

***RESPONSE
TO PARENTAGE
PETITION***

PROCEDURE FOR FILING A RESPONSE

NOTE: It is a good idea to file a Response, even if your Response is late. Whether a late Response will be accepted is up to the Judge assigned to your case. Failure to file a Response can result in serious consequences.

1. Prepare the *Response* form. Prepare an original *Response* plus two (2) sets of copies.
2. Submit your *Response* for filing to the **Domestic Relations Division, Room 119** on the First floor of the Bernalillo County Courthouse, between the hours of **8:00 A.M. and 4:00 P.M. Monday through Friday**. The Clerk will file the original, then Endorse stamp the copies and return them to you. There is no cost for filing a *Response*.
3. Mail a copy of the *response* to the opposing party or his/her attorney (if represented). This should be done as soon as possible after filing.

RESPONSE TO PETITION

BACKGROUND INFORMATION

When you are served with a *Petition* you have 30 calendar days after receiving the papers to file your WRITTEN response to the points raised in the *Petition*.

The "Petition" is the paper which starts a Domestic Relations or Family Law case. It may be a Petition for Dissolution of Marriage (a "divorce"), a Petition for Legal Separation, a Petition to Establish Paternity, a Petition to Determine Custody, or some other kind of request. Many times only the word "Petition" is used, without other words which tell what kind of Petition it is.

It is EXTREMELY IMPORTANT to file a Response to a Petition within 30 days from when you first receive it. Without a filed Response, the other party can go to court without you and ask for an Order of Court that gives the other party everything asked for in the Petition. This is called a "*default*" and it may be very difficult to change once the "*Default Judgment*" has been signed by the Judge.

In counting when the 30 day response period ends, it is better to be safe and file your Response a few days early than to be a day or two late. The 30 days run from the time you are "served" with the papers, not from the date stamped on the papers. Sometimes the date you are "served" is earlier than the date you receive the papers. For instance, if the papers are left at your home and your roommate forgot to give them to you for several days, the 30 days runs from when they were left with your roommate at your home, not from when you finally received the papers from your roommate.

It is a good idea to file a Response, even if it is late. Whether a late Response will be accepted is up to the Judge assigned to your case. As mentioned above, failure to file a Response can result in serious consequences.

This instruction packet has 3 main parts:

1. Information about how to prepare your Response and file it;
2. A brief summary of some of the laws of New Mexico that you need to be aware of; and
3. Sample language for you to use as a starting point in doing your own Response.

PREPARING THE RESPONSE

The Response must be written. You may use the Response form provided in this packet, or you may use the information below to help you prepare your own Response. *As a Pro Se Litigant, it is YOUR responsibility to comply with all Court rules and procedures.* Employees of the Court CANNOT give legal advice. If you wish further assistance or representation, please consult an attorney.

1. **Heading or Caption.**

The Heading should be EXACTLY the same as the heading on the Petition. The Heading is the top of the first page of the Petition. It shows the court information, the cause number, the name of the Petitioner and the name of the Respondent.

2. **Title of Pleading.**

You are preparing a "Response." The title of your pleading is "Response."

Your response should be factual. Though you cannot get emotional and start rambling about how you have been wronged by the other party, your response should go into enough detail for the Judge and the other party to know what your position is.

If child custody and visitation are issues, then you should ask for a referral to the Court Clinic in the Response. (Ask for our instructions on Modification of Child Custody, Visitation or Timesharing for general information about the Court Clinic and the Court Clinic forms) and do the Court Clinic Referral papers at the same time you do your Response.

You must do a Child Support Worksheet to determine the proper amount of child support if there is a child under the age of 18.

If the other party has in some way mistreated or abused the children, then the Court Clinic can consider your information in working out custody and time-sharing arrangements, but your arguments about why time-sharing should be limited in some way will NOT be in the Response. You will raise those concerns in the Court Clinic. In the Response, only state who you think should have custody and ask for referral to the Court Clinic.

3. **The Body of the Response.**

After you have the heading and title of the Response, you must "answer" all the statements or "allegations" of the Petition. Some of them you will agree with; others you will not agree with. Attached to the end of these instructions are some examples of how to agree or disagree. You will have to read each paragraph of your Petition carefully and decide which things you agree with and which you do not, and why you do not.

The Rules require that the Response be:

- (1) On good quality white paper that is 8 1/4" x 11."
- (2) Top and left margins are at least 1 1/2." Bottom margin is 1" and right margin at

least 1/2"

- (3) Type or print ONLY. Typewritten text must be 10 or 12 pitch and letter quality.
- (4) Main body must be double spaced. Captions, titles and quotations may be single spaced.
- (5) Signatures are followed by typed or printed name, capacity (like "Respondent Pro Se"), address and telephone number.

Your response should have the same paragraph numbers as the Petition, and you must answer paragraph by paragraph.

4. Finishing the Response

After you have the Heading, the Title, and the Body of the Response, you need to do the signature section. Following is how the signature section on the Response looks

JANE DOE, Respondent, Pro Se
12345 Happy Town Road
Albuquerque, NM 87100
(505) 555-9999

VERIFICATION OF SERVICE

I affirm under penalty of perjury under the laws of the State of New Mexico that on _____ (date), I (check the applicable item below and fill in all information)

- mailed a copy of this response by United States mail, postage prepaid, to:
Name: _____
Mailing address: _____
City, state, and zip code: _____;
- delivered a copy of this response to _____ (the other party or the other party's attorney); or
- faxed a copy of this response to _____ (the other party or the other party's attorney) using the following fax number: _____. The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m) (p.m) on _____ (date).

Signature of person who made service

Date of signature

You will insert the date you mail the copy to the Petitioner in the blank, provide information regarding how you sent a copy of your response to the other party and sign in the bottom signature

block. This is your certification to the Court that you are the one filing this Response and that you have provided a copy of your Response to the other party.

FILING WITH THE CLERK

Prepare an original Response plus two (2) sets of copies. You will also need a stamped envelope addressed to the Petitioner or the Petitioner's attorney. 1. Submit your Response for filing to the Domestic Relations Division, Room 240 on the second floor of the Bernalillo County Courthouse, between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday. The Clerk will file the original, then Endorse stamp the copies and return them to you. There is no cost for filing a Response.

You will now mail one of the copies to the other party or his/her attorney (if represented). It is important that this be done on the day you certified you would mail it in the verification of service you filled in and signed.

The second copy which the Clerk Endorsed is for your file.

GENERAL INFORMATION ABOUT FAMILY LAW

1. Child Custody, Periods of Responsibility and Time-Sharing

New Mexico provides for joint legal custody in nearly all situations. Joint legal custody means both parents will be involved in the child(ren)'s lives.

Though there may be joint legal custody of a child, one parent may have physical custody most of the time. The parent who does not have primary physical custody will have "timesharing," and will have "periods of responsibility" for the child(ren)

Non-payment of support is NOT, by itself, reason to deny timesharing with the other parent.

In Bernalillo County, all disputes of custody or timesharing (visitation) must be immediately referred to the Court Clinic.

The same rules for custody and time-sharing apply whether or not the parents were married. The fact the father is not shown on the birth certificate does not affect his rights to visit or custody. Once it is established that he is the father, he has the rights (and also the obligations and duties) that the law gives to any father.

A parent is not entitled to custody because that parent is the mother or the father. The standard the courts use to determine issues of custody are "best interests of the child(ren)." The sex of the parent does not decide custody. What one parent thinks is best for the child may not be what the Judge determines is "in the best interests of the child(ren)."

2. Child Support

Child Support is, nearly always, resolved by doing a Child Support Worksheet and filing it with an Order or Decree.

The Worksheets are calculated based on a chart of child support adopted by the New Mexico Legislature. The Judge is required to follow the Worksheet and the Guidelines unless the Judge makes a specific, detailed determination that the guidelines should not be followed in a case, and explains in writing why the Guidelines are not applied.

The Worksheets and instructions for completing them are available for your use in calculating child support.

3. Property and Debt Division

New Mexico is a "no fault divorce" state. You do not receive more property or any better settlement by establishing that the other party mistreated you in some way. The Judge will not listen to your stories of how you are the wronged party and you should not include that type of information in your written Response.

New Mexico is a Community Property state. That means that property you bought while married or acquired through the efforts of one or both of you while married is "community property."

"Separate property" is property that is not "community property." It may be property you owned before marriage or an inheritance.

There are lots of exceptions to these general statements about community and separate property. It is possible for property that started out as separate property to be changed into community property.

Generally in a divorce, the separate property goes to the person who owns it as separate property and the community property is divided 50-50, or close to 50-50. Separate property, though, can be considered by the Judge in deciding on the amount of child support.

Debts are divided about like property. Separate debts go to the person who incurred the debt; community debts are divided equally.

Sometimes one person takes more than $\frac{1}{2}$ the debts. For instance, the person who has the vehicle usually agrees to make the car or truck payments, though that debt is more than half the total amount of debts.

The agreement about who is responsible for the debts is just between the wife and the husband. The company or person that you owe money to as a community debt can collect it from either of you, not just the one the divorce papers say will pay.

4. Common Law Marriage

New Mexico does not permit a "common law marriage" to start in this state. Some states do permit common law marriages. If a man and woman lived together in another state and under the laws of that state they are

considered married, then New Mexico will recognize that marriage when they later move to New Mexico.

This is important because "community property" rules apply ONLY if there is a valid marriage.

With regard to children, though, it doesn't matter if the mother and father are married. Decisions about custody, time-sharing or visitation and child support are made on the same basis, without regard to the marriage or non-marriage of the parents of the child or children

Examples of Bad and Good Paragraphs for your Response

You must respond to each part of each paragraph of the Petition. These paragraphs are examples of how a paragraph might read in a Petition for Divorce, in your Response, and how you should answer that paragraph. How you respond must be customized for your own situation. These are just good v. bad examples.

Example 1

The Petition says:

1. Petitioner and Respondent both reside in Bernalillo County, New Mexico, and have resided in said County and State for more than six months.

You want to say:

Okay, I guess; but what do I give up if I agree with this?

The Response you file says:

1. Respondent admits the allegations of Paragraph 1 of the Petition.

Example 2

The Petition says:

2. The parties were married on the 6th day of June, 1983, and have been husband and wife since that date.

You want to say:

2. You'd think he could at least get the date we were married right. This just shows how he doesn't pay attention to me or things that are important to us.

The Response you file says:

2. Respondent admits the allegations of Paragraph 2 of the Petition, except for the date of marriage. The correct marriage date is June 7, 1984.

Example 3

The Petition says:

3. The parties have one child, Consuela, who was born on August 10, 1986.

You want to say:

He is totally ignoring the fact that he deserted me, pregnant, with no food or money for myself or my little girl, Connie. I had to go get money from welfare for us. He's never paid any support to us since he left.

The Response you file says:

3. In response to Paragraph 3 of the Petition, Respondent admits the parties are the parents of Consuela, born August 10, 1986. In addition, the parties are parents of a child which is expected to be born around March 30, 1995.

Example 4

The Petition says:

4. Both Petitioner and Respondent are fit and proper persons to have custody of the child, Consuela. Respondent should have primary custody, with Petitioner to have liberal times of timesharing. \$35.00 per month is a reasonable amount for Petitioner to pay Respondent for child support.

You want to say:

I can't believe him. He wants custody of my child after he deserted us and has gone off to live with another woman. I think he should be able to see Connie, but only if I am there too. And I don't want him to ever have Connie while THAT WOMAN is with him. If he wants to see Connie it should just be him and Connie -- no one else should be there. He

makes \$1,500 per month and should pay me half, at least \$750 per month, for child support.

The Response you file says:

4. In response to Paragraph 7 of the Petition, Respondent states the following:

A. Respondent agrees that she should have primary custody of their child, Consuela.

B. The parties have not been able to resolve issues of timesharing with Consuela, so Respondent requests that the parties be referred to the Court Clinic for assistance in determining the timesharing schedule and related issues.

C. Respondent requests that the amount of Child Support be determined in accordance with the New Mexico Child Support Guidelines.

D. Respondent requests that Petitioner be required to pay child support for the unborn child of the parties on the first of the month immediately following the birth of the child.

E. Respondent requests that Petitioner be ordered to provide medical insurance coverage for Consuela and for the unborn child as soon as possible after its birth.

Example 5

The Petition says:

5. The parties have community property which has been divided.

You want to say:

When he left he took all the property that had any value and left me with the leftovers. I should get everything because he left me for that woman and it is not fair for her to have any of my things. He has my stereo that I bought before I even met him and all my tapes too. And he said he would destroy it.

The Response you file says:

5. The parties have community debts and various items of community property which should

be divided equally. Respondent requests the following division of property and debts:

A. To the Petitioner: His mechanic's tools, his clothing and personal effects, the kitchen table and chairs, a portion of the household furnishings which he has in his possession, and the 1983 Ford pickup truck. He should be responsible for the amount we still owe to ABC Bank for the purchase of the truck and one-half of the balance due to M Department Store. He should be required to pay any lying-in expenses for Respondent's pregnancy and the birth of the child which is not covered by his medical insurance. He should be required to complete all necessary insurance claim forms to secure medical coverage for Respondent and the children of the parties.

B. To the Respondent: Her clothing and personal effects; those of the child, Consuela; the baby clothing and furniture, including crib and car seat. The household furnishings and appliances which are presently in her possession. The microwave oven and color television set which are presently in the possession of the Petitioner. The stereo system and tapes which are the separate property of the Respondent and are presently in the possession of the Petitioner. Respondent requests that these be ordered returned to her immediately, in good condition. Respondent will assume and pay one-half of the balance due to M Department Store.