

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

1. Prepare a *Motion, Request for Hearing, and Notice of Hearing*. 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 addressed to you. **Note:** If the opposing party is not represented by an attorney and you do not have a home address, it is acceptable to use their work address or their parent's address.

NOTE: If the case is pending, a filing fee of **\$137.00** is not required. Local Court Rules require a completed SCRA, Rule 1-099 Certificate attached as the last page to your motion. This form shows the Court the status of the case.

3. 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 to the **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.

4. 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.

5. The assigned judge's secretary 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.

MOTIONS

FORMS YOU WILL PROBABLY NEED

- A. To get started
 - 1. Motion with Certificate (SCRA) attached
 - 2. Request for Hearing
 - 3. Notice of Hearing
 - 4. Envelopes, addressed & stamped for all parties entitled to notice
do not put a return address

- B. After the hearing is held
 - 1. Order

- C. If you and the other party have already agreed
 - 1. Motion
 - 2. Certificate (SCRA)
 - 3. Stipulation (signed and notarized by BOTH parties)
 - 4. Order
 - 5. Request for Hearing (if Judge has questions/concerns)
 - 6. Notice of Hearing (if Judge has questions/concerns)

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. Examples of "Post-Decree" motions ask to modify the amount of child support or change the custody or time-sharing arrangement for the children.

A new filing fee of \$ 137.00 (cash or money order) is usually needed for Motions filed after the Court file has been closed. This fee is waived if the new motion a.) seeks ONLY enforcement of a previous Child Support Order b.) is a modification which has been agreed to, and the motion is filed with a Stipulated Order or c.) action is filed within 90 days of previous Final Order.

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."

Changes involving custody and timesharing, the law may require the Judge to consider the "best interest of the child," and decide on that basis.

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% 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.

FORMS

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".

MOTION

You will have to prepare a "MOTION" giving basic information about what you wish to have the Judge order. The Judge needs to know, in writing, what relief you are seeking example: who, what, where, when, why.

CERTIFICATE (SCRA)

A "Certificate" or "SCRA" must be filed with all motions. This certificate shows the status of the case. The Judge determines from the Motion and the Certificate whether a new \$137.00 filing fee is required. We have these Certificate forms for you.

REQUEST FOR HEARING
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 and time.

ORDER

The Order is what the Judge signs after considering the Motion. If there is a hearing before the Judge he/she may handwrite the Order at the end of the hearing. Other times the Judge will ask one of the parties to prepare an Order for signature.

STIPULATION & PROPOSED ORDER

If the parties agree to the change or relief they should prepare a "Stipulation" or "Stipulated Agreement". A "Stipulation" sets out the agreement the parties have come to. This agreement must be signed and notarized by BOTH parties. A Proposed Order will re-state the agreement but will have a place for the Judge's signature. The Proposed Order should be signed by both parties.

PROCEDURE FOR CONTESTED CASES

Prepare the Motion, Rule 1-099 Certificate (if you are not paying filing fee), Request for Hearing, Notice of Hearing, and Self Addressed Stamped Envelopes for each party, entitled to notice.

Be sure your documents are signed and stapled appropriately *before* approaching the counter, otherwise you may be asked to step aside to complete your documents properly.

You will need to bring the Original and *three (3)* copies of each pleading plus self addressed stamped envelopes to the Domestic Relations Clerk's Office -- Room 240. The Clerk's office is open from 10am to 4pm Monday through Friday.

*The office does not close during the noon hour; however;
it does close promptly at 4pm -so come early.*

If a filing fee is required, bring \$137.00 cash, cashier's check or money order:

Payable to Clerk of the Court

******NO personal checks, credit cards or debit cards will be accepted.******

Any exhibits and/or evidence you want submitted can be presented *at your hearing*. Please do not attach them to your motion. If attached, you will be asked to remove them or to get approval from the assigned Judge's Office prior to filing.

Hand the clerk:

- ~ Original Motion (with certificate attached to back) + 3 copies
- ~ Original Request for Hearing (w/parties entitled to notice attached) + 3 copies
- ~ Original Notice of Hearing (w/parties entitled to notice attached) + 3 copies
- ~ Self Addressed Stamped Envelopes (with no return address)

The clerk will:

- ~ File stamp Original Motion
- ~ File stamp Original Request for Hearing
- ~ Endorse all copies of Motion and Request
- ~ Forward all notices w/envelopes to Judges office

You will get back:

- ~ Two endorsed Motions (one for you & one for the other party)
- ~ Two endorsed Requests (one for you & one for the other party)

The Judge's Secretary will find time on the calendar to schedule your motion and will then complete the Notice of Hearing forms and mail to you using the envelopes you provided.

STIPULATED CASES

Prepare the Motion, Stipulation and the Proposed Order. Remember, the stipulation must be signed and notarized by both parties.

Hand the clerk:

- ~ Original Motion (with certificate attached to back) + copies
- ~ Original Stipulation + copies
- ~ Original Order + copies

The clerk will:

- ~ File stamp Original Motion
- ~ File stamp Original Stipulation
- ~ Endorse all copies of Motion and Stipulation
- ~ Forward all Proposed Orders to Judges Office

You will get back:

- ~ Two endorsed Motions (one for you & one for the other party)
- ~ Two endorsed Stipulations (one for you & one for the other party)

You will be responsible for picking up your Order at the Family Court Reception Area approximately five (5) business days after filing. The Court will not notify you when your order is signed. Once you have picked up your order, immediately return to the Domestic Relations Office to have your Order filed.

If the Judge has questions/concerns you may be asked to submit a Request for Hearing and Notice of Hearing.