

1 **4-963A. Temporary order of protection against petitioner and order to appear.**

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

3 STATE OF NEW MEXICO

4 COUNTY OF \_\_\_\_\_

5 \_\_\_\_\_ JUDICIAL DISTRICT

6 \_\_\_\_\_, Petitioner

7 v. No. \_\_\_\_\_

8 \_\_\_\_\_, Respondent

9 **TEMPORARY ORDER OF PROTECTION AGAINST PETITIONER**

10 **AND ORDER TO APPEAR**

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

14 [ ] 1. [~~Petitioner~~] The petitioner shall not write to, talk to, visit, or contact the respondent  
15 in any way except through the respondent's lawyer, if the respondent has a lawyer.

16 [ ] 2. [~~Petitioner~~] The petitioner shall not abuse the respondent or the respondent's  
17 household members in any way. "Abuse" means any incident by the petitioner against the  
18 respondent or the respondent's household members resulting in (1) physical harm; (2) severe  
19 emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury;  
20 (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or  
21 [~~workplace~~] work place; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or  
22 threatened harm to children in any manner set forth above.

1  3. ~~[Petitioner]~~ The petitioner shall not ask or cause other persons to abuse the  
2 respondent or the respondent's household members.

3  4. ~~[Petitioner]~~ The petitioner shall not go within \_\_\_\_\_ yards of the  
4 respondent's home or school or ~~[workplace]~~ work place. ~~[Petitioner]~~ The petitioner shall not go  
5 within \_\_\_\_\_ yards of the respondent at all times except  
6 \_\_\_\_\_. If at a public place, such as a store, the petitioner shall  
7 not go within \_\_\_\_\_ yards of the respondent.

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

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

14	Child's Name	Date of Birth
15	_____	_____
16	_____	_____

17  ~~[6:]~~7. With respect to the child(ren) named in the preceding paragraph,  
18 \_\_\_\_\_ (*first and last name of ~~[parent]~~ party*) shall have:

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

21  B. Contact with the child(ren), subject to: \_\_\_\_\_  
22 \_\_\_\_\_.

1  ~~[7-]~~8. Neither party shall remove the child(ren) named in ~~[the preceding]~~ paragraph 5  
2 from the ~~[State]~~ state of New Mexico or disenroll them from the child(ren)'s present school during  
3 the period of this temporary order of protection.

4  ~~[8-]~~9. The court may decide temporary child and interim support at the hearing listed  
5 below. Both parties shall bring to the hearing proof of income in the form of the two latest pay  
6 stubs or the federal tax returns from the previous year, proof of work-related daycare costs, and  
7 proof of medical insurance costs for the child(ren).

8  ~~[9-]~~10.

9  A. ~~[Petitioner]~~ The petitioner is ordered to immediately leave the residence at  
10 \_\_\_\_\_ and to not return until further court order.

11  B. Law enforcement officers are hereby ordered to evict the petitioner from the  
12 residence at \_\_\_\_\_.

13  C. ~~[Petitioner]~~ The petitioner is ordered to surrender all keys to the residence  
14 to law enforcement officers.

15  ~~[10-]~~11. Law enforcement officers or \_\_\_\_\_ shall  
16 accompany  the respondent  the petitioner to remove essential tools (*as specified in No. ~~[13]~~*  
17 14), clothing, and personal belongings from the residence at  
18 \_\_\_\_\_.

19  ~~[11-]~~12. Neither party shall transfer, hide, add debt to, sell, or otherwise dispose of  
20 the other's property or the joint property of the parties except in the usual course of business or for  
21 the necessities of life. The parties shall account to the court for all ~~[such]~~ changes to property made  
22 after the order is served or communicated to the party. Neither party shall disconnect the utilities  
23 of the other party's residence.

1  ~~[12.]~~13. This order supersedes any inconsistent prior order in Cause No.  
2 \_\_\_\_\_ and any other prior domestic relations order and domestic violence  
3 restraining orders between these two parties.

4  ~~[13.]~~14. Other:  
5 \_\_\_\_\_.

6  ~~[14.]~~15. While this order of protection is in effect, the respondent should refrain from  
7 any act that would cause the petitioner to violate this order. This provision is not intended to and  
8 does not create a mutual order of protection. Under NMSA 1978, Section 40-13-6(D)[~~NMSA~~  
9 ~~1978~~], only the restrained party can be arrested for violation of this order.

10 **HEARING**

11 IT IS FURTHER ORDERED that the parties shall appear in the \_\_\_\_\_  
12 Judicial District Court, Room \_\_\_\_\_, at \_\_\_\_\_, before  
13 \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date) for  
14 hearing on whether an extended order of protection against domestic abuse will be issued. Either  
15 party may bring witnesses or evidence and may be represented by counsel at this hearing.  
16 [~~Petitioner~~] The petitioner may file a Response to the Petition for Order of Protection from  
17 Domestic Abuse, *see* Form 4-962 NMRA, on or before the hearing. If the petitioner fails to attend  
18 this hearing, an extended order may be entered by default against the petitioner and a bench warrant  
19 may be issued for the petitioner's arrest. If the respondent willfully fails to appear at this hearing,  
20 the counter-petition may be dismissed. This order remains in force until  
21 \_\_\_\_\_, \_\_\_\_\_. **If an order of protection is**  
22 **entered, the restrained party is prohibited from receiving, transporting, or possessing a**  
23 **firearm or destructive device while the order of protection is in place.** If at the hearing the

1 court finds that the restrained party presents a credible threat to the physical safety of the protected  
2 party, the court shall order the restrained party (a) to immediately deliver any firearm in the  
3 restrained party's possession, care, custody, or control to a law enforcement agency, law  
4 enforcement officer, or federal firearms licensee while the order of protection is in effect, and (b)  
5 to refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess  
6 any firearm while the order of protection is in effect.

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

9 **ENFORCEMENT OF ORDER**

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

12 **SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

13 Upon the signing of this order by a district court judge, a law enforcement officer shall  
14 serve on the petitioner a copy of this order and a copy of the counter-petition. **A LAW**  
15 **ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS**  
16 **ORDER.**

17 [ ] I have reviewed the counter-petition for an order of protection and made recommendations  
18 to the district judge regarding its disposition.

19 \_\_\_\_\_

20 *(Signed)*

\_\_\_\_\_ Court telephone number

21 \_\_\_\_\_

22 *(Title)*

23 SO ORDERED:

1 \_\_\_\_\_

2 District Judge

\_\_\_\_\_ Date and time approved

3 **USE NOTES**

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

7 2. Personal service of the temporary order of protection and order to appear will assure  
8 that the temporary order is fully enforceable. It is possible that actual notice to the petitioner of the  
9 content of the temporary order will also suffice to bind the petitioner to comply with the  
10 order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, 7 N.M. 580[~~583~~(1894)], 37 P. 1108.

11 [Approved, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020,  
12 effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15,  
13 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or  
14 after July 1, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases  
15 pending or filed on or after December 31, 2020.]