PROPOSED REVISIONS TO THE CIVIL FORMS
PROPOSAL 2020-023

August 31, 2020

The Supreme Court is considering amendments to Forms 4-901, 4-901A, and 4-902 NMRA.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at http://supremecourt.nmcourts.gov/open-for-comment.aspx or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before September 18, 2020, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

4-901. Three-day notice of nonpayment of rent *(Uniform Owner-Resident Relations Act)*.
[Section 47-8-33 NMSA 1978]

THREE-DAY NOTICE OF NONPAYMENT OF RENT[1]
(Uniform Owner-Resident Relations Act)

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at[2]:

_____
_____
_____, New Mexico
_____

by failure to pay rent as follows:

$_____
$_____

$_____

Total due: $_____

If you do not pay this [~~the~~] amount [~~due is not paid~~] within three (3) days from the date of delivery [~~set out below~~] of this notice, the owner will terminate the rental agreement [~~shall be terminated~~] and can file in court to evict you. You will receive a summons to appear in court.

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

You have the right to challenge the termination of the rental agreement or the amount of rent owed by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not attend the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from the premises.

You are NOT required to voluntarily vacate the premises before you have had the opportunity to go to the court hearing and the judge has issued an order in the case.

Payment will be accepted only by:

[ ] cash [ ] money order

[ ] cashiers or certified check [ ] personal check

Dated this _____ day of _____, _____

_____

(Owner) (Agent)

Service of notice:

[ ] personally delivered to resident

[ ] posted

[ ] mailed certified mail, return receipt requested

[ ] mailed

[ ] Delivered [ ] Posted

Time: _____

Date: _____

By[3]: _____

[ ] Mailed:

Time: _____

Date: _____

By[3]: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action.

2. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. _____, effective _____.]

4-901A. Three-day notice of substantial violation of rental agreement *(Uniform Owner-Resident Relations Act)*.
[Section 47-8-33 NMSA 1978]

THREE-DAY NOTICE OF SUBSTANTIAL VIOLATION OF RENTAL AGREEMENT
(Uniform Owner-Resident Relations Act)

To: _____
and all other occupants
Address: _____ Unit: _____
_____, New Mexico _____

You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement concerning the premises at[1]:
_____
_____, New Mexico _____
in that on or about _____, _____ (*date*), you, or someone with your consent, did the following:
_____
_____

This conduct occurred on or within [~~300~~] three hundred (300) feet of the premises and includes *(check all that apply)*:

[ ] possession, use, sale, distribution, or manufacture of a controlled substance, other than misdemeanor possession and use;

[ ] unlawful use of a deadly weapon;

[ ] unlawful action causing serious physical harm to another person;

[ ] sexual assault or sexual molestation of another person;

[ ] entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

[ ] theft or attempted theft of the property of another person by use or threatened use of force; or

[ ] intentional or reckless damage to property in excess of one thousand dollars ($1,000.00).

As a result of this conduct, the owner of the premises will terminate the rental agreement [~~shall terminate~~] three (3) days from the date of [~~service set out below~~] delivery of this notice. [~~You must vacate the premises no later than _____ *(date)*. Failure to vacate by this date will result in a legal action against you.~~]

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

The owner may file in court to evict you for a substantial violation of the rental agreement. You have the right to challenge the termination of the rental agreement by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from your home.

If you choose to leave the premises, you must leave no later than _____ (*date*).

Dated this _____ day of _____, _____.

_____
(Owner) (Agent)

Service of notice[2]:
[ ] personally delivered to resident
[ ] posted and mailed certified mail, return receipt requested
[ ] mailed by certified mail, return receipt requested

[ ] Delivered [ ] posted:	Mailed:
Time: _____	Time: _____
Date: _____	Date: _____
By[3]: _____	By[3]: _____

USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

2. If this notice is personally delivered to the resident, mailing or posting is not required. If posted, mailing by certified mail is also required by this form. A posted notice must be affixed to a door by taping all sides or placing it in a fixture or receptacle designed for notices. *See* [~~Paragraph D of Section 47-8-13 NMSA 1978~~] NMSA 1978, § 47-8-13(D).

The party giving notice should retain two (2) copies for possible court action.

3. Set forth the name of the person delivering, posting, or mailing the notice.

[Adopted, effective September 2, 1997; as amended, effective October 15, 1999; as amended by Supreme Court Order No. _____, effective _____.]

4-902. Seven-day notice of noncompliance with rental agreement (other than failure to pay rent) *(Uniform Owner-Resident Relations Act)*.
[Sections 47-8-27.1, 47-8-33, 47-8-37 NMSA 1978]

SEVEN-DAY NOTICE OF NONCOMPLIANCE
WITH RENTAL AGREEMENT
(OTHER THAN FAILURE TO PAY RENT)[1]
(Uniform Owner-Resident Relations Act)

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at[2]:
_____
_____
_____, New Mexico _____
in that on or about _____, _____ *(date)*, the following noncompliance occurred:
_____
_____
_____
(*describe the noncompliance specifically and in detail. Attach additional pages if necessary.*)

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the termination of the rental agreement.

[ ] **First notice.** If [~~this~~] you, the tenant, correct the noncompliance [~~is not corrected~~] within seven (7) days from the date of delivery [~~set out below~~] of this notice, the rental agreement will continue and you will be permitted to stay. If you do not correct the noncompliance within seven (7) days from the date of delivery, the owner may terminate the rental agreement and file in court to evict you. [~~shall be terminated and you shall be required to vacate the premises. Regardless of whether this noncompliance is corrected, if a second material noncompliance with the rental agreement or any separate agreement occurs within six (6) months of this initial noncompliance, the rental agreement will be terminated.~~]

If the owner files in court to evict you, you, the tenant, have the right to challenge the termination of the rental agreement by going to the court hearing to respond and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from your home.

Even if you correct the noncompliance, if there is a second material noncompliance with the rental agreement within six (6) months of the first noncompliance, the owner may terminate the rental agreement and file in court to evict you.

[ ] **Second notice.** You were given previous notice of noncompliance on _____ (*date*). [~~Therefore~~] The owner claims that you have been in material noncompliance twice or more within a [~~six month~~] six (6)-month period[~~. As a result the rental agreement shall~~] and will terminate the rental agreement in seven (7) days from the date of delivery [~~set out below~~] of this notice. [~~You must vacate~~] If you do not voluntarily leave the premises [~~no later than~~] by _____ (*insert date*), the owner will file in court to evict you, and you will receive a summons to appear in court. [~~Failure to vacate by this date will result in a legal action against you~~].

You have the right to challenge the termination of the rental agreement. If you want to challenge the termination of the rental agreement, you must go to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from the premises.

Dated this _____ day of _____, _____.

_____

(Owner) (Agent) (Resident)

Service of notice
[ ] personally delivered to resident

[ ] posted
[ ] mailed certified mail, return receipt requested

[ ] Delivered [ ] posted:	Mailed:
Time: _____	Time: _____
Date: _____	Date: _____
By[3]: _____	By[3]: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action. If this form is used by the resident some modifications will be necessary.

2. If leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. _____, effective _____.]

KAREN J. MEYERS, Attorney at Law
905 Fruit NW, Albuquerque, NM 87102
Kj.meyers@comcast.net

September 9, 2020

Honorable Michael E. Vigil, Chief Justice
Honorable Barbara J. Vigil, Senior Justice
Honorable Judith K. Nakamura, Justice
Honorable C. Shannon Bacon, Justice
Honorable David K. Thomson, Justice

RE: Rule 4-901, *Three-Day Notice of Nonpayment of Rent*
Rule 4- 901A, *Three-Day Notice of Substantial Violation of Rental Agreement*
Rule 4-902, *Seven-Day Notice of Noncompliance with Rental Agreement (other than nonpayment of rent)*

Dear Honorable Justices:

I support the proposed revisions to above-referenced rules, on an expedited and emergency basis, to address notice deficiencies and ambiguities that exist in the forms currently used in cases arising under the Owner-Resident Relations Act.

For purpose of eviction for non-payment of rent or for other bases, an owner is required to use the applicable form to initiate the termination of a rental agreement and before filing to evict a resident. As I explain below, these notices fail to provide clear information to the tenants about the restitution procedure and fail to provide understandable disclosures of a tenant's rights, in light of the owner's termination of the rental agreement.

Since the onset of the COVID-19 pandemic, I have been working with a broad range of groups, including attorneys, non-profits and government agencies, to develop coordinated responses to the impact of the pandemic on tenants. We are working to educate tenants about their rights and options and, thereby, stem the risk of eviction and homelessness for those unable to pay their rent. To that end, the Supreme Court's Order stay of evictions, where the tenant demonstrates a current inability to pay rent, has been crucial.

Data available from national sources shows that New Mexico's eviction rates, even before COVID, were already higher than the national average. The nationally recognized Eviction Lab at Princeton University has recently cited Albuquerque as a city facing an eviction crisis as a result of the pandemic. The Legal Services Corporation reports that at least 105,000 New Mexico households are at risk of eviction as a result of the pandemic. The New Mexico Workforce Solutions conducted a survey of persons

receiving unemployment benefits and 87.6% of respondents reported that they are concerned about their ability to pay rent or mortgage payments in the near future.

As part of the efforts mentioned above, I have provided trainings on basic tenant's rights and the scope of the Supreme Court moratorium to a range of groups – including community health workers whose clients are struggling financially. I learned during one training that the community health workers' clients reported that when they were served with a 3 day notice, the clients believed that they had to vacate the premises. They did not understand that they had a right to contest the termination of the rental agreement; nor did they understand that they needed to appear at court to demonstrate their inability to pay rent. Some families just moved out after getting the 3 day notice; some families believed that there was a moratorium on all evictions, so did nothing; some families did not understand their obligation to appear at a court hearing to prevent the termination of the lease.

As a result of this input, I reviewed the above-reference rules and was surprised to find that the language in the current version of these notices was misleading as to the impact of the notice and certainly did not provide any information to the tenants about their right to contest, challenge or appear at a court hearing before they had to vacate the premises. Rather, when read literally, the notice tells them to vacate the premises on a date specified by the landlord.

I am writing to support Court adoption of emergency, expedited changes to these Notices. The goals of these changes are to provide specific notice to tenants that:

- A tenant has the right to contest (challenge or dispute) the termination of the rental agreement.
- In order to challenge the termination of the rental agreement and eviction, a tenant must appear (go to the court hearing) to respond to the owner's claims and to contest (dispute or challenge) the termination of the rental agreement.
- When you go to the court hearing, you will have the chance to explain your side of the story.
- A tenant does not have to vacate (leave) the premises (their home) without a court hearing and court order evicting them.

The proposed changes use common, easily understood language to avoid legalese, which often can make legal notices less than effective and create obstacles to understanding.

Submitted by:

Karen J. Meyers

Karen J. Meyers, Attorney at Law
Kj.meyers@comcast.net
505-270-2152

New Mexico Courts

Jennifer Scott <supjls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Wed, Sep 9, 2020 at 3:28 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
George Chandler

Phone Number
5052803110

Email
geo_c@cybermesa.com

Proposal Number
2020-023

Comment
I like this proposal.

Upload

Cathy Garcia
1313 Declovina St.
Santa Fe, NM
cathy@chainbreaker.org
(505) 577-5481

September 9, 2020

Joey D. Moya, Clerk
New Mexico Supreme Court
P O Box 848
Santa Fe, New Mexico 87504-0848

Re: Proposal Number 2020-023

May it Please the Honorable Justices of the Court,

My name is Cathy Garcia, and I am a Santa Fe resident. In my professional capacity, I provide members of our community with information about their rights as a tenant, the eviction process, and now (since the emergence of the novel coronavirus), additional and emergent information about the local, state, and federal moratoria.

Firstly, I applaud the efforts by New Mexico's Courts to clarify the forms that relate to eviction under the Uniform Owner-Resident Relations Act. I believe the modifications provide much clearer information about a tenants' rights to due process. Certainly, I've witnessed many families' fears and anxieties as they struggle to make sense of these forms while simultaneously experiencing financial hardship, panicking, and leaving their homes before their day in court. I approve of the proposed changes, and I urge the Court to adopt the changes to these forms.

Secondly, I humbly recommend that the Court continue its reevaluation of court forms in re: Uniform Owner-Resident Relations Act. I look forward to providing public commentary on 4-902A, 4-906A, and all the other forms associated with the OURRA.

Finally, I humbly, if urgently, recommend that the Court expand the availability of the forms in other languages. Official legal translations of these forms into Spanish, Vietnamese, Dari, Farsi, Mandarin and Cantonese are needed and would be welcome by our immigrant neighbors.

I thank the Court in advance for its consideration of these comments and appreciate all the work the Court does to ensure fairness, equity, and justice under the law for all New Mexicans.

Respectfully,

Cathy Garcia

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Thu, Sep 10, 2020 at 11:33 AM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Jane McGuigan

Phone Number
5059181884

Email
janiemc07@gmail.com

Proposal Number
2020-023

Comment
I, Janie McGuigan, with Supportive Housing Consulting Associates, Albuquerque, NM have worked in Housing and Tenants rights for over 12 years in New Mexico.

I fully support the proposed changes to the following Notices: 3 day notice of nonpayment of rent, a 7 day notice for violation of the lease, or a 3 day notice for substantial violation of the lease, that clarify certain misleading statements that Tenants may perceive as having to immediately vacate their dwelling instead of choosing to go to Court to tell their side of the story.
I urge the Supreme Court of NM to accept and adopt the proposed changes to the three notice forms used under the Owner Resident Relations Act (a/k/a landlord tenant law). Thank you, Janie McGuigan

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 11, 2020 at 8:54 AM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Chris Miller

Phone Number
5054355952

Email
cmiller@webchoices.us

Proposal Number
2020-023

Comment
If I understand the proposal, you are considering changing "If the amount due is not paid within three (3) days..." to "If you do not pay this amount within three (3) days..."
The second one requires the tenant to make the payment instead of the landlord being paid. I understand the desire for active language, but the way it is worded, a parent making the payment may not satisfy the demand.
Also, at what point has the tenant "paid"? If a tenant mails a check within three days, but landlord does not receive it until day six, when was it paid? If landlord is held to the standard of the date of delivery of the notice, then the tenant should be held to the same standard. Payment should occur when landlord receives it, and the language of the notice should reflect that.
How about "If the amount due is not received within three (3) days..."

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 11, 2020 at 10:48 AM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Robert Nelson

Phone Number
5056882899

Email
robert.nelson.abq@gmail.com

Proposal Number
2020-023

Comment
The current forms may mislead tenants to believe they have to vacate the premises after receiving the notice; many tenants do not understand that they have the right to contest the landlord's actions and go to court to challenge the eviction and tell their side of the story. The proposed changes focus on providing clearer information for tenants receiving any of these notices so that the tenant can choose whether to move or go to court to contest the eviction. Please clarify so that tenants do not prematurely vacate. Thank you.

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 11, 2020 at 2:44 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Elizabeth McGrath

Phone Number
5052381187

Email
evmcgrathnm@gmail.com

Proposal Number
2020-023

Comment
Amendments to Forms 4-901, 4-901A, and 4-902 NMRA

I am writing to lend my support to the proposed amendments to forms 4-901, 4-901A, and 4-902 NMRA. Community groups report that the current forms may mislead tenants to believe they have to vacate the premises after receiving the notice; many tenants do not understand that they have the right to contest the landlord's actions and go to court to challenge the eviction and tell their side of the story. The proposed changes focus on providing clearer information for tenants receiving any of these notices so that the tenant can choose whether to move or go to court to contest the eviction. I believe that these changes will help ensure that tenants are sufficiently informed to enforce their rights under the Owner Resident Relations Act.

Sincerely,

Elizabeth V. McGrath
Attorney at Law
1615 Bayita Lane, NW
Albuquerque, NM 87107

Upload

comments on proposed forms for use in eviction proceedings

Nancy Koenigsberg <nmkberg@gmail.com> Sep 15, 2020 10:29 AM

Posted in group: **nmsupremecourtclerk**

Dear Mr. Moya:

I submit the attached comments on the proposed forms for use in eviction proceedings.

Thank you for your consideration.

Sincerely,

Nancy Koenigsberg

Nancy Koenigsberg
317 Fontana Place NE
Albuquerque, NM 87108
nmkberg@gmail.com

September 15, 2020

RE: Rule 4-901, Three-Day Notice of Nonpayment of Rent

Rule 4- 901A, Three-Day Notice of Substantial Violation of Rental Agreement

Rule 4-902, Seven-Day Notice of Noncompliance with Rental Agreement (other than nonpayment of rent)

Dear Honorable Justices of the New Mexico Supreme Court:

I have reviewed the proposed changes for the foregoing Supreme Court forms used in instances of the Nonpayment of Rent, Substantial Violation of Rental Agreement and Noncompliance with Rental Agreement. The proposed amended language substantially simplifies the language of the forms and makes clearer the rights of tenants in eviction proceedings which was necessary. To further simplify the language and make absolutely clear what the tenant's responsibilities are, I suggest the following refinements to the Court's proposed language.

Page 2:

"You have the right to challenge the termination of the rental agreement or the amount of rent owed. To do so, you MUST ~~by~~ go~~ing~~ to the court hearing to respond to the owner's claims and tell your side of the story. If you do not attend the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from the premises."

Page 4:

The owner may file in court to evict you for a substantial violation of the rental agreement. You have the right to challenge the termination of the rental agreement. To do so you MUST ~~by~~ go~~ing~~ to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may

enter a judgment against you and issue a writ of restitution evicting you from your home.

Page 6:

_____If the owner files in court to evict you, you, the tenant, have the right to challenge the termination of the rental agreement. To do so you MUST~~by~~ go~~ing~~ to the court hearing to respond and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from your home.

Thank you for your timely attention to this matter as it is critically important generally, and most particularly during the COVID pandemic and beyond.

Sincerely,

Nancy Koenigsberg, Esq.

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Tue, Sep 15, 2020 at 1:40 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Gene vance

Phone Number
5052471111

Email
gene@vancechavez.com

Proposal Number
2020-023

Comment
I understand the clarification that is intended, but I think the additions are repetitive to the point that they may discourage the resident from working out a peaceful termination of a rental agreement. Therefore I agree with adding "You cannot be evicted without a court order." But I believe this is repeated so many times without mentioning the consequences of holding over, that it discourages a resident from considering the option of leaving, which may be better for all involved.

A rule amendment goes on beyond the pandemic. There are serious consequences to a resident who needlessly requires a trial and judgment to vacate. It affects the resident's ability to rent in the future, and it adds rent, costs and attorney fees to the judgment.

Upload

Jane Lincoln McGuigan
4924 Purcell Dr. NE
Albuquerque, NM 87111

September 10, 2020

Joey D. Moya
Clerk, New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

RE: PROPOSAL 2020-023

SUPPORTING THE PROPOSED REVISIONS TO THE CIVIL FORMS 4-901, 4-901A, and 4-902 NMRA, under the New Mexico Owner Resident Relations Act

Dear Mr. Moya,

I, Janie McGuigan, Principle at Supportive Housing Consulting Associates, Albuquerque, NM have worked in New Mexico Housing Issues and Tenants Rights for over 12 years.

I fully support the changes in Proposal 2020-023 to the following Notices: 3 day notice of nonpayment of rent, a 7 day notice for violation of the lease, or a 3 day notice for substantial violation of the lease. These changes clarify certain misleading statements that Tenants may perceive as having to immediately vacate their dwelling after receipt of a notice instead of choosing to go to Court to tell their side of the story.

I urge the Supreme Court of NM to accept and adopt the proposed changes to the three notice forms used under the New Mexico Owner Resident Relations Act in Proposal 2020-023.

Sincerely,

Janie McGuigan

Janie McGuigan
4924 Purcell Dr. NE
Albuquerque, NM 87111
Janiemc07@gmail.com

SUPREME COURT OF NEW MEXICO
FILED

SEP 15 2020

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Wed, Sep 16, 2020 at 10:04 AM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Ron A. Tucker

Phone Number
5058439442

Email
ron@moseslaw.com

Proposal Number
2020-023

Comment
I gave a brief comment to the NMUORRA notice forms just to make sure I did not miss the deadline. I think we should all point out that the rule is very repetitive and detailed about stating that the resident cannot be removed without court. It says it so many times and with so much emphasis, the resident may understand the notice as advising them not to leave.

As I see it, the notice has crossed over into legal advice to the resident, and it may be bad advice. Staying until judgment does not serve the resident. In fact it may hurt them by:

1. Making it harder to find another apartment.
2. Causes loss of subsidies
3. Adds fees and costs in a judgment
4. Adds rent and damages to the judgment
5. Gives less time to claim belongings

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Wed, Sep 16, 2020 at 10:11 AM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Ron A. Tucker

Phone Number
5058439442

Email
ron@moseslaw.com

Proposal Number
2020-023

Comment
When you remove "set out below" from after the word delivery, you invite challenges, as to whether the tenant got the notice, or it was in fact delivered. Delivery is not defined if not "as set out below", does it mean "upon delivery" to the tenant, or "upon delivery" for instance to the USPS by dropping to be mailed? or "delivery upon posting". this changes the spirit of the delivery of notices and should not be changed.

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Wed, Sep 16, 2020 at 2:18 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Kevin Arthun

Phone Number
5052179570

Email
kevinarthun@gmail.com

Proposal Number
Amendments to Forms 4-901, 4-901A, and 4-902 NMRA.

Comment
I work as a housing navigator in Albuquerque and have fielded thousands of calls from people with housing instability over the years.

The perception of a 3 day or 7 day notice almost always gets construed by the tenant as a move out date and many are not aware they can contest the notice. Clarifying this language is direly needed.

Upload

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Wed, Sep 16, 2020 at 4:12 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Deian McBryde, Esq.

Phone Number
5054659086

Email
deian@mcbrydelaw.com

Proposal Number
2020-023

Comment
Uploading a file with specific notes on 4-901. However, I think the language of the other forms might also be simplified to make it easier to understand.

Upload
Proposal 2020-023 - Tenant rights in eviction proceedings [Forms 4-901, 4-901A, and 4-902 NMRA].pdf

Proposal 2020-023 - Tenant rights in eviction proceedings [Forms 4-901, 4-901A, and 4-902 NMRA].pdf
628K

PROPOSED REVISIONS TO THE CIVIL FORMS
PROPOSAL 2020-023

August 31, 2020

The Supreme Court is considering amendments to Forms 4-901, 4-901A, and 4-902 NMRA.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at http://supremecourt.nmcourts.gov/open-for-comment.aspx or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before September 18, 2020, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

4-901. Three-day notice of nonpayment of rent *(Uniform Owner-Resident Relations Act)*.
[Section 47-8-33 NMSA 1978]

THREE-DAY NOTICE OF NONPAYMENT OF RENT[1]
(Uniform Owner-Resident Relations Act)

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at[2]:

_____
_____
_____, New Mexico
_____

by failure to pay rent as follows:

$_____
$_____

$_____

Total due: $_____

after this notice is delivered

If you do not pay this [~~the~~] amount [~~due is not paid~~] within three (3) days from the date of delivery [~~set out below~~] of this notice, the owner will terminate the rental agreement [~~shall be terminated~~] and can file in court to evict you. You will receive a summons to appear in court.

If this happens, you will receive

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement. *See (A) below*

You have the right to challenge the termination of the rental agreement or the amount of rent owed by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not attend the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from the premises. *See (B) below*

You are NOT required to voluntarily vacate the premises before you have had the opportunity to go to the court hearing and the judge has issued an order in the case.

leave the home voluntarily

chance

Payment will be accepted only by:

[ ] cash [ ] money order

[ ] cashiers or certified check [ ] personal check

Dated this _____ day of _____, _____

_____

(Owner) (Agent)

Service of notice:

[ ] personally delivered to resident

[ ] posted

[ ] mailed certified mail, return receipt requested

[ ] mailed

[ ] Delivered [ ] Posted

Time: _____

Date: _____

By[3]: _____

[ ] Maile

Time: __

Date: __

By[3]: ___

(B) You have the right to go to the hearing to respond to the owner's claims and tell your side of the story if the landlord files a case. You can also challenge the owner's termination of the rental agreement or challenge how much the owner says you owe.

USE NOTES

(A) The property owner must have a court order to evict you. This notice is not a court order. This notice does not require you to leave your home before a court date where you may challenge the owner's termination of the rental agreement.

If you do not go to the court hearing, the court may decide against you by entering a judgment against you and giving the owner a "writ of restitution" that evicts you from the property.

notice (usually the owner notifying the tenant) should…

keep two (2) copies in case they are needed for court.

1. The party giving notice should retain two (2) copies for possible court action.

2. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. _____, effective _____.]

4-901A. Three-day notice of substantial violation of rental agreement *(Uniform Owner-Resident Relations Act)*.
[Section 47-8-33 NMSA 1978]

THREE-DAY NOTICE OF SUBSTANTIAL VIOLATION OF RENTAL AGREEMENT
(Uniform Owner-Resident Relations Act)

To: _____
and all other occupants

Address: _____ Unit: _____
_____, New Mexico _____

You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement concerning the premises at[1]:
_____
_____, New Mexico _____
in that on or about _____, _____ (*date*), you, or someone with your consent, did the following:
_____
_____

This conduct occurred on or within [~~300~~] three hundred (300) feet of the premises and includes *(check all that apply)*:

[ ] possession, use, sale, distribution, or manufacture of a controlled substance, other than misdemeanor possession and use;

[ ] unlawful use of a deadly weapon;

[ ] unlawful action causing serious physical harm to another person;

[ ] sexual assault or sexual molestation of another person;

[ ] entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

[ ] theft or attempted theft of the property of another person by use or threatened use of force; or

[ ] intentional or reckless damage to property in excess of one thousand dollars ($1,000.00).

As a result of this conduct, the owner of the premises will terminate the rental agreement [~~shall terminate~~] three (3) days from the date of [~~service set out below~~] delivery of this notice. [~~You must vacate the premises no later than _____ *(date)*. Failure to vacate by this date will result in a legal action against you.~~]

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

The owner may file in court to evict you for a substantial violation of the rental agreement. You have the right to challenge the termination of the rental agreement by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from your home.

If you choose to leave the premises, you must leave no later than _____ (*date*).

Dated this _____ day of _____, _____.

_____
(Owner) (Agent)

Service of notice[2]:
[ ] personally delivered to resident
[ ] posted and mailed certified mail, return receipt requested
[ ] mailed by certified mail, return receipt requested

[ ] Delivered [ ] posted:	Mailed:
Time: _____	Time: _____
Date: _____	Date: _____
By[3]: _____	By[3]: _____

USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

2. If this notice is personally delivered to the resident, mailing or posting is not required. If posted, mailing by certified mail is also required by this form. A posted notice must be affixed to a door by taping all sides or placing it in a fixture or receptacle designed for notices. *See* [~~Paragraph D of Section 47-8-13 NMSA 1978~~] NMSA 1978, § 47-8-13(D).

The party giving notice should retain two (2) copies for possible court action.

3. Set forth the name of the person delivering, posting, or mailing the notice.

[Adopted, effective September 2, 1997; as amended, effective October 15, 1999; as amended by Supreme Court Order No. _____, effective _____.]

4-902. Seven-day notice of noncompliance with rental agreement (other than failure to pay rent) *(Uniform Owner-Resident Relations Act)*.
[Sections 47-8-27.1, 47-8-33, 47-8-37 NMSA 1978]

SEVEN-DAY NOTICE OF NONCOMPLIANCE
WITH RENTAL AGREEMENT
(OTHER THAN FAILURE TO PAY RENT)[1]
(Uniform Owner-Resident Relations Act)

To: _____
Address: _____
_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at[2]:
_____
_____
_____, New Mexico _____
in that on or about _____, _____ *(date)*, the following noncompliance occurred:
_____
_____
_____
(*describe the noncompliance specifically and in detail. Attach additional pages if necessary.*)

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the termination of the rental agreement.

[ ] **First notice.** If [~~this~~] you, the tenant, correct the noncompliance [~~is not corrected~~] within seven (7) days from the date of delivery [~~set out below~~] of this notice, the rental agreement will continue and you will be permitted to stay. If you do not correct the noncompliance within seven (7) days from the date of delivery, the owner may terminate the rental agreement and file in court to evict you. [~~shall be terminated and you shall be required to vacate the premises. Regardless of whether this noncompliance is corrected, if a second material noncompliance with the rental agreement or any separate agreement occurs within six (6) months of this initial noncompliance, the rental agreement will be terminated.~~]

If the owner files in court to evict you, you, the tenant, have the right to challenge the termination of the rental agreement by going to the court hearing to respond and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from your home.

Even if you correct the noncompliance, if there is a second material noncompliance with the rental agreement within six (6) months of the first noncompliance, the owner may terminate the rental agreement and file in court to evict you.

[ ] **Second notice.** You were given previous notice of noncompliance on _____ (*date*). [~~Therefore~~] The owner claims that you have been in material noncompliance twice or more within a [~~six month~~] six (6)-month period[~~. As a result the rental agreement shall~~] and will terminate the rental agreement in seven (7) days from the date of delivery [~~set out below~~] of this notice. [~~You must vacate~~] If you do not voluntarily leave the premises [~~no later than~~] by _____ (*insert date*), the owner will file in court to evict you, and you will receive a summons to appear in court. [~~Failure to vacate by this date will result in a legal action against you~~].

You have the right to challenge the termination of the rental agreement. If you want to challenge the termination of the rental agreement, you must go to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go to the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from the premises.

Dated this _____ day of _____, _____.

_____

(Owner) (Agent) (Resident)

Service of notice
[ ] personally delivered to resident

[ ] posted
[ ] mailed certified mail, return receipt requested

[ ] Delivered [ ] posted:	Mailed:
Time: _____	Time: _____
Date: _____	Date: _____
By[3]: _____	By[3]: _____

USE NOTES

1. The party giving notice should retain two (2) copies for possible court action. If this form is used by the resident some modifications will be necessary.

2. If leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than [~~12~~] twelve (12) units. *See* [~~Subsection C of Section 47-10-2 NMSA 1978~~] NMSA 1978, § 47-10-2(C).

3. Include the name of the person delivering, posting, or mailing the notice.

[As amended, effective September 2, 1997; April 6, 1998; as amended by Supreme Court Order No. _____, effective _____.]

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Thu, Sep 17, 2020 at 2:15 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Karie Taylor

Phone Number
5052275363

Email
karie@elevatedrentalsnm.com

Proposal Number
2020*023

Comment
Simply letting the tenant know that they cannot be evicted without a trial is good enough. There is no need for a 3 paragraph explanation.

Upload

Google Groups

Proposal 2020-023 - Comments by Senior Citizens' Law Office

Kathy Heyman <kheyman@sclonm.org> Sep 18, 2020 7:48 AM
Posted in group: **nmsupremecourtclerk**

The Senior Citizens' Law Office would like to submit the attached comments to Proposal 2020-023. Thank you.

Kathy Heyman
Administrative Director
Senior Citizens' Law Office, Inc.
4317 Lead Avenue SE, Suite A
Albuquerque, NM 87108
(505) 265-2300 ext. 209

The mission of the Senior Citizens' Law Office is to provide quality civil legal services to residents of central New Mexico over sixty years of age in order to uphold their rights, maximize their autonomy and to ensure that they receive the benefits to which they are entitled.

Funded by the City of Albuquerque Area Agency on Aging and New Mexico Civil Legal Services and Access to Justice Commissions.

SENIOR CITIZENS LAW OFFICE

Executive Director: Ellen Leitzer, Esq.

Telephone: (505) 265-2300
Facsimile: (505) 265-3600
Website: www.sclonm.org

4317 Lead Avenue SE, Suite A
Albuquerque, New Mexico 87108

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Secretary: Marsha Thole

September 18, 2020

Honorable Judith K. Nakamura, Chief Justice
Honorable Barbara J. Vigil, Senior Justice
Honorable Michael E. Vigil, Justice
Honorable C. Shannon Bacon, Justice
Honorable David K. Thomson, Justice

RE: Proposal 2020-023 - Comments in Support

To the Honorable Justices of the Supreme Court:

The Senior Citizens' Law Office supports these proposed changes to the standard Notice of Termination forms for landlord-tenant cases.

By adding language that helps explain the legal process to tenants, these forms will hopefully protect tenants from moving before it is necessary, and encourage them to avail themselves of their legal rights.

Our office further suggests that the forms include language encouraging the tenant to immediately seek legal advice. Given the short timeframes at issue, and how fact-specific many landlord-tenant disputes can be, it is to the tenant's benefit to be in a position to make an informed decision about how they wish to proceed. This would help encourage tenants to pursue meritorious defenses where available, and seek resolution where no defense exists. This will help to promote just outcomes or settlement of such cases.

In addition, we support the changes that are intended to make the language on these forms clearer and easier for a layperson to understand. We encourage the adoption of any changes that help tenants better understand their rights and options under the law.[1]

A potential eviction upends a tenant's life, and it is our experience that an eviction judgment can hurt a person's ability to obtain decent, affordable housing for years to come. Some landlords will outright refuse to lease to tenants who have recently been evicted. Yet, once an eviction case

[1] One of our staff members has offered the following suggestions:

- The Three-Day Notice phrasing, "If you choose to leave the premises, you must leave no later than ____" may be confusing to tenants, as it does not explain the relative benefits or drawbacks of leaving voluntarily.
- Suggested Seven-Day Notice phrasing: "If you do not go to the court hearing, the court may issue an order called a Writ of Restitution evicting you from the premises and may enter a Judgment awarding Plaintiff the amount of money claimed to be owed plus court costs and attorney's fees."

Funded by the City of Albuquerque Area Agency on Aging, NM Civil Legal Services and Access to Justice Commissions, and corporate and individual donors.

is filed, the timeframe from filing to being removed by Writ of Restitution is very short. We applaud any changes to these notice forms that will better advise tenants of the process and their rights.

The Senior Citizens' Law Office respectfully asks the Court to adopt these proposed changes.

Sincerely,

Ellen Leitzer
Executive Director

Google Groups

Comment in Support of Proposal 2020-023

Lindsay Cutler <lindsay@nmpovertylaw.org> Sep 18, 2020 10:59 AM
Posted in group: **nmsupremecourtclerk**

Hello Mr. Moya,

Please find the NM Center on Law & Poverty's comment in support of Proposal 2020-023, attached.

Sincerely,

Lindsay Cutler

Pronouns: She/Her

Attorney - Economic Equity Team

NM Center on Law and Poverty

Phone: (505)255-2840

Fax: (505)255-2778

lindsay@nmpovertylaw.org

THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL OR BY CALLING (505) 255-2840 AND DELETE THE MESSAGE. THANK YOU.

NM center on law and poverty

924 Park Ave SW, Ste C
Albuquerque, NM 87102
505.255.2840
nmpovertylaw.org

September 18, 2020

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: Public Comment in Support of Proposal 2020-023

Dear Chief Justice Nakamura,

On behalf of the New Mexico Center on Law & Poverty, we submit these comments in support of Supreme Court Proposal 2020-023 regarding amendments to Civil Forms 4-901 (Three-Day Notice of Non-Payment of Rent), 4-901A (Three-Day Notice of Substantial Violation of Rental Agreement), and 4-902 NMRA (Seven-Day Notice of Noncompliance with Rental Agreement).

The New Mexico Center on Law and Poverty is a non-profit legal and advocacy organization dedicated to advancing social and economic justice. Ensuring that New Mexicans have access to safe and affordable housing is one of our immediate priorities. We are committed to protecting and strengthening the right to housing for low-income New Mexicans during the global health crisis and beyond.

Between 2018 and 2019, New Mexico had the largest increase in homelessness nationwide (27%).[1] This crisis has only been exacerbated by the onset of the COVID-19 pandemic. Recent estimates predict that more than 105,000 families and households are at risk of eviction in the coming months because of loss of income due to the pandemic.[2] Our state leaders must take quick and bold measures to ensure that New Mexico's families stay housed and stay safe for the duration of this public health emergency. We thank the Supreme Court for taking swift action in issuing Orders 20-8500-007 and 20-8500-008 at the beginning of the pandemic which stay writs of restitution for families who have a demonstrated inability to pay rent. We strongly encourage the Court to adopt the proposed amendments to Civil Forms 4-901, 4-901A, and 4-902 which will provide additional and much needed protections for families who are renting and are at risk of eviction.

Currently, Forms 4-901, 4-901A, and 4-902 NMRA contain confusing and misleading information and are very difficult for a non-attorney tenant to understand. The forms that tenants receive

[1] Albuquerque Journal, *NM's Rise in Homelessness Highest in the Nation*, Rick Nathanson, January 9, 2020, available at: https://www.abqjournal.com/1408348/nms-rise-in-homelessness-tops-nation-hud-reports-27-increase-in-one-year.html#:~:text=The%20New%20Mexico%20Coalition%20to,counted%20in%20the%20city%20limits.
[2] Right to Counsel Resource Center, *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction*, https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOjN9 (last accessed September 14, 2020).

Advocating for equal rights, opportunities, and justice

when their landlords initiate an eviction against them do not make it clear that tenants have the right to go to court and present their side of the story to the judge. The forms also do not inform tenants that their landlord must go to court and get an eviction order signed by a judge before a tenant can be removed from their home. The proposed amendments to these forms make clear to tenants who receive them that they have the right to contest the termination of their rental agreement, but that they must appear at their court hearing and provide evidence of why they should be allowed to stay in their home in order to do so. The amendments also make clear to tenants that they do not have to vacate their home without a court hearing and an order signed by a judge.

The amendments to Forms 4-901, 4-901A, and 4-902 NMRA were written so a tenant would not need to seek the assistance of an attorney to understand the notice or what steps they need to take to stay in their home. This is especially important in light of the widespread and well-documented access to justice crisis in New Mexico. Prior to the pandemic, the Licensed Legal Technicians Workgroup noted in a 2019 Report to the Court that that "even an optimistic reading of the averages for New Mexico suggests that less than half of the state's population has access to the legal services enjoyed by the country as a whole, and that this scarcity is concentrated in the state's rural counties."[3] The legal needs of low-income New Mexicans, particularly low-income tenants, have grown exponentially as a direct result of the pandemic. The proposed amendments will help ensure that tenants who do not have access to an attorney are able to fully exercise their rights and can stay in their homes.

Without amendments to these important forms that make clear a tenant's rights and responsibilities, we will only continue a sharp increase in homelessness in New Mexico - a crisis our state cannot withstand. Accordingly, we urge the Court to adopt, on an emergency basis, Proposal 2020-023. Additionally, we urge the Court to ensure that, once adopted, the forms are translated into Spanish and other prevalent languages spoken in the respective judicial districts, consistent with federal Title VI language access requirements.

Sincerely,

/s/

Lindsay Cutler, Attorney,
Maria Griego, Attorney and Director of Economic Equity
New Mexico Center on Law and Poverty
lindsay@nmpovertylaw.org
maria@nmpovertylaw.org
(505) 255 2840

[3] Ad Hoc Licensed Legal Technicians Workgroup, "Innovation to Address the Access to Justice Gap" Dec. 2019 https://cms.nmcourts.gov/uploads/files/News/Report%20to%20Supreme%20Court-Ad%20Hoc%20Licensed%20Legal%20Technicians%20Workgroup.pdf.

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 12:24 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Brie Sillery

Phone Number
5055450050

Email
brie-s@nmceh.org

Proposal Number
2020-023

Comment
Comments submitted on behalf of the New Mexico Coalition to End Homelessness are attached.

Upload
Comments to NM Supreme Court.pdf

Comments to NM Supreme Court.pdf
110K

New Mexico Coalition to
End Homelessness

September 18, 2020

Submitted electronically http://supremecourt.nmcourts.gov/open-for-comment.aspx

Re: The Supreme Court's proposed amendments to Forms 4-901, 4-901A, and 4-902 NMRA.

The New Mexico Coalition to End Homelessness supports and encourages the changing of forms 4-901, 4-901A, and 4-902 to use language in the forms that better explains that process for tenants after receiving 3-day or 7-day notices, and that these in themselves are not eviction notices.

Many tenants that receive these notices are often intimidated and do not know how to navigate the eviction process. We ask that the notice states multiple times that the notice served is not an eviction notice and that they do not need to vacate immediately. Further, we hope that the process will be clearly detailed for tenants to know what their rights are, how to access legal assistance (such as from NM Legal Aid or NM Center for Law and Poverty), and how to best prepare their case for the court hearing.

The current status of the moratoria should also be indicated on the forms served to the tenant, which provide clarification on the guidance of the CDC moratorium and the NM Supreme Court's moratorium. A lot of misinformation has been distributed to renters throughout the COVID-19 pandemic, which resulted in misunderstandings of the protections for renters facing eviction.

Forms served to tenants should be available in multiple languages, with some form of responsibility imposed on the landlord to serve the notice to the tenant in their documented primary language.

Thank you for addressing this systemic issue and working to ensure all those that find themselves facing eviction are well aware of the process.

Sincerely,

Brie Sillery

Brie Sillery
Communications Strategist
The New Mexico Coalition to End Homelessness

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 1:29 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Steve Ross

Phone Number
5052553643

Email
sross@shcnm.org

Proposal Number
2020-023

Comment
comment attached

Upload
Response to NM Supreme court.docx

Response to NM Supreme court.docx
13K

Response to NM Supreme court

Supportive Housing Coalition of New Mexico (SHC) is both a landlord and a provider of rental assistance housing vouchers for people living with behavioral health issues and co-occurring diagnoses. Our organization supports proposed changes to the 3- and 7-day notices, not only for the people we serve, but as a humanistic approach to the issue of late rent payments. The current method bottlenecks housing programs, government programs, constituent services, case management, care coordinators, legal aid and other support service systems. For individuals, the current notices are very intimidating and limiting, thus many participants think they have to be completely moved-out within the 3- or 7-days, causing undue stress and anxiety to people who have already experienced the trauma of homelessness and/or housing insecurity. We do suggest keeping the wording that, *one cannot be evicted without a court order*, but the repetition that follows is not necessary and may be confusing. Because many of our participants do not understand the notices, staff members have to explain the process and calm their worries regarding these notices. SHC believes the proposed changes are a positive step forward in improving tenant/landlord relations as well as helping to sustain one's housing.

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 2:38 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Tony Dalton

Phone Number
5053021413

Email
daltonto@law.unm.edu

Proposal Number
2020-023

Comment
comment attached.

Upload
proposed form changes comments .pdf

proposed form changes comments .pdf
63K

PROPOSED REVISIONS TO THE CIVIL FORMS
PROPOSAL 2020-023

COMMENTS ON PROPOSED FORM 4-901

In the first paragraph after Total Due, change "the owner **will** terminate the rental agreement . . . ." to "the owner **may** terminate the rental agreement . . . ."

The form language is inconsistent with the statute. The form reads, "the owner **will** terminate the rental agreement . . . ." whereas the statute reads "the owner **may** terminate the rental agreement . . . ." NMSA 1978, § 47-8-33(D).

Delete the fourth paragraph after Total Due.

The fourth paragraph after Total Due basically rephrases parts of the second paragraph after Total Due and is unnecessary.

Language in second paragraph: "You cannot be evicted from your home without a court order."
Language in fourth paragraph: "You are NOT required to voluntarily vacate the premises before . . . the judge has issued an order in the case."

Language in second paragraph: "This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement."
Language in fourth paragraph: "You are NOT required to voluntarily vacate the premises before you have had the opportunity to go to the court hearing . . . ."

In the first paragraph under Total Due, change "this" to "Total due amount" or something more specific.

For a tenant, "this" may be ambiguous, especially because there is no explanation for the amounts listed above the paragraph. Does "this" mean the Total due amount? Just the unpaid rent amount? Or something else? If the tenant disputes the unpaid rent or a fee, does "this" comprise the disputed amounts?

Next to "$ _____", list the descriptions of each item or add blank lines for landlords to fill in.

The current form and proposed form do not provide space to list both the dollar amount and a description for the amount. See two possible options below:

Option #1

Unpaid rent:	$_____
Court costs:	$_____
Attorney's fees:	$_____
Late fees and other fees:	$_____

Total Due: **$_____**

Option #2

_____ $_____
_____ $_____
_____ $_____
_____ $_____

Total Due: **$_____**

COMMENTS ON PROPOSED FORM 4-901A

Delete the following sentence: "If you choose to leave the premises, you must leave no later than _____ (date)."

The date by when the tenant must leave the premises is determined by the delivery of notice. The date inserted by the landlord may not be the correct date. For example, the landlord might not understand that weekends and holidays do not count for the three-day period; if the landlord mails the notice, he or she can only guess when the notice was actually delivered to the tenant.

A possible option:
"If you choose to leave the premises, you must leave no later than three (3) days from the date of delivery of this notice."

COMMENTS ON PROPOSED FORM 4-902

Replace the wording in the last paragraph before dates and signature lines with the language used in Form 4-901A

The paragraph on this form is repetitive and should replaced with the succinct language found in Form 4-901A.

Language in proposed Form 4-902: "You have the right to challenge the termination of the rental agreement. If you want to challenge the termination of the rental agreement, you must go to the court hearing . . . ."
Language in Form 4-901A: You have the right to challenge the termination of the rental agreement by going to the court hearing . . . ."

Consider uniformity across forms. A sentence that appears in the last sentence of the paragraph before the date and signature lines also appears slightly modified form in Form 4-901 and Form 4-901A.

If the differences serve no valid purpose, the wording on the forms should match.

Language in proposed Form 4-901: If you do not **attend** the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from **the premises.**

Language in proposed Form 4-901A: If you do not **go to** the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from **your home**.

Language in proposed Form 4-902: If you do not **go to** the court hearing, the court may enter a judgment against you and issue a writ of restitution evicting you from **the premises.**

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 2:38 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Serge Martinez

Phone Number
5057386937

Email
serge.a.martinez@gmail.com

Proposal Number
2020-023

Comment
Comment attached

Upload
Comments on Proposed Changes to Forms.pdf

Comments on Proposed Changes to Forms.pdf
84K

September 18, 2020

RE: Proposed Changes to Form 4-901, Form 4- 901A, and Form 4-902

Dear Honorable Justices of the New Mexico Supreme Court:

We write in support of the proposed changes to Forms 4-901, 4-901A, and 4-902 NMRA. We are members of the UNM School of Law community who teach and work with clients in the area of landlord-tenant law.

The proposed changes to the forms are a welcome move to make the forms more accessible to tenants who are likely to be unfamiliar with the procedural nuances of the Uniform Owner-Resident Relations Act. We appreciate that the proposed forms use more accessible language. The proposed changes not only highlight for tenants that they have not been evicted until a court terminates their possession, but these changes also do a much better job explaining tenants' rights, giving some context to the legal proceedings the landlord may initiate, and reinforcing the importance of attending court hearings.

Any efforts to make court forms more useful to *pro se* litigants is important. This is particularly true in the context of eviction, where we regularly encounter misunderstandings and misperceptions about the law and how it affects tenants facing eviction. For example, it is common for a tenant to receive a 3-Day Notice or a 7-Day Notice and mistakenly conclude that they have already been evicted and must leave the residence. This disconnect between perception and law discourages tenants from addressing any breach, either by paying any rent due or curing a breach, and from appearing in court to raise defenses and their own claims. Clarifying the language in these notices as suggested in the revisions will help prevent tenants' mistaken self-evictions. The revisions further encourage tenants to appear in court, and clearly explain the consequences of failure to appear. This is always important, of course, but it is particularly important in our current public health emergency, when orders from this Court and other authorities may provide protections for tenants that can only be claimed by appearing before a judge.

These changes are particularly welcome in a moment when unprecedented numbers of New Mexico tenants are facing rent instability, and all signs point to greater numbers of tenants facing eviction in the near future. Forms that make it easier for tenants to understand their rights are valuable tools for tenants. We strongly support the proposed changes to Forms 4-901, 4-901A, and 4-902 NMRA.

Jena Ritchey, Clinical Law Student
Professor Elizabeth Elia
Professor Nathalie Martin
Professor Aliza Organick
Professor Serge Martinez

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 2:45 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Albuquerque Affordable Housing Coalition

Phone Number
3232198620

Email
abqaffordablehousingcoalition@gmail.com

Proposal Number
Proposal 2020-023

Comment
Please see attached letter.

Upload
AAHC comments on Supreme Court Changes.pdf

AAHC comments on Supreme Court Changes.pdf
69K

ALBUQUERQUE AFFORDABLE HOUSING COALITION

September 15, 2020

Submitted electronically http://supremecourt.nmcourts.gov/open-for-comment.aspx

Comments re: Proposal 2020-23 Tenants Rights in Eviction Processes, proposed amendments to Forms 4-901, 4-901A, and 4-902 NMRA.

The Albuquerque Affordable Housing Coalition supports changing forms 4-901, 4-901A, and 4-902 to use language in the forms that better explains that the 3-day or 7-day notices are not eviction notices.

Because such formal processes often intimidate the recipients, we suggest an additional line be included that reiterates: This is *not* an eviction notice.

We suggest this sentence stand alone rather than be embedded in a paragraph. While this may seem redundant, it often takes stating information multiple time for the information to become clear, and this is more necessary when the information causes anxiety.

It also critical that all people, regardless of immigration status, know there is process before they can be evicted, and language that affirms this applies to all people would help.

Although beyond the scope of the proposed changes, AAHC also comments that the forms are available in English with no requirement to attempt to offer information in language spoken by the head of household. This creates an additional burden and can lead to misunderstanding.

Sincerely,

The Albuquerque Affordable Housing Coalition

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com> Fri, Sep 18, 2020 at 3:41 PM
To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Riley Masse

Phone Number
5055458548

Email
rileym@nmlegalaid.org

Proposal Number
2020-023

Comment
Letter attached.

Upload
Comments on Proposed Form Changes 9.17.2020 - Masse.pdf

Comments on Proposed Form Changes 9.17.2020 - Masse.pdf
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New Mexico Legal Aid, Inc.

www.newmexicolegalaid.org
505 Marquette St. NW Ste. 700, Albuquerque, NM 87102
P.O. Box 25486, Albuquerque, NM 87125-5486

September 17, 2020

By email only to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: Proposed Revisions to the Civil Forms, Proposal 2020-023

Dear Honorable Justices:

We write to wholeheartedly support the proposed changes to civil forms under Rule 4-901 (Three-Day Notice of Nonpayment of Rent), Rule 4-901A (Three-Day Notice of Substantial Violation of Rental Agreement), and Rule 4-902 (Seven-Day Notice of Noncompliance with Rental Agreement). As the largest civil legal service provider in New Mexico, New Mexico Legal Aid sees hundreds of landlord/tenant cases each month—and the numbers have been increasing since the Coronavirus pandemic. We frequently see a misunderstanding of the process, and one of the major areas of misunderstanding arises from the use of the forms in their current state. Commonly, tenants are served with these forms and think—based on the current language of the forms—that they have received an eviction notice and have no right to challenge the landlord's claims. This means that tenants are deprived of their due process rights—particularly their right to challenge the eviction action in court—and are subsequently forced into an even more precarious housing situation.

We have seen a number of people who have received one of the notices in their current forms and have simply moved out based on the language of the form. Sometimes, this means loss of valuable subsidies like a Section 8 voucher. Sometimes, this means that a person with disabilities vacates a unit and is living on the street if they are not then able to secure new housing. Almost always, this means that the tenant's housing situation becomes more instable than it already was—it is difficult to find affordable, decent housing, especially on short notice and in the current market—and the tenant may find themselves living on the streets in the middle of a pandemic, or may find themselves renting inadequate, dangerous housing simply to have a roof over their heads. Children may be forced to change schools, increasing the mobility rate which has been shown to decrease successful education outcomes.

The housing insecurity that results from people being misled as to their rights affects not only those losing their housing, but their families and the community as a whole. In hard-hit areas such as McKinley County, we have seen devastating consequences when medically-fragile elders living on

reservations are compelled to take in children and grandchildren who have lost their housing, leading to overcrowding in homes that frequently also lack running water.

We recognize that many tenants – due to education, disability or language barriers – will be unable to read or understand these forms, no matter what changes are made. For most tenants, however, the proposed changes to the forms would clarify that tenants do not need to vacate the unit immediately and that they have a right to challenge the claims in court. This means more access to justice for our most vulnerable communities and more stable housing—a benefit for the whole community, including landlords and tenants alike.

Sincerely,

/s/ Riley Masse
/s/ Jean Philips
/s/ Tom Prettyman
/s/ Ben Zinke
/s/ Dawn Vernooy
/s/ Monica Corica
/s/ Julia Petrucelli
/s/ Gabrielle Johnson
/s/ Corinna Lazlo-Henry

NEW MEXICO LEGAL AID
HOUSING LAW PRACTICE GROUP

New Mexico Courts

Terri Saxon <suptls@nmcourts.gov>

[nmsupremecourtclerk-grp] Rule proposal comment

1 message

Arika Sanchez <arika.sanchez@nmcan.org> Fri, Sep 18, 2020 at 4:08 PM
Reply-To: arika.sanchez@nmcan.org
To: nmsupremecourtclerk@nmcourts.gov

Mr. Moya:

Please accept the attached document as public comment on Civil Forms Proposal 2020-023.

Thank you.

Arika

--

Arika E. Sanchez
Director of Policy and Advocacy

NMCAN
625 Silver Avenue SW, Suite 345, Albuquerque, NM 87102
505-217-0220 ext. 1003
www.nmcan.org
Partnering with Young People to Build Community, Promote Equity, and Lead Change

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NMCAN Public Comment - Civil Forms Proposal 2020-023.pdf
529K

625 Silver Avenue SW, Suite 345 | Albuquerque, New Mexico 87102
505-217-0220 | NMCAN.ORG

September 18, 2020

Joey D. Moya
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Via Email: nmsupremecourtclerk@nmcourts.gov

Re: Proposal 2020-023 Public Comment

Mr. Moya:

NMCAN is an organization that works with young people impacted by systems to improve their transition to adulthood. Through our work with young people ages 14-25 impacted by foster care, juvenile justice, and/or homelessness, we see that housing is an ongoing struggle for young people. Unfortunately, because these young people must transition to independent living at age 18, regardless of whether they are equipped with the knowledge, resources, and support necessary to do so, far too many of them face evictions — and its long term consequences.

NMCAN supports the proposed amendments to Forms 4-901, 4-901A, and 4-902 NMRA. The amendments provide clear language and more detail explaining the process, allowing tenants to make the decision of whether to contest the eviction. We have seen many young people who received these notices and have vacated the premises without realizing they had the right to contest the landlord's actions and could go to court.

To provide additional clarity for tenants, we offer the following recommendations:

- For Forms 4-901, 4-901A, 4-902, it would be helpful if a line can be added explaining what "a judgment against you" means, and its consequences.
- For Form 4-901, add a line explaining that if the tenant pays the amount due within three days from the date of delivery, the owner cannot terminate the rental agreement for nonpayment, and add, "If you choose to leave the premises, you must leave no later than *(date)*."
- For Forms 4-901A and 4-902, if possible, it would be helpful to add something like, "The court clerks may give you information about resources for legal assistance."

Thank you for your consideration of these comments.

Sincerely,

Arika E. Sánchez
Director of Policy and Advocacy
NMCAN