

**10-571. Motion to permit testimony by alternative method.**

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT  
IN THE CHILDREN'S COURT

STATE OF NEW MEXICO ex rel.  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT

No. \_\_\_\_\_

In the Matter of

\_\_\_\_\_, (a) Child(ren), and Concerning  
\_\_\_\_\_, Respondent(s).

**MOTION TO PERMIT TESTIMONY BY ALTERNATIVE METHOD**

COMES NOW \_\_\_\_\_,<sup>1</sup> Movant, and requests leave for \_\_\_\_\_, Child, to testify before the Court by alternative method. In support of this Motion, Movant states the following:

1. Movant's relationship to Child is as follows: \_\_\_\_\_

2. Child is expected to testify at the \_\_\_\_\_ (*type of hearing*) set before the Court on \_\_\_\_\_ (*date*) at \_\_\_\_\_ (*time*).

3. Movant seeks an order of the Court permitting Child to testify via the following alternative method<sup>2</sup>: \_\_\_\_\_

4. Permitting Child to testify by alternative method is necessary to serve Child's best interests or to enable Child to communicate with the Court.<sup>3</sup>

5. The reasons supporting testimony by alternative method are as follows: (*select and explain your reasoning for all that apply*)

The nature of the hearing: \_\_\_\_\_

The age and maturity of Child: \_\_\_\_\_

The relationship of Child to the parties in the proceeding: \_\_\_\_\_

\_\_\_\_\_ the nature and degree of mental or emotional harm that Child may suffer in testifying:

[ ] other: \_\_\_\_\_

6. Other alternative methods reasonably available for protecting the interests of or reducing mental or emotional harm to Child include: \_\_\_\_\_

\_\_\_\_\_. Movant, however, requests the particular method described in this Motion because

7. Other means for protecting the interests of or reducing mental or emotional harm to Child without resort to an alternative method include: \_\_\_\_\_

\_\_\_\_\_. Movant, however, requests the particular method described in this Motion because

8. This is an abuse and neglect proceeding where Child will need to testify about difficult and sensitive subject matter, including: \_\_\_\_\_

9. Child's proposed testimony is necessary to enable the Court to make a fully informed ruling in this proceeding.

10. The nature and degree of mental or emotional harm that Child may suffer if an alternative method is not used are as follows: \_\_\_\_\_

11. Other reasons supporting testimony by alternative method include<sup>4</sup>: \_\_\_\_\_

12. Child's best interests and the Court's interest in enabling Child to communicate with the Court outweigh the other parties' interests implicated by Child's testimony by alternative method.<sup>5</sup>

13. Movant requests the following additional measures to protect Child's best interests and to enable Child to communicate with the Court:

14. The additional measures requested in Paragraph 13 are necessary because \_\_\_\_\_

15. Counsel for the other parties [concur] [do not concur] in the relief requested in this Motion.

WHEREFORE, Movant respectfully requests the Court to enter an order as follows:

1. Finding and concluding that the alternative method of testimony requested in this Motion is necessary to serve Child's best interests or enable Child to communicate with the Court;

2. Permitting Child to testify by alternative method at the \_\_\_\_\_  
(*type of hearing*) set in this matter on \_\_\_\_\_ (*date*);

3. Setting forth the following additional measures to protect Child's best interests and to enable Child to communicate with the Court: \_\_\_\_\_; and

4. Awarding any other relief as the Court sees fit and just.

Respectfully Submitted:

By: \_\_\_\_\_  
Movant's attorney

### CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was mailed or faxed to all parties of record on this \_\_\_\_\_ (*date*).

### USE NOTES

1. This motion may be brought by a party, a child witness, or an individual determined by the court to have a sufficient connection to the child to act on behalf of the child. See Rule 10-340(A) NMRA.

2. Alternative methods of testimony may include testimony by closed circuit television, deposition, closed forum, or any other method that would serve the best interests of the child or enable the child to communicate with the court.

3. Rule 10-340 NMRA and the Uniform Child Witness Protective Measures Act, NMSA 1978, § 38-6A-1 to -9, permit courts to allow testimony from children by alternative methods if allowing testimony by the alternative method is necessary to serve the best interests of the child or allow the child to communicate with the finder of fact. See Rule 10-340(B); NMSA 1978 § 38-6A-5(B). Additionally, Rule 11-611(A)(3) NMRA allows the court to control the mode and order of interrogation and presentation of testimony of a witness.

4. An alternative method of testimony may be preferable because it would enable the child to more fully express the child's position or because the child has a disability or a therapeutic need that supports an alternative method of testimony.

5. For a discussion of the rights implicated by permitting a child to testify by

alternative method in an abuse and neglect proceeding, see *In re Pamela A.G.*, 2006-NMSC-019, ¶ 12, 139 N.M. 459, 463, 134 P.3d 746, 750.

6. Additional safeguards may include requiring certain individuals or categories of individuals to be allowed in or excluded from the child's presence during some or all of the child's testimony, imposing special conditions on the other parties' ability to examine or cross-examine the child, or placing conditions or limitations upon the participation of individuals present during the child's testimony. See Rule 10-340(D) NMRA.

[Approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]