RESPONSE TO 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 240** on the second 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 <u>or</u> 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 calender 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 <u>you</u> 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 advise. 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.

If the Petition has been notarized, your Response to it should also be notarized. A verification form is included in these materials.

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 ½" x 11."**

(2) Top and left margins are at least 1 ½." Bottom margin is 1" and right margin at least ½."

(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

I hereby certify that a true copy of
the foregoing pleading was mailed to:
Petitioner, John Doe at 2369 Happy Trails
Road NE, Albuquerque, NM 87100,
on this ____ day of _____, 20___.

_____

Jane Doe

You will insert the date you mail the copy to the Petitioner in the blanks and sign on the 2nd blank line. This is your certification to the Court that you are the one filing this Response and that you have mailed a copy of your Response to the other party.

You should verify your Response. A Verification form is included with these materials.

FILING WITH THE CLERK

You will need to have the original plus two copies of your Response. You will also need a stamped envelope addressed to the Petitioner or the Petitioner's attorney.

Take the original to the Court Clerk and file it. The Domestic Relations Division is on the 2nd floor of the Bernalillo County Courthouse. Have the 2 copies "Endorsed" by the Clerk when you file the original. You will now mail one of the copies to the other party. it is important that this be done on the day you certified you would mail it in the affidavit of mailing you filled in and signed. There is no cost for filing a Response.

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

SOME GENERAL INFORMATION

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, then 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 ½ 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 so that 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:

7. 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:

7. 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:

8. 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 left-overs. 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:

9. 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.

Example 6

Following is an example of how you might close your Response.

WHEREFORE, having fully answered all the allegations of the Petition for Dissolution of Marriage, the Respondent requests the Court to enter an order in accordance with this Response.

Respectfully submitted,

_____

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

VERIFICATION

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

JANE DOE being first duly sworn upon oath deposes and states that she is the Respondent in the foregoing Petition for Dissolution of Marriage, that she has read the Petition and this Response, knows and understands the contents thereof, and that the Response is true and correct of her own knowledge.

_____

Respondent Pro Se

SUBSCRIBED AND SWARD TO before me this _____ day of _____, 20_____.

_____

NOTARY PUBLIC

My commissions expires: _____

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

Cause No._____

_____
Petitioner,

vs.

_____
Respondent.

RESPONSE

In response to the Petition, Respondent, _____, Pro Se, states:

1.____ (a) Respondent admits/denies the allegations of Paragraph 1 of the Petition. Additionally (Optional): _____
_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 1. (Optional) But without admitting or denying the allegation(s), Respondent states: _____
_____

2.____ (a) Respondent admits/denies the allegations of Paragraph 2 of the Petition. Additionally (Optional): _____
_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 2. (Optional) But without admitting or denying the allegation(s), Respondent states: _____
_____

3.____ (a) Respondent admits/denies the allegations of Paragraph 3 of the Petition. Additionally (Optional): _____
_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 3. (Optional) But without admitting or denying the allegation(s), Respondent states: _____
_____

4.____ (a) Respondent admits/denies the allegations of Paragraph 4 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 4. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

5.____ (a) Respondent admits/denies the allegations of Paragraph 5 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 5. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

6.____ (a) Respondent admits/denies the allegations of Paragraph 6 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 6. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

7.____ (a) Respondent admits/denies the allegations of Paragraph 7 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 7. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

8.____ (a) Respondent admits/denies the allegations of Paragraph 8 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 8. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

9.____ (a) Respondent admits/denies the allegations of Paragraph 9 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 9. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

10.____ (a) Respondent admits/denies the allegations of Paragraph 10 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 10. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

11.____ (a) Respondent admits/denies the allegations of Paragraph 11 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 11. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

12.____ (a) Respondent admits/denies the allegations of Paragraph 12 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 12. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

13.____ (a) Respondent admits/denies the allegations of Paragraph 13 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 13. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

14.____ (a) Respondent admits/denies the allegations of Paragraph 14 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 14. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

15.____ (a) Respondent admits/denies the allegations of Paragraph 15 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 15. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

16.____ (a) Respondent admits/denies the allegations of Paragraph 16 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 16. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

17.____ (a) Respondent admits/denies the allegations of Paragraph 17 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 17. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

18.____ (a) Respondent admits/denies the allegations of Paragraph 18 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 18. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

19.____ (a) Respondent admits/denies the allegations of Paragraph 19 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 19. (Optional) But without admitting or denying the allegation(s), Respondent states:

_____

_____

20.____ (a) Respondent admits/denies the allegations of Paragraph 20 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 20. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

21.____ (a) Respondent admits/denies the allegations of Paragraph 21 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 21. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

22.____ (a) Respondent admits/denies the allegations of Paragraph 22 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 22. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

23.____ (a) Respondent admits/denies the allegations of Paragraph 23 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 23. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

24.____ (a) Respondent admits/denies the allegations of Paragraph 24 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 24. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

25.____ (a) Respondent admits/denies the allegations of Paragraph 25 of the Petition. Additionally (Optional): _____

_____

OR

____ (b) Respondent does not have sufficient information at this time to admit or deny the allegations contained in Paragraph 25. (Optional) But without admitting or denying the allegation(s), Respondent states: _____

_____

WHEREFORE, having fully answered all the allegations of the Petition, the Respondent requests the Court to:

1. Award Petitioner and Respondent relief with respect to all the claims that were alleged in the Petition and admitted in this Response.

2. Dismiss all claims of Petitioner, which Respondent has denied.

3. (Optional) _____

_____

4. (Optional) _____

_____

1. (Optional) _____

_____

2. Award any additional and further relief that the Court may deem appropriate.

Respectfully Submitted,

_____

Signature

_____

Name

_____

Address

_____

City, State, Zip

_____

Telephone

I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing party pro se on this _____ day of _____, 20____.

_____
Signature

VERIFICATION

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

_____, being duly sworn, states under oath that s(he) is the Respondent in this matter, that s(he) has read the foregoing document and states the contents therein are true and correct to the best of his/her knowledge.

_____
Respondent Pro Se

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

_____
NOTARY PUBLIC

My commissions expires: _____