

[NEW MATERIAL]

1 4-966A

2 *[Standard mutual order of protection, Family Violence*
3 *Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]*

4 _____
5 JUDICIAL DISTRICT COURT
6 COUNTY OF _____
7 STATE OF NEW MEXICO

8 _____
9 _____
10 Petitioner

11 v. No. _____

12 _____
13 _____
14 _____
15 Respondent.

16 **MUTUAL ORDER OF PROTECTION¹**

17 *This order complies with the Violence Against Women Act,*
18 *18 U.S.C. Section 2265. This order shall be accorded full*
19 *faith and credit by the courts of every state and Indian*
20 *Tribe and shall be enforced as if it were the order of such*
21 *other State or Tribe.*

22 _____
23 _____
24 _____
25 THIS MATTER came before the court on the _____ day of
26 _____, _____ through a hearing on the petitioner's
27 and respondent's written requests for an order prohibiting
28 domestic abuse.

29 _____
30 The court, having determined that it has legal jurisdiction
31 over the parties and the subject matter, **FINDS, CONCLUDES AND**
32 **ORDERS:**

33 _____
34 *(check only applicable paragraphs)*

35 _____
36 **1. NOTICE AND APPEARANCES**

37 _____
38 Respondent received actual notice of the hearing and
39 had an opportunity to participate in the hearing.²
40 Petitioner received actual notice of the hearing and had
41 an opportunity to participate in the hearing.²

- 42 Respondent was present.
43 Respondent was properly served with a copy of
44 the petitioner's petition.
45 Respondent was represented by counsel.
46 Petitioner was present.
47 Petitioner was represented by counsel.
48 Petitioner was properly served with a copy of the
49 respondent's cross-petition, counter-petition or
50 other pleading.

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1 **2. FINDING OF DOMESTIC ABUSE**

2
3 An act of domestic abuse was committed by
4 respondent that necessitates an order of protection
5 against respondent; and

6
7 An act of domestic abuse was committed by petitioner
8 that necessitates an order of protection against
9 petitioner.

10
11 **3. DOMESTIC ABUSE PROHIBITED**

12
13 The respondent shall not abuse the petitioner or
14 members of petitioner's household.

15
16 The petitioner shall not abuse the respondent or
17 members of respondent's household.

18
19 "Abuse" means any incident by one party against the
20 other party or another household member resulting in
21 (1) physical harm; (2) severe emotional distress; (3)
22 bodily injury or assault; (4) a threat by petitioner or
23 respondent causing imminent fear of bodily injury to
24 the other or any household member; (5) criminal
25 trespass; (6) criminal damage to property; (7)
26 repeatedly driving by petitioner's or respondent's or a
27 household member's residence or work place; (8)
28 telephone harassment; (9) stalking; (10) harassment; or
29 (11) harm or threatened harm to children in any
30 manner set forth above.

31
32 Petitioner shall not ask or cause other persons to abuse
33 the respondent or any other household members.

34
35 Respondent shall not ask or cause other persons to
36 abuse the petitioner or any other household members.

37
38 **4. CONTACT PROHIBITIONS**

39
40 The parties shall stay _____ yards away from
41 each other, each other's homes and workplaces at all
42 times, unless at a public place, where they shall
43 remain _____ yards away from each other
44 except as specifically permitted by this order.

45
46 [] Petitioner and respondent shall not telephone, talk
47 to, visit or contact each other in any way except
48 as follows:
49

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1. The parties may contact each other by telephone regarding medical emergencies of minor child(ren);

2. _____

_____.

The parties may attend joint counseling sessions at the counselor's discretion.

(Unless the court has entered an order sealing a party's address, include address of residence and employment for each party)

Petitioner's addresses

(home address)
(work address)
(city)
(if applicable, tribe or pueblo)
(state and zip code)

Respondent's addresses:

(home address)
(work address)
(city)
(if applicable, tribe or pueblo)
(state and zip code)

5. COUNSELING

The [parties] [petitioner] [respondent] shall participate in, attend and complete counseling at _____ prior to _____
(date) [as recommended by _____
(name of agency)].

The [parties] [petitioner] [respondent] shall report to _____, for a drug [and] alcohol screen by _____, _____ *(date)* with the results returned to this court.

Other counseling requirements:

_____.

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1 **6. PROVISIONS RELATING TO CHILDREN**

2
3 [] The court's findings regarding the minor
4 child(ren) are addressed in the attached
5 Counseling, Custody, Support and Division of
6 Property Order³ of this Mutual Order of
7 Protection.
8

9 **7. PROVISIONS RELATING TO SUPPORT**

10
11 [] Temporary support shall be paid by respondent to
12 petitioner in the amount of \$_____ per
13 month payable _____.

14
15 [] Temporary support shall be paid by petitioner to
16 respondent in the amount of \$_____ per
17 month payable _____.

18
19 [] Respondent shall provide suitable alternative
20 housing to petitioner and any child(ren) to whom
21 the respondent owes a legal obligation of support.
22 This shall be provided as follows:

23 _____
24 _____
25 _____.

26
27 [] Petitioner shall provide suitable alternative
28 housing to respondent and any child(ren) to
29 whom the petitioner owes a legal obligation of
30 support. This shall be provided as follows:

31 _____
32 _____
33 _____.

34
35 **8. PROPERTY, DEBTS AND PAYMENTS OF MONEY**

36
37 [] Neither party shall transfer, conceal, encumber or
38 otherwise dispose of the other party's property or
39 the joint property of the parties except in the
40 usual course of business or for the necessities of
41 life. Each party shall account to the court for all
42 such transfers, encumbrances and expenditures
43 made by that party after the order is entered.

44
45 This means that you shall not give away, hide,
46 add debt to, sell or pawn the property.

47
48 [] The parties' property shall be temporarily
49 distributed as set forth in the attached Counseling,

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Custody, Support and Division of Property
Order³.

9. PARTIES SHALL NOT CAUSE VIOLATION

Petitioner and respondent shall refrain from any act the purpose or effect of which is to cause an act of non-compliance by the other.⁴

10. ADDITIONAL ORDERS

IT IS FURTHER ORDERED:⁵

_____.

11. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION

This order is effective upon filing with the clerk of the court.

This order [with the exception of the orders in Counseling, Custody, Support and Division of Property Order³, if any] shall continue until _____ (date), or until modified or rescinded by the court.

12. NOTICE TO LAW ENFORCEMENT AGENCIES

ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

The [petitioner] [respondent] is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or _____ shall be present during any property exchange.

This order supersedes prior orders in _____ County, State of _____, Cause No. _____ to the extent that there are contradictory provisions.

13. NOTICE TO PETITIONER AND RESPONDENT

A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable

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1 by imprisonment of up to 364 days and a fine of
2 up to \$1000.00. A violation of that order may
3 also result in a finding of civil contempt.
4

5 B. If you are "intimate partners" (you are married to
6 each other, live with each other or have lived with
7 each other, or if you have had a child together),
8 federal law prohibits you from possessing or
9 transporting firearms or ammunition while this
10 order is in effect. If you have a firearm or
11 ammunition, you should immediately dispose of
12 the firearm or ammunition. Violation of this law
13 is a federal crime punishable by imprisonment for
14 up to 10 years and a fine of up to \$250,000.
15

16 C. If you are not a citizen of the United States, entry
17 of this order may have a negative effect on your
18 application for residency or citizenship.
19

20 D. This order does not serve as a divorce and does
21 not permanently resolve child custody or support
22 issues.
23

24 E. If you violate any part of this order, you may be
25 arrested, held in contempt of court, fined and
26 jailed.
27

28 **14. RECOMMENDATIONS**
29

30 I have:

- 31 reviewed the pleadings for order of protection;
32 conducted hearings on the merits of the request;
33 after notice and hearing as indicated in this order

34 I prepared this order as my recommendation to
35 the district court judge regarding disposition of
36 requests for order of protection.
37
38

39 _____
40 Signed
41

42 _____
43 Title
44

45 Court's telephone number:
46 _____
47

48
49 **SO ORDERED:**

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1 _____
2 _____
3 _____
4 District Judge Date _____

5
6 A copy of this order was hand delivered faxed
7 mailed to
8 respondent respondent's counsel on
9 _____ (date).⁶

10
11 A copy of this order was hand delivered faxed
12 mailed to
13 petitioner's petitioner's counsel on
14 _____ (date).

15
16
17 _____
18 Signed

19
20 _____
21
22 Title

23
24 USE NOTES

- 25
26 1. If both petitioner and respondent have
27 committed acts of abuse and both
28 petitioner and respondent have filed a
29 petition or counter-petition, this form
30 may be used instead of using both
31 Forms 4-965 and 4-966. This mutual
32 order of protection is binding on the
33 respondent as well as the petitioner and
34 upon findings by the court of abuse by
35 both petitioner and respondent is
36 entitled to full faith and credit. *See* 18
37 U.S.C. Section 2261(c) and Section
38 40-13-6(D) NMSA 1978. Form 4-965
39 provides an appropriate order of
40 protection against respondent and Form
41 4-966 provides an appropriate order
42 against the petitioner. Form 4-970 is
43 used instead of this Form 4-966A if a
44 counter-petition is not filed or the court
45 does not make a specific finding of
46 abuse after a hearing of which the
47 respondent received actual notice and
48 had an opportunity to participate.
49

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1 Absent the exigent circumstance that the misdemeanor is
2 committed in the presence of the officer, *id.*, ("If an officer
3 observes the person arrested committing a felony, exigency
4 will be presumed."), the New Mexico Constitution appears
5 to bar blanket authority to make warrantless arrests for
6 misdemeanors committed outside the presence of the
7 officer.
8

9 The legislature, of course, lacks power to provide by
10 statute for an arrest procedure that violates the New Mexico
11 Constitution. *Campos v. State*, 117 N.M. 155, 158, 870 P.2d
12 117, 120 (1994). To avoid having the Supreme Court give
13 approval to a form containing language of questionable
14 constitutional validity, the Committee did not use the
15 statutory language in the portion of the Final Order
16 describing the power of a law enforcement officer to make
17 a warrantless arrest for the misdemeanor crime (Section
18 40-13-6(D) NMSA 1978), of violating the Final Order of
19 Protection. The Committee substituted more general
20 language, which does not prejudice the constitutional issue.
21

22 The general provisions of the order of protection,
23 including injunctive orders, "shall continue until modified
24 or rescinded . . . or until the court approves a subsequent
25 consent agreement. . . ." Section 40-13-6(B) NMSA 1978.
26 In contrast, "[a]n order of protection . . . involving custody
27 or support shall be effective for a fixed period of time not to
28 exceed six months". *Id.* The custody or support "order may
29 be extended for good cause upon motion . . . for an
30 additional period of time not to exceed six months", *id.*,
31 unless "the order supersedes or alters prior orders of a
32 court" pertaining to child custody or child support. *See*
33 Section 40-13-5(C) NMSA 1978. In the latter situation,
34 "the court may enter an initial order of protection, but the
35 portion of the order dealing with child custody or child
36 support will then be transferred to the court that has or
37 continues to have jurisdiction over the pending or prior
38 custody or support action". *Id.*

39 DBD::DB2::st execute failed: [IBM][CLI
40 Driver][DB2/6000] SQL0530N The insert or update value
41 of the FOREIGN KEY
42 "DBUSER.BILLDETAIL.SQL980508102800170" is not
43 equal to any value of the parent key of the parent table.
44 SQLSTATE=23503
45