

4-963. Temporary order of protection and order to appear.

[Family Violence Protection Act, NMSA 1978, Sections 40-13-1 to 40-13-8]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner

v. _____ No. _____

_____, Respondent

**TEMPORARY ORDER OF PROTECTION
AND ORDER TO APPEAR**

The court has reviewed the sworn petition alleging domestic abuse. The court having considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court **ORDERS**:

1. The respondent shall not write to, talk to, visit, or contact the petitioner in any way except through the petitioner’s lawyer, if the petitioner has a lawyer.

2. The respondent shall not abuse the petitioner or the petitioner’s household members in any way. “Abuse” means any incident by the respondent against the petitioner or the petitioner’s household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or work place; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

3. The respondent shall not ask or cause other persons to abuse the petitioner or the petitioner’s household members.

4. The respondent shall not go within _____ yards of the petitioner’s home or school or work place. The respondent shall not go within _____ yards of the petitioner at all times except _____. If at a public place, such as a store, the respondent shall not go within _____ yards of the petitioner.

5. The respondent shall not post or cause another to post anything about the petitioner on any form of social media, including, but not limited to, Facebook, Twitter, Instagram, or Snapchat. This prohibition includes posts about the petitioner’s family members, significant other, and children.

6. _____ (*first and last name of party*) shall have temporary physical custody of the following child(ren):

Child’s Name

Date of Birth

7. With respect to the child(ren) named in the preceding paragraph, _____ (*first and last name of party*) shall have:

A. No contact with the child(ren) until further order of this court and shall stay _____ yards away from the child(ren)'s school.

B. Contact with the child(ren), subject to: _____

8. Neither party shall remove the child(ren) named in Paragraph 6 from the state of New Mexico or disenroll the child(ren) from the child(ren)'s present school during the period of this temporary order of protection.

9. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work-related day-care costs, and proof of medical insurance costs for the child(ren).

10.

A. The respondent is ordered to immediately leave the residence at _____ and to not return until further court order.

B. Law enforcement officers are hereby ordered to evict the respondent from the residence at _____.

C. The respondent is ordered to surrender all keys to the residence to law enforcement officers.

11. Law enforcement officers or _____ shall accompany the respondent the petitioner to remove essential tools (*as specified in No. 14*), clothing, and personal belongings from the residence at _____.

12. Neither party shall transfer, hide, add debt to, sell, or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

13. This order supersedes any inconsistent prior order in Cause No. _____ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

14. Other: _____

15. While this order of protection is in effect, the petitioner should refrain from any act that would cause the respondent to violate this order. This provision is not intended to and does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6(D), only the restrained party can be arrested for violation of this order.

HEARING

IT IS FURTHER ORDERED that the parties shall appear in the _____ Judicial District Court, Room _____, at _____, before _____, at _____ (a.m.) (p.m.) on _____ (*date*) for hearing on whether an extended order of protection against domestic abuse will be issued. Either party may bring witnesses or evidence and may be represented by counsel at this hearing. The respondent may file a

Response to the Petition for Order of Protection from Domestic Abuse, see Form 4-962 NMRA, on or before the hearing. If the respondent fails to attend this hearing, an extended order may be entered by default against the respondent and a bench warrant may be issued for the respondent's arrest. If the petitioner willfully fails to appear at this hearing, the petition may be dismissed. This order remains in force until

_____ , _____.

If an order of protection is entered, the restrained party is prohibited from receiving, transporting, or possessing a firearm or destructive device while the order of protection is in place. If at the hearing the court finds that the restrained party presents a credible threat to the physical safety of the protected party, the court shall order the restrained party (a) to immediately deliver any firearm in the restrained party's possession, care, custody, or control to a law enforcement agency, law enforcement officer, or federal firearms licensee while the order of protection is in effect, and (b) to refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess any firearm while the order of protection is in effect.

DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.

ENFORCEMENT OF ORDER

If the restrained party violates any part of this order, the restrained party may be charged with a crime, arrested, held in contempt of court, fined, or jailed.

SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the respondent a copy of this order and a copy of the petition.

A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

I have reviewed the petition for order of protection and made recommendations to the district judge regarding its disposition.

(Signed)

Court telephone number

(Title)

SO ORDERED:

District Judge

Date and time approved

USE NOTES

1. The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form, which will be used for this purpose.

2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the respondent of the content of the temporary order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, 7 N.M. 580, 37 P. 1108.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases pending or filed on or after December 31, 2020.]