used by the court clerks to mail the Notices of Hearing to each party.</p> <p>This information is contained in both the Self-Help Guide from the New Mexico State Judiciary starting on page 5, as well as in Form 4A-200(E) through 4A-200(H) NMRA. The Self-Help Guide can be downloaded at:</p> <p>http://www.nmcourts.gov/Self-Help/self-help-guide.aspx</p> <p>Form 4A-200 NMRA can be downloaded from the 7th Judicial District Court’s website.</p> <p>Please pay close attention to the “Helpful hints about hearings” that start on page 6 of the Self-Help Guide.</p> |
| <p><u>Step 4</u></p> <p><i>Getting Organized for Stage 3</i></p> | <p>Stage 3 of the divorce process is the last step before finalizing you divorce. The Stage 2 forms can get you ready. In order to get the Final Decree you need a Marriage Settlement Agreement that will include how any property is divided, how the debts are divided, who will get spousal support if any, and how the parties will take care of any issues that come up regarding the settlement of these issues. If there are any children you will also need a parenting plan and custody order that sets out the obligations of both parties with respect to the children.</p> <p>Once you have all this in order you can request the Court sign the Final Decree. Form 4A-300 NMRA contains the basic instructions for Stage 3 Forms. Additional information is available in the Stage 3 Instructions on this website.</p> |

Rules that you MUST follow for getting a Divorce

When you represent yourself in any legal matter there are Rules that you must follow. They are all published in the New Mexico Rules Annotated. When a Rule is being referred to it is listed "Rule 1-011 NMRA". The set of Rules for getting a Divorce are listed in several sections, including "Rules of Civil Procedure for District Courts" and "Domestic Relations Forms". There are other Rules that may also apply, such as when you need an interpreter, (Rule 1-103 NMRA), how to format a document you want to file, (Rule 1-100 NMRA), or what happens if you don't answer a claim in the petition when you file an answer, (Rule 1-008(D) NMRA).

In the Instructions on the 7th Judicial District Court Website for Getting a Divorce most of the steps have the Rules that apply listed. Below is a list of the Rules that you can refer to when you work your way through the instructions. They are provided here only as a quick reference.

When you represent yourself you are responsible for following the Rules.

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20 Rules noted in the Instructions:

This is NOT a complete list of the Rules governing procedures in the Court. The complete set of the New Mexico Rules Annotated, or NMRA can be found by going to:

<http://public.nmcompcomm.us/nmnextadmin/NMPublic.aspx>

Once there you can select the appropriate device and click on the "OK" icon. You can then look through the complete set of Statutes and Rules for New Mexico.

The 20 Rules listed below are:

Rule 1-001
Rule 1-003.1
Rule 1-004
Rule 1-005
Rule 1-006
Rule 1-007
Rule 1-007.1

Rule 1-008
Rule 1-008.1
Rule 1-010
Rule 1-011
Rule 1-120
Rule 1-121
Rule 1-122

Rule 1-123
Rule 1-124
Rule 1-125
Rule 1-126
Rule 1-127
Rule 23-113

Rule 1-001. Scope of rules; definitions.

A. **Scope.** These rules govern the procedure in the district courts of New Mexico in all suits of a civil nature whether cognizable as cases at law or in equity except to the extent that the New Mexico Rules of Evidence are inconsistent herewith. Except where these rules explicitly provide otherwise, these rules do not apply where there are contrary statutory provisions concerning special statutory or summary proceedings. These rules shall be subject to the provisions of Rule [23-114](#) NMRA, the rule governing free process for civil cases. These rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

B. **Definitions.** As used in these rules and the civil forms approved for use with these rules:

- (1) "defendant" includes a respondent;
- (2) "plaintiff" includes a petitioner;
- (3) "process" is the means by which jurisdiction is obtained over a person to compel the person to appear in a judicial proceeding and includes a:
 - (a) summons and complaint;
 - (b) summons and petition;
 - (c) writ or warrant; and
 - (d) mandate; and
- (4) "service of process" means delivery of a summons or other process in the manner provided by Rule [1-004](#) NMRA of these rules.

C. **Title.** These rules shall be known as the Rules of Civil Procedure for the District Courts.

D. **Citation form.** These rules shall be cited by set and rule number of the New Mexico Rules Annotated, "NMRA", as in Rule 1-____ NMRA.

[As amended, effective January 1, 1995; March 1, 2005; as amended by Supreme Court Order 07-8300-41, effective February 25, 2008; by Supreme Court Order No. 11-8300-050, effective for cases filed on or after February 6, 2012.]

Rule 1-003.1 Commencement of action; domestic relations information sheet.

A. **Information sheet.** A domestic relations information sheet substantially in the form approved by the Supreme Court shall be submitted with the petition initiating a domestic relations case, a motion to reopen a closed domestic relations case, and with a party's first responsive pleading in a domestic relations case. A blank copy of the domestic relations information sheet shall be served on the respondent with the summons and petition. Information in the court automated information system which is obtained from the domestic relations information sheet is confidential and shall not be disclosed except that it may be disclosed to:

- (1) the parties in the proceeding, unless otherwise ordered by the court;

- (2) state and federal agencies required by law to collect the information disclosed; and
- (3) court personnel for enforcement, data collection and record keeping purposes.

B. Legal effect. Information appearing on the information sheet will have no legal effect in the action.

C. Failure to comply. The clerk will file a pleading even if it is submitted without an information sheet or is filed with an information sheet that is incomplete. If a party fails to file or complete an information sheet, the clerk will give written notice to the party of the deficiency. If a party fails to cure the deficiency within thirty (30) days, the court may enter an order which provides for dismissal of the party's claim without prejudice. The clerk shall serve a copy of the court's order of dismissal on all parties.

[Provisionally approved, effective November 1, 1999 until November 1, 2000; approved, effective November 1, 2000; as amended by Supreme Court Order No. 14-8300-011, effective for all cases 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.]

Rule 1-005. Service and filing of pleadings and other papers.

A. Service; when required. Except as otherwise provided in these rules, every written order, every pleading subsequent to the original complaint unless the court otherwise

orders because of numerous defendants, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of settlement, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule [1-004](#) NMRA.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney's or party's last known address. Service by mail is complete upon mailing.

C. Definitions. As used in this rule:

(1) "Delivering a copy" means:

(a) handing it to the attorney or to the party;

(b) sending a copy by facsimile or electronic transmission when permitted by Rule [1-005.1](#) NMRA or Rule [1-005.2](#) NMRA;

(c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

(d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

(e) leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

(i) the court, in its discretion, chooses to provide such a location;

and

(ii) service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

(2) "Mailing a copy" means sending a copy by first class mail with proper postage.

D. Service; numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

E. Filing by a party; certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and

method of service, shall be filed with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

- (1) summonses without completed returns;
- (2) subpoenas;
- (3) returns of subpoenas;
- (4) interrogatories;
- (5) answers or objections to interrogatories;
- (6) requests for production of documents;
- (7) responses to requests for production of documents;
- (8) requests for admissions;
- (9) responses to requests for admissions;
- (10) depositions;
- (11) briefs or memoranda of authorities on unopposed motions;
- (12) offers of settlement when made; and
- (13) mandatory and supplemental disclosures served under Rule [1-123](#) NMRA.

Except for the papers described in Subparagraphs (1), (10), and (11) of this paragraph, counsel shall file a certificate of service with the court within a reasonable time after service, indicating the date and method of service of any paper not filed with the court.

F. Filing with the court defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy or filing an electronic copy as may be permitted under Rule [1-005.1](#) NMRA or Rule [1-005.2](#) NMRA. If a party has filed a paper using electronic or facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

G. Filing and service by the court. Unless otherwise ordered by the court, the court shall serve all written court orders and notices of hearing on the parties. The court may file papers before serving them on the parties. For papers served by the court, the certificate of service need not indicate the method of service. For purposes of Rule [1-006\(C\)](#) NMRA, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court's certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in Subparagraph (C)(1)(e) of this rule.

H. Filing and service by an inmate. The following provisions apply to documents filed and served by an inmate confined to an institution:

- (1) If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.
- (2) The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(3) Whenever service of a document on a party is permitted by mail, the document is deemed mailed when deposited in the institution's internal mail system addressed to the parties on whom the document is served.

(4) The date of filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date when the document was deposited in the institution's internal mail system.

(5) A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

(6) Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

[As amended, effective August 1, 1988; January 1, 1998; January 3, 2005; as amended by Supreme Court Order 06-8300-20, effective December 18, 2006; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Rule 1-006. Time.

A. Computing time. This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less.***

(a) When the period is stated in days but the number of days is ten (10) days or less,

(i) exclude the day of the event that triggers the period;

(ii) exclude intermediate Saturdays, Sundays, and legal holidays;

and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) This subparagraph shall not apply to any statutory notice that is required to be given prior to the filing of an action.

(3) ***Period stated in hours.*** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) **Unavailability of the court for filing.** If the court is closed or is unavailable for filing at any time that the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) **“Last day” defined.** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) **“Next day” defined.** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) **“Legal holiday” defined.** “Legal holiday” means the day that the following are observed by the judiciary:

(a) New Year’s Day, Martin Luther King Jr.’s Birthday, Presidents’ Day (traditionally observed on the day after Thanksgiving), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

B. Extending time.

(1) **In General.** When an act may or must be done within a specified time, the court may, for cause shown, extend the time

(a) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **Exceptions.** A court shall not extend the time to act under Rules [1-050](#), [1-052](#), [1-059](#), [1-060](#), [1-062](#), or [12-201](#) NMRA, except to the extent and under the conditions stated in those rules.

C. **Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, electronic transmission, or by deposit at a location designated for an attorney at a court facility under Rule [1-005](#)(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday,

Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. Public posting of regular court hours. The court shall publicly post the hours that it is regularly open.

[As amended, effective January 1, 1987; August 1, 1989; January 1, 1995; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Rule 1-007. Pleadings allowed; form of motions.

A. Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim denominated as such; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule [1-014 NMRA](#); and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

B. Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

C. Demurrers, pleas, etc., abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

Rule 1-007.1. Motions; how presented.

A. Requirement of written motion. All motions, except motions made during trial, or as may be permitted by the court, shall be in writing and shall state with particularity the grounds and the relief sought.

B. Unopposed motions. The movant shall determine whether a motion will be opposed. If the motion will not be opposed, an order approved by all parties shall accompany the motion.

C. Opposed motions. The motion shall recite that the movant requested the concurrence of all parties or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from all parties unless the motion is a:

(1) motion to dismiss;

- (2) motion for new trial;
- (3) motion for judgment as a matter of law;
- (4) motion for summary judgment;
- (5) motion for relief from a final judgment, order or proceeding pursuant to Paragraph B of Rule [1-060](#) NMRA.

Notwithstanding the provisions of any other rule, the movant may file with any opposed motion a brief or supporting points with citations or authorities. If the motion requires consideration of facts not of record, the movant shall file copies of all affidavits, depositions or other documentary evidence to be presented in support of the motion. Motions to amend pleadings shall have attached the proposed pleading. A motion for judgment on the pleadings presenting matters outside the pleading shall comply with Rule [1-056](#) NMRA. A motion for new trial shall comply with Rule [1-059](#) NMRA.

D. Response. Unless otherwise specifically provided in these rules, any written response and all affidavits, depositions or other documentary evidence in support of the response shall be filed within fifteen (15) days after service of the motion. If a party fails to file a response within the prescribed time period the court may rule with or without a hearing.

E. Separate counter-motions and cross-motions required. Responses to motions shall be made separately from any counter-motions or cross-motions.

F. Reply brief. Any reply brief shall be filed within fifteen (15) days after service of any written response.

G. Request for hearing. A request for hearing shall be filed at the time an opposed motion is filed. The request for hearing shall be substantially in the form approved by the Supreme Court.

H. Notice of completion of briefing. At the expiration of all response times under this rule, the movant shall file a notice of completion of briefing. The notice alerts the judge that the motion is ready for decision.

[As amended, effective December 4, 2000; March 15, 2005; as amended by Supreme Court Order No. 08-8300-32, effective November 17, 2008.]

Rule 1-008. General rules of pleading.

A. Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim shall contain:

- (1) proper allegations of venue, provided the name of the county stated in the complaint shall be taken to be the venue intended by the plaintiff and it shall not be necessary to state a venue in the body of the complaint or in any subsequent pleading;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for judgment for the relief to which the pleader claims to be entitled to receive. Relief in the alternative or of several different types may be demanded. Unless it is a necessary allegation of the complaint, the complaint shall not contain an allegation for damages in any specific monetary amount.

B. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the pleader's denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule [1-011](#) NMRA.

C. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

D. Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

E. Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as

many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule [1-011](#) NMRA.

F. **Construction of pleadings.** All pleadings shall be so construed as to do substantial justice.

[Approved, effective August 1, 1942; as amended, June 13, 1973; as amended by Supreme Court Order 07-8300-16, effective August 1, 2007.]

Rule 1-008.1. Pleadings and papers; captions.

Pleadings and papers filed in the district courts shall have a caption or heading which shall briefly include:

A. the name of the court as follows:

"State of New Mexico
County of _____
_____ Judicial District";

B. the names of the parties; and

C. a title which describes the cause of action or relief requested. The title of a pleading or paper shall have no legal effect in the action.

[Approved, effective March 1, 2000.]

Rule 1-010. Form of pleadings.

A. **Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Paragraph A of Rule [1-007](#) NMRA. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate

count or defense whenever a separation facilitates the clear presentation of the matters set forth.

C. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

[Approved, effective August 1, 1942; as amended, effective January 1, 1987; August 1, 1989; as amended by Supreme Court Order 07-8300-16, effective August 1, 2007.]

Rule 1-011. Signing of pleadings, motions, and other papers; sanctions; unsworn affirmations under penalty of perjury.

A. Signing of pleadings, motions, and other papers; sanctions. Every pleading, motion, and other paper of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address and telephone number. The signature of an attorney or party 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; and that it is not interposed for delay. If a pleading, motion, or other paper is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading or other paper had not been served. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. For a willful violation of this rule an attorney or party may be subjected to appropriate disciplinary or other action. Similar action may be taken if scandalous or indecent matter is inserted. A "signature" means an original signature, a copy of an original signature, a computer generated signature, or any other signature otherwise authorized by law.

B. Unsworn affirmations under penalty of perjury. Any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a court proceeding as a notarized written statement, provided that the statement includes the following:

- (1) the date that the statement was given;
- (2) the signature of the person who gave the statement; and
- (3) a written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct.

[As amended, effective January 1, 1995; March 1, 2005; as amended by Supreme Court Order 07-8300-40, effective February 25, 2008; by Supreme Court Order 08-8300-022, effective September 12, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]

Rule 1-120. Domestic relations action; scope; use of forms in dissolution of marriage proceedings.

A. **Scope.** Rules 1-120 to 1-127 NMRA provide additional rules for domestic relations actions.

B. Mandatory use of court-approved forms by self-represented litigants.

Self-represented litigants must use Forms 4A-100 through 4A-315 NMRA in dissolution of marriage cases and in any case involving child custody or child support. Upon request, all district courts must provide self-represented litigants in dissolution of marriage proceedings with the Domestic Relations Forms approved by the New Mexico Supreme Court. No court shall distribute forms for use in dissolution of marriage proceedings other than those approved by the New Mexico Supreme Court. Courts must provide Domestic Relations Forms in dissolution of marriage proceedings as follows:

- (1) Forms 4A-100 through 4A-105 NMRA must be used to file a dissolution of marriage case and to file a response;
- (2) Forms 4A-200 through 4A-215 NMRA must be used to request temporary assistance from the court after the case has been filed and while it is pending;
- (3) Forms 4A-300 through 4A-306 NMRA must be used to complete a dissolution of marriage by presenting proposed final orders for court approval; and
- (4) Forms 4A-310 through 4A-315 NMRA must be used to request a dissolution of marriage by default as provided by Rule 1-055 NMRA and Form 4A-310.

C. **Notarization.** The following forms must be notarized before a self-represented litigant may file them or submit them to the court for approval:

- (1) Form 4A-301 NMRA (Marital settlement agreement);
- (2) Form 4A-302 NMRA (Custody plan and order);
- (3) Form 4A-303 NMRA (Child support obligation and order);
- (4) Form 4A-314 NMRA (Default judgment and final decree of dissolution of marriage (without children));
- (5) Form 4A-315 NMRA (Default judgment and final decree of dissolution of marriage (with children)); and

(6) Form 4-968 NMRA (Application to modify, terminate, or extend the order of protection from domestic abuse).

D. Mandatory acceptance of filings in dissolution of marriage cases.

(1) District courts must accept the forms approved by the New Mexico Supreme Court in dissolution of marriage cases.

(2) The clerk of the court must accept a filing submitted by a party in a dissolution of marriage case. The clerk shall not make a determination of whether the filing complies with the Domestic Relations Rules and Forms.

[Approved, effective, November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 13-8500-010, 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. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]

Scope of rules

As used in this rule, “domestic relations actions” includes:

- (1) legal separations, Section 40-4-3 NMSA 1978;
- (2) dissolution of marriage, Section 40-4-5 NMSA 1978;
- (3) annulment, Section 40-1-9 NMSA 1978;
- (4) spousal support, Section 40-4-7 NMSA 1978;
- (5) child support, Sections 40-4-11 to 40-4-11.6 NMSA 1978;
- (6) division or distribution of community or separate property or debts, Sections 40-2-1 to 40-2-9, 40-3-1 to 40-3-17 and 40-4-20 NMSA 1978;
- (7) determination of paternity pursuant to the Uniform Parentage Act, Sections 40-11-1 to 40-11-23 NMSA 1978;
- (8) actions brought pursuant to the Uniform Interstate Family Support Act, Sections 40-6A-101 to 40-6A-902 NMSA 1978;
- (9) child custody actions pursuant to Sections 40-4-9 and 40-4-9.1 NMSA 1978 and actions brought pursuant to the Child Custody Jurisdiction Act, Sections 40-10-1 to 40-10-24 NMSA 1978 [repealed, now see Uniform Child-Custody Jurisdiction and Enforcement Act,

40-10A-101 to 40-10A-403 NMSA 1978.];

(10) actions brought pursuant to the Mandatory Medical Support Act, Sections 40-4C-1 to 40-4C-14 NMSA 1978;

(11) actions brought pursuant to the Support Enforcement Act, Sections 27-2-32, 37-1-29, 40-4-15 and 40-4A-1 to 40-4A-16 NMSA 1978; and

(12) proceedings brought pursuant to the Family Violence Protection Act, Sections 40-13-1 to 40-13-7 NMSA 1978.

As used in this rule “domestic relations actions” does not include:

(1) termination of parental rights actions brought in the children’s court;

(2) adoption of a child pursuant to Sections 32A-5-1 to 32A-5-45 NMSA 1978; 40-14-15 NMSA 1978;

(4) proceedings brought pursuant to the Grandparent Visitation Privileges Act, Sections 40-9-1 to 40-9-4 NMSA 1978 except mediation and attorney fee proceedings;

(5) actions arising out of enforcement of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978; or

(6) change of name proceedings brought pursuant to Sections 40-8-1 to 40-8-3 NMSA 1978.

[As amended by Supreme Court Order No. 13-8500-010, effective for all pleadings and papers filed on or after May 31, 2013, in cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]

Rule 1-121. Temporary domestic orders.

A. Temporary domestic orders required. Except as provided in this rule, in all original domestic relations actions where a summons has been issued, the court shall enter a temporary domestic order, unless:

- (1) the action was filed by the state regarding child support; or
- (2) otherwise ordered by the court.

B. Approved form. If a temporary domestic order is issued it shall be substantially in the form approved by the Supreme Court. Any prohibition or limitation on the parties not included in the Supreme Court approved form shall only be approved after notice and hearing by the court.

C. **Issuance.** Coincident with the issuance of summons, the clerk shall file a temporary domestic order, and deliver an endorsed copy of the order to the person obtaining the summons. The petitioner shall cause to be served an endorsed copy of the temporary domestic order on the respondent. If served with the summons and petition, the return of summons shall include a statement that the temporary domestic order was served with the petition.

D. **Effective date of temporary domestic orders.** The verification to the petition shall include a statement that the petitioner understands the content of the temporary domestic order. The temporary domestic order shall be binding upon the petitioner at the time the petition is filed and upon the respondent two (2) days after it is personally served on the respondent. Actions taken by either party that are contrary to the terms of the temporary domestic order are subject to redress by the court, including costs and attorney fees.

E. **Applicability.** Unless the court orders otherwise, this rule shall not apply to domestic relations actions or proceedings filed:

- (1) pursuant to [Section 40-4-20](#) NMSA 1978 to divide or distribute property;
- (2) after entry of the final order or decree;
- (3) pursuant to the Uniform Interstate Family Support Act [[40-6A-100](#) NMSA 1978];
- (4) pursuant to the Uniform Parentage Act [[40-11-1](#) NMSA 1978]; or
- (5) as a third party custody action.

F. **Temporary restraining orders.** This rule shall not preclude a party from requesting the entry of a temporary restraining order under Rule [1-066](#) NMRA of these rules.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001.]

Rule 1-122. Dissolution of marriage and Section 40-4-3 NMSA 1978 proceedings; interim order allocating income and expenses.

A. **Interim order allocating income and expenses.** Absent exceptional circumstances, during the pendency of a dissolution of marriage or Section [40-4-3](#) NMSA 1978 proceeding, community income and expenses shall be equally divided between the parties. Upon motion, separate income and expenses may also be divided if appropriate.

B. **Agreement by parties.** The parties may file a stipulation waiving the entry of an interim order allocating income and expenses.

C. **Allocation of income and expenses.** If the parties have not agreed to or waived entry of an interim order allocating income and expenses, at any time after commencement of the proceeding

- (1) a party may file a motion requesting the court to enter an interim order allocating income and expenses; or

(2) the court, on its own motion, may set a hearing to allocate income and expenses. At least five (5) days prior to the hearing the parties shall be required to exchange the information set out in Domestic Relations Form [4A-212](#) NMRA.

D. Modification of interim allocation. Any party may file a motion to modify or supplement the interim order allocating income and expenses.

E. Form of statements, orders, and notices. Interim monthly income and expense statements, interim orders allocating income and expenses, notices of hearing for an interim order dividing income and expenses and orders for production shall be substantially in the form approved by the Supreme Court.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 13-8300-047, effective for all cases filed or pending on or after December 31, 2013.]

Rule 1-123. Mandatory disclosure in domestic relations and paternity actions; preliminary disclosure requirements.

A. Duty to disclose. Parties to domestic relations actions shall disclose to other parties relevant information concerning characterization, valuation, division, or distribution of assets or liabilities, whether separate or community property, in any proceeding involving the distribution of property or the establishment or modification of child or spousal support as provided in this rule.

B. Preliminary disclosure. Unless otherwise stipulated by the parties and ordered by the court or otherwise ordered by the court

(1) in every domestic relations action involving property and debt division or characterization, within forty-five (45) days after service of the petition, the parties shall serve a disclosure as provided in Domestic Relations Form [4A-212](#) NMRA. The disclosure shall contain

- (a) an interim monthly income and expense statement;
- (b) a community property and liabilities schedule; and
- (c) a separate property and liabilities schedule.

The statements and schedules shall substantially comply with Domestic Relations Forms [4A-212](#), [4A-214](#), and [4A-215](#) NMRA approved by the Supreme Court. The schedules shall be accompanied by a list of the documents utilized to complete the schedules.

(2) in actions concerning spousal support or child support, within forty-five (45) days of service of process on the opposing party, the petitioner or movant shall serve on the opposing party, and the opposing party shall serve on the petitioner or movant, an affidavit of disclosure containing the following information

- (a) federal and state tax returns, including all schedules, for the year preceding the request;
- (b) W-2 statements for the year preceding the request;
- (c) Internal Revenue Service Form 1099s for the year preceding the request;

- (d) work-related daycare statements for the year preceding the request, if applicable;
- (e) dependent medical insurance premiums for the year preceding the request, if applicable;
- (f) wage and payroll statements for four months preceding the request; and
- (g) in actions concerning modification of spousal support, a statement of income and expenses pursuant to Domestic Relations Form [4A-212](#) NMRA.

C. Supplemental disclosure. Sworn disclosure schedules shall be served in accordance with Rule [1-026](#) NMRA upon all parties, with copies to the trial court, at least five (5) days before trial.

D. Child support worksheets. In actions involving child support, the parties shall each complete a child support worksheet as provided by Section [40-4-11.1](#) NMSA 1978. The worksheets shall be served upon all parties, with copies to the trial judge, at least five (5) days before trial.

E. Duty of the State as a party. Under this rule, the State of New Mexico is required to produce only documents intended to be introduced at an evidentiary hearing, at least five (5) days prior to the hearing, unless otherwise prohibited by law.

F. Failure to comply. Failure to comply with this rule may result in the assessment of costs and attorney fees against the delinquent party or such other sanctions as the court deems appropriate.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 06-8300-020, effective December 18, 2006; as amended by Supreme Court Order No. 13-8300-047, effective for all cases filed or pending on or after December 31, 2013.]

Rule 1-124. Child custody; parenting plans; binding arbitration.

A. Parenting plan required. If a domestic relations proceeding involves custody or visitation of minor children, the parties shall attempt to agree upon and file a joint parenting plan pursuant to [Section 40-4-9.1](#) NMSA 1978 within sixty (60) days of the filing of the petition for dissolution.

B. Binding arbitration. If the parties have not filed a parenting plan, the parties may agree to submit issues involving custody or visitation to binding arbitration pursuant to [Section 40-4-7.2](#) NMSA 1978.

C. Mediation. If the parties have not agreed to a parenting plan or to binding arbitration pursuant to Paragraphs A or B of this rule, the court may refer the matter to family counseling or mediation prior to holding a hearing on child custody or visitation.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001.]

Rule 1-125. Domestic Relations Mediation Act programs.

A. **Applicability.** This rule shall apply only to domestic relations proceedings which involve custody, periods of parental responsibility or visitation of minor children pending in a judicial district that has established a domestic relations mediation program, safe exchange program, or supervised visitation program pursuant to the Domestic Relations Mediation Act. This rule shall not apply to referrals to private programs by stipulation of the parties or preclude a court from operating a program for no fee.

B. **Referral by court.** If the parties to a domestic relations action involving minor children have not filed a parenting plan pursuant to Section [40-4-9.1](#) NMSA 1978, unless binding arbitration is pending pursuant to Section [40-4-7.2](#) NMSA 1978, the court may order the parties to:

- (1) attend a general information session;
- (2) meet with a counselor designated by the court;
- (3) participate in mediation;
- (4) participate in priority consultation pursuant to this rule; or
- (5) participate in advisory consultation pursuant to this rule.

C. **Mediation; parenting plan.** If the court orders the parties to participate in mediation, if the mediation is successful, the counselor or mediator shall prepare a parenting plan which shall be submitted to the parties and their respective counsel for approval. When the parenting plan has been signed it shall be submitted to the court for approval together with an order approving it.

D. **Priority consultation.** The court may refer the parties to a priority consultation pursuant to the Domestic Relations Mediation Act. Upon conclusion of a priority consultation, the consultant shall prepare written recommendations to the court which shall be filed with the court and served on the parties. If a party does not agree with the recommendations, within eleven (11) days of the filing of the priority consultation recommendations, the party shall file a motion specifically describing the reasons for the party's objections to the recommendations. The party's objections shall be served on all other parties. The opposing party may file a written response within eleven (11) days after the date of service of the objections. No reply may be filed. If no objections are filed within eleven (11) days after service of the recommendations, an order adopting the recommendations shall be entered.

E. **Advisory consultations.** The court may enter an order requiring the parties to submit to an advisory consultation. The order shall be substantially in the form approved by the Supreme Court. At the conclusion of an advisory consultation a report shall be prepared and served on each party. The person preparing the report shall also prepare and file with the court written recommendations. The written recommendations filed

with the court shall not contain the basis for the recommendations. If a party does not agree with the recommendations, within eleven (11) days of the filing of the advisory consultation recommendations, the party shall file a motion specifically describing the reasons for party's objections to the recommendations. The party's objections shall be served on all other parties. The opposing party may file a written response within eleven (11) days after service of the objections. No reply may be filed. If no objections are filed within eleven (11) days after service of the recommendations, an order adopting the recommendations shall be entered.

F. Confidentiality. All communications made by any person who participates in mediation proceedings pursuant to this rule are confidential except that there is no protection for information derived from such communications which a participant is required by law to report to a law enforcement officer or state agency. The Mediation Procedures Act, Sections [44-7B-1](#) to [44-7B-6](#) NMSA 1978, shall apply to proceedings commenced under this rule.

G. Conduct in domestic relations mediation programs. The parties to a domestic relations mediation proceeding commenced under this rule are expected to participate in good faith, but sanctions shall not be imposed for failure to settle or compromise any claim or defense.

H. Safe exchange or supervised visitation programs. The court may establish a safe exchange program or supervised visitation program under Section [40-12-5.1](#) NMSA 1978. The court may order the parties to use the services of a safe exchange program or supervised visitation program when the court determines that the child's best interest will be served by avoiding contact or confrontation between the parents during exchanges of custody or by providing supervised contact between a parent and the child.

I. Sliding fee scales.

(1) Any party who is ordered to participate in a domestic relations mediation program, safe exchange program, or supervised visitation program under this rule shall pay a fee in accordance with a sliding fee scale under Section [40-12-5](#) NMSA 1978 or Section [40-12-5.1](#) NMSA 1978. Any fees payable under this rule may be reallocated between the parties in the district court's discretion as appropriate. If a district court elects to operate a domestic relations mediation program, safe exchange program, or supervised visitation program under this rule, either in-house with court staff or by contracting with an outside service provider, the court shall submit a proposed sliding fee scale to the Supreme Court for its approval. Nothing in this rule shall preclude a court from operating a program for no charge.

(2) When submitting a proposed sliding fee scale for the Supreme Court's consideration, the district court shall do the following:

- (a) provide the Supreme Court with detailed information regarding the costs incurred by the district court for operating an in-house program or contracting with an outsider service provider to provide services under this rule;

- (b) explain how the district court arrived at the cost it proposes to charge each party receiving services from the domestic relations mediation program, safe exchange program, or supervised visitation program;
- (c) submit a separate sliding fee scale for each type of program services the court elects to provide under Paragraphs C, D, E, or H of this rule;
- (d) structure the proposed sliding fee scale based on the party's gross income and proportionate ability to pay; and
- (e) if the Supreme Court approves the proposed sliding fee scale, the district court shall post the sliding fee scale in the courthouse and on the court's web site.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 09-8300-013; effective May 18, 2009; by Supreme Court Order No. 10-8300-038, effective December 31, 2010; by Supreme Court Order No. 12-8300-029, effective for all cases filed or pending on or after January 7, 2013.]

Rule 1-126. Partial decrees.

- A. **Limited to exceptional circumstances.** Partial decrees dissolving the marriage will be granted only upon a showing that exceptional circumstances exist.
- B. **Motion contents.** The motion shall address the impact of entry of a partial decree on the parties and their children, including, but not limited to, medical coverage, child custody, income division, child support, spousal support and taxes paid by the parties.
- C. **Entry of partial decree.** A partial decree may include provisions that the court deems necessary for the protection of the parties and their minor children.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001.]

Rule 1-127. Attorney fees in domestic relations cases.

- A motion for attorney fees pursuant to Rule [1-054](#) NMRA shall include an itemization of time expended and an affirmation that the fees claimed are correctly stated and necessary. In awarding fees, the court shall consider relevant factors presented by the parties, including but not limited to:
- A. disparity of the parties' resources, including assets and incomes;
 - B. prior settlement offers;
 - C. the total amount of fees and costs expended by each party, the amount paid from community property funds, any balances due and any interim advance of funds ordered by the court; and
 - D. success on the merits.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001.]

What Court Personnel Can Help You With

Rule 23-113. Providing court information to self-represented litigants.

A. Self-represented litigant, court staff; defined. For purposes of this rule, a self-represented litigant is any person who appears, or is contemplating an appearance, in any court in this state without attorney representation and court staff includes all judicial branch employees except judges, settlement facilitators, and mediators.

B. Permitted information. When communicating with a self-represented litigant, court staff are permitted to:

- (1) encourage the self-represented litigant to obtain legal advice from a licensed New Mexico attorney without recommending a specific attorney;
- (2) provide information about available pro bono, free or low-cost civil legal services, legal aid programs and lawyer referral services without endorsing a specific service;
- (3) provide information about available statutory or court-approved forms, pleadings and instructions without providing advice or recommendations as to any specific course of action;
- (4) answer questions about what information is being requested on forms without providing the self-represented litigant with the specific words to put in a form;
- (5) provide, orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries, if available, and without advising whether a particular definition is applicable to the self-represented litigant's situation;
- (6) provide, orally or in writing, citations to constitutions, statutes, administrative rules or regulations, court rules and case law, but are not required to search for the citation and are not permitted to perform legal research as defined in Subparagraph (4) of Paragraph C of this rule or advise whether a particular provision is applicable to the self-represented litigant's situation;
- (7) provide publically available, non-sequestered information on docketed cases;
- (8) provide general information about court processes, procedures and practices, including court schedules and how to get matters scheduled;
- (9) provide information about mediation, parenting courses, courses for children of divorcing parents and any other appropriate information approved by the court for self-represented litigants;
- (10) provide, orally or in writing, information on local court rules and administrative orders;
- (11) provide information regarding proper courtroom conduct and decorum; and
- (12) provide general information about community resources without endorsing a specific resource.

C. Prohibited information. When communicating with a self-represented litigant, court staff are prohibited from:

(1) providing, orally or in writing, any interpretation or application of legal terminology, constitutional provisions, statutory provisions, administrative rules or regulations, court rules and case law based on specific facts or the self-represented litigant's particular circumstances;

(2) providing, orally or in writing, information that must be kept confidential by statute, administrative rule or regulation, court rule, court order or case law;

(3) creating documents or filling in the blanks on forms on behalf of self-represented litigants;

(4) performing direct legal research by applying the law to specific facts or expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative rules or regulations, court rules, court orders or case law to the self-represented litigant's particular circumstances;

(5) explaining court orders or decisions except as permitted by Subparagraph (8) of Paragraph B of this rule;

(6) telling the self-represented litigant what to say in court;

(7) assisting or participating in any unauthorized or inappropriate communications with a judge on behalf of the self-represented litigant outside the presence of the other party;

(8) indicating, orally or in writing, whether the self-represented litigant should file a case in court;

(9) predicting the outcome of a case filed in court; and

(10) indicating, orally or in writing, what the self-represented litigant should do or needs to do.

D. Immunity. Despite any information provided to self-represented litigants pursuant to this rule, self-represented litigants remain responsible for conducting themselves in an appropriate manner before the court and representing themselves in compliance with all applicable constitutional and statutory provisions, administrative rules or regulations, court rules, court orders and case law. Court staff shall be immune from suit, as provided by statute or common law, for any information provided to a self-represented litigant.

[Approved by Supreme Court Order 08-8300-03, effective January 22, 2008.]