

1 **9-401. Waiver of Counsel.**

2 [For use with District Court Rule 5-301 NMRA, Magistrate Court Rule 6-501 NMRA,
3 Metropolitan Court Rule 7-501 NMRA, and Municipal Court Rule 8-501 NMRA]

4
5 STATE OF NEW MEXICO
6 COUNTY OF _____
7 _____ COURT

8 No. _____

9 STATE OF NEW MEXICO

10
11 v.

12
13 _____, Defendant

14
15 **WAIVER OF COUNSEL**

16 (To be used only if, upon conviction, the
17 defendant may be [deprived of liberty] sentenced to jail or prison)
18 [I understand that I am charged with the following offense(s):

19 _____
20 ~~_____ which (strike inapplicable words or parts) (is) (are) misdemeanors under the law and that if I~~
21 ~~am found guilty I can be given a severe punishment, including imprisonment in (the New Mexico~~
22 ~~state penitentiary) (in the _____ (city) (county) jail) and a fine.~~

23 ~~I understand that under the Constitutions of the United States and the State of New Mexico,~~
24 ~~I have the right to be represented by a lawyer at all stages of the criminal case — before trial, at~~
25 ~~the trial itself, during proceedings to determine what sentence should be imposed if I am found~~
26 ~~guilty, and any appeal.~~

27 ~~I understand that if I am unable, without undue hardship, to pay for all or a part of the~~
28 ~~expense of legal representation from available present income and assets, a lawyer will be~~
29 ~~furnished for me free of charge.~~

30 ~~After reading and understanding all of the above, I hereby give up my rights to a lawyer in~~
31 ~~this case, and to have a lawyer furnished for me free of charge if I cannot afford one.~~

32 **DO NOT SIGN THIS FORM IF YOU**
33 **WANT AN ATTORNEY. DO NOT SIGN**
34 **THIS FORM UNLESS YOU HAVE**
35 **READ IT AND UNDERSTAND IT.**

36
37 _____
38 Defendant

39 I find that the defendant, knowingly, voluntarily and intelligently with full awareness of
40 the right to counsel, has waived the right to counsel.]

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42 1 You have told the Court that you do not want to be represented by an attorney in this case.

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44 2. You understand that you are charged with the following offense(s):
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3. You understand that the maximum penalty as to each count is as follows:
4. You understand that if you are found guilty of the offense(s) you can be sentenced to a term of imprisonment and may be required to pay fines and court costs.
5. You understand that under the Constitutions of the United States and of the State of New Mexico, you have the right to be represented by an attorney at all critical stages of this criminal case. This includes before trial, at the trial itself, and during proceedings to determine what sentence should be imposed if you are found guilty. You understand that if you are unable to obtain the services of an attorney and are determined to be indigent, an attorney will be provided to you free of charge.
6. You understand that the services of an attorney can be of great value in determining whether the charges against you are sufficient as a matter of law, whether the procedures used in investigating the charges and obtaining evidence against you, including any statements you may have made, were lawful, whether an act you may have committed actually amounts to the offense(s) of which you are charged, whether you have any other valid defense to the charge(s), and, if you are found guilty, whether you should be placed on probation, required to pay a fine, or sentenced to a term of imprisonment.
7. You understand that the prosecution may be represented by an experienced attorney and that a person unfamiliar with legal procedures may allow the prosecutor an advantage by failing to make timely and valid objections; and because of this you may make tactical decisions that produce unintended consequences that are prejudicial to your defense.
8. You understand that the effectiveness of your defense may be diminished by your dual role as attorney and accused.
9. You understand that if you are found guilty of the offense(s) charged the Court may sentence you to a term of imprisonment even though you have given up your right to an attorney.
10. You understand that if you are convicted you will have a right to appeal your case but that you will not be allowed to complain on appeal about the effectiveness of your own representation.
11. You understand that if you choose to represent yourself the Court will hold you to the same rules of evidence and procedure that an attorney must follow.

- 1 12. You understand that your lack of knowledge of these rules will not prevent the Court from
2 enforcing them.
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4 13. You have been informed by the Court of the charge(s) against you, the possible
5 punishments for the charge(s), and your right to have an attorney represent you, even if
6 you cannot afford one.
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8 14. You understand your rights and have had the opportunity to ask the Court any questions
9 you might have about waiving your right to an attorney.
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11 15. By signing this Waiver of Counsel Advisement you hereby knowingly, intelligently, and
12 voluntarily waive your rights to an attorney.
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14 **DO NOT SIGN THIS FORM IF YOU**
15 **WANT AN ATTORNEY. DO NOT SIGN**
16 **THIS FORM UNLESS YOU HAVE**
17 **READ IT AND UNDERSTAND IT.**
18

19 _____
20 Defendant
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22 **The Court FINDS the following:**
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- 24 1. Defendant has been fully informed of the charge(s) filed and of the right to have counsel
25 appointed if indigent;
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27 2. Defendant has executed a waiver of counsel and signed this waiver of counsel advisement
28 after their terms and effects have been fully explained;
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30 3. After inquiry into Defendant's background, education, and experience, Defendant is
31 capable of self-representation; and,
32
33 4. Defendant has knowingly, intelligently, and voluntarily waived the right to counsel.
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35 Judge: _____

36 Date: _____
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38 [As amended, effective January 1, 1999; as amended by Supreme Court Order No. 21-8300-023,
39 effective for all cases pending or filed on or after December 31, 2021.]