

April 1, 2010

Counter-Petition for Order of Protection from Domestic Violence

What if a Petition for an Order of Protection from domestic violence is filed against you, but you are actually the victim, rather than the perpetrator of the abuse? In New Mexico, you are allowed to file a Counter-Petition for Order of Protection from Domestic Abuse in which you can respond to the allegations in the original Petition while also asking the Court to enter an Order of Protection against the other party. In Albuquerque, the Counter-Petition can be filed at the Domestic Violence Office on the Second Floor of the Second Judicial District Courthouse.

The Counter-Petition must include all of the elements required of the original Petition for Order of Protection Against Domestic Abuse including a clear, detailed statement of the nature of the abuse and when and how it occurred. Remember that the definition of domestic abuse under Family Violence Protection Act is very broad. It includes incidents against a household resulting in: actual, physical harm, severe emotional distress, a threat that causes you to fear bodily injury and a variety of other situations. Also, remember that the definition of Household Member is very broad and can include a spouse, former spouse, any other family member (including present or former-stepparents or in-laws) and any other person with whom you have had an ongoing, personal relationship.

There should not be any cost for filing the Counter-Petition and the local sheriff is required to serve the Counter-Petition for free. If you are served with a Petition for Order of Protection and believe that you have grounds for a Counter-Petition it is imperative that you act quickly because hearings on the Petitions are typically held within a few weeks, if not days, of the issuance of the Petition. You will need to have the other party personally served with the Counter-Petition prior to that hearing so that the hearing officer or judge evaluating your case can hear both petitions. It is best to consult an attorney in any domestic violence situation, but at the very least you should get the courthouse where the original petition was filed to get more information about filing a Counter-Petition.

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