

***MOTION TO MODIFY/ENFORCE  
PREVIOUS  
DECREE/JUDGMENT/ORDER  
(WHEN PARTIES DO NOT AGREE)***

**PROCEDURE FOR FILING A MOTION  
AND REQUEST FOR HEARING**

Included forms:

- 1) Motion
- 2) Request for Hearing
- 3) Notice of Hearing
- 4) Stipulation for Modification of Previous Decree/Judgment/Order (only with the Motion to Modify Previous Decree/Judgment/Order (when parties agree))
- 5) Order of Modification (this is only used with a request for modification. It will be used following the hearing or with the Motion to Modify Previous Decree/Judgment/Order (when parties agree))
- 6) Subpoena (this is used if you need to request financial information, documents, or testimony from the other party)
- 7) Proof of Service

**FILING A MOTION WHEN THE PARTIES DO NOT AGREE**

If filing a General Motion, Motion to Modify or Enforce Child Support, or Motion to Modify Previous Decree/Judgment/Order (parties do not agree):

1. Prepare a *Motion, Request for Hearing, Notice of Hearing, and Subpoena* (if applicable). Prepare an original set of documents plus three (3) sets of copies of each form. Sort the documents according to title and staple each one separately. The originals of each form should be placed on top of its copies and then paper clipped together. **For example:** Place the original Motion on top with the stapled copies underneath, and paper clip them together. Repeat the procedure for the Request for Hearing and Notice of Hearing.
2. Prepare three (3) *stamped and addressed legal sized envelopes*. Two (2) envelopes should be stamped and addressed to the opposing party (or his/her Attorney) and one (1) envelope stamped and addressed to you. **Note:** If the opposing party is not represented by an attorney and you do not have a home address, it may be acceptable to use their work address.
3. **Note:** If CSED is a party, you must also prepare two envelopes stamped and addressed to CSED as well. One envelope will be used to mail a copy of the Motion to CSED. The other envelope will be left at the court when you file your motion so that the notice of the hearing can be mailed to CSED from the court.
4. A filing fee of **\$137.00** is required if the case has been closed for more than ninety (90) days and you want to request a hearing. When you are ready to file your documents, submit **\$137.00, if applicable**, (in the form of cash, a money order, or cashier's check made payable to District Court Clerk) with your original documents, copies and envelopes (stamped and addressed for all parties) to the **Domestic Relations Clerks Office, Room 240 (second floor)**, of the Bernalillo County Courthouse, located at 400 Lomas Blvd. NW, Albuquerque, NM between the hours of **8:00 A.M. - 4:00 P.M., Monday - Friday**. Personal checks and credit cards are not accepted.  
**NOTE:** If the case is pending, a filing fee of **\$137.00** is not required.
5. The Clerk will file the original documents, endorse stamp your copies, and will return two (2) sets to you. One set of copies is for your records and the other set is for the opposing party or his/her Attorney. Send endorsed copies of the motion and request for hearing in one of the envelopes you addressed to the opposing party (or his/her attorney). It is your responsibility to inform the opposing party you have requested a hearing and what it is concerning.
6. Service (Notice to the Other Party)
  - a. Is the case pending/open when you file your motion and request a hearing? If yes, then service is complete upon mailing documents as listed in Step 5.
  - b. If the case is closed when you file your motion and request for hearing, did it close within the last 90 days?

(Hint: if you had to pay the filing fee or apply for free process, your case was most likely not closed within the last 90 days). If yes, then service is complete upon mailing documents as listed in Step 5 above. Exception: If your case closed due to Lack of Prosecution, a filing fee will be paid after 30 days and service will be required.

c. If the case is closed and it has been closed for greater than 90 days at the time you file your motion and request a hearing, you will need to serve the other party and CSED, if applicable. See the attached document *Service of Process* for instructions on how to complete service.

7. The assigned judge's assistant will send a scheduled *Notice of Hearing* to all parties in the envelopes provided by you. This notice will inform you of the hearing date and time.

#### FILING A MOTION WHEN THE PARTIES AGREE

If filing a Motion to Modify Previous Decree/Judgment/Order (when parties agree), prepare a *Motion, Stipulation for Modification of Previous Decree/Judgment/Order, and Order of Modification*.

1. Prepare an original set of documents plus three (3) sets of copies of each form. The *Stipulation* and *Order* must be signed by BOTH parties.
2. If the parties are changing the primary residence for a minor child(ren) from one party to the other or are changing the amount of child support paid, a Child Support Worksheet must be submitted using the NM Child Support Guidelines for calculation. The worksheet must be signed by both parties.
3. Sort the documents according to title and staple each one separately. The originals of each form should be placed on top of its copies and then paper clipped together. **For example:** Place the original Motion on top with the stapled copies underneath, and paper clip them together. Repeat the procedure for the other forms.
4. Submit your documents for filing to the **Domestic Relations Division, Room 240**, Second Floor, of the Bernalillo County Courthouse, between the hours of **8:00am-4:00pm, Monday through Friday**.
5. A filing fee of **\$137.00** is not required when both parties stipulate (agree) to the modification. If the assigned judge has concerns, than a hearing for the Motion and Stipulation may be set. In this instance, a filing fee may be required and the party filing will be notified by the judge's trial court administrative assistant.
6. Go to the **Domestic Relations Division** and submit the *Order of Modification* with copies and ENDORSED copies of the *Motion* and *Stipulation*, and a *Child Support Worksheet* (if applicable). Inform the Receptionist of the name of the judge assigned to the case.
7. Return to the **Domestic Relations Division** in five working days to pick up your *Order of Modification* and other documents. If the Order has been signed, return to the **Domestic Relations Division** to file the original *Order of Modification* and the clerk will endorse the copies. At this time, the filing procedure will be complete.

## Frequently Asked Questions

1. **What is a Motion?** Motions are documents used to let the Judge and the other party know there is something that needs to be addressed, and that a hearing may be needed to try to resolve the problem. A Motion can be used before the case is finalized to get some immediate relief or to resolve an emergency situation. It is also used to reopen a case after it has been closed.
2. **What is the case heading?** The "heading" of the case is the top part that includes the Court, the Case Number, and the Names of the Petitioner and the Respondent. The heading remains the same *forever*. There is a heading at the beginning of each separate court document (pleading). The heading must be *exactly* like the heading in the original Petition. Do not change the names in any way. The original Petitioner is always the Petitioner, etc. Also, even though a party may have a legal name change, this change *will not* be shown in the heading. If the original Petition shows your name as "Jane Doe" you will continue to use "Jane Doe", even though you have now married Mr. Smith and now use the name "Jane Smith". You may add, n/k/a (now known as) "Jane Smith".
3. **What is Burden of Proof?** The person who files the Motion has the "Burden of Proof - that is, the responsibility of convincing the Judge that the Order is necessary. In many cases, the law requires that there be a "substantial change in circumstances" before a judge will change a previous order. The person who files a Motion to Modify a previous order of custody, timesharing, or support MUST prove a "substantial change in circumstances."
4. **What do I need to do for a modification of child support?** If a modification of child support is requested (whether an increase or a decrease), then the Child Support Guidelines are usually followed. Modification of child support amounts may be possible if there are "material and substantial changes in circumstances subsequent to the adjudication of the pre-existing order" (40-4- 11.4 NMSA). A deviation up or down of more than 20% of the current support payment and more than a year going by since the previous order is a type of "material and substantial change. The Child Support Guideline Worksheet (either Worksheet A or Worksheet B) must be completed to modify a child support order.
5. **What are the Request and Notice of Hearing?** The Request for Hearing and Notice of Hearing are two separate documents. You will fill out the request. Most of the time the Judges allow 15 to 30 minutes for a Motion. If you think you need more time than this, put in the time that you feel will be needed. Remember, if you want a hearing as soon as possible, it will be easier for the Judge to set a 30 minute hearing than to find room for a 2 hour case. You should also complete all blanks on the Notice of Hearing EXCEPT the date, time, and length of hearing.

**SERVICE OF PROCESS: GIVING THE OTHER PARTY LEGAL NOTICE**

**ASSEMBLING A SERVICE PACKET**

Means putting together the following:

- a. Copy of the Proof of Service
- b. Copy of the Motion
- c. Subpoena if necessary.

**ARRANGING FOR SERVICE**

Means method of service that you will use to notify the other party:

**PERSONAL SERVICE BY USING ONE OF THESE:**

- a. SHERIFF/LAW ENFORCEMENT
- b. PROCESS SERVER (may see yellow pages, internet and/or Self Help Center for a list of these)
- c. PERSON OVER 18 YRS. OF AGE WHO IS NOT A PARTY TO THE CASE

OR

**SUBSTITUTE SERVICE BY USING ONE OF THESE:**

- a. To a person over the age of 15 years of age residing at the home of the person being served and by mailing by first class mail to that address.
- b. To a person apparently in charge at the actual place of business or employment of the person being served and by mailing by first class mail to the person being served at the last known mailing address.

OR

**MAIL**

It must be mailed to a good address by using a mailing method where Respondent will sign for receiving the Summons Packet and you having proof to present to the court. Example: Certified Mail with Return Receipt.

OR

**NEWSPAPER**

Publishing a Legal Notice in a Newspaper: This method of service is used when you have made all of the attempts possible to locate the Respondent and whereabouts are unknown. You will need to tell the court about all of the ways you have tried to find the other party. Before publishing you must ask the Court for permission to do this (you may return to the Center for Self Help and Dispute Resolution for proper forms and procedural information).

**FILING PROOF OF SERVICE**

Means proving to the court that the other party was given notice of the legal proceeding.

To do this you must file the Proof of Service, Affidavit of Service (mail) and/or Affidavit of Publication. What you submit will depend on the method of service that you used to serve the other party. You must file in the Domestic Relations Clerks Office, Room 240, 2<sup>nd</sup> floor of the Second Judicial District Court. **NOTE: IF PERSONAL SERVICE WAS DONE, THE PROCESS SERVER OR PERSON WHO SERVED RESPONDENT, MUST SIGN THE PROOF OF SERVICE IN FRONT OF A NOTARY PUBLIC. IF A LAW ENFORCEMENT OFFICER DID PERSONAL SERVICE, THE OFFICER MUST SIGN THE PROOF OF SERVICE, BUT A NOTARY IS NOT NEEDED.**

**NOTE: You must always follow the Rules of Civil Procedure. Service of Process is a requirement that must be completed in order to move forward with finalizing your case. For additional information governing Service of Process you can refer back to NMRA, Rule 1-004 and/or visit the Second Judicial District Court, Center for Self Help and Dispute Resolution, in room 119, 1<sup>st</sup> floor, for proper forms and further instruction.**

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT**

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

vs.

DM\_\_\_\_\_

\_\_\_\_\_  
Respondent.

**MOTION TO MODIFY OR ENFORCE PREVIOUS DECREE/JUDGMENT/ORDER**

\_\_\_\_\_, who was the \_\_\_\_\_  
(Petitioner or Respondent) in the previous proceeding, appearing pro se, requests the Court to consider the following modification or enforcement:

1. DECREE/JUDGMENT/ORDER TO BE MODIFIED/ENFORCED:

A. Name of document:

B. Date previous document filed in Court:

C. Judge who signed previous document:

2. CHANGE (MODIFICATION) OR ENFORCEMENT REQUESTED:

A. The present ages of our children are:

B. On page number \_\_\_ of the previous document there was an order that provided:

C. I would like to have that provision changed/enforced so that the new order will provide:

D. I believe that the change/enforcement is necessary in order to provide for the best interests of any children affected because:

E. \_\_\_\_ I have changes to propose that did not fit into the space provided.  
Please also read the Supplemental Information page which is attached.

3. COMMUNICATION WITH OTHER PARTY: (Complete A or B)

A. I have discussed this modification or change with the other party. The other party has:

1. \_\_\_ Agreed to the change. We have signed the Stipulation for Modification and completed a proposed Order of Modification, and file them with this Motion;

OR 2. \_\_\_ Agreed to part of the requested change/enforcement and did not agree to part.

2a. We have agreed about:

2b. We cannot agree about:

OR 3. \_\_\_ Not agreed with my proposed change.

B. I have not discussed the proposed change with the other party because:

4. REQUEST FOR ACTION: (check A or B)

A. \_\_\_ We have agreed to the changes requested as shown on the Stipulation for Modification and the Order of Modification which is submitted with this Motion. We request that the Judge sign the Order of Modification.



OR B. \_\_\_\_ We have not been able to Stipulate to the requested change and need to have a hearing time scheduled. I therefore ask that a time for hearing be set and that the other party be notified of the fact this Motion is pending and the time set for hearing the Motion. I submit a Request for Hearing and Notice of Hearing with this Motion, and stamped and addressed envelopes for mailing to myself and the other party.

---

*Signature*

*Capacity: \_\_Petitioner \_\_ Respondent pro se*

---

*Name (printed)*

---

*Address*

---

*Telephone number*

I hereby certify that a completed  
copy of the foregoing was mailed/served to  
opposing counsel and parties pro se this  
\_\_\_\_\_ day of \_\_\_\_\_ 20

---

(Signature of Party filing Motion)

## **SUPPLEMENTAL INFORMATION**

This sheet is a Supplement to the Motion to Modify Previous Decree/Judgment/Order.

Supplement to paragraph \_\_\_\_ subparagraph \_\_\_\_ on page \_\_\_\_.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

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

v.

No. \_\_\_\_\_

\_\_\_\_\_,  
Respondent.

**REQUEST FOR HEARING  
(domestic relations actions)<sup>1</sup>**

Assigned judge: \_\_\_\_\_

Matters to be heard: \_\_\_\_\_

Hearings presently set: \_\_\_\_\_

Amount of time requested: \_\_\_\_\_

(Provide names, mailing addresses, and telephone numbers of parties who need to be notified —  
attach a list if necessary.)

_____	_____
_____	_____
_____	_____
_____	_____

Hearing requested by:

\_\_\_\_\_  
Signature of party

\_\_\_\_\_  
Name (*print*)

\_\_\_\_\_  
Mailing address (*print*)

\_\_\_\_\_  
City, state, and zip code (*print*)

\_\_\_\_\_  
Telephone number

**VERIFICATION OF SERVICE**

I affirm under penalty of perjury under the laws of the State of New Mexico that on \_\_\_\_\_ (date), I (check the applicable item below and fill in all information)

- [ ] mailed a copy of this request by United States mail, postage prepaid, to:  
Name: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
City, state, and zip code: \_\_\_\_\_;
  
- [ ] delivered a copy of this request to \_\_\_\_\_ (the other party or the other party's attorney); or
  
- [ ] faxed a copy of this request to \_\_\_\_\_ (the other party or the other party's attorney) using the following fax number: \_\_\_\_\_. The transmission was reported as complete and without error. The time and date of the transmission was \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).

\_\_\_\_\_  
Signature of party

\_\_\_\_\_  
Date of signature

DO NOT FILE THIS PAGE: FOR PARTY USE ONLY

USE NOTE

1. This form may be used anywhere in this state to request a hearing in a domestic relations action.

[Approved by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases filed or pending on or after December 31, 2014.]

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

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

v.

No. \_\_\_\_\_

\_\_\_\_\_,  
Respondent.

**NOTICE OF HEARING**  
*(domestic relations actions)*<sup>1</sup>

NOTICE IS HEREBY GIVEN that a hearing in this case has been set as follows:

Date of hearing: \_\_\_\_\_  
Time of hearing: \_\_\_\_\_  
Place of hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Matter(s) to be heard: \_\_\_\_\_  
Comments: \_\_\_\_\_  
Length of hearing: \_\_\_\_\_  
Judicial Officer: \_\_\_\_\_

If this hearing requires more or less time than the court has designated, or if this hearing conflicts with any prior setting, please contact us immediately as continuances may not be granted on late notice. The District Court complies with the American with Disabilities Act. Counsel or self-represented litigants may notify the Clerk of the Court of the nature of the disability at least five (5) days before ANY hearing so appropriate accommodations may be made. Please contact us if an interpreter will be needed.

\_\_\_\_\_  
CLERK OF THE DISTRICT COURT

**CERTIFICATE OF SERVICE**

I, the undersigned Employee of the District Court of \_\_\_\_\_ County, New Mexico, do hereby certify that I served a copy of this document to all parties listed on the attached page on \_\_\_\_\_ (date).

By: \_\_\_\_\_

**PARTIES ENTITLED TO NOTICE**

*(The party requesting the hearing must list the name, address, and phone number of every party entitled to notice, including the requesting party. If a party has an attorney, list the name and address of the attorney.)*

Party's name: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_

Party's name: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_

*(Repeat as necessary.)*

DO NOT FILE THIS PAGE: FOR PARTY USE ONLY

USE NOTE

1. This form may be used anywhere in this state to give notice of a hearing in a domestic relations action.

[Approved by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases filed or pending on or after December 31, 2014.]



STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

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

vs. DM- \_\_\_\_\_

\_\_\_\_\_  
Respondent.

**PROOF OF SERVICE**

STATE OF NEW MEXICO )  
 )ss  
COUNTY OF \_\_\_\_\_ )

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served items checked below in \_\_\_\_\_ County, by delivering a copy thereof, as set out below. The person being served is \_\_\_\_\_ (name of person being served) on the \_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_

**(check one box and fill in appropriate blanks)**

- to the \_\_\_\_\_ (name of person being served) *(used when person being served accepts a copy of the documents or refuses to accept the documents)*
- to the \_\_\_\_\_ (name of person being served) by [mail] [courier service] as provided by Rule 1-004 NMRA *(used when service is by mail or commercial courier service—attach copy of proof of delivery by the mail or commercial courier service).*

After attempting to serve the documents on \_\_\_\_\_ (name of person being served) by personal service or by mail or commercial courier service, by delivering a copy of these documents, in the following manner:  
 to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of the person being served *(used when the person being served is not presently at place of abode)* and by mailing a copy of the documents by first class mail to the person being served at \_\_\_\_\_ *(insert last known mailing address of the person being served).*

to \_\_\_\_\_ the person apparently in charge at the actual place of business or employment of the person being served and by mailing by first class mail to the person being served at \_\_\_\_\_ *(insert business address of the person being served)* and by mailing the documents by first class mail to the person being served at *(insert last known mailing address of the person being served).*

to \_\_\_\_\_, an agent authorized to receive service of process for person being served.

to \_\_\_\_\_, [parent] [guardian] [conservator] [guardian ad litem] of person being served \_\_\_\_\_ *(used when person being served is a minor or an incompetent person).*

ITEMS SERVED:

Fees: \_\_\_\_\_

- Motion filed on \_\_\_\_\_
- Request for hearing on the motion.
- Notice of hearing on \_\_\_\_\_
- \_\_\_\_\_

\_\_\_\_\_  
Signature of Person making service

\_\_\_\_\_  
Title (if any)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_,

20 \_\_\_\_, by \_\_\_\_\_ (name of person making service).

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_