

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

2 [Family Violence Protection Act, 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 shall not write to, talk to, visit or contact the respondent in any way
15 except through respondent's lawyer, if respondent has a lawyer.

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

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

3 4. Petitioner shall not go within _____ yards of the respondent's home or school
4 or workplace. Petitioner shall not go within _____ yards of the respondent at all times except
5 _____ . If at a public place, such as a store, petitioner
6 shall not go within _____ yards of respondent.

7 5. _____ first and last name of party shall have
8 temporary physical custody of the following child(ren):[_____]

9 Child's Name Date of Birth

10 _____
11 _____

12 6. With respect to the child(ren) named in the preceding paragraph, [respondent
13 petitioner] _____ (*first and last name of parent*) shall have:

14 A. No contact with the child(ren) until further order of this court and shall stay
15 _____ yards away from the child(ren)'s school.

16 B. Contact with the child(ren), subject to: _____
17 _____.

18 7. Neither party shall remove the child(ren) named in the preceding paragraph from
19 the State of New Mexico or disenroll them from the child(ren)'s present school during the period
20 of this temporary order of protection.

21 8. The court may decide temporary child and interim support at the hearing listed
22 below. Both parties shall bring to the hearing proof of income in the form of the two latest pay

1 stubs or the federal tax returns from the previous year, proof of work-related daycare costs and
2 proof of medical insurance costs for the child(ren).

3 9.

4 A. Petitioner is ordered to immediately leave the residence at
5 _____ and to not return until further court order.

6 B. Law enforcement officers are hereby ordered to evict petitioner from the
7 residence at _____.

8 C. Petitioner is ordered to surrender all keys to the residence to law
9 enforcement officers.

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

13 11. Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's
14 property or the joint property of the parties except in the usual course of business or for the
15 necessities of life. The parties shall account to the court for all such changes to property made after
16 the order is served or communicated to the party. Neither party shall disconnect the utilities of the
17 other party's residence.

18 12. This order supersedes any inconsistent prior order in Cause No.
19 _____ and any other prior domestic relations order and domestic violence
20 restraining orders between these two parties.

21 13. Other: _____.

22 14. While this order of protection is in effect, respondent should refrain from any act
23 that would cause the petitioner to violate this order. This provision is not intended to and does not

1 create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained
2 party can be arrested for violation of this order.

3 **HEARING**

4 IT IS FURTHER ORDERED that the parties shall appear in the _____
5 Judicial District Court, Room _____, at _____, before
6 _____, at _____ (a.m.) (p.m.) on _____ (date) for
7 hearing on whether an extended order of protection against domestic abuse will be issued. Either
8 party may bring witnesses or evidence and may be represented by counsel at this hearing.
9 Petitioner may file a Response to the Petition for Order of Protection from Domestic Abuse, see
10 Form 4-962 NMRA, on or before the hearing. If the petitioner fails to attend this hearing, an
11 extended order may be entered by default against petitioner and a bench warrant may be issued
12 for petitioner's arrest. If respondent willfully fails to appear at this hearing, the counter-petition
13 may be dismissed. This order remains in force until _____, _____.

14 **If an order of protection is entered, the restrained party is prohibited from receiving,**
15 **transporting, or possessing a firearm or destructive device while the order of protection is**
16 **in place.** If at the hearing the court finds that the restrained party presents a credible threat to the
17 physical safety of the protected party, the court shall order the restrained party (a) to immediately
18 deliver any firearm in the restrained party's possession, care, custody, or control to a law
19 enforcement agency, law enforcement officer, or federal firearms licensee while the order of
20 protection is in effect, and (b) to refrain from purchasing, receiving, or possessing, or attempting
21 to purchase, receive, or possess any firearm while the order of protection is in effect.

22

1 **DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR**
2 **PERMISSION OF THE COURT.**

3 **ENFORCEMENT OF ORDER**

4 If the [~~petitioner~~] restrained party violates any part of this order, the [~~petitioner~~] restrained
5 party may be charged with a crime, arrested, held in contempt of court, fined or jailed.

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

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

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

13 _____

14 *(Signed)*

Court telephone number _____

15 _____

16 *(Title)*

17 **SO ORDERED:**

18 _____

19 District Judge

Date and time approved

20 **USE NOTE**

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

1 2. Personal service of the temporary order of protection and order to appear will assure
2 that the temporary order is fully enforceable. It is possible that actual notice to the petitioner of the
3 content of the temporary order will also suffice to bind the petitioner to comply with the order.
4 *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).
5 [Approved, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020,
6 effective September 17, 2007; by Supreme Court Order No. 08-8300-040, effective December 15,
7 2008; as amended by Supreme Court Order No. 19-8300-009, effective for all orders issued on or
8 after July 1, 2019.]