9-705. Procedural order on petition for writ of habeas corpus.

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

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____, No. _____
Petitioner,

v.

_____,
Respondent.

PROCEDURAL ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

This matter having come before the [~~court~~] Court on petitioner's petition for a writ of habeas corpus or other pleading pursuant to Rule 5-802 NMRA of the Rules of Criminal Procedure for the District Courts, the [~~court~~] Court having reviewed the record and being otherwise fully advised in the premises, FINDS AND ORDERS THAT:

1. **SUMMARY DISMISSAL/TRANSFER OF VENUE**[1]

[ ] This matter is transferred because of improper venue to the _____ Judicial District Court.

[ ] This matter is summarily dismissed because as a matter of law petitioner is not entitled to relief based on a review of the files, pleadings, and records which show that:

(*statement of reasons required*)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

2. **RETURN OF PETITION FOR FURTHER INFORMATION:**

[ ] The petition is returned to petitioner for additional information on the following issues/claims:

_____
_____
_____
_____

_____
_____

Pursuant to Rule 5-802([~~G~~]H)(2)(a)) NMRA, [~~a revised petition shall be filed within forty-five (45) days after service of this order.~~] the petitioner shall have no less than forty-five (45) days from service of this order to file a revised petition. The Court orders that any revised petition be filed by _____.

3. **FREE PROCESS AND APPOINTMENT OF COUNSEL:**

[ ] Petitioner is granted permission to proceed *in forma pauperis* based on Form 9-403 NMRA or because petitioner is an inmate of a correctional facility.

[ ] Petitioner is not granted permission to proceed *in forma pauperis*.

[ ] The [~~Public Defender Department~~] Law Office of the Public Defender (LOPD) is appointed to represent petitioner based on the court's finding that this is a proceeding which a reasonable person would bring at that person's own expense. Upon being properly appointed, the [~~Public Defender Department~~] LOPD shall either file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of this appointment.[2]

4. **RESPONSE[3]:**

[ ] The respondent is directed to file a response within [~~one-hundred~~] one hundred and twenty (120) days after the service of an amended petition or a notice that no amended petition will be filed.

[ ] The court, having received an amended petition or a notice that no amended petition will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby summarily dismisses the petition.

(*statement of reasons required*)

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_____

[ ] The court, having received an amended petition or a notice that no amended petitioner will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby dismisses the following claims:

(*statement of reasons required*)

_____
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_____

AND

orders a response from respondent on the following claims:

_____
_____
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_____

5. **HEARING SCHEDULE:**

[ ] A status conference will be held on _____ (*date*), at _____ (*time*).

[ ] A preliminary disposition hearing will be held on _____ (*date*), at _____ (*time*).

[ ] An evidentiary hearing will be held on _____ (*date*), at _____ (*time*).

[ ] An evidentiary hearing is not required, but legal argument will be heard on this matter on _____ (*date*), at _____ (*time*).

_____
(*District Judge*)

USE NOTES

1. Paragraph 1 should only be used prior to the appointment of counsel and before the filing of any amended petition.
2. *See* NMSA 1978, § 31-16-3(B)(3) (1968).

3. After receiving the amended petition or notice that no amended petition will be filed, the court will then decide if a response will be ordered, and whether a status conference, a preliminary disposition hearing, or evidentiary hearing are required, and will send the parties notice. Paragraph 5 should be used when ordering a response at the time of appointment of counsel or after reviewing the amended petition or notice that no amended petition will be filed.

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. S-1-RCR-2025-00134, effective for all cases pending or filed on or after December 31, 2026.]