

New Mexico Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination - Jurisdiction

1. Initial Custody Determination – **N.M. St. Ann. 40-10A-201** (https://law.justia.com/codes/new-mexico/2006/nmrc/jd_40-10a-201-ec4d.html)

Permissible if:

1. this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
2. a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 207 or 208 [40-10A-207 or 40-10A-208 NMSA 1978] and:
 - (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
 - (B) substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;
3. all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 207 or 208 [40-10A-207 or 40-10A-208 NMSA 1978]; or
4. no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3). (b)
5. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

[“A child-custody determination made by a court of this state that had jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act [40-10A-101 NMSA 1978] binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 108 [40-10A-108 NMSA 1978] or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.” – N.M. St. Ann. 40-10A-106 (<https://law.justia.com/codes/new-mexico/2013/chapter-40/article-10a/article-1/section-40-10a-106/>)]

1. Temporary Emergency Jurisdiction relating to Child Custody – See **N.M. St. Ann. 40-10A-204** (https://law.justia.com/codes/new-mexico/2006/nmrc/jd_40-10a-204-ec53.html)

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

Custody Determination – Service/Notification Requirements

Service Requirements (<http://www.lrcvaw.org/laws/nmuccjea.pdf>) § 40-10A-108.

Notice to persons outside state (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. (b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made. (c)

Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Paternity and Child Support Proceeding – Jurisdiction

Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – N.M. St. Ann. 40-6A-201

(<https://codes.findlaw.com/nm/chapter-40-domestic-affairs/nm-st-sect-40-6a-201.html>)

Jurisdiction permitted over non-resident individual if:

1. the individual is personally served with notice within this state;
2. the individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. the individual resided with the child in this state;
4. the individual resided in this state and provided prenatal expenses or support for the child;
5. the child resides in this state as a result of the acts or directives of the individual;
6. the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
7. the individual asserted parentage in the putative father registry maintained in this state by the department of health; or
8. there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
9. The bases of personal jurisdiction set forth above or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of Section 40-6A-611 or 40-6A-615 NMSA 1978 are met.

Paternity and Child Support Proceeding – Service/Notification Requirements

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Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Child Abuse/Neglect Proceeding – Jurisdiction

Child Abuse/Neglect/Dependency Proceedings

- “When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication.” N.M. Stat. 32A-4-18-A (https://law.justia.com/codes/new-mexico/2006/nmrc/jd_32a-4-18-d523.html)

Child Abuse/Neglect Proceeding – Service/Notification Requirements

- § 40-10A-309. Service of petition and order Except as otherwise provided in Section 311 [40-10A-311 NMSA 1978], the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.
- “The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.” N.M. Stat. 32A-4-18-B (https://law.justia.com/codes/new-mexico/2006/nmrc/jd_32a-4-18-d523.html)
- “Within thirty days after a child is taken into custody by law enforcement, or when the department files a petition seeking legal custody of the child, whichever occurs first, the department shall exercise due diligence and make reasonable efforts to identify and provide notice to all grandparents; all parents of a sibling of the child, when the parent has legal custody of the sibling; and other adult relatives of the child, including adult relatives suggested by the parents, unless such notice would be contrary to the best interests of the child due to family or domestic violence.” N.M. Stat. 32A-4-17.1 (<https://law.justia.com/codes/new-mexico/2017/chapter-32a/article-4/section-32a-4-17.1/>)

Divorce and Legal Separation – Jurisdiction

Sufficient contacts with state exist to confer jurisdiction over non-resident defendant “with respect to actions for divorce, separate maintenance or annulment, the circumstance of living in the marital relationship within the state, notwithstanding subsequent departure from the state, as to all obligations arising from alimony, child support or real or personal property settlements under Chapter 40, Article 4 NMSA 1978 if one party to the marital relationship continues to reside in the state.” N.M. St. 38-1-16(A)(5) (<https://codes.findlaw.com/nm/chapter-38-trials/nm-st-sect-38-1-16.html>)

Divorce and Legal Separation – Service/Notification Requirements

Service may be accomplished generally: (https://www.nmd.uscourts.gov/sites/nmd/files/local_rules/2014-December-01_Local%20Rules%20of%20Civil%20Procedure_Amended%2012.1.2014_0.pdf)

- Process shall be served in a manner reasonably calculated to apprise the defendant of the action and to “afford a reasonable opportunity to appear and defend.” N.M. R. Civ. P. 1-004 (E)(1)
- “Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that” defendant or other authorized person signs and accepts service. N.M. R. Civ. P. 1-004 (E)(3)
- Personal Service may be affected by:
- Service on the individual personally, or if refused, by leaving the process at a location where the individual has been found. N.M. R. Civ. P. 1-004 (F)(1)(a)
- If, after attempts of personal service, and defendant has not signed or accepted, service may be made by: N.M. R. Civ. P. 1-004 (F)(2)

- delivering a copy of the process to some person residing at the usual place of abode of defendant who is over the age of 15 and by mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process; or
- in the event the above fail, service of process may be made by delivering a copy of the process at the actual place of business or employment of the defendant to the person apparently in charge thereof and by mailing a copy of the summons and complaint by first-class mail to the defendant at the defendant's last known mailing address and at the defendant's actual place of business or employment.
- In a manner approved by court upon affidavit showing that service cannot reasonably be made:
- The court may order service by any method, including publication, reasonably calculated to apprise the defendant of the existence of the action and afford reasonable opportunity to appear and defend.

N.M. R. Civ. P. 1-004 (J)

Adoption Proceeding – Jurisdiction

The petition for adoption shall be served by the petitioner on the following, unless it has been previously waived in writing: N.M. St. 32A-5-27-A (<https://codes.findlaw.com/nm/chapter-32a-childrens-code/nm-st-sect-32a-5-27.html>).

- (1) the department, by providing a copy to the court clerk for service pursuant to Section 32A-5-7 NMSA 1978;
- (2) any person, agency or institution whose consent or relinquishment is required by Section 32A-5-17 NMSA 1978 , unless the notice has been previously waived;
- (3) any acknowledged father of the adoptee;
- (4) the legally appointed custodian or guardian of the adoptee;
- (5) the spouse of any petitioner who has not joined in the petition;
- (6) the spouse of the adoptee;
- (7) the surviving parent of a deceased parent of the adoptee;
- (8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;
- (9) any person in whose home the child has resided for at least two months within the preceding six months;
- (10) the agency or individual authorized to investigate the adoption under Section 32A-5-13 NMSA 1978; and
- (11) any other person designated by the court.

Notice shall not be served on the following: N.M. St. 32A-5-27-B.

- (1) an alleged father; and
- (2) a person whose parental rights have been relinquished or terminated.

The following provisions determine who must provide consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico. N.M. St. 32A-5-17 (<https://law.justia.com/codes/new-mexico/2011/chapter32A/article5/section32A-5-17/>)

- (1) the adoptee, if fourteen years of age or older, except when the court finds that the adoptee does not have the mental capacity to give consent;
- (2) the adoptee's mother;
- (3) the adoptee's proposed adoptive parent;
- (4) the presumed father of the adoptee;
- (5) the adoptee's acknowledged father;

- (6) the department or the agency to whom the adoptee has been relinquished that has placed the adoptee for adoption or the department or the agency that has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and
- (7) the guardian of the adoptee's parent when, pursuant to provisions of the Uniform Probate Code, that guardian has express authority to consent to adoption.

Consent to adoption or relinquishment of parental rights are not required from the following persons:

N.M. St. 32A-5-19. (<https://codes.findlaw.com/nm/chapter-32a-childrens-code/nm-st-sect-32a-5-19.html>)

- A. a parent whose rights with reference to the adoptee have been terminated pursuant to law;
- B. a parent who has relinquished the child to an agency for an adoption;
- C. a biological father of an adoptee conceived as a result of rape or incest;
- D. a person who has failed to respond when given notice pursuant to the provisions of Section 32A-5-27 NMSA 1978; or
- E. an alleged father who has failed to register with the putative father registry within ten days of the child's birth and is not otherwise the acknowledged father.

Adoption Proceeding – Service/Notification Requirements

See Adoption Proceeding Jurisdiction Section.

Domestic Violence – Jurisdiction

Domestic Violence Protection Order – **N.M. St. 40-13**

(<https://thirddistrictcourt.nmcourts.gov/uploads/files/family%20violence%20protection%20act.pdf>)

A domestic violence order of protection is a type of restraining order issued to protect victims of domestic violence under New Mexico's Family Violence Protection Act.

Jurisdiction – Manner of seeking and filing protective orders.

- “A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.” **N.M. St. 40-13-3 (A)**
- “‘court’ means the district court of the judicial district where an alleged victim of domestic abuse resides or is found” **N.M. St. 40-13-2 (C)**
- “The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.” **N.M. St. 40-13-3 (B)**
- “The petition shall state whether any other domestic action is pending between the petitioner and the respondent.” **N.M. St. 40-13-3 (C)**
- “An action brought under the Family Violence Protection Act is independent of any proceeding for annulment, separation or divorce between the parties.” **N.M. St. 40-13-3 (E)**
- Except for petitions alleging stalking or sexual assault, the alleged perpetrator of domestic abuse must be a household member or the petition will be dismissed. **N.M. St. 40-13-4(C)**
- “If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.” **N.M. Stat. 40-13-5 (C)**
- State courts give full faith and credit to orders of protection issued by courts of other states or tribal courts, unless certain steps enumerated in this section are not met. **N.M. Stat. 40-13-6**

Temporary Order of Protection N.M. St. 40-13-4

(<https://thirddistrictcourt.nmcourts.gov/uploads/files/family%20violence%20protection%20act.pdf>)

- (A) Upon the filing of a petition for order of protection, the court shall:
- immediately grant an ex parte temporary order of protection if there is probable cause;
- (2) serve the temporary order of protection and notice of hearing on the alleged perpetrator of the domestic abuse;
- (3) hold a hearing on the question of continuing the order within 10 days of grant of the temporary order.

Order of Protection N.M. St. 40-13-5

(<https://thirddistrictcourt.nmcourts.gov/uploads/files/family%20violence%20protection%20act.pdf>)

- “Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party to refrain from abusing the protected party or any other household member.”
- As part of the protection order, the court may:
 - o Grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing;
- Award temporary custody of any children involved;
- Order that the restrained party shall not initiate contact with the protected party;
- Restrain a party from transferring, concealing, or disposing of the other party’s property or joint property; or
- Order other injunctive relief as the court deems necessary for the protection of a party.

Domestic Violence– Service/Notification Requirements

See Domestic Violence Jurisdiction Section.

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