

Paternity

(Paternity, Custody, Time-sharing, & Child Support)

(FOR ONE PARENT FILING ALONE)

INSTRUCTIONS AND FIRST COURT PAPERS

**How to File a Pro Se Petition for
Paternity, Custody, Time-sharing, and Child Support
in Dona Ana County, NM**

PATERNITY PACKET

THIS PACKET CONTAINS THE FOLLOWING INSTRUCTIONS AND FORMS:

1. INSTRUCTIONS ABOUT PREPARING A PETITION - 4 pages
2. DOMESTIC RELATIONS INFORMATION SHEET - 2 pages
3. PETITION TO ESTABLISH PATERNITY - 5 pages
4. INSTRUCTIONS ABOUT SERVICE - 3 pages
5. SUMMONS/RETURN OF SUMMONS - 2 pages

1. GENERAL INSTRUCTIONS FOR ESTABLISHING PATERNITY

A. BACKGROUND. These materials are for handling your own court case *pro se* (without an attorney) and are provided for persons who cannot hire an attorney. If at all possible, you should have an attorney for your case because the system is quite complicated, and if you are proceeding *pro se*, you must do everything just as a lawyer would.

B. INFORMATION ABOUT THESE MATERIALS.

1. You are handling your own case. This information packet gives basic information on preparing and filing a Petition for Paternity. No matter what pleading you are doing, you will have to read every word carefully and tailor everything to fit your own fact situation.
2. Fill-in-the-blank forms provide a starting point in preparing your own pleadings. You must change the forms which are provided to fit your own situation!
3. There are other sets of instructions and forms for different stages of a case. For example, there are different sets of forms for each of the different ways of "serving" (giving formal notice of the divorce action) the other party. There are also separate forms and instructions for getting hearings scheduled. You will need to return at each stage of your case to get everything you will need.

C. PREPARING THE PETITION. The Petition is the document which tells the Judge what you are asking the Court to do for you. Before the Court can act on your request, you must give certain facts so that the Judge can determine that what you are asking is something this Court has the power to do, and that it is legal for the Judge to do it. The Petition contains some information to let the Judge know about you and why you are going to Court, that you are asking something which it is legal for the Court to order, and what it is you want the Court to do. The Summons is attached to a copy of the Petition and gives the other party notice that you have filed the Petition and (s)he has to do something or the Judge will give you what you have asked for. The other documents are completed because different rules require them to be done in family court cases.

1. **Heading.** The "Heading" is the top of page one, which gives the Court name and file number and the names of the parties. The heading is put on page one of every document or "pleading" which you file in this case from now on. Even if you come back to court 10 years after the divorce is final to change something, you will use the same heading.

The District Courts in New Mexico are divided into "Districts." Dona Ana County is the "Third Judicial District." Other districts around Las Cruces are: Twelfth Judicial District -Alamogordo, Sixth Judicial District - Deming, Seventh Judicial District - T or C.

These forms and instructions are ONLY for cases in New Mexico. You cannot try to use these forms in any other state. Each state has its own laws, and many states have mandatory forms that have to be used, so you cannot try to use these forms outside of New Mexico. The forms and instructions are developed following rules and practices in Dona Ana County. Even the surrounding counties have different ways of doing things, so you will have to check with the Clerk's Office at the Court you want to use them in.

A Cause number will be assigned by the Clerk of the Court when the Petition is filed. The Deputy Clerk will stamp a number on your first set of papers when you file them. You must fill in that same file or "cause" number on all the later documents in the case.

2. **Parties.** The Petitioner is the person who is starting the case. The Respondent is the "other side." One of you must be named "Petitioner" and the other person is named "Respondent." These titles are yours whenever you file something in Court in this case, even several years later. You must use your formal name.
3. **Title of Document or Pleading.** To establish paternity, you must file a "Petition to Establish Paternity, Custody and Child Support," and that is the title typed in the next line. The title should be centered and in all capital letters.
4. **Jurisdiction.** The statutes that give the court "jurisdiction" (authority to do something) in paternity cases are NMSA 1978 §§ 40-11-1 to 40-11-23. Basically, the District Court of New Mexico has jurisdiction to establish paternity over any "person who has sexual intercourse in this state," NMSA 1978 § 40-11-8 (B). You must decide which County to file in. This is called "venue." Your petition can be filed in the County in which one of the parties resides. If there are children, and one parent resides in one county, and the other parent lives in a different county, then venue is often decided to be the County in which the children reside permanently or indefinitely. Generally, New Mexico can determine child custody if the child has lived in New Mexico for at least 6 consecutive months and is now residing in New Mexico. If the child has been living in New Mexico but has been removed from New Mexico by a person claiming custody, and the removal was less than 6 months ago, then New Mexico may still determine custody issues where one parent is still in New Mexico. (See 40-10-2 through 40-10-4 in the section of statutes.) One purpose of this law is to avoid abductions or removal of children to another state.

It is important to be absolutely truthful in the facts stated in the Petition, since it is submitted under oath. Do not "fudge" on the residence requirements. Jurisdiction MUST be exactly right or the Decree (the final paper signed by the Judge) could be invalid and everything would have to be re-done at a later time.

5. **Children.** Every time you do any document that involves the children, their names should be given along with their birth dates. Sometimes, also, the age of the child is put in. In making any decisions about the children, the Judge needs to know which children are being discussed and how old they are. Using the birth dates helps identify the children and also gives information the Judge can use to determine the age of the child.

New Mexico law assumes that "joint custody" is best for children. Joint Custody DOES NOT mean equal time, where the children spend half their time with one parent and half their time with the other. Equal time-sharing is possible in joint custody, but other arrangements are usually preferred. In fact, an equal time-sharing arrangement will nearly always be refused unless a psychologist has recommended that equal time-sharing be ordered. Joint custody means that both parents spend time with the children and are involved with them.

Mediation is required in EVERY case in which there is a dispute or conflict about child custody or visitation. A parent education class is also required. Some, but not all, of the other Counties in New Mexico have similar requirements. If you are outside Dona Ana County, you need to ask whether your Court has a mediation service.

The Mandatory Child Custody Jurisdiction Allegations are required by law. This law requires that BOTH parents give information, under oath, as to the children's present address, the places where the children have lived within the last FIVE years, and the names and present addresses of the persons with whom the children have lived during that three year period. In addition to this information about residential addresses, the law requires statements about whether there have been any other court proceedings about custody of the children, or if any other person has had custody of them.

When the time-sharing (visitation) schedule with the children is known, then the amount of child support can be determined, based on the Child Support Guidelines which are part of the New Mexico Statutes. Worksheets are available so that the child support amount can be calculated. It is required that the Child Support Worksheet be signed by both parties and be attached to the final papers when the Decree and other final documents are submitted to the Judge for approval. The Petition includes a statement asking that child support be calculated in accordance with the guidelines.

6. **Prayer.** The ending paragraph of the Petition is called the "Prayer" and summarizes what the Petitioner is asking the Judge to do. Each major section of the Petition is limited to a sentence or two in the Prayer.
7. **Signing and Verification.** The Petition must be signed by the Petitioner, and the Petitioner's address and telephone number must be included. In addition, since some of the statements in the Petition were required to be made under oath, a "verification" is included. This verification must be signed before a Notary Public. Re-read the General Information instructions about notarizing and copies.

- D. FILING WITH THE CLERK.** The last step in getting your case started is to file the Petition with the Clerk. You will need the original and 2 copies of the Petition and the Summons and also a Domestic Relations Information Sheet. Before you take your Petition to the Clerk for filing, read the instruction materials in this Packet called INSTRUCTIONS ABOUT "SERVICE," you will need to have the SUMMONS issued by the Clerk at the same time that you take the Petition in to be filed. If you do not have the Summons issued when the Petition is filed and find out later that you need the Summons, you have to go through a lot of trouble to be able to get a Summons issued. It is better to get the Summons issued at the beginning, and then you have it ready in case you find that you need it. **A filing fee of \$137.00** is required in all new cases unless you are low income and apply for free process and it is approved. ***A Free Process Packet, which includes the Application, Affidavit and Order for Free Process is provided separately at the Clerk's office.***
- E. SERVICE.** You must SERVE the respondent with an ENDORSED copy of the Petition, endorsed copy of the Order for Parent Education, a copy of the Summons and a blank Domestic Relations Information Sheet. INSTRUCTIONS ABOUT "SERVICE" gives information about the different ways to serve the respondent. You should keep one set of the Endorsed pleadings in your own personal file.
- F. INFORMATION ABOUT CUSTODY**
1. **WHEN ESTABLISHING PATERNITY** - A case is started with filing a Petition for Dissolution of Marriage or a Petition to Establish Paternity, Custody and Visitation with the Court. Alternatively, you may file a Motion to Modify Custody and Visitation after you already have divorced and you need to make a modification because of changed circumstances (READ PART 2, BELOW). The Respondent answers the Petition, either agreeing or disagreeing to various parts of the Petition, by filing a written Response. When the Petition and Response show that the parties are in dispute about child custody and visitation issues and cannot work them out on their own, the parties must attend mandatory mediation before a hearing is set for the Judge to resolve the dispute. The mediator will work with the parties to try to settle the dispute. In order to schedule your mediation in DONA ANA COUNTY ONLY, you must the Mediation Program (575-523-8267). Both parties will be required to meet with a Mediator. It is very important that you provide the Court with accurate and complete addresses for both of the parents. The Court will mail information regarding mediation as well as a Notice and Order of Mediation to both parents. ATTENDANCE AT ALL SCHEDULED MEDIATION CONFERENCES IS MANDATORY. You may also be required to attend a Parenting Education class. An agreement is often worked out during the Mediation process. If you reach an agreement, the mediator will fill out a Parenting Plan and send it to the Court. If you do not reach an agreement, the Judge's office will set a hearing to decide custody and visitation.
 2. **CHANGING CUSTODY/VISITATION AFTER FINAL DECREE-** You must file a Motion to Change Custody and Visitation and Certificate of Re-open Status. The Court will set your case for a hearing. The judge may require you to attend Mediation and/or a Parenting Education class before deciding your request to make a change.

Remember that this packet contains only basic instructions and materials to get your case FILED and started. You will need to return to get forms and other instructions to continue with your case and get it completed.

4A-101. Domestic relations information sheet.

DOMESTIC RELATIONS INFORMATION SHEET¹
NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET
Type or print responses. Required in all domestic relations cases.²
(Do not use in domestic violence cases.)

A. Petitioner's attorney information. (Complete only if Petitioner has an attorney.)

Petitioner's name: _____
Attorney's name: _____
Attorney's address: _____
City: _____
State: _____
Zip code: _____
Telephone: _____

B. Information regarding petitioner and respondent. (Do not use an attorney's mailing address. Use a separate sheet if necessary.)

Petitioner

Name: _____
(Last name, first, middle)
Other names *(e.g. maiden name)*: _____

Address: _____
City: _____
State: _____
Zip code: _____
Date of birth: _____
Social Security number³: _____

Respondent

Name: _____
(Last name, first, middle)
Other names *(e.g. maiden name)*: _____

Address: _____
City: _____
State: _____
Zip code: _____
Date of birth: _____
Social Security number³: _____

C. Parties' minor children. (Provide the date of birth and social security number for each minor child, if any. Use a separate sheet if necessary.)

Name: _____
(Last name, first, middle)
Date of birth: _____
Social Security number: _____

Name: _____
(Last name, first, middle)
Date of birth: _____
Social Security number: _____

Name: _____
(Last name, first, middle)
Date of birth: _____
Social Security number: _____

Name: _____
(Last name, first, middle)
Date of birth: _____
Social Security number: _____

D. Request to limit access to information.

(Optional – complete only if applicable)

The [petitioner] [respondent] has reason to fear domestic violence or child abuse. For this reason, please limit access to information about the [petitioner] [respondent] in the Child Support & Paternity Case Registry to the extent possible.⁴ The [petitioner] [respondent] realizes that this request may make it more difficult to assist in collecting child support. The [petitioner] [respondent] understands that the other party and the public might still view information about this case under some circumstances.

I affirm that this request is legitimately made and not designed to harass or intimidate the other party or mislead the court.

Signature of Petitioner

END OF INFORMATION SHEET

USE NOTE

1. The Domestic Relations Information Sheet is not required in domestic violence, commitment, guardianship, probate, or adoption actions; or if you are filing a pleading that does not change or add to the first pleading.

In uncontested domestic relations matters, the parties may submit one Information Sheet with the initial pleading, and the documents need not be served.

In all other contested domestic relations cases each attorney representing a petitioner, or the petitioner proceeding pro se, in a contested case must submit the Information Sheet and serve a blank copy of the Information Sheet on the respondent. Respondents must submit the completed Information Sheet with their first responsive pleading.

The information submitted on these forms does not replace or supplement the filing and service of pleadings or other papers required by law. These forms, approved by the Supreme Court of New Mexico, are required to initiate domestic relations cases and are used by the courts for case management.

Forms are available from the court clerks and the NMRA. Electronic copies may be obtained from the Supreme Court's internet site (www.supremecourt.nm.org) and New Mexico Law on Disc. If re-keying the form it must appear substantially in the same format as the Supreme Court approved form. Type or print only. If using a word processing system, please print your answers in bold.

2. Unless there are more than four children, the Information Sheet is to be submitted on a single page. The clerk will key-enter the information on the Information Sheet. The Information Sheet will not be filed in the court file.

3. If the party has more than one social security number, please include it. Pursuant to Sections 27-1-10 and 27-1-11 NMSA 1978 and federal law, each party must submit the social security number of each party as well as the name, date of birth and social security number for each minor child. This information will be provided to the State Case Registry and, upon request, to child support enforcement agencies. The parties' addresses and social security numbers are also used to accurately identify and track court users, obtain feedback from court

users on a periodic basis and to issue process in contempt proceedings. Addresses provided on this page will not be made a part of the public record unless that party is or becomes self represented.

4. The Child Support & Paternity Case Registry is a required, nationwide database of child support and paternity orders. Access to registry information is strictly limited to court and child support administrative personnel. Requesting that your registry information be “nondisclosed” does not prevent authorized parties from reviewing the information. Rather, it alerts courts and child support administrative personnel to act with caution when viewing your information. However, be aware that requesting “nondisclosure” of registry information does not limit access to your official district court case file which is a public record. If you are concerned about such access, ask your lawyer, or the court clerk if you do not have a lawyer, about ways in which the court may restrict access to your court file.

[Provisionally approved as 4-211 NMRA, effective November 1, 1999 until November 1, 2000; approved, as amended, effective November 1, 2000; as amended by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 14-8300-011, effective for all cases filed on or after December 31, 2014.]

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

Court clerk - do not file
FOR INFORMATION PURPOSES ONLY

_____, Petitioner,
(print first, middle and last name)

v.

Case No. _____
Judge: _____

_____, Respondent.
(print first, middle and last name)

QUESTIONS ABOUT PUBLIC ASSISTANCE

1. Are the child/ren in this case currently on TANF? YES NO I don't know

QUESTIONS ABOUT CHILD SUPPORT ENFORCEMENT

2. Have you ever applied for services with
Child Support Enforcement Division (CSED)
for this/these child/ren? YES NO

If YES, what is your CSED case number? _____

Did you apply for CSED *full* services? YES NO I don't know

(SIGN YOUR NAME) _____

(PRINT YOUR NAME) _____

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, **Petitioner/Plaintiff,**
(print first, middle and last name)

v.

Case No. _____
Judge: _____

_____, **Respondent/Defendant.**
(print first, middle and last name)

and involving _____, **Minor Child(ren).**

**PETITION TO ESTABLISH PATERNITY, DETERMINE
CUSTODY AND TIME-SHARING, AND ASSESS CHILD SUPPORT**

THE PETITIONER comes before this court and states:

1. The Petitioner is a resident of _____ County.
2. _____ is the mother of the minor child(ren).
3. _____ is the father of the minor child(ren).
4. The name, date of birth and age of the minor child(ren) are:

<u>Name</u>	<u>Date of Birth</u>	<u>Age</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

PATERNITY (✓ ONE #5)

5. Paternity HAS NOT been established.

5. Paternity HAS BEEN established by (✓ check all that apply):

- Petitioner/Respondent has acknowledged his paternity of the minor child(ren) in writing filed with the Department of Vital Statistics in the State in which the child(ren) were born.
- Petitioner/Respondent has consented to paternity and is named on the birth certificate.
- Paternity of the minor child(ren) has been established by blood tests.
- Petitioner/Respondent has openly held out the minor child(ren) as his natural child(ren) and established a personal, financial or custodial relationship with the child(ren).

RESIDENCE OF CHILD(REN)

6. During the past five years, the minor child(ren) have lived with the following persons, at the following places, and for the following periods of time:

<u>Lived With</u>	<u>Address</u>	<u>Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

PRIOR LITIGATION (✓ ONE #7)

7. Petitioner knows of no other litigation concerning custody or visitation involving the minor child(ren) of parties in New Mexico or in any other state in which Petitioner has participated as a party, as a witness, or in any other capacity.

7. Issues concerning custody or visitation involving the minor child(ren) of the parties were previously litigated in the following court action:

<u>Case Name</u>	<u>Case Number</u>	<u>Name of Court</u>	<u>Location of Court</u>
_____	_____	_____	_____
_____	_____	_____	_____

PENDING LITIGATION (✓ ONE #8)

- 8. Petitioner has no information of any proceeding that is pending in a court in New Mexico or in any other state involving visitation or custody with the parties' minor child(ren).
- 8. The following proceeding is pending in a court in New Mexico or in another state involving visitation or custody with the parties' minor child(ren):

<u>Case Name</u>	<u>Case Number</u>	<u>Name of Court</u>	<u>Location of Court</u>
_____	_____	_____	_____
_____	_____	_____	_____

OTHER CUSTODY AND VISITATION CLAIMS (✓ ONE #9)

- 9. Petitioner knows of no persons other than the parties who have physical custody of the minor child(ren) or who claim to have custody or visitation rights to the minor child(ren).
- 9. The following persons *other than the parties* have physical custody of the minor child(ren) or claim to have custody or visitation rights to the minor child(ren):

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____

CUSTODY OPTIONS (✓ ONE #10)

- 10. The parties should be awarded joint legal custody of the minor child(ren), with primary physical custody in and periods of care and responsibility consistent with the best interests of the child(ren).
- 10. _____ should be awarded sole legal and physical custody of the child(ren) subject to the other parent's reasonable rights of visitation. Sole legal and physical custody is in the best interest of the minor child(ren) because:

CHILD SUPPORT

- 11. Child support should be set according to the New Mexico Child Support Guidelines and the Respondent should be ordered to pay child support in an amount as determined by the Child Support Guidelines and Worksheet.
- 12. Petitioner requests immediate child support during the pendency of this case, in accordance with the New Mexico Child Support Guidelines.
- 13. Petitioner requests that child support be retroactive to the birth of the child(ren), and that the amount of child support be in accordance with the New Mexico Child Support Guidelines.
- 14. Petitioner requests that Respondent be ordered to pay the birthing expenses, including hospital and medical expenses, incurred by mother in the amount of \$ _____.

LIFE INSURANCE

- 15. Respondent should be ordered to purchase life insurance with a benefit amount of \$ _____, naming the other parent as trustee for the benefit of the minor child(ren) in order to pay the child(ren) support obligation upon the paying parent's death.

MEDICAL INSURANCE

- 16. _____ should provide health and dental insurance for the minor child(ren).

MEDICAL EXPENSES (✓ ONE #17)

- 17. _____ should pay 100% of the child(ren)'s health and dental expenses not paid by the insurance.
- 17. The parties should each pay one-half of the child(ren)'s health and dental expenses not paid by insurance.
- 17. The parties should pay the child(ren)'s health and dental expenses not paid by insurance in the percentages shown on the child(ren) support worksheet.

BLOOD TESTING

- 18. Petitioner requests blood testing be ordered if Respondent denies paternity of the child(ren), with blood samples to be sent for testing to a qualified blood testing laboratory and HLA tests and any other tests the testing facility recommends to be performed. Petitioner requests that court costs, blood testing costs and expert witness fees should be ordered to be paid by Respondent.

INSTRUCTIONS ABOUT “SERVICE”

I. BACKGROUND

You must give the other party formal notice that you have filed a Petition. This is called “service.” This means the proper and correct way of getting a copy of the petition to the respondent or other person named in the petition. The rules for this are governed by Rule 1-004 of the Rules of Civil Procedure for the District Courts. After you file the Petition, you must have a copy of the Petition and a copy of the Summons delivered to the other party.

These instructions about service are provided as part of the Petition packet so you will have the information you need to decide HOW you are going to serve the other party.

The Petition must be served along with a Summons. The Summons tells the respondent (who is the other side of the case) that an action against him or her has been filed in District Court and he/she will have thirty (30) days after the Summons and Petition are received to file a response or answer.

II. WAIVER

If you and the other side have reached an agreement about the paternity issues, then you do not need to “serve” the summons. Instead, the respondent will sign an Acceptance of Service and Consent to Judgment and it will be submitted along with a Parenting Plan and Final Decree Establishing Paternity to the Court Clerk at the same time.

III. SUMMONS

A. COMPLETING THE FORMS. There are blanks on the summons (and the other forms) that you will need to fill in. The heading will be the same as the heading on the Petition. You must include the Respondent’s name in the space allotted for that after the “TO” which follows the title Summons at the beginning. Your own name and address will need to be filled in also. The part starting WITNESS will be filled out by the Clerk when s(he) “issues” the Summons.

You must attach a copy of the summons of each copy of the petition. The original summons and the original petition are NOT stapled together. Take the original and two copies (one is for you and one is to serve on the Respondent) to the Court Clerk and the clerk will give you a cause number which must be stamped or written on all copies where there is a blank after “cause number.” You will need to get the copies made before you go the court. The clerk will then sign, endorse and seal the original Summons and the two copies. The original and the two copies of the Summons will be given back to you along with copies of the Petition. The Court Clerk will “file” the original Petition in your newly established court file.

B. SERVICE. The next step is to get copies of the Summons and Petition to the respondent and be able to prove to the Judge that this was done correctly. There are different ways of getting the summons and petition served.

(1). SERVICE BY MAIL. One way to get service is by mail. This requires the other party to sign a receipt acknowledging that s(he) has received the papers, and to mail that form back to you. The papers must be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

The documents you will mail to the other party if this method is used are:

- a. Copy of Petition stamped by the Clerk when you filed the Petition;
- b. Copy of Summons, also stamped by the Clerk

Service is complete when the defendant or respondent signs the return receipt and it is returned to you. You should then fill in the return of service on your copy of the summons and file it with the Court.

(2). **PERSONAL SERVICE**

- A. USE A PROFESSIONAL PROCESS SERVER.** There are professional “process servers” who are listed in the yellow pages of the telephone book under “Process Servers.” You are not required to use these professionals, but may want to.
- B. USE YOUR OWN PROCESS SERVER.** It is possible to have your papers served by a person who is not a professional process server. Such a person must be over the age of 18 and not involved in the case.

The person you ask to serve your process for you will see that the papers are “served” and then must complete the Affidavit (Return of Service) on the back of the Summons. The Return of Service Affidavit must be notarized.

- (3). **SERVICE BY PUBLICATION.** If the Respondent cannot be found or is deliberately hiding to avoid service, you may still “serve” him/her. To use this method you must first make an honest effort to locate the Respondent. You should keep copies of letters that you try to send to him or her, and also copies of letters you send to his or her relatives or friends where you trying to find an address for the respondent. If you proceed by publication and the other party feels like you should have been able to find his or her address fairly easily, s(he) may come in even months or years later and argue that the Decree or Order is not valid because you could have given him or her personal notice. It is very important if you want to use service by publication that you try really hard to find the Respondent and keep a record of what you did and copies of all letters you send and any returned mail.

You must complete the *Motion to Serve by Publication in a Newspaper* and *Affidavit of Need for Service by Publication* (must be notarized) and file them with the Court. You must complete the *Order for Service of Process by Publication in a Newspaper* and *Notice of Suit* and submit them to the Court for approval. The Notice can be served upon the Respondent after the Clerk’s office issues it, by publishing it in a newspaper published in the County where you filed for the divorce. The law requires that the Notice of Suit “be published in the **English** language in some newspaper of general circulation published in the county where such publication is required to be made, “**once each week for four consecutive weeks.**” After your Notice has been published for four weeks as required by law, you need to get an Affidavit of Publication from the newspaper that published your notice. When you received the Affidavit of Publication you should make a copy of it for your file and take the original to the Clerk’s office for filing. At that time you will also file the original Summons.

If the Respondent has a mailing address but is avoiding service of the papers, you must send him or her a copy of the papers at his or her residence address in addition to the publication. If you do this, then you should complete the Certificate of Service form and file it in the Clerk’s office. It is important for you to file the documents that show that service was completed. If the Respondent does not file a Response within 30 days of service you will want to consider “taking a default.” Default packets are available at the Pro Se Center. You must have proof of service in the Court file in order to proceed with a “default”.

III. ADDITIONAL INFORMATION ABOUT THE SUMMONS

1. You fill out the Summons BEFORE you take it to the Clerk's office to have it issued.
2. When you take your completed Petition to the Clerk's office for filing you MUST also take the Summons (fill in your and the other party's name and address) OR one of the Waiver Forms which is completed and signed by the Respondent.
3. The Clerk will complete the bottom of the Summons, process the original and the copies of the Summons, and GIVE BACK TO YOU THE ORIGINAL AND ONE COPY OF THE SUMMONS. At this point, the Summons has been "issued", and it is your responsibility to have a copy of the Summons "served" along with a copy of the Petition on the Respondent.
4. If you have the Respondent personally served, then the process server will complete the back of the original Summons, and will give a copy to the Respondent. The process server will then return the original summons you, and you must then file it with the Clerk's Office. If you do not file the Summons with the Return of Service filled out, then the Judge does not know whether or not the Respondent got the papers and your cannot proceed with your case.
5. Sometimes the parties are able to work out a settlement and the Summons does not have to be served. If you think you will be able to work out all the issues in your case, then just keep the Summons which the Clerk has issued and see if you are able to complete the Decree or Order, Parenting Plan, and if needed, the Order for Wage Withholding and get the papers signed by both of you. If you do it this way, you will also need ONE OF THE WAIVER FORMS (either the "Acceptance of Service, Waiver and Entry of Appearance," or the "Notice and Receipt of Summons," Petition for [divorce] or [parentage], etc.) Which the Respondent has signed. If you have the Respondent's signature on a paper that says he or she has received the copy of the Summons, then you do not need to have the Summons served.
6. If you thought you could work out the details of the case but your settlement gets hung up and you cannot get the closing papers signed by the two of you, then you can have the Respondent served with the Summons and the other papers when you determine that settlement is not possible, and use the Summons at that time, even though the Clerk issued it sometime earlier. Remember to file the Summons with the Clerk after the Return of Service has been completed on the back of the original Summons.

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

_____, **Petitioner,**
(print first, middle and last name of the spouse filing for divorce)

v. Case No. DM _____

Judge: _____

_____, **Respondent.**
(print first, middle and last name of the other spouse)

SUMMONS

THE STATE OF NEW MEXICO:

TO: _____, **RESPONDENT**
(print first, middle and last name)

You are required to serve upon the Petitioner or Petitioner’s attorney an answer or motion in response to the Petition which is attached to this summons within thirty (30) days after service of this summons upon you, exclusive of the day of service, and file your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the Petition.

Petitioner: _____

Address: _____

Telephone: _____

Email Address: _____

WITNESS the Honorable _____, District Judge of the Third Judicial district court of the State of New Mexico and the seal of the district court of Dona Ana County, this ____ day of _____, 20____.

BERNICE A. RAMOS
Clerk of Court

Deputy

RETURN

STATE OF _____)
) ss.
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ County on the _____ day of _____, 20____, by delivering a copy of this summons, with a copy of the Petition to Establish Paternity, Determine Custody and Time-Sharing, and Assess Child Support and the Order for Parent Education attached, in the following manner:

- To Respondent _____ (used when Respondent accepts a copy of summons and petition or refuses to accept the summons and petition)
To Respondent by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service)

After attempting to serve the summons and complaint on the Respondent by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of petition attached, in the following manner:

- To _____ a person over fifteen (15) years of age and residing at the usual place of abode of Respondent _____, (used when Respondent is not presently at place of abode) and by mailing by first class mail to the Respondent at _____ (INSERT RESPONDENT'S LAST KNOWN MAILING ADDRESS) a copy of the summons and petition.
To _____, the person apparently in charge at the actual place of business or employment of the Respondent and by mailing by first class mail to the Respondent at _____ (INSERT RESPONDENT'S BUSINESS ADDRESS) and by mailing the summons and petition by first class mail to Respondent at _____ (INSERT RESPONDENT'S LAST KNOWN MAILING ADDRESS)
To _____ an agent authorized to receive service of process for Respondent _____
To _____ (parent) (guardian) (custodian) (conservator) (guardian ad litem) of Respondent _____ (used when Respondent is a minor or an incompetent person.)
To _____ (name of person), _____ (title of person authorized to receive service. Use this alternative when the Respondent is a corporation or an association subject to a suit under common name, a land grant board of trustees, the State of New Mexico or any political subdivision)

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, 20____.

Judge, notary or other officer authorized to administer oaths

My commission expires:

Official title