

1 4-970

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

7 _____
8 Petitioner

9 v.

No. _____

10 _____
11 Respondent.
12

13 **STIPULATED MUTUAL ORDER OF PROTECTION¹**
14 **[NON-REGISTRY]**

15 *This is not an order of protection under 18 U.S.C. Section*
16 *922 or 18 U.S.C. Section 2265.*
17

18
19 THIS MATTER came before the court on the ____ day of
20 _____, _____, upon agreement of the parties to
21 the entry of an order.
22

23 The court, having determined that it has legal jurisdiction
24 over the parties and the subject matter, **FINDS, CONCLUDES AND**
25 **ORDERS:**
26

27 *(check only applicable paragraphs)*
28

29 **1. NOTICE AND APPEARANCES**

30 This order was entered on stipulation of the parties.²
31

32
33 **2. EFFECT OF STIPULATION TO MUTUAL ORDER OF PROTECTION**

34 Violation of this order can have serious consequences,
35 including:
36

37
38 A. If you violate the terms of this order, you may be
39 charged with a misdemeanor, which is punishable
40 by imprisonment of up to 364 days and a fine of
41 up to \$1,000.
42

43 B. You may be found to be in contempt.
44

45 C. If you are not a citizen of the United States, entry
46 of this order may have a negative effect on your
47 application for residency or citizenship.
48

49 **3. DOMESTIC ABUSE PROHIBITED**

50 The respondent shall not abuse the petitioner or
51 members of petitioner's household.
52

1 The petitioner shall not abuse the respondent or
2 members of respondent's household.
3

4 "Abuse" means any incident by one party against the
5 other party or another household member resulting in
6 (1) physical harm; (2) severe emotional distress; (3)
7 bodily injury or assault; (4) a threat by petitioner or
8 respondent causing imminent fear of bodily injury to
9 the other or any household member; (5) criminal
10 trespass; (6) criminal damage to property; (7)
11 repeatedly driving by petitioner's or respondent's or a
12 household member's residence or work place; (8)
13 telephone harassment; (9) stalking; (10) harassment; or
14 (11) harm or threatened harm to children in any
15 manner set forth above.
16

17 Petitioner shall not ask or cause other persons to abuse
18 the respondent or any other household members.
19

20 Respondent shall not ask or cause other persons to
21 abuse the petitioner or any other household members.
22

23 **4. CONTACT PROHIBITIONS**
24

25 The parties shall stay _____ yards away from
26 each other, each other's homes and workplaces at all
27 times, unless at a public place, where they shall
28 remain _____ yards away from each other
29 except as specifically permitted by this order.
30

31 [] Petitioner and respondent shall not telephone, talk
32 to, visit or contact each other in any way except
33 as follows:
34

35 1. The parties may contact each other by
36 telephone regarding medical emergencies of
37 minor children;
38

39 2. _____
40 _____
41 _____
42 _____.
43

44 [] The parties may attend joint counseling sessions
45 at the counselor's discretion.
46

47 *(Unless the court has entered an order sealing a party's address, include*
48 *address of residence and employment for each party)*
49

50 **Respondent's addresses:**

51 _____ *(home address)*

1 _____ (work address)
2 _____ (city)
3 _____ (if applicable,
4 _____ tribe or
5 _____ pueblo)
6 _____ (state and zip
7 _____ code)

8
9 **Petitioner's addresses**

10 _____ (home address)
11 _____ (work address)
12 _____ (city)
13 _____ (if applicable,
14 _____ tribe or
15 _____ pueblo)
16 _____ (state and zip
17 _____ code)

18
19 **5. COUNSELING³**

20
21 The petitioner shall participate in, attend and
22 complete counseling at _____ prior
23 to _____ (date) [as recommended by
24 _____ (name of agency)].

25
26 The respondent shall participate in, attend and
27 complete counseling at _____ prior
28 to _____ (date) [as recommended by
29 _____ (name of agency)].

30
31 The petitioner shall report to
32 _____, for a drug [and]
33 alcohol screen by _____, _____ (date)
34 with the results returned to this court.

35
36 The respondent shall report to
37 _____, for a drug [and]
38 alcohol screen by _____, _____ (date)
39 with the results returned to this court.

40
41 Other counseling requirements:
42 _____
43 _____
44 _____.

45
46 **6. CUSTODY³**

47
48 A. The [petitioner] [respondent] shall have
49 temporary legal custody of the following
50 child(ren):
51 _____

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- _____
- _____.
- B. [Petitioner] [Respondent] shall have physical custody of the above child(ren) at all times, except that [respondent] [petitioner] shall have contact as follows:
- No contact, and stay _____ yards from the child(ren)'s school at all times.
- Contact at the following specified times:

_____.
- The children shall be exchanged for visitation at _____ on _____.
- Referred to _____ for evaluation or mediation, with appropriate safeguards to protect the parties and allow them to mediate fairly. Contact with the child(ren) is deferred until findings of mediator or counselor.
- C. Custody, visitation and child support will be continued in accordance with the court order in _____ County, State of _____, Cause No. _____.
- D. Other

_____.
- E. The [parties] [respondent] [petitioner] shall not hide the child(ren) from the other parent or permanently remove the child(ren) from the State of New Mexico. Neither parent should speak negatively about the absent parent in front of the children or question the child(ren) about the other parent.
- F. Each parent shall immediately notify the

1 other parent about any emergency condition
2 of the child(ren).
3

4 **7. PROVISIONS RELATING TO SUPPORT³**

5
6 Temporary support shall be paid by respondent to
7 petitioner in the amount of \$_____ per
8 month payable _____.
9

10 Respondent shall provide suitable alternative
11 housing to petitioner and any children to whom
12 the respondent owes a legal obligation of support.
13 This shall be provided as follows:
14 _____
15 _____
16 _____.

17
18 All child support payments shall be made by
19 check or money order made payable to and sent to
20 _____.
21

22 A separate wage withholding order shall be
23 entered and directed to (*employer*)
24 _____, at
25 _____ (*address*).
26

27 **8. PROPERTY, DEBTS, PAYMENTS OF MONEY³**

28
29 Neither party shall transfer, conceal, encumber or
30 otherwise dispose of the other party's property or
31 the joint property of the parties except in the
32 usual course of business or for the necessities of
33 life. Each party shall account to the other party
34 for all such transfers, encumbrances and
35 expenditures made by that party after the order is
36 entered.
37

38 This means that you shall not give away, hide,
39 add debt to, sell or pawn the property.
40

41 [Petitioner] [Respondent] shall have temporary
42 physical custody of the following physical assets⁴:
43 _____
44 _____
45 _____.

46
47
48 **9. ADDITIONAL ORDERS**

49 **IT IS FURTHER ORDERED⁵:**
50 _____
51

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_____.

10. 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.⁶

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 Form 4-967, "Custody, Support and Division of Property Order", if any] shall continue until _____ (date), or until modified or rescinded by the court.

12. NOT TO BE ENTERED IN STATE OR FEDERAL REGISTRY

This order shall not be entered into a national, state or tribal domestic violence registry or other national information system.

13. 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.

14. NOTICE TO PETITIONER AND RESPONDENT

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

1 **15. AGREEMENT OF PARTIES**

2
3 Without admitting that domestic abuse has occurred,
4 the parties stipulate to the entry of this order.
5

6 _____
7
8 _____
9

10 Petitioner's signature
11 signature

Respondent's

12 _____
13
14 _____
15

16
17 Petitioner's counsel, if any
18 counsel, if any

Respondent's

19
20 _____
21
22 _____
23

24 Date

Date

25
26 **16. RECOMMENDATIONS**

27 I have:

- 28 reviewed the pleading for order of protection;
29 I prepared this order as my recommendation to
30 the district court judge regarding disposition of
31 requests for order of protection.
32
33

34
35 _____
36 Signed

37
38 _____
39 Title

40 Court's telephone number:
41
42 _____
43

44
45 **SO ORDERED.**

46
47
48 _____
49 District Judge

50
51 A copy of this order was hand delivered faxed

1 mailed to
2 respondent respondent's counsel on
3 _____ (date).⁷
4

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

10
11 _____
12 Signed

13
14 USE NOTES

- 15
16 1. This form may be used if both parties
17 have stipulated to the entry of a
18 stipulated mutual order of protection
19 without any findings of abuse. This
20 stipulated mutual order of protection is
21 binding on the respondent as well as the
22 petitioner.
23

24 This order is not entitled to full faith
25 and credit under 18 U.S.C. Section
26 2265(c) or Section 40-13-6(D) NMSA
27 1978. If enforcement, other than that
28 provided for by the Family Violence
29 Protection Act, Sections 40-13-1 to 40-
30 13-8 NMSA 1978, is appropriate there
31 are three orders which are entitled to
32 full faith and credit each of which
33 requires a finding of abuse. Form
34 4-965 is used for an order of protection
35 against respondent and Form 4-966 is
36 used for an order of protection against
37 the petitioner. When a petition and a
38 counter-petition have been filed and the
39 court finds each party is entitled to an
40 order of protection, the court may either
41 use both Forms 4-965 and 4-966 or the
42 court may use Form 4-966A. See also
43 Section 40-13-6(D) NMSA 1978 for
44 the requirements of state law relating to
45 full faith and credit. This order is
46 binding on the respondent as well as the
47 petitioner.
48

- 49 2. This order may be entered only upon
50 stipulation of the parties without a
51 hearing. If a hearing is held on the

1 issue of abuse, use Form 4-965, 4-966
2 or 4-966A, as appropriate. If a hearing
3 is held on any other issue, Form 4-967
4 is used.

- 5
6 3. Complete this part only if the parties
7 stipulate to Paragraphs 5, 6, 7, and 8
8 without a hearing. If a hearing is held
9 on counseling, custody, support or
10 property issues, Form 4-967, "Custody,
11 Support and Division of Property
12 Order" must be used.
- 13
14 4. List personal assets. A separate schedule
15 may be attached to this order.
- 16
17 5. If appropriate, an order providing for
18 restitution may be included in this
19 paragraph.
- 20
21 6. A violation of this provision may result
22 in a finding of contempt of court,
23 punishable by fine, imprisonment or
24 both. Section 40-13-6 NMSA 1978
25 also provides that a person convicted of
26 violating an order of protection enter
27 under the Family Violence Protection
28 Act is guilty of a misdemeanor which is
29 punishable by imprisonment of up to
30 364 days and a fine of up to \$1,000.
- 31
32 7. The parties may be served at the time this
33 order is issued. If a party is not present at
34 the time this order is issued, service upon the
35 party shall be made by delivering a copy to
36 the party. *See* Section 40-13-6(A) NMSA
37 1978.

38
39 [Approved, effective November 1, 1999 until November 1,
40 2000.]

41
42 **COMMITTEE COMMENT**

43
44 This Stipulated Mutual Order of Protection is not the
45 same as a Mutual Order of Protection entered pursuant to
46 Form 4-966A. This order provides three and sometimes
47 four fewer protections to the parties than does the Form 4-
48 966A Mutual Order of Protection. The decreased
49 protection is the result of the fact that the order is not based
50 upon findings of abuse, but is entered without reference to
51 whether abuse has occurred. Nonetheless, there may be

1 occasions when the parties and the court are satisfied that
2 this Stipulated Mutual Order of Protection provides
3 adequate relief to the parties.
4

5 The general provisions of the order of protection,
6 including injunctive orders, shall "continue until modified
7 or rescinded . . . or until the court approves a subsequent
8 consent agreement. . . ." Section 40-13-6(B) NMSA 1978.
9 In contrast, "[a]n order of protection . . . involving custody
10 or support shall be effective for a fixed period of time not to
11 exceed six months". *Id.* The custody or support "order may
12 be extended for good cause upon motion . . . for an
13 additional period of time not to exceed six months", *id.*,
14 unless "the order supersedes or alters prior orders of a
15 court" pertaining to child custody or child support. *See*
16 Section 40-13-5(C) NMSA 1978. In the latter situation,
17 "the court may enter an initial order of protection, but the
18 portion of the order dealing with child custody or child
19 support will then be transferred to the court that has or
20 continues to have jurisdiction over the pending or prior
21 custody or support action". *Id.*
22

23 **Factual Distinction Between Mutual Order of Protection and Stipulated Mutual**
24 **Order of Protection.**
25

26 The core factual difference between the Form 4-966A
27 Mutual Order of Protection and this Stipulated Mutual
28 Order of Protection is that Form 4-966A requires the court
29 to make findings that each party has committed an act of
30 domestic abuse. In contrast, this order is entered by the
31 court with no finding of domestic abuse by either party, but
32 rather, is based solely on the stipulation of the parties that,
33 without admitting to acts of abuse, each party is willing to
34 have the restraining order entered against that party in
35 return for the entry of an order of protection against the
36 other party.
37

38 **Stipulated Mutual Order of Protection Not Entitled to Full Faith and Credit**
39

40 Because the use of this form does not require that the
41 respondent file a counter petition seeking abuse, and also
42 because the court "d[oes] not make specific findings that
43 each party was entitled to such an order," 28 U.S.C. Section
44 2265 (c)(1) and (c)(2), this Stipulated Mutual Restraining
45 Order is not entitled to Full Faith and Credit under federal
46 law, 28 U.S.C. Section 2265. In addition, New Mexico law
47 bars the grant of Full Faith and Credit to New Mexico
48 orders under these circumstances. Section 40-13-6(D)
49 NMSA 1978.
50

51 In reaching this conclusion, the committee

1 acknowledges that the broad definition of a protective order
2 in the statute, *see* 18 U.S.C. Section 2266, may be met by a
3 stipulated order, but concluded that the additional
4 requirement that the protective order must also include
5 "specific findings" requirement of Section 2265(c)(2) is not
6 satisfied by mere agreement of the parties to stipulate to the
7 entry of an order of protection with no finding that either
8 party has committed an act of abuse.

9
10 **Stipulated Mutual Order of Protection Not Placed in any Federal, State or Tribal**
11 **Registry**

12
13 New Mexico has a computerized registry of orders of
14 protection available to law enforcement officials. The
15 federal government also has a registry for orders of
16 protection. Orders entered in the state registry are often
17 forwarded to the federal registry. No statute mandates that
18 all such orders be registered in the state registry or the
19 federal registry. Placement of orders in the state or federal
20 registry can have serious negative consequences for parties.
21 The committee is of the view that parties (most often acting
22 *pro se*) who stipulate to entry of a mutual order of protection
23 without admitting abuse should not be subject to such
24 consequences. For this reason, this form Stipulated Mutual
25 Order of Protection directs that the order not be entered in
26 any national, state or tribal registry.

27
28 **Brady Bill Firearm Ban Does Not Apply if There is no Hearing**

29
30 The so-called "Brady Bill", 18 U.S.C. Section 922,
31 prohibits a person who is the subject of a court order
32 prohibiting abuse from possessing a firearm or ammunition
33 if the order meets the requirements set forth in the act. The
34 applicable provision does not require a finding of abuse, but
35 merely an other that "explicitly prohibits the use of physical
36 force against [an] intimate partner." 18 U.S.C. Section
37 922(g)(8)(c)(ii).

38
39 This Stipulated Order of Protection Against
40 Respondent could qualify as a trigger for the federal firearm
41 ban if a hearing is held prior to its entry. However, the act
42 has a separate specific requirement that also must be met
43 before the Brady Bill ban is effective: Only an Order that
44 "was issued after a hearing of which such person received
45 actual notice and at which such person had an opportunity
46 to participate" will trigger the federal firearm ban. 18
47 U.S.C. Section 922(g)(8)(A).
48 DBD::DB2::st execute failed: [IBM][CLI
49 Driver][DB2/6000] SQL0530N The insert or update value
50 of the FOREIGN KEY
51 "DBUSER.BILDETAIL.SQL980508102800170" is not

1 equal to any value of the parent key of the parent table.
2 SQLSTATE=23503
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