

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

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

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. Respondent shall not write to, talk to, visit or contact the petitioner in any way except through petitioner's lawyer, if petitioner has a lawyer.

[] 2. Respondent shall not abuse the petitioner or the petitioner's household members in any way. "Abuse" means any incident by respondent against petitioner or 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. Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner's household members.

4. Respondent shall not go within _____ yards of the petitioner's home or school or work place. Respondent shall not go within _____ yards of the petitioner
a t a l l t i m e s e x c e p t

_____. If at a public place, such as a store, respondent shall not go within _____ yards of petitioner.

5. _____ shall have temporary physical custody of the following child(ren):

6. With respect to the child(ren) named in the preceding paragraph, respondent

petitioner 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: _____

_____.

7. Neither party shall remove the child(ren) named in the preceding paragraph 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.

8. 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).

9. A. 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 respondent from the residence at _____
_____.

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

10. Law enforcement officers or _____ shall accompany respondent petitioner to remove essential tools (as specified in No. 13), clothing, and personal belongings from the residence at _____
_____.

11. 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 such 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.

12. 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.

13. Other: _____
_____.

14. While this order of protection is in effect, 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 Section 40-13-6(D) NMSA 1978, 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.
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 respondent and a bench warrant may be issued for respondent's arrest. If petitioner willfully fails to appear at this hearing, the petition may be dismissed. This order remains in force until _____, _____.

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

ENFORCEMENT OF ORDER

If the respondent violates any part of this order, the respondent 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 NOTE

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 that 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*, 7 N.M. 580, 583 (1894).

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]