

## New Mexico Divorce Laws

### Chapter 40 Domestic Affairs

#### Article 3 Property Rights

##### 40-3-8. Classes of property.

A. "Separate property" means:

- (1) property acquired by either spouse before marriage or after entry of a decree of dissolution of marriage;
- (2) property acquired after entry of a decree entered pursuant to Section 40-4-3 NMSA 1978, unless the decree provides otherwise;
- (3) property designated as separate property by a judgment or decree of any court having jurisdiction;
- (4) property acquired by either spouse by gift, bequest, devise or descent; and
- (5) property designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by the spouses as joint tenants or tenants in common in which the property is designated as separate property.

B. Except as provided in Subsection C of this section, "community property" means property acquired by either or both spouses during marriage which is not separate property. Property acquired by a husband and wife by an instrument in writing whether as tenants in common or as joint tenants or otherwise shall be presumed to be held as community property unless such property is separate property within the meaning of Subsection A of this section.

C. "Quasi-community property" means all real or personal property, except separate property as defined in Subsection A of this section, wherever situated, heretofore or hereafter acquired in any of the following ways:

- (1) by either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition; or
- (2) in exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

D. For purposes of division of property incident to a dissolution of marriage or a legal separation under Section 40-4-3 NMSA 1978, quasi-community property shall be treated as community property, if both parties are domiciliaries of New Mexico at the time of the dissolution or legal separation proceeding.

E. "Property" includes the rents, issues and profits thereof.

F. The right to hold property as joint tenants or as tenants in common and the legal incidents of so holding, including but not limited to the incident of the right of survivorship of joint tenancy, are not altered by the Community Property Act of 1973, except as provided in Sections 40-3-10, 40-3-11 and 40-3-13 NMSA 1978.

G. The provisions of the 1984 amendments to this section shall not affect the right of any creditor, which right accrued prior to the effective date of those amendments.

#### **40-3-9. Definition of separate and community debts.**

A. "Separate debt" means:

- (1) a debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;
- (2) a debt contracted or incurred by a spouse after entry of a decree entered pursuant to Section 40-4-3 NMSA 1978, unless the decree provides otherwise;
- (3) a debt designated as a separate debt of a spouse by a judgment or decree of any court having jurisdiction;
- (4) a debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse;
- (5) a debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage or a separate tort committed during marriage; or
- (6) a debt declared to be unreasonable pursuant to Section 2 of this act.

B. "Community debt" means a debt contracted or incurred by either or both spouses during marriage which is not a separate debt.

#### **40-3A-2. Definitions.**

As used in the Uniform Premarital Agreement Act:

A. "premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage; and

B. "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

#### **40-3A-3. Formalities.**

A premarital agreement must be in writing, signed by both parties and acknowledged. It is enforceable without consideration.

#### **40-3A-4. Content.**

A. Parties to a premarital agreement may contract with respect to:

- (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (4) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (5) the ownership rights in and disposition of the death benefit from a life insurance policy;
- (6) the choice of law governing the construction of the agreement; and
- (7) any other matter not in violation of public policy.

B. A premarital agreement may not adversely affect the right of a child or spouse to support, a party's right to child custody or visitation, a party's choice of abode or a party's freedom to pursue career opportunities.

#### **40-3A-5. Effect of marriage.**

A premarital agreement becomes effective upon marriage.

#### **40-3A-6. Amendment; revocation.**

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed and acknowledged by the parties or by a consistent and mutual course of conduct, which evidences an amendment to or revocation of the premarital agreement. The amended agreement or the revocation is enforceable without consideration.

#### **40-3A-7. Enforcement.**

A. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (1) that party did not execute the agreement voluntarily; or
- (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:
  - (a) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
  - (b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

B. An issue of unconscionability or voluntariness of a premarital agreement shall be decided by the court as a matter of law.

#### **40-3A-8. Enforcement; void marriage.**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

#### **40-3A-9. Limitation of actions.**

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

### **Article 4 Dissolution of Marriage**

#### **40-4-1. Dissolution of marriage.**

On the petition of either party to a marriage, a district court may decree a dissolution of marriage on any of the following grounds:

- A. incompatibility;
- B. cruel and inhuman treatment;
- C. adultery; or
- D. abandonment.

#### **40-4-2. Incompatibility.**

Incompatibility exists when, because of discord or conflict of personalities, the legitimate ends of the marriage relationship are destroyed preventing any reasonable expectation of reconciliation.

#### **40-4-3. Proceeding for division of property, disposition of children or alimony without the dissolution of marriage.**

Whenever the husband and wife have permanently separated and no longer live or cohabit together as husband and wife, either may institute proceedings in the district court for a division of property, disposition of children or alimony, without asking for or obtaining in the proceedings, a dissolution of marriage.

#### **40-4-4. Venue; jurisdiction over property.**

Any proceeding for the dissolution of marriage, division of property, disposition of children or alimony, as provided for in this chapter, may be instituted in the county where either of the parties resides. In such proceedings, the court shall have jurisdiction of all property of the parties, wherever located or situated in the state.

#### **40-4-5. Dissolution of marriage; jurisdiction; domicile.**

The district court has jurisdiction to decree a dissolution of marriage when at the time of filing the petition either party has resided in this state for at least six months immediately preceding the date of the filing and has a domicile in New Mexico. As used in this section, "domicile" means that the person to whom it applies:

- A. is physically present in this state and has a place of residence in this state;
- B. has a present intention in good faith to reside in this state permanently or indefinitely;
- C. provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in New Mexico for such period of six months shall, for the purposes hereof, be deemed to have a domicile of the state and county where such military base or installation is located; and
- D. provided further, any person who had resided continuously in New Mexico for at least six months immediately prior to his or his spouse's entry into any military branch of the United States government, who is stationed or whose spouse is stationed at any military base or installation outside of New Mexico and who has a present intention in good faith to return and to reside in this state permanently or indefinitely, shall for the purposes hereof, be deemed to have a domicile of the state and county of his residence immediately prior to his or his spouse's entry into the military branch.

#### **40-4-6. Verification of petition.**

The petition in all proceedings for the dissolution of marriage, division of property, disposition of children or alimony, must be verified by the affidavit of the petitioner.

#### **40-4-7. Proceedings; spousal support; support of children; division of property.**

A. In any proceeding for the dissolution of marriage, division of property, disposition of children or spousal support, the court may make and enforce by attachment or otherwise an order to restrain the use or disposition of the property of either party or for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The court may make an order, relative to the expenses of the proceeding, as will ensure either party an efficient preparation and presentation of his case.

B. On final hearing, the court:

(1) may allow either party such a reasonable portion of the spouse's property or such a reasonable sum of money to be paid by either spouse either in a single sum or in installments, as spousal support as under the circumstances of the case may seem just and proper, including a court award of:

(a) rehabilitative spousal support that provides the receiving spouse with education, training, work experience or other forms of rehabilitation that increases the receiving spouse's ability to earn income and become self-supporting. The court

may include a specific rehabilitation plan with its award of rehabilitative spousal support and may condition continuation of the support upon compliance with that plan;

(b) transitional spousal support to supplement the income of the receiving spouse for a limited period of time; provided that the period shall be clearly stated in the court's final order;

(c) spousal support for an indefinite duration;

(d) a single sum to be paid in one or more installments that specifies definite amounts, subject only to the death of the receiving spouse; or

(e) a single sum to be paid in one or more installments that specifies definite amounts, not subject to any contingencies, including the death of the receiving spouse;

(2) may:

(a) modify and change any order in respect to spousal support awarded pursuant to the provisions of Subparagraph (a), (b) or (c) of Paragraph (1) of this subsection whenever the circumstances render such change proper; or

(b) designate spousal support awarded pursuant to the provisions of Subparagraph (a) or (b) of Paragraph (1) of this subsection as nonmodifiable with respect to the amount or duration of the support payments;

(3) may set apart out of the property or income of the respective parties such portion for the maintenance and education of:

(a) their unemancipated minor children as may seem just and proper; or

(b) their children until the children's graduation from high school if the children are emancipated only by age, are under nineteen and are attending high school; and

(4) may make such an order for the guardianship, care, custody, maintenance and education of the minor children, or with reference to the control of the property of the respective parties to the proceeding, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of the minor children, as may seem just and proper.

C. The court may order and enforce the payment of support for the maintenance and education after high school of emancipated children of the marriage pursuant to a written agreement between the parties.

D. An award of spousal support made pursuant to the provisions of Subparagraph (a), (b), (c) or (d) of Paragraph (1) of Subsection B of this section shall terminate upon the death of the receiving spouse, unless the court order of spousal support provides otherwise.

E. When making determinations concerning spousal support to be awarded pursuant to the provisions of Paragraph (1) or (2) of Subsection B of this section, the court shall consider:

- (1) the age and health of and the means of support for the respective spouses;
- (2) the current and future earnings and the earning capacity of the respective spouses;
- (3) the good-faith efforts of the respective spouses to maintain employment or to become self-supporting;
- (4) the reasonable needs of the respective spouses, including:
  - (a) the standard of living of the respective spouses during the term of the marriage;
  - (b) the maintenance of medical insurance for the respective spouses; and
  - (c) the appropriateness of life insurance, including its availability and cost, insuring the life of the person who is to pay support to secure the payments, with any life insurance proceeds paid on the death of the paying spouse to be in lieu of further support;
- (5) the duration of the marriage;
- (6) the amount of the property awarded or confirmed to the respective spouses;
- (7) the type and nature of the respective spouses' assets; provided that potential proceeds from the sale of property by either spouse shall not be considered by the court, unless required by exceptional circumstances and the need to be fair to the parties;
- (8) the type and nature of the respective spouses' liabilities;
- (9) income produced by property owned by the respective spouses; and
- (10) agreements entered into by the spouses in contemplation of the dissolution of marriage or legal separation.

F. The court shall retain jurisdiction over proceedings involving periodic spousal support payments when the parties have been married for twenty years or more prior to the dissolution of the marriage, unless the court order or decree specifically provides that no spousal support shall be awarded.

G. The court may modify and change any order or agreement merged into an order in respect to the guardianship, care, custody, maintenance or education of the children whenever circumstances render such change proper. The district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children until the parents' obligation of support for their children terminates. The district court shall also have exclusive, continuing jurisdiction with reference to the property decreed or funds created for the children's maintenance and education.

#### **40-4-7.1. Use of life insurance policy as security.**

In any proceeding brought pursuant to the provisions of Section 40-4-7 NMSA 1978 or in any other proceeding for the division of property or spousal or child support brought pursuant to the provisions of Chapter 40 NMSA 1978, the court

may require either party or both parties to the proceeding to maintain the minor children of the parties or a spouse or former spouse as beneficiaries on a life insurance policy as security for the payment of:

- (1) support for the benefit of the minor children;
- (2) spousal support; or
- (3) the cost to equalize a property division in the event of the death of the insured on the life insurance policy.

The court may also allocate the cost of the premiums of the life insurance policy between the parties.

#### **40-4-7.2. Binding arbitration option; procedure.**

A. Parties to an action for divorce, separation, custody or time-sharing, child support, spousal support, marital property and debt division or attorney fees related to such matters, including any post-judgment proceeding, may stipulate to binding arbitration by a signed agreement that provides for an award with respect to one or more of the following issues:

- (1) valuation and division of real and personal property;
- (2) child support, custody, time-sharing or visitation;
- (3) spousal support;
- (4) costs, expenses and attorney fees;
- (5) enforceability of prenuptial and post-nuptial agreements;
- (6) determination and allocation of responsibility for debt as between the parties;
- (7) any civil tort claims related to any of the foregoing; or
- (8) other contested domestic relations matters.

B. A court may not order a party to participate in arbitration except to the extent a party has agreed to participate pursuant to a written arbitration agreement. When the party involved is a minor, then his parent must consent to arbitration. When the party involved is a minor with a guardian ad litem, the guardian ad litem must provide written consent. When the party involved is a minor without a guardian ad litem, then in order for arbitration to proceed the court must find that arbitration is in the best interest of the minor.

C. Arbitration pursuant to this section shall be heard by one or more arbitrator. The court shall appoint an arbitrator agreed to by the parties if the arbitrator consents to the appointment.

D. If the parties have not agreed to an arbitrator, the court shall appoint an arbitrator who:

- (1) is an attorney in good standing with the state bar of New Mexico;

(2) has practiced as an attorney for not less than five years immediately preceding the appointment and actively practiced in the area of domestic relations during three of those five years. Any period of time during which a person serves as a judge, special master or child support hearing officer is considered as actively practicing in the area of domestic relations; or

(3) is another professional licensed and experienced in the subject matter that is the area of the dispute.

E. An arbitrator appointed pursuant to this section is immune from liability in regard to the arbitration proceeding to the same extent as the judge who has jurisdiction of the action that is submitted to arbitration.

F. Objections to the qualifications of an arbitrator must be raised in connection with the appointment by the court or they are waived. The court will permit parties to raise objections based on qualifications within ten days of appointment of an arbitrator. Parties who agree on an arbitrator waive objections to his qualifications.

G. An arbitrator appointed pursuant to this section:

(1) shall hear and make an award on each issue submitted for arbitration pursuant to the arbitration agreement subject to the provisions of the agreement; and

(2) has all of the following powers and duties:

(a) to administer an oath or issue a subpoena as provided by court rule;

(b) to issue orders regarding discovery proceedings relative to the issues being arbitrated, including appointment of experts; and

(c) to allocate arbitration fees and expenses between the parties, including imposing a fee or expense on a party or attorney as a sanction for failure to provide information, subject to provisions of the arbitration agreement.

H. An arbitrator, attorney or party in an arbitration proceeding pursuant to this section shall disclose in writing any circumstances that may affect an arbitrator's impartiality, including, bias, financial interests, personal interests or family relationships. Upon disclosure of such a circumstance, a party may request disqualification of the arbitrator. If the arbitrator does not withdraw within seven days after a request for disqualification, the party may file a motion for disqualification with the court.

I. If the court finds that the arbitrator is disqualified, the court may appoint another arbitrator, subject to the provisions of the arbitration agreement.

J. As soon as practicable after the appointment of the arbitrator, the parties and attorneys shall confer with the arbitrator to consider all of the following:

(1) scope of the issues submitted;

(2) date, time and place of the hearing;

(3) witnesses, including experts, who may testify;

(4) appointment of experts and a schedule for exchange of expert reports or summary of expert testimony; and

(5) subject to the provisions of Subsection K of this section, exhibits, documents or other information each party considers material to the case and a schedule for production or exchange of the information. An objection not made before the hearing to production or lack of production of information is waived.

K. The arbitrator shall order reasonable access to information for each party that is material to the arbitration issues prior to the hearing, including the following:

(1) a current complete sworn financial disclosure statement, when financial matters are at issue;

(2) if a court has issued an order concerning an issue subject to arbitration, a copy of the order;

(3) any relevant documents related to the arbitration issues defined by the arbitrator;

(4) proposed award by each party for each issue subject to arbitration; and

(5) expert opinions of experts to be used by either party or appointed by the arbitrator.

L. Except as provided by this section, court rule or the arbitration agreement, a record shall not ordinarily be made of an arbitration hearing pursuant to this section unless either party requests it. If a record is not required, an arbitrator may make a record to be used only by the arbitrator to aid in reaching the decision.

M. Unless waived by the parties, a record shall be made of that portion of the hearing that concerns child custody, visitation or time-sharing.

N. The arbitration agreement may set forth any standards on which an award should be based, including the law to be applied. An arbitration agreement shall provide that in deciding child support issues, the arbitrator shall apply Section 40-4-11.1 NMSA 1978 when setting or modifying a child support order.

O. Unless otherwise agreed to by the parties and arbitrator in writing or on the record, the arbitrator shall issue the written award on each issue within sixty days after the end of the hearing and after receipt of proposed findings of fact and conclusions of law if requested by the arbitrator.

P. If the parties reach an agreement regarding child custody, time-sharing or visitation, the agreement shall be placed on the record by the parties under oath and shall be included in the arbitrator's written award.

Q. The arbitrator retains jurisdiction to correct errors or omissions in an award upon motion by a party to the arbitrator within twenty days after the award is issued or upon the arbitrator's own motion. Another party to the arbitration may respond to the motion within seven days after the motion is made. The arbitrator shall make a decision on the motion within seven days after the expiration of the response time period.

R. The court shall enforce an arbitrator's award or other order issued pursuant to this section in the same manner as an order issued by the court. A party may make a motion to the court to enforce an arbitrator's award or order.

S. Any party in an action that was submitted to arbitration pursuant to this section shall file with the court a stipulated order, or a motion to enforce the award within twenty-one days after the arbitrator's award is issued unless otherwise agreed to by the parties in writing or unless the arbitrator or court grants an extension.

T. If a party applies to the court for vacation of an arbitrator's award in binding arbitration issued pursuant to this section that concerns child custody, time-sharing or visitation, the court shall review the award based only upon the record of the arbitration hearing and factual matters that have arisen since the arbitration hearing that are relevant to the claim. The court may vacate an award of custody, time-sharing or visitation made in binding arbitration if the court finds that circumstances have changed since issuance of the award that are adverse to the best interests of the child, upon a finding that the award will cause harm or be detrimental to a child, or pursuant to Subsections U and V of this section. An arbitration agreement may provide a broader scope of review of custody, time-sharing or visitation issues by the court, and such review will apply if broader than this section.

U. If a party applies to the court for vacation or modification of an arbitrator's award issued pursuant to this section, the court shall review the award only as provided in Subsections T and V of this section.

V. If a party applies under this section, the court may vacate, modify or correct an award under any of the following circumstances:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was evident partiality by an arbitrator, or misconduct prejudicing a party's rights;

(3) the arbitrator exceeded his powers; or

(4) the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear evidence substantial and material to the controversy.

W. An application to vacate an award on grounds stated in Subsections U and V of this section shall be decided by the court. If an award is vacated on grounds stated in Paragraph (3) or (4) of Subsection V of this section, the court may order a rehearing before the arbitrator who made the award when both parties consent to the rehearing before the arbitrator who made the award.

X. An appeal from an arbitration award pursuant to this section that the court confirms, vacates, modifies or corrects shall be taken in this same manner as from an order or judgment in other domestic relations actions.

Y. No arbitrator may decide issues of a criminal nature or make decisions on petitions pursuant to the Family Violence Protection Act.

#### **40-4-7.3. Accrual of interest; delinquent child and spousal support.**

A. Interest shall accrue on delinquent child support at the rate of four percent and spousal support at the rate set forth in Section 56-8-4 NMSA 1978 in effect when the support payment becomes due and shall accrue from the date the support is delinquent until the date the support is paid.

B. Interest shall accrue on a consolidated judgment for delinquent child support at the rate of four percent when the consolidated judgment is entered until the judgment is satisfied.

C. Unless the order, judgment, decree or wage withholding order specifies a due date other than the first day of the month, support shall be due on the first day of each month and, if not paid by that date, shall be delinquent.

D. In calculation of support arrears, payments of support shall be first applied to the current support obligation, next to any delinquent support, next to any consolidated judgment of delinquent support, next to any accrued interest on delinquent support and next to any interest accrued on a consolidated judgment of delinquent support.

E. The human services department shall have the authority to forgive accrued interest on delinquent child support assigned to the state not otherwise specified in an order, judgment, decree or income withholding order if, in the judgment of the secretary of human services, forgiveness will likely result in the collection of more child support, spousal support or other support and will likely result in the satisfaction of the judgment, decree or wage withholding order. This authority shall include the ability to authorize the return of suspended licenses.

#### **40-4-8. Contested custody; appointment of guardian ad litem.**

A. In any proceeding for the disposition of children when custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs and attorneys' fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When custody is contested, the court:

(1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:

(a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or

(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence;

(2) may order, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling; and

(3) may use, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, auxiliary services such as professional evaluation by application of Rule 11-706 of the New Mexico Rules of Evidence or Rule 1-053 of the Rules of Civil Procedure for the District Courts.

C. As used in this section:

(1) "child abuse" means:

(a) that a child has been physically, emotionally or psychologically abused by a parent;

(b) that a child has been: 1) sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; or 2) sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution and allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;

(c) that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health; or

(d) that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished; provided that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph; and

(2) "domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional or psychological harm to the other parent.

#### **40-4-9. Standards for the determination of child custody; hearing.**

A. In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court shall, if the minor is under the age of fourteen, determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including, but not limited to:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community; and

(5) the mental and physical health of all individuals involved.

B. If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom he wishes to live before awarding custody of such minor.

C. Whenever testimony is taken from the minor concerning his choice of custodian, the court shall hold a private hearing in his chambers. The judge shall have a court reporter in his chambers who shall transcribe the hearing; however, the court reporter shall not file a transcript unless an appeal is taken.

#### **40-4-9.1. Joint custody; standards for determination; parenting plan.**

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an existing custody arrangement unless there has been a substantial and material change in circumstances since the entry of the prior custody order or decree, which change affects the welfare of the child such that joint custody is presently in the best interests of the child. With respect to any proceeding in which it is proposed that joint custody be terminated, the court shall not terminate joint custody unless there has been a substantial and material change in circumstances affecting the welfare of the child, since entry of the joint custody order, such that joint custody is no longer in the best interests of the child.

B. In determining whether a joint custody order is in the best interests of the child, in addition to the factors provided in Section 40-4-9 NMSA 1978, the court shall consider the following factors:

- (1) whether the child has established a close relationship with each parent;
- (2) whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;
- (3) whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;
- (4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;
- (5) whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;
- (6) the suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;
- (7) geographic distance between the parents' residences;
- (8) willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and
- (9) whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member. If a determination is made that domestic abuse has occurred, the court shall set forth findings that

the custody or visitation ordered by the court adequately protects the child, the abused parent or other household member.

C. In any proceeding in which the custody of a child is at issue, the court shall not prefer one parent as a custodian solely because of gender.

D. In any case in which the parents agree to a form of custody, the court should award custody consistent with the agreement unless the court determines that such agreement is not in the best interests of the child.

E. In making an order of joint custody, the court may specify the circumstances, if any, under which the consent of both legal custodians is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.

F. When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangement prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

(1) statements regarding the child's religion, education, child care, recreational activities and medical and dental care;

(2) designation of specific decision-making responsibilities;

(3) methods of communicating information about the child, transporting the child, exchanging care for the child and maintaining telephone and mail contact between parent and child;

(4) procedures for future decision making, including procedures for dispute resolution; and

(5) other statements regarding the welfare of the child or designed to clarify and facilitate parenting under joint custody arrangements.

In a case where joint custody is not agreed to or necessary aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party or it may combine or revise these plans as it deems necessary in the child's best interests. The time of filing of parenting plans shall be set by local rule. A plan adopted by the court shall be entered as an order of the court.

G. Where custody is contested, the court shall refer that issue to mediation if feasible. The court may also use auxiliary services such as professional evaluation by application of Rule 706 of the New Mexico Rules of Evidence or Rule 53 of the Rules of Civil Procedure for the District Courts.

H. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including medical, dental and school records, shall not be denied to a parent because that parent is not the child's physical custodial parent or because that parent is not a joint custodial parent.

I. Whenever a request for joint custody is granted or denied, the court shall state in its decision its basis for granting or denying the request for joint custody. A statement that joint custody is or is not in the best interests of the child is not sufficient to meet the requirements of this subsection.

J. An award of joint custody means that:

- (1) each parent shall have significant, well-defined periods of responsibility for the child;
- (2) each parent shall have, and be allowed and expected to carry out, responsibility for the child's financial, physical, emotional and developmental needs during that parent's periods of responsibility;
- (3) the parents shall consult with each other on major decisions involving the child before implementing those decisions; that is, neither parent shall make a decision or take an action which results in a major change in a child's life until the matter has been discussed with the other parent and the parents agree. If the parents, after discussion, cannot agree and if one parent wishes to effect a major change while the other does not wish the major change to occur, then no change shall occur until the issue has been resolved as provided in this subsection;
- (4) the following guidelines apply to major changes in a child's life:
  - (a) if either parent plans to change his home city or state of residence, he shall provide to the other parent thirty days' notice in writing stating the date and destination of move;
  - (b) the religious denomination and religious activities, or lack thereof, which were being practiced during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;
  - (c) both parents shall have access to school records, teachers and activities. The type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;
  - (d) both parents shall have access to medical and dental treatment providers and records. Each parent has authority to make emergency medical decisions. Neither parent may contract for major elective medical or dental treatment unless both parents agree or it has been otherwise resolved as provided in this subsection; and
  - (e) both parents may attend the child's public activities and both parents should know the necessary schedules. Whatever recreational activities the child participated in during the marriage should continue with the child's agreement, regardless of which of the parents has physical custody. Also, neither parent may enroll the child in a new recreational activity unless the parties agree or it has been otherwise resolved as provided in this subsection; and
- (5) decisions regarding major changes in a child's life may be decided by:
  - (a) agreement between the joint custodial parents;
  - (b) requiring that the parents seek family counseling, conciliation or mediation service to assist in resolving their differences;
  - (c) agreement by the parents to submit the dispute to binding arbitration;
  - (d) allocating ultimate responsibility for a particular major decision area to one legal custodian;

(e) terminating joint custody and awarding sole custody to one person;

(f) reference to a master pursuant to Rule 53 of the Rules of Civil Procedure for the District Courts; or

(g) the district court.

K. When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.

L. As used in this section:

(1) "child" means a person under the age of eighteen;

(2) "custody" means the authority and responsibility to make major decisions in a child's best interests in the areas of residence, medical and dental treatment, education or child care, religion and recreation;

(3) "domestic abuse" means any incident by a household member against another household member resulting in:

(a) physical harm;

(b) severe emotional distress;

(c) a threat causing imminent fear of physical harm by any household member;

(d) criminal trespass;

(e) criminal damage to property;

(f) stalking or aggravated stalking, as provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

(g) harassment, as provided in Section 30-3A-2 NMSA 1978;

(4) "joint custody" means an order of the court awarding custody of a child to two parents. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child;

(5) "parent" means a natural parent, adoptive parent or person who is acting as a parent who has or shares legal custody of a child or who claims a right to have or share legal custody;

(6) "parenting plan" means a document submitted for approval of the court setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement;

(7) "period of responsibility" means a specified period of time during which a parent is responsible for providing for a child's physical, developmental and emotional needs, including the decision making required in daily living. Specified periods of responsibility shall not be changed in an instance or more permanently except by the methods of decision making described under Subsection L of this section;

(8) "sole custody" means an order of the court awarding custody of a child to one parent; and

(9) "visitation" means a period of time available to a noncustodial parent, under a sole custody arrangement, during which a child resides with or is under the care and control of the noncustodial parent.

**40-4-11. Determination of award of child support; disregard of welfare payments; notice to withhold income.**

In any proceeding before a court in which the court has the duty or authority to determine liability of a parent for the support of minor children or the amount of that support, the court:

A. shall make a specific determination and finding of the amount of support to be paid by a parent to provide properly for the care, maintenance and education of the minor children, considering the financial resources of the parent;

B. shall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination under Subsection A of this section; and

C. for good cause may order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that portion of the parent's periodic income or other periodic entitlements to money. The assignment of that portion of the parent's periodic income or other periodic entitlements to money may be ordered by the court by the issuance of a notice to withhold income against the income of the parent. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income shall be the same as provided for in the Support Enforcement Act, except that delinquency in payment under an order for support need not be a pre-existing condition to effectuate the procedures of the Support Enforcement Act for purpose of withholding income under this section.

**40-4-11.1. Child support; guidelines.**

A. In any action to establish or modify child support, the child support guidelines as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. Every decree or judgment of child support that deviates from the guideline amount shall contain a statement of the reasons for the deviation.

B. The purposes of the child support guidelines are to:

(1) establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(2) make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

C. For purposes of the guidelines specified in this section:

(1) "income" means actual gross income of a parent if employed to full capacity or potential income if unemployed or underemployed. Income need not be imputed to the primary custodial parent actively caring for a child of the parties who is under the age of six or disabled. If income is imputed, a reasonable child care expense may be imputed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage; and

(2) "gross income" includes income from any source and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received, provided:

(a) "gross income" shall not include benefits received from means-tested public assistance programs or child support received by a parent for the support of other children;

(b) for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the court to be inappropriate for purposes of calculating child support;

(c) "gross income" shall not include the amount of alimony payments actually paid in compliance with a court order;

(d) "gross income" shall not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and

(e) "gross income" shall not include a reasonable amount for a parent's obligation to support prior children who are in that parent's custody. A duty to support subsequent children is not ordinarily a basis for reducing support owed to children of the parties but may be a defense to a child support increase for the children of the parties. In raising such a defense, a party may use Table A as set forth in Subsection K of this section to calculate the support for the subsequent children.

D. As used in this section:

(1) "children of the parties" means the natural or adopted child or children of the parties to the action before the court but shall not include the natural or adopted child or children of only one of the parties;

(2) "basic visitation" means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five percent of the time. Such arrangements can exist where the parties share responsibilities pursuant to Section 40-4-9.1 NMSA 1978; and

(3) "shared responsibility" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least thirty-five percent of the year in each home and the parents significantly share the duties, responsibilities and expenses of parenting.

E. The basic child support obligation shall be calculated based on the combined income of both parents and shall be paid by them proportionately pursuant to Subsections K and L of this section.

F. Physical custody adjustments shall be made as follows:

(1) for basic visitation situations, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet A and instructions contained in Subsection K of this section. The court may provide for a partial abatement of child support for visitations of one month or longer; and

(2) for shared responsibility arrangements, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet B and instructions contained in Subsection L of this section.

G. In shared responsibility situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

H. The cost of providing medical and dental insurance for the children of the parties and the net reasonable child-care costs incurred on behalf of these children due to employment or job search of either parent shall be paid by each parent in proportion to his income, in addition to the basic obligation.

I. The child support may also include the payment of the following expenses not covered by the basic child support obligation:

(1) any extraordinary medical, dental and counseling expenses incurred on behalf of the children of the parties. Such extraordinary expenses are uninsured expenses in excess of one hundred dollars (\$100) per child per year;

(2) any extraordinary educational expenses for children of the parties; and

(3) transportation and communication expenses necessary for long distance visitation or time sharing.

J. Whenever application of the child support guidelines set forth in this section requires a person to pay to another person more than forty percent of his gross income for a single child support obligation for current support, there shall be a presumption of a substantial hardship, justifying a deviation from the guidelines.

K. BASIC CHILD SUPPORT SCHEDULE. -

Both Parents'

Combined

Gross Monthly Number of children

Income 1 2 3 4 5 6

\$ 0 - 800 \$100 \$150 \$150 \$150 \$150 \$150

850 119 150 150 150 150 150

900 153 155 157 158 160 162

950 187 189 191 193 196 198

1,000 206 223 226 228 231 233

1,050 215 257 260 263 266 269

1,100 224 291 294 298 301 304  
1,150 232 325 329 332 336 339  
1,200 241 351 363 367 371 375  
1,250 250 363 397 401 406 410  
1,300 258 375 431 436 441 445  
1,350 267 387 457 470 475 481  
1,400 275 399 471 505 510 516  
1,450 283 411 485 536 545 551  
1,500 292 423 499 551 579 585  
1,550 300 435 513 567 613 620  
1,600 308 447 527 582 631 654  
1,650 316 458 540 597 647 689  
1,700 324 470 554 612 664 710  
1,750 333 482 568 628 680 728  
1,800 341 494 582 643 697 746  
1,850 349 506 596 658 714 764  
1,900 357 517 609 673 730 781  
1,950 365 529 623 689 747 799  
2,000 373 541 637 704 763 816  
2,050 382 553 651 719 780 834  
2,100 390 564 665 734 796 852  
2,150 398 576 678 750 813 869  
2,200 406 588 692 765 829 887  
2,250 414 600 706 780 846 905  
2,300 422 611 720 795 862 922  
2,350 430 623 733 810 879 940  
2,400 438 635 747 825 895 957  
2,450 443 641 754 834 904 967  
2,500 447 647 761 841 912 976  
2,550 451 652 768 849 920 984  
2,600 455 658 775 856 928 993  
2,650 459 664 782 864 936 1,002  
2,700 463 670 788 871 944 1,010  
2,750 467 675 795 878 952 1,019  
2,800 471 681 802 886 960 1,027  
2,850 474 687 808 893 968 1,036  
2,900 478 692 815 900 976 1,044  
2,950 482 698 822 908 984 1,053  
3,000 486 704 828 915 992 1,062  
3,050 490 710 835 923 1,000 1,070  
3,100 494 715 842 930 1,008 1,079  
3,150 497 720 847 936 1,014 1,085  
3,200 500 723 851 940 1,019 1,090  
3,250 503 727 855 945 1,024 1,095  
3,300 505 731 859 949 1,029 1,101

3,350 508 734 863 954 1,033 1,106  
3,400 511 738 867 958 1,038 1,111  
3,450 513 742 871 963 1,043 1,116  
3,500 516 745 875 967 1,048 1,121  
3,550 519 749 879 971 1,053 1,127  
3,600 522 752 883 976 1,058 1,132  
3,650 524 756 887 980 1,063 1,137  
3,700 527 760 891 985 1,067 1,142  
3,750 530 763 895 989 1,072 1,147  
3,800 532 767 899 994 1,077 1,153  
3,850 535 771 903 998 1,082 1,158  
3,900 540 777 911 1,007 1,091 1,168  
3,950 545 785 919 1,016 1,101 1,178  
4,000 550 792 927 1,025 1,111 1,189  
4,050 554 799 936 1,034 1,121 1,199  
4,100 559 806 944 1,043 1,130 1,209  
4,150 564 812 952 1,052 1,140 1,220  
4,200 569 819 960 1,060 1,150 1,230  
4,250 574 826 968 1,069 1,159 1,241  
4,300 579 833 976 1,078 1,169 1,251  
4,350 584 840 984 1,087 1,179 1,261  
4,400 589 847 992 1,096 1,188 1,272  
4,450 594 854 1,000 1,105 1,198 1,282  
4,500 599 861 1,008 1,114 1,208 1,292  
4,550 604 868 1,016 1,123 1,217 1,303  
4,600 608 875 1,024 1,132 1,227 1,313  
4,650 612 880 1,030 1,139 1,234 1,321  
4,700 615 885 1,036 1,145 1,241 1,328  
4,750 619 890 1,042 1,152 1,248 1,336  
4,800 622 895 1,048 1,158 1,256 1,344  
4,850 625 900 1,054 1,165 1,263 1,351  
4,900 629 905 1,060 1,172 1,270 1,359  
4,950 632 910 1,066 1,178 1,277 1,367  
5,000 635 915 1,072 1,185 1,284 1,374  
5,050 639 920 1,078 1,192 1,292 1,382  
5,100 642 926 1,085 1,199 1,300 1,391  
5,150 646 931 1,092 1,206 1,308 1,399  
5,200 650 937 1,098 1,214 1,316 1,408  
5,250 654 942 1,105 1,221 1,324 1,416  
5,300 657 948 1,112 1,228 1,332 1,425  
5,350 661 954 1,119 1,236 1,340 1,433  
5,400 666 960 1,126 1,244 1,349 1,443  
5,450 671 967 1,134 1,253 1,358 1,453  
5,500 675 973 1,141 1,261 1,367 1,463  
5,550 680 980 1,149 1,269 1,376 1,472

5,600 685 987 1,156 1,278 1,385 1,482  
5,650 690 993 1,164 1,286 1,394 1,492  
5,700 695 1,000 1,171 1,294 1,403 1,501  
5,750 700 1,007 1,179 1,303 1,412 1,511  
5,800 704 1,013 1,186 1,311 1,421 1,521  
5,850 709 1,020 1,194 1,319 1,430 1,530  
5,900 714 1,027 1,201 1,328 1,439 1,540  
5,950 719 1,033 1,209 1,336 1,448 1,549  
6,000 724 1,040 1,216 1,344 1,457 1,559  
6,050 728 1,047 1,224 1,353 1,466 1,569  
6,100 733 1,053 1,232 1,361 1,475 1,579  
6,150 738 1,060 1,240 1,370 1,485 1,589  
6,200 742 1,067 1,247 1,378 1,494 1,599  
6,250 747 1,073 1,255 1,387 1,504 1,609  
6,300 751 1,080 1,263 1,396 1,513 1,619  
6,350 756 1,087 1,271 1,405 1,523 1,629  
6,400 760 1,093 1,279 1,413 1,532 1,639  
6,450 765 1,100 1,287 1,422 1,541 1,649  
6,500 770 1,107 1,295 1,431 1,551 1,660  
6,550 774 1,113 1,303 1,439 1,560 1,670  
6,600 779 1,120 1,311 1,448 1,570 1,680  
6,650 783 1,127 1,318 1,457 1,579 1,690  
6,700 788 1,133 1,326 1,466 1,589 1,700  
6,750 792 1,140 1,334 1,474 1,598 1,710  
6,800 797 1,147 1,342 1,483 1,607 1,720  
6,850 802 1,153 1,350 1,492 1,617 1,730  
6,900 806 1,160 1,358 1,500 1,626 1,740  
6,950 811 1,167 1,366 1,509 1,636 1,751  
7,000 815 1,173 1,374 1,518 1,645 1,761  
7,050 820 1,180 1,382 1,527 1,655 1,771  
7,100 824 1,187 1,389 1,535 1,664 1,781  
7,150 828 1,193 1,396 1,543 1,673 1,789  
7,200 832 1,198 1,403 1,550 1,680 1,798  
7,250 836 1,203 1,409 1,557 1,688 1,806  
7,300 840 1,209 1,416 1,564 1,696 1,814  
7,350 843 1,214 1,422 1,572 1,704 1,823  
7,400 847 1,220 1,429 1,579 1,711 1,831  
7,450 851 1,225 1,435 1,586 1,719 1,839  
7,500 855 1,231 1,442 1,593 1,727 1,847  
7,550 858 1,236 1,448 1,600 1,735 1,856  
7,600 862 1,241 1,455 1,607 1,742 1,864  
7,650 866 1,247 1,461 1,614 1,750 1,872  
7,700 869 1,252 1,467 1,622 1,758 1,881  
7,750 873 1,258 1,474 1,629 1,766 1,889  
7,800 877 1,263 1,480 1,636 1,773 1,897

7,850 881 1,269 1,487 1,643 1,781 1,905  
 7,900 884 1,274 1,493 1,650 1,789 1,914  
 7,950 888 1,279 1,500 1,657 1,797 1,922  
 8,000 892 1,285 1,506 1,665 1,804 1,930

For gross monthly income greater than \$8,000, multiply gross by the following percentages:

11% 16.1% 18.8% 20.8% 22.6% 24%.

WORKSHEET A - BASIC VISITATION

\_\_\_\_\_ JUDICIAL DISTRICT COURT

COUNTY OF \_\_\_\_\_  
 STATE OF NEW MEXICO

NO. \_\_\_\_\_

\_\_\_\_\_  
 Petitioner,

vs.

\_\_\_\_\_  
 Respondent.

MONTHLY CHILD SUPPORT OBLIGATION

Custodial Parent    Other Parent    Combined  
 Parent    Parent    Parent

1. Gross Monthly Income \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_
2. Percentage of Combined Income  
 (Each parent's income divided by combined income) \_\_\_\_\_% + \_\_\_\_\_% = 100 %
3. Number of Children \_\_\_\_\_
4. Basic Support from Schedule  
 (Use combined income from Line 1) = \_\_\_\_\_
5. Children's Health and Dental Insurance Premium \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_
6. Work-Related Child Care \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_

7. Additional Expenses \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_

8. Total Support (Add Lines 4, 5, 6 and 7 for each parent and for combined column) \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_

9. Each Parent's Obligation (Combined Column Line 8 x each parent's Line 2) \_\_\_\_\_

10. Enter amount for each parent from Line 8 - \_\_\_\_\_ - \_\_\_\_\_

11. Each parent's net obligation (Subtract Line 10 from Line 9 for each parent). \_\_\_\_\_ Other

Parent  
pays  
Custodial  
Parent  
this  
Amount

\_\_\_\_\_ PAYS \_\_\_\_\_ EACH MONTH \$ \_\_\_\_\_

\_\_\_\_\_  
Petitioner's Signature Respondent's Signature

Date: \_\_\_\_\_

**BASIC VISITATION**

**INSTRUCTIONS FOR WORKSHEET A**

Line 1. Gross monthly income:

Includes all income, except AFDC, food stamps and supplemental security income. If a parent pays child support by court order to other children, subtract from gross income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return. Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Line 4. Basic Support:

Fill in number of children on worksheet (Line 3). Round combined income to nearest one hundred dollars (\$100). Look at the basic child support schedule. In the far left-hand column of the basic child support schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Children's Health and Dental Insurance Premium:

Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 5. Add costs paid by each parent and enter under the combined column on Line 5.

Line 6. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 6. Add the cost for both parents and enter in the combined column on Line 6.

Line 7. Additional Expenses:

Enter the amounts paid by each parent for additional expenses provided by Subsection I of this section on Line 7. Add the cost for both parents and enter in the combined column on Line 7.

Line 8. Total Support:

Total the basic support amount from Line 4 in the combined column with the combined column on Lines 4, 5, 6 and 7 and enter the totals in combined column on Line 8.

Line 9. Each Parent's Obligation:

Multiply the total child support amount on Line 8 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 9.

Line 10. Total Support:

Enter the total amount shown for each parent on Line 8 beside the "minus" marks on Line 10.

Line 11. Net Obligation:

For each parent, subtract the amount on Line 10 from the amount on Line 9. Enter the difference for each parent in that parent's column on Line 11. The amount in the box "other parent" is what that parent pays to the custodial parent each month. Do not subtract the amount on the custodial parent's Line 11 from the amount in the other parent's box. The custodial parent is presumed to use the amount in that parent's column on Line 11 for the children.

SHARED RESPONSIBILITY

INSTRUCTIONS FOR WORKSHEET B

\_\_\_\_\_ JUDICIAL DISTRICT COURT

COUNTY OF \_\_\_\_\_

STATE OF NEW MEXICO

NO. \_\_\_\_\_

\_\_\_\_\_, Petitioner,

vs.

\_\_\_\_\_, Respondent.

#### MONTHLY CHILD SUPPORT OBLIGATION

Mother Father Combined

#### Part 1 - Basic Support:

1. Gross Monthly Income \$ \_\_\_\_ \$ \_\_\_\_ \$ \_\_\_\_
2. Percentage of Combined Income  
(Each parent's income divided by  
combined income) \_\_\_\_% + \_\_\_\_% = 100%
3. Number of Children \_\_\_\_
4. Basic Support from Schedule  
(Use combined income from Line  
1) = \_\_\_\_
5. Shared Responsibility Basic  
Obligation (Line 4 x 1.5) \_\_\_\_
6. Each Parent's Share (Line 5 x  
each parent's Line 2) \_\_\_\_
7. Number of 24 hour days with  
each parent (must total 365) \_\_\_\_ + \_\_\_\_
8. Percentage with each parent  
(Line 7 divided by 365) \_\_\_\_% + \_\_\_\_% 100 %
9. Amount retained (Line 6 x Line 8  
for each parent) \_\_\_\_
10. Each Parent's Obligation  
(subtract Line 9 from Line 6) \_\_\_\_
11. Amount Transferred (subtract  
smaller amount on Line 10 from

larger amount on Line 10.) Parent  
with larger amount on Line 10  
pays other parent the difference. \_\_\_\_\_

Mother Father Combined

Part 2 - Additional Payments:

12. Children's Health and Dental  
Insurance Premium \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_
13. Work-Related Child Care \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_
14. Additional Expenses \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_
15. Total Additional Payments (Add  
Lines 12, 13 and 14 for each  
parent and for combined column) \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_
16. Each Parent's Obligation  
(Combined Column Line 15 x  
each parent's Line 2) \_\_\_\_\_
17. Amount transferred (Subtract  
each parent's Line 16 from his  
Line 15). Parent with "minus"  
figure pays that amount to other  
parent. \_\_\_\_\_

Part 3 - Net Amount Transferred:

18. Combine Lines 11 and 17 by  
addition if same parent pays on  
both lines, otherwise by  
subtraction. \_\_\_\_\_

\_\_\_\_\_ PAYS \_\_\_\_\_ EACH MONTH \$ \_\_\_\_\_

\_\_\_\_\_  
Petitioner's Signature Respondent's Signature

Date: \_\_\_\_\_

#### INSTRUCTIONS FOR WORKSHEET B

Part 1 - Basic Support:

Line 1. Gross Monthly Income:

Includes all income, except AFDC, food stamps and supplemental security income. See text for allowed deductions from income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return.

Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Lines 3 and 4. Basic Support:

Fill in the number of children on the worksheet (Line 3). Round combined income to nearest one hundred dollars (\$100). Look at the basic child support schedule. In the far left-hand column of that schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Shared Responsibility Basic Obligation:

Multiply the basic obligation on Line 4 by 1.5.

Line 6. Each Parent's Share:

Multiply the support amount on Line 5 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 6.

Line 7. Each Parent's Time of Care for Children:

Enter the number of twenty-four-hour days of responsibility that each parent has each child in a year according to the parenting plan.

Line 8. Percentage of Twenty-Four-Hour Days With Each Parent:

Divide each parent's number of twenty-four-hour days (Line 7) by three hundred sixty-five to obtain a percentage.

Line 9. Amount Retained:

Under shared responsibility arrangements, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five. Multiply each parent's share of basic support (Line 6) by the percentage in that parent's Line 8 and enter the result on that parent's Line 9. This is the amount that each parent retains to pay the children's expenses during that parent's periods of responsibility.

Line 10. Each Parent's Basic Obligation:

Subtract the amount retained by each parent for direct expenses (Line 9) from that parent's basic obligation (Line 6) and enter the difference on that parent's Line 10.

Line 11. Amount Transferred for Basic Support:

In shared responsibility situations, both parents are entitled not only to retain money for direct expenses but also to receive contributions from the other parent toward those expenses. Therefore, subtract the smaller amount on Line 10 from the larger amount on Line 10 to arrive at a net amount transferred for basic support.

Part 2 - Additional Payments:

Line 12. Children's Health and Dental Insurance Premium:

Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 12. Add costs paid by each parent and enter under the combined column on Line 12.

Line 13. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 13. Add the cost for both parents and enter in combined column on Line 13.

Line 14. Cost Paid For Additional Expenses:

Enter the cost paid by each parent for additional expenses provided by Subsection I of this section on Line 14.

Line 15. Enter Total of Lines 12, 13 and 14:

For each parent, total the amount paid by him for insurance, child care and additional expenses (Lines 12, 13 and 14). Enter the total in that parent's column on Line 15 and the total of both parents' expenses under the combined column on Line 15.

Line 16. Each Parent's Obligation:

Multiply the total additional payments (combined column on Line 15) by each parent's percentage share of income on Line 2, and enter each parent's dollar share of the additional payments on his Line 16.

Line 17. Amount Transferred:

Subtract each parent's obligation for additional expenses (that parent's Line 16) from the total additional payments made by that parent (that parent's Line 15). The parent with a "minus" figure pays the other parent the amount on Line 17.

Part 3 - Net Amount Transferred:

Line 18. Combine Lines 11 and 17:

Combine the amount owed by one parent to the other for basic support (Line 11) and the amount owed by one parent to the other for additional payments (Line 17). If the same parent owes for both obligations, add Lines 11 and 17, and enter the total on Line 18. If one parent owes for basic support and the other owes for additional payments, subtract the smaller amount from the larger and enter on Line 18. Fill in the blanks by stating which parent pays and which parent receives the net amount transferred.

#### **40-4-11.2. Grounds for deviation from child support guidelines.**

Any deviation from the child support guideline amounts set forth in Section 40-4-11.1 NMSA 1978 shall be supported by a written finding in the decree, judgment or order of child support that application of the guidelines would be unjust or inappropriate. Circumstances creating a substantial hardship in the obligor, obligee or subject children may justify a deviation upward or downward from the amount that would otherwise be payable under the guidelines.

#### **40-4-11.4. Modification of child support orders; exchange of financial information.**

A. A court may modify a child support obligation upon a showing of material and substantial changes in circumstances subsequent to the adjudication of the pre-existing order. There shall be a presumption of material and substantial changes in circumstances if application of the child support guidelines in Section 40-4-11.1 NMSA 1978 would result in a deviation upward or downward of more than twenty percent of the existing child support obligation and the petition for modification is filed more than one year after the filing of the pre-existing order.

B. All child support orders shall contain a provision for the annual exchange of financial information by the obligor and obligee upon a written request by either party. The financial information to be furnished shall include:

- (1) federal and state tax returns, including all schedules, for the year preceding the request;
- (2) W-2 statements for the year preceding the request;
- (3) Internal Revenue Service Form 1099s for the year preceding the request;
- (4) work-related daycare statements for the year preceding the request;
- (5) dependent medical insurance premiums for the year preceding the request; and
- (6) wage and payroll statements for four months preceding the request.

For the purposes of this subsection, the wages of a subsequent spouse may be omitted from the financial information provided by either the obligor or the obligee.

#### **40-4-11.5. Modification of child support orders in cases enforced by the state Title IV-D agency.**

A. For child support cases being enforced by the human services department acting as the state's Title IV-D child support enforcement agency as provided in Section 27-2-27 NMSA 1978, the department shall implement a process for the periodic review of child support orders that shall include:

(1) a review of support orders every three years upon the request of either the obligor or obligee or, if there is an assignment of support rights pursuant to the Public Assistance Act, upon the request of the department or of either the obligor or obligee;

(2) notification by the department of its review to the obligor and obligee; and

(3) authorization to require financial information from the obligor and the obligee to determine whether the support obligation should be presented to the court for modification.

B. In carrying out its duties under this section, the secretary of human services, or the secretary's authorized representative, has the power to issue subpoenas:

(1) to compel the attendance of the obligor or the obligee at a hearing on the child support order;

(2) to compel production by the obligor or the obligee of financial or wage information, including federal or state tax returns;

(3) to compel the obligor or the obligee to disclose the location of employment of the payor party; and

(4) to compel the employer of the obligor or the obligee to disclose information relating to the employee's wages.

C. A subpoena issued by the human services department under this section shall state with reasonable certainty the nature of the information required, the time and place where the information shall be produced, whether the subpoena requires the attendance of the person subpoenaed or only the production of information and records and the consequences of failure to obey the subpoena.

D. A subpoena issued by the human services department under this section shall be served upon the person to be subpoenaed or, at the option of the secretary or the secretary's authorized representative, by certified mail addressed to the person at his last known address. The service of the subpoena shall be at least ten days prior to the required production of the information or the required appearance. If the subpoena is served by certified mail, proof of service is the affidavit of mailing. After service of a subpoena upon a person, if the person neglects or refuses to comply with the subpoena, the department may apply to the district court of the county where the subpoena was served or the county where the subpoena was responded to for an order compelling compliance. Failure of the person to comply with the district court's order shall be punishable as contempt.

E. If a review by the human services department results in a finding that a child support order should be modified in accordance with the guidelines, it should be presented to the court for modification and the obligor and the obligee shall be notified of their respective rights and shall have thirty days to respond to the department's finding. The right to seek modification shall rest with the department in the case of obligations being enforced as a result of a public assistance recipient's assignment of support rights to the state as provided in the Social Security Act, 42 U.S.C. § 602 (a)(26).

F. At the request of the obligor or the obligee or upon the filing of a motion to modify child support, the human services department shall furnish any information it has obtained in its review process regarding wages or other information pertaining to the obligor or the obligee.

G. Nothing in this section shall be construed to restrict the right of either party to petition the court to modify a child support obligation. The human services department shall not be required to conduct a review of any party's obligation more than once every three years.

**40-4-12. Allowance from spouse's separate property as alimony.**

In proceedings for the dissolution of marriage, separation or support between husband and wife, the court may make an allowance to either spouse of the other spouse's separate property as alimony and the decree making the allowance shall have the force and effect of vesting the title of the property so allowed in the recipient.

**40-4-13. Spousal support to constitute lien on real estate.**

A. The decree making the allowance for spousal support to either spouse shall be a lien on the real estate of the obligor spouse from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property is situated.

B. The notice of order or decree shall contain:

- (1) the caption of the case from which the duty of spousal support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;
- (2) the date of entry of the judgment, order or decree from which the duty of spousal support arose;
- (3) the current names, social security numbers and dates of birth of the parties; and
- (4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of spousal support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at his last known address.

**40-4-14. Allowance in property; appointment and removal of guardian.**

In proceedings for the dissolution of marriage, separation or support between husband and wife, the court may make an allowance of certain property or properties of either party or of both parties for the maintenance, education and support of the minor children of the parties, and may vest title to the part of the property so allowed in a conservator appointed by the court. The conservator must qualify and serve in such capacity as provided in Sections 5-101 through 5-502 of the Probate Code.

**40-4-15. Child support to constitute lien on real and personal property.**

A. In case a sum of money is allowed to the children by the decree for the support, education or maintenance of the children, the decree shall become a lien on the real and personal property of the obligor party from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property may be situated.

B. The notice of order or decree shall contain:

- (1) the caption of the case from which the duty of child support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;
- (2) the date of entry of the judgment, order or decree from which the duty of child support arose;
- (3) the current names, social security numbers and dates of birth of the parties; and
- (4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of child support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at his last known address.

**40-4-19. Enforcement of decree by attachment, garnishment, execution or contempt proceedings.**

Nothing in Sections 40-4-12 through 40-4-19 NMSA 1978 shall prevent a person or persons entitled to benefits of any decree for alimony or support from enforcing the decree by attachment, garnishment, execution or contempt proceedings as is now provided by statute, except that the filing of an affidavit that the defendant has no property within the state subject to execution to satisfy the judgment shall not be a prerequisite to the issuance of a garnishment.

**40-4-20. Failure to divide or distribute property on the entry of a decree of dissolution of marriage or separation; distribution of spousal or child support and determination of paternity when death occurs during proceedings for dissolution of marriage, separation, annulment of marriage or paternity.**

A. The failure to divide or distribute property on the entry of a decree of dissolution of marriage or of separation shall not affect the property rights of either the husband or wife, and either may subsequently institute and prosecute a suit for division and distribution or with reference to any other matter pertaining thereto that could have been litigated in the original proceeding for dissolution of marriage or separation.

B. Upon the filing and service of a petition for dissolution of marriage, separation, annulment, division of property or debts, spousal support, child support or determination of paternity pursuant to the provisions of Chapter 40, Article 4 or 11 NMSA 1978, if a party to the action dies during the pendency of the action, but prior to the entry of a decree granting dissolution of marriage, separation, annulment or determination of paternity, the proceedings for the determination, division and distribution of marital property rights and debts, distribution of spousal or child support or determination of paternity shall not abate. The court shall conclude the proceedings as if both parties had survived. The court may allow the spouse or any children of the marriage support as if the decedent had survived, pursuant to the provisions of Chapter 40, Article 4 or 11 NMSA 1978. In determining the support, the court shall, in addition to the factors listed in Chapter 40, Article 4 NMSA 1978, consider the amount and nature of the property passing from the decedent to the person for whom the support would be paid, whether by will or otherwise.

**40-4A-2. Definitions.**

As used in the Support Enforcement Act:

A. "authorized quasi-judicial officer" means a person appointed by the court pursuant to rule 53(a) of the Rules of Civil Procedure for the District Courts;

B. "consumer reporting agency" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

C. "delinquency" means any payment under an order for support which has become due and is unpaid;

D. "department" means the human services department;

E. "income" means any form of periodic payment to an obligor, regardless of source, including but not limited to wages, salary, commission, compensation as an independent contractor, workers' compensation benefits, disability benefits, annuity and retirement benefits or other benefits, bonuses, interest or any other payments made by any person, but does not include:

(1) any amounts required by law to be withheld, other than creditor claims, including but not limited to federal, state and local taxes, social security and other retirement and disability contributions;

(2) union dues;

(3) any amounts exempted by federal law; or

(4) public assistance payments;

F. "notice of delinquency" means the notice of delinquency as provided for in Section 40-4A-4 NMSA 1978;

G. "notice to withhold income" means a notice that requires the payor to withhold from the obligor money necessary to meet the obligor's duty under an order for support and, in the event of a delinquency, requires the payor to withhold an additional amount to be applied towards the reduction of the delinquency;

H. "obligor" means the person who owes a duty to make payments under an order for support;

I. "obligee" means any person who is entitled to receive support under an order for support or that person's legal representative;

J. "order for support" means any order which has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state and which order provides for:

(1) periodic payment of funds for the support of a child or a spouse;

(2) modification or resumption of payment of support;

(3) payment of delinquency; or

(4) reimbursement of support;

K. "payor" means any person or entity who provides income to an obligor;

L. "person" means an individual, corporation, partnership, governmental agency, public office or other entity; and

M. "public office" means the state disbursement unit of the department as defined in Section 454B of the Social Security Act.

**40-4A-4. Notice of delinquency.**

A. When an obligor accrues a delinquency, the obligee or public office may prepare and serve upon the obligor a copy of a verified notice of delinquency. The income of a person with a support obligation imposed by a support order issued or modified in the state before January 1, 1994, if not otherwise subject to immediate withholding under Section 40-4A-4.1 NMSA 1978, shall become subject to immediate withholding as provided in Section 40-4A-4.1 NMSA 1978 if arrearages occur, without the need for a judicial or administrative hearing.

B. If the date upon which payment is due under an order for support is not stated in the order for support, the due date shall be deemed to be the last day of the month.

C. The notice of delinquency shall:

(1) recite those terms of the order for support which enumerate the support obligation;

(2) contain a current computation of the period and total amount of the delinquency;

(3) inform the obligor of the amount to be withheld;

(4) inform the obligor of the procedures available to contest the income withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact;

(5) state that, unless the obligor complies with the procedures to contest the income withholding, a notice to withhold income shall be served upon the payor;

(6) state that the notice to withhold income shall be applicable to any current or subsequent payor; and

(7) state the name and address of the public office to which withheld income shall be sent.

D. The original notice of delinquency shall be filed with the clerk of the district court.

E. Service of the notice of delinquency upon the obligor shall be effected by sending the notice by prepaid certified mail addressed to the obligor at his last known address or by any method provided by law for service of a summons. Proof of service shall be filed with the clerk of the district court.

**40-4A-4.1. Immediate child support income withholding.**

A. In any judicial proceeding in which child support is ordered, modified or enforced and which proceeding is brought or enforced pursuant to Title IV-D of the Social Security Act as provided in Section 27-2-27 NMSA 1978, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency. Effective January 1, 1994, in proceedings in which child support services are not being provided pursuant to Title IV-D and the initial child support order is issued in the state on or after January 1, 1994, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency.

B. As part of the court or administrative order establishing, modifying or enforcing the child support obligation, the court shall issue the order to withhold.

C. The order to withhold shall state:

(1) the style, docket number and court having jurisdiction of the cause;

(2) the name, address and, if available, the social security number of the obligor;

(3) the amount and duration of the child support payments. If any of the ordered amount is toward satisfaction of an arrearage or delinquency up to the date of the order, the amount payable to current and past-due support shall be specified, together with the total amount of the delinquency or arrearage, including judgment interest, if any;

(4) the name and date of birth of the child for whom support is ordered and the name of the obligee;

(5) the name and address of the person or agency to whom the payment is to be made, together with the agency's internal case number; and

(6) any other information deemed necessary to effectuate the order.

D. All Title IV-D payments shall be made through the public office. All non-Title IV-D payments shall be made through the public office to be effective on October 1, 1998.

E. The maximum amount withheld pursuant to this section and any other garnishment shall not exceed fifty percent of the obligor's income.

F. The order of a withholding shall be mailed by the Title IV-D agency or the support obligee, obligee's attorney or court by certified mail to the payor. The payor shall pay over income as provided by and in compliance with the procedures of Section 40-4A-8 NMSA 1978.

G. The court may provide an exception to the immediate income withholding required by this section if it finds good cause for not ordering immediate withholding. The burden shall be on the party claiming good cause to raise the issue and demonstrate the existence of good cause to the court. In the event of a finding of good cause, the court shall make a written finding in the order specifying the reasons or circumstances justifying the good-cause exception and why income withholding would not be in the best interest of the child. If the order is one modifying a support obligation and

immediate income withholding is not ordered, the order shall include a finding that the obligor has timely paid support in the past. The order shall provide that the obligor shall be subject to withholding if a one-month support delinquency accrues.

H. The court shall make an exception to the immediate income withholding required by this section if the parties to the proceeding enter into a written agreement providing for alternative means of satisfying the child support obligation. Such an agreement shall be incorporated into the order of the court. For the purposes of this subsection, the support obligee shall be considered to be the department in the case of child support obligations that the state is enforcing pursuant to an assignment of support rights to it as a condition of the assignor's receipt of public assistance. The agreement shall contain the signatures of a representative of the department and the custodial parent.

I. Notwithstanding the provisions of Subsection G of this section, immediate income withholding shall take place if the child support obligor so requests. The notice to withhold shall be filed with the clerk of the district court and the requirements of Subsection C of this section, Subsections D, E and F of Section 40-4A-5 and Sections 40-4A-6, 40-4A-8, 40-4A-10 and 40-4A-11 NMSA 1978 shall apply.

J. A court shall order a wage withholding effective on the date on which a custodial parent requests such withholding to begin if the court determines, in accordance with such procedures and standards as it may establish, that the request should be approved, notwithstanding:

- (1) the absence of a support delinquency of at least one month;
- (2) a finding of good cause under Subsection G of this section; or
- (3) an agreement under Subsection H of this section.

K. The standards and procedures established for purposes of Subsection J of this section shall provide for the protection of the due process rights of the support obligor, appropriate notices and the right to a hearing under the Support Enforcement Act.

L. Wages not subject to withholding under Subsection J of this section shall still be subject to withholding on an earlier date as provided by law.

M. Notwithstanding any other provision of this section, wages not subject to withholding because of a finding of good cause under Subsection G of this section shall not be subject to withholding at the request of a custodial parent unless the court changes its determination of good cause not to initiate immediate wage withholding.

N. In the event a child support obligor accrues a delinquency in an amount equal to at least one month's support obligation and notwithstanding any previous agreement or court finding to the contrary, income withholding shall issue against the support obligor and the procedures set out in Section 40-4A-4 NMSA 1978 shall be followed. Such withholding shall terminate only upon the termination of all obligations imposed by the order of support and payment in full of all enforceable child support delinquencies.

#### **40-4A-5. Notice to withhold income.**

A. The obligee or public office shall file an affidavit with the clerk of the district court showing that notice of delinquency has been duly served upon the obligor.

B. Upon filing of the affidavit required by Subsection A of this section, the notice to withhold income shall be filed with the clerk of the district court and served upon the payor by certified mail or personal delivery, and proof of service shall be filed with the clerk of the district court.

C. A conformed copy of the notice to withhold income shall be mailed to the obligor at his last known address.

D. The notice to withhold income shall be verified by the obligee or public office and shall:

(1) state the amount of income to be withheld from the obligor; provided, however, the amount to be applied to satisfy the monthly obligation under the order for support, the amount of the delinquency which is set forth in the notice of delinquency and the amount to be applied to reduce the delinquency set forth in the notice of delinquency shall be stated separately;

(2) state that payments due from multiple obligors may be combined into one remittance so long as each withholding is separately identified;

(3) state that the maximum amount of an obligor's income subject to withholding pursuant to the Support Enforcement Act and pursuant to any garnishment shall not exceed fifty percent;

(4) state the duties of the payor as set forth in Section 40-4A-8 NMSA 1978; and

(5) require that all payments be made through the public office to ensure accurate recordkeeping.

E. The termination of the obligations imposed by the order of support and payment in full of any delinquency shall revoke the notice to withhold income.

#### **40-4A-6. Amount of income subject to withholding.**

A. The income of an obligor shall be subject to withholding in an amount:

(1) equal to the monthly support obligation set forth in the order for support; and

(2) in the event of a delinquency, the additional amount of twenty percent of the monthly support obligation set forth in the order for support, or such amount as the court may order after notice and hearing, until payment in full of any delinquency set forth in the notice of delinquency.

B. The maximum amount of an obligor's income which may be subject to withholding pursuant to the Support Enforcement Act and pursuant to any garnishment shall not exceed fifty percent.

#### **40-4A-7. Procedure to avoid income withholding.**

Except as provided in Section 40-4A-4.1 NMSA 1978, the obligor may contest the notice to withhold income by filing a petition with the clerk of the district court within twenty days after service of the notice of delinquency. Grounds for the contest shall be limited to a dispute concerning the existence or amount of the delinquency or noncompliance with the Support Enforcement Act. The clerk of the district court shall notify the obligor and the obligee or public office, as appropriate, of the time and place of the hearing on the petition. The court shall hold the hearing pursuant to the provisions of Section 40-4A-9 NMSA 1978.

#### **40-4A-9. Petitions to modify, suspend or terminate notice of withholding.**

A. When an obligor files a petition pursuant to Section 40-4A-7 NMSA 1978, the court, after due notice to all parties, shall hear and resolve the matter no later than forty-five days following the service of the notice of delinquency. Where the court cannot promptly resolve the issues alleged in the petition, the court may order immediate execution of an amended notice to withhold income as to any undisputed amounts and may continue the hearing on the disputed issues for such reasonable length of time as required under the circumstances. Failure to meet the time requirements shall not constitute a defense to the notice to withhold income.

B. At any time, an obligor or obligee or the public office may petition the court to:

(1) modify, suspend or terminate the notice to withhold income because of a corresponding modification, suspension or termination of the underlying order for support;

(2) modify the amount of income to be withheld to increase the rate of payment of the delinquency; or

(3) suspend the notice to withhold income because of the inability of the public office to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

C. Except for orders to withhold issued pursuant to Section 40-4A-4.1 NMSA 1978, an obligor may petition the court at any time to terminate the withholding of income because payments pursuant to the notice to withhold income have been made for at least three years and all delinquencies have been paid. The court shall suspend the notice to withhold income, absent good cause for denying the petition. If the obligor subsequently becomes delinquent in payment of the order for support, the obligee or public office may serve another notice to withhold income by complying with all requirements for notice and service pursuant to the Support Enforcement Act.

#### **40-4A-17. Publication of names of obligors; amount owed.**

The department shall publish, once every three months in a newspaper with statewide circulation, the names and last known addresses of at least twenty-five delinquent obligors. In addition to publication of the obligors' names and last known addresses, the department shall publish the respective amounts of delinquency accrued by the individual obligors as of the date of publication.

### **Article 4C Mandatory Medical Support**

#### **40-4C-3. Definitions.**

As used in the Mandatory Medical Support Act:

- A. "court" means any district court ordering child support of an obligor;
- B. "dental insurance coverage" means those coverages generally associated with a dental plan of benefits, not including medicaid coverage authorized by Title 19 of the Social Security Act and administered by the department;
- C. "department" means the human services department;
- D. "employer" means an individual, organization, agency, business or corporation hiring an obligor for pay;
- E. "health insurance coverage" means those coverages generally associated with a medical plan of benefits, not including medicaid coverage authorized by Title 19 of the Social Security Act and administered by the department;
- F. "insurer" means an employment-related or other group health care insurance plan, a health maintenance organization, a nonprofit health care plan or other type of health care insurance plan under which medical or dental services are provided, regardless of service delivery mechanism;
- G. "minor child" means a child younger than eighteen years of age who has not been emancipated;
- H. "national medical support notice" means a court-ordered notice to an employer that an employee's child must be covered by the employment-related group health care insurance plan;
- I. "obligee" means a person to whom a duty of support is owed or a person, including the department, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order, regardless of whether the person to whom a duty of support is owed is a recipient of public assistance; and
- J. "obligor" means a person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or for registration of a support order is commenced.

**40-4C-4. Medical support; order.**

- A. The court shall order an obligor to name the minor child on behalf of whom support is owed as an eligible dependent of health insurance coverage or dental insurance coverage if:
  - (1) health insurance coverage or dental insurance coverage that meets or exceeds the minimum standards required under the Mandatory Medical Support Act is not available at a more reasonable cost to the obligee than to the obligor for coverage of the minor child; and
  - (2) such health insurance coverage or dental insurance coverage is available to the obligor through an employment-related or other group health care insurance plan.
- B. The court may consider the impact of the cost of health insurance coverage or dental insurance coverage on the payment of the base child support amounts in determining whether such insurance coverage shall be ordered.
- C. The court may order the obligor to obtain health insurance coverage or dental insurance coverage for any minor child to whom support is owed, if:

(1) the court finds that health insurance coverage or dental insurance coverage for the minor child is not available to the obligor through an employment-related or other group health care insurance plan; and

(2) the obligee does not have such health insurance coverage or dental insurance coverage available at a more reasonable cost than the obligor for coverage of the minor child.

D. The court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the minor child that are not covered by the required health insurance coverage or dental insurance coverage, if:

(1) the court finds that the health insurance coverage or dental insurance coverage required to be obtained by the obligor or available to the obligee does not pay all the reasonable and necessary medical or dental expenses of the minor child; and

(2) the court finds that the obligor has the financial resources to contribute to the payment of these medical or dental expenses.

E. The court shall require the obligor to provide health insurance coverage or dental insurance coverage for the benefit of the obligee if it is available at no additional cost to the obligor.

F. The court in any proceeding for the establishment, enforcement or modification of a child support obligation may modify an existing order of support or establish child support, as applicable, for the minor child to incorporate the provisions for medical support ordered pursuant to the Mandatory Medical Support Act.

**40-4C-5. Order; proof of compliance; notice.**

A. The obligor shall provide to the obligee within thirty days of receipt of effective notice of a court order for health insurance coverage or dental insurance coverage pursuant to the Mandatory Medical Support Act written proof of the obligor's compliance with that order. Compliance means either that the health insurance coverage or dental insurance coverage has been obtained or that a correct and complete application for such coverage has been made.

B. The obligee shall forward a copy of the court order for health insurance coverage or dental insurance coverage issued pursuant to the Mandatory Medical Support Act to the obligor's employer or union only when ordered to do so by the court or when:

(1) the obligor fails to provide written proof of compliance with the court order to the obligee within thirty days of the obligor's receipt of effective written notice of the court order;

(2) the obligee serves by mail at the obligor's last known post office address written notice on the obligor of the obligee's intent to enforce the order; and

(3) the obligor fails to provide within fifteen days after the date the obligee mailed the notice in Paragraph (2) of this subsection written proof to the obligee that the obligor has obtained the health insurance coverage or dental insurance coverage ordered by the court or has applied for such coverage.

C. Upon receipt of a court order for health insurance coverage or dental insurance coverage pursuant to the Mandatory Medical Support Act, the employer or union shall forward a copy of the order to the health insurer or dental insurer, as applicable.

**40-4C-7. Health insurance coverage required.**

Any health insurance coverage plan ordered for a minor child pursuant to the Mandatory Medical Support Act shall at a minimum, meet minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out-of-pocket expenses, co-payments and plan requirements as set forth in regulations promulgated by the secretary of human services pursuant to the Mandatory Medical Support Act. To be an acceptable choice under the act, a health maintenance organization plan, in addition to meeting minimum standards, shall have a coverage area specified under the plan that includes the residential area of the minor child who is covered under the plan as an eligible dependent.

**40-4C-12. Obligor liability.**

A. An obligor who fails to maintain the health insurance coverage or dental insurance coverage for the benefit of a minor child as ordered pursuant to the Mandatory Medical Support Act shall be liable to the obligee for any medical and dental expenses incurred from the date of the court order.

B. An obligor who receives payment from a third party for the costs of medical or dental services provided to a minor child and who fails to use the payment to reimburse the department is liable to the department to the extent of the department's payment for the services. The department is authorized to intercept the obligor's tax refund or use other means of enforcement available to the department to recoup amounts paid. Claims for current or past due child support take priority over any claims made pursuant to this subsection. Proof of failure to maintain health insurance coverage or dental insurance coverage as ordered constitutes a showing of increased need by the obligee and provides a basis for modification of the obligor's child support order.

C. An obligor is required to provide the department with the following information concerning health insurance coverage or dental insurance coverage:

- (1) obligor's name and tax identification number;
- (2) type of coverage (single or family);
- (3) name, address and identifying number of health insurance coverage or dental insurance coverage;
- (4) name and tax identification number of other individuals who are provided health insurance coverage or dental insurance coverage by the obligor;
- (5) effective period of coverage; and
- (6) name, address and the tax identification number of the employer.

**ARTICLE 9 Grandparent's Visitation Privileges**

**40-9-2. Children; visitation by grandparent; petition; mediation.**

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act, or at any time after the entry of the judgment, the district court may grant reasonable visitation privileges to a grandparent of a minor child, not in conflict with the child's education or prior established visitation or time-sharing privileges.

B. If one or both parents of a minor child are deceased, any grandparent of the minor child may petition the district court for visitation privileges with respect to the minor. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

C. If a minor child resided with a grandparent for a period of at least three months and the child was less than six years of age at the beginning of the three-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

D. If a minor child resided with a grandparent for a period of at least six months and the child was six years of age or older at the beginning of the six-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

E. A biological grandparent may petition the district court for visitation privileges with respect to a grandchild when the grandchild has been adopted or adoption is sought, pursuant to the provisions of the Adoption Act, by:

(1) a stepparent;

(2) a relative of the grandchild;

(3) a person designated to care for the grandchild in the provisions of a deceased parent's will; or

(4) a person who sponsored the grandchild at a baptism or confirmation conducted by a recognized religious organization.

F. When a minor child is adopted by a stepparent and the parental rights of the natural parent terminate or are relinquished, the biological grandparents are not precluded from attempting to establish visitation privileges. When a petition filed pursuant to the provisions of the Grandparent's Visitation Privileges Act is filed during the pendency of an adoption proceeding, the petition shall be filed as part of the adoption proceedings. The provisions of the Grandparent's Visitation Privileges Act shall have no application in the event of a relinquishment or termination of parental rights in cases of other statutory adoption proceedings.

G. When considering a grandparent's petition for visitation privileges with a child, the district court shall assess:

(1) any factors relevant to the best interests of the child;

(2) the prior interaction between the grandparent and the child;

- (3) the prior interaction between the grandparent and each parent of the child;
- (4) the present relationship between the grandparent and each parent of the child;
- (5) time-sharing or visitation arrangements that were in place prior to filing of the petition;
- (6) the effect the visitation with the grandparent will have on the child;
- (7) if the grandparent has any prior convictions for physical, emotional or sexual abuse or neglect; and
- (8) if the grandparent has previously been a full-time caretaker for the child for a significant period.

H. The district court may order mediation and evaluation in any matter when a grandparent's visitation privileges with respect to a minor child are at issue. When a judicial district has established a domestic relations mediation program pursuant to the provisions of the Domestic Relations Mediation Act, the mediation shall conform with the provisions of that act. Upon motion and hearing, the district court shall act promptly on the recommendations set forth in a mediation report and consider assessment of mediation and evaluation to the parties. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

I. When the district court decides that visitation is not in the best interest of the child, the court may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.

J. The provisions of the Child Custody Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding custodial interference, are applicable to the provisions of the Grandparent's Visitation Privileges Act.

#### **40-9-3. Visitation; modification; restrictions.**

A. When the district court grants reasonable visitation privileges to a grandparent pursuant to the provisions of the Grandparent's Visitation Privileges Act, the court shall issue any necessary order to enforce the visitation privileges and may modify the privileges or order upon a showing of good cause by any interested person.

B. Absent a showing of good cause, no grandparent or parent shall file a petition pursuant to the provisions of the Grandparent's Visitation Privileges Act more often than once a year.

C. When an action for enforcement of a court order allowing visitation privileges is brought pursuant to the Grandparent's Visitation Privileges Act by a grandparent, the court may award court costs and reasonable attorneys' fees to the prevailing party when a court order is violated.

#### **40-9-4. Change of child's domicile; notice to grandparent.**

A. When a grandparent is granted visitation privileges with respect to a minor child pursuant to the provisions of the Grandparent's Visitation Privileges Act and the child's custodian intends to depart the state or to relocate within the state with the intention of changing that child's domicile, the custodian shall:

(1) notify the grandparents of the minor child of the custodian's intent to change the child's domicile at least five days prior to the child's change of domicile;

(2) provide the grandparent with an address and telephone number for the minor child; and

(3) afford the grandparent of the minor child the opportunity to communicate with the child.

B. This state will recognize an order or act regarding grandparent visitation privileges issued by any state, district, Indian tribe or territory of the United States of America.

## **Article 12 Domestic Relations Mediation**

### **40-12-3. Definitions.**

As used in the Domestic Relations Mediation Act:

A. "advisory consultation" means a brief assessment about the parenting situation and a written report summarizing the information for the attorneys and the court, including an assessment by the counselor of the positions, situations and relationships of family members and suggestions regarding specific plans, general issues or requested action;

B. "counselor" means a person who by training or experience is qualified to work with individuals in a mediation situation and to perform assessments;

C. "domestic relations mediation program" means the provision of services to the court and parents, including advisory consultations, priority consultations, evaluations and mediation;

D. "evaluation" means a complete assessment that may include multiple interviews with parents and children, psychological testing, home visits and conferences with other appropriate professionals;

E. "fund" means the domestic relations mediation fund of the judicial district;

F. "mediation" means a process in which parents meet with a counselor in order to assist the parents in focusing on the needs of the child and to assist the parents in reaching a mutually acceptable arrangement regarding the child; and

G. "priority consultation" means that the court has requested specific information and brief assessment regarding the parenting situation and suggestions regarding temporary arrangements.

### **40-12-4. District court domestic relations mediation fund created.**

A judicial district shall create a "domestic relations mediation fund" of the judicial district. Money in the fund shall be used to offset the cost of operating the domestic relations mediation program and the supervised visitation program. Deposits to the fund shall include payments made through the imposition of a sliding fee scale pursuant to Sections 40-12-5 and 40-12-5.1 NMSA 1978, distributions pursuant to Section 34-6-40 NMSA 1978 and the collection of the surcharge provided for in Section 40-12-6 NMSA 1978.

#### **40-12-5. Domestic relations mediation program.**

A. A judicial district may establish a domestic relations mediation program by court rule approved by the supreme court. The district court may employ or contract with a counselor to provide consultations, evaluations and mediation in domestic relations cases involving children.

B. Parents may request of the court the services of the domestic relations mediation program for consultations, evaluation or mediation. Parents shall enter the program when ordered to do so by the court.

C. Parents shall pay the cost of the domestic relations mediation program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the specific service rendered by the counselor. The fees shall be paid to the district court to be credited to the fund.

#### **40-12-5.1. Supervised visitation program.**

A. A judicial district may establish a "supervised visitation program" by local court rule approved by the supreme court. The supervised visitation program shall be used when, in the opinion of the court, the best interests of the child are served if confrontation or contact between the parents is to be avoided during exchanges of custody or if contact between a parent and a child should be supervised. In a supervised visitation program, the district court may employ or contract with a person:

- (1) with whom a child may be left by one parent for a short period while waiting to be picked up by the other parent; or
- (2) to supervise visits among one or both parents and the child.

B. A parent may request the services of the supervised visitation program or the court may order that the program be used.

C. Parents shall pay the cost of the neutral corner program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the service. The fees shall be paid to the district court to be credited to the fund.

**Note:** Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.