

**9-704. Order of appointment for habeas corpus proceedings under Rule 5-802 NMRA.**

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

\_\_\_\_\_,  
Petitioner, No. \_\_\_\_\_

v.

\_\_\_\_\_,  
Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS  
UNDER RULE 5-802 NMRA**

This matter having come before the court, and the court being fully advised of the circumstances;

**THE COURT FINDS THAT:**

- the petitioner is incarcerated; or
- the petitioner is not incarcerated, and is indigent and unable to obtain counsel; and
- this is a proceeding which a reasonable person would bring at that person's own expense.<sup>1</sup>

**IT IS THEREFORE ORDERED THAT:**

- the Public Defender Department is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.
- the Public Defender Department, shall appoint an attorney on contract with the department represent the petitioner based on the conflict memorandum reviewed by the court or as disclosed at a status conference with the court.
- petitioner's counsel shall file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.

\_\_\_\_\_  
(District Judge)

USE NOTES

If the Public Defender Department is appointed, the clerk of the district court shall mail a copy of this order and a copy of the pro se petition to the Post-Conviction/Habeas Division, Office of the Public Defender, 505 Marquette NW, Ste. 120, Albuquerque, NM 87102.

1. Under the Indigent Defense Act, a person has the limited right to appointed counsel representation in post-conviction matters “unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense” NMSA 1978, § 31-16-3(B)(3) (1968). Therefore, the Public Defender may not be able to represent a petition in all cases.

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014.]