

## **PETITION FOR EMANCIPATION INSTRUCTIONS**

Any person sixteen years of age or older may be declared an emancipated minor for one or more of the purposes numbered in the Emancipation of Minors Act if he or she:

- A. is willingly living separate and apart from his parents, guardian or custodian; and
- B. is managing his own financial affairs and the court finds it in the minor's best interest.

This packet is designed to guide you through the process of filing a Petition for Emancipation. Please refer to the NEW MEXICO STATUTES (NMSA) where you can read the statute for yourself (see 32A-21-1 NMSA 1978). The New Mexico Statutes can be located on [www.nmcourts.com](http://www.nmcourts.com) or at the UNM Law Library. This packet contains a general procedure for filing a Petition for Emancipation, a list of legal terminology and their definitions and some legal referrals. At any time legal advice is needed, please consult with an attorney for your legal rights and obligations.

1. A petition for emancipation will be completed and verified by the petitioner. (See 32A-21-7. Declaration of Emancipation; petition; contests; notice; mandate). The caption for adoption paperwork will be worded "In the Matter of (Petitioner's Name), A Minor Child." The attached verification must be notarized.
2. The Petition for Emancipation must include the following exhibits that prove to the judge that child is capable of caring for themselves:
  - a. Check stubs
  - b. Rent stubs
  - c. Proof of education
  - d. Employee verification
  - e. Bills
3. A summons must be completed for each parent or legal guardian. For issuance of a summons and process service, please see step 6.
4. The Petitioner must complete the Request for Hearing, Notice of Hearing and provide 3 addressed-stamped envelopes. One (1) self-addressed envelope and one (1) addressed to each legal guardian, (mother and father).
5. Once all pleadings are complete, make three (3) sets of copies. Submit originals and copies for filing to the Children's Court Clerk, located at 5100 Second NW Room 173 between the hours of 8:00 a.m. - 4:30 p.m. The required filing fee is \$132.00. Cash, money order or cashiers' check are acceptable forms of payment. Personnel checks and credit cards are not accepted. The Clerk will keep the originals and give Petitioner back their copies.
6. Once the summonses are issued by the Children's Court Clerk, it is up to the Petitioner to arrange service upon their legal guardians. Every effort must be made to serve the parent(s), guardian(s) or custodian(s). Service can be accomplished by having an official,

such as a Sheriff or Process Server, serve their guardians. Once the legal guardian is served, the summons will be returned to the Petitioner and the Petitioner will then file the proof of service with the Children's Court Clerk.

NOTE: Each judge may have different requirements and require additional information before he or she can make a final decision on the petition. At this point the judge may appoint a guardian ad litem to your case. The guardian ad litem will usually interview the Petitioner to determine if it is in the best interest of the minor to be emancipated. If a guardian ad litem is appointed, it will be the Petitioner's responsibility to pay for the cost of the guardian ad litem.

If the Petition for Emancipation is granted, the petitioner should have a prepared Declaration of Emancipation ready for final approval by the District Court Judge.

If the petition is denied, the Petitioner can appeal by filing a petition for writ of mandamus. If the petition is granted the parents, guardian or custodian can appeal by filing a petition for writ of mandamus. (See 32A- 21-7 NMSA 1978.)

**THE FORMS IN THIS PACKET ARE INTENDED TO GUIDE PRO-SE LITIGANTS. EACH CASE IS DIFFERENT AND WILL BE DETERMINED ON A CASE BY CASE BASIS.**

### **Definitions**

**Emancipation**- the act by which one who was unfree, or under the power and control of another, is rendered free, or set at liberty and made his own master.

**Declaration** - to make known; proclaim. Affirm.

**Guardian ad litem** -an attorney who is appointed by the court to represent the child's best interests with respect to matters arising pursuant to the provisions of the Children's Code.

**Mandate** - a judicial command or rule of conduct proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree. A rule of conduct or order issued upon the decision of an appeal or writ of error, directing action be taken, or disposition to be made of case, by inferior court. Official mode of communicating judgment of appellate court to lower court, direction action to be taken for disposition to be made of cause by trial court.

**Verified** - to prove to be true; to confirm or establish the truth or truthfulness of; to check or test the accuracy of exactness of; to confirm or establish the authenticity of; to authenticate; to maintain; to affirm; to support.

**Writ of mandamus** - an extraordinary writ which lies to compel performance of ministerial act or mandatory duty where there is a clear legal right in plaintiff, a corresponding duty in defendant, and a want of any other appropriate and adequate remedy.