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# Chapter 1: Judgments and Executions

A judgment is the final determination of the rights of the parties in any lawsuit. An execution is the process of the court to carry out the judgment. Judgment in New Mexico includes a decree and any order from which an appeal may be taken.

[RULE 1-054 NMRA](#)

## Section 1-1: Types of Judgments

JUDGMENT TYPE	RULE OR STATUTE
Stipulated or Agreement	NMSA 1978, §§ 39-1-9, -18;
Default	RULE 1-055 NMRA
Declaratory	RULE1-057 NMRA
Summary	RULE 1-056 NMRA
Confession of Judgment vs. Cognovit Note	NMSA 1978, §§ 39-1-9 -18
Money	NMSA 1978, § 39-1-6
Deficiency	NMSA 1978, § 48-10-17
Foreign	NMSA 1978, § 39-4A-1
Magistrate	RULE 2-701 NMRA
Vesting Title	RULE 1-070 NMRA

## Section 1-2: Orders and Judgments

[RULE 1-058 NMRA](#)

<b>Preparation of Orders and Judgments</b>	<p>Upon announcement of the court's decision in any matter the court shall:</p> <ul style="list-style-type: none"> <li>• Allow counsel a reasonable time, fixed by the court, within which to submit the requested form of order or judgment;</li> <li>• Designate the counsel who shall be responsible for preparation of the order or judgment and fix the time within which it is to be submitted; or</li> <li>• Prepare its own form of order or judgment.</li> </ul>
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<b>Time Limit</b>	If no satisfactory form of order or judgment has been submitted within the time fixed by the court, the court shall take such steps as it may deem proper to have an appropriate form of order or judgment entered promptly.
<b>Examination by Counsel</b>	In all events, before the court signs any order or judgment, counsel shall be afforded a reasonable opportunity to examine the same and make suggestions or objections.
<b>Filing</b>	Upon the signing of any order or judgment it shall be filed promptly in the clerk's office and such filing constitutes entry thereof.

## Section 1-3: Stipulated Judgment

A stipulated judgment is not considered to be a judicial determination, but rather a contract between the parties. *Owen v. Burn Constr. Co.* 90 N.M. 297, 563 P.2d 91 (1977)

## Section 1-4: Default Judgment

[RULE 1-055 NMRA](#)

<b>Entry of Default Judgment</b> <a href="#">RULE 1-055 (E) NMRA</a>	When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.
<b>Setting Aside</b> <a href="#">RULE 1-055 (E) NMRA</a>	For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with <a href="#">RULE 1-060 NMRA</a> .

**Exception and Limitation**  
**RULE 1-055 (E) NMRA**

No judgment by default shall be entered against the state or an officer or agency thereof or against a party in any case based upon a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court.



**CLERICAL DUTIES | DEFAULT JUDGMENT**

1. Attorney prepares and brings Certificate as to the State of the Record.
2. Check the docket and file to ensure that service was proper and that there has been no appearance by or on behalf of the party being defaulted.
3. Bring to judge's attention any discrepancies or if default requested is against a state agency.
4. After you receive signed default judgment, file default judgment which may close the party, parties or case.

## Section 1-5: Summary Judgment

**RULE 1-056 NMRA**

<b>Claimant</b>	A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.
<b>Defending Party</b>	A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment as to all or any part thereof.

<p><b>Grounds for Motion</b></p>	<ul style="list-style-type: none"> <li>• The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.</li> <li>• A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.</li> <li>• If alternative grounds for summary judgment have been presented to the court, the order granting or denying the motion for summary judgment shall specify the grounds upon which the order is based.</li> </ul>
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## Section 1-6: Docketing Money Judgment

NMSA 1978, § 39-1-6

<p><b>Money Judgment</b></p>	<ul style="list-style-type: none"> <li>• Any money judgment rendered in the supreme court, court of appeals, district court or metropolitan court shall be docketed by the clerk of the court and a transcript or abstract of judgment may be issued by the clerk upon request of the parties.</li> <li>• The judgment shall be a lien on the real estate of the judgment debtor from the date of the filing of the transcript of the judgment in the office of the county clerk of the county in which the real estate is situated.</li> <li>• Upon approval and filing of a supersedeas bond upon appeal of the cause as provided by law, the lien shall be void. Judgment shall be enforced for not more than fourteen years thereof.</li> </ul>
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<p><b>Judgment and Liens</b></p>	<ul style="list-style-type: none"> <li>• When any judgment giving rise to a subsisting lien pursuant to Section 39-1-6 NMSA 1978 upon any real estate in the state has been fully satisfied, it is the duty of the judgment creditor to file a release of the lien in the office of the county clerk of the county in which the real estate is situated.</li> <li>• The cost of filing the release of lien shall be assessed against the judgment debtor and shall be collected before the release of lien is required to be filed.</li> </ul>
<p><b>Judgment Debts</b></p>	<p>All judgments and decrees for payment of money rendered in the courts of this state and which have become final may be satisfied, if the judgment creditor cannot be found after a diligent search, by payment of the full amount of such judgment or decree, with interest thereon to date of payment, plus any post-judgment costs incurred by the judgment creditor which can be determined from the court record and the costs of court for receiving into and paying the money out of the registry of the court.</p>
	<p>Upon such payment, the clerk, or the judge if there is no clerk, shall issue a receipt therefor and shall enter a satisfaction of such judgment in the record, and shall formally notify the judgment creditor of such judgment or decree, if known; and upon the request therefor, shall pay over to the judgment creditor, or to his order, the full amount of the judgment, costs and interest collected.</p>

## Section 1-7: Foreign Judgments

JUDGMENT TYPE	RULE OR STATUTE
<b>Foreign Judgment</b>	<a href="#">NMSA 1978, § 39-4A-1 TO -6</a>
<b>Uniform Foreign Money-Judgments Recognition Act</b>	<a href="#">NMSA 1978, §§ 39-4B-1 TO -9</a>
<b>Uniform Foreign Money-Claims Act</b>	<a href="#">NMSA 1978, § 39-4C-1 TO -16</a>

<b>Foreign Judgment</b>	As used in the Foreign Judgments Act [39-4A-1 to 39-4A-6 NMSA 1978] "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.
	A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of the district court of any county of this state in which the judgment debtor resides or has any property or property rights subject to execution, foreclosure, attachment or garnishment. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed shall have the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing or satisfying as a judgment of the district court of this state and may be enforced or satisfied in like manner, except as provided in Subsection B of this section.

## NOTICE OF JUDGMENT

	At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the district court an affidavit setting forth the name and last known address of the judgment debtor and the judgment creditor.
	<ul style="list-style-type: none"> <li>• Promptly upon the filing of the foreign judgment and the affidavit, the clerk of the district court shall mail a notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket.</li> <li>• The notice shall include the name and address of the judgment creditor and his attorney, if any, in this state.</li> <li>• In addition, the judgment creditor shall mail a notice of the filing of the judgment to the judgment debtor, certified mail, and shall file proof of the mailing with the clerk.</li> </ul>



### TIME LIMIT | EXECUTION OR ENFORCEMENT OF JUDGMENT

No execution or other process for enforcement of a foreign judgment filed pursuant to this section shall issue until **twenty (20) days** after the date the judgment is filed.

## STAY ENFORCEMENT OF JUDGMENT

NMSA 1978, § 39-4A-5

	If the judgment debtor shows the district court that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.
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If the judgment debtor shows the district court sufficient grounds upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction that is required in this state.



#### **CAUTION | ATTORNEY'S RESPONSIBILITIES**

- The judgment creditor or his/her attorney is responsible for filing a transcript or abstract of the judgment with the county clerk if a lien attaches to real estate in the county.
- The judgment creditor or his/her attorney is responsible for taking necessary legal steps to enforce the foreign judgment.
- Out-of-state attorneys must secure resident counsel to file pleadings if not licensed in New Mexico



#### **CLERICAL DUTIES | FOREIGN JUDGMENT**

1. Collect filing fee.
2. Open CV case file.
3. Mail notice of filing of judgment to judgment debtor and note date of mailing in docket.
4. File Notice of Judgment
5. File proof of mailing received from judgment creditor.

## Section 1-8: Vesting Title

### RULE 1-070 NMRA

	<ul style="list-style-type: none"><li>• If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party.</li><li>• On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment.</li><li>• The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.</li><li>• When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.</li></ul>
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## Section 1-9: Transcript of Judgment

NMSA 1978, § 39-1-8

<p><b>Transcript of Judgment</b></p>	<p>The transcript of judgment issued by the clerks of the supreme court, court of appeals, district courts and metropolitan courts shall show:</p> <ul style="list-style-type: none"> <li>• The names of the parties,</li> <li>• The number and nature of the case,</li> <li>• The court in which judgment was rendered,</li> <li>• The date of judgment, amount of damages, amount of costs, total amount of judgment and date of docket,</li> <li>• The attorney for the creditor,</li> <li>• Issuance and return of executions, if any, and</li> <li>• Satisfaction of judgment when paid.</li> </ul>
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### CLERICAL DUTIES | TRANSCRIPT OF JUDGMENT

1. Check transcript against judgment for correctness.



**CAUTION | JUDGMENT AMOUNT ON TRANSCRIPT**

Transcript must indicate the same judgment amount as the judgment.

2. Issue with date, signature and seal.
3. File copy, docket and place in case file (optional).

## Section 1-10: Costs and Attorney Fees

### RULE 1-054 E. NMRA

<p><b>Attorney Fees</b></p>	<ul style="list-style-type: none"> <li>• Claims for attorney fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.</li> <li>• Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than <b>fifteen (15) days</b> after entry of judgment; must specify the judgment and the statute or other grounds entitling the moving party to the award; and must state the amount sought and the basis for the amount claimed.</li> <li>• On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion.</li> <li>• The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court.</li> <li>• A judgment shall be prepared and entered as provided in Rule 1-058 NMRA.</li> </ul>
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#### TIME LIMIT | RECOVERY OF COSTS, RULE 1-054 D. (4) NMRA

- Within **fifteen (15) days** after filing of the final judgment, the party recovering costs shall file with the clerk of the district court an itemized cost bill, with proof of service of a copy to opposing counsel.
- Any party failing to file a cost bill within **fifteen (15) days** after the filing of the final judgment shall be deemed to have waived costs.
- If no objections are filed within **ten (10) days** after service of the cost bill, the clerk of the district court shall tax the claimed costs which are allowable by law.
- The judge shall settle any objections filed.



#### CAUTION | RECOVERY COST TIME LIMITS

The time limit for recovery of cost listed is the law and **MUST** be followed.

## Section 1-11: Interest Rates

NMSA 1978, § 56-8-4

	<p>Interest shall be allowed on judgments and decrees for the payment of money from entry and shall be calculated at the rate of eight and three-quarters percent per year, unless the judgment is rendered on a written instrument having a different rate of interest, in which case interest shall be computed at a rate no higher than specified in the instrument or the judgment is based on tortious conduct, bad faith, intentional or willful acts, in which case interest shall be computed at the rate of fifteen percent.</p>
	<p>The court in its discretion may allow interest of up to ten percent from the date the complaint is served upon the defendant after considering among other things:</p> <ul style="list-style-type: none"> <li>• If the plaintiff was the cause of unreasonable delay in the adjudication of the plaintiff's claims; and</li> <li>• If the defendant had previously made a reasonable and timely offer of settlement to the plaintiff.</li> </ul>
	<p>Nothing contained in this section shall affect the award of interest or the time from which interest is computed as otherwise permitted by statute or common law.</p>
	<p>The state and its political subdivisions are exempt from the provisions of this section except as otherwise provided by statute or common law.</p>

## Section 1-12: Supplemental Proceedings

<b>Examination</b>	Upon request of the judgment creditor or a successor in interest, the clerk shall issue a subpoena directing any person with knowledge that will aid in enforcement of or execution on the judgment, including the judgment debtor, to appear before the district court to respond to questions concerning that knowledge. The subpoena shall be served in the same manner as other subpoenas except that it shall be served not less than three (3) days prior to the date the examination is to be conducted.
<b>Deposition in Lieu of Exam</b>	In lieu of such an examination before the court, the judgment creditor or a successor in interest may obtain discovery from any person, including the judgment debtor, in any manner provided in these rules.

## Section 1-13: Execution

NMSA 1978, §§ 39-1-4 AND -6

EXECUTION TYPE	RULE OR STATUTE
<b>Execution</b>	NMSA 1978, §§ 39-1-4 AND -6
<b>Execution Against Sureties</b>	NMSA 1978, § 39-4-10
<b>Execution Against a Corporation</b>	NMSA 1978, § 39-4-11
<b>Review of Execution</b>	NMSA 1978, § 39-3-28
<b>Writs of Execution</b>	RULE 1-065.1. A. NMRA

## Section 1-14: Docketing Magistrate Court Judgment

RULE 2-804 (E) NMRA

	<ul style="list-style-type: none"><li>• Upon the expiration of the time for appeal, the judgment creditor may file in the district court of the county in which the magistrate issued the judgment a certified copy of the judgment.</li><li>• Upon payment of the prescribed docket fee, the clerk of the district court shall docket the judgment, in the same manner in which judgments of the district court are docketed, and shall issue a transcript of judgment as though the judgment had been issued by the district court.</li><li>• The docketing of a judgment in the district court pursuant to this paragraph shall not prevent the magistrate court from issuing writs and other orders in aid of enforcement of the judgment of the magistrate court.</li></ul>
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## Chapter 2: Writs

### Section 2-1: Writs of Execution

#### RULE 1-065 NMRA



#### CAUTION | ISSUANCE OF WRITS

Please follow in-house procedure regarding [RULE 1-065 E. NMRA](#) listed below.

<p><b>Writs of Execution</b> <a href="#">RULE 1-065 E. NMRA</a></p>	<p>Writs of execution, writs of possession issued pursuant to Section 42-4-12 NMSA 1978 and writs of attachment directed to land or an interest in land (other than rents, issues and profits thereof) may be issued by the clerk of the district court in proper cases without endorsement or approval of the district judge.</p>
<p><b>Approval</b></p>	<p>All writs issued by the district courts other than those enumerated in Paragraph A of this rule and Rules 1-065.1 and 1-065.2 may be issued only upon the express written approval of the district judge endorsed on the writ. All writs shall be signed by the clerk or deputy clerk of the district court and shall bear the court seal. In instances where written approval of the district judge is required, the procedure set out in Paragraphs C through I of this rule shall be followed.</p>
	<p>Application for the writ shall be by verified petition filed with the district court accompanied by the proposed form of writ with a copy of the petition appended as an exhibit.</p>

<p><b>Contents</b></p>	<p>The petition shall set forth the following:</p> <ul style="list-style-type: none"> <li>• A statement of the facts showing venue and jurisdiction of the court in which the writ is sought, and the right or standing of the filing party;</li> <li>• If the respondent is a public officer, board or tribunal purporting to act in the discharge of official duties, the names of the real parties in interest;</li> <li>• The grounds upon which the petition is based and the facts required by the substantive law for issuance of the writ, stated in concise form; and</li> <li>• A concise statement of the relief sought.</li> </ul>
<p><b>Form of Writ</b></p>	<ul style="list-style-type: none"> <li>• The writ shall be in lieu of summons.</li> <li>• The form of writ shall be in the name of the State of New Mexico, shall contain the caption of the case, the name and address of petitioner's attorney (pro se-petitioner's address), shall direct the respondent or respondents to serve and file a responsive pleading within a time specified in the writ, and, if a date for hearing is set, the date, time and place when the hearing will be held.</li> <li>• The writ shall further state in concise form the relief sought, but other matters set forth in the petition, copy of which is annexed to the writ, need not be included in the writ.</li> </ul>



#### TIME LIMIT | FORM OF WRIT

- If the date for service of a responsive pleading and the date for hearing are the same, the writ shall so state.
- No peremptory writ shall be issued unless a date, not later than **ten (10) days** after its issuance, is set for a hearing at which it may be challenged, and any hearing date so fixed may be advanced upon motion of any respondent.


**TIME LIMIT | RESPONSIVE PLEADING**

The date set in the writ for responsive pleading or hearing shall be not earlier than **seven (7) days** following date of issuing the writ unless, from the verified petition or affidavit filed with the petition, the court shall determine that unreasonable loss or hardship is likely to result unless an earlier date is set, in which event determination of the court specifying the particular loss or hardship must be set forth in the writ.

**Exemptions**

- Exemptions of personal property provided by Sections 42-10-1 to 42-10-7 NMSA 1978 also apply to attachment proceedings. If the party is a natural person, notice of a right to claim exemptions shall be given.
- A claim of exemption may be filed and served in the same manner and time as required in execution proceedings.
- The petitioner may dispute the claimed exemption in the same manner and time provided for a dispute on a claim of exemption in an execution proceeding.
- If the petitioner disputes the claimed exemption, the court shall proceed in the manner provided for hearings on claims of exemptions in execution proceedings.

## GARNISHMENT TO SATISFY ALIMONY

NMSA 1978, § 40-4-19

	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.
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## Section 2-2: Writ of Possession

NMSA 1978, § 42-4-12

	Upon judgment for the recovery of possession, a writ of possession shall be issued, and the sheriff shall deliver to the plaintiff the possession of the premises, and also collect the damages and costs, as on execution in other cases.
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## Section 2-3: Writ of Garnishment

RULE 1-065.1 NMRA

<b>Garnishment Procedure</b>	After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.
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<p><b>Service of Writ of Garnishment</b></p>	<ul style="list-style-type: none"> <li>• A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico.</li> <li>• The writ shall be served and return of service filed in the same manner as provided by Rule 1-004 for service of the summons and complaint.</li> </ul>
<p><b>Service of Additional Forms</b></p>	<p>In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:</p> <ul style="list-style-type: none"> <li>• A copy of the application for writ of garnishment and the writ of garnishment; and</li> <li>• Unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form; and</li> <li>• A copy of the answer by garnishee form approved by the New Mexico Supreme Court.</li> </ul>



#### TIME LIMIT | ANSWER BY GARNISHEE

The garnishee shall answer the writ of garnishment within **twenty (20) days** of service as required by Section 35-12-4 NMSA 1978.

<p><b>Appearance by Garnishee</b></p>	<ul style="list-style-type: none"> <li>• A garnishee may appear in person in any garnishment proceeding.</li> <li>• If the garnishee is a partnership, the garnishee may appear by one of its general partners.</li> <li>• If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation.</li> <li>• The court shall award reasonable attorney fees and costs to the garnishee.</li> </ul>
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**TIME LIMIT | SERVICE ON JUDGMENT DEBTOR**

On or before the **fourth (4th) business day** following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

**TIME LIMIT | EXEMPTION FROM GARNISHMENT**

A judgment debtor who is a natural person:

- Shall receive an exemption from garnishment of wages to the extent provided by law; and
- May claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within **ten (10) days** after service by the garnishee of notice of the right to claim exemptions.

**Service of Claim of Exemption**

The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 1-005.

**TIME LIMIT | FAILURE TO FILE CLAIM OF EXEMPTION (WAGES EXCLUDED)**

If the judgment debtor fails to file a claim of exemption within **ten (10) days** after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages.


**TIME LIMIT | NOTICE OF DISPUTE**

- Within **ten (10) days** after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court.
- If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

<b>Notice of Hearing on Dispute</b>	<ul style="list-style-type: none"> <li>• If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor.</li> <li>• The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.</li> </ul>
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**TIME LIMIT | NOTICE OF DISPUTE**

- A hearing on the claim of exemption shall be held within **ten (10) days** after the filing of a notice of dispute and request for hearing.
- At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

<b>Judgment on Writ of Garnishment</b>	If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.
<b>Form of Writs</b>	Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing and judgments shall be substantially in the form approved by the Supreme Court.



#### CLERICAL DUTIES | WRIT OF GARNISHMENT

1. File application for writ of garnishment presented by judgment creditor. File in existing judgment file.
2. Docket.
3. Check that the writ of garnishment agrees with the judgment, record of costs and rate of interest. Some payments may have previously been made. Ask questions.
4. Issue writ of garnishment and return to party for service. File record of issuance.
5. The judge or his/her designee shall give notice to judgment creditor and judgment debtor of the date and time for hearing. Include a copy of debtor's claim for exemption form. The hearing shall be held within **ten (10) business days** after the clerk received debtor's completed claim of exemption form.
6. If anyone other than an employer was named as garnishee, file certificate of mailing required of the judgment creditor under paragraph K of this rule.
7. After filing of judgment on writ of garnishment, the court clerk shall issue a transcript of judgment upon the request of the prevailing party.

## Section 2-4: Writ of Attachment

NMSA 1978, §§ 42-9-1 TO -39

A writ of attachment may be sought by a person who is justly owed a debt and the debtor has absconded, is about to dispose of his/her assets or has fraudulently concealed his/her property to hinder and delay his/her creditors. The court may order the sheriff to seize the property and hold it until a hearing can be held and a judgment rendered. These writs are issued by a court before a hearing can be held, and for that reason are seldom issued at all. It is more common for a court to issue such writs against absconding, concealed or fraudulent debtors at the beginning or during the process of some other legal action. Procedures governing notice of and claims of exemption of personal property from seizure and sale are also applicable to attachment.

## Section 2-5: Writ of Replevin

NMSA 1978, § 42-8-1

	<p>Before the writ of replevin is issued, the plaintiff or some creditable person in his stead shall file in the district court an affidavit stating:</p> <ul style="list-style-type: none"> <li>• That the plaintiff is lawfully entitled to the possession of the property mentioned in the complaint;</li> <li>• That the same was wrongfully taken or wrongfully detained by the defendant;</li> <li>• That the plaintiff has reason to believe that the defendant may conceal, dispose of, or waste the property or the revenues therefrom or remove the property from the jurisdiction, during the pendency of the action;</li> <li>• That the right of action accrued within one year; and</li> <li>• Specific facts, from which it clearly appears that the above allegations are justified.</li> </ul>
<b>Bond</b>	<p>The plaintiff shall before the execution of the writ enter into bond with sufficient sureties, to the officer to whom the writ is directed, in double the value of the property, conditioned on the prosecution of the suit with effect and without delay and that he will without delay make return of the property if a return is adjudged, keep harmless the officer and pay all costs that may accrue.</p>

<b>Docketing</b> NMSA 1978, § 42-8-20	The district court clerk shall docket the action in replevin and the cause shall then proceed as in other civil actions.
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## Section 2-6: Other Writs

<b>Writ of Certiorari</b>	<ul style="list-style-type: none"> <li>The writ of certiorari is a legal proceeding by which a court reviews the decision of a lower court or governmental agency.</li> <li>Generally a second appeal. (NMSA 1978, §§ 53-18-2, 34-5-14 and SCRA 1986, 1-081(B) NMRA See Chapter 11, 11.2-6 for further information and procedures.</li> </ul>
<b>Writ of Error</b> NMSA 1978, § 39-3-5 RULE 12-503 NMRA	<ul style="list-style-type: none"> <li>The writ brings into the supreme court for review any cause adjudged or determined in any of the district courts when remedy by way of appeal is inadequate:</li> <li>This writ is a catch-all, filed and issued by the supreme court.</li> </ul>
<b>Writ of Habeas Corpus</b> RULE 5-802 NMRA	A proceeding by which a writ is issued to someone having custody of a person, ordering him/her to bring the prisoner to court to determine if the prisoner is being unlawfully detained.
<b>Extradition</b> NMSA 1978, §§ 31-4-1 TO -31	<ul style="list-style-type: none"> <li>The formal process used to obtain authority to move a defendant from one state to another for trial in a criminal case.</li> <li>The defendant may or may not contest extradition</li> </ul>
<b>Mandamus</b> NMSA 1978, § 44-2-4	Purpose: it may be issued to any inferior tribunal, corporation, board or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station.
<b>Writ of Prohibition</b> N.M. CONST., ART. VI, § 3	A writ issued from a high court to a lower court ordering it to stop certain actions or warning it not to engage in them.

<b>Ne Exeat</b> <a href="#">NMSA 1978, § 56-9-6</a>	The court or judge may grant against such debtor a writ of ne exeat or attachment in chancery, as for contempt, when it shall be made to appear, by affidavit, that such writ or attachment is necessary to secure the surrender or disclosures provided for herein.
<b>Quo Warranto</b> <a href="#">NMSA 1978, § 44-3-1 TO -16</a>	A writ issued to determine by what right an office is being held by the person or corporation in possession of it.



# Addendum: Forms

## LOCAL RULES

- [LOCAL RULES](#)

## CIVIL FORMS

- [DISTRICT COURT CIVIL FORMS](#)
- [WRIT OF GARNISHMENT](#)
- [ANSWER BY GARNISHEE](#)
- [NOTICE OF RIGHT TO CLAIM EXEMPTIONS](#)
- [JUDGMENT ON WRIT OF GARNISHMENT](#)

## REFERENCE

- [PLAIN LANGUAGE LEGAL DICTIONARY](#)
- [FINDLAW LEGAL DICTIONARY](#)
- [MERRIAM-WEBSTER DICTIONARY](#)
- [WEBOPEDIA COMPUTER TERMS DICTIONARY](#)