

**PARENTAGE PETITION  
AND ORDER  
PACKET**

# Parentage Petition and Order: Procedure and Instructions

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Included forms and instructions:

- 1) Domestic relations information sheet
- 2) General instructions about doing your own case for custody when parents are not married
- 3) Information about the Petition To Establish Parentage, Determine Custody and
- 4) Time-Sharing and Assess Child Support (also referred to as “the petition”)
- 5) Instructions for completing the petition (numbered to match blanks in petition)
- 6) Petition To Establish Parentage, Determine Custody and Time-Sharing and Assess Child Support  
Instructions about service
- 7) Summons
- 8) Parenting plan
- 9) Child Support Worksheet A
- 10) Child Support Worksheet B
- 11) Child Support Guidelines
- 12) Instructions for completing order establishing parentage, determining custody and time-sharing,  
and assessing child support form
- 13) Order establishing parentage, determining custody and time-sharing, and assessing child support  
form

This packet of materials is to provide you with assistance in handling your own court case to determine parentage (paternity), and at the same time resolve custody, time-sharing and child support issues between persons who are not married and have a child or children together.

The materials on handling your own court case are provided for persons who are representing themselves without an attorney. If at all possible, you should have an attorney for your case. The system is quite complicated, and if you are proceeding without an attorney, you must do everything just as a lawyer would.

**TIME REQUIRED.** One of the first questions people ask is, "How long is it going to take me to get this done?" The answer depends on how well you and the other parent can work together to resolve the issues. If you work out the different things that have to be included, most people can finish in a month or two. If you cannot agree, then you have to get hearings set on the Judge's trial calendar, and that usually takes several weeks or months.

## **Information about the Materials**

1. In addition to these General Instructions, we have prepared forms with instruction pages attached that explain each blank or choice. Our forms include usual provisions but cannot include everything that might fit every situation. The forms are just forms and are only a guide. In several places the forms have suggestions for 2 or 3 ways that section can be written. Most of the forms can be changed so they will fit your special situation. Some parts are required to be a certain way, and we will try to point these requirements out as we describe the different sections.
2. The Courts prefer TYPED papers. If at all possible, use these forms as a guide, and TYPE your papers, leaving out the parts of the form that do not apply to you. The General Instructions for completing a Petition include a sample of how the first page looks when it is ready to take to the Clerk for filing.

3. This packet gives general information about preparing and filing the papers you will need to resolve custody, time-sharing (visitation) and child support issues through Court proceedings. You will have to read every word in the forms and in the instructions carefully and tailor your papers to fit your own fact situation.
4. We will sometimes refer to court rules, court cases or the Statutes (laws) of New Mexico. Law libraries in the different counties will have these rules or laws. In Santa Fe you can use the law library at the Supreme Court. In Albuquerque there is a law library in the Law School at the University of New Mexico.
5. There are different sets of instructions and forms for different stages of a case. For example, there are materials that discuss the different ways of "serving" (giving formal notice of the divorce or custody action) the other party. There are also separate forms and instructions for getting hearings scheduled. We are developing forms and instructions for usual or common needs, but cannot provide a form for every problem you might have.

#### Steps in filing a Parentage case:

1. If you are filing a contested case (parties do not agree on all issues), you are to prepare a *Petition to Establish Parentage, Determine Custody and Time-Sharing, and Assess Child Support* and a *Summons*. Prepare an original set of documents plus two (2) sets of copies of each form. Documents which number more than one page must be stapled separately. Sort the documents according to title, place the original on top of its copy and then paper clip them together. For example: Place the original *Petition* on top of the stapled copies and then paper clip them together. Repeat the same for the *Summons*. In addition, the Court requires a completed *Domestic Relations Information Sheet* at the time of filing.
2. If you are filing an uncontested case (parties agree on all issues), you are to prepare the following forms in the Parentage Packet: *Petition to Establish Parentage, Determine Custody and Time-Sharing, and Assess Child Support* - requires Petitioner's signature, *Parenting Plan* - requires both parties' signatures, *Worksheet (A or B)* - requires both parties' signatures, *Order Establishing Parentage, Determining Custody and Time-Sharing, and Assess Child Support* - requires both parties' signatures.  
Prepare an original set of documents plus two (2) sets of copies of each form. Staple each document separately. Sort the documents according to title, place the original of each form on top of its copy and then paper clip them together. For example: Place the original *Petition* on top of the stapled copies and then paper clip them together. Repeat the same for the remaining forms. In addition, the Court requires a completed *Domestic Relations Information Sheet* at the time of filing.
3. Submit your documents for filing to the Domestic Relations Division, Room 119, first floor, of the Bernalillo County Courthouse, at 400 Lomas Blvd. NW between the hours of 8:00 A.M. - 4:00 P.M., Monday through Friday. Contact the division at 841-7421 prior to filing to confirm hours. There is a required filing fee of \$137.00. Cash, money order or cashier's check are acceptable forms of payments. Personal checks and credit cards are not accepted.

4. When you file your documents, the case will be randomly assigned a judge through the computer and given a case number. The clerk will file the original *Petition* and endorse stamp the copies. The original *Summons* is issued by the Clerk.
5. If this case is contested, proceed to step 6. If this case is uncontested, proceed to step 8.
6. In a contested case, once the initial filing process is complete, it is your responsibility to have the Respondent served. (See Service of Process instructions in packet).
  - a. The Respondent must be served with the following documents:
    - i. ENDORSED copy of the *Petition*
    - ii. COPY of the *Summons*
  - b. After the Respondent has been served, the process server or Deputy Sheriff will complete the reverse side of the original *Summons* (*a Return of Service*). The Sheriff's Department will return this document to you by mail. If you obtain the services of a private process server, you can ask for the *Return of Service* to be returned to you. *It is IMPORTANT to file the completed return of service because it shows proof that the Respondent was served.*
7. After service, the Respondent has thirty (30) days after service to file a *Response* to the Court. (He or she has until 5:00 P.M. on the 30<sup>th</sup> day to respond.) If the Respondent fails to file a response, you may be able to obtain a judgment by default by submitting additional documents to the court for filing. You may return to the Center for Self Help and Dispute Resolution for additional forms and information.
8. In an uncontested case, after you have filed your documents in Domestic Relations Division, the documents will be forwarded to the assigned Judge for review. Return to the Domestic Relations Clerks Office in ten (10) business days to pick up your Order and all other documents. The Court may sign the Order without further notice, or it may order you and the other parent to appear for a hearing. If the Order has been approved and signed by the Judge, the Clerk will file your originals and endorse your copies. Your endorsed copies are a record that your case is final.

# Parentage Petition and Order: Summary of Applicable Law

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## A. Jurisdiction

The statutes that give the court "jurisdiction" (authority to do something) in cases where parents of children were not married are 40-11-1 to 40-11-23 NMSA 1978. Basically, the District Court of New Mexico has jurisdiction to determine custody if the child is less than 6 months old **and** was born in New Mexico or, if older than 6 months, the child has lived in New Mexico for at least the past 6 months.

In addition to the 6 month residency requirement, you must decide which County to file in. This is called "venue." The case is filed in the County in which one of the parties resides. If one 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 statutes.) One purpose of this law is to avoid abductions or removal of children to another state.

If the child has not lived in New Mexico for at least the last six months, then New Mexico courts might not be able to determine child custody issues. There are emergency situations and some exceptions to the rules about the child living in New Mexico for the past six months.

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 or the statements about other cases which concern your child(ren). Jurisdiction **MUST** be exactly right or the Orders the Judge enters could be invalid and everything would have to be re-done at a later time.

## B. Custody of Children

New Mexico law assumes that "joint custody" is best for children. Joint custody means that both parents spend time with the children and are involved with them. Joint custody **DOES NOT** necessarily 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 possible as well. The Judge may not order 50-50 custody unless a counselor or a psychologist recommends such an arrangement.

If you feel that joint custody will not work, or if you need help in determining time-sharing (visitation) arrangement or schedule, then you should ask the court for a referral to mediation or Court Clinic. There are separate forms for you to prepare to get into the mediation or Court Clinic services. It may be done automatically by the Judge or Clerk in some cases.

## C. Child Support

When the time-sharing (visitation) schedule with the child(ren) 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. The Guidelines and the Worksheets are part of the materials available so that the child support amount can be calculated. The Child Support Worksheet is required to be attached to the final papers when the Decree and other final documents are submitted to the Judge for approval.

## **D. Property and Debts**

Sometimes people who are not married live together, have children together and also have bought property or incurred debts together. The community property laws about how to divide up property DO NOT apply to persons who are not married. You cannot start a Common law marriage in New Mexico by living together. New Mexico will recognize a valid common law marriage from another state.

Although it is possible to include issues of property and debt division in your Petition, our materials do not include any suggestions for how to do this. There are so many different ways for people to have bought property together that we cannot include any kind of a form paragraph to cover property and debt division between unmarried persons.

New Mexico case law [see *Merrill v. Davis*, 673 P2d 1285, 100 NM 552 (1983)], provides that if you have a definite agreement, and you can prove how you agreed the property would be split if you separate, the courts can follow the agreement.

If there is no provable agreement, and you are arguing about property which is in one person's name, it is difficult (but not always impossible) to get a property division between unmarried persons through the New Mexico courts.

### **Other Pleadings**

IN ADDITION to the Petition, you will need to do a SUMMONS and have it with you when you file the Petition.

Other commonly needed paperwork that you may need include:

- The court has mediation or counseling services that may assist you in determining custody and time-sharing issues. There are additional forms for being referred to that service.
- Many people use a Parenting Plan to set out the agreement they reach regarding custody and a time-sharing (visitation) schedule.
- Child support is calculated using Worksheet A or Worksheet B (which worksheet is used depends on the time-sharing schedule you have reached). This calculation is done and the Worksheet attached when you submit an Order to the Judge for signing.
- An Order must be prepared for presenting to the Judge to sign at the end of the case, which provides a written record of the issues resolved in the case.
- If the Child Support Enforcement Division is going to be processing the child support payments, you must secure a file number for including in the Order

This text is excerpted from materials provided by Albuquerque Bar Association Volunteer Lawyers.