Children's Court Rules and Forms

ARTICLE 1
General Provisions; All Proceedings

10-101. Scope; definitions; title.

A. **Scope.** Except as specifically provided by these rules, the following rules of procedure shall govern proceedings under the Children's Code:

(1) the Children's Court Rules govern procedure in the children's courts of New Mexico in all matters involving children alleged by the state:

(a) to have committed a delinquent act as defined in the Delinquency Act;

(b) to be a "youthful offender" as that term is defined in the Children's Code.

(c) to be members of families in need of court-ordered services as defined in the Families in Need of Court-Ordered Services Act;

(d) to be abused or neglected as defined in the Abuse and Neglect Act including proceedings to terminate parental rights which are filed pursuant to the Abuse and Neglect Act; and

(2) The Rules of Criminal Procedure for the District Courts govern all proceedings in the district court in which a child is alleged to be a "serious youthful offender" as that term is defined in the Children's Code.

(3) the Rules of Criminal Procedure for the Magistrate Courts govern all proceedings in the magistrate court in which a child is alleged to be a "serious youthful offender" as that term is defined in the Children's Code;

(4) the Rules of Criminal Procedure for the Metropolitan Courts govern all proceedings in the metropolitan court in which a child is alleged to be a "serious youthful offender" as that term is defined in the Children's Code;

(5) the Children's Code and the Rules of Civil Procedure for the District Courts govern the procedure in all other proceedings under the Children's Code. In case of a conflict between the Children's Code and the Rules of Civil Procedure for the District Court, the Children's Code shall control; and

(6) unless otherwise provided, the rules and forms governing abuse and neglect proceedings shall apply to proceedings pursuant to the Families in Need of Court-Ordered Services Act.

B. **Construction.** These rules are intended to provide for the just determination of children's court proceedings. These rules shall be construed to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay and to assure the recognition and enforcement of constitutional and other rights.

C. **Definitions.** As used in these rules and the forms approved for use with these rules:

(1) "respondent" includes a defendant;

(2) "petitioner" includes a plaintiff;

(3) "process" is the means by which jurisdiction is obtained over a person to compel the person to appear in a judicial proceeding and includes the following:

(a) a summons and complaint;

(b) a summons and petition;

(c) a writ or warrant; and

(d) a mandate; and

(4) "service of process" means delivery of a summons or other process in the manner provided by Rule 10-103 NMRA of these rules.

D. **Title.** These rules and forms shall be known as "Children's Court Rules."

E. **Citation Form.** These rules and forms may be cited as Rule 10-___ NMRA.

[Children's Court Rule 1 NMSA 1953; Children's Court Rule 1 NMSA 1978; Rule 1-001 SCRA 1986; Rule 1-101 NMRA; as amended effective February 1, 1982; January 1, 1987; March 1, 1994; April 1, 1997; as amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — Prior to the 2014 amendments, a child alleged by the state to be a youthful offender was subject to the Rules of Criminal Procedure for the District Courts upon the state's filing of a "notice of intent to invoke an adult sentence." *See* NMSA 1978, § 32A-2-20(A). The amendments provide that alleged youthful offenders are subject to the Children's Court Rules for the duration of their proceedings. *See State v. Jones*, 2010-NMSC-012, ¶ 32 n.2, 148 N.M. 1, 229 P.3d 474 (directing the Children's Court Rules Committee to revisit the question of which rules best protect the rights and interests of children who are alleged to be youthful offenders).

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, made the rule applicable to youthful offenders; applied the Rules of Criminal Procedure for the District Courts only to serious youthful offenders; added Paragraph A (1)(b); deleted former Paragraph A (2) which provided that the Rules of Criminal Procedure governed procedure in proceedings in district court in which the child was alleged to be a serious youthful offender and in proceedings in children's court in which the child was alleged to be a youthful offender and that if the child was not charged as a youthful offender, then the Children's Court rules applied; added current Paragraph A (2); in Paragraph A (3), after "in which a child is", deleted "charged as" and added "alleged to be" and after "'serious youthful offender'", deleted "or 'youthful offender' as those terms are" and added "as that term is"; in Paragraph A (4), after "in which a child is", deleted "charged as" and added "alleged to be"; and in Paragraph C (3), after "and includes", deleted "a" and added "the following".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted the word "definitions" in the title; in Paragraph A(b), changed "Family in Need of Services Act" to "Families in Need of Court-Ordered Services Act"; in Paragraph A(4), changed"'serious youthful offender' or 'youthful offender' as those terms are defined in the Children's Code" to "'serious youthful offender' as that term is defined in the Children's Code"; added new Subparagraph (6) of Paragraph A; added new Paragraph C; and relettered former Paragraphs C and D as Paragraphs D and E.

The 1997 amendment, effective April 1, 1997, added "Except as specifically provided by these rules" in Paragraph A, deleted "and Forms" following "Rules" and added "by the state" in Subparagraph A(1), substituted "to have committed a delinquent act" for "to be a delinquent" and "Delinquency Act" for "Children's Code" in Subparagraph A(1)(a), substituted "Family in Need of Services Act" for "Children's Code" in Subparagraph A(1)(b), substituted "Abuse and Neglect Act" for "Children's Code" and added the language beginning "including" in Subparagraph A(1)(c), substituted "in" for "except for disposition proceedings" and added the last sentence in Subparagraph A(2)(b), substituted "child is charged as a 'serious youthful offender' or 'youthful offender' as those terms are defined in the Children's Code" in Subparagraphs A(3) and A(4), inserted "and forms" and deleted "and Forms" following "Rules" in Paragraph C, and rewrote Paragraph D.

The 1994 amendment, effective March 1, 1994, rewrote Paragraph A, which read "These rules govern the procedure in the children's courts of New Mexico in all matters involving children alleged to be delinquent, in need of supervision, abused or neglected, as defined in the Children's Code."

Cross references. — For Children's Code definitions, *see* Section 32A-1-4 NMSA 1978.

For establishment of children's court as division of district court (or additional family court division), *see* Section 32A-1-5 NMSA 1978.

Supreme Court intended that application of the Children's Court Rules and Rules of Criminal Procedure in youthful offender cases turns on the nature of the offenses charged. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 290, cert. granted, 2005-NMCERT-004.

Rules govern all dispositional proceedings. — Reading the Children's Code and the Children's Court Rules together, the overall scheme contemplates that, while the Rules of Criminal Procedure govern the adjudicatory proceedings in youthful offender cases, the Children's Court Rules govern all dispositional proceedings for all youthful offenders. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 290, cert. granted, 2005-NMCERT-004.

Once a child is adjudicated a youthful offender, the Children's Court Rules governing dispositional proceedings, not the Rules of Criminal Procedure, should apply in all cases. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 290, cert. granted, 2005-NMCERT-004.

Failure to follow statutory procedure denied respondent due process. — Where the parent was charged with neglect and abandonment of the parent’s children; at the end of the hearing, after all evidence had been presented, CYFD asserted in its closing argument that there was sufficient evidence to support a finding of abuse; the court considered CYFD’s argument as a motion to amend to conform to the evidence pursuant to Rule 1-015 NMRA and granted the motion to amend the petition to include a claim of abuse; the court did not hear the issue of abuse; and the court found that the parent neglected and abused the children, the parent’s due process rights were violated by the amendment procedure because the court erred by relying on Rule 1-015 NMRA and by not holding a hearing on the abuse issue as required by Section 32A-1-18 NMSA 1978. *State ex rel. CYFD v. Steve C.,* 2012-NMCA-045, 277 P.3d 484.

Paragraph A(2)(b) governs only adjudicatory phase of certain youthful offender proceedings. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 290, cert. granted, 2005-NMCERT-004.

Rule 11 (now see Rule 10-111 NMRA) limits inherent power of district judge. — Rule 11 (now see Rule 10-111 NMRA) limits the inherent power of a district judge to appoint a special master in children's court. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

Consequence of violating Rule 49(b) (now see Paragraph B of Rule 10-229 NMRA) is dismissal. — Consistent with this rule, and giving effect to the mandatory aspect of the time requirements of Rule 49 (now see Rule 10-229 NMRA), the consequence of violating Paragraph B of the latter rule is dismissal. *State v. Doe*, 1979-NMCA-063, 93 N.M. 31, 595 P.2d 1221.

Law reviews. — For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Infants §§ 16, 17; 47 Am. Jur. 2d Juvenile Courts §§ 4, 8, 13 to 15.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent, 14 A.L.R.2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 A.L.R.2d 663.

Court's power to punish for contempt a child within the age group subject to jurisdiction of juvenile court, 77 A.L.R.2d 1004.

Right to jury trial in juvenile court delinquency proceedings, 100 A.L.R.2d 1241.

Right of bail in proceedings in juvenile courts, 53 A.L.R.3d 848.

Expungement of juvenile court records, 71 A.L.R.3d 753.

Extradition of juveniles, 73 A.L.R.3d 700.

Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

21 C.J.S. Courts §§ 124 to 134; 43 C.J.S. Infants §§ 7, 98.

10-102. Commencement of action.

A. **In general.** A children’s court action is commenced by filing a petition with the court. Upon the filing of the petition, the clerk shall endorse thereon the time, day, month and year that it is filed.

B. **Abuse and neglect proceedings; party information sheet.** A completed party information sheet substantially in the form approved by the Supreme Court shall accompany a petition or amended petition filed with the court that alleges the abuse or neglect of a child.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-002, effective for all cases filed on or after August 31, 2014.]

Committee commentary. — The party information sheet required in Paragraph B is for administrative use only and does not become part of the record.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed on or after August 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-002, effective August 31, 2014, required that a party information sheet accompany a petition or amended petition that alleges child abuse or neglect; in Paragraph A, added the title of the paragraph; and added Paragraph B.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, a new Rule 10-102 NMRA was adopted, effective January 15, 2009.

Withdrawals. — Pursuant to a court order dated February 2, 1994, former Rule 10-102 NMRA, defining certain terms, was withdrawn effective for cases filed in the Children's Court on and after March 1, 1994.

10-103. Service of process.

A. **Summons; issuance.** Upon the filing of the petition, the clerk shall issue a summons and deliver it to the petitioner for service. Upon the request of the petitioner, the clerk shall issue separate or additional summons. Any respondent may waive the issuance or service of summons.

B. **Summons; execution; form.** The summons shall be signed by the clerk, issued under the seal of the court, and be directed to the respondent. The summons shall be substantially in the form approved by the Supreme Court and must contain

(1) the name of the court in which the action is brought, the name of the county in which the petition is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed;

(2) in an abuse and neglect proceeding, a notice that the respondent has a right to an attorney and that a child must have an attorney or guardian ad litem;

(3) in an abuse and neglect proceeding, a notice that the proceeding could ultimately result in the termination of parental rights; and

(4) the name, address, and telephone number of the petitioner’s attorney.

C. **Service of process; return.**

(1) If a summons is to be served, it shall be served together with any other pleading or paper required to be served by this rule. The petitioner shall furnish the person making service with such copies as are necessary.

(2) Service of process shall be made with reasonable diligence, and the original summons with proof of service shall be filed with the court in accordance with the provisions of Paragraph J of this rule.

D. **Process; by whom served.** Process shall be served as follows:

(1) if the process to be served is a summons and petition, petition, or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action;

(2) if the process to be served is a writ of habeas corpus, service may be made by any person not a party to the action over the age of eighteen (18) years designated by the court to perform such service or by the sheriff of the county where the person may be found;

(3) if the process to be served is a writ other than a writ specified in Subparagraph (2) of this paragraph, service shall be made as provided by law or order of the court.

E. **Process; how served; generally.**

(1) Process shall be served in a manner reasonably calculated, under all the circumstances, to apprise the respondent of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

(2) Service may be made, subject to the restrictions and requirements of this rule, by the methods authorized by this rule or in the manner provided for by any applicable statute, to the extent that the statute does not conflict with this rule.

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named respondent and further provided that the respondent or a person authorized by appointment, by law, or by this rule to accept service of process upon the respondent signs a receipt for the envelope or package containing the summons and petition, writ, or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule “signs” includes the electronic representation of a signature.

F. **Process; personal service upon an individual.**

(1) Personal service of process shall be made upon an individual by delivering a copy of a summons and petition or other process as follows:

(a) to the individual personally; or if the individual refuses to accept service, by leaving the process at the location where the individual has been found; and if the

individual refuses to receive such copies or permit them to be left, such action shall constitute valid service; or

(b) by mail or commercial courier service as provided in Subparagraph (E)(3) of this rule.

(2) If, after the petitioner attempts service of process by either of the methods of service provided by Subparagraph (1) of this paragraph, the respondent has not signed for or accepted service, service may be made by delivering a copy of the process to some person residing at the usual place of abode of the respondent who is over the age of fifteen (15) years and mailing by first class mail to the respondent at the respondent's last known mailing address a copy of the process; or

(3) If service is not accomplished in accordance with Subparagraphs (1) and (2) of this paragraph, then service of process may be made by delivering a copy of the process at the actual place of business or employment of the respondent to the person apparently in charge thereof and by mailing a copy of the summons and petition by first class mail to the respondent at the respondent's last known mailing address and at the respondent's actual place of business or employment.

G. **Service upon minor, incompetent person, custodian, guardian, or fiduciary.**

(1) A child who is a respondent in delinquency, youthful offender, or abuse and neglect proceedings shall be served by delivering a copy of the summons and petition to the respondent child and to a custodial parent, custodian, guardian, or conservator of the minor in the manner and priority provided in Paragraph F or H of this rule as may be appropriate. If no conservator or guardian has been appointed for the minor, service shall be made on the minor by serving a copy of the process on each person who has legal authority over the minor. If no person has legal authority over the minor, process may be served on a person designated by the court. If the respondent child has a known guardian ad litem or attorney, notice of the proceedings shall be served on the guardian ad litem or attorney as provided in Rule 10-105 NMRA of these rules.

(2) A child who is alleged to be an abused or neglected child, or a child whose family is alleged to be in need of court-ordered services, shall be served by service on the child's guardian ad litem if the child is less than fourteen (14) years old or the child's attorney if the child is fourteen (14) years old or over.

(3) An incompetent person shall be served by serving a copy of the process to the conservator or guardian, if there is a conservator of the estate or guardian of the incompetent person, in the manner and priority provided by Paragraph F or H of this rule. If the incompetent person does not have a conservator or guardian, process may be served on a person designated by the court.

(4) Service upon a personal representative, guardian, conservator, trustee, or other fiduciary in the same manner and priority for service as provided in Paragraphs F or H of this rule as may be appropriate.

H. **Service in manner approved by court.**

(1) Except in delinquency and youthful offender proceedings, upon motion, without notice, and showing by affidavit that service cannot reasonably be made as provided by this rule, the court may order service by any method or combination of methods, including publication, that is reasonably calculated under all of the circumstances to apprise the respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.

(2) In delinquency or youthful offender proceedings, a child shall not be served at the child's school except that upon written motion, without notice, and a showing by affidavit that service cannot reasonably be made by any other method or combination of methods provided by this rule, the court may order service at the child's school.

I. **Service by publication.** Service by publication may be made only pursuant to Paragraph H of this rule. A motion for service by publication shall be substantially in the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.

(1) Service by publication pursuant to this rule shall be made by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the respondent notice of the pendency of the action, the court may also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears most likely to give the respondent notice of the action.

(2) The notice of pendency of action shall contain the following:

(a) the caption of the case, as provided in Rule 10-112 NMRA, except that any party other than the respondent against whom service by publication is sought shall be identified in the caption using the initials of the party's first and last name;

(b) a statement which describes the action or relief requested;

(c) the name of the respondent or, if there is more than one respondent, the name of each of the respondents against whom service by publication is sought; and

(d) the name, address, and telephone number of the petitioner's attorney.

J. **Proof of service.** The party obtaining service of process or that party's agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New Mexico county, proof of service shall be made by affidavit. Proof of service by mail or commercial courier service shall be established by filing with the court a certificate of service which shall include the date of delivery by the post office or commercial courier service and a copy of the respondent's signature receipt. Proof of service by publication shall be by affidavit of publication signed by an officer or agent of the newspaper in which the notice of the pendency of the action was published. Failure to make proof of service shall not affect the validity of service.

K. **Service of process in the United States, but outside of state.** Whenever the jurisdiction of the court over the respondent is not dependent upon service of the process within the State of New Mexico, service may be made outside the State as provided by this rule.

L. **Service of process in a foreign country.** Service upon an individual may be effected in a place not within the United States as follows:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the laws of the United States or the law of the foreign country, in the same manner and priority as provided for in Paragraph F or H of this rule as may be appropriate.

M. **Service by mail on child in delinquency or youthful offender proceedings; time to appear.** If service is made by mail under Subparagraph (E)(3) upon a child who is a respondent in a delinquency or youthful offender proceeding, service shall be made at least ten (10) days before the child is required to appear, unless a shorter time is ordered by the court.

N. **Failure to appear.** If the respondent in a delinquency or youthful offender proceeding fails to appear at the time and place specified in the summons, the court may take the following action:

(1) issue a warrant for the respondent's arrest; or

(2) direct that service of such summons and petition may be made in the manner prescribed by the court.

[As amended, effective September 1, 1995; Rule 10-104 NMRA recompiled and amended as Rule 10-103 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 18-8300-011, effective for all cases pending or filed on or after December 31, 2018.]

Committee commentary. — This rule has been rewritten to be consistent with Rule 1-004 NMRA, with special provisions on service for minors to take into consideration the unique circumstances of children.

Subparagraph (H)(2), which was added to the rule in 2016, prohibits serving a child in a delinquency proceeding at the child's school, "except that upon written motion, without notice, and a showing by affidavit that service cannot reasonably be made by any other method or combination of methods provided by this rule." The committee views the practice of serving a child at school with disfavor because of the negative social and educational consequences that may result for the child. The committee acknowledges, however, that serving a child at school may be appropriate in rare circumstances. Subparagraph (H)(2), therefore, permits service upon a child at the child's school only with court approval and only when the court is satisfied that service cannot be reasonably achieved by any other method or combination of methods under the rule.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018, corrected a citation to the NMRA, and provided that any party other than the respondent against whom service by publication is sought shall be identified in the caption using the initials of the party's first and last name, and made technical language changes; in Paragraph I, in Subparagraph I(2)(a), after "Rule", changed "10-108" to "10-112", and after "NMRA,", added the remainder of the subparagraph, added subparagraph designation "(b)" and redesignated former Subparagraphs I(2)(b) and I(2)(c) as Subparagraphs I(2)(c) and I(2)(d), respectively.

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, provided for service of process in youthful offender proceedings,

prohibited service of process on a child at the child's school except by written motion and court approval, provided procedures for service by mail in delinquency and youthful offender proceedings, and revised the committee commentary; in the heading, added "Service of"; in Subparagraph F(1), after "other process", added "as follows"; in Subparagraph F(1)(b), after "Subparagraph", deleted "(3) of Paragraph E" and added "(E)(3)"; in Subparagraph E(3), after "(1) and (2)", added "of this paragraph"; in Subparagraph G(1), after "respondent in", deleted "either", and after "delinquency", added "youthful offender"; in Paragraph H, added the subparagraph designation "(1)"; in Subparagraph H(1), after "delinquency", added "and youthful offender"; added new Subparagraph H(2); in Subparagraph I(2), after "shall contain", added "the following"; in Subparagraph I(2)(c), after "number of", added "the"; in Paragraph L, in the introductory sentence, after "United States", added "as follows"; added a new Paragraph M and redesignated former Paragraph M as Paragraph N; in Paragraph N, in the introductory sentence, after "delinquency", added "or youthful offender", and after "the court may", added "take the following action"; and in the committee commentary, added the second undesignated paragraph.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted the former rule and committee commentary and replaced it with the current version.

The 1995 amendment, effective September 1, 1995, recompiled this rule, which was formerly Rule 10-105 NMRA, and rewrote the rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-104 NMRA was recompiled as Rule 10-103 NMRA, effective January 15, 2009.

Withdrawals. — Former Rule 10-103 NMRA, relating to general rules of pleadings, was withdrawn by Supreme Court Order No. 08-8300-042, effective January 15, 2009.

Cross references. — For summonses, and service thereof, in children's court, *see* Sections 32A-1-12 and 32A-1-13 NMSA 1978.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 62 et seq.

Right of parent to notice and hearing before being deprived of custody of child, 76 A.L.R. 242.

10-104. Service and filing of pleadings and other papers.

A. **Service; when required.** Except as otherwise provided in these rules, every written order, every pleading subsequent to the original petition, every paper relating to

discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, designation of record on appeal, and similar paper shall be served upon each of the parties.

B. **Service; how made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, or if the party is a child under the age of fourteen in an abuse or neglect proceeding, the child's guardian ad litem, unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney's or party's last known address. Service by mail is complete upon mailing.

C. **Definitions.** As used in this rule:

(1) "Delivering a copy" means:

(a) handing it to the attorney or to the party;

(b) sending a copy by facsimile or electronic transmission when permitted by Rule 10-105 NMRA or Rule 10-106 NMRA;

(c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

(d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

(e) leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

(i) the court, in its discretion, chooses to provide such a location; and

(ii) service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

(2) "Mailing a copy" means sending a copy by first class mail with proper postage.

D. **Filing; certificate of service.** All papers after the petition required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

(1) summonses without completed returns;

(2) subpoenas;

(3) returns of subpoenas;

(4) depositions; and

(5) briefs or memoranda of authorities on unopposed motions.

E. **Filing with the court defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy or filing an electronic copy as may be permitted under Rule 10-105 NMRA or Rule 10-106 NMRA. If a party has filed a paper using electronic or facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

F. **Filing and service by the court.** Unless otherwise ordered by the court, the court shall serve all written court orders and notices of hearing on the parties. The court may file papers before serving them on the parties. For papers served by the court, the certificate of service need not indicate the method of service. For purposes of Rule 10-107(C) NMRA, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court's certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in Subparagraph (C)(1)(e) of this rule.

G. **Filing and service by an inmate.** The following provisions apply to documents filed and served by an inmate confined to an institution:

(1) If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.

(2) The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(3) Whenever service of a document on a party is permitted by mail, the document is deemed mailed when deposited in the institution's internal mail system addressed to the parties on whom the document is served.

(4) Timely filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date when the document was deposited in the institution's internal mail system.

(5) A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

(6) Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

[Children's Court Rule 5 NMSA 1953; Children's Court Rule 5 NMSA 1978; Rule 10-104 SCRA 1986; as recompiled as Rule 10-105 SCRA 1986 effective September 1, 1995; Rule 10-105 NMRA; as amended effective April 1, 1997; November 1, 2000; Rule 10-105 NMRA recompiled and amended as Rule 10-104 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Committee commentary. — Paragraph G governs the filing and service of documents by an inmate confined to an institution. A court generally will not consider pro se pleadings filed by an inmate who is represented by counsel. *See, e.g., State v. Martinez*, 1981-NMSC-016, ¶ 3, 95 N.M. 421, 622 P.2d 1041 (providing that no constitutional right permits a defendant to act as co-counsel in conjunction with the defendant's appointed counsel); *State v. Boyer*, 1985-NMCA-029, ¶ 15, 103 N.M. 655, 712 P.2d 1 (explaining that "once a defendant has sought and been provided the assistance of appellate counsel, that choice binds the defendant, absent unusual circumstances" (citation omitted)).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-016, effective December 31, 2014, authorized the court to designate a place of service on attorneys; provided for the filing and service of orders and notices by the court; provided for the filing and service of documents by an inmate; in Paragraph A, after "rules, every", added "written" and after "written order", deleted "required by its terms to be served"; in Paragraph B, in the second sentence, after "last known address", deleted "or, if no address is known, by leaving it with the clerk of the court"; in Paragraph C (1), changed "delivery of" to "Delivering"; in Paragraph C (1)(c), after "a conspicuous place", deleted "therein" and added "in the office"; added Paragraph C (1)(e); in Paragraph E, in the first sentence, after "The filing of", deleted "pleadings and other", deleted the former third sentence which provided that a paper filed by electronic means constituted a written paper, and added the current third sentence; and added Paragraphs F and G.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "Notice of hearings" in the title; in Paragraph A, changed "Except as provided" to "Except as otherwise provided"; changed "every pleading

subsequent to the original petition unless the court otherwise orders because of numerous respondents" to "every pleading subsequent to the original petition" and deleted the last sentence which provided that service was not required on parties in default for failure to appear except pleadings asserting new or additional claims; in Paragraph B, changed "if the party is a child" to "if the child is a party under the age of fourteen"; divided former Paragraph B into Paragraphs B, C and D; relettered Subparagraphs (1) through (4) of Paragraph B as Items (a) through (d) of Subparagraph (1) of Paragraph C; added letter designation and title for Paragraph C; added Subparagraph (1) of Paragraph C; in Item (b) of Subparagraph (1) of Paragraph C, changed the reference from Rule 10-105.1 NMRA to Rule 10-105 NMRA and from Rule 10-105.2 NMRA to Rule 10-106 NMRA; in Item (c) of Subparagraph (1) of Paragraph C, added "or party's"; in Item (d) of Subparagraph (1) of Paragraph C, added "attorney's or party's"; added Subparagraph (2) of Paragraph C; added the letter designation for Paragraph D; in Paragraph D, changed "certificate of service" to "certificate of service indicating the date and method of service"; in Paragraph D, deleted former Subparagraphs (4) through (9) of former Paragraph B which listed interrogatories, answers or objections to interrogatories, requests for production of documents, responses to requests for production of documents, requests for admission and responses to requests for admissions; relettered former Subparagraph (10) of former Paragraph B as Subparagraph (4) of Paragraph D; added Subparagraph (5) of Paragraph D; deleted language in Paragraph B which provided that except for papers described in Subparagraphs (1), (2), (3) and (10) of Paragraph B, counsel was required to file a certificate with the court indicating the date of service of any paper not filed with the court; relettered former Paragraph D as Paragraph E; and in Paragraph E, changed "Rule 1-005.1 or 1005.2 of these rules. A paper filed by electronic means in compliance with Rule 10-105.1" to "Rule 10-105 NMRA or Rule 10-106 NMRA. A paper filed by electronic means in compliance with Rule 10-106 NMRA".

The 2000 amendment, effective November 1, 2000, added the designations in the second paragraph in Subsection B inserting the provisions of Paragraph (2) therein, and added the last three sentences in Subsection D. This conforms the rule to Rules 1-005, 10-105.1 and 10-105.2 NMRA.

The 1997 amendment, effective April 1, 1997, added "and other papers" in the rule heading, and rewrote the rule.

Recompilations. – Pursuant to Supreme Court Order No. 08-8300-042, former Rule 105 NMRA was recompiled as Rule 10-104 NMRA effective January 15, 2009.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 62 et seq.

Authority of court, upon entering default judgment, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party, 5 A.L.R.5th 863.

43 C.J.S. Infants § 99.

10-104.1. Notice to foster parents, pre-adoptive parents and relative care givers by department.

In abuse and neglect proceedings, the department shall give notice of permanency hearings and periodic judicial review hearings to the child's foster parents, pre-adoptive parents and relative care givers. The notice given shall expressly inform foster parents, pre-adoptive parents and relative care givers of their right to be heard at the permanency hearing or judicial review. Notice shall be served in the manner provided by Rule 10-104 NMRA, and a certificate of service shall be filed with the court.

[Approved by Supreme Court Order No. 07-8300-012, effective June 6, 2007; Rule 10-105.3 NMRA recompiled and amended as Rule 10-104.1 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — This rule was promulgated in response to 42 U.S.C. § 675(5)(G) and 42 U.S.C. § 629h(b)(1) and is consistent with Sections 32A-4-20(C) and 32A-4-27(F) NMSA 1978.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed the reference from Rule 10-105 NMRA to Rule 10-104 NMRA.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-105.3 NMRA was recompiled as Rule 10-104.1 NMRA, effective January 15, 2009.

Withdrawals. — Former Rule 10-104.1 NMRA, relating to service of summons on child in delinquency proceeding; failure to appear, was withdrawn by Supreme Court Order No. 08-8300-042, effective January 15, 2009.

Cross references — For disposition of adjudicated abuse or neglected child, *see* Section 32A-4-25 NMSA 1978.

For permanency hearings, *see* Section 32A-4-25.1 NMSA 1978.

For notice of termination proceedings, *see* Section 32A-4-29 NMSA 1978.

Lack of notice of issue of continuation of parental rights violates mother's due process rights. — Since the issue of termination of parental rights was not raised in the pleadings, nor properly tried and was mentioned for the first time after closing arguments, when counsel for the father made an oral motion that the parental rights of the mother be terminated, the procedural due process rights of the mother were violated as she was never given notice that the continuation of her parental rights was at issue, she did not have a full opportunity to prepare her case and, consequently, she was not given a full and fair hearing. *In re Arnall*, 1980-NMSC-052, 94 N.M. 306, 610 P.2d 193

Parent not denied due process. — The parent was not deprived of due process where the district court changed the permanency plan from permanent guardianship to termination of parental rights and adoption; the parent was present and represented by counsel at a pre-adjudicatory hearing meeting, at the adjudicatory hearing regarding revocation of guardianship, at the hearing regarding the change in the permanency plan, and at the hearing regarding termination of parental rights; the parent participated in the permanency plan hearing and the termination hearing, and custody, adjudicatory and dispositional hearings would not have resulted in an award of custody to the parent because of the parent's history of drug abuse, the lack of a parent-child relationship, the existence of restraining orders prohibiting the parent's contact with the child, and the parent's arrest and incarceration on child abuse and drug charges. *State ex rel. Children, Youth and Families Dep't v. Browind C.*, 2007-NMCA-023, 141 N.M. 166, 152 P.3d 153.

10-105. Service and filing of pleadings and other papers by facsimile.

A. **Facsimile copies permitted to be filed.** Subject to the provisions of this rule, a party may file a facsimile copy of any pleading or paper by faxing a copy directly to the court or by faxing a copy to an intermediary agent who files it in person with the court. A facsimile copy of a pleading or paper has the same effect as any other filing for all procedural and statutory purposes. The filing of pleadings and other papers with the court by facsimile copy shall be made by faxing them to the clerk of the court at a number designated by the clerk, except if the paper or pleading is to be filed directly with the judge, the judge may permit the papers to be faxed to a number designated by the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Each judicial district shall designate one or more telephone numbers to receive fax filings.

B. **Facsimile service by court of notices, orders or writs.** Facsimile service may be used by the court for issuance of any notice, order or writ. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

C. **Paper size and quality.** No facsimile copy shall be filed with the court unless it is on plain paper and substantially satisfies all of the requirements of Rule 10-113 NMRA of these rules.

D. **Filing pleadings or papers by facsimile.** A pleading or paper may be filed with the court by facsimile transmission if:

(1) a fee is not required to file the pleading or paper;

(2) only one copy of the pleading or paper is required to be filed;

(3) unless otherwise approved by the court, the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

(4) the pleading or paper to be filed is preceded by a cover sheet with the names of the sender and the intended recipient, any applicable instructions, the voice and facsimile telephone numbers of the sender, an identification of the case, the docket number and the number of pages transmitted.

E. **Facsimile copy filed by an intermediary agent.** Facsimile copies of pleadings or papers filed in person by an intermediary agent are not subject to the restrictions of Paragraph D of this rule.

F. **Time of filing.** If facsimile transmission of a pleading or paper is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the pleading or paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court's facsimile machine will be determinative.

G. **Service by facsimile.** Any document required to be served by Paragraph A of Rule 10-105 NMRA may be served on a party or attorney by facsimile transmission if the party or attorney has:

(1) listed a facsimile telephone number on a pleading or paper filed with the court in the action;

(2) a letterhead with a facsimile telephone number; or

(3) agreed to be served with a copy of the pleading or paper by facsimile transmission.

Service by facsimile is accomplished when the transmission of the pleading or paper is completed.

H. **Demand for original.** A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile transmission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

I. **Conformed copies.** Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by facsimile transmission.

[Adopted, effective January 1, 1997; Rule 10-105.1 NMRA recompiled and amended as Rule 10-105 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed "transmission" to "service"; in Paragraph C, changed the reference from Rule 10-103.3 NMRA to Rule 10-113 NMRA; changed the title of Paragraph D from "Pleadings or papers faxed directly to the court" to "Filing pleadings or papers by facsimile"; in Paragraph D, changed "faxed directly to the court" to "filed with the court by facsimile transmission"; in Paragraph D(3), added "unless otherwise approved by the court"; in Paragraph G, changed the title and prefatory sentence from "Transmission by facsimile. A notice, order, writ, pleading or paper may be faxed to a party or attorney who has" to the current title and prefatory sentence; deleted former Paragraph H which provided that proof of service by facsimile must include a statement that the facsimile transmission was reported as complete and without error, the time, date and sending and receiving facsimile machine telephone numbers, and the name of the person who made the facsimile transmission; relettered former Paragraph I as Paragraph H; and added new Paragraph I.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-105.1 NMRA was recompiled as Rule 10-105 NMRA, effective January 15, 2009.

10-106. Electronic service and filing of pleadings and other papers.

A. **Definitions.** As used in these rules:

(1) "electronic transmission" means the transfer of data from computer to computer other than by facsimile transmission; and

(2) "document" includes the electronic representation of pleadings and other papers.

B. **Service by electronic transmission.** Any document required to be served by Paragraph A of Rule 10-104 NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic mail, a party served by electronic mail notifies the sender of the electronic mail that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 10-104 NMRA designated by the party to be served.

C. **Service by electronic transmission by the court.** The court may serve any document by electronic service to an attorney or party pursuant to Paragraph B of this rule and to any other person who has agreed to receive documents by electronic transmission.

D. **Filing by electronic transmission.** Documents may be filed with the court by electronic transmission in accordance with this rule, if:

(1) the Supreme Court has adopted technical specifications for electronic transmission; and

(2) the court in which documents are filed by electronic transmission has complied with the technical specifications for electronic transmission adopted by the Supreme Court.

E. **Single transmission.** Whenever a rule requires multiple copies of a document to be filed only a single transmission is necessary.

F. **Time of filing.** For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight.

If electronic transmission of a document is received before midnight on the day preceding the next business day of the court it will be considered filed on the immediately preceding business day of the court. For any questions of timeliness, the time and date registered by the court's computer will be determinative.

G. **Demand for original.** A party shall have the right to inspect and copy any document that has been filed or served by electronic transmission if the document has a statement signed under oath or affirmation or penalty of perjury.

H. **Conformed copies.** Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by electronic transmission.

[Approved, effective July 1, 1997; Rule 10-105.2 NMRA recompiled and amended as Rule 10-106 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — This rule anticipates electronic filing and mirrors the analogous Rule of Civil Procedure. *See* Rule 1-005.2 NMRA.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph B, deleted the former title and rule which required the

clerk of the Supreme Court to maintain a register of attorneys who agree to accept documents by electronic transmission which included the attorney's name and preferred electronic mail address, and added the current rule; in Paragraph C, added "Service by" to the title, changed "transmission" to "service" and changed "to an attorney registered pursuant to Paragraph B" to "to an attorney or party pursuant to Paragraph B"; in Paragraph B, changed "filed by electronic transmission" to "filed with the court by electronic transmission" and deleted "and any technical specifications for electronic transmission"; in Paragraph D(1), deleted "in any court that has adopted the technical specification for electronic transmission" and added the current language; in Paragraph D(2), deleted "if a fee is not required or if payment is made at the time of filing" and added the current language; in Paragraph F, deleted the former rule which provided that service pursuant to Rule 10-005 NMRA may be made by electronic transmission on any attorney who is registered and on any other person who has agreed to service by electronic transmission, and added the current rule, changed "the close of the business day of the court in which it is being filed, it will be considered filed on that date. If electronic transmission is received after the close of business, the document will be considered filed on the nest business day" to "midnight on the day preceding the next business day of the court it will be considered filed on the immediately preceding business day"; deleted the letter and title of former Paragraph G; relettered former Paragraph H as Paragraph G; deleted former Paragraph I which required that proof of electronic transmission be made by certificate which include the name of the person who sent the document, the time, date and electronic address of the sender, the electronic address of the recipient, and a statement that the electronic transmission was successful; and added Paragraph H.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-105.2 NMRA was recompiled as Rule 10-106 NMRA, effective January 15, 2009.

10-107. Time.

A. **Computing time.** This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less.*** When the period is stated in days but the number of days is ten (10) days or less,

(a) exclude the day of the event that triggers the period;

(b) exclude intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) ***Period stated in hours.*** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) ***Unavailability of the court for filing.*** If the court is closed or is unavailable for filing at any time that the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) ***"Last day" defined.*** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) ***"Next day" defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) ***"Legal holiday" defined.*** "Legal holiday" means the day that the following are observed by the judiciary:

(a) New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day (traditionally observed on the day after Thanksgiving), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

B. **Extending time.**

(1) ***In General.*** When an act may or must be done within a specified time, the court may, for cause shown, extend the time

(a) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) ***Exceptions.*** A court shall not extend the time for taking any action under Rules 10-211, 10-241, 10-343, or 12-201 NMRA, except to the extent and under the conditions stated in those rules.

C. **Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, electronic transmission, or by deposit at a location designated for an attorney at a court facility under Rule 10-104(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. **Public posting of regular court hours.** The court shall publicly post the hours that it is regularly open.

[As amended, effective September 1, 1995; Rule 10-106 NMRA recompiled and amended as Rule 10-107 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

Committee commentary. — In 2014, the Joint Committee on Rules of Procedure amended the time computation rules, including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and restyled the rules to more closely resemble the federal rules of procedure. *See* Fed. R. Civ. Pro. 6; Fed. R. Crim. Pro. 45.

Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable for filing due to weather, technological problems, or other circumstances. A person relying on Subparagraph (A)(4) to extend the time for filing a paper should be prepared to demonstrate or affirm that the court was closed or unavailable for filing at the time that the paper was due to be filed under Subparagraph (A)(1), (A)(2), or (A)(3).

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-016, effective December 31, 2014, completely rewrote the rule; deleted former Paragraph A which provided rules for computation of time by excluding the day of the event from which the period of time began to run, including the last day of the period of time, excluding Saturdays, Sundays, legal holidays and days of severe inclement weather, and defined legal holidays; deleted former Paragraph B which provided for the enlargement of the period of time by the court; deleted former Paragraph C which provided for the service of motions for the enlargement of the period of time and for ex parte applications; deleted former Paragraph D, which provided for a three day enlargement of the period of time when a party was served by mail; and added current Paragraphs A through D.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph B(2), changed the reference from Rule 10-212 NMRA to Rule 10-211 NMRA, from Rule 10-226 NMRA to Rule 10-241 NMRA, and from Rule 10-308 NMRA to Rule 10-343 NMRA.

The 1995 amendment, effective September 1, 1995, rewrote Paragraph A, added "where the failure to act was the result of excusable neglect" at the end of Subparagraph B(2), substituted the ending language of Paragraph B for "The court may not extend the time for commencement of a detention hearing or a custody hearing unless the attorney for the respondent agrees in writing to an extension", added Paragraph C, redesignated former Paragraph C as Paragraph D and made gender neutral changes in that paragraph, and deleted former paragraph D relating to time for motions.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-106 NMRA was recompiled as Rule 10-107 NMRA, effective January 15, 2009.

Failure of state to move for enlargement of time to file petition. — Paragraph B of this rule does not indicate that, upon failure of the state to move for an enlargement of the time in which to file a petition, the children's court loses jurisdiction or that it requires the petition to be dismissed with prejudice. *State v. Doe*, 1978-NMCA-010, 91 N.M. 393, 574 P.2d 1021.

Time for demand for jury trial. — Since the state was unable to establish the date the child's attorney was served with a copy of her appointment, the 10-day period within which to demand a jury trial began to run on the day following the appearance of the attorney at the detention hearing. *In re Ruben O.*, 1995-NMCA-051, 120 N.M. 160, 899 P.2d 603.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 16 et seq.

10-111. Motions; how and when presented.

A. **Requirement of written motion; time for filing.** All motions, except motions made during trial, or as may be permitted by the court, shall be in writing and shall state with particularity the grounds and the relief sought. All pre-adjudicatory motions shall be filed at least twenty-five (25) days prior to any adjudicatory hearing except by leave of court.

B. **Unopposed motions.** The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order approved by all other counsel and parties pro se shall accompany the motion.

C. **Opposed motions.** The motion shall recite that concurrence of all other counsel and parties pro se was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for seeking concurrence unless the motion is a:

(1) motion to dismiss;

(2) motion for new trial;

(3) motion for judgment notwithstanding the verdict;

(4) motion for summary judgment in an abuse or neglect proceeding or in a termination of parental rights proceeding;

(5) motion for an ex parte custody order in an abuse or neglect proceeding; or

(6) motion for relief from a final judgment, order or proceeding in an abuse or neglect proceeding or a termination of parental rights proceeding pursuant to Paragraph B of Rule 1-060 NMRA of the Rules of Civil Procedure for the District Courts.
Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. If the motion requires consideration of facts not of record, the moving party shall file copies of all affidavits, depositions or other documentary evidence to be presented in support of the motion. Motions to amend pleadings shall have attached the proposed pleading. A motion for judgment on the pleadings presenting matters outside the pleading shall comply with

Rule 1-056 NMRA of the Rules of Civil Procedure for the District Courts. A motion for new trial in a neglect or abuse, termination of parental rights or delinquency proceeding shall comply with Rule 10-146 NMRA of these rules.

D. **Response.** Unless otherwise specifically provided in these rules or by the Children's Code, any written response and all affidavits, depositions or other documentary evidence in support of the response shall be filed within ten (10) days after service of the motion. A motion for new trial in a delinquency proceeding shall comply with Rule 5-614 NMRA of the Rules of Criminal Procedure for the District Courts.

E. **Reply brief.** Any reply brief shall be filed within five (5) days after service of any written response.

F. **Request for hearing.** A request for hearing shall be filed at the time an opposed motion is filed. The request for hearing shall be substantially in the form approved by the Supreme Court.

[Adopted, effective September 1, 1995; May 1, 1998; Rule 10-103.1 NMRA recompiled and amended as Rule 10-111 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

Committee commentary. — The time lines in this rule may be modified by the court as required. Attorneys seeking an expedited hearing must include the request for expedited hearing with the motion when it is filed.

[Adopted by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-024, effective January 7, 2013, reduced the time for filing a response and a reply brief; required a request for a hearing to be filed at the time an opposed motion is filed; in Paragraph A, changed "at least ten (10)" to "at least twenty-five (25)"; in Paragraph D, in the first sentence, after "shall be filed within", deleted "fifteen (15)" and added "ten (10)" and in the second sentence, after "shall comply with", deleted "Rule 5-604" and added "Rule 5-614"; in Paragraph E, after "shall be filed within" deleted "fifteen (15)" and added "five (5)"; and added Paragraph E.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph B, changed "an order initialed by opposing counsel shall accompany the motion" to "an order approved by all other counsel and parties pro se shall accompany the motion"; in Paragraph C, changed "concurrence of opposing counsel was requested" to "concurrence of all other counsel and parties pro se was requested" and changed "motion obviates the need for concurrence unless the motion"

to "motion obviates the need for seeking concurrence unless the motion"; and in the second paragraph of Paragraph C, changed "termination of parental rights proceeding" to "termination of parental rights or delinquency proceeding" and changed the reference from Rule 1-059 NMRA of the Rules of Civil Procedure for the District Courts to Rule 10-147 NMRA.

The 1998 amendment, effective May 1, 1998, redesignated former Subparagraph C(5) as C(6) and added new Subparagraph C(5).

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-103.1 NMRA was recompiled as Rule 10-111 NMRA, effective January 15, 2009.

Compiler's notes. — For comparable District Court rule, *see* Rule 1-007.1 NMRA.

As a general rule, a motion to suppress evidence is not required to be made before trial and may be made at trial. *State v. Katrina G.*, 2008-NMCA-069, 144 N.M. 205, 185 P.3d 376.

10-112. Pleadings and papers; captions.

A. **Caption.** Pleadings and papers filed in the children's court shall have a caption or heading which shall briefly include:

(1) the name of the court as follows:

"State of New Mexico

County of _____

_____ Judicial District"

In the Children's Court;

(2) the names of the parties; and

(3) a title which describes the cause of action or relief requested. The title of a pleading or paper shall have no legal effect in the action.

B. **Style.** The petition and all other papers filed in the delinquency and abuse and neglect proceedings shall be entitled "In the Matter of _____, (*insert name of each child*)".

[Approved, effective July 1, 2002; Rule 10-107 NMRA recompiled as Rule 10-112 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-107 NMRA was recompiled as Rule 10-112 NMRA, effective January 15, 2009.

Compiler's notes. — For comparable District Court rule, *see* Rule 1-008.1 NMRA.

10-113. Form of papers.

Except exhibits and papers filed by electronic transmission pursuant to Rule 10-106 NMRA of these rules, all pleadings and papers filed in the district court shall be clearly legible, shall be: on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size, with a left margin of one (1) inch, a right margin of one (1) inch, and top and bottom margins of one and one-half (1 1/2) inches; with consecutive page numbers at the bottom; and stapled at the upper left hand comer; and, except for a cover page, shall be typed or printed using pica (10 pitch) type style or a twelve (12) point typeface. A space of at least two and one-half (2 1/2) by two and one-half (2 1/2) inches for the clerk's recording stamp shall be left in the upper right-hand comer of the first page of each pleading. The contents, except quotations and footnotes, shall be double spaced. Exhibits which are copies of original documents may be reproduced from originals by any duplicating or copying process which produces a clear black image on white paper. The size of any exhibits shall be their original size or any smaller size not less than eight and one-half by eleven (8 1/2 x 11) inches.

[Adopted, effective September 1, 1995; as amended, effective July 1, 2002; Rule 10-103.3 NMRA, recompiled and amended as Rule 10-113 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed the reference from Rule 10-105.2 NMRA to Rule 10-106 NMRA.

The 2002 amendment, effective July 1, 2002, rewrote the first sentence to conform to Rule 1-100 NMRA as amended effective January 1, 1998.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-103.3 NMRA was recompiled as Rule 10-113 NMRA, effective January 15, 2009.

10-114. Form of pleadings.

A. **Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number and a designation as to the type of pleading. In the petition the title of the action shall include the names of all parties.

B. **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters.

C. **Adoption by reference.** Statements made in one part of a pleading may be adopted by reference in another part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

D. **Name of respondent.** In any pleading, the name of the respondent shall be stated, or, if the respondent's name is not known, the respondent may be described by any name or description by which the respondent can be identified with reasonable certainty, together with a statement that respondent's name is not known.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, a new Rule 10-114 NMRA was adopted, effective January 15, 2009.

Withdrawals. — Pursuant to a court order dated July 17, 1995, former Rule 10-114 NMRA, relating to filing of motions, was withdrawn effective September 1, 1995.

10-115. Signing of pleadings, motions and other papers; sanctions.

A. **Signing of papers.** Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion or other paper and state the party's address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

B. **Sanctions.** If a pleading, motion or other paper is signed with the intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading or other paper had not been served. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. For a willful violation of

this rule an attorney or party may be subjected to appropriate disciplinary or other action. Similar action may be taken if scandalous or indecent matter is inserted.

C. **Definitions.** A "signature" means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-115 NMRA, relating to rules of evidence, was recompiled as Rule 10-141 NMRA, and a new Rule 10-115 NMRA, relating to the signing of pleadings, motions and other papers, was adopted, effective January 15, 2009.

10-121. Parties.

A. **Delinquency proceedings.** In proceedings on petitions alleging delinquency, the parties to the action are the child alleged to be delinquent, the state and any person made a party by the court.

B. **Neglect or abuse and family in need of court-ordered services proceedings; parties.** In proceedings on petitions alleging neglect or abuse or a family in need of court-ordered services, the parties to the action are:

(1) the state;

(2) a parent, guardian or custodian who has allegedly neglected or abused a child or is in need of court-ordered services;

(3) the child alleged to be neglected or abused or in need of court-ordered services; and

(4) any other person made a party by the court.

C. **Neglect or abuse and family in need of court-ordered services proceedings; permissive joinder.** In proceedings on petitions alleging neglect or abuse or a family in need of court-ordered services, the state may join as parties the non-custodial parent or parents, the guardian or custodian of the child or any other person permitted by law to intervene in the proceedings.

D. **Termination of parental rights; necessary parties.** If a motion to terminate parental rights is filed in an abuse or neglect proceeding and a parent who has a constitutionally protected liberty interest in the child has not been joined as a party in the abuse or neglect proceeding, the department shall name the parent as a party in the

motion to terminate parental rights, and such parent shall be served with a summons and a copy of the motion in the manner provided by Rule 10-103 NMRA.

[As amended, effective July 1, 1995; February 15, 1999; Rule 10-108 NMRA, recompiled and amended as Rule 10-121 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Under Paragraph A of Rule 10-121 NMRA, the parties in delinquency proceedings are the respondent child, the state, a parent of a child alleged to be delinquent if named pursuant to Section 32A-2-28 NMSA 1978 (1993) and, of course, anyone allowed to intervene under Rule 10-122 NMRA. The children's court attorney, namely the district attorney or an attorney so designated from his or her office (*see* Section 32A-1-6(A) NMSA 1978 (1995)) represents the state in these proceedings. An attorney will be appointed for a child not otherwise represented by counsel, as set forth in Section 32A-2-14 NMSA 1978 (2003) and Rule 10-223 NMRA.

Paragraph B of Rule 10-121 NMRA defines the parties in abuse and neglect cases. These parties are the state, the accused parent, guardian, or custodian, and the child, as well as any other person made a party by the court. As in delinquency cases, the state is represented by the "children's court attorney" but the children's court attorney in an abuse or neglect case is an attorney selected by and representing the Children, Youth and Families Department (*see* Section 32A-1-6(C) NMSA 1978 (1995)), not the district attorney.

As noted, the child in the abuse or neglect case is a party to the case. If under the age of fourteen, the child is represented by a guardian ad litem, who is an attorney appointed by the court to represent the child's best interest. If the child is fourteen or over, the court appoints an attorney to represent the child in the same way an attorney represents an adult under the traditional client-directed model of representation. The youth's attorney, although he or she may advise differently, follows the instructions of the client. *See* Section 32A-4-10 NMSA 1978 (2005) and Rules 10-312 and 10-313 NMRA.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "intervention" in the title of the rule; in Paragraph A, added "and any person made a party by the court" at the end of the sentence; in Paragraph B(2), added "guardian or custodian"; in Paragraph B(3), deleted the sentence which required the court to appoint a guardian ad litem to represent a child alleged to be neglected or abused or in need of court ordered services upon the filing of a petition; added Subparagraph (4) of Paragraph B; in Paragraph D, deleted the sentence which named the parties in a termination of parental rights proceeding as the state, the parents, the legal guardians and any person who is required by law to be made a party,

changed "supplemental petition" to "motion", changed "parent" to "parent who has a constitutionally protected liberty interest in the child", and added "and such parent shall be served with a summons and a copy of the motion in the manner provided by Rule 10-103 NMRA" at the end of the sentence; and deleted former Paragraph E which provided for intervention by parents, guardian, custodian or the child's Indian tribe.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, portions of former Rule 10-108 NMRA have been recompiled as Rule 10-121 NMRA, effective January 15, 2009.

Applicability of child custody jurisdiction statute. — That the nonparent custodians of a child were "acting as parents" pursuant to Section 40-10-3H NMSA 1978 [now Section 40-10A-102(13) NMSA 1978] because they had physical custody of the child and claimed a right to custody, had no applicability in a neglect or abuse case so as to entitle the custodians to the protections afforded in a termination of parent rights case. *In re Agnes P.*, 1990-NMCA-091, 110 N.M. 768, 800 P.2d 202.

Rights of de facto custodians. — Because the nonparent custodians of a child failed to establish any right to the child, other than their previous status as de facto custodians, the children's court could properly discontinue their involvement in a treatment plan, dismiss them from the neglect action, and direct that the child be freed for adoption by other qualified and suitable persons. While through their status they appeared to have assumed all the obligations of parents, an in loco parentis status did not entitle them to parental termination proceedings. *In re Agnes P.*, 1990-NMCA-091, 110 N.M. 768, 800 P.2d 202.

A guardian appointed for a child pursuant to the Kinship Guardianship Act must be a party in proceedings on petitions alleging neglect or abuse or a family in need of court-ordered services, although such guardians are not necessary and indispensable parties to abuse and neglect proceedings as defined by Rule 1-019 NMRA, which is a rule of civil procedure that does not govern children's court cases under the Children's Code. *State ex rel. Children, Youth & Families Dep't v. Djamila B.*, 2015-NMSC-003.

10-122. Intervention.

A. **Intervention of right.** At any stage of an abuse or neglect proceeding, a parent who has not been named as a party or, if the abused or neglected child is an Indian child, the child's Indian tribe may intervene.

B. **Permissive intervention.** Upon timely application the following persons may be permitted to intervene in a children's court proceeding under such terms and conditions as the judge may prescribe:

(1) in delinquency proceedings, the parents, guardian or custodian of the respondent;

(2) in neglect, abuse or families in need of court-ordered services proceedings, a guardian or custodian of the child alleged to have been abused or neglected or in need of court-ordered services;

(3) in a delinquency, neglect, abuse or family in need of court ordered services proceeding any person with a statutory basis for intervention in the proceedings;

(4) any person who has a constitutionally protected liberty interest in the proceedings if the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties; or

(5) any other person permitted by law to intervene.

In exercising its discretion pursuant to Subparagraph (2) of this paragraph, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C. **Procedure.** A person desiring to intervene pursuant to Paragraph A or B of this rule shall serve a motion to intervene upon the parties as provided in Rule 10-104 NMRA. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

[As amended, effective July 1, 1995; February 15, 1999; Rule 10-108 NMRA, recompiled and amended as Rule 10-222 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted former Paragraphs A through D which designated the parties in delinquency, neglect and abuse, family in need of court ordered services, and termination of parental rights proceedings; in Paragraph A, changed "abused child" to "abused or neglected child"; added the letter designation and title for Paragraph B; added Subparagraph (5) of Paragraph B; and added Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, portions of former Rule 10-108 NMRA have been recompiled as Rule 10-122 NMRA, effective January 15, 2009.

Discretion of trial court in determining intervention. — The trial court has a good deal of discretion in determining whether to allow intervention, and the decision of the trial court will not be reversed absent a showing of abuse of that discretion. *In re Melvin B.*, 1989-NMCA-078, 109 N.M. 18, 780 P.2d 1165.

10-131. Persons before whom depositions may be taken.

A. **Within the United States.** Depositions shall be taken before an officer authorized to administer oaths by the laws of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

B. **In foreign countries.** In a foreign country, depositions may be taken:

(1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States or;

(2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony; or

(3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

C. **Disqualification for interest.** Except as provided in Rule 10-132 NMRA, no deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action. As used in this rule, an "employee" means a person who is employed in the office of the respondent, the state or an attorney representing a respondent in the proceedings.

[Approved, effective February 1, 2002.]

10-132. Stipulations regarding discovery procedure.

Unless the court orders otherwise, or previous orders of the court conflict, the parties may by written stipulation:

A. provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

B. modify the procedures provided by these rules for other methods of discovery.

[Approved, effective February 1, 2002.]

10-133. Depositions; statements.

A. **Statements.** Any person, other than the respondent, with information which is subject to discovery shall give a statement. If upon request of a party, a person other than the respondent refuses to give a statement, the party may obtain the statement of the person by serving a written "notice of statement" upon the person to be examined and upon each party not less than five (5) days before the date scheduled for the statement. The notice will state the time and place for taking of the statement. A subpoena may also be served to secure the presence of the person to be examined or the materials to be examined during the statement.

B. **Depositions; when allowed.** A deposition may be taken pursuant to this rule upon:

(1) agreement of the parties; or

(2) order of the court at any time after the filing of the petition, upon a showing that it is necessary to take the person's deposition to prevent injustice.

C. **Scope of discovery.** Unless otherwise limited by order of the court, parties may obtain discovery regarding any matter, not privileged, which is relevant to the act charged or alleged or the defense of the accused person, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

D. **Time and place of deposition.** Counsel must make reasonable efforts to confer in good faith regarding scheduling of depositions before serving notice of deposition. Unless agreed to by the parties, any deposition allowed under this rule shall be taken at such time and place as ordered by the court. The attendance of witnesses at depositions may be compelled by subpoena as provided in these rules.

E. **Notice of examination: general requirements; special notice; notice of non-appearance; nonstenographic recording; production of documents and things; deposition of organization; deposition by telephone.**

(1) A party taking the deposition of any person upon oral examination pursuant to court order shall give at least ten (10) days notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is

not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription or copy of the deposition or statement to be made from the recording of a deposition or statement at the party's expense.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. If the deposition is taken by an official court reporter, the official transcript shall be the transcript prepared by the official court reporter.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 10-131 NMRA and shall begin with a statement on the record by the officer that includes:

(a) the officer's name and business address;

(b) the date, time, and place of the deposition;

(c) the name of the deponent;

(d) the administration of the oath or affirmation to the deponent; and

(e) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (a) through (c) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) A party may, in the party's notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person

will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph does not preclude taking a deposition by any other procedure authorized in these rules.

(6) The parties may agree in writing or the court may, upon motion, order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rule 10-131(A) NMRA and 10-136(A)(1) NMRA and 10-136(B)(1) NMRA, a deposition taken by such means is taken in the county and at a place where the witness is to answer questions. The officer taking the deposition must be physically present with the witness.

F. **Depositions; examination and cross-examination; record of examination; oath; objections.** Examination and cross-examination of witnesses in depositions may proceed as permitted at trial under the New Mexico Rules of Evidence, except Rule 11-103 NMRA and Rule 11-615 NMRA. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by Paragraph D(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

G. **Statements; depositions; motion to terminate or limit examination.** At any time during a deposition or statement, on motion of a party, the witness or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the witness or the deponent, the court in which the action is pending, or the court in the county where the deposition or statement is being taken, may order the examination to cease or may limit the scope and manner of the taking of the deposition or statement pursuant to Rule 10-138 NMRA. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party, the witness or the deponent, the taking of the deposition or statement shall be suspended for the time necessary to make a motion for an order.

H. **Depositions; review by witness; changes; signing.** If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the

deponent for making them. The officer shall indicate in the certificate prescribed by Paragraph I(1) of this rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

I. **Certification by officer; exhibits; copies; notice of transcription.**

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. If the deposition is transcribed, the officer shall provide the original of the deposition or statement to the party ordering the transcription and shall give notice thereof to all parties. The party receiving the original shall maintain it, without alteration, until final disposition of the case in which it was taken or other order of the court. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may:

(a) offer copies to be marked for identification and annexed to the deposition or statement and to serve thereafter as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or

(b) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) Any party filing a deposition shall give prompt notice of its filing to all other parties.

J. **Final disposition of depositions.** The original deposition may be destroyed as provided in the judicial retention of records schedule.

[Approved, effective February 1, 2002.]

10-134. Audiotaped and videotaped depositions.

A. **Definition; "stenographic recording".** As used in these rules, "stenographic recording" or "stenographically recorded" shall mean reporting by simultaneous verbatim reporting.

B. **Audio-video deposition requirements.** If a proceeding is to be recorded by audiotape or videotape, unless the court otherwise orders or the parties otherwise stipulate:

(1) at the commencement of the deposition the operator shall swear or affirm to record the proceedings fairly and accurately;

(2) the deposition shall begin with an oral or written statement on camera or on the audiotape that includes: the operator's name and business address; the name and business address of the operator's employer, if any; the date, time and place of the deposition; the caption of the case; the name of the deponent; the party on whose behalf the deposition is being taken; and any stipulations by the parties;

(3) each witness, attorney and other person attending the deposition shall be identified on tape or on camera at the commencement of the deposition. Only the deponent and demonstrative materials used during the deposition will be videotaped;

(4) the audiotape or videotape operator shall not distort the voice, appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques. At a videotaped deposition, unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with appropriate lighting. Lighting, camera angle, lens setting and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. At both audiotaped and videotaped depositions, sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent;

(5) when the parties go off the record, the audio or video operator will state on the tape "going off the record, the time is _____". At this point no audio or video recording shall be made. When going back on the record, the operator will state on the tape "going back on the record, the time is _____";

(6) if the length of a deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on the audiotape or videotape;

(7) the audio or video operator shall use a counter on the recording equipment and shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape: at which examination by different counsel begins and ends; at which exhibits are identified; and at which any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussions, mechanical failure or otherwise;

(8) at the conclusion of the deposition, a statement shall be made on the audiotape or videotape that the deposition is ended. The operator shall mark as "original" and consecutively number each tape;

(9) the original audio or video recording may not be edited or altered. Copies of the audiotape or videotape may be redacted as may be appropriate for use in court;

C. **Approval of audiotaped or videotaped deposition.** If there is no stenographic transcription of the deposition, the person in possession of the audio or videotape promptly shall provide a copy of the tape to the deponent, unless the deponent and all parties attending the deposition have agreed on the record to waive review, correction and certification by the deponent. Within thirty (30) days after receipt of the audio or videotape, if there are changes in form or substance, the deponent shall sign a statement reciting such changes and the reasons given by the deponent for making them. If the deponent fails to provide a timely signed statement, no changes may later be made to the deposition.

D. **Use in court proceedings.** A party desiring to use an audiotaped or videotaped deposition pursuant to Rule 10-135 NMRA shall be responsible for having available appropriate playback equipment and an operator.

[Approved, effective February 1, 2002.]

10-135. Use of depositions in court proceedings.

A. **Use of depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used for any purpose permitted by the Rules of Evidence.

B. **Effect of errors and irregularities in depositions.**

(1) **As to notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice and filed in the action.

(2) **As to disqualification of officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence. Such objections should be served on the party giving notice and filed in the action.

(3) **As to taking of deposition.**

(a) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or

during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation or in the conduct of parties and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(4) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under this rule are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

[Approved, effective February 1, 2002.]

10-136. Depositions; failure to make discovery; sanctions.

A. **Motion for order compelling discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in depositions as follows:

(1) An application for an order to a deponent who is not a party but whose deposition is being taken within the state or for an order to a party may be made to the court where the action is pending. If a deposition is being taken outside the state this shall not preclude the seeking of appropriate relief in the jurisdiction where the deposition is being taken.

(2) If a deponent fails to answer a question propounded or submitted under Rule 10-133 NMRA, or a corporation or other entity fails to make a designation under Rule 10-133(E)(5) NMRA, or if a party, in response to a request for inspection fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 10-138 NMRA.

(3) For purposes of this paragraph an evasive or incomplete answer is to be treated as a failure to answer.

(4) If the motion is granted, the court may, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

Any motion filed pursuant to this paragraph shall state that counsel has made a good faith effort to resolve the issue with opposing counsel prior to filing a motion to compel discovery.

If the motion is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the moving party or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B. **Failure to comply with order.**

(1) If a deponent fails to be sworn or to answer a question after being directed to do so by a court with jurisdiction, the failure may be considered a contempt of that court.

(2) If a party or an officer, director or managing agent of a party or a person designated under Rule 10-133 NMRA to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Paragraph A of this rule, or if a party fails to obey an order under Rule 10-138 NMRA, the court in which the action is pending may make such orders in regard to the failure as are just.

[Approved, effective February 1, 2002.]

10-137. Continuing duty to disclose; failure to comply.

A. **Duty to disclose.** If, subsequent to compliance with Rule 10-231, 10-232, 10-331, 10-332, 10-333 or 10-334 NMRA and prior to or during the adjudicatory hearing or termination of parental rights hearing, a party discovers additional material or witnesses which the party would have been under a duty to produce or disclose at the time of such previous compliance if it were then known to the party, the party shall promptly give written notice to the other party of the existence of the additional material or witnesses.

B. **Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or

with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed, or from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including, but not limited to, holding an attorney in contempt of court pursuant to Rule 10-165 NMRA of these rules.

[10-215 NMRA; as amended and recompiled, effective February 1, 2002; as amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; by Supreme Court Order No. 10-8300-041, effective January 31, 2011.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-041, effective January 31, 2011, in Paragraph A, after "Rule", deleted "10-221, 10-222" and added "10-231, 10-232".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, changed "Rule 10-213, 10-214, 10-308, 10-309 or 10-350" to "10-221, 10-222, 10-331, 10-332, 10-333 or 10-334" and in Paragraph B, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

10-138. Depositions; statements; protective orders.

A. **Motion.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition or statement, the court in the district where the deposition or statement is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, the risk of physical harm, intimidation, bribery or economic reprisals. The order may include one or more of the following restrictions:

(1) that the deposition or statement requested not be taken;

(2) that the deposition or statement requested be deferred;

(3) that the deposition or statement may be had only on specified terms and conditions, including a designation of the time or place;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that the deposition or statement be conducted with no one present except persons designated by the court;

(6) that a deposition or statement after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

B. **Written showing of good cause.** Upon motion, the court may permit the showing of good cause required under Paragraph A of this rule to be in the form of a written statement for inspection by the court in camera, if the court concludes from the statement that there is a substantial need for the in camera showing. If the court does not permit the in camera showing, the written statement shall be returned to the movant upon request. If no such request is made, or if the court enters an order granting the relief sought, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court having jurisdiction in the event of an appeal.

C. **Denial of order.** If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

[10-218 NMRA; as amended and recompiled, effective February 1, 2002.]

Committee commentary. — *See* Rule 5-507 NMRA of the Rules of Criminal Procedure for the District Courts.

ANNOTATIONS

The 2001 amendment, effective February 1, 2002, inserted "statements" in the bold rule heading; in the first sentence of Paragraph A, substituted "the person from whom discovery is sought" for "a person to be examined pursuant to Rule 10-216", deleted "children's" preceding "court in which", substituted "or alternately, on matters relating to a deposition or statement, the" for "or the children's", substituted "expense" for "from the risk" and was amended to conform this rule with Rule 5-507 NMRA.

Compiler's notes. — Former Rule 10-218 NMRA pertaining to "depositions; protective orders" was recompiled as this rule, effective February 1, 2002.

10-141. Rules of evidence.

The New Mexico Rules of Evidence shall govern all proceedings in the children's court, except as otherwise provided by law.

[Rule 10-115 NMRA, recompiled and amended as Rule 10-141 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "Except as otherwise provided by these rules" and added "except as provided by law".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-115 NMRA was recompiled as Rule 10-141 NMRA, effective January 15, 2009.

Cross references. — For Rules of Evidence, *see* Rule 11-101 NMRA et seq.

Expert witness. — A state police narcotics agent who had conducted 200 to 300 similar tests, 80 of which had been used in various cases, preliminary hearings and children's cases not involving felonies, was sufficiently expert to qualify for purposes of delinquency petitions involving marijuana offense which would have been a misdemeanor if committed by an adult. *Doe v. State*, 1975-NMCA-108, 88 N.M. 347, 540 P.2d 827, cert. denied, 88 N.M. 318, 540 P.2d 248.

Manifestation of belief in truth of statement. — A children's court judge could properly hold that a child manifested a belief in the truth of statements, made by two sons of the owner of a pickup, that he was trying to rip a CB radio out of the same, where the child admitted that he was caught running and more or less admitted that he was in the pickup. *State v. Doe*, 1977-NMCA-078, 91 N.M. 92, 570 P.2d 923.

Statements made without advice of counsel. — A child's statements manifesting the truth of the accusers' claims, but made to the police after being taken into custody without the benefit of the advice of counsel, were inadmissible under former 32-1-27 NMSA 1978. *State v. Doe*, 1977-NMCA-078, 91 N.M. 92, 570 P.2d 923.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 47.

Use of judgment in prior juvenile court proceeding to impeach credibility of witness, 63 A.L.R.3d 1112.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

43 C.J.S. Infants § 47.

10-142. Judicial notice and determination of foreign law.

A. **Judicial notice.** The courts of New Mexico shall take judicial notice of the following facts:

(1) the true significance of all English words and phrases and of all legal expressions;

(2) whatever is established by law;

(3) public and private official acts of the legislative, executive and judicial departments of the United States, and the laws of the several states and territories of the United States, and the interpretation thereof by the highest courts of appellate jurisdiction of such states and territories;

(4) the seals of all the courts of this state, the United States and the courts of record of the various states of the United States and its territories;

(5) the accession to office, seals and the official signatures under seal of the officers of government in the legislative, executive and judicial departments of the United States and of the several states and territories thereof;

(6) the existing title, national flag and seal of every state or sovereign recognized by the executive power of the United States;

(7) the seals of notaries public; and

(8) the laws of nature, the result of time and the geographic divisions and political history of the world.

In all cases the court may resort for its aid to appropriate books or documents of reference.

This rule is not intended to be exclusive and nothing herein contained shall be construed to limit or restrict the courts from taking judicial notice under the New Mexico Rules of Evidence.

B. **Determination of foreign law.** A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the New Mexico Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

10-143. Subpoena.

A. **Form; issuance.**

(1) A subpoena shall not be issued pursuant to these rules unless a petition has been filed. Every subpoena shall:

(a) state the name of the court from which it is issued;

(b) state the title of the action and its children's court action number;

(c) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person at a time and place therein specified; and

(d) be substantially in the form approved by the Supreme Court.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing, deposition or statement, or may be issued separately.

(2) All subpoenas shall issue from the court for the district in which the matter is pending.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney authorized to practice law in New Mexico and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court.

B. **Service; place of examination.**

(1) A subpoena may be served any place within the state;

(2) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if that person's attendance is commanded:

(a) if the witness is to be paid from funds appropriated by the legislature to the administrative office of the courts for payment of state witnesses or for the payment of witnesses in indigency cases, by processing for payment to such witness the fee and mileage prescribed by regulation of the administrative office of the courts;

(b) for all persons not described in Subparagraph (2)(a) of this paragraph, by tendering to that person the full fee for one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by subsection D of Section 10-8-

4 NMSA 1978. The fee for per diem expenses shall not be prorated. If attendance is required for more than one day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the state or an officer or agency thereof, including the public defender department, fees and mileage need not be tendered. Prior to or at the same time as service of any subpoena commanding production of documents and things before trial, notice shall be served on each party in the manner prescribed by Rule 10-104, 10-105 or 10-106 NMRA;

(3) A person may be required to attend a deposition or statement within one hundred (100) miles of where that person resides, is employed or transacts business in person, or at such other place as is fixed by an order of the court.

(4) A person may be required to attend a hearing or trial at any place within the state.

(5) Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.

(6) A subpoena may be issued for taking of a deposition within this state in an action pending outside the state pursuant to Section 38-8-1 NMSA 1978 upon the filing of a miscellaneous proceeding in the judicial district in which the subpoena is to be served. Upon the docketing of the miscellaneous proceeding, the subpoena may be issued and shall be served as provided by this rule.

(7) A subpoena may be served in an action pending in this state on a person in another state or country in the manner provided by law or rule of the other state or country.

C. **Protection of persons subject to subpoenas.**

(1) **In general.** A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) **Subpoena of materials.**

(a) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things:

(i) need not appear in person at the place of production or inspection unless commanded to appear for deposition, statement, hearing or trial;

(ii) absent a court order or a subpoena to appear for a deposition, statement, hearing or trial, shall not respond to the subpoena prior to the expiration of fourteen (14) days after the date of service of the subpoena;

(iii) if a written objection is served or a motion to quash the subpoena is filed, shall not respond to the subpoena until ordered by the court; and

(iv) may condition the preparation of any copies upon payment in advance of the reasonable cost of inspection and copying.

(b) Subject to Subparagraph (2) of Paragraph D of this rule:

(i) a person commanded to produce and permit inspection and copying, or a person who has a legal interest in or the legal right to possession of the designated material may file a written objection or a motion to quash the subpoena;

(ii) any party may, within fourteen (14) days after service of the subpoena serve upon all parties written objection to or a motion to quash inspection or copying of any or all of the designated materials;

(iii) if objection is served on the party serving the subpoena or a motion to quash is filed with the court and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court by which the subpoena was issued. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash which lacks substantial merit.

(3) **Modification or quashing of subpoena.**

(a) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of Subparagraph (3)(b)(iii) of this paragraph, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(b) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information;

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. **Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided in Subparagraph (3)(a)(ii) of Paragraph C of this rule.

F. **Duty to make copies available.** A party receiving documents under subpoena shall make them available for copying by other parties.

[Approved, effective April 1, 2002; Rule 10-109 NMRA, recompiled and amended as Rule 10-143 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* Rule 1-045 NMRA of the Rules of Civil Procedure for the District Courts. *See* the committee comments following Rule 1-045 NMRA for a

discussion of the comparable civil rule governing subpoenas. This rule is also similar to Rule 5-511 NMRA.

Grand jury subpoenas may be issued pursuant to Sections 31-6-12 and 31-6-13 NMSA 1978.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph B(2)(b), changed "Rule 10-105, 10-105.1, 10-105.2" to "Rule 10-104, 10-105 or 10-106"; in Paragraph C(1), added the title and added "which may include, but is not limited to, lost earnings and a reasonable attorney's fee; in Paragraph C(2), added the title; added subitems (ii), (iii) and (iv) in Paragraph C(2)(a); in Paragraph C(2)(b)(i), added "or a person who has a legal interest in or the legal right to possession of the designated material may file a written objection or a motion to quash the subpoena"; in Paragraph C(2)(b)(ii), changed "service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service" to "service of the subpoena" and added "or a motion to quash"; in Paragraph C(2)(b)(iii), added "or a motion to quash is filed with the court and served on the parties, the party serving the subpoena", deleted the sentences which provided for motions to compel production, and added the last sentence; in Paragraph C(3)(b), deleted "To protect a person subject to or affected by the subpoena, the court may quash or modify the subpoena if the" at the beginning of the sentence; in Paragraph C(3)(b)(iii), added "one hundred (100) miles to attend trial"; and added Paragraph F.

The 2002 amendment, effective April 1, 2002, substituted "Subpoena" for "Compelling attendance of witnesses" in the rule heading, added the entire current rule text and deleted the undesignated paragraph at the beginning of the rule which read "The Rules of Civil Procedure for the District Courts shall apply to and govern the compelling of attendance of witnesses in children's court proceeding."

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-109 NMRA was recompiled as Rule 10-143 NMRA, effective January 15, 2009.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

10-144. Harmless error; failure to comply with time limits.

Error or defect in any ruling, order, act or omission by the court or by any of the parties including failure to comply with time limits is not grounds for granting a new hearing or for setting aside a verdict, for vacating, modifying or otherwise disturbing a judgment or order, or for dismissing an action, unless refusal to take any such action

appears to the court inconsistent with substantial justice or unless these rules expressly provide otherwise.

[Rule 10-117 NMRA, recompiled as Rule 10-144 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* District Court Civil Rule 1-061 NMRA and District Court Criminal Rule 5-113 NMRA for harmless error rules governing civil and criminal proceedings in the district court.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted the former committee commentary and replaced it with the current version.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-117 NMRA was recompiled as Rule 10-144 NMRA, effective January 15, 2009.

This rule deals primarily with dismissals. *In re Michael L.*, 2002-NMCA-076, 132 N.M. 479, 50 P.3d 574, cert. denied, 132 N.M. 484, 50 P.3d 574.

Failure to observe time limits. — This rule by its terms states that, absent special circumstances, failure to observe time limits is not grounds to modify a judgment. *In re Michael L.*, 2002-NMCA-076, 132 N.M. 479, 50 P.3d 574, cert. denied, 132 N.M. 484, 50 P.3d 574.

Fundamental error. — Fundamental error will only be heard to prevent a plain miscarriage of justice where someone has been deprived of rights essential to a defense, or to protect those whose innocence appears indisputable or is open to such question that it would shock the conscience to permit the conviction to stand. *Doe v. State*, 1975-NMCA-108, 88 N.M. 347, 540 P.2d 827, cert. denied, 88 N.M. 318, 540 P.2d 248.

Prejudicial error needed for reversal. — In children's court cases, no less than in adult cases, error must be prejudicial to be reversible. *State v. Doe*, 1985-NMCA-065, 103 N.M. 233, 704 P.2d 1109.

Improper admission of evidence not reversible error absent reliance. — The erroneous admission of evidence is not reversible error in a nonjury proceeding unless it appears that the court must have relied upon such evidence in reaching its decision; court's remarks at conclusion of child's transfer hearing showed that court did not rely on any of possibly inadmissible testimony based on contents of probation file, but rather

on probation officer's personal knowledge of activities involving the child. *In re Doe*, 1976-NMCA-102, 89 N.M. 700, 556 P.2d 1176.

10-145. Dismissal of actions.

A. **Voluntary dismissal; effect thereof.**

(1) In any action except a delinquency proceeding, the action may be dismissed by the petitioner without order of the court:

(a) by filing a notice of dismissal at any time before commencement of the adjudicatory hearing; or

(b) by filing a stipulation of dismissal signed by all parties in the action.

(2) The children's court attorney may dismiss a delinquency petition or a petition to revoke probation, at any time prior to commencement of the adjudicatory hearing, without order of the court.

B. **Involuntary dismissal; effect thereof.** For failure of the petitioner to comply with these rules or any order of court, a respondent may move for dismissal of an action or of any claim against the respondent. Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 10-121 NMRA, operates as an adjudication upon the merits.

C. **Dismissal of requests for affirmative relief by parties other than the petitioner.** The provisions of this rule apply to the dismissal of any request for affirmative relief by any party other than the petitioner. A voluntary dismissal without leave of the court by the party requesting such relief shall be made before a response is served, or if there is no response, before the introduction of evidence at the adjudicatory hearing.

[Adopted, effective September 1, 1995; as amended, effective May 1, 1998; Rule 10-103.2 NMRA, recompiled and amended as Rule 10-145 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph B, changed the reference from Rule 10-007 NMRA to Rule 10-121 NMRA; and in Paragraph C, changed "trial or" to "adjudicatory".

The 1998 amendment, effective May 1, 1998, rewrote Paragraph A.

Recompilations. – Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-103.2 NMRA was recompiled as Rule 10-145 NMRA, effective January 15, 2009.

Voluntary dismissal terminates the jurisdiction of the children's court. — A notice of dismissal, pursuant to this rule, terminates the jurisdiction of the children's court and leaves the children's court without power to reinstate the action pursuant to Rule 10-146 NMRA. *State ex rel. CYFD v. Scott C.*, 2016-NMCA-012, cert. denied, 2016-NMCERT-001.

Where the Children, Youth and Families Department (CYFD) filed notices of voluntary dismissal, pursuant to Rule 10-145 NMRA, terminating proceedings without prejudice against plaintiff in several abuse and neglect cases, the children's court was without jurisdiction to reopen and dismiss with prejudice the abuse and neglect cases pursuant to Rule 10-146 NMRA. *State ex rel. CYFD v. Scott C.*, 2016-NMCA-012, cert. denied, 2016-NMCERT-001.

10-146. New adjudicatory hearing or trial; relief from judgment or order.

A. **Motion for new adjudicatory hearing or trial.** A motion for a new adjudicatory hearing or trial may be filed by a party or upon the court's own initiative at any time not later than ten (10) days after the entry of a judgment pursuant to Rule 10-251 NMRA or Rule 10-353 NMRA. A motion for a new adjudicatory hearing or trial based on the ground of newly discovered evidence may be made within thirty (30) days after entry of the judgment, but if an appeal is pending the court may grant the motion only on remand of the case.

(1) A new adjudicatory hearing or trial may be granted upon a finding by the court that the newly discovered evidence:

(a) will probably change the result if a new hearing is granted;

(b) was discovered since the adjudicatory hearing and could not have been discovered before the adjudicatory hearing by the exercise of due diligence;

(c) is material to the issue;

(d) is not merely cumulative; and

(e) is not merely impeaching or contradictory.

(2) A motion for new adjudicatory hearing is automatically denied:

(a) if not granted within thirty (30) days from the date it is filed; or

(b) if the motion is filed while an appeal of the adjudication is pending, if not granted within thirty (30) days from the date of remand to the children's court.

B. **Clerical mistakes.** Clerical mistakes in judgments, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

C. **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Paragraph A of this rule;

(3) fraud, misrepresentation or other misconduct of an adverse party;

(4) the judgment is void; or

(5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court.

[Approved, effective May 1, 2003; Rule 10-120 NMRA, recompiled and amended as Rule 10-146 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — This rule retains the automatic denial provision because of the necessity of timely resolution of children’s court proceedings.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, added "or trial" in the title and changed "Rule 10-230

NMRA or Rule 10-310 NMRA" to "Rule 10-251 NMRA or Rule 10-353 NMRA"; and in Paragraph A(2)(a), changed 10 days to 30 days.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-120 NMRA was recompiled as Rule 10-146 NMRA, effective January 15, 2009.

Cross references. — For remand from the appellate court, *see* Rule 10-152 NMRA.

For modification of judgment in delinquency proceedings, *see* Rule 10-262 NMRA.

Voluntary dismissal terminates the jurisdiction of the children's court. — A notice of dismissal, pursuant to Rule 10-145 NMRA, terminates the jurisdiction of the children's court and leaves the children's court without power to reinstate the action pursuant to Rule 10-146 NMRA. *State ex rel. CYFD v. Scott C.*, 2016-NMCA-012, cert. denied, 2016-NMCERT-001.

Where the Children, Youth and Families Department (CYFD) filed notices of voluntary dismissal, pursuant to Rule 10-145 NMRA, terminating proceedings without prejudice against plaintiff in several abuse and neglect cases, the children's court was without jurisdiction to reopen and dismiss with prejudice the abuse and neglect cases pursuant to Rule 10-146 NMRA. *State ex rel. CYFD v. Scott C.*, 2016-NMCA-012, cert. denied, 2016-NMCERT-001.

10-151. Stay pending appeal.

A party appealing a judgment of the children's court may request that the judgment be stayed by filing and serving an application for stay in the manner provided by Rule 12-206 NMRA.

[As amended, effective July 1, 1988; Rule 10-118 NMRA, recompiled and amended as Rule 10-151 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed "in the manner provided by the Rules of Appellate Procedure" to "in the manner provided by Rule 12-206 NMRA".

The 1988 amendment, effective July 1, 1988, deleted the Paragraph A designation, substituted "in the manner provided by the Rules of Appellate Procedure" for the former provisions regarding filing and serving in the courts of appeals at the end of the rule, and deleted former Paragraphs B to E, regarding contents of the application, response to the application, stay pending disposition of the application, and disposition of the application.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-118 NMRA was recompiled as Rule 10-151 NMRA, effective January 15, 2009.

Cross references. — For appeals from children's court, *see* Section 32A-1-17 NMSA 1978.

10-152. Judgments or orders on mandate.

A. **Party responsible.** Within thirty (30) days after an appellate court has sent its mandate to the children's court, the prevailing party on appeal shall either:

(1) present to the court a proposed judgment or order on the mandate containing the specific directions of the appellate court; or

(2) if necessary, request a hearing.

B. **Service.** The proposed judgment or order on the mandate shall be served on all parties.

[Approved, effective November 1, 2000; Rule 10-119 NMRA, recompiled as Rule 10-152 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-119 NMRA was recompiled as Rule 10-152 NMRA, effective January 15, 2009.

10-161. Designation of children’s court judge.

A. **Assignment of cases.** The judge before whom the case is to be tried shall be designated at the time the petition is filed under local district court rule.

B. **Procedure for replacing a children’s court judge who has been excused or recused.** In the event the designated children’s court judge has been excused or recused, the clerk of the district court shall assign a district judge of the same judicial district at random, in the same fashion as cases are originally assigned or under local district court rule. If all district court judges in the district have been excused or recused, the clerk of the district court shall immediately notify the chief justice of the Supreme Court of New Mexico, who shall designate a judge, justice, or judge pro tempore to hear all further proceedings.

C. **Automatic recusal.** If a proceeding is filed in any county of a judicial district in which a judge or employee of the district is a party, a judge from another district shall be designated in accordance with procedures ordered by the chief justice.

D. **Excusal of judge appointed by chief judge.** Any judge designated by the chief justice may not be excused except under Article VI, Section 18 of the New Mexico Constitution.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 17-8300-026, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-026, effective December 31, 2017, removed the provision allowing the parties to file a stipulation agreeing to a judge to preside over a case where a judge or an employee of the same district is a party to that proceeding, provided that in those cases, a judge from another district shall be designated, and added an exception to the prohibition against excusing any judge designated by the chief justice; in Paragraph C, after "district is a party", deleted "no judge of the district may hear the matter without written agreement of the parties. If within ten (10) days after the proceeding is filed, the parties have not filed a stipulation agreeing to a judge within the district to preside over the matter, the clerk shall request the Supreme Court to designate a judge" and added "a judge from another district shall be designated in accordance with procedures ordered by the chief justice"; and in Paragraph D, after "may not be excused", deleted "pursuant to" and added "except under".

Compiler's notes. — For comparable district court rule, *see* Rule 1-088 NMRA.

10-162. Peremptory challenge to a children's court judge; recusal; procedure for exercising; disability.

A. **Limit on excusals or challenges.** No party shall excuse more than one judge. A party may not excuse a judge after the party has requested that judge to perform any discretionary act. Action by the court in connection with the issuance of an ex parte custody order, a detention hearing or the appointment of counsel shall not preclude the disqualification of a judge.

B. **Procedure for excusing a children's court judge on first assignment.** A party may exercise the statutory right to excuse the judge before whom the proceeding is pending by filing with the clerk of the children's court a peremptory election. The peremptory election to excuse, other than one filed by the Children, Youth and Families Department (the Department) in an abuse or neglect case, must be signed by the party or an attorney representing a party within ten (10) days after the latter of:

(1) the first appearance of the party;

(2) service of the petition on the party; or

(3) mailing by the clerk of notice of assignment of the case to a judge. The Department in an abuse or neglect case shall file any peremptory election to excuse within two (2) days of the filing of the petition.

C. **Notice of reassignment; service of excusal.** After the filing of the petition, if the case is reassigned to a different judge, the clerk shall give notice of reassignment to all parties. Any party who is not precluded from electing to excuse a judge shall serve notice of such election on all parties within ten (10) days of mailing by the clerk of the notice of reassignment.

D. **Misuse of peremptory excusal procedure.** Peremptory excusals without cause are intended to allow litigants an expeditious method of avoiding assignment of a judge whom the party has a good faith basis for believing will be unfair to one side or the other, and they are not to be exercised to hinder, delay, or obstruct the administration of justice. If it appears that an attorney or group of attorneys may be using peremptory excusals for improper purposes or with such frequency as to impede the administration of justice, the Chief Judge of the district shall send a written notice to the Chief Justice of the Supreme Court and shall send a copy of the written notice to the attorney or group attorneys believed to be improperly using peremptory excusals. The Chief Justice may take appropriate action to address any misuse, including issuance of an order providing that the attorney or attorneys or any party they represent may not file peremptory excusals for a specified period of time or until further order of the Chief Justice.

E. **Recusal.** No children’s court judge shall sit in any action in which the judge’s impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and the judge shall file a recusal in any such action. Upon receipt of notification of recusal from a children's court judge, the clerk of the court shall give written notice to each party.

F. **Disability.** If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the jury trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the jury trial, may proceed with and finish the jury trial or, if appropriate, may grant a mistrial. In a nonjury trial, upon motion of a party, a mistrial shall be granted upon disability of the trial judge.

[As amended, effective August 1, 1989; July 1, 1995; Rule 10-112 NMRA, recompiled and amended as Rule 10-162 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 11-8300-030, effective September 9, 2011; as amended by Supreme Court Order No. 15-8300-019, effective for all cases pending or filed on or after December 31, 2015.]

Committee commentary. — Rule 10-162 NMRA is not meant to restrict disqualifications pursuant to Art. VI, Sec. 18, of the New Mexico Constitution, nor to restrict disqualifications pursuant to Section 32A-2-22(F) NMSA 1978. Section 32A-2-

22(F) NMSA 1978 allows disqualification upon objection by the child in certain situations involving consent decrees.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-019, effective December 31, 2015, provided procedures and penalties to address the misuse of peremptory excusals; added new Paragraph D and redesignated the succeeding paragraphs accordingly.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-030, effective September 9, 2011, in Paragraph A, provided that the issuance of an ex parte custody order does not preclude the disqualification of a judge; in Paragraph B, required the Children, Youth and Families Department to file peremptory elections within two days after filing a petition in abuse and neglect cases; and in Paragraph C, required parties who are not precluded from excusing a judge to serve notice of excusal within ten days after the clerk mails a notice of reassignment to a different judge.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph D, deleted the former rule which provided that a judge who is disabled may be succeeded by any judge who certifies familiarity with the record and who determines that the proceeding may be completed without prejudice to the parties and that the successor judge may recall any witness; and added the current rule.

The 1995 amendment, effective July 1, 1995, rewrote this rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-112 NMRA was recompiled as Rule 10-162 NMRA, effective January 15, 2009.

Cross references. – For comparable district court civil rule, *see* Rule 1-088.1 NMRA.

For comparable district court criminal rule, *see* Rule 5-106 NMRA.

State's representative authorized to execute affidavit of disqualification of judge. — The power and duty of the children's court attorney to represent the state necessarily includes the authority to execute an affidavit of disqualification of a judge when the disqualification is done on behalf of the state. *Smith v. Martinez*, 1981-NMSC-066, 96 N.M. 440, 631 P.2d 1308.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 8.

10-163. Special masters.

A. **Appointment.** A special master may be appointed by a children's court judge pursuant to the provisions of this rule to assist in any children's court proceeding.

B. **Qualifications.** Any person appointed to serve as a special master pursuant to this rule shall:

(1) have been licensed to practice law in the State of New Mexico for at least three (3) years; and

(2) shall be familiar with children's court matters.

C. **Powers.** Unless the order otherwise specifies, the special master has the power to perform any of the functions of a children's court judge pursuant to the provisions of the Children's Court Rules except as provided in this paragraph. All recommendations of the special master are contingent upon the approval of the children's court judge as provided in Paragraph F of this rule.

(1) ***Proceedings under the Abuse and Neglect Act.*** The special master in a proceeding under the Abuse and Neglect Act, Sections 32A-4-1 to -34 NMSA 1978, shall not preside at an adjudicatory hearing or a trial on a motion to terminate parental rights without concurrence of the parties.

(2) ***Proceedings under the Delinquency Act.*** The special master in a proceeding under the Delinquency Act, Sections 32A-2-1 to -33 NMSA 1978 , has the power to make a judicial determination of probable cause, to preside over a detention hearing, to advise a party of basic rights, and to appoint counsel, a guardian, or a custodian without concurrence of the parties. The special master shall not preside over any other proceeding unless the child waives the right to have a children's court judge preside over such proceedings and consents to the special master. A waiver shall be in writing in a form substantially approved by the Supreme Court and shall note the consent of the child and the state.

D. **Duties.** The special master shall prepare a report including proposed findings of fact and conclusions of law on the matters submitted to the special master by the order of appointment. The report shall be filed with the court and copies shall be served on all parties in accordance with the provisions of these rules.

E. **Exceptions to report.** Any party may file exceptions to the special master's proposed findings, conclusions, recommendations or proposed orders. Exceptions shall be in writing, filed with the clerk within five (5) days after service of the master's report and shall set forth:

(1) those items to which exception is taken;

(2) a short resume of all facts relevant to the issues presented for review with appropriate references to the pages of the record proper and pages or sequential time or counter numbers of the transcript. If reference is made to evidence the admissibility of which is in controversy, reference shall be to the place in the transcript of proceedings where the evidence was identified, offered and received or rejected;

(3) a citation to any authority which may assist the children's court judge in reviewing the exceptions; and

(4) a statement of the precise relief sought.

F. **Children's court proceedings.** After receipt of the special master's report:

(1) ***Review of recommendations.***

(a) The court shall review the recommendations of the special master and determine whether to adopt the recommendations.

(b) If a party files timely, specific objections to the recommendations, the court shall conduct a hearing appropriate and sufficient to resolve the objections. The hearing shall consist of a review of the record unless the court determines that additional evidence will aid in the resolution of the objections.

(c) The court shall make an independent determination of the objections.
(d)The court may adopt the recommendations, modify them, reject them in whole or in part, receive further evidence, or may recommit them to the special master with instructions.

(2) ***Findings and conclusions; entry of final order.*** After the hearing, the court shall enter a final order. When required by law the court also shall enter findings and conclusions.

G. **Removal of special masters.** In any proceeding, upon motion of any party upon good cause shown, or upon the court's own motion, the children's court may at any time remove the special master from acting in that proceeding.

H. **Time limits.** No time limit set forth in these rules shall be tolled or enlarged because of the appointment of a special master. If a special master is assigned to make recommendations on a proposed admission or consent decree for a child who is in detention, the special master shall submit the special master's recommendations to the court within five (5) days after the admission or consent decree has been referred to the special master.

[As amended, effective March 1, 1991; November 1, 1991; September 1, 1995; August 1, 1999; Rule 10-111 NMRA, recompiled and amended as Rule 10-163 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by

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

Committee commentary. — A major goal of the juvenile justice system is early and prompt judicial disposition of a case. Rule 10-163 NMRA is designed to allow supplementation of judicial resources. Paragraph F has been amended to conform with the changes in Rules 1-053.1 and 1-053.2 NMRA.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, revised the provision regarding the powers of the special master, clarifying the types of proceedings that a special master may preside over and which proceedings require consent of the parties or the child; in Paragraph C, in the introductory paragraph, after “Children’s Court Rules except”, deleted “that the special master shall not preside at a preliminary hearing or examination, jury trial, bench trial, adjudicatory hearing or dispositional hearing without concurrence of the parties” and added “as provided in this paragraph”, and after “children’s court judge”, added “as provided in Paragraph F of this rule”; and added new Subparagraphs C(1) and C(2).

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph F, deleted the title and the former rule which provided for the review of a special master’s report; and added the title and the current rule.

The 1999 amendment, effective August 1, 1999, substituted "be familiar with" for "be knowledgeable in the trial of" in Subparagraph B(2), and added the last sentence in Paragraph H.

The 1995 amendment, effective September 1, 1995, deleted "and CASA" from the rule heading and rewrote Paragraphs A to D and H to delete provisions relating to court appointed special advocates; deleted former Subparagraphs A(1) and A(2) relating to necessary showings for appointment; rewrote Paragraph C; inserted "special" in the introductory language of Paragraph E; inserted "or proposed order" in Subparagraph F(1); and in Paragraph G, substituted "Removal" for "Substitution" in the paragraph heading, substituted "In any proceeding, upon motion" for "Upon application", inserted "upon good cause shown", and added "from acting in that proceeding".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-111 NMRA was recompiled as Rule 10-163 NMRA, effective January 15, 2009.

Cross references. — For definition of "court appointed special advocate", *see* 32A-1-4 NMSA 1978.

Court is not bound by commentaries. — The court of appeals is not bound by the interpretations of the commentaries to this rule. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

Rule limits the inherent power of a district judge to appoint a special master in children's court. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

Appointment without prior approval is improper. — Where prior approval of the supreme court for a party to act as a special master to a children's court is never sought, either immediately prior to a particular case, or at some time more remote in the past, such an appointment is improper. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

Effect of special master's recommendations. — As long as the special master's recommendations are not binding on the children's court judge, a special master is considered a ministerial, rather than a judicial officer, and is without powers of adjudication. Under Paragraph F of this rule, the children's court is not bound by the special master's findings and conclusions. Thus, there is no violation of the double jeopardy clause when the children's court judge remands to the special master prior to entering its findings and conclusions. *State v. Billy M.*, 1987-NMCA-080, 106 N.M. 123, 739 P.2d 992.

Time limit for dispositional hearing is not suspended. — The running of the twenty-day time limit in Rule 10-229 NMRA within which a dispositional hearing must be held is not suspended until exceptions are filed under Paragraph E of this rule, and the children's court judge acts on the report of the special master. *In re Paul T.*, 1994-NMCA-123, 118 N.M. 538, 882 P.2d 1051.

Where special master lacks authority to hear probation revocation petition, the court is without jurisdiction at the hearing on the petition. When the district judge disposes of the case more than 30 days after the petition is filed, the petition should be dismissed with prejudice. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

10-164. Court appointed special advocates.

A. **Appointment.** A court appointed special advocate ("CASA") may be appointed by a children's court judge pursuant to the provisions of this rule to assist in any children's court proceeding.

B. **Qualifications.** Any volunteer appointed to serve as a CASA pursuant to this rule shall:

(1) be of the age of majority;

(2) have successfully passed screening requirements, including a written application, personal interview, reference checks and criminal records checks;

(3) have successfully completed initial and regular in-service training in accordance with the guidelines of the statewide CASA network; and

(4) remain under the supervision of the local CASA director.

C. **Powers.** The CASA may assist the court:

(1) in determining the best interests of the child by investigating the facts of the situation when directed by the court and submitting reports to the parties; and

(2) by monitoring compliance with the treatment plan and submitting reports to the court and the parties subsequent to adjudication.

D. **Duties.** Any volunteer appointed to serve as a CASA pursuant to this rule shall be assigned duties consistent with the best interest of the child, which include but are not limited to:

(1) reviewing records other than those records to which access is limited by the court;

(2) interviewing appropriate parties;

(3) monitoring case progress;

(4) preparing reports based on the investigation conducted by the CASA, including recommendations to the court; and

(5) conducting business while maintaining confidentiality of information obtained.

E. **Ex parte communications.** A CASA volunteer shall not engage in any ex parte communications with the judge assigned to any case on which the CASA volunteer is working.

F. **Reports.** Any reports prepared by the CASA volunteer shall not be filed with or considered by the children's court judge prior to the conclusion of the adjudicatory proceeding. The report shall be served on the parties, but not the court, at least five (5) days prior to the hearing at which it will be considered.

G. **Time limits.** No time limit set forth in these rules shall be tolled or enlarged because of the appointment of a CASA.

[Adopted, effective September 1, 1995; as amended, effective March 1, 2003; Rule 10-121 NMRA, recompiled as Rule 10-164 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2003 amendment, effective March 1, 2003, rewrote Subparagraph B(3) which formerly read "have successfully completed a minimum of fifteen (15) hours initial training in accordance with the guidelines of the National CASA Association"; redesignated Subparagraph B(5) as Subparagraph B(4); deleted former Subparagraph B(4) which read "receive regular in-service training"; and deleted "children's" preceding "court" from the introductory language of Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-121 NMRA was recompiled as Rule 10-164 NMRA, effective January 15, 2009.

10-165. Attorney appearances; withdrawal and substitution of counsel; signing of pleadings.

A. **Entry of appearance.** Whenever an attorney undertakes to represent a party in any children's court action, the attorney shall file a written entry of appearance in the cause, unless the attorney was appointed by written order of the court. For the purpose of this rule, the filing of any pleading signed by an attorney constitutes an entry of appearance.

B. **Continued representation.** An attorney who has entered an appearance or who has been appointed by the court to represent a party in a children's court proceeding shall continue such representation until relieved by the court, unless a substitution of counsel is filed not less than fifteen (15) days prior to the adjudicatory hearing.

C. **Substitution of counsel.** Except as provided in Paragraph B of this rule, no attorney or firm who has entered an appearance in a children's court proceeding may withdraw as counsel without a written order of the court. The court may condition consent to withdraw upon substitution of other counsel or the filing by a party of proof of service on all other parties of an address at which service may be made upon the party. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance *pro se*. Notice of withdrawal and substitution of counsel shall be filed with the court and served on all parties either by withdrawing counsel or by substituted counsel.

D. **Failure to observe rules.** An attorney who willfully fails to observe the requirements of these rules, including prescribed time limitations, may be held in contempt of court and subject to disciplinary action.

E. **Signing of pleadings.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading and state the party's address and telephone number. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a

certificate by the signer that the signer has read the pleading; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

[As amended, effective May 1, 1986; April 2, 2001; May 1, 2003; Rule 10-113 NMRA, recompiled as Rule 10-165 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2003 amendment, effective May 1, 2003, in Paragraph B, deleted "delinquency proceedings" from the heading, deleted "in a delinquency proceeding" following "entered an appearance", and substituted "party" for "child" and "children's court proceeding" for "delinquency proceeding" preceding "shall continue such representation."

The 2001 amendment, effective April 2, 2001, rewrote the rule heading which read "Attorneys; fees"; in Paragraph B, inserted "delinquency proceedings" in the bold heading, inserted "in a delinquency proceeding" preceding "appearance", inserted "to represent a child in a delinquency proceeding" preceding "by the court" and inserted "unless a substitution of counsel is filed not less than fifteen (15) days prior to the adjudicatory hearing" at the end; redesignated former Paragraphs C and D as present Paragraphs D and E; added Paragraph C pertaining to substitution of counsel; deleted former Paragraph E relating to fees; and in present Paragraph E, inserted "telephone number" in two places.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-113 NMRA was recompiled as Rule 10-165 NMRA, effective January 15, 2009.

Cross references. — For Supreme Court approved forms for the withdrawal and substitution of counsel, *see* Children's Court Forms 10-551 and 10-552 NMRA.

For Rules of Professional Conduct, *see* Rule 16-101 NMRA et seq.

For Supreme Court Rules Governing Discipline, *see* Rule 17-101 NMRA et seq.

Extent of attorney's duty to carry out appointment. — Pursuant to Paragraph B of this rule, notwithstanding his pending request to be relieved, an appointed attorney remained subject to the duty to carry out a district court's order of appointment unless and until he was notified by the district court that his request to be relieved had been granted. *In re Kleinsmith*, 2005-NMCA-136, 138 N.M. 681, 124 P.3d 579.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Lack of notice to contemnor at time of contemptuous conduct of possible criminal contempt sanctions as affecting prosecution for contempt in federal court, 76 A.L.R. Fed. 797.

10-166. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule. This rule does not apply to court records sealed under Rule 10-262 NMRA or Section 32A-2-26 NMSA 1978, unless otherwise specified in this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) "court record" means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) "lodged" means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) "protected personal identifier information" means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver's license number, and all but the year of a person's date of birth;

(4) "public" means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) "public access" means the inspection and copying of court records by the public; and

(6) "sealed" means a court record for which public access is limited by order of the court or as required by Paragraphs C or D of this rule.

C. **Limitations on public access.** In addition to court records protected pursuant to Paragraphs D and E of this rule, court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

(1) proceedings commenced under the Adoption Act, Chapter 32A, Article 5 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Subsection A of Section 32A-5-8 NMSA 1978;

(2) proceedings for testing commenced under Section 24-2B-5.1 NMSA 1978;

(3) proceedings commenced under the Family in Need of Court-Ordered Services Act, Chapter 32A, Article 3B NMSA 1978. The automatic sealing provisions of

this subparagraph shall not apply to persons and entities listed in Sub-subsections (1) through (6) of Subsection B of Section 32A-3B-22 NMSA 1978;

(4) proceedings commenced under the Abuse and Neglect Act, Chapter 32A, Article 4 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Sub-subsections (1) through (6) of Subsection B of Section 32A-4-33 NMSA 1978, and disclosure by the Children, Youth, and Families Department as governed by Section 32A-4-33 NMSA 1978;

(5) proceedings commenced under the Children's Mental Health and Developmental Disabilities Code, Chapter 32A, Article 6A NMSA 1978, subject to the disclosure requirements in Section 32A-6A-24 NMSA 1978; and

(6) records in delinquency proceedings protected by Section 32A-2-32(A) NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

D. **Protection of personal identifier information.**

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person's name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

E. **Motion to seal court records required.** Except as provided in Paragraphs C and D of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 10-111 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been filed or is to be filed. Any party or member of the public may file a response to the motion to seal under Rule 10-111 NMRA. The movant shall lodge the court record with the court pursuant to Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph F. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

F. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rules 10-112 and 10-114 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a file-stamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

G. **Requirements for order to seal court records.**

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

(a) the existence of an overriding interest that overcomes the right of public access to the court record;

(b) the overriding interest supports sealing the court record;

(c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;

(d) the proposed sealing is narrowly tailored; and

(e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

H. **Sealed court records as part of record on appeal.** Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

I. **Motion to unseal court records.**

(1) Court records sealed under Rule 10-262 NMRA or Section 32A-2-26 NMSA 1978 shall not be unsealed under this paragraph. In all other cases, a sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 10-111 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph G. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court record or

unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

J. **Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Approved by Supreme Court Order No. 10-8300-008, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 10-8300-023, temporarily suspending Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No. 10-8300-037, extending the temporary suspension of Paragraph D for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 11-8300-010, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016; amendments provisionally approved by Supreme Court Order No. 16-8300-003 withdrawn by Supreme Court Order No. 16-8300-037, effective retroactively to May 18, 2016; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017; as amended by Supreme Court Order No. 17-8300-019, effective for all cases pending or filed on or after December 31, 2017; amendments approved by Supreme Court Order No. 17-8300-019 suspended and republished for comment by Supreme Court Order No. 18-8300-002, effective January 9, 2018; as amended by Supreme Court Order No. 18-8300-021, effective December 31, 2018.]

Committee commentary. — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records,

the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases identified in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless, a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule.

Aside from entire categories of cases that may warrant limitations on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g.*, NMSA 1978, § 7-1-4.2(H) (providing for confidentiality of taxpayer information); NMSA 1978, § 14-6-1(A) (providing for confidentiality of patient health information); NMSA 1978, § 24-1-9.5 (limiting disclosure of test results for sexually transmitted diseases); NMSA 1978, § 29-10-4 (providing for confidentiality of certain arrest record information); NMSA 1978, § 29-12A-4 (limiting disclosure of local crime stoppers program information); NMSA 1978, § 29-16-8 (providing for confidentiality of DNA information); NMSA 1978, § 31-25-3 (providing for confidentiality of certain communications between victim and victim counselor); NMSA 1978, § 40-8-2 (providing for sealing of certain name change records); NMSA 1978, § 40-6A-312 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); NMSA 1978, § 40-10A-209 (providing for limitations on disclosure of certain information during proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act); NMSA 1978, § 40-13-7.1 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); NMSA 1978, § 40-13-12 (providing for limits on internet disclosure of certain information in domestic violence cases); NMSA 1978, § 44-7A-18 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of such items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph G of this rule before deciding whether to seal any particular court record.

Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-

sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion, the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled "conditionally under seal." If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected

sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court's register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by

the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Approved by Supreme Court Order No. 10-8300-008, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 11-8300-010, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016; amendments provisionally approved by Supreme Court Order No. 16-8300-003 withdrawn by Supreme Court Order No. 16-8300-037, effective retroactively to May 18, 2016; as amended by Supreme Court Order No. 17-8300-019, effective for all cases pending or filed on or after December 31, 2017; amendments approved by Supreme Court Order No. 17-8300-019 suspended and republished for comment by Supreme Court Order No. 18-8300-002, effective January 9, 2018; amendments suspended and republished for comment by Supreme Court Order No. 18-8300-002 withdrawn by Supreme Court Order No. 18-8300-021.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-021, effective December 31, 2018, expanded the scope of the confidentiality provisions to include all records in delinquency proceedings; and in Subparagraph C(6), deleted “court” preceding “records”, and after “Section 32A-2-32”, added “(A)”.

The second 2017 amendment, approved by Supreme Court Order No. 17-8300-019, effective December 31, 2017, rewrote the provision relating to the confidentiality of court records in proceedings commenced under the Delinquency Act, and revised the committee commentary; in Subparagraph C(6), in the introductory clause, deleted “court records in delinquency proceedings protected by Section 32A-2-32 NMSA 1978” and

added “proceedings commenced under the Delinquency Act, Chapter 32A, Article 2 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to the following:”, and added new Subparagraphs C(6)(a) through C(6)(c).

The first 2017 amendment, approved by Supreme Court Order No. 17-8300-002, effective March 31, 2017, provided that any attorney or other person granted access to electronic records in children’s court cases that contain protected personal identifier information must take reasonable precautions to protect that personal identifier information, and provided that any attorney or other person who unlawfully discloses such personal identifier information may be subject to sanctions or the initiation of disciplinary proceedings; and in Subparagraph D(1), added the last two sentences.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-010, effective February 7, 2011, in Paragraph C, excepted disclosure pursuant to Section 32A-4-33 NMSA 1978 from the automatic sealing provisions, eliminated court records sealed pursuant to Section 32A-2-26 NMSA 1978 from the class of court records that are automatically sealed, and added proceedings under the Children’s Health and Development Disabilities Code and court records in delinquency proceedings under Section 32A-6A-24 NMSA 1978 to the class of cases in which court records are automatically sealed; and in Paragraph D, eliminated the former prohibition against including personal identifier information in court records without a court order, the prohibition against disclosing personal identifier information that the court orders to be included in a court record, the requirement that citations be automatically sealed, and the exceptions to the prohibitions against the inclusion and disclosure of personal identifier information; and required the court and the parties to avoid including personal identifier information in court records unless they deem the inclusion of personal identifier information to be necessary to the court’s function, prohibited the publication of personal identifier information on court web sites and by posting in the courthouse, and required persons requesting access to court records to provide personal information and identification.

Compiler’s notes. — Pursuant to Supreme Court Order No. 18-8300-002, effective January 9, 2018, the court suspended the amendments to Rule 10-166 NMRA, approved by Supreme Court Order No. 17-8300-019.

Pursuant to Supreme Court Order No. 16-8300-037, the provisional amendment to 10-166 NMRA, approved by Supreme Court Order No. 16-8300-003, was withdrawn retroactively effective to May 18, 2016.

10-167. Court Interpreters.

A. **Scope and definitions.** This rule applies to all proceedings filed in the district court pursuant to the Children’s Code or the Children’s Court Rules. The following definitions apply to this rule:

(1) "case participant" means a party, witness, or other person required or permitted to participate in a proceeding governed by these rules;

(2) "interpretation" means the transmission of a spoken or signed message from one language to another;

(3) "transcription" means the interpretation of an audio, video, or audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice mail messages, that is memorialized in a written transcript for use in a court proceeding;

(4) "translation" means the transmission of a written message from one language to another;

(5) "court interpreter" means a person who provides interpretation or translation services for a case participant;

(6) "certified court interpreter" means a court interpreter who is certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts or who is acknowledged in writing by the Administrative Office of the Courts as a court interpreter certified by another jurisdiction that is a member of the Consortium for Language Access in the Courts;

(7) "justice system interpreter" means a court interpreter who is listed on the Registry of Justice System Interpreters maintained by the Administrative Office of the Courts;

(8) "language access specialist" means a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements;

(9) "non-certified court interpreter" means a justice system interpreter, language access specialist, or other court interpreter who is not certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts;

(10) "sight translation" means the spoken or signed translation of a written document; and

(11) "written translation" means the translation of a written document from one language into a written document in another language.

B. **Identifying a need for interpretation.**

(1) The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. The need for a court interpreter may be identified by the court or by a case participant. A court interpreter shall be appointed if one is requested.

(2) The court is responsible for making arrangements for a court interpreter for a juror who needs one.

(3) A party is responsible for notifying the court of the need for a court interpreter as follows:

(a) if a party needs a court interpreter, the party or the party's attorney shall notify the court at the party's first appearance before the court; and

(b) if a court interpreter is needed for a party's witness, the party shall notify the court in writing substantially in a form approved by the Supreme Court upon service of a notice of hearing and shall indicate whether the party anticipates the proceeding will last more than two (2) hours.

(4) If a party fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay.

(5) Notwithstanding any failure of a party, juror, or other case participant to notify the court of a need for a court interpreter, the court shall appoint a court interpreter for a case participant whenever it becomes apparent from the court's own observations or from disclosures by any other person that a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding.

C. **Appointment of court interpreters.**

(1) When a need for a court interpreter is identified under Paragraph B of this rule, the court shall appoint a certified court interpreter except as otherwise provided in this paragraph.

(2) Upon approval of the court, the parties may stipulate to the use of a non-certified court interpreter for non-plea and non-evidentiary hearings without complying with the waiver requirements in Paragraph D of this rule.

(3) To avoid the appearance of collusion, favoritism, or exclusion of English speakers from the process, the judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party's attorney shall not act as a court interpreter for the proceeding, except that a

party and the party's attorney may engage in confidential attorney-client communications in a language other than English.

(4) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraphs (d) and (e) of this subparagraph. If the court has made diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a language access specialist or less qualified non-certified court interpreter only after the following requirements are met:

(a) the court provides notice to the parties substantially in a form approved by the Supreme Court that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter but none is reasonably available and has concluded after evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding that an accurate and complete interpretation of the proceeding can be accomplished with a less qualified not-certified court interpreter;

(b) the court finds on the record that the proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting to provide an accurate and complete interpretation for the proceeding;

(c) the court finds on the record that the proposed court interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters Code of Professional Responsibility set forth in Rule 23-111 NMRA;

(d) with regard to a non-certified signed interpreter, in no event shall the court appoint a non-certified signed language interpreter who does not, at a minimum, possess both a community license from the New Mexico Regulations and Licensing Department and a generalist interpreting certification from the Registry of Interpreters for the Deaf, and;

(e) a non-certified court interpreter shall not be used for a juror.

D. **Waiver of the right to a court interpreter.** Any case participant identified as needing a court interpreter under Paragraph B of this rule may at any point in the case waive the services of a court interpreter with approval of the court only if the court explains in open court through a court interpreter the nature and effect of the waiver and finds on the record that the waiver is knowingly, voluntarily, and intelligently made. If the case participant is the juvenile in a delinquency proceeding or a respondent in an abuse and neglect or termination of parental rights proceeding, the waiver shall be in writing and the court shall further determine that the party has consulted with counsel regarding

the decision to waive the right to a court interpreter. The waiver may be limited to particular proceedings in the case or for the entire case. With the approval of the court, the case participant may retract the waiver and request a court interpreter at any point in the proceedings.

E. **Procedures for using court interpreters.** The following procedures shall apply to the use of court interpreters:

(1) **Qualifying the court interpreter.** Before appointing a court interpreter to provide interpretation services to a case participant, the court shall qualify the court interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may use the questions in Form 10-440 NMRA to assess the qualifications of the proposed court interpreter. A certified court interpreter is presumed competent, but the presumption is rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified court interpreter, the court shall inquire on the record into the following matters:

(a) whether the proposed court interpreter has assessed the language skills and needs of the case participant in need of interpretation services; and

(b) whether the proposed court interpreter has any potential conflicts of interest.

(2) **Instructions regarding the role of the court interpreter during trial.** Before the court interpreter begins interpreting for a party during trial, the court shall instruct the parties and others present in the courtroom regarding the role of the court interpreter. If the court interpreter will provide interpretation services for a juror, the court also shall instruct the jury prior to deliberations in accordance with UJI 14-6022 NMRA.

(3) **Oath of the court interpreter.** Before a court interpreter begins interpreting, the court shall administer an oath to the court interpreter as required by Section 38-10-8 NMSA 1978. If a court interpreter will provide interpretation services for a juror, the court also shall administer an oath to the court interpreter prior to deliberations in accordance with UJI 14-6021 NMRA. All oaths required under this subparagraph shall be given on the record in open court.

(4) **Objections to the qualifications or performance of a court interpreter.** A party shall raise any objections to the qualifications of a court interpreter when the court is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon as the party learns of any information calling into question the qualifications of the court interpreter. A party shall raise any objections to court interpreter error at the time of the alleged interpretation error or as soon as the party has reason to believe that an interpretation error occurred that affected the outcome of the proceeding.

(5) **Record of the court interpretation.** Upon the request of a party, the court may make and maintain an audio recording of all spoken language court interpretations or a video recording of all signed language interpretations. Unless the

parties agree otherwise, the party requesting the recording shall pay for it. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. This subparagraph shall not apply to court interpretations during jury discussions and deliberations.

(6) **Court interpretation for multiple case participants.** When more than one case participant needs a court interpreter for the same spoken language, the court may appoint the same court interpreter to provide interpretation services for those case participants. When more than one case participant needs court interpretation for a signed language, separate court interpreters shall be appointed for each case participant. If a party needs a separate court interpreter for attorney-client communications during a court proceeding, prior to the commencement of the court proceeding, the party shall obtain a court interpreter of the party's own choosing and at the party's own expense. If the party is a juvenile or respondent represented by court-appointed counsel, a court interpreter for attorney-client communications may be paid as allowed under the Indigent Defense Act and Public Defender Act.

(7) **Use of team court interpreters.** To avoid court interpreter fatigue and promote an accurate and complete court interpretation, when the court anticipates that a court proceeding requiring a court interpreter for a spoken language will last more than two (2) hours the court shall appoint a team of two (2) court interpreters to provide interpretation services for each spoken language. For court proceedings lasting less than two (2) hours, the court may appoint one (1) court interpreter but the court shall allow the court interpreter to take breaks approximately every thirty (30) minutes. The court shall appoint a team of two (2) court interpreters for each case participant who needs a signed language court interpreter when the court proceeding lasts more than one (1) hour. If a team of two (2) court interpreters are required under this subparagraph, the court may nevertheless proceed with only one (1) court interpreter if the following conditions are met:

(a) two (2) qualified court interpreters could not be obtained by the court;

(b) the court states on the record that it contacted the Administrative Office of the Courts for assistance in locating two (2) qualified court interpreters but two (2) could not be found; and

(c) the court allows the court interpreter to take a five (5)-minute break approximately every thirty (30) minutes.

(8) **Use of court interpreters for translations and transcriptions.** If a court interpreter is required to provide a sight translation, written translation, or transcription for use in a court proceeding, the court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription. Whenever possible, the court shall provide the court interpreter with

advance notice of the need for a translation or transcription before the court proceeding begins and, if possible, the item to be translated or transcribed.

(9) **Modes of court interpretation.** The court shall consult with the court interpreter and case participants regarding the mode of interpretation to be used to ensure a complete and accurate interpretation.

(10) **Remote spoken language interpretation.** Court interpreters may be appointed to serve remotely by audio or audio-video means approved by the Administrative Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably available for in-person attendance in the courtroom. Electronic equipment used during the hearing shall ensure that all case participants hear all statements made by all case participants in the proceeding. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow for consecutive interpreting of each sentence. The electronic equipment that is used must permit attorney-client communications to be interpreted confidentially.

(11) **Court interpretation equipment.** The court shall consult and coordinate with the court interpreter regarding the use of any equipment needed to facilitate the interpretation.

(12) **Removal of the court interpreter.** The court may remove a court interpreter for any of the following reasons:

(a) inability to adequately interpret the proceedings;

(b) knowingly making a false interpretation;

(c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;

(d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;

(e) failing to appear as scheduled without good cause;

(f) misrepresenting the court interpreter's qualifications or credentials;

(g) acting as an advocate; or

(h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter's Code of Professional Responsibility.

(13) **Cancellation of request for a court interpreter.** A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party or a witness

to be called by the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. **Payment of costs for the court interpreter.** Unless otherwise provided in this rule, and except for court interpretation services provided by an employee of the court as part of the employee's normal work duties, all costs for providing court interpretation services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts consistent with guidelines issued by the Administrative Office of the Courts.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

Committee commentary. — This rule governs the procedure for the use of court interpreters in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter Standards of Practice and Payment Policies issued by the Administrative Office of the Courts (the AOC Standards), also provide guidance to the courts on the certification, use, and payment of court interpreters. But in the event of any conflicts between the AOC Standards and this rule, the rule controls.

The rule requires the use of certified court interpreters whenever possible but permits the use of less qualified interpreters in some situations. For purposes of this rule, a certified court interpreter may not be reasonably available if one cannot be located or if funds are not available to pay for one. But in all instances, before a court may use a non-certified court interpreter, the court must contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may in fact be available to pay for a certified court interpreter.

The rule does not attempt to set forth the criteria for determining who should be a certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC. When a court interpreter is certified by the AOC, the certified court interpreter is placed on the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC and can be viewed on its web site. A certified court interpreter is also issued an identification card by the AOC, which can be used to demonstrate to the court that the cardholder is a certified court interpreter.

In collaboration with the New Mexico Center for Language Access (NMCLA), the AOC is also implementing a new program for approving individuals to act as justice system interpreters and language access specialists who are specially trained to provide many interpretation services in the courts that do not require a certified court interpreter. Individuals who successfully complete the Justice System Interpreting course of study offered by the NMCLA are approved by the AOC to serve as justice system interpreters and will be placed on the AOC Registry of Justice System Interpreters. Those who are approved as justice system interpreters will also be issued identification cards that may be presented in court as proof of their qualifications to act as a justice system interpreter. Under this rule, if a certified court interpreter is not reasonably available, the

court should first attempt to appoint a justice system interpreter to provide court interpretation services. If a justice system interpreter is not reasonably available, the court must contact the AOC for assistance before appointing a non-certified court interpreter for a court proceeding.

In addition to setting forth the procedures and priorities for the appointment of court interpreters, this rule also provides procedures for the use of court interpreters within the courtroom. In general, the court is responsible for determining whether a juror needs a court interpreter, and the parties are responsible for notifying the court if they or their witnesses will need a court interpreter. But in most cases, the court will be responsible for paying for the cost of court interpretation services, regardless of who needs them. However, the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.

Although this rule generally applies to all court interpreters, the court should be aware that in some instances the procedures to follow will vary depending on whether a spoken or signed language court interpreter is used. Courts should also be aware that in some instances when court interpretation services are required for a deaf or hard-of-hearing individual, special care should be taken because severe hearing loss can present a complex combination of possible language and communication barriers that traditional American Sign Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-hearing individual is having trouble understanding a court interpreter and there is an indication that the person needs other kinds of support, the court should request assistance from the AOC for a language assessment to determine what barriers to communication exist and to develop recommendations for solutions that will provide such individuals with meaningful access to the court system.

While this rule seeks to provide courts with comprehensive guidance for the appointment and use of court interpreters, the courts should also be aware that the AOC provides additional assistance through a full-time program director who oversees the New Mexico Judiciary's court interpreter program and who works in tandem with the Court Interpreter Advisory Committee appointed by the Supreme Court to develop policies and address problems associated with the provision of court interpreter services in the courts. Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure of the proper procedure for providing court interpretation services under this rule, the court is encouraged, and sometimes required under this rule, to seek assistance from the AOC to ensure that all case participants have full access to the New Mexico state court system.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

10-168. Rules and forms.

A. **Approval procedure.** Each district court may from time to time recommend to the Supreme Court local rules governing its practice in children's court cases. Copies of proposed local rules and amendments shall be submitted to the Supreme Court and to the chair of the Supreme Court's Local Rules Committee ("the committee") for review. If the proposed local rule amends an existing local rule, a mark-up copy shall be submitted to the Supreme Court and the committee. The committee shall review any proposed local rule for content, appropriateness, style, and consistency with the other local rules, statewide rules and forms, and the laws of New Mexico, and shall advise the Supreme Court and the chief judge of the district of its opinion and recommendation regarding the proposed rules. Local rules and forms shall not conflict with, duplicate, or paraphrase statewide rules or statutes. The committee shall consult with the chief judge, or the chief judge's designee, regarding any revisions recommended by the committee. Following the consultation, the committee shall report its recommendations to the Supreme Court, and shall bring to the Court's attention any differences of opinion between the committee and the chief judge. No local rule shall take effect unless

(1) approved by an order of the Supreme Court;

(2) filed with the clerk of the Supreme Court; and

(3) published in accordance with Rule 23-106(L)(9) and (10) NMRA.

B. **Definition.** A "local rule" whether called a rule, order, or other directive, is a rule which governs the procedure in a judicial district in proceedings under the Children's Code. An order, which is consistent with local rules, statewide rules and forms, and the laws of New Mexico, that is entered in an individual case and served on the parties shall not be considered a local rule.

C. **Applicability.** This rule shall not apply to technical specifications for electronic transmission adopted by a district court to permit electronic transmission of documents to the court if the technical specifications are limited to the form of the documents to be transmitted and are consistent with any technical specifications approved by the Supreme Court and the provisions of Rule 10-106 NMRA.

D. **Periodic review of local rules required.** Every two years beginning on January 1, 2019, the chief judge of each odd-numbered judicial district shall review the district's local rules and submit a report to the committee identifying any local rules that are no longer needed by the district and confirming that the district's local rules do not conflict with, duplicate, or paraphrase statewide laws, rules, and forms. Every two years beginning on January 1, 2020, the chief judge of each even-numbered judicial district shall review the district's local rules and submit a report to the committee identifying any local rules that are no longer needed by the district and confirming that the district's local rules do not conflict with, duplicate, or paraphrase statewide laws, rules, and forms. The committee shall review each report submitted under this paragraph and

submit a recommendation to the Supreme Court by June 30 of the year the report was submitted for any proposed changes to the district's local rules that may be warranted.

[Adopted by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

10-169. Criminal contempt.

A. **Scope.** This rule addresses the inherent and statutory powers of the court to impose punitive sanctions for criminal contempt of court. This rule shall not apply to the imposition of other sanctions specifically authorized by these rules, statute, or the common law, or to the imposition of remedial sanctions for civil contempt of court.

B. **Definitions.**

(1) "Contempt" or "contemptuous conduct" includes but is not limited to

(a) disorderly conduct, insolent behavior, or a breach of peace, noise, or other disturbance, if such behavior actually obstructs or hinders the administration of justice or tends to diminish the court's authority;

(b) misconduct of court officers in official transactions; or

(c) disobedience of any lawful order, rule, or process of the court.

(2) "Direct contempt" means contemptuous conduct committed in the immediate presence of the court that is personally observed by the judge.

(3) "Indirect contempt" means contemptuous conduct that occurs outside the presence of the court, or conduct that is not personally observed by the judge and requires further fact finding.

(4) "Punitive sanction" means a sentence imposed to punish a person for committing an act of criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Criminal contempt.**

(1) ***Adult.*** The children's court shall hold an adult in direct or indirect criminal contempt of court only as provided by Rule 1-093 NMRA.

(2) ***Child.*** The children's court shall not hold a child in direct or indirect criminal contempt of court. Nothing in this rule shall affect the authority of the children's court to hold a child in civil contempt of court.

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]

Committee commentary. — Judicial powers of contempt provide courts with authority to enforce orders and protect the dignity of the court. New Mexico law classifies contempts of court as either civil or criminal. *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. Civil contempt sanctions are remedial and may be imposed as coercive measures to compel a person to comply with an order of the court or to enforce the rights of a private party to a lawsuit. *Id.* ¶ 25; *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, ¶ 6, 63 N.M. 156, 315 P.2d 223. A person held in civil contempt "carries the keys to his prison" and can end continuing contempt sanctions by complying with the court's orders. *Concha*, 2011-NMSC-031, ¶ 25 (internal quotation marks and citation omitted). Criminal contempt sanctions are imposed to punish the contempt defendant for a completed act of contempt and to preserve the dignity and authority of the court. *See Concha*, 2011-NMSC-031, ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Many judges in New Mexico regularly address children who are unable to properly regulate their conduct inside or outside the courtroom. Indeed, courts can anticipate that children will behave improperly at times, and they can anticipate that children will not always follow directives.

The imposition of criminal contempt towards children, however, is unnecessary and is not in keeping with the purposes of the Children's Code. Historically, New Mexico has recognized that children need to be treated as children, even by courts. Since 1917, when the state established its first juvenile court, New Mexico courts have adopted special procedures governing treatment of children accused of criminal offenses. *See Peyton v. Nord*, 1968-NMSC-027, ¶ 11, 78 N.M. 717, 437 P.2d 716. New Mexico's juvenile court aligned with the national juvenile court movement, which rejected the historic common law approach towards children, under which all children over seven years of age accused of criminal offenses were treated the same as adults. *See In re Gault*, 387 U.S. 1, 16-17 (1967). The juvenile justice system in New Mexico presumes that while children must be held accountable for criminal acts, their conduct "is not to be measured by the same standard as that of a matured person." *State v. Adam J.*, 2003-NMCA-080, ¶ 18, 133 N.M. 815, 70 P.3d 805 (Alarid, J., specially concurring) (citations and internal quotation marks omitted).

Similarly, the legislature has declared that the purpose of the Children's Code is "first to provide for the care, protection and wholesome mental and physical development of children." NMSA 1978, § 32A-1-3(A). The Code also seeks to reduce overrepresentation of minority children in the juvenile justice system. NMSA 1978, § 32A-1-3(E). The Delinquency Act, NMSA 1978, §§ 32A-2-1 to -33, for example, articulates legislative intent regarding treatment of juveniles accused of committing delinquent acts as follows:

A. Consistent with the protection of the public interest, *to remove from children committing delinquent acts the adult consequences of criminal behavior*, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, *and to provide a program of supervision, care and rehabilitation*, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;

B. To provide effective deterrents to acts of juvenile delinquency, *including an emphasis on community-based alternatives*;

. . .

E. To develop juvenile justice policies and procedures that are supported by data;

. . .

H. To develop *community-based alternatives to detention*;

I. *To eliminate or reduce disparities based upon race or gender*;

NMSA 1978, § 32A-2-2 (emphasis added).

The Delinquency Act reflects "an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act." *State v. Jones*, 2010-NMSC-012, ¶ 32, 148 N.M. 1, 229 P.3d 474. Unlike the adult criminal justice system, which places emphasis on punishment and deterrence, the juvenile justice system "'favor[s] the rehabilitation and treatment of children.'" *Id.* ¶ 35 (citing *State v. Jose S.*, 2007-NMCA-146, ¶ 16, 142 N.M. 829, 171 P.3d 768). The New Mexico legislature and courts have uniformly emphasized that children's lack of maturity must be taken into account in decisions involving the justice system and children. *See, e.g., State v. Jonathan M.*, 1990-NMSC-046, ¶ 8, 109 N.M. 789, 791 P.2d 64. Importantly, New Mexico has chosen not to criminalize status offenses, activities that are unlawful due to a child's age and that would not be criminal if engaged in by an adult. *See ACLU v. City of Albuquerque*, 1999-NMSC-044, ¶ 25, 128 N.M. 315, 992 P.2d 866 (holding that the Children's Code preempts city ordinance providing criminal sanctions for violations of curfew). These principles strongly suggest that children are not proper subjects of the criminal contempt power and its focus on punishment.

In addition, the children who appear in court, especially those in abuse and neglect, mental health, and juvenile delinquency proceedings, often have experienced adverse childhood events and trauma. See the National Child Traumatic Stress Network "NCTSN Bench Card for the Trauma-Informed Judge," which is distributed through the National Council of Juvenile and Family Court Judges and is available at: https://swrtc.nmsu.edu/ files/2013/10/ Letter-and-judge_bench_cards_final.pdf (last

visited August 28, 2016). The children in abuse and neglect proceedings, in particular, are parties to the proceeding because they are allegedly or have been adjudicated as abused or neglected children. *See* NMSA 1978, § 32A-4-10. The Abuse and Neglect Act requires that courts order "the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court." *See* NMSA § 32A-4-22(C). The Abuse and Neglect Act thus contemplates that the adults — not the children — bear the responsibility for complying with the court's directives. Under these circumstances, holding a child in criminal contempt of court for misbehaving in the court room risks further traumatizing a child who already has been the subject of abuse or neglect.

By favoring the use of civil contempt powers as to children and prohibiting criminal contempt as to children, this rule balances the court's inherent authority with the larger purposes of the Children's Code. *Accord* NMSA 1978, § 32A-1-5(B) ("The supreme court shall adopt rules of procedure not in conflict with the children's code governing proceedings in the children's court, including rules and procedures for juries."); § 32A-1-18(C) (providing that the court may "punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders").

Judges, however, are not without tools to maintain the authority and integrity of the court. New Mexico law provides multiple alternatives to address misbehavior by children. The delinquency act provides courts with the authority and procedures to address delinquency. The mental health code provides courts with the authority and procedures to address circumstances when children require treatment. And civil contempt provides courts with the authority to compel compliance with judicial orders. Thus, despite the rule's focus on helping the child achieve appropriate behavior, rather than on punishment, the judiciary remains well-equipped to respond to contemptuous conduct without resorting to use of the criminal contempt power.

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]

10-171. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-037, former Rule 10-171 NMRA, relating to notice of federal restriction on right to receive or possess a firearm or ammunition, was withdrawn retroactively effective to May 18, 2016. For provisions of former rule, *see* the 2016 NMRA on *NMOneSource.com*.

ARTICLE 2
Delinquency Proceedings

10-201. Delinquency proceedings; scope.

Article 2 of these rules governs procedure in delinquency proceedings.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, a new Rule 10-201 NMRA was adopted, effective January 15, 2009. The former version of this rule, relating to preliminary inquiry and time limits, was withdrawn effective October 1, 1996.

10-211. Preliminary inquiry; filing of petition.

A. **Preliminary inquiry.** Prior to the filing of a petition alleging delinquency, probation services shall complete a preliminary inquiry in accordance with the Children's Code [32A-1-1 NMSA 1978].

B. **Petition; form.** The petition shall be substantially in the form approved by the Supreme Court. The petition shall be signed by the children's court attorney or a staff attorney as permitted by the Children's Code.

C. **Time limit.** If the respondent child is in detention a petition shall be filed within two (2) days from the date of detention.

D. **Notice of filing of the petition.** If the parents, guardians or custodians of a respondent child alleged to be a delinquent child are not joined as parties in the delinquency proceeding, they shall be given notice of the filing of the petition in the manner provided by Rule 10-104 NMRA of these rules.

E. **Amendment of offense.** At any time prior to commencement of the adjudicatory hearing and subject to the provisions of Rule 10-212 NMRA, the court may allow the petition to be amended to charge the respondent child with an additional or different offense. Upon allowing such an amendment and upon the request of the respondent child, the court shall grant a continuance to allow further time for preparation.

[As amended, effective October 1, 1996; Rule 10-204 NMRA, recompiled and amended as Rule 10-211 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Under Paragraph A of Rule 10-211 NMRA the filing of a petition is a two-step process: (1) probation services conducts a preliminary inquiry and either recommends or refuses to recommend the filing of a petition; and (2) the children's court attorney reviews the matter to determine if there are legally sufficient grounds to proceed to court with the case. The children's court attorney makes the final determination whether or not to prosecute the child. The children’s court attorney may

do so even if probation services has not recommended a petition and may refuse to do so even if probation services has recommended the filing of the petition. However, probation services must have completed a preliminary inquiry before the petition can be filed.

The committee recognizes that the time limit in the rule differs from the time limit in the statute. The difference is intentional and the rule applies because the time limit is procedural. See Rule 10-107 NMRA for computation of time.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs C and D, changed "child" to "respondent child"; in Paragraph D, changed "petitions in delinquency proceedings" to "the petition", and changed the reference from Rule 10-105 NMRA to Rule 10-104NMRA; and added new Paragraph E.

The 1996 amendment, effective October 1, 1996, added "Preliminary inquiry" to the rule heading, rewrote Paragraphs A, B and C, and added Paragraph D.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-204 NMRA was recompiled as Rule 10-211 NMRA, effective January 15, 2009.

Cross references. — For signing of petition, *see* Section 32A-1-10 NMSA 1978.

For form and content of petition, *see* Section 32A-1-11 NMSA 1978.

For time limit for filing of petition when child is detained, *see* Section 32A-2-13 NMSA 1978.

Determination whether to file delinquency petition deemed social, not legal. — The "best interests" determination as to the filing of a delinquency petition is a social determination, not a legal determination. *State v. Doe*, 1982-NMCA-065, 97 N.M. 792, 643 P.2d 1244.

And involves exercise of discretion. — A best interest determination, whether by probation services, the children's court attorney or both, involves the exercise of discretion. *State v. Doe*, 1982-NMCA-065, 97 N.M. 792, 643 P.2d 1244.

Although determination by children's court attorney subject to judicial review. — The best interests determination of the children's court attorney is subject to judicial review by the children's court and by the New Mexico Court of Appeals. *State v. Doe*, 1982-NMCA-065, 97 N.M. 792, 643 P.2d 1244.

Children's court attorney authorized to execute affidavit of disqualification of judge. — The power and duty of the children's court attorney to represent the state necessarily includes the authority to execute an affidavit of disqualification of a judge when the disqualification is done on behalf of the state. *Smith v. Martinez*, 1981-NMSC-066, 96 N.M. 440, 631 P.2d 1308.

Rule does not apply to a petition to revoke probation; such petitions are governed by Rule 10-232. *State v. Doe*, 1978-NMCA-001, 91 N.M. 364, 574 P.2d 288.

Dismissal of petition inappropriate where procedural violation tangential to remedy. — The normal remedy for a violation of the children's court time limits, dismissal of the petition, would be inappropriate where the procedural violation is only tangentially related to the asserted remedy. *State v. Doe*, 1980-NMCA-070, 94 N.M. 446, 612 P.2d 238.

Delinquency petition based on alleged burglary not insufficient. — A best interests determination that a delinquency petition be filed, based on the fact that the child allegedly committed a burglary, is not insufficient as a matter of law. *State v. Doe*, 1982-NMCA-065, 97 N.M. 792, 643 P.2d 1244.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

10-212. Joinder of delinquent acts and parties; severance.

A. **Joinder of delinquent acts.** Two or more delinquent acts shall be joined in a single petition alleging delinquency, with each allegation stated in a separate count if the allegations

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

B. **Joinder of respondents.** A separate petition shall be filed for each respondent who is a child alleged to have committed a delinquent act. Two or more respondents may be joined on motion of a party, or by the filing of a statement of joinder by the state contemporaneously with the filing of the petitions charging the respondents

(1) when each of the respondents is charged with accountability for each delinquent act included;

(2) when all of the respondents are charged with conspiracy and some of the respondents are also charged with one or more delinquent acts alleged to be in furtherance of the conspiracy; or

(3) when, even if conspiracy is not charged and not all of the respondents are charged in each count, the several delinquent acts charged

(a) were part of a common scheme or plan; or

(b) were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one delinquent act from proof of others.

C. **Motion for severance.** If it appears that a respondent or the state is prejudiced by the joinder of delinquent acts or of parties by the filing of a statement of joinder for trial, the court may order separate trials of delinquent acts, grant a severance of respondents, or provide whatever other relief justice requires. In ruling on a motion by a respondent for severance, the court may order the state to deliver to the court for inspection in camera any statements or confessions made by the respondents which the state intends to introduce in evidence at the trial.

[As amended and recompiled, effective May 1, 1998; Rule 10-204.1 NMRA, recompiled and amended as Rule 10-212 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 19-8300-020, effective for all cases filed on or after December 31, 2019.]

ANNOTATIONS

The 2019 amendment, approved by Supreme Court Order No. 19-8300-020, effective for all cases filed on or after December 31, 2019, replaced the term “offense” with “delinquent act” throughout the rule, and required that two or more delinquent acts be joined in a single petition alleging delinquency; and in Paragraph A, after “Two or more delinquent acts”, deleted “may” and added “shall”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "Delinquency proceedings" from the title; and in Paragraph A, changed "such allegations, whether felonies or misdemeanors or both" to "the allegations".

The 1998 amendment, effective May 1, 1998, rewrote this rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-204.1 NMRA was recompiled as Rule 10-212 NMRA, effective January 15, 2009.

10-213. Initiation of youthful offender proceedings; probable cause determination.

A. **Notice of intent.** Within ten (10) days after the filing of a petition, the children's court attorney may file with the children's court a notice of intent to seek adult sanctions if the child is alleged to be a youthful offender under Section 32A-2-3(J) NMSA 1978. The court may extend the time for filing of a notice of intent to seek adult sanctions, for good cause shown, provided that such time shall not be extended to more than thirty (30) days after the filing of a petition.

B. **Probable cause determination.**

(1) ***Timing.*** Unless the child waives the right to a probable cause determination, such a determination shall be made within ten (10) days from the last to occur of the following:

(a) the filing of a notice of intent to seek adult sanctions; or

(b) the filing of a peremptory election to excuse a judge under Rule 10-162 NMRA.

(2) ***Extensions of time.*** The children's court, for good cause shown, may extend the time for a probable cause determination, provided that such time shall not be extended to more than thirty (30) days from the last to occur of Subparagraph (B)(1)(a) or (b) under this rule.

(3) ***How determined.*** Probable cause shall be determined in a preliminary examination as provided in Rule 5-302 NMRA or by a grand jury as provided in Rule 5-302A NMRA, provided that the time limits set forth in this rule shall apply.

C. **No finding of probable cause.** If, after a preliminary examination or grand jury proceeding, no finding of probable cause is made that the child committed a youthful offender offense, one of the following provisions shall apply:

(1) if there is probable cause to believe that the child has committed a delinquent act, the indictment or bind over order shall be made part of the record, and the case shall proceed under these rules as they apply to delinquent children; or

(2) if there is no probable cause to believe that the child has committed any offense, the court shall discharge the child and dismiss the petition without prejudice.

D. **Failure to comply with time limits; remedy.** Absent a showing of exceptional circumstances, a failure to comply with the time limits set forth in this rule shall require proceeding under these rules as they apply to delinquent children and shall preclude imposing adult sanctions against the child.

[As amended, effective July 1, 1995; April 1, 1997; May 3, 1999; Rule 10-222 NMRA, recompiled and amended as Rule 10-213 NMRA by Supreme Court Order No. 08-8300-

042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — Due to the need for the timely disposition of matters under the Delinquency Act, the committee intends the ten (10)-day period stated in Paragraph B to apply irrespective of whether the child is in custody. *Contra* Rule 5-302(D) NMRA (providing that a preliminary hearing shall be held no later than sixty (60) days following the initial appearance if the defendant is not in custody); Rule 5-302A NMRA (providing no time limit for the initiation of grand jury proceedings). A waiver of the right to a probable cause determination shall be knowing, voluntary, and intelligent and shall be in writing substantially in the form approved by the Supreme Court. *See* Form 10-433 NMRA (waiver of preliminary examination and grand jury proceeding).

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, provided that an extension of time to file a notice of intent to seek adult sanctions shall not exceed thirty days; provided a ten day time limitation to determine probable cause and a thirty day limit on extensions of time to determine probable cause; required that probable cause be determined in a preliminary examination; provided for the disposition of the case if there is a finding of no probable cause; provided that the failure to comply with the time limits precludes imposing adult sanctions against the child; in the title, deleted “Youthful” and added “Initiation of youthful” and after “proceedings”, deleted “filing of notice” and added “probable cause determination”; in Paragraph A, in the first sentence, after “children’s court a notice of intent to”, deleted “request the court to treat the respondent child as a ‘youthful offender’, as that term is defined in the Children’s Code” and added the remainder of the sentence, and in the second sentence, deleted “At any time prior to the commencement of the adjudicatory proceeding, upon good cause shown, the”, after “The court may”, deleted “permit the” and added “extend the time for”, and after “filing of a notice of intent to”, deleted “invoke an adult sentence” and added the remainder of the sentence; in Paragraph B, deleted the former language which required that a preliminary hearing be held within fifteen days after a notice of intent to invoke an adult sentence was filed unless the case was presented to a grand jury or the child waived a preliminary hearing or grand jury; in Paragraph B, added Subparagraphs (1) through (3); and added Paragraphs C and D.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A and B, changed "child" to "respondent child"; in Paragraph B, changed 10 days to 15 days, added the last sentence, and deleted the sentence which provided that a preliminary hearing may be conducted by the children’s court judge or by a magistrate court or metropolitan court judge; deleted former Paragraph C which provided for the transfer of the case to the magistrate or

metropolitan court for preliminary examination and the transfer back to the children's court judge with findings of no probable cause or probable cause; and deleted former Paragraph D which provided for the reopening of the case by the original children's court judge after transfer by the magistrate or metropolitan court.

The 1999 amendment, effective for cases filed in the Children's Court on and after May 3, 1999, designated the existing paragraph as Paragraph A, and added Paragraphs B through D.

The 1997 amendment, effective April 1, 1997, substituted "proceedings; filing of notice" for "hearing; general procedure" in the rule heading, deleted the Paragraph A designation and the former Paragraph A heading, substituted "child" for "respondent" and added "as that term is defined in the Children's Code" in the first sentence, and deleted former Paragraphs B and C relating to bail and criminal proceedings.

The 1995 amendment, effective July 1, 1995, substituted "Youthful offender" for "Transfer" in the section heading and rewrote this rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-222 NMRA was recompiled as Rule 10-213 NMRA, effective January 15, 2009.

Untimely preliminary hearing. — Where a preliminary hearing was held twenty-four days after the state filed notice of intent to charge the child as a youthful offender, the court did not commit reversible error in denying the child's motion to dismiss because neither Rule 10-213 NMRA nor Section 32A-2-20 NMSA 1978 provides a remedy for a violation of the time limits for holding a preliminary hearing. *State v. Leticia T.,* 2012-NMCA-050, 278 P.3d 553, cert. granted, 2012-NMCERT-005.

Denial of a transfer motion under either 32-1-29 or 32-1-30 NMSA 1978 is not final; it simply leaves the case in the children's court for further proceedings. *State v. Doe*, 1983-NMCA-015, 99 N.M. 460, 659 P.2d 912 (decided prior to 1995 amendment).

And court empowered to reconsider denial. — The children's court has the inherent power to reconsider, by reason of its nonfinal nature, an order denying a motion to transfer. *State v. Doe*, 1983-NMCA-015, 99 N.M. 460, 659 P.2d 912 (decided prior to 1995 amendment).

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Possibility of rehabilitation as affecting whether juvenile offender should be tried as adult, 22 A.L.R.4th 1162.

43 C.J.S. Infants § 45.

10-214. General rules of pleading.

A. **Defects, errors, omissions and clerical mistakes.** No pleading shall be deemed invalid, nor shall the inquiry, hearing, judgment or other proceeding be stayed or in any manner affected because of any defect, error, omission, imperfection or inconsistency in the pleading, which does not prejudice the substantial rights of the respondent child on the merits. The court may at any time prior to an adjudication on the merits cause the pleadings to be amended to cure errors, defects, omissions, imperfections or variances if substantial rights of the respondent child are not prejudiced. Upon ordering such an amendment of a petition or other pleading, the court shall grant a continuance to any party whose ability to present the party's case has been affected by the amendment. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

B. **Surplusage.** Any unnecessary allegation contained in a petition may be disregarded as surplusage.

C. **Variances.** No variance between those allegations of a petition or any supplemental pleading which states the particulars of the delinquent act, whether amended or not, and the evidence offered in support thereof shall be grounds for the acquittal of the respondent unless such variance prejudices substantial rights of the respondent child. The court may at any time allow the petition to be amended in respect to any variance to conform to the evidence. If the court finds that the respondent child has been prejudiced by an amendment, the court may postpone the adjudicatory hearing or grant such other relief as may be proper under the circumstances.

D. **Effect.** No appeal, or motion made after verdict, based on any such defect, error, omission, repugnancy, imperfection, variance or failure to prove surplusage shall be sustained unless the respondent child was, in fact, prejudiced in the respondent child’s defense on the merits.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* Rule 5-204 NMRA of the Rules of Criminal Procedure of the District Courts for comparable rule.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-214 NMRA, relating to disclosure by respondent child, was recompiled as Rule 10-232 NMRA, and a new Rule 10-214 NMRA, relating to general rules of pleadings, was adopted, effective January 15, 2009.

10-215. Warrants.

A. **Arrest warrants.** Warrants for the arrest of a respondent child alleged to have committed a delinquent act, or to have violated conditions of release, may be issued by a children's court or district court judge. The issuance, execution and return of the warrant for arrest shall be in accordance with the Rules of Criminal Procedure for the District Courts. The warrant for arrest shall be substantially in the form approved by the Supreme Court.

B. **Bench warrants.** If any person who has agreed in writing to appear in court at a specified time and place or who is ordered by the court to appear at a specified time and place fails to appear at such specified time and place in person or by counsel when permitted by these rules, the court may issue a warrant for the person's arrest.

C. **Search warrants.** Search warrants may be issued by the court. The issuance, execution and return of the search warrant shall be in accordance with the Rules of Criminal Procedure for the District Courts. The search warrant shall be substantially in the form approved by the Supreme Court.

[As amended, effective November 1, 2000; Rule 10-206 NMRA, recompiled and amended as Rule 10-215 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, changed "child" to the phrase "respondent child" and changed "or a criminal offense" to "or to have violated conditions of release".

The 2000 amendment, effective November 1, 2000, in Paragraph A, substituted "have committed a delinquent act or a criminal offense" for "be delinquent or in need of supervision" and inserted "judge" in the first sentence, in the second sentence, inserted "substantially" following "shall be"; in Paragraph C, rewrote the first sentence which read "Search warrants may be issued by the children's court or the district court." and inserted "substantially" following "shall be" at the end of the second sentence.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-206 NMRA was recompiled as Rule 10-215 NMRA, effective January 15, 2009.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

10-221. Placing child in detention.

A. **Referral to probation services.** Unless otherwise specifically ordered by the court, upon delivery of a respondent child who may be held in custody to probation services or to a place of detention, a probation officer with the Children, Youth and Families Department shall interview the respondent child and, if possible, the

respondent child's parents, guardian or custodian to determine if continued detention is necessary under the criteria set forth in the Children's Code [32A-1-1 NMSA].

B. **Notice of detention.** If a Children, Youth and Families Department employee or a trained county detention professional designated by that department determines that continued detention is necessary, the person in charge of the place of detention shall advise the respondent child's parents, guardian or custodian as soon as practicable but no later than twenty-four (24) hours from the time the respondent child was delivered to probation services or to a place of detention, including Saturdays, Sundays and legal holidays:

(1) the respondent child has been placed in detention;

(2) the reason the respondent child has been placed in detention;

(3) the place where the respondent child is detained and the visiting hours there;

(4) if no petition is filed, the respondent child will be released;

(5) if a petition is filed, a detention hearing will be held to determine whether continued detention is necessary; and

(6) the respondent child has a right to an attorney and, if they do not obtain an attorney for the child, the public defender will represent the child.

C. **Statement of probable cause.** In warrantless arrests, other than arrests for alleged parole violations, if the respondent child is to be detained, at the time of the detention the arresting officer shall prepare a statement of probable cause. The arresting officer or the arresting officer's designee shall inform the respondent child of the contents of the statement of probable cause. A copy of the statement of probable cause shall be provided to the respondent child and the respondent child's attorney prior to the detention hearing. If a petition is filed, the statement and determination of probable cause shall be filed with the petition. A statement of probable cause shall be substantially in the form approved by the Supreme Court.

[As amended, effective November 1, 1995; February 1, 2002; Rule 10-208 NMRA, recompiled and amended as Rule 10-221 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A, B and C, changed "child" to "respondent child"; in Paragraph A, added "Unless otherwise specifically ordered by the court" at the beginning of the sentence and added "a probation officer with" and "the Children, Youth

and Families Department"; and in Paragraph B, changed "the probation officer" to "a Children, Youth and Families Department employee or a trained county detention professional designated by that department".

The 2001 amendment, effective February 1, 2002, in Paragraph C, deleted "and shall give a copy to the child" at the end of the first sentence, added the second sentence and inserted "and determination" following "the statement" in the third sentence; and withdrew the commentary following the rule.

The 1995 amendment, effective November 1, 1995, substituted "the child's parents" for "his parents" in Paragraph A, deleted "or has been filed" following "filed" in Paragrph B(5), substituted "they" for "his parents, custodian or guardian" and "for the child" for "for him" in Paragraph B(6), and added Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-208 NMRA was recompiled as Rule 10-221 NMRA, effective January 15, 2009.

Cross references. — For Children's Code provisions relating to detention of children, *see* Sections 32A-2-9 to 32A-2-13 NMSA 1978.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Habeas Corpus § 93; 47 Am. Jur. 2d Juvenile Courts § 62 et seq.

10-222. Probable cause determination for delinquency offenses.

A. **When required.** A probable cause determination shall be made in all cases in which the arrest has been made without a warrant and the respondent child has not been released. The probable cause determination shall be made promptly by a district judge, magistrate or special master, but in any event within forty-eight (48) hours after custody commences and no later than the first appearance of the respondent child whichever occurs earlier.

B. **How conducted.** The determination that there is probable cause shall be nonadversarial and may be held in the absence of the respondent child and of counsel. No witnesses shall be required to appear unless the court determines that there is a basis for believing that the appearance of one or more witnesses might lead to a finding that there is no probable cause.

C. **Amended statement of probable cause.** If the statement of probable cause fails to make a written showing of probable cause, an amended statement of probable

cause may be filed with sufficient facts to show probable cause for detaining the respondent child.

D. **Failure to show probable cause.** If the court finds that there is no probable cause to believe that the respondent child has committed an offense, the court shall order the immediate release of the respondent child.

[Adopted, effective November 1, 1995; Rule 10-208A NMRA, recompiled and amended as Rule 10-222 NMRA by Supreme Court Order No. 08-8300-42, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — This rule applies only to probable cause determinations in delinquency proceedings. For probable cause determinations in youthful offender proceedings, *see* Rule 10-213 NMRA.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, in the title, added “for delinquency offenses” to reflect that the rule applies to delinquency offenses.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A, B, C and D, changed "child" to "respondent child"; and in Paragraph D, in the title, deleted "Dismissal for".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-208A NMRA was recompiled as Rule 10-222 NMRA, effective January 15, 2009.

10-223. Appointment of counsel; payment of fees.

A. **Appointment.** Within five (5) days from the date the petition is filed, or at the commencement of the detention hearing, whichever occurs first, unless counsel has entered an appearance on behalf of the respondent child, the court shall appoint the public defender to represent the respondent child.

B. **Notice to parents.** Any order of appointment shall be served on the parents, guardian or custodian by the court together with a written notice that if they can afford an attorney to represent the respondent child, they will be ordered to reimburse the state for public defender representation. The notice shall be accompanied by a copy of the eligibility determination for indigent defense services form approved by the Supreme Court and shall advise the parents, guardian or custodian that if they do not complete the eligibility determination form and return it to the public defender within the

prescribed time, they may be charged for all legal representation of the respondent child. The notice shall also advise the parents, guardian or custodian of the duty of the public defender to assist the parents, guardian or custodian in any indigency determination proceeding.

C. **Hearing on indigency.** Within five (5) days after receipt of the order and notice from the court pursuant to Paragraph B of this rule, the parents, guardian or custodian shall complete and return to the public defender the eligibility determination form or shall make satisfactory arrangements for payment for legal services performed for the respondent child. Upon motion the children's court shall review the determination by the public defender that the parent, guardian or custodian is not indigent as provided by the guidelines for eligibility determination for indigent defense services approved by the Supreme Court.

[As amended, effective November 1, 1995; Rule 10-205 NMRA, recompiled and amended as Rule 10-223 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Court-appointed counsel are referred to Children's Court Forms 10-407 (Notice of Requirement to Pay Attorney Fees for Legal Representation of the Above-Named Child) and 10-408 NMRA (Eligibility determination for indigent defense services).

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A, B and C, changed "child" to "respondent child"; in Paragraph A, changed "conclusion" to "commencement", changed "advise the public defender that the child is not represented by counsel and the public defender shall provide a defense for" to "appoint the public defender to represent"; in Paragraph B, changed "If the public defender is asked to represent the child, the public defender shall serve" to "Any order of appointment shall be served", and changed "guardian or custodian a written notice on a form approved by the Supreme Court" to "guardian or custodian by the court together with a written notice"; and in Paragraph C, changed "ten (10) days after receipt of notice from the public defender" to "five (5) days after receipt of the order and notice from the court", and changed the "by the procedures set forth in Children's Court Rule 10-408" to "by the guidelines for eligibility determination for indigent defense service approved by the Supreme Court".

The 1995 amendment, effective November 1, 1995, substituted "child" for "respondent" near the beginning of Paragraph A; in Paragraph B, substituted "a copy of the eligibility determination for indigent defense services form" for "an affidavit of indigency" and "eligibility determination form" for "affidavit"; in Paragraph C, substituted "ten (10) days" for "thirty (30) days", "eligibility determination form" for "affidavit of indigency", and

substituted the last sentence for "The public defender shall assist any parent, guardian or custodian in any hearing before the court to determine the indigency of the parents, guardian or custodian"; and deleted former Paragraph D relating to court orders.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-205 NMRA was recompiled as Rule 10-223 NMRA, effective January 15, 2009.

10-223A. Physical restraints in the courtroom.

A. **Purpose.** This rule is intended to balance legitimate security needs in court facilities with the purpose of the Children's Code to provide care, protection, and wholesome mental and physical development of children subject to children's court proceedings and to preserve the dignity, decorum, and safety of judicial proceedings involving children.

B. **Use of physical restraints in the courtroom; reasonable grounds required.** Children shall not be brought before the court wearing any physical restraint devices except as ordered by the court during or prior to the hearing, based on particularized security needs relating to the facility, available security personnel and other resources, individualized determinations in a particular case, or other reasonable grounds supporting a need for physical restraints. In proceedings before a jury, every reasonable effort must be made to avoid the jury's observation of the child in physical restraints.

C. **Challenge to the use of restraints.** Before or after any child is ordered restrained, the court shall permit any party to be heard on the issue of whether reasonable grounds exist for use of physical restraints in a particular situation or as to a particular child.

[Approved by Supreme Court Order No. 11-8300-033, effective for cases pending or filed on or after September 30, 2011; suspended by Supreme Court Order No. 11-8300-036, effective September 1, 2011; as amended by Supreme Court Order No. 12-8300-014, effective for all cases pending or filed on or after April 9, 2012.]

Committee commentary. — This rule is intended to express the policy of not having children in physical restraints inside the courtroom except where required by legitimate security concerns in a particular case, at a location in general, or in light of other relevant temporary or permanent circumstances. It does not control transport procedures or other matters outside the courtroom. The rule requires no particular formality in timing or mode of raising or addressing security concerns and permits a presiding judge to promulgate and evaluate either general or specific requirements as the need may arise.

[Adopted by Supreme Court Order No. 12-8300-014, effective for all cases pending or filed on or after April 9, 2012.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-014, effective April 9, 2012, required a showing of the particularized security needs for restraints based on the facility, available security personnel and other resources, and the individual to be restrained; in Paragraph A, after "This rule is intended to", deleted "further" and added "balance legitimate security needs in court facilities with", after "decorum", added "and safety", and deleted the former second sentence, which prohibited indiscriminate shackling of children; in Paragraph B, in the first sentence, after "as ordered by the court", added "during or", and after "based on", deleted "an individualized determination that reasonable grounds for the use of physical restraints exist. This includes children in residential care or any other treatment facility" and added the remainder of the sentence, and added the second sentence; added a new Paragraph C; deleted former Paragraph C, which specified the elements of proof required to determine the need for restraints; deleted former Paragraph D, which placed the burden of proof on the children's court attorney; deleted former Paragraph E, which provided the procedure for determining the need for restraints; deleted former Paragraph F, which provided the procedure for challenging the use of restraints; and deleted former Paragraph G, which provided that an order permitting restraints remained in effect at subsequent hearings.

Compiler's note. — Pursuant to Supreme Court Order No. 11-8300-036, effective September 1, 2011, the implementation of Rule 10-223A and Forms 10-426 and 10-427, which would have become effective September 30, 2011, is suspended until further order by the court.

10-224. First appearance; explanation of rights.

Upon the first appearance of a respondent child before a court in response to summons or warrant or following arrest, the court shall inform the respondent child of the following:

A. the offense charged;

B. the penalty provided by law for the offense charged;

C. the right, if any, to bail;

D. the right, if any, to trial by jury;

E. the right to the assistance of counsel at every stage of the proceedings;

F. the right, if any, to representation by an attorney at state expense;

G. the right to remain silent, and that any statement made by the respondent child may be used against the respondent child; and

H. the right, if any, to a preliminary examination.

[Adopted, effective November 1, 1995; Rule 10-208B NMRA, recompiled and amended as Rule 10-224 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in the prefatory sentence and in Paragraph G, changed "child" to "respondent child".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-208B NMRA was recompiled as Rule 10-224 NMRA, effective January 15, 2009.

10-225. Detention hearing; conditions of release.

A. **Detention hearing.** A detention hearing shall be held within one (1) day from the time:

(1) the petition is filed if the respondent child is in detention at the time the petition is filed;

(2) the respondent child is placed in detention if the respondent child is placed in detention after the petition is filed;

(3) the respondent child is placed in detention without a warrant for failure to comply with the conditions of release; or

(4) the respondent child moves the court for release after being placed in detention pursuant to a warrant for failure to comply with conditions of release.

B. **Notice of detention.** If the respondent child is taken into custody and detained, the court shall give oral or written notice of the detention hearing to the children’s court attorney, public defender and probation services. Probation services shall make a reasonable effort to give oral or written notice of the time and place of the detention hearing to the respondent child and, if they can be found, to the parents, guardian or custodian of the respondent child.

C. **Conditions of release.** The court shall review the need for detention pursuant to the Children’s Code [32A-1-1 NMSA 1978]. If none of the criteria for detention exist, the court shall release the respondent child on the respondent child's written promise to appear before the court at a stated time and place or impose the first of the following conditions of release which will reasonably assure the appearance of the respondent child at the adjudicatory hearing or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the child in the custody of a designated person or organization agreeing to supervise the child;

(2) place restrictions on the travel, association or place of abode of the child during the period of release;

(3) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the child return to detention as required.

D. **Review.** A denial of release may be reviewed at any time.

E. **Violation of conditions of release.** If the child fails to appear or violates a condition of release, the children's court may order the child taken into custody.

F. **Special master.** The provisions of Paragraphs A through D of this rule may be carried out by a magistrate or special master.

[As amended, effective November 1, 1995; February 1, 1997; Rule 10-211 NMRA, recompiled and amended as Rule 10-225 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* Rule 10-107 NMRA for computation of time. This rule has been amended to provide for a release hearing when a child is placed in detention for violating conditions of release. Such a hearing was not required under the prior rule.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Subparagraphs (1) and (2) of Paragraph A and Paragraphs B and C, changed "child" to "respondent child"; in Paragraph A, changed "twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays" to "one (1) day" and added new Subparagraphs (3) and (4) of Paragraph A; in Paragraph B, added "of detention" in the title and added the first sentence; in Paragraph C, changed "detention pursuant to Rule 10-209" to "detention pursuant to the Children's Code"; in Paragraph E, changed the title from "Failure to appear" to "Violation of conditions of release" and changed "If the child violates" to "If the child fails to appear or violates"; and in Paragraph F, changed "carried out by a metropolitan court judge, a magistrate or by a special master" to "carried out by a magistrate or special master".

The 1997 amendment, effective February 1, 1997, substituted "Detention hearing" for "Time limits" in the paragraph heading of Paragraph A, added Paragraph B, redesignated former Paragraphs B and C as Paragraphs C and D, deleted former Paragraph D relating to notice, added Paragraph E, redesignated former Paragraph E

as Paragraph F, and inserted "Paragraphs A through D" and made stylistic changes in Paragraph F.

The 1995 amendment, effective November 1, 1995, rewrote Paragraph A, added Paragraph C and redesignated former Paragraphs C and D as Paragraphs D and E, rewrote the paragraph heading and substituted "special master" for "referee" and "a district judge, a metropolitan court judge or a magistrate" for "the judge" in Paragraph E, and made gender neutral changes throughout the rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-211 NMRA was recompiled as Rule 10-225 NMRA, effective January 15, 2009.

Cross references. — For detention hearing, *see* Section 32A-2-13 NMSA 1978.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

10-225.1. Youthful offenders; right to bail.

If a notice of intent to seek adult sanctions has been filed under Rule 10-213(A) NMRA, the respondent child shall have a right to bail as provided under Rule 5-401 NMRA.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

10-226. Plea agreements in delinquency and youthful offender proceedings.

A. **Response to petition or youthful offender charging document.** The respondent child may:

(1) admit sufficient facts to permit a finding that the allegations of the petition or youthful offender charging document are true;

(2) enter a plea of no contest to the allegations in the petition or youthful offender charging document; or

(3) in the case of a motion for consent decree, stand mute.

B. **Alternatives.**

(1) ***In General.*** The attorney for the state and the attorney for the respondent child may engage in discussions with a view toward reaching an agreement that, upon the entering an admission, no contest or a consent decree to a charged offense or to a lesser or related offense, the attorney for the state will move for dismissal of other

charges, or will recommend or not oppose the imposition of a particular disposition, or will do both. The court shall not participate in any such discussions.

(2) ***Conditional plea.*** With the approval of the court and the consent of the state, a respondent child may enter a conditional admission, plea of no contest, or a consent decree in writing reserving the right, on appeal from the judgment, to review of the adverse determination of any specified pre-trial motion. A respondent child who prevails on appeal shall be allowed to withdraw the plea.

(3) ***Youthful offender proceedings.*** The court in a youthful offender proceeding shall not accept a plea agreement that purports to do both of the following:

(a) imposes adult sanctions on a youthful offender; and

(b) relieves the court of its duty to hold an amenability hearing as that term is defined in Rule 10-247(A) NMRA.

C. **Notice.** If a plea agreement has been reached by the parties which contemplates entry of an admission, a plea of no contest, or a consent decree, it shall be reduced to writing substantially in the form approved by the Supreme Court. The court shall require the disclosure of the agreement in open court at the time the plea is offered and shall advise the defendant as required by Paragraph H of this rule. If the plea agreement was not made in exchange for a guaranteed, specific disposition and was instead made with the expectation that the state would only recommend a particular disposition or sentence and not oppose the respondent child's request for a particular disposition or sentence, the court shall inform the respondent child that such recommendations and requests are not binding on the court. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until after there has been an opportunity to consider any social, diagnostic, or other predisposition or presentence report.

D. **Acceptance of Plea.**

(1) ***Guaranteed, specific disposition.*** If the court accepts a plea agreement that was made in exchange for a guaranteed, specific disposition, the court shall inform the respondent child that it will impose in the judgment and disposition the disposition provided for in the plea agreement.

(2) ***No guaranteed, specific disposition.*** If the court accepts a plea agreement that was not made in exchange for a guaranteed, specific disposition, the court shall inform the respondent child that it may impose in the judgment and disposition any disposition authorized by law. If the respondent child is an alleged youthful offender, the court shall inform the respondent child that it may impose any disposition or sentence that is authorized by law, up to and including the maximum adult sentence.

E. **Rejection of Plea.** If the court rejects a plea agreement, the court shall inform the parties of this fact, advise the respondent child personally in open court that the court is not bound by the plea agreement, afford either party the opportunity to withdraw the agreement, and advise the respondent child that if the respondent child persists in an admission, plea of no contest, or a motion for a consent decree, the disposition or sentence of the case may be less favorable to the respondent child than that contemplated by the plea agreement. This paragraph does not apply to a plea for which the court rejects a recommended or requested disposition or sentence but otherwise accepts the plea.

F. **Time of Plea Agreement Procedure.** Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at such time, as may be fixed by the court.

G. **Inadmissibility of Plea Discussions.** Evidence of an admission, later withdrawn, a plea of no contest, or a consent decree, or of an offer to admit, to not contest, or to enter a consent decree to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the respondent child who made the plea or offer.

H. **Inquiry of Respondent Child.** The court shall not accept an admission or a no contest plea, or grant a motion for consent decree, without addressing the respondent child in open court and determining that the respondent child understands:

(1) the allegations or charges to which the plea is offered;

(2) the possible dispositions authorized by the Children's Code for the offense, which for an alleged youthful offender may include up to the maximum adult sentence;

(3) the right to deny the allegations or charges in the charging document and to have a trial on the allegations or charges;

(4) that an admission, no contest plea, or motion for consent decree accepted by the court waives the right to a trial;

(5) that, if the respondent child admits, pleads no contest, or enters into a consent decree, it may have an effect upon the respondent child’s immigration and naturalization status, and the court shall determine that the respondent child has been advised by counsel of the immigration consequences of a plea; and

(6) for youthful offenders

(a) that, if the respondent child receives an adult sentence for a crime of domestic violence or a felony, a plea of guilty or no contest may affect the respondent

child's constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence or a felony;

(b) that registration as a sex offender is or may be required if the respondent child receives an adult sentence after pleading guilty or no contest to a crime for which such registration is or may be required, and the court shall determine that the respondent child has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act; and

(c) that, if the respondent child receives an adult sentence, any conviction will be considered a prior conviction as permitted by law.

I. **Ensuring Voluntariness.** The court shall not accept an admission or plea of no contest, or grant a motion for consent decree, without addressing the respondent child in open court and determining that the admission, no contest plea, or motion for consent decree is voluntary and not the result of force or threats except promises made as part of the plea agreement or motion for consent decree. The court shall also inquire of the respondent child, defense counsel, and the attorney for the government about whether the respondent child's willingness to make an admission, plead no contest, or enter into a consent decree results from prior discussions between the attorney for the government and the respondent child or the respondent child's attorney.

J. **Factual Basis.** The court shall not enter a disposition or consent decree without making such inquiry as shall satisfy it that there is a factual basis for the allegations or charges in the charging document. In determining the existence of a factual basis in the case of a no contest plea or a motion for consent decree, the court shall not require any statement or admission from the respondent child.

K. **Form of Written Pleas.** A plea and disposition agreement or a conditional plea shall be submitted substantially in the form approved by the Supreme Court.

L. **Record of proceedings.** A verbatim record of the proceedings at which the respondent child enters a plea shall be made and, if there is an admission, a plea of no contest, or a consent decree, the record shall include, without limitation, the court's advice to the respondent child, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of the admission, plea of no contest, or consent decree.

[Adopted, effective August 1, 1999; Rule 10-224.1 NMRA, recompiled and amended as Rule 10-226 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, completely rewrote the rule; in the title, after “agreements”, added “in delinquency and youthful offender proceedings”; deleted former Paragraph A which prohibited the court from participating in plea discussions and required that a plea and dispositions agreement be in the form approved by the Supreme Court; deleted former Paragraph B which required the court to disclose a plea and disposition agreement in open court before accepting it; deleted former Paragraph C which provided that if the court rejected an agreement, the court was required to inform the parties and the child personally in open court that the court had rejected the agreement and was not bound by it and to advise the child that if the child admitted the allegations or pleaded no contest, the disposition of the case might be less favorable to the child than contemplated in the agreement; and added Paragraphs A through L.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A and C, changed "child" to "respondent child"; in Paragraph B, deleted "at the time the admission is offered" and deleted the sentence which provided that the court may accept or reject the agreement or may defer its decision until there has been an opportunity to consider a report from the probation department; and in Paragraph C, changed "admitting the allegations" to "admitting the allegations or pleading no contest".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-224.1 NMRA was recompiled as Rule 10-226 NMRA, effective January 15, 2009.

10-227. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 14-8300-015, 10-227 NMRA, relating to admission, no contest plea or motion for consent decree, was withdrawn effective December 31, 2014. For provisions of former rule, *see* the 2014 NMRA on *NMOneSource.com*.

10-228. Consent decrees; extension, revocation or termination of consent decree.

A. **Consent decrees.** Upon a finding that a factual basis exists for the allegations in the petition, or after adjudication, the court may enter a consent decree that places the respondent child under supervision for a period not to exceed six (6) months under conditions approved by the court. As part of a consent decree, the parties may agree to an extension of the consent decree not to exceed an additional six (6) months.

B. **Extension.** The children's court attorney may move the court for an order extending the original consent decree for a period not to exceed six (6) months from the expiration of the original decree. The motion for extension shall be filed prior to the expiration of the original decree. If the respondent child objects to the extension, the

court shall hold a hearing to determine if the extension is in the best interests of the respondent child and the public.

C. **One year limit.** A consent decree and any extension may not exceed one (1) year from the date of the entry of the original consent decree.

D. **Revocation of consent decree.** If, prior to discharge by probation services or the expiration of the consent decree, whichever occurs earlier, the respondent child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation.

[As amended, effective August 1, 1999; July 1, 2002; Rule 10-225 NMRA, recompiled and amended as Rule 10-228 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Like Rule 10-227 NMRA, this rule reflects the 2005 changes to the Children's Code. This rule continues the change that was made by the Supreme Court in 2002 to allow consent decrees after adjudication.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A and C, changed "child" to "respondent child"; in Paragraph A, at the beginning of the sentence, changed "After entry of an admission pursuant to Rule 10-224 NMRA or after a child has been adjudicated as a delinquent" to "Upon a finding that a factual basis exists for the allegations in the petition, or after adjudication", and deleted the last sentence which provided that a consent decree and any extension may not exceed one year from the date of the entry of an original consent decree; added new Paragraph C; relettered former Paragraph C as Paragraph D; and in Paragraph D, changed "prior to the expiration" to "prior to discharge by probation services or the expiration", and added "whichever occurs earlier".

The 2002 amendment, effective July 1, 2002, substituted "entry of an admission pursuant to Rule 10-224 NMRA or after a child has been adjudicated as a delinquent" for "a factual basis has been established" in Paragraph A.

The 1999 amendment, effective August 1, 1999, added Paragraph A, and redesignated subsequent paragraphs accordingly; substituted "child" for "respondent" in Paragraphs B and C; in Paragraph C, deleted the last sentence listing the court's options if the respondent is found to have violated the terms of the consent decree; and deleted former Subsection C relating to termination.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-225 NMRA was recompiled as Rule 10-228 NMRA, effective January 15, 2009.

Cross references. — For extension, revocation or termination of consent decrees, *see* 32A-2-22 NMSA 1978.

Court may properly call for information in deciding whether to accept or reject a consent decree or provide for a more favorable disposition of the child, as predisposition reports are relevant in deciding an appropriate disposition of the case and calling for information on the child's background is consistent with the legislative purpose in Section 32-1-2B NMSA 1978 of providing a "program of supervision, care and rehabilitation." *State v. Doe*, 1978-NMCA-124, 92 N.M. 354, 588 P.2d 555.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

10-231. Disclosure by the state.

A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, within ten (10) days after the date of filing of a petition alleging delinquency, subject to Paragraph E of this rule, the state shall disclose or make available to the respondent:

(1) any statement made by the respondent child, or a co-respondent, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the children's court attorney;

(2) the respondent child's prior record of delinquent acts and probation records, if any, as is then available to the state;

(3) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defense or are intended for use by the state as evidence at the adjudicatory hearing, or were obtained from or belong to the respondent child;

(4) any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known to the children's court attorney;

(5) a written list of the names and addresses of all witnesses which the children's court attorney intends to call at the adjudicatory hearing, together with any recorded or written statement, made by the witness and any record of prior convictions of any such witness which is within the knowledge of the children's court attorney; and

(6) any material evidence favorable to the respondent which the state is required to produce under the United States or New Mexico Constitutions.

B. **Examining, photographing or copying evidence.** The respondent child may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. **Certificate.** The children's court attorney shall file with the clerk of the court at least ten (10) days prior to the adjudicatory hearing a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the children's court attorney to the respondent after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the respondent.

D. **Information not subject to disclosure.** Unless otherwise ordered, the children's court attorney shall not be required to disclose any material required to be disclosed by this rule if:

(1) the disclosure will expose a confidential informer; or

(2) there is substantial risk to some person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure to defense counsel.

E. **Failure to comply.** If the state fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 10-165 NMRA and Rule 10-137 NMRA.

[As amended, effective February 1, 2002; Rule 10-213 NMRA, recompiled and amended as Rule 10-231 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Subparagraphs (1) and (2) of Paragraph A and Paragraph B, changed "respondent" to "respondent child"; in Subparagraph (6) of Paragraph A, changed "due process clause of the United States Constitution" to "United States or

New Mexico Constitutions"; and in Paragraph E, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

The 2001 amendment, effective February 1, 2002, deleted "or need of supervision" following "petition alleging delinquency" near the middle of Paragraph A, deleted "or other children's court or" following "delinquent acts" near the beginning of Subparagraph A(2), deleted "buildings or places" following "tangible objects" near the beginning of Subparagraph A(3), inserted "recorded or written" preceding "statement" near the middle of Subparagraph A(5); deleted former Paragraph C, pertaining to "depositions"; redesignated Paragraphs D through F as Paragraphs C through E; and, in present Paragraph E, deleted "Rule 10-215 or hold the children's court attorney in contempt or take other disciplinary action" following "order pursuant to" and inserted "and Rule 10-137 NMRA" at the end.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-213 NMRA was recompiled as Rule 10-231 NMRA, effective January 15, 2009.

Compiler's notes. – Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-231 NMRA, relating to commitment information, was withdrawn, effective January 15, 2009.

10-232. Disclosure by the respondent child.

A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, within thirty (30) days after the date of the filing of a petition or not less than ten (10) days before the adjudicatory hearing, whichever date occurs earlier, the respondent child in a delinquency proceeding shall disclose or make available to the state:

(1) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the respondent child, and which the respondent child intends to introduce in evidence at the adjudicatory hearing which were prepared by a witness whom the respondent child intends to call at the adjudicatory hearing;

(2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the respondent child, which the respondent child intends to introduce in evidence at the adjudicatory hearing or which were prepared by a witness whom the respondent child intends to call at the adjudicatory hearing; and

(3) a list of the names and addresses of the witnesses the respondent child intends to call at the adjudicatory hearing, together with any recorded or written statement made by any identified witness.

B. **Examining, photographing or copying evidence.** The state may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. **Information not subject to disclosure.** Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of:

(1) reports, memoranda or other internal defense documents made by the respondent child, or the respondent child's attorneys in connection with the investigation or defense of the case;

(2) statements made by the respondent child to the respondent child's agents or attorneys.

D. **Certificate.** The respondent shall file with the clerk of the court at least ten (10) days prior to the adjudicatory hearing a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the respondent child after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the state.

E. **Failure to comply.** If the respondent child fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 10-165 NMRA and Rule 10-137 NMRA.

[As amended, effective February 1, 2002; Rule 10-214 NMRA, recompiled and amended as Rule 10-232 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A, C and E, changed "respondent" to "respondent child"; and in Paragraph E, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

The 2001 amendment, effective February 1, 2001, substituted "in a delinquency proceeding" for "in a petition alleging delinquency or need of supervision" in Paragraph A; inserted "which were prepared by a witness whom the respondent intends to call at the adjudicatory hearing" at the end of Subparagraph A(1); deleted "if the results or reports relate to his testimony" at the end of Subparagraph A(2); inserted "recorded or written" preceding "statement" and inserted "any identified" in Subparagraph A(3); substituted "or the respondent's attorneys" for "his attorney or agents" in Subparagraph C(1); and in the undesignated paragraph following Paragraph D, deleted "Rule 10-215 or hold the respondent or the defense counsel in contempt or take other disciplinary

action" following "an order pursuant to" and substituted "NMRA and Rule 10-137 NMRA" for "of these rules".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-214 NMRA was recompiled as Rule 10-232 NMRA, effective January 15, 2009.

10-233. Notice of alibi; entrapment defense.

A. **Notice.** Upon the written request of the children's court attorney, specifying as particularly as is known to the children's court attorney, the place, date and time of the commission of the delinquent act charged, a respondent child who intends to offer evidence of an alibi or entrapment as a defense shall, not less than ten (10) days before the adjudicatory hearing or such other time as the children's court may direct, serve upon such children's court attorney a notice in writing of the respondent child's intention to introduce evidence of an alibi or evidence of entrapment.

B. **Content of notice.** A notice of alibi or entrapment shall contain specific information as to the place at which the respondent child claims to have been at the time of the alleged offense and, as particularly as known to the respondent child or the respondent child's attorney, the names and addresses of the witnesses by whom the respondent child proposes to establish such alibi or raise an issue of entrapment. Not less than five (5) days after receipt of the respondent child's alibi witness list or at such other time as the children's court may direct, the children's court attorney shall serve upon the respondent child the names and addresses, as particularly as known to the children's court attorney, of the witnesses the state proposes to offer in rebuttal to discredit the respondent child's alibi or claim of entrapment at the adjudicatory hearing.

C. **Continuing duty to give notice.** Both the respondent child and the children's court attorney shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses which come to the attention of either party subsequent to filing their respective witness lists as provided in this rule.

D. **Failure to give notice.** If a respondent child fails to serve a copy of such notice as herein required, the children's court may exclude evidence offered by the respondent child for the purpose of proving an alibi, except the testimony of the respondent child. If such notice is given by a respondent child, the children's court may exclude the testimony of any witness offered by the respondent child for the purpose of proving an alibi or entrapment if the name and address of such witness was known to respondent child or the respondent child's attorney but was not stated in such notice. If the children's court attorney fails to file a list of witnesses and serve a copy on the respondent child as provided in this rule, the children's court may exclude evidence offered by the state to contradict the respondent child's alibi or entrapment evidence. If notice is given by the children's court attorney, the children's court may exclude the testimony of any witnesses offered by the children's court attorney for the purpose of contradicting the defense of alibi or entrapment if the name and address of such witness

is known to the children's court attorney but was not stated in such notice. For good cause shown the children's court may waive the requirements of this rule.

E. **Notice inadmissible.** The fact that a notice of alibi was given or anything contained in such notice shall not be admissible as evidence in the adjudicatory hearing.

[As amended, effective February 1, 2002; Rule 10-219 NMRA, recompiled and amended as Rule 10-233 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* Rule 5-508 NMRA of the Rules of Criminal Procedure for the District Courts.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in the title, changed "delinquency proceedings" to "entrapment defense"; in Paragraphs A, D, C and D, changed "respondent" to "respondent child"; in Paragraph A, deleted "In delinquency proceeding", changed "offer evidence of an alibi in the respondent's defense" to "offer evidence of an alibi or entrapment as a defense", and changed "intention to claim such alibi" to "intention to introduce evidence of an alibi or evidence of entrapment"; added the letter and title for Paragraph B; in Paragraph B, changed "Such notice shall contain" to "A notice of alibi or entrapment shall contain", changed "to establish such alibi" to "to establish such alibi or raise an issue of entrapment", and changed "alibi at the adjudicatory hearing" to "alibi or claim of entrapment at the adjudicatory hearing"; relettered Paragraph B, C and D as Paragraph C, D and E; and in Paragraph D, changed "serve a copy of notice of alibi" to "serve a copy of such notice as herein required" and changed "alibi" to "alibi or entrapment".

The 2001 amendment, effective February 1, 2002, inserted "delinquency proceedings" in the rule heading; substituted "the respondent's alibi" for "respondent's" in the third sentence in Paragraph A; and substituted "the notice of alibi" for "such notice as herein required" near the beginning of Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-219 NMRA was recompiled as Rule 10-233 NMRA, effective January 15, 2009.

10-234. Videotaped depositions; testimony of certain minors who are victims of sexual offenses.

A. **Videotaped depositions.** Upon motion, and after notice to opposing counsel, at any time after the filing of a petition in a children's court delinquency proceeding alleging criminal sexual penetration or criminal sexual contact on a child under sixteen (16)

years of age, the children's court may order the taking of a videotaped deposition of the victim, upon a showing that the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm. The children's court judge must attend any deposition taken pursuant to this paragraph and shall provide such protection of the child as the judge deems necessary.

B. **Use of videotaped depositions.** At the adjudicatory hearing of a child charged with criminal sexual penetration or criminal sexual contact on a child under sixteen (16) years of age, any part or all of the videotaped deposition of a child under sixteen (16) years of age taken pursuant to Paragraph A of this rule, may be shown to the children's court judge or the jury and admitted as evidence as an additional exception to the hearsay rule of the Rules of Evidence if:

(1) the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm;

(2) the deposition was presided over by a children's court judge and the child was present and was represented by counsel or waived counsel; and

(3) the child was given an adequate opportunity to cross-examine the child, subject to such protection of the child as the judge deems necessary.

C. **Other uses.** In addition to the use of a videotaped deposition as permitted by Paragraph B of this rule, a videotaped deposition may be used in a delinquency proceeding if permitted by the Rules of Evidence.

[As amended, effective January 1, 2001; Rule 10-217 NMRA, recompiled and amended Rule 10-234 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Rule 10-234 NMRA is almost identical to Rule 5-504 NMRA of the Rules of Criminal Procedure for the District Courts. *See* the commentary to that rule for a discussion of the history of that rule.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "delinquency proceedings" from the title; and in Paragraph C, changed "used for any of the reasons set forth in Paragraph N of Rule 10-216 NMRA" to "used in a delinquency proceeding if permitted by the Rules of Evidence".

The 2000 amendment, effective January 1, 2001, inserted "delinquency proceeding" following "children's court" in the first sentence of Paragraph A and substituted "child" for "respondent" and "sixteen (16)" for "thirteen (13)" throughout the rule.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-217 NMRA was recompiled as Rule 10-234 NMRA, effective January 15, 2009.

10-241. Insanity at time of commission of alleged offenses; notice of incapacity to form specific intent.

A. **Defense of insanity.** Unless upon good cause shown the court waives the time requirement of this rule, notice of the defense of insanity of the respondent child at the time of the commission of the delinquent act or alleged youthful offender offense must be given within ten (10) days after whichever of the following events occurs latest:

(1) service of the petition;

(2) an attorney is appointed or enters an appearance on behalf of the respondent child; or

(3) a notice is filed of an intent to seek adult sanctions.

B. **Mental examination.** Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child.

C. **Determination of issue of insanity.** When the defense of insanity at the time of the commission of the delinquent act or alleged youthful offender offense is raised, the issue shall be determined in nonjury trials by the court and in jury trials by a special verdict of the jury. When the determination is made and the respondent child is discharged on the ground of insanity, a judgment dismissing the petition with prejudice shall be entered, and any proceedings for commitment of the respondent child because of any mental disorder or developmental disability shall be pursuant to law.

D. **Statement made during mental examination or treatment.** A statement made by the child during a mental examination or treatment subsequent to the commission of the alleged delinquent act or alleged youthful offender offense shall not be admissible in evidence in any criminal or delinquency proceeding before or at adjudication on any issue other than that of the child's sanity, ability to form specific intent or competency to participate in the proceedings.

E. **Notice of incapacity to form specific intent.** If the respondent child intends to call an expert witness on the issue of whether the respondent child was incapable of forming the specific intent required as an element of an alleged delinquent act or alleged youthful offender offense, notice of such intention shall be given in the same manner and time as notice of insanity as a defense.

[As amended, effective January 1, 1987; as amended and recompiled effective May 15, 2000; Rule 10-220 NMRA, recompiled and amended as Rule 10-241 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by

Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, provided that the ten day limitation period for filing a notice of the defense of insanity commences when a notice of intent to seek adult sanctions is filed; in the title, after “commission of”, deleted “delinquent act” and added “alleged offenses”; deleted former Paragraph A, which required a notice of the defense of insanity to be filed within ten days after service of the petition or after an attorney was appointed or entered an appearance on behalf of the child, whichever event occurred last; added current Paragraph A; and in Paragraphs C, D and E, after “delinquent act”, added “or alleged youthful offender offense”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, deleted "In delinquency proceedings"; deleted the subparagraph letter for former Subparagraph (1) of Paragraph A; deleted former Subparagraph (2) of Paragraph A which provided for the determination of the defense of insanity by the court or by a special jury verdict and for the dismissal of the petition with prejudice upon a finding of insanity; and in Paragraph D, changed "psychiatric" to "mental" and changed "delinquency proceeding on any issue" to "delinquency proceeding before or at adjudication on any issue".

The 2000 amendment, effective for cases filed in the Children's Court on and after May 15, 2000, in Paragraph A, substituted the bold heading "Defense of insanity" for "Notice of insanity as a defense" and added Subparagraph A(2); deleted "before making any determination of competency" following "child" at the end of Paragraph B; in Paragraph C, substituted "by the child" for "by a person", inserted "criminal or delinquency" preceding "proceeding", substituted "of the child's" for "of respondent's", inserted "ability to form specific intenet or" and "to participate in the proceedings"; and, in Subsection E substituted "the respondent child" for "he".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-220 NMRA was recompiled as Rule 10-241 NMRA, effective January 15, 2009.

10-242. Determination of competency to stand trial.

A. **How raised.** The issue of a respondent child’s competency to stand trial may be raised by motion, or upon the court’s own motion, at any stage of the proceedings. Once competency is raised, all proceedings in the cause, including grand jury proceedings, shall immediately be stayed in accordance with Section 32A-1-3(G) NMSA 1978.

B. **Mental examination.** Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child before making any determination of competency.

C. **Determination.** The issue of competency shall be determined by the children's court judge, unless the judge finds there is evidence which raises a reasonable doubt as to the respondent child's competency to stand trial.

(1) If a reasonable doubt is raised prior to the adjudicatory hearing, the children's court, without a jury, may determine the issue of competency; or, in its discretion, may submit the issue to a jury, other than the jury sitting at the adjudicatory hearing.

(2) If the issue of competency is raised during the adjudicatory hearing, the children's court judge in nonjury cases shall determine the issue; in jury cases, the jury shall be instructed upon the issue. If, however, the respondent child has been previously found to be competent to stand trial in the proceedings, the issue of competency shall be redetermined in accordance with this rule only if the children's court judge finds that there is evidence not previously submitted which raises a reasonable doubt as to the respondent child's competency to participate in the proceedings.

D. **Proceedings on finding of incompetency.** If a respondent child is found incompetent to stand trial in a case in which the respondent child is accused of an act that would be a misdemeanor if the respondent child were an adult, the court shall dismiss the petition with prejudice and may recommend that the children's court attorney initiate proceedings under the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6-1 to 32A-6-22 NMSA 1978. In all other cases in which the respondent child is found incompetent to stand trial:

(1) further proceedings on the petition shall be stayed until the respondent child becomes competent to participate in the proceedings, provided that a petition shall not be stayed for more than one (1) year;

(2) where appropriate, the court may order treatment to enable the respondent child to attain competency to stand trial;

(3) the court may review and amend the conditions of release pursuant to Rule 10-225 NMRA of these rules; and

(4) the court shall review the respondent child's competency every ninety (90) days for up to one year.

E. **Remedy.** If, at any time during the year described in Paragraph D, the court finds that the respondent child cannot be treated to competency or if the court finds after one year that the respondent child is still incompetent to stand trial, then the case shall be

dismissed without prejudice. The court may recommend proceedings under the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6-1 to 32A-6-22 NMSA 1978.

F. **Mistrial.** If the finding of incompetency is made during the adjudicatory hearing, the children's court judge shall declare a mistrial.

[As amended, effective January 1, 1987; Rule 10-221 NMRA, recompiled and amended as Rule 10-242 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — This rule was changed in 2008 to reflect the changes to Section 32A-2-21(G) NMSA 1978 of the Children's Code that were enacted in 2005.

NMSA 1978, Section 32A-1-3(G) provides that a purpose of the Children's Code is "to provide continuity for children and families appearing before the children's court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family." Thus, when a child is involved in multiple proceedings, all proceedings in which the child is a respondent or defendant usually should be stayed when competency is raised in any proceeding.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, provided for a stay of the proceedings when competency is raised; in Paragraph A, added the second sentence; and in Paragraph E, added the title.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in the title, deleted "lack of capacity"; in Paragraph A and Subparagraphs (1) and (2) of Paragraph D, changed "respondent" to "respondent child"; in Paragraph A, changed "competency to stand trial in delinquency or child in need of supervision proceedings" to "competency to stand trail"; in Paragraph D, added "If a respondent child is found incompetent to stand trial"; in Subparagraph (1) of Paragraph D, added the provision at the end of the sentence that a petition shall not be stayed for more than one year; in Subparagraph (2) of Paragraph D, changed "children's court judge" to "court"; in Subparagraph (3) of Paragraph D, changed "children's court judge" to "court" and changed the reference from Rules 10-209 and 10-211 NMRA to Rule 10-225 NMRA; added Subparagraph (4) of Paragraph D; added Paragraph E; and relettered former Paragraph E as Paragraph F.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-221 NMRA was recompiled as Rule 10-242 NMRA, effective January 15, 2009.

Subparagraph (1) of Paragraph C of this rule controls over 32-1-35B NMSA 1978, providing for the dismissal of a delinquency petition without prejudice when a child is committed as a mentally disordered child. *State v. Doe*, 1981-NMCA-141, 97 N.M. 189, 637 P.2d 1244.

Disposition of petition regarding child that cannot be treated to competency. — Where the evidence persuades the court that a child cannot likely be treated to competency, the court may, in the sound exercise of its discretion, dismiss a delinquency petition without prejudice. *In re Daniel H.*, 2003-NMCA-063, 133 N.M. 630, 68 P.3d 176.

A trial court is not required to dismiss a petition in every case where the child is found incompetent to stand trial and not amenable to treatment; rather, the court has the discretion to proceed consistent with Paragraph (D) of this rule, stay the proceedings on the petition, and order conditions of release or treatment. Dismissal without prejudice is an additional option for the trial court under such circumstances. *In re Daniel H.*, 2003-NMCA-063, 133 N.M. 630, 68 P.3d 176.

10-243. Adjudication in delinquency proceedings; time limits.

A. **Child in detention.** If the child is in detention, the adjudicatory hearing shall be commenced within thirty (30) days from whichever of the following events occurs latest:

(1) the date the petition is served on the child;

(2) the date the child is placed in detention;

(3) if an issue is raised concerning the child's competency to participate at the adjudicatory hearing, the date an order is entered finding the child is competent to participate at the adjudicatory hearing. The court may order periodic judicial reviews pending completion of the competency evaluation. At each judicial review the child's attorney shall advise the court of the status of the evaluation;

(4) if the proceedings have been stayed pursuant to Rule 10-242 NMRA on a finding of incompetency to stand trial, the date an order is filed finding the child competent to participate in an adjudicatory hearing;

(5) if a mistrial is declared or a new adjudicatory hearing is ordered by the children's court, the date such order is filed;

(6) in the event of an appeal, the date the mandate or order is filed in the children's court disposing of the appeal;

(7) if the child fails to appear at any time set by the court, the date the child is taken into custody in this state after the failure to appear or the date an order is entered

quashing the warrant for failure to appear. If the child is taken into custody in another state, the thirty (30) days shall begin to run on the date the child is returned to this state;

(8) the date the court allows the withdrawal of a plea or rejects a plea; or

(9) if a notice of intent has been filed alleging the child is a "youthful offender," as that term is defined in the Children's Code [Chapter 32A NMSA 1978], the return of an indictment or the filing of a bind over order that does not include a "youthful offender" offense.

B. **Child not in detention.** If the child is not in detention, or has been released from detention prior to the expiration of the time limits set forth in this rule for a child in detention, the adjudicatory hearing shall be commenced within one-hundred twenty (120) days from whichever of the following events occurs latest:

(1) the date the petition is served on the child;

(2) if an issue is raised concerning the child's competency to participate at the adjudicatory hearing, the date an order is entered finding the child is competent to participate at the adjudicatory hearing;

(3) if the proceedings have been stayed on a finding of incompetency to participate in the adjudicatory hearing, the date an order is filed finding the child competent to participate in an adjudicatory hearing;

(4) if a mistrial is declared or a new adjudicatory hearing is ordered by the children's court, the date such order is filed;

(5) in the event of an appeal, the date the mandate or order is filed in the children's court disposing of the appeal;

(6) if the child fails to appear at any time set by the court, the date the child is taken into custody in this state after the failure to appear or the date an order is entered quashing the warrant for failure to appear. If the child is taken into custody in another state, the one-hundred twenty (120) days shall begin to run on the date the child is returned to this state;

(7) the date the court allows the withdrawal of a plea or rejects a plea; or

(8) if a notice of intent has been filed alleging the child is a "youthful offender," as that term is defined in the Children's Code, the return of an indictment or the filing of a bind over order that does not include a "youthful offender" offense.

C. **Multiple petitions.** If more than one petition is pending, the time limits applicable to each petition shall be determined independently.

D. **Extensions of time.** For good cause shown, the time for commencement of an adjudicatory hearing may be extended by the children's court, provided that the aggregate of all extensions granted by the children's court shall not exceed ninety (90) days, except upon a showing of exceptional circumstances. An order granting an extension shall be in writing and shall state the reasons supporting the extension. An order extending time beyond the ninety (90)-day limit set forth in this paragraph shall not rely on circumstances that were used to support another extension.

E. **Procedure for extensions of time.** The party seeking an extension of time shall file with the clerk of the children's court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the children's court. If the children's court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.

F. **Effect of noncompliance with time limits.**

(1) The children's court may deny an untimely motion for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

G. **Time waiver.** These limits may be waived through a waiver of time limits under Section 32A-2-7 NMSA 1978.

[As amended, effective February 1, 1997; May 15, 2000; as recompiled and amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 09-8300-003, effective April 6, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

Committee commentary. — The adjudicatory hearing is sometimes described in the Children's Code as the "hearing on the petition" and is the equivalent to a trial in the adult criminal system.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph F, after “untimely”, deleted “petition” and added “motion”; and in the committee commentary, after “system.”, deleted “The time limits in this rule for commencing an adjudicatory hearing are jurisdictional.”

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, increased the time by which the children’s court may extend the time for commencement of an adjudicatory hearing; provided the procedure for extensions of time in children’s court; authorized the children’s court to deny or grant, with sanctions, an untimely petition for extension of time; deleted the former title “Adjudicatory hearing” and added the current title; in Paragraph D, in the title, after “time”, deleted “by children’s court”, in the first sentence, after “extensions granted by the children's court”, deleted “judge may” and added “shall”, after “shall not exceed”, changed “sixty (60)” to “ninety (90)”, after “ninety (90) days”, added the remainder of the sentence, and added the second and third sentences; deleted former Paragraph E which permitted the Supreme Court or a judge of the Supreme Court to extend the time for commencement of an adjudicatory hearing, required that a petition be filed stating the extraordinary circumstances justifying an extension of time, provided time limitations for filing a petition and a response to the petition, provided that a hearing would be held only upon order of the Supreme Court, and required the Supreme Court to fix the time limit for commencement of the adjudicatory hearing if the court granted the extension of time; added current Paragraph E; in Paragraph F, deleted the former language of the paragraph which provided that if an adjudicatory hearing had not begun within the applicable time limits or an extension of time, then the children’s court could dismiss the petition with prejudice or sanctions; and in Paragraph F, added Subparagraphs (1) and (2).

The 2009 amendment, approved by Supreme Court Order No. 09-8300-003, effective April 6, 2009, in Paragraph F, after "the petition", replaced "shall" with "may" and added "or the court may consider other sanctions as appropriate".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Subparagraph (4) of Paragraph A, changed the reference from Rule 10-221 NMRA to Rule 10-242 NMRA; in Subparagraph (7) of Paragraph A, changed "taken into custody" to "taken into custody in this state" and added the last sentence; in Subparagraph (6) of Paragraph B, changed "taken into custody" to "taken into custody in this state" and added the last sentence; and added new Paragraph G.

The 2000 amendment, effective for cases filed in the Children's Court on and after May 15, 2000, substituted "Child" for "Respondent" in the bold heading of Paragraph A,

added the last two sentences in Subparagraph A(3), inserted "pursuant to Rule 10-221 NMRA" in Subparagraph A(4), added Subparagraph A(8) and redesignated former Subparagraph A(8) as A(9), added Subparagraph B(7) and redesignated former Subparagraph B(7) as B(8), added Paragraph C and redesignated the remaining paragraphs accordingly.

The 1997 amendment, effective February 1, 1997, substituted "child" for "respondent" and "defendant" throughout the rule; added Subparagraphs A(2), A(3), and B(2) and redesignated the remaining subparagraphs accordingly; added "or the date an order is entered quashing the warrant for failure to appear" in Subparagraphs A(7) and B(6); rewrote Subparagraphs A(8) and B(7), which formerly read: "in the event a motion for transfer is filed by the children's court attorney, the date an order is filed denying the motion"; substituted "time limits set forth in this rule for a child in detention" for "time limits set forth in Paragraph A of this rule" and substituted "one-hundred twenty (120) days" for "ninety (90) days" in Paragraph B; rewrote Paragraph C which formerly related to failure to appear; and in Paragraph D, added "by Supreme Court" to the paragraph heading, and in the first sentence, added "For good cause shown" at the beginning, deleted "only" following "extended", and deleted "for good cause shown" at the end.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-226 NMRA was recompiled as Rule 10-243 NMRA, effective January 15, 2009.

Cross references. — For time limitations on adjudicatory hearings, *see* Sections 32A-2-15, 32A-4-18 and 32A-4-19 NMSA 1978.

Untimely trial. — Where the child was arrested on February 7, 2010 for aggravated battery on a police officer; the state filed notice of intent to charge the child as a youthful offender on February 15, 2010 and filed a criminal information on March 16, 2010; the child was arraigned on March 14, 2010; and the child was held in detention since the child was arrested; and the court granted a sixty-day extension of time to commence trial until May 9, 2010, the child’s exclusive remedy for the delay in commencing trial lay in the speedy trial protections of the Sixth Amendment and Article II, Section 14 of the New Mexico Constitution. *State v. Leticia T.,* 2012-NMCA-050, 278 P.3d 553, cert. granted, 2012-NMCERT-005.

Effect of grand jury return of a no bill within the thirty-day deadline. — Where the State filed a delinquency petition against the child alleging that the child committed nine delinquent acts which included two youthful offender offenses and seven delinquent offender offenses; the petition was served on the child on March 16, 2009; the State presented all of the delinquent acts listed in the petition to a grand jury; on April 3, 2009, the grand jury found no probable cause and returned a no-bill on all of the delinquent acts; on April 13, 2009, the State filed a motion for an extension of time for trial; and on April 17, 2009, the court held a hearing on pending motions and dismissed the petition with prejudice based on timeliness grounds, the court lacked any procedural authority to dismiss the petition with prejudice on the ground that the thirty-day deadline had been violated because the grand jury no-bill constituted a dismissal of the petition without

prejudice within the thirty-day deadline and no charges were pending against the child at the time of the April 17, 2009 hearing. *State v. Oscar Castro H.,* 2012-NMCA-047, 277 P.3d 467, cert. denied, 2012-NMCERT-004.

Rule compared regarding noncompliance with time limits. — Despite notable similarities of their provisions, this rule, Rule 5-604 NMRA and Rule 10-320 NMRA, each has an additional provision that Rule 10-229 NMRA does not have. These rules all provide that noncompliance with the time limits of the rules or with the time limits of any extensions granted shall result in dismissal with prejudice of the charges against the accused, and Rule 10-229 NMRA has no such provision. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

Parole revocation. — The children's court procedure for an original petition alleging delinquency applies to petitions for revocation of parole. *State v. Doe*, 1977-NMCA-065, 90 N.M. 568, 566 P.2d 117.

Time limits jurisdictional. — Time limits set forth in this rule are jurisdictional; thus, an issue involving the improper extension of time for conducting a trial on the merits did not require preservation for appellate review. *In re Ruben O.*, 1995-NMCA-051, 120 N.M. 160, 899 P.2d 603.

Application to detained child. — The 30-day time limit specified in this rule applies to a detained child pending an adjudicatory hearing because the state has not proven any allegations against the child and such limit protects the child's liberty interests. *State v. Anthony M.*, 1998-NMCA-065, 125 N.M. 149, 958 P.2d 107, cert. denied, 125 N.M. 145, 958 P.2d 103.

The 30-day time limit does not apply to youthful offender proceedings in which probable cause is found; such proceedings are subject to the six-month time limit set forth in the Rules of Criminal Procedure. *State v. Michael S.*, 1998-NMCA-041, 124 N.M. 732, 955 P.2d 201.

"Detention" ends upon being committed. — A child who, while being detained on a second delinquency petition, is adjudicated delinquent and committed to a boys' school on the first delinquency petition is no longer in detention following such commitment and the 30-day time limit for commencing an adjudicatory hearing is, therefore, inapplicable. *State v. Anthony M.*, 1998-NMCA-065, 125 N.M. 149, 958 P.2d 107, cert. denied, 125 N.M. 145, 958 P.2d 103.

Child who was already in detention because of a prior delinquency adjudication was not considered to be in detention for purposes of this rule; therefore, the 120-day time limitation of Paragraph B applied to the second adjudication, following a mistrial. *State v. Augustine R.*, 1998-NMCA-139, 126 N.M. 122, 967 P.2d 462.

Calculation of time period. — The time period for holding a hearing becomes fixed by presence or absence of the detention of the child after the detention hearing. *State v. Doe*, 1977-NMCA-065, 90 N.M. 568, 566 P.2d 117.

Effect of subsequent detention. — A revocation of a child's release for a violation of the conditions thereof did not change the applicable time period for holding the hearing. *State v. Doe*, 1977-NMCA-065, 90 N.M. 568, 566 P.2d 117.

Child held on two separate detentions. — Where a child was the subject of two separate delinquency petitions at the time he was detained, the period for commencement of the adjudicatory hearing started when the children's court determined that the child would continue to be detained on one of the petitions, not when he was arrested on a bench warrant issued for the other petition. *State v. Isaiah A.*, 1997-NMCA-116, 124 N.M. 237, 947 P.2d 1057.

Good cause for continuance. — The absence of witnesses and the fact that the judge was occupied with a jury trial constituted good cause for continuances. *State v. Doe*, 1977-NMCA-065, 90 N.M. 568, 566 P.2d 117.

No abuse of discretion in granting continuance.— Where child appealed the district court's order granting the state's motion for extension to commence child's adjudication, the district court did not abuse its discretion in granting the state's motion, because the record established that child remained in detention because child's parents did not want him in their home and the extension was necessary in order to determine an appropriate placement for child, based on a pending community service agency assessment and identification of a possible out—of—home placement for child. *State v. Anthony L.*, 2019—NMCA—003, cert. denied.

"Appeal". — The term "appeal" in Subparagraph A(6) includes a request for review over which the appellate court lacks jurisdiction. *State v. Michael C.*, 1987-NMCA-118, 106 N.M. 440, 744 P.2d 913.

"Appeal", for purposes of Paragraph B(5), should be defined as a seeking of review by a higher court, including seeking supreme court review under a peremptory writ. *State v. Felipe V.*, 1986-NMCA-117, 105 N.M. 192, 730 P.2d 495.

Rule 10-226 [10-243] NMRA governs the time limits within which the children's court must hear a petition to revoke probation. *State v. Katrina G.*, 2007-NMCA-048, 141 N.M. 501, 157 P.3d 66.

Child in detention for a separate offense. — Where the child was in detention for a separate offense, but was not in detention for the original offense for which revocation of probation was sought, the 120 day time limit applied to the hearing on the petition to revoke probation. *State v. Katrina G.*, 2007-NMCA-048, 141 N.M. 501, 157 P.3d 66.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

10-243.1. Adjudication in youthful offender proceedings; time limits.

A. **Youthful offender offenses.** The following time limits shall apply when a notice of intent to seek adult sanctions has been filed and an indictment or bind over order is returned that includes a “youthful offender” offense.

(1) ***Arraignment.*** The alleged youthful offender shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the information or indictment or the date of arrest, whichever is later.

(2) ***Time limits for commencement of adjudicatory hearing.*** The adjudicatory hearing of an alleged youthful offender shall be commenced within six (6) months after whichever of the following events occurs last:

(a) The date of arraignment, or waiver of arraignment, in the children’s court of any alleged youthful offender;

(b) If the proceedings have been stayed to determine the competency of the youthful offender to participate at the adjudicatory hearing, the date an order is filed finding the alleged youthful offender competent to participate at the adjudicatory hearing;

(c) If a mistrial is declared or a new adjudicatory hearing is ordered by the children’s court, the date such order is filed;

(d) In the event of an appeal, including interlocutory appeals, the date the mandate or order is filed in the children’s court disposing of the appeal; or

(e) If the alleged youthful offender is arrested or surrenders in this state for failure to appear, the date or arrest or surrender of the youthful offender.

B. **Extensions of time.** The children’s court may extend the time for commencement of the adjudicatory hearing as set forth in ths paragraph. An order granting an extension shall be in writing and shall state the reasons supporting the extension.

(1) For good cause shown, the children’s court may extend the time for commencement of the adjudicatory hearing for six (6) months.

(2) The children's court may grant one (1) additional six (6)-month extension but in doing so shall consider the following factors:

(a) the complexity of the case;

(b) the length of the delay in bringing the alleged youthful offender to adjudication;

(c) the reason for the delay in bringing the alleged youthful offender to adjudication;

(d) whether the alleged youthful offender has asserted the right to a speedy adjudication or acquiesces in the delay; and

(e) the extent of prejudice, if any, to the parties from the delay.

(3) The aggregate of all extensions of time granted by the children's court shall not exceed one (1) year, except upon a showing of exceptional circumstances. An order extending time beyond the one (1)-year limit set forth in this subparagraph shall not rely on circumstances that were used to support another extension.

C. **Procedure for extensions of time.** The party seeking an extension of time shall file with the clerk of the children's court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the children's court. If the children's court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.

D. **Effect of noncompliance with time limits.**

(1) The children's court may deny an untimely motion for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — The adjudicatory hearing is sometimes described in the Children's Code as the "hearing on the petition" and is the equivalent to a trial in the adult criminal system.

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

10-244. Adjudicatory hearing; general procedure.

A. **Conduct.** Except as otherwise provided, adjudicatory hearings in delinquency cases shall be conducted in the same manner as trials are conducted under the Rules of Criminal Procedure for the District Courts.

B. **Children's court attorney.** In delinquency cases, the children's court attorney shall represent the state at all adjudicatory hearings.

[As amended, effective February 1, 1997; Rule 10-227 NMRA, recompiled and amended as 10-244 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — The rule establishes general procedures for both jury and nonjury adjudicatory hearings and, by reference, adopts the specific provisions of Rules 5-606 through 5-611 NMRA of the Rules of Criminal Procedure for the District Courts. However, the procedure for demanding a jury trial and certain other aspects of jury trials established by the Rules of Criminal Procedure for the District Courts are not applicable to jury trials in the children's court under Rule 10-244 NMRA. *See* commentary to Rule 10-245 NMRA of these rules.

Subsection B of Section 32A-2-16 NMSA 1978 provides that all hearings on petitions alleging delinquency shall be open to the public unless the court makes a finding of exceptional circumstances.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "Delinquency proceedings" from the title.

The 1997 amendment, effective February 1, 1997, added "Delinquency proceedings" in the rule heading, and inserted "in delinquency cases" in Paragraph A and "In delinquency cases" in Paragraph B.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-227 NMRA was recompiled as Rule 10-244 NMRA, effective January 15, 2009.

Cross references. — For children's court attorney, *see* Section 32A-1-6 NMSA 1978.

For conduct of hearings, *see* Section 32A-2-16 NMSA 1978.

For Rules of Criminal Procedure for the District Courts, *see* Rule 5-101 NMRA et seq.

Nature of proceedings. — Juvenile proceedings to determine "delinquency," which may lead to a commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination. *Peyton v. Nord*, 1968-NMSC-027, 78 N.M. 717, 437 P.2d 716.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

10-245. Jury trial; delinquency proceedings.

A. **Waiver.** Unless the respondent child knowingly and voluntarily waives the right to a jury trial, trial shall be by jury on all delinquency petitions when the offense(s) alleged would be triable by jury if committed by an adult.

B. **Peremptory challenges.** In all trials by jury in delinquency proceedings, the state shall be entitled to two (2) peremptory challenges and the defense, three (3). When two (2) or more respondents are jointly tried, two (2) additional challenges shall be allowed to the defense and one (1) to the state for each additional respondent.

[As amended, effective September 1, 1995; Rule 10-228 NMRA, recompiled and amended as Rule 10-245 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — A written jury demand is no longer required for delinquency proceedings. *See State v. Eric M.*, 1996-NMSC-056, 122 N.M. 436, 925 P.2d 1198. In *State v. Eric M.*, the Supreme Court held that juveniles have a state constitutional right to a jury trial and must be accorded that right absent an understanding and intelligent decision to waive such right.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, in the title, added “delinquency proceedings”.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, changed the title from "Demand" to "Waiver", deleted the rule which provided that a demand for a trial had to be filed within 10 days from the date the petition was filed or from the appointment of an attorney for the respondent or

entry of appearance by counsel for respondent, whichever was later and that if a demand was not timely filed, trail by jury was waived, and added the current rule.

The 1995 amendment, effective September 1, 1995, added "delinquency proceedings" in the rule heading and, in the first sentence in Paragraph B, substituted "delinquency proceedings" for "children's court", and changed the number of preemptory challenges allowed from three and five to two and three, respectively.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-228 NMRA was recompiled as Rule 10-245 NMRA, effective January 15, 2009.

Cross references. — For jury trial on issue of alleged delinquent acts, *see* Section 32A-2-16 NMSA 1978.

Right to trial by jury. — Since at the time of the adoption of the state constitution, a juvenile could not have been imprisoned without trial by jury, no change in terminology or procedure may be invoked whereby incarceration might now be accomplished in manner involving the denial of the right to a jury trial. *Peyton v. Nord*, 1968-NMSC-027, 78 N.M. 717, 437 P.2d 716.

The children's court erred in concluding that a child was not entitled to a jury trial when he failed to make a timely jury demand as provided in Paragraph A; the rule can do no more than encourage a counseled decision at an early stage of the proceedings. *State v. Eric M.*, 1996-NMSC-056, 122 N.M. 436, 925 P.2d 1198.

Timeliness of demand. — Since the state was unable to establish the date the child's attorney was served with a copy of her appointment, the 10-day period within which to demand a jury trial began to run on the day following the appearance of the attorney at the detention hearing. *In re Ruben O.*, 1995-NMCA-051, 120 N.M. 160, 899 P.2d 603.

Waiver of jury trial. — Where a child has a right to a trial by jury, such right may be waived, but only by an express waiver. *State v. Doe*, 1980-NMCA-091, 94 N.M. 637, 614 P.2d 1086.

Jury trial may be waived, but waiver should be permitted only when the juvenile has been advised by counsel and it is amply clear that an understanding and intelligent decision has been made; if the juvenile, after considering the advantages and disadvantages and having been advised by counsel, waives trial by jury, he would enjoy the benefits generally felt to attach through trial to court. *Peyton v. Nord*, 1968-NMSC-027, 78 N.M. 717, 437 P.2d 716.

The state has no right grounded in either state statute, court rule, or the state constitution to impose a right of concurrence on the right of a child to waive his jury trial. *In re Christopher K.*, 1999-NMCA-157, 128 N.M. 406, 993 P.2d 120.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts §§ 43, 88.

10-245.1. Jury trial; youthful offender proceedings.

A. **Waiver.** All trials in youthful offender proceedings, where the respondent child has been indicted or bound over for a “youthful offender” offense, shall be by jury, unless the respondent child waives a jury trial. The court shall ensure that any waiver is knowing, intelligent, and voluntary.

B. **Number of jurors.** In all youthful offender jury trials, the trial shall be to a twelve-member jury.

C. **Procedure for trial by jury.** Youthful offender proceedings tried by jury shall be tried according to the procedures in the Rules of Criminal Procedure for the District Courts as prescribed by Rule 5-605 NMRA through Rule 5-614 NMRA.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — Following the Supreme Court’s ruling in *State v. Jones*, 2010-NMSC-012, 148 N.M. 1, 229 P.3d 474, the Committee found it appropriate to clarify that, to provide children with no fewer rights than adults when facing a potential adult sentence, jury trials in youthful offender proceedings shall proceed with a twelve-member jury and all of the procedural protections granted to adult defendants. A twelve-member jury in youthful offender proceedings is provided for by NMSA 1978, Section 32A-2-16.

The children’s court should submit special interrogatories to the jury to support the court’s possible consideration of whether the child is amenable to treatment or rehabilitation as a child in available facilities or eligible for commitment to an institution for children with developmental disabilities or mental disorders. *See State v. Rudy B.*, 2010-NMSC-045, 36, 149 N.M. 22, 243 P.3d 726 (“[W]e think it prudent to submit the offense-specific factors in Section 32A-2-20(C)(2), (3) and (4) to the jury during the trial perhaps by way of special interrogatories.”); *see also* UJI 14-9005 NMRA (Children’s court; special verdict; amenability specific factors).

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

10-246. Dispositional proceedings.

A. **Access to reports.** At least five (5) days before a hearing, copies of any social, diagnostic or other predisposition reports ordered by or submitted to the court shall be provided to the parties.

B. **Time limits.** When the respondent child is in detention, dispositional proceedings shall begin within thirty (30) days from the date the court concludes the adjudicatory hearing in a delinquency proceeding or trial in a youthful offender proceeding or accepts an admission of the factual allegations of the petition. The dispositional proceedings shall be concluded as soon as practical. If the hearing is not begun within the time specified in this paragraph, unless the respondent child has agreed to the delay or has been responsible for the failure to comply with the time limits, the respondent child shall be released from detention on such conditions as appropriate until the dispositional hearing can be commenced.

C. **Commitment for diagnosis.** The court may order a respondent child adjudicated as a delinquent child or convicted in a youthful offender proceeding to be committed to a facility for purposes of diagnosis and recommendations to the court as to what disposition is in the best interests of the child and the public. If the court enters an order transferring the child for a diagnostic commitment pursuant to the Children's Code [32A-1-1 NMSA 1978], the dispositional proceedings shall be recommenced within forty-five (45) days after the filing of the court's order. If the hearing is not recommenced within the time specified in this paragraph, unless the respondent child has agreed to the delay or has been responsible for the failure to comply with the time limits, the respondent child shall be released from detention on such conditions as appropriate until the dispositional hearing can be commenced.

D. **Extension of time.** For good cause shown the time for commencing a disposition hearing may be extended by the Supreme Court, a justice thereof, or a judge designated by the Supreme Court. The party seeking an extension of time shall file with the clerk of the Supreme Court a verified petition for extension concisely stating the facts petitioner deems to constitute good cause for an extension of time to commence the dispositional hearing. The petition shall be filed within the applicable time limits prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limits if it is based on exceptional circumstances beyond the control of the state or children's court which justify the failure to file the petition within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the Supreme Court. If the Supreme Court finds that there is good cause for the granting of an extension beyond the applicable time limit, it shall fix the time limit within which the dispositional hearing must be commenced.

[As amended, effective April 1, 1997; as amended by Supreme Court Order No. 06-8300-004, effective March 15, 2006; Rule 10-229 NMRA, recompiled and amended as

Rule 10-246 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — The purpose of the five day notice requirement is to assure that the respondent and the state have a reasonable opportunity to test the accuracy of any social, medical, psychological and psychiatric reports before they are considered by the court at disposition.

There is no time limit for the dispositional hearing of a child who is not in detention or undergoing diagnosis, but the time limits imposed by this rule and the procedures that must be followed for an extension when the child is in detention or committed for diagnosis are mandatory. The remedy when the hearing is not begun or recommenced as provided in the rule is release from detention, not dismissal of the case.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A, B, and D, changed "child" to "respondent child".

The 2006 amendment, approved by Supreme Court Order No. 06-8300-004 effective March 15, 2006, adds youthful offenders to the first sentence of Paragragh C and adds the last sentence of Paragraph C providing for the release of a child if the dispositional proceedings are not commenced within the time prescribed.

The 1997 amendment, effective April 1, 1997, substituted "proceedings" for "hearing" in the rule heading, rewrote Paragraphs A and B, and added Paragraphs C and D.

Recompilations. – Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-229 NMRA was recompiled as Rule 10-246 NMRA, effective January 15, 2009.

Cross references. — For hearing regarding disposition of child, *see* Section 32A-2-13 NMSA 1978.

For predisposition studies, reports and examinations, *see* Section 32A-2-17 NMSA 1978.

For disposition of youthful offender, *see* Section 32A-2-20 NMSA 1978.

Effect of 1997 amendment. — The 1997 amendment to this rule considerably shortened the time permitted for diagnostic commitment. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

The 1997 amendment's reduction of the time limit to 45 days brought the rule into compliance with the Children's Code. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

Remedy for failure to comply with time limits. — The remedy for failure of the court to comply with the time limit to recommence dispositional proceedings of a child, adjudicated as a youthful offender, who is committed for diagnosis prior to disposition is the release of the child from custody until the hearing can proceed, not the dismissal of charges or the vacation of a judgment. *State v. Stephen F.*, 2006-NMSC-030, 140 N.M. 24, 139 P.3d 184.

Committee commentary to rule was not changed in any way after the 1997 amendment significantly changed the rule. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

When court filed written order directing that child be committed for diagnostic evaluation, the time limit for recommencement of the dispositional hearing was triggered. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

Time limit in Paragraph C is mandatory. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, *aff'd*, 2006-NMSC-030, 140 N.M. 24, 139 P.3d 184.

Trial court violated Paragraph C of this rule where it did not recommence child's dispositional hearing within 45 days of an order committing child for diagnostic evaluation. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, *aff'd*, 2006-NMSC-030, 140 N.M. 24, 139 P.3d 184.

Diagnostic evaluation. — The 45-day time limit in Rule 10-229 NMRA, rather than the 90-day time limit in Rule 5-701 NMRA, applies to a child, adjudicated as a youthful offender, who is committed for diagnosis prior to disposition. *State v. Stephen F.*, 2006-NMSC-030, 140 N.M. 24, 139 P.3d 184.

Addition of Paragraph D by 1997 amendment manifests a heightened emphasis on the importance of the time limits, as compared to the pre-1997 version. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

Purpose of time requirements is to ensure prompt handling of children's court matters. *State v. Doe*, 1979-NMCA-063, 93 N.M. 31, 595 P.2d 1221.

Court's discretion does not permit it to delay a hearing. — There is no conflict between the time limit within which a dispositional hearing must be held under Paragraph B of this rule and Subsection H of 32-1-31 NMSA 1978 granting discretion to the children's court in a wide variety of circumstances; the rule simply states that in one specific circumstance that discretion should not be exercised to delay a hearing. *In re Paul T.*, 1994-NMCA-123, 118 N.M. 538, 882 P.2d 1051.

If Paragraph B violated, judgment void. — Judgment entered by the children's court revoking probation and committing a juvenile to the custody of the Children, Youth and Families Department was void because the dispositional hearing following the conclusion of the adjudicatory hearing was not held within the time period mandated by Paragraph B. *In re Paul T.*, 1994-NMCA-123, 118 N.M. 538, 882 P.2d 1051.

Where a defendant agrees to be sentenced as an adult by entering into a plea and disposition agreement in which the defendant also waives any motions, defenses, objections, or requests, either made or that could thereafter be made, the defendant has waived the time limit on dispositional hearings under this rule. *State v. Timothy T.*, 1998-NMCA-053, 125 N.M. 96, 957 P.2d 525, cert. denied, 125 N.M. 147, 958 P.2d 105.

When time limit not waived. — A child does not waive the time limit of this rule either by requesting a delay in transportation to the Youth Diagnostic Center or by requesting a continuance of a dispositional hearing which itself would have been untimely. *State v. Doe*, 1980-NMCA-046, 94 N.M. 282, 609 P.2d 729.

Time limit in Paragraph B is not suspended by special master's proceedings. — The running of the time limit in Paragraph B, within which a dispositional hearing must be held, is not suspended until exceptions are filed under Paragraph E of Rule 10-111, and the children's court judge acts on the report of the special master. *In re Paul T.*, 1994-NMCA-123, 118 N.M. 538, 882 P.2d 1051.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

10-247. Amenability hearing.

A. **Definition.** For purposes of this rule, an “amenability hearing” is an evidentiary hearing to determine if the child is not amenable to treatment or rehabilitation as a child in available facilities and if the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

B. **Separate proceeding.** An amenability hearing is a separate proceeding from an adjudicatory hearing and a subsequent dispositional or sentencing hearing. The court shall not impose adult sanctions without holding an amenability hearing.

C. **Time.** Except for good cause shown, the amenability hearing,

(1) shall be held after the trial or the entry of an admission or of a plea of no contest; and

(2) shall begin no later than thirty (30) days after the date the trial was concluded or the admission or plea was entered.

D. **Rules of evidence.** An amenability hearing is not a dispositional hearing under Rule 11-1101 NMRA. The rules of evidence, therefore, shall apply.

E. **Burden of proof.** The burden is on the state to prove that the child is not amenable to treatment or rehabilitation as a child in available facilities and that the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

F. **Findings.** The Court shall make findings on the record on each of the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) whether a firearm was used to commit the alleged offense;

(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(5) the maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history, and disability;

(6) the record and previous history of the child;

(7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available; and

(8) any other relevant factor.

G. **Disclosure by the state.** The state must disclose to the defense not later than ten (10) days prior to an amenability hearing what witnesses and evidence the state will rely on to prove each factor listed in Paragraph D of this rule.

H. **Disclosure by the child.** The child must disclose to the state not later than ten (10) days prior to an amenability hearing what, if any, witnesses and evidence will be presented on the child's behalf.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. —

Timing of hearing

The presumptive time for holding an amenability hearing is after the adjudicatory hearing or the entry of an admission or of a plea of no contest. *Cf. State v. Jones*, 2010-NMSC-012, ¶ 31, 148 N.M. 1, 229 P.3d 474 ("[Alleged youthful offenders] remain in the juvenile system until after adjudication and may be sentenced as adults only after an amenability hearing."). In certain circumstances, however, the children's court may find it necessary to hold the amenability hearing earlier in the proceeding to protect the rights and interests of the parties. For example, in a case in which the maximum adult sanction is significantly greater than the maximum juvenile disposition, uncertainty over the outcome of an amenability hearing may frustrate the parties' ability to negotiate a plea agreement. The rule therefore permits the children's court, for good cause shown, to hold the amenability hearing before the trial or the entry of an admission or of a plea of no contest.

Standard of proof

To invoke an adult sentence against a child, NMSA 1978, Section 32A-2-20(B) requires the children's court to find that the child (1) is not amenable to treatment or rehabilitation as a child in available facilities, and (2) is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. However, Section 32A-2-20 is silent about the standard of proof upon which these findings must be based. The committee agrees with Judge Bustamante's reasoning in *State v. Gonzales* that the appropriate standard is clear and convincing evidence. *See* 2001-NMCA-025, ¶¶ 52-65, 130 N.M. 341, 24 P.3d 776 (Bustamante, J., specially concurring) (reasoning that the clear-and-convincing-evidence standard should apply at the amenability hearing as a matter of procedural due process); *cf. State v. Rudy B.* 2010-NMSC-045, 59, 149 N.M. 22, 243 P.3d 726 (holding that the Sixth Amendment does not require the amenability determination to be submitted to a jury and proven beyond a reasonable doubt); IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Transfers Between Courts* § 2.2(A)(2), *available at* http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/JJ_Standards_Transfers_Between_Courts.authcheckdam.pdf ("The juvenile court should waive its jurisdiction only upon finding . . . that by clear and convincing evidence the juvenile is not a proper person to be handled by the juvenile court.").

Jury findings

The findings required by Subparagraphs (F)(2), (3), and (4) of this Rule must be made by a jury at the adjudicatory hearing. *See State v. Rudy B.*, 2010-NMSC-045, 36, 149 N.M. 22, 243 P.3d 726 ("[W]e think it prudent to submit the offense-specific factors in Section 32A-2-20(C)(2), (3) and (4) to the jury during the trial perhaps by way of special interrogatories."). Thus, the children's court should submit special interrogatories to the jury to support the court's possible consideration of whether the child is amenable to treatment or rehabilitation as a child in available facilities or eligible for commitment to

an institution for children with developmental disabilities or mental disorders. *See* UJI 14-9005 NMRA (Children's court; special verdict; amenability specific factors).

Timing of required reports

Prior to an amenability hearing, the Children, Youth and Families Department must prepare a report on the child's amenability to treatment. *See* NMSA 1978, § 32A-2-17; *State v. Jose S.*, 2007-NMCA-146, 142 N.M. 829, 171 P.3d 768. If the child is found not amenable to treatment or rehabilitation as a child in available facilities and not eligible for commitment to an institution for children with developmental disabilities or mental disorders, the adult probation and parole division of the corrections department must prepare a report before sentencing.

The ten (10)-day notice requirement in Paragraph G is longer than the five (5) days required by NMSA 1978, Section 32A-2-17(A), for providing a predispositional report to the defense. To the extent that this rule conflicts with Section 32A-2-17(A), the Committee considers the rule to be controlling. *See Ammerman v. Hubbard Broadcasting, Inc.*, 1976-NMSC-031, ¶ 16, 89 N.M. 307, 551 P.2d 1354 (affirming that the power to make rules that regulate practice and procedure in the courts are vested exclusively in the Supreme Court).

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

10-251. Judgment; delinquency offenses.

If the child is found to have committed a delinquent act, a judgment to that effect shall be entered. If the child is found not to be a delinquent child, a judgment to that effect shall be entered. The judgment and disposition shall be rendered in open court and thereafter a written judgment and disposition shall be signed by the judge and filed. The clerk shall give notice of entry of judgment and disposition.

[Children's Court Rule 50 NMSA 1953; Children's Court Rule 50 NMSA 1978; Rule 10-230 SCRA 1986; as amended effective April 1, 1997; Rule 10-230 NMRA, recompiled as Rule 10-251 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, deleted former provisions regarding appeals; in the title of the rule, deleted "Judgments and appeals" and added the current title; deleted the designation and former title of Paragraph A; deleted former Paragraph B which required the court to advise the child of the right to appeal and the right to appoint counsel and provided that failure to advise the child tolled the time for taking an appeal; and deleted former

Paragraph C which provided that appeals were governed by the Rules of Appellate Procedure.

The 1997 amendment, effective April 1, 1997, substituted "child" for "respondent" throughout the rule, deleted "or is found to have committed an offense defined as need of supervision" following "act" in the first sentence in Paragraph A, deleted the former second sentence in Paragraph A which read "If it also determined that the respondent is in need of care or rehabilitation, a judgment that the child is a delinquent child or a child in need of supervision shall be entered", deleted "or a child in need of supervision" following "delinquent child" in the present second sentence in Paragraph A, inserted "in open court" in the third sentence in Paragraph A, and deleted "or need of supervision" following "delinquency" in Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-230 NMRA was recompiled as Rule 10-251 NMRA, effective January 15, 2009.

Cross references. — For appeals from children's court, *see* Section 32A-1-17 NMSA 1978.

For judgment in proceedings under Children's Code, *see* Section 32A-2-18 NMSA 1978.

For disposition of child, *see* Sections 32A-2-19 and 32A-4-22 NMSA 1978.

For limitations on dispositional judgments, and modification, termination or extension of court orders, *see* Section 32A-2-23 NMSA 1978.

For periodic review of dispositional judgments, *see* Section 32A-4-25 NMSA 1978.

There are two aspects to the determination that child is delinquent child: (1) the act which he committed; and (2) the need for care or rehabilitation. *State v. Doe*, 1977-NMCA-023, 90 N.M. 249, 561 P.2d 948.

State has the right to appeal judgments of the children's court. *State v. Doe*, 1978-NMCA-124, 92 N.M. 354, 588 P.2d 555.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 106 et seq.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt, 8 A.L.R.3d 657.

10-251.1. Judgment; youthful offenders.

A. **Judgment.**

(1) ***Juvenile disposition.*** Unless the court has made the necessary findings to sentence a youthful offender as an adult, a judgment and disposition shall be rendered in accordance with Rule 10-251 NMRA.

(2) ***Adult sentence.*** If the court has made the necessary findings to sentence a youthful offender as an adult, a judgment of guilty shall be rendered, and Paragraphs B, C, and D of this rule shall apply. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and filed. The clerk shall give notice of entry of judgment and sentence.

B. **Sentencing Hearing.** Except for good cause shown, the sentencing hearing shall begin within ninety (90) days from the date that the court entered the necessary findings to sentence a youthful offender as an adult.

C. **Judgment and Sentence.** Within thirty (30) days after the conclusion of the sentencing hearing, the court shall enter a judgment and sentence.

D. **Costs and Fees.** In every case in which there is a conviction, costs and fees may be imposed as provided by law.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

Committee commentary. — If the child is found not amenable to treatment or rehabilitation as a child in available facilities and not eligible for commitment to an institution for children with developmental disabilities or mental disorders, the adult probation and parole division of the corrections department must prepare a report before sentencing. *See* NMSA 1978, § 32A-2-17; *State v. Jose S.*, 2007-NMCA-146, 142 N.M. 829, 171 P.3d 768.

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014.]

10-252. Modification of judgment.

A. **Correction of judgment.** The court may correct an unlawful disposition at any time and may correct a commitment imposed in an unlawful manner within the time provided by this rule for the reduction of the term of commitment.

B. **Reduction of term of commitment.** A motion to modify or reconsider the disposition may be filed by any party or raised by the court on its own motion:

(1) if the initial commitment period is two (2) years or less, within thirty (30) days after the judgment is filed;

(2) if the initial commitment period is longer than two (2) years, within ninety (90) days after the judgment is filed;

(3) within thirty (30) days after filing in the children's court of a mandate affirming the judgment or dismissal of an appeal; or

(4) upon revocation of probation as provided by law.

C. **Form of order.** A form of order setting a hearing and providing for transportation shall be submitted with the motion to modify or reconsider disposition.

D. **Disposition.** The court shall enter an order either denying or granting a motion to modify or reconsider disposition within sixty (60) days after the date it is filed or the motion is deemed denied. If the court grants the motion, the court may change the disposition from incarceration to probation or enter such other order as deemed appropriate.

[Adopted, effective May 3, 1999; as amended, effective June 15, 2003; Rule 10-230.1 NMRA, recompiled and amended as Rule 10-252 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, changed "unlawful disposition in a delinquency proceeding" to "unlawful disposition"; in Paragraph B, changed "by the respondent in a delinquency proceeding" to "by any party or raised by the court of its own motion"; in Subparagraph (2) of Paragraph B, deleted the former division of the Subparagraph (2) into Items (a) and (b), relettered former Item (b) of Subparagraph (2) of Paragraph B as Subparagraph (3) of Paragraph B, and changed "receipt by the court" to "within thirty (30) days after filing in the children's court"; deleted former Subparagraph (3) of Paragraph B which provided for the filing of a motion within 30 days after the filing of any order of judgment of the appellate court denying review or having the effect of upholding the disposition; in Paragraph C, changed "setting a hearing on the motion" to "setting a hearing and providing for transportation shall be submitted with the motion" and changed "reconsider disposition shall be submitted with the motion" to "reconsider disposition"; and in Paragraph D, changed 90 days to 60 days.

The 2003 amendment, effective June 15, 2003, in Paragraph A, inserted "in a delinquency proceeding" following "unlawful disposition"; in Paragraph B, in the unnumbered paragraph, deleted "judgment or" following "reconsider the" and added "in a delinquency proceeding" to the end, rewrote Subparagraph (1) and added Subparagraphs (2), (3) and (4); inserted Paragraph C, and added the final sentence in Paragraph D.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-230.1 NMRA was recompiled as Rule 10-252 NMRA, effective January 15, 2009.

Cross references. — For modification of judgments in youthful offender and serious youthful offender proceedings, *see* Rule 5-801 NMRA.

The thirty-day time limit does not apply to court-invited motions to reconsider. *State v. Dylan A.*, 2007-NMCA-114, 142 N.M. 467, 166 P.3d 1121, cert. granted, 2007-NMCERT-008.

There is no conflict between Paragraph B of this rule and 32A-2-23 G NMSA 1978. *In re Michael L.*, 2002-NMCA-076, 132 N.M. 479, 50 P.3d 574, cert. denied, 132 N.M. 484, 51 P.3d 527.

Motions under control of court. — Motions initiated by the children's court or the state remain under the control of the children's court. *In re Michael L.*, 2002-NMCA-076, 132 N.M. 479, 50 P.3d 574, cert. denied, 132 N.M. 484, 51 P.3d 527.

Time limitation. — Where this rule required juvenile's motion to reconsider, filed pursuant to 32A-2-23G NMSA 1978, to be ruled upon within 90 days after filing, children's court erred in ruling on motion after the 90 day period elapsed. *In re Christobal V.*, 2002-NMCA-077, 132 N.M. 474, 50 P.3d 569, cert. denied, 132 N.M. 484, 51 P.3d 527.

Based on the explicit language of Paragraph B of this rule, the 90-day limitation period applies only to child-initiated motions. *In re Michael L.*, 2002-NMCA-076, 132 N.M. 479, 50 P.3d 574, cert. denied, 132 N.M. 484, 51 P.3d 527.

10-253. Appeals.

A. **Advisement of right to an appeal.** In a case which has gone to an adjudicatory hearing on a denial of the allegations of the petition, the court shall advise the child of the right to appeal and of the right of a person who is unable to pay the cost of an appeal to proceed at state expense. Failure of the court to so advise the child shall toll the time for taking an appeal. The advice shall be given,

(1) for a delinquent offender or a youthful offender subject to juvenile sanctions, at the time of disposition; and

(2) for a youthful offender subject to an adult sentence, at the time of imposing or deferring sentence.

B. **Appeals.** The Rules of Appellate Procedure shall govern appeals from

(1) judgments and dispositions on petitions alleging delinquency; and

(2) judgments and sentences on petitions alleging the commission of a youthful offender offense.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

10-261. Probation.

A. **Probation.** At the conclusion of the dispositional hearing, the court may enter an order placing the child on probation under terms and conditions as the court may prescribe. An order placing a child on probation shall be substantially in the form approved by the Supreme Court.

B. **Revocation of probation.** If the child fails to fulfill the terms or conditions of probation, the children's court attorney may file a petition to revoke probation.

C. **Revocation procedure.** Proceedings to revoke probation shall be conducted in the same manner as proceedings on petitions alleging delinquency. The child whose probation is sought to be revoked shall be entitled to all rights that a child alleged to be delinquent is entitled to under law and these rules, except that

(1) no preliminary inquiry shall be conducted;

(2) the hearing on the petition shall be to the court without a jury;

(3) the petition shall be styled as a "Petition to Revoke Probation" and shall state the terms of probation alleged to have been violated and the factual basis for these allegations; and

(4) the petition may be filed any time prior to expiration of the period of probation.

[As amended, effective August 1, 1999; Rule 10-232 NMRA, recompiled as Rule 10-261 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 18-8300-011, effective for all cases filed on or after December 31, 2018.]

Committee commentary. — The Supreme Court has approved Form 10-719 NMRA as the Probation Order and Agreement that must be used under Paragraph A of this rule.

[Approved by Supreme Court Order No. 18-8300-011, effective for all cases filed on or after December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018, provided that an order placing a child on probation shall be substantially in the form approved by the supreme court, and added the committee commentary; in Paragraph A, added the last sentence of the paragraph.

The 1999 amendment, effective August 1, 1999, added Paragraphs A and B, redesignated former Paragraph A as Paragraph C, and in the introductory language of that paragraph deleted "or need of supervision" at the end of the first sentence, and in the second sentence substituted "child" for "respondent" twice and deleted "or in need of supervision" preceding "is entitled to"; and deleted former Paragraph B relating to disposition.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-232 NMRA was recompiled as Rule 10-261 NMRA, effective January 15, 2009.

Cross references. — For establishment of probation services, *see* Section 32A-2-5 NMSA 1978.

For powers and duties of probation officers under Children's Code, *see* Section 32A-2-5 NMSA 1978.

For probation and parole revocation, *see* Sections 32A-2-24 and 32A-2-25 NMSA 1978.

Where a special master lacks authority to hear a probation revocation petition, the court is without jurisdiction at the hearing on the petition. When the district judge disposes of the case more than 30 days after the petition is filed, the petition should be dismissed with prejudice. *State v. Doe*, 1979-NMCA-126, 93 N.M. 621, 603 P.2d 731.

Juveniles entitled to confront witnesses during revocation proceedings. — A child whose probation is sought to be revoked shall be entitled to all the rights a child alleged to be delinquent is entitled to under the law, and since juveniles have the right to confront witnesses during delinquency proceedings, they must be accorded that right in probation revocation proceedings. *State v. Trevor M.*, 2015-NMCA-009.

Analysis of right to confrontation. — The right to confrontation provided by this section is the same right guaranteed by the Sixth Amendment to the United States Constitution, and consequently, the analysis of an alleged violation of this right is the same, and as in the analysis of the Sixth Amendment right, this right is not absolute, and deviation from live, face-to-face testimony may be permitted when an exception is necessary to further an important public policy, such exception being supported by a particularized showing of necessity by the district court. *State v. Trevor M.*, 2015-NMCA-009.

Child’s right to confront witnesses violated. — Where State’s witness, who could not attend the proceedings on the day of the hearing, testified by telephone over the Child’s objections, and where the district court failed to make any findings on the necessity of

telephonic testimony, the Child's right to confront witnesses against him was violated. *State v. Trevor M.*, 2015-NMCA-009.

New trial required only if violation of right is harmful. — A violation of the right to confrontation alone does not require a new trial, but only when a violation of the confrontation right is harmful to the defendant does the violation require a new trial, and the burden is on the State to show the violation was harmless. *State v. Trevor M.*, 2015-NMCA-009.

State failed to meet its burden. — Where State failed to address whether any violation of the child's right to confrontation was harmless, the State failed to meet its burden, and therefore the child was entitled to a new probation revocation proceeding. *State v. Trevor M.*, 2015-NMCA-009.

Proof of a probation violation. — To establish a violation of a probation agreement, the obligation is on the state to prove willful conduct on the part of the probationer. *State v. Trevor M.*, 2015-NMCA-009.

Insufficient evidence to support willful conduct. — Where child was discharged from an out-of-home placement, such placement being a condition of probation, and where all of the testimony by the juvenile probation officer and the social worker was improperly admitted in a juvenile probation revocation proceeding, the evidence was insufficient to support a finding of willful conduct on the part of the child. *State v. Trevor M.*, 2015-NMCA-009.

Applicability of Rules of Evidence. — The Rules of Evidence apply to the adjudicatory phase of juvenile probation revocation proceedings; however, they do not apply to the dispositional phase. *State v. Erickson K.*, 2002-NMCA-058, 132 N.M. 258, 46 P.3d 1258, cert. quashed, 132 N.M. 732, 55 P.3d 428.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 25 et seq.

43 C.J.S. Infants § 78.

10-262. Sealing of records under Section 32A-2-26 NMSA 1978.

A. **Scope.** This rule governs the sealing of records and files as authorized by Section 32A-2-26 NMSA 1978.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “files and records” includes but is not limited to legal and social files and records of the court as well as the files and records of probation services and any other agency including law enforcement agencies unless otherwise ordered by the court;

(2) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(3) “public access” means the inspection and copying by the public of records and files in the possession of the court or other government entities; and

(4) “seal,” “seals,” “sealed,” or “sealing” means prohibiting public access to files and records concerning a person who is the subject of a delinquency proceeding as required by this rule.

C. **Sealing upon motion.** Upon motion, the court may seal the files and records concerning a person who is the subject of the delinquency proceeding if the court finds the following:

(1) the person is eighteen (18) years of age or older, has been released from court-ordered supervision, or custody of the Children, Youth and Families Department (the department), and is no longer subject to any pending delinquency proceeding or any other order not involving legal custody and supervision; or

(2) the person is under eighteen (18) years of age and the following conditions are established:

(a) good cause exists to seal the files and records before the person is eighteen (18) years of age;

(b) two (2) years or more have elapsed since

(i) the final release of the person from legal custody and supervision; or

(ii) the entry of any other judgment not involving legal custody and supervision; and

(c) for the two (2) years immediately before the filing of the motion the person does not have, and is not subject to a court proceeding seeking,

(i) a conviction for a felony

(ii) a conviction for a misdemeanor involving moral turpitude; or

(iii) a finding of delinquency.

D. **No adjudication of delinquency; sealing requirements.**

(1) Before an adjudicatory hearing in a delinquency proceeding, remote electronic access to the files and records concerning a person who is the subject of the delinquency proceeding shall be limited to the judge and court personnel, provided that access to such records and files is provided at the courthouse to the parties to the proceeding and to the public unless the court orders otherwise.

(2) When a petition for delinquency has been filed that does not result in an adjudication of delinquency, the children's court attorney shall, upon conclusion of the case, present the court with a proposed order sealing the files and records in the case, in a form prescribed by the Supreme Court. Upon entry of the order by the court, all court files and records shall be sealed in the delinquency proceeding and the order shall direct the department and all other agencies to seal all files and records related to the delinquency proceeding in their possession.

E. **Sealing requirements for persons eighteen (18) years of age or older.**

(1) When a person has been released from the court ordered supervision or custody of the Children, Youth and Families Department (the department), is no longer subject to any pending delinquency proceeding or any other order not involving legal custody and supervision, and has reached the age of eighteen (18), the department shall seal the person's delinquency files and records in its possession. The department also shall notify the Administrative Office of the Courts by including a list of the agencies, including law enforcement agencies, contacted and shall provide the complete children's court docket number used for the delinquency proceeding.

(2) Upon receipt of the department's notification of sealing, the Administrative Office of the Courts shall notify the children's court that it will seal the person's electronic court files and records for the delinquency proceeding unless the children's court orders otherwise in writing within thirty (30) days of receiving the notice. The court shall provide a copy of the order to the parties and the department.

(3) Upon receipt of notice from the Administrative Office of the Courts, unless the children's court determines that the notice was in error and orders otherwise, the children's court shall seal all paper court files and records from the delinquency proceeding that are in its possession and shall issue an order directing any other agencies who were involved in the delinquency proceeding to seal all files and records in their possession concerning the person who was the subject of the delinquency proceeding.

(4) The children's court shall provide the department's public records custodian with a copy of the sealing order, who shall be responsible for serving a copy of the order on all of the persons and entities listed in Paragraph F of this rule.

F. **Copies of order to seal.** The clerk of the court shall deliver or mail copies of any sealing order to the department's public records custodian, who shall then serve copies to the following:

(1) the children's court attorney;

(2) the law enforcement agency and central depository having custody of the law enforcement files and records related to the delinquency proceeding;

(3) any other agency having custody of records or files related to the delinquency proceeding subject to the sealing order;

(4) counsel of record at the time of disposition; and

(5) the person who is the subject of the sealing order, at that person's last known mailing address.

G. **Effect of sealing order.**

(1) Upon receipt of a sealing order, the recipient shall immediately seal all files and records in the possession of the person or agency related to any delinquency proceedings referenced in the order.

(2) To effectuate the requirements of Subsection C of Section 32A-2-26 NMSA 1978 that all sealed delinquency proceedings be treated as if they never occurred,

(a) the court's sealing order shall have the effect of vacating the findings, orders, and judgments and deleting all index references in the delinquency proceeding;

(b) the court, the department, and other persons and agencies to whom the order is delivered shall reply to any inquiry that no record of any delinquency proceeding exists with respect to the person who is the subject of the sealing order; and

(c) the person who is the subject of a sealing order in a delinquency proceeding may reply to any inquiry that no record exists.

(3) A sealing order entered under this rule does not prohibit the department from storing and using a person's delinquency records and files for research and reporting purposes as permitted, subject to the confidentiality provisions of Section 32A-2-32 NMSA 1978 and any other applicable state or federal laws. No other use of delinquency records and files sealed under this rule is permitted unless unsealed by order of the court in accordance with Section 32A-2-26 NMSA or other applicable state or federal laws.

[Approved by Supreme Court Order No. 06-8300-030, effective January 15, 2007; Rule 10-233 NMRA, recompiled as Rule 10-262 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 12-8300-024, effective for all cases eligible for sealing on or after January 7, 2013.]

Committee commentary on 2011 rule. — The Committee recognizes an apparent conflict within the statute. While Subsection 32A-2-26(C) NMSA 1978 mandates that all index references to the delinquency matter be deleted, Subsection 32A-2-26(I) NMSA 1978 provides for limited access to the files.

Section 32A-2-26 NMSA 1978 authorizes the Children's Court to enter an order sealing the legal and social files and records of the court as well as the files and records of probation services and any other agency including law enforcement agencies. This rule addresses the procedure for sealing the court files and records. The Children, Youth and Families Department, law enforcement agencies, and other agencies that deal with children in delinquency cases must adopt their own regulations, policies and procedures for complying with sealing orders issued pursuant to Section 32A-2-26 NMSA 1978. The committee strongly encourages them to do so. The procedures to be followed by an executive department or agency are beyond the scope of a children's court rule of procedure.

The revisions to Paragraph E of the rule are based on the 2009 amendment to Subsection G of Section 32A-2-26 NMSA 1978, Sealing of Records, which changed the requirements for automatic sealing of delinquency records. Automatic sealing of records for a child adjudicated delinquent now occurs only after the child reaches the age of eighteen, has been released from the court ordered supervision or custody of the Children, Youth and Families Department, and is no longer subject to any pending delinquency proceeding or any other order not involving legal custody and supervision. The former sealing statute allowed for sealing of records before a child turned eighteen; however, the former statute also required a two-year "waiting period," wherein the child had not received new allegations of delinquency. There is no longer a two-year waiting period for automatic sealing.

Paragraph E requires that in order to seal an individual's case file, the court must have access to the complete court case number. Without the complete case number, the court cannot be sure that it is in fact sealing the correct case file. A complete court case number includes five distinct identifiers. First, every district court case number begins with the letter "D." Second, the letter "D" is followed by the specific court location number. The district court location number is not the same as the judicial district number. For example, although Roswell and Carlsbad district courts are both in the Fifth Judicial District, Roswell's location number is 504 and Carlsbad's location number is 503. Third, a complete case number includes the case type. The case type for delinquency cases is "JR." The fourth identifier is the year. Finally, the year is followed by a series of numbers that are sequentially generated from the Judiciary's case management system when a case file is opened. An example of a complete children's court case number is D-504-JR-2009-273.

Committee commentary on 2007 rule. — This rule is based on the 2003 statutory amendments to Section 32A-2-26 NMSA 1978, Subsections G and H. These subsections provide for automatic sealing of court records for a person who is not the subject of a delinquency petition; for a person who is determined by the court not to be a delinquent offender; or for a person who has been released from legal custody and supervision and for whom no new allegations of delinquency have been received in the past two years. This rule is intended to specify the mechanism for automatic sealing, as the statute does not state how it is to be accomplished, and to provide guidance to the Children, Youth and Families Department (department) and the courts in its implementation. The rule is not intended to govern or comment on sealing by motion under Subsection A of Section 32A-2-26 NMSA 1978.

Note that the rule does not address the first part of Subsection G of Section 32A-2-26 NMSA 1978, which provides that a person who is not the subject of a delinquency petition shall have his or her files automatically sealed. The fact that a delinquency petition was not filed means that the matter was handled informally by probation services. The committee believes this is a matter best left to the department, which administers probation services. The committee strongly encourages the department to develop a mechanism for sealing under these circumstances, as these children's records otherwise will remain unsealed while children for whom a petition has been filed are protected by the rule.

With regard to Paragraph A of the rule, there are a variety of circumstances under which a petition for delinquency is filed but does not result in an adjudication of delinquency. Such circumstances may include, but are not limited to, dismissal by the state, a satisfaction of time waiver, completion of the terms of a consent decree, an acquittal or other form of dismissal, or a ruling on appeal that concludes the case without an adjudication of delinquency. Not all courts enter formal orders of dismissal or make formal determinations that the child is not delinquent; the rule is broadly stated to accommodate different practices around the state. This approach is consistent with Rule 10-145 NMRA, which provides, with limited exceptions, that a dismissal "operates as an adjudication upon the merits."

With regard to Paragraph B of the rule, the committee recommended use of the phrase "court-ordered supervision of the department" instead of the statutory phrase "custody and supervision of the department" to make it clear that a child given probation alone is as entitled to sealing as a child placed in the department's custody. Comments received during the public comment period suggested that this required clarification.

It is the committee's intent that the term "files and records" include all forms of such documents, including but not limited to electronic and paper versions. Finally, the committee encourages all recipients of any sealing order under this rule to ensure that the order is given to the proper person responsible for sealing within the recipient's agency. The rule attempts to delineate the responsible persons to the degree possible, but ultimately implementation of this rule and its underlying statute rests with the recipient individuals and agencies.

Because this rule does not change current law, which has been in effect since July 1, 2003, this rule applies to all cases either pending or filed on or after the effective date of the statute and to those cases that were closed but not yet eligible for sealing before that date. Those persons who were eligible to move for sealing of their records before the amended statute became effective are not covered by this rule, but they may still file a motion to have their records sealed.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; Supreme Court Order No. 12-8300-024, effective for all cases filed by or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-024, effective January 7, 2013, provided for the sealing of records and files pursuant to Section 32A-2-26 NMSA 1978; specified required findings for sealing files and records; restricted remote electronic access to files and records before an adjudicatory hearing is held; required the sealing of files and records when a petition does not result in an adjudication of delinquency; required the sealing of files and records for persons released from supervision or custody and the procedure for sealing the files and records; specified the effect of a sealing order; in the title of the rule, at the beginning of the title, deleted "Automatic sealing" and added "Sealing" and after "Sealing of records", added "under Section 32A-2-26 NMSA 1978"; added Paragraphs A, B, and C; relettered former Paragraph A as Paragraph D; in Paragraph D, added Subparagraph (1); in Subparagraph (2), in the first sentence, after the phrase "present the court with", deleted "an" and added "a proposed"; and added the second sentence; relettered former Paragraph B as Paragraph E; in Paragraph E, deleted the former title "Release from legal custody and supervision" and added the new title; in Subparagraph (1) of Paragraph E, in the first sentence, after "court ordered supervision", deleted "[Children, Youth, and Families Department (CYFD) or] [,and the department shall not receive any new allegations of delinquency regarding the person for two (2) years since the release]" and added "or custody of the Children, Youth and Families Department (the department), is no longer subject to any pending delinquency proceeding or any other order not involving legal custody and supervision and has reached the age of eighteen (18)", after "the department shall", added "seal the person's delinquency files and records in its possession", and in the second sentence, added "The department also shall", after "shall notify the", deleted "court that two (2) years have elapsed since the release and shall present the court with an order sealing the files and records in the case, in a form prescribed by the Supreme Court, which the court shall enter" and added "Administrative Office of the Courts by including a list of the agencies, including law enforcement agencies, contacted and shall provide the complete children's court docket number used for the delinquency proceeding"; in Paragraph E, added Subparagraphs (2), (3), and (4); relettered former Paragraph C as Paragraph F; in Paragraph F, at the end of the title, deleted "to seal", in the first sentence, after "mail copies of the sealing order to", added the remainder of the sentence; deleted former Subparagraph (2), which required that copies of the sealing be given to CYFD and any

other authority granting the release; relettered former Subparagraph (3) as Subparagraph (2); in Subparagraph (2), after “files and records”, added “related to the delinquency proceeding”; relettered former Subparagraph (4) as Subparagraph (3); and in Subparagraph (3), after “records or files”, added “related to the delinquency proceeding”; and added Paragraph G.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed the reference from Rule 10-103.2(B) to Rule 10-145 NMRA in the committee commentary.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-233 NMRA was recompiled as Rule 10-262 NMRA, effective January 15, 2009.

ARTICLE 3
Abuse and Neglect Proceedings and Families in Need of Court Ordered Services

10-301. Abuse and neglect proceedings; families in need of court-ordered services; scope.

Article 3 of these rules governs the procedure in abuse and neglect proceedings in the children’s court. Unless addressed separately, Article 3 also governs families in need of court-ordered services proceedings in the children’s court.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Rule 10-101A(1)(c) NMRA of the Children’s Court Rules provides that the Children’s Court Rules govern procedure in the children’s courts of New Mexico in all matters involving children alleged by the state "to be abused or neglected, as defined in the Abuse and Neglect Act, including proceedings to terminate parental rights which are filed pursuant to the Abuse and Neglect Act". Rule 10-101A(5) NMRA provides in part that "the Children’s Code and the Rules of Civil Procedure for the District Courts govern the procedure in all other proceedings under the Children’s Code". The Rules of Civil Procedure do not automatically apply to abuse and neglect proceedings. Where gaps exist, the Rules of Civil Procedure may be used as guidance for procedural matters under Article 3 not otherwise addressed in the Children’s Court Rules.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-301 NMRA, relating to *ex parte* custody orders, was recompiled as Rule 10-311

NMRA and a new Rule 10-301 NMRA, relating to abuse and neglect proceedings was adopted, effective January 15, 2009.

10-311. *Ex parte* custody orders.

A. **Issuance.** If the department wishes to seek or retain custody at the time the petition is filed, or seek removal of a child from the home during a period of protective supervision in a pending abuse/neglect case, the department shall file a motion for an *ex parte* custody order with a sworn written statement of facts showing probable cause to believe (1) that the child has been abused or neglected and (2) that custody under the criteria set forth in Section 32A-4-18 NMSA 1978 is necessary. The motion and affidavit for the *ex parte* custody order shall be substantially in the form approved by the Supreme Court.

B. **Service.** If the department has received custody from law enforcement, the order may be served with the petition. If the child is not yet in the custody of the department, the order shall be served on the respondent by a person authorized to serve arrest warrants.

[Adopted April 1, 1976, Children's Court Rule 40 NMSA 1953; recompiled and amended as Children's Court Rule 52 NMSA 1978 effective November 1, 1978; Rule 10-301 SCRA 1986, as amended effective February 1, 1982; August 1, 1999; Rule 10-301 NMRA, recompiled and amended as Rule 10-311 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, in the first sentence, deleted "Within two (2) days after a child is taken into custody" and added the current prefatory language, added the Subparagraph (1) designation, and added Subparagraph (2); and in Paragraph B, deleted the former rule which provided that the order shall be served with the petition and added the current rule.

The 1999 amendment, effective August 1, 1999, rewrote Paragraph A, which formerly read "At the time a petition is filed or any time thereafter, the children's court or district court may issue an ex parte custody order upon a sworn written statement of facts showing probable cause exists to believe that the child is abused or neglected and that custody under the criteria set forth in Rule 10-303 of these rules is necessary"; in Paragraph B, substituted "with the petition" for "on the respondent by a person authorized to serve arrest warrants and shall direct the officer to take custody of the child and deliver him to a place designated by the court"; and deleted former Paragraph C relating to evidence and former Paragraph D relating to referees.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-301 NMRA was recompiled as Rule 10-311 NMRA, effective January 15, 2009.

Cross references. — For taking of child into custody, *see* Section 32A-2-9 NMSA 1978.

For definition of "neglected child", *see* Section 32A-4-2 NMSA 1978.

For ex parte custody orders, *see* Section 32A-4-16 NMSA 1978 .

For whom arrest warrants may be directed, *see* Rule 5-210 NMRA.

For exclusion from Rules of Evidence, *see* Rule 11-1101 NMRA.

Law reviews. — For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Infants §§ 16, 17; 47 Am. Jur. 2d Juvenile Courts § 45 et seq.

Sexual abuse of child by parent as ground for termination of parent's right to child, 58 A.L.R.3d 1074.

43 C.J.S. Infants § 5 et seq.; 67A C.J.S. Parent and Child §§ 31 to 46.

10-312. Filing of petition; amendment of petition; appointment of guardian ad litem or attorney.

A. **Form and contents.** Petitions or amended petitions alleging abuse or neglect shall be in a form approved by the Supreme Court.

B. **Time limits.** If a child is taken into custody, a petition alleging abuse or neglect shall be filed by the department within two (2) days from the date that the child is taken into emergency custody by the department. If a petition is not filed within the time set forth in this paragraph, the child shall be released to the child's parents, guardian or custodian.

C. **Service.** A petition alleging abuse or neglect shall be served as provided by Rule 10-103 NMRA of these rules. A copy of the petition shall also be served on a parent who has not been made a party with a notice that the parent may intervene and request custody of the child.

D. **Appointment of guardian ad litem or attorney.** Upon the filing of a petition in an abuse or neglect proceeding, a guardian ad litem shall be appointed by the court to represent the best interest of any child under the age of fourteen (14). The court shall appoint an attorney to represent any child who is fourteen (14) years of age or older.

E. **Notice to Indian tribes.** If the alleged abused or neglected child is enrolled or eligible for enrollment in an Indian tribe, the Children, Youth and Families Department

shall give notice of the filing of the petition to the child's Indian tribe. The form and manner of the notice shall comply with the provisions of the federal Indian Child Welfare Act of 1978.

F. **Amended petitions.** The department may file an amended petition alleging abuse or neglect:

(1) once as a matter of course at any time within twenty (20) days after it is served; or

(2) upon leave of court.

[Approved April 1, 1976, Children's Court Rule 42 NMSA 1953; recompiled and amended as Children's Court Rule 57 NMSA 1978; as amended effective February 1, 1982; Rule 10-305 SCRA 1986; as amended effective May 1, 1986; Rule 10-305 NMRA, as amended, effective August 1, 1999; as amended by Supreme Court Order No. 06-8300-004, effective March 15, 2006; Rule 10-305 NMRA, recompiled as Rule 10-312 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 10-8300-041, effective January 31, 2011.]

Committee commentary. — Rule 10-312 NMRA sets the general procedure and time limits for filing of petitions alleging abuse or neglect.

The approved form of summons in abuse or neglect actions provides notice that the respondent's parental rights may be terminated. *See* Rule 10-122 NMRA and Section 32A-4-27 NMSA 1978 for rights of non-custodial parents to intervene. *See also* Section 32A-4-29 NMSA 1978. The committee views the right to intervene as procedural.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2010 amendment, approved by Supreme Court Order No. 10-8300-041, effective January 31, 2011, in Paragraph C, in the first sentence, after "Rule", deleted "10-104" and added "10-103".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in the committee commentary, changed "Rule 10-305 NMRA" to "Rule 10-312 NMRA", changed "petition" to "summons" and changed "Rule 10-108 NMRA" to "Rule 10-122 NMRA".

The 2006 amendment, approved by Supreme Court Order No. 06-8300-004 effective March 15, 2006, inserted "or attorney" in the catchline and revised Paragraph D to provide that the guardian *ad litem* represents the best interest of a child under 14 years of age and an attorney is appointed to represent a child who is 14 years of age or older.

The 1999 amendment, effective August 1, 1999, inserted "amendment of petition" in the section heading; deleted former Paragraph A relating to procedure, and redesignated subsequent paragraphs accordingly; in Paragraph A, inserted "or amended petitions" and deleted a list of information which the petition should set forth; in Paragraph B, deleted former Subparagraph (1) which stated that petitions shall be filed within ninety days from the date that the complaint is referred to the department if the child is not in custody of the department, deleted the former Paragraph (2) designation, added the language ending "filed by the department", and substituted "emergency custody by the department" for "custody" in the first sentence; added Paragraphs C, E, and F; and rewrote Paragraph D, which formerly read "The court shall appoint a guardian ad litem to represent the child alleged to be abused or neglected no later than the filing of the petition alleging abuse or neglect".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-305 NMRA was recompiled as Rule 10-312 NMRA, effective January 15, 2009.

Cross references. — For Children's Code provisions relating to petitions, *see* Sections 32A-1-10, 32A-1-11 and 32A-2-8 NMSA 1978.

For the filing of a petition in an abuse or neglect proceeding, *see* Section 32A-4-4 NMSA 1978.

For appointment of a guardian ad litem, *see* Section 32A-1-7 NMSA 1978.

For appointment of an attorney to represent a child in an abuse or neglect proceeding, *see* Section 32A-4-10 NMSA 1978.

For the Indian Child Welfare Act, *see* 25 U.S.C. §§ 1901 – 1963.

Law reviews. — For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

10-313. Appointment of attorney for child turning fourteen.

A. **Duty of guardian *ad litem*.** If a child in an abuse or neglect proceeding is represented by a guardian *ad litem* at the time the child reaches the age of fourteen (14) years of age, the guardian *ad litem* shall either:

(1) file a notice of continued representation as attorney for the child; or

(2) file a motion to request the court appoint an attorney for the child.

B. **Advice of rights.** At the first appearance of a child in an abuse or neglect proceeding after the child's fourteenth (14th) birthday, the court shall inquire as to whether the child is represented by an attorney. If the child is not represented by an attorney, the court shall appoint an attorney.

[Approved by Supreme Court Order No. 06-8300-004, effective March 1, 2006; Rule 10-305.2, recompiled as Rule 10-313 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-305.2 NMRA was recompiled as Rule 10-313 NMRA, effective January 15, 2009.

Cross references. — For basic rights, *see* Section 32A-4-10 NMSA 1978.

10-313.1. Representation of multiple siblings.

A. **Initial appointment.**

(1) In the same or related abuse and neglect proceedings, the court may appoint the same attorney to represent the best interests of the children in a sibling group who are under the age of fourteen (14) as guardian *ad litem*, pursuant to Section 32A-1-7 NMSA 1978, and to represent the children in the sibling group who are fourteen (14) years of age or older as attorney, pursuant to Section 32A-1-7.1 NMSA 1978.

(2) Except as provided in Subparagraph (3) below, an attorney must decline to represent one or more siblings in the same or related abuse and neglect proceedings, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings, a concurrent conflict of interest exists. Such conflict of interest exists if the representation of one child will be directly adverse to another child or there is a significant risk that the representation of one or more of the children will be materially limited by the attorney's responsibilities to another client, a former client or a third person, or by a personal interest of the attorney.

(3) Notwithstanding the existence of a concurrent conflict of interest, an attorney may represent a child if each of the following conditions is met:

(a) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected sibling;

(b) the representation is not prohibited by law;

(c) the representation does not involve the assertion of a claim by one sibling against another sibling represented by the same attorney in the same proceeding;

(d) the representation does not involve cases in which there exists either evidence or an allegation that one of the siblings has abused or is likely to abuse another of the siblings; and

(e) any sibling age fourteen (14) or over who is to be represented by the attorney gives informed consent, confirmed in writing, pursuant to Rule 16-107 NMRA, and the attorney determines that the representation does not adversely affect the representation of the best interests of any of the younger siblings.

B. **Withdrawal from continued representation.**

(1) An attorney representing siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is a conflict of interest.

(2) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a possibility that a conflict of interest will develop.

(3) If an attorney believes that a conflict of interest existed at appointment or has developed during representation, the attorney must take the necessary action to ensure that the siblings' interests are not prejudiced. Such action may include notifying the court or requesting to withdraw.

(4) If an actual conflict of interest arises, and one or more siblings fourteen (14) or over and represented by the attorney will not waive the conflict or the continued representation of all of the siblings by the same attorney is not in the interest of the younger siblings, the attorney may continue to represent one or more siblings if each of the following conditions is met:

(a) the attorney has successfully withdrawn from the representation of the siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;

(b) the attorney has exchanged no confidential information relevant to the conflicting issue with any sibling whose interests conflict with those of the sibling or siblings the attorney continues to represent; and

(c) continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings formerly represented by the attorney.

C. **Circumstances not a conflict.** Each of the following circumstances, standing alone, does not demonstrate a conflict of interest:

(1) the siblings are of different ages;

(2) the siblings have different parents;

(3) there is a purely theoretical or abstract conflict of interest among the siblings;

(4) the attorney previously represented one or more of the siblings in another proceeding;

(5) some of the siblings are more likely to be adopted than others;

(6) the siblings have different permanency plans;

(7) the siblings express conflicting desires or objectives, but the issues involved are not material to the case; or

(8) the siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

[Adopted by Supreme Court Order No. 10-8300-013, effective May 10, 2010.]

Committee commentary. — This rule is intended to guide attorneys in their application of Rule 16-107 NMRA of the Rules of Professional Conduct, as amended in 2008, to their work as attorneys for children in abuse and neglect cases in Children's Court. The model of representation in these cases is unusual in that attorneys and children age fourteen (14) have a traditional attorney-client relationship while attorneys appointed for children under the age of fourteen (14) serve as guardians *ad litem* (GAL) and represent the child's best interest. The statute also contemplates that the attorney appointed as GAL for the younger child will become the child's attorney in the traditional sense when the child turns fourteen (14). *See* NMSA 1978, § 32A-4-10.

Before this approach was adopted in 2005, courts appointed a single attorney to represent all of the siblings in a case. Since the approach was adopted, there has been some confusion over the representation of siblings when some are fourteen (14) or older and some are younger. However, the value of preserving connections for children in foster care, together with the importance of the sibling relationship, argue for a single attorney to represent siblings to the greatest extent possible. The committee hopes that this rule will assist judges and attorneys in evaluating and resolving possible conflicts in these cases.

[Adopted by Supreme Court Order No. 10-8300-013, effective May 10, 2010.]

10-314. Explanation of respondent's rights at first appearance; ICWA advisement; appointed counsel.

A. **Explanation of rights at first appearance.** At the first appearance of the respondent, the court shall inform the respondent of the following:

(1) the allegations of the abuse or neglect petition or the termination of parental rights motion;

(2) the right to an adjudicatory hearing on the allegations in the petition or the right to a trial on the allegations in the motion;

(3) the right to an attorney and that if the respondent cannot afford an attorney, one will be appointed to represent the respondent free of charge;

(4) the possible consequences if the allegations of the petition or the motion are found to be true; and

(5) the right to have the proceedings interpreted into a language the respondent understands.

B. **ICWA advisement.** If the child is an Indian child or there is reason to know that the child is an Indian child as defined by the Indian Child Welfare Act, the court shall further inform the respondent of the following:

(1) the parent, Indian custodian, or tribe may request that the case be transferred to tribal court;

(2) either parent may object to the request to transfer;

(3) the department shall place the Indian child in accordance with the placement preferences set forth in ICWA, unless good cause is shown to depart from those preferences;

(4) the department shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and

(5) if a motion for termination of parental rights is filed, the department shall prove the allegations beyond a reasonable doubt.

C. **Appointed counsel.** In any proceeding or case that may result in the termination of parental rights, an attorney may not be appointed to represent more than one respondent.

[Approved, effective November 1, 1978, Rule 55 NMSA 1978; Rule 10-304 SCRA 1986; as amended, effective August 1, 1999; Rule 10-304 NMRA, recompiled and amended as Rule 10-314 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which respondent has not made a first appearance, on or after December 31, 2019.]

Committee commentary. — Historically, noncriminal proceedings against parents based on their treatment of their children were equitable in nature and were based on the doctrine of *parens patriae*. *See In re Santillanes*, 1943-NMSC-011, 47 N.M. 140, 138 P.2d 503. Modern abuse and neglect and termination of parental rights proceedings are typically statutory proceedings. Absent statutory authorization for a right to a jury trial, it has been held that the parents have no such right. *Matter of T.J.*, 1997-NMCA-021, 123 N.M. 99, 934 P.2d 293 (mother not entitled to jury trial under New Mexico constitution or by statute).

A new Paragraph B was added to encourage full compliance with the Indian Child Welfare Act, 25 U.S.C. §§ 1901 to 1963, and its implementing regulations, 25 C.F.R. Part 23 (effective December 12, 2016). Paragraph B provides the courts with a uniform advisement to alert the parties to the unique protections provided to Indian children, their families, and their tribe(s) in cases subject to the Act, and to highlight some of the Act's procedural requirements. Because of the extensive protections included in the Act, it would be unwieldy to enumerate every provision in this advisement. Practitioners and judges are urged to familiarize themselves with all of the Act's requirements.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which respondent has not made a first appearance, on or after December 31, 2019.]

ANNOTATIONS

The 2019 amendment, approved by Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which respondent has not made a first appearance, on or after December 31, 2019, provided a uniform advisement to alert the parties to certain protections for Indian children, their families, and their tribes in cases subject to the Indian Child Welfare Act and its implementing regulations, provided respondents the right to have the proceedings interpreted into a language the respondent understands, made certain stylistic changes, and revised the committee commentary; in the rule heading, added "ICWA advisement"; in Paragraph A, after "first appearance of the respondent", deleted "on an abuse or neglect petition or a termination of parental rights motion, if the respondent is not represented by an attorney", after the next occurrence of "the", added "court shall inform the", after the next occurrence of "respondent", deleted "shall be informed by the court", and after "of" added "the following"; in Subparagraph A(1), after "allegations of the", added "abuse or neglect", and after "petition or the", added "termination of parental rights", and added Subparagraph A(5); added a new Paragraph B, and redesignated former Paragraph B as Paragraph C.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, added "appointed counsel" to the title; lettered the former prefatory sentence as Paragraph A and added the title; in the prefatory sentence of Paragraph A, changed "abuse or neglect proceeding" to "abuse or neglect petition or a termination of parental rights motion"; relettered former Paragraphs A through D as new

Subparagraphs (1) through (4) of Paragraph A, in Subparagraph (1) of Paragraph A, added "or the motion"; in Subparagraph (2) of Paragraph A, added "or the right to a trial on the allegations in the motion"; and added new Paragraph B.

The 1999 amendment, effective August 1, 1999, inserted "respondent's" in the section heading, deleted "before the court" following "appearance of the respondent" and added "if the respondent is not represented by an attorney" in the introductory language; substituted "an adjudicatory hearing" for "a trial" in Paragraph B; and made gender neutral changes in Paragraph C.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-304 NMRA was recompiled as Rule 10-314 NMRA, effective January 15, 2009.

Right to attorney denied only where waived intelligently and knowingly. — The waiver of a right created by the constitution, a statute or a court-promulgated rule, such as the right to an attorney, must be done intelligently and knowingly if the right is to be denied the one claiming it. *State ex rel. Dep't of Human Servs. v. Perlman*, 1981-NMCA-076, 96 N.M. 779, 635 P.2d 588.

Law reviews. — For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For annual survey of New Mexico law relating to civil procedure, see 13 N.M.L. Rev. 251 (1983).

10-315. Custody hearing.

A. **Time limits.** A custody hearing shall be held within ten (10) days from the date a petition is filed alleging abuse or neglect. At the custody hearing the court shall determine if the child should remain or be placed in the custody of the department pending adjudication. Upon written request of the respondent, the hearing may be held sooner, but in no event shall the hearing be held less than two (2) days after the date the petition was filed.

B. **Notice.** The department shall give reasonable notice of the time and place of the custody hearing to the parents, guardian, or custodian of the child alleged to be abused or neglected.

C. **Audio recording.** The court shall make an audio recording of the custody hearing and shall provide a copy of the recording immediately upon request to a party who wishes to file an appeal under Paragraph I of this rule.

D. **ICWA; Indian child; duty to inquire.** At the commencement of the custody hearing, the court shall ask each party and participant, including the guardian *ad litem* and agency representative, to state on the record under oath whether the party or participant knows or has reason to know that the child is an Indian child under the

Indian Child Welfare Act. An Indian child is any unmarried person who is under eighteen (18) years of age at the time the petition is filed and who is either,

(1) a member of an Indian Tribe; or

(2) eligible for membership in an Indian Tribe and the biological child of a member of an Indian Tribe.

E. **ICWA; duty to determine; reason to know.** On the basis of the information and evidence provided, the court shall determine that the child is or is not an Indian child. If the evidence is insufficient to make such a determination, the court shall determine whether there is reason to know that the child is an Indian child. The court has reason to know that the child is an Indian child upon the occurrence of any of the following:

(1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) the court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a pueblo, reservation, or in an Alaska Native village;

(5) the court is informed that the child is or has been a ward of a Tribal court; or

(6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

F. **Indian child; effect on proceedings.** If the court determines that the child is an Indian child, or determines that there is reason to know the child is an Indian child but insufficient evidence to determine that the child is or is not an Indian child, the court shall do the following:

(1) confirm, by way of a report, declaration, or testimony included in the record that the department or other party used due diligence to identify and work with all Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);

(2) ensure that the department promptly sends notice of the proceeding as required by the Indian Child Welfare Act and its regulations and substantially in the form approved by the Supreme Court; and

(3) treat the child as an Indian child subject to the Indian Child Welfare Act unless and until it is determined on the record that the child does not meet the definition of an Indian child under applicable law. Treating the child as an Indian child includes, but is not limited to, the following:

(a) permitting the temporary or emergency foster care placement to continue only if the court finds that it is necessary to prevent imminent physical damage or harm to the child; and

(b) terminating the temporary or emergency foster care placement as soon as the court or agency possesses sufficient evidence to determine that the emergency removal is no longer necessary to prevent imminent physical damage or harm to the child, unless the court orders a foster care placement in accordance with the standard of proof and time limits mandated by the Indian Child Welfare Act and its regulations.

G. **Not an Indian child; effect on proceedings; continuing duty to disclose.** If the court determines that the child is not an Indian child, or that there is no reason to know that the child is an Indian child, the court shall do the following:

(1) proceed as though the child is not subject to the Indian Child Welfare Act; and

(2) order the parties and participants at the hearing to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child. If the court finds, on the basis of information or evidence presented at a later hearing, that there is reason to know the child is an Indian child, the court shall proceed as required under Paragraph E of this rule.

H. **Form of order.** The decision of the court shall be made by a written order that shall be filed with the clerk of the court at the earliest practicable time.

I. **Appeal.** An order filed under this rule that grants legal custody of a child to, or withholds legal custody from, one or more parties may be appealed as provided by Section 32A-4-18 NMSA 1978. An appeal from such an order shall proceed as an expedited appeal under Rule 12-206A NMRA of the Rules of Appellate Procedure.

[As amended, effective August 1, 1999; Rule 10-303 NMRA, recompiled and amended as Rule 10-315 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-004, effective in all cases filed on or after July 1, 2014; as amended by Supreme Court Order No. 16-8300-038, effective for all cases pending or filed on or after November 28, 2016.]

Committee commentary. — *See* Section 32A-4-18 NMSA 1978 (2005), which provides criteria for the issuance of custody orders. The Rules of Evidence, other than those with respect to privileges, do not apply to custody hearings. *See* Rule 11-1101 NMRA of the Rules of Evidence.

The 2016 amendments to the rule coincide with the adoption of new regulations by the Bureau of Indian Affairs (BIA) that are intended to "clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families." 25 C.F.R. § 23.101. Consistent with the new regulations, the amended rule places an affirmative duty on the court to ask each participant at the commencement of every custody hearing whether the participant knows or has reason to know that the child is an Indian child. *See* 25 C.F.R. § 23.107(a) (providing that the court shall make such an inquiry at the commencement of an "emergency or voluntary or involuntary child-custody proceeding").

The amended rule further requires the court to determine, based on the information provided by the participants, whether the child is in fact an Indian child or, at a minimum, whether there is reason to know that the child is an Indian child. If either condition is met, the rule requires the court to treat the child as an Indian child subject to ICWA and to ensure that the department has complied and continues to comply with its responsibilities under ICWA. *See* 25 C.F.R. § 23.107(b) (requiring the court to confirm that the department has used "due diligence to identify and work with all of the Tribes of which there is reason to know that the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership)"); *id.* § 23.111 (setting forth the notice and timing requirements for child-custody proceedings that involve an Indian child); *see also* Form 10-521 NMRA (ICWA notice).

The law is unsettled about whether ICWA's notice and timing requirements apply at the custody hearing. *See* 25 U.S.C. § 1912(a) (providing that no proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, and Tribe and requiring the court to grant up to an additional 20 days to prepare for the hearing upon request of the child's parent, Indian custodian, or tribe). The Supreme Court has held that ex parte and custody hearings are emergency proceedings under ICWA and therefore are exempt from the requirements of § 1912. *See State ex rel. Children, Youth and Families Dep't v. Marlene C.,* 2011-NMSC-005, 34, 149 N.M. 315, 248 P.3d 863 ("New Mexico's ex parte and custody hearings are emergency proceedings under [25 U.S.C.] § 1922 to which the requirements of [25 U.S.C.] § 1912 do not apply.").

Recently adopted federal regulations, however, clarify the standards imposed in emergency proceedings under ICWA and are difficult to reconcile with the procedures allowed under New Mexico law. *Compare, e.g.*, 25 C.F.R. § 23.113(b) (providing that the emergency removal or placement of an Indian child must be based on a finding that the removal or placement "is necessary to prevent imminent physical damage or harm

to the child"), *and id.* § 23.113(e) (providing that an emergency proceeding should not be continued for more than 30 days without a finding, *inter alia*, that "restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm"), *with* NMSA 1978, § 32A-4-18(C) (providing that custody may be awarded to the department based upon a showing that, *inter alia*, "the child will be subject to injury by others if not placed in the custody of the department"), *and id.* § 32A-4-19(A) (providing that an adjudicatory hearing shall commence within 60 days of service on the respondent).

Regardless of the continued validity of *Marlene C.*, the committee views the new regulations, taken as a whole, as a directive to engage potentially interested Tribes as early as possible in a child-custody proceeding in which an Indian child may be affected. *See* 25 C.F.R. § 23.101. Thus, the committee recommends as a best practice that the department, at a minimum, should inform the Tribe of the custody hearing when the department knows or has reason to know that the child is an Indian child prior to the custody hearing.

If the court determines at the custody hearing that the child is not an Indian child and that there is no reason to know that the child is an Indian child, the amended rule requires the court to order the participants to inform the court of any information that they subsequently receive that provides reason to know that the child is an Indian child. Although not required by rule or regulation, the committee encourages courts to inquire at each proceeding following the custody hearing whether any participant has received such information.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 16-8300-038, effective for cases pending or filed on or after November 28, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-038, effective November 28, 2016, added provisions to coincide with the adoption of new regulations by the Bureau of Indian Affairs that are intended to clarify the minimum federal standards governing implementation of the Indian Child Welfare Act (ICWA), placed a duty on the court to determine whether a child, who is the subject of a custody hearing, is an Indian child under the ICWA, and if so, to comply with the ICWA and its regulations, and revised the committee commentary; added new Paragraphs D through G and redesignated former Paragraphs D and E as Paragraphs H and I, respectively; and in the committee commentary, added the last six undesignated paragraphs.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-004, effective July 1, 2014, required the court to make an audio recording of custody hearings and to provide a copy of the recording to any party that wishes to appeal; required the court to make a written order of its decision; permitted appeals by a party who has been granted

or denied custody; required that the appeal proceed as an expedited appeal; and added Paragraphs C, D, and E.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "abuse and neglect" at the end of the title; deleted former Paragraph C which specified grounds for not releasing a child to the child's parents, guardian or custodian at a custody hearing; deleted former Paragraph D which provided for alternative placements of a child if the court determined that custody pending adjudication was appropriate; and deleted former Paragraph E which provided for a custody hearing by a special mater.

The 1999 amendment, effective August 1, 1999, added "abuse and neglect" to the section heading; in Paragraph A, in the first sentence, deleted "If the child alleged to be abused or neglected is in the custody of the department or the department has petitioned the court for temporary custody" at the beginning and added "alleging abuse or neglect" at the end, and added "At the custody hearing the court shall" at the beginning of the second sentence; deleted former Subparagraph D(3) relating to the court's authority to order the respondent or child alleged to be neglected or abused to undergo appropriate diagnostic examinations or evaluations; rewrote Paragraph E which formerly read "Referees. The provisions of this rule may be carried out by a referee appointed by the court"; deleted former Paragraph F relating to evidence; and made gender neutral and stylistic changes throughout the section.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-303 NMRA was recompiled as Rule 10-315 NMRA, effective January 15, 2009.

Cross references. — For criteria for detention of children, *see* Section 32A-2-11 NMSA 1978.

For statutory provision relating to custody hearings, *see* Section 32A-4-18(B) NMSA 1978.

For disqualification of judge in proceedings where his impartiality might be questioned, *see* Code of Judicial Conduct, Rule 21-400 NMRA.

Post-deprivation hearing within reasonable period constitutional. — In the context of child abuse and neglect proceedings, a parent's familial and due process rights are balanced against the state's interest in protecting and caring for neglected children. In achieving a balance of these interests, a post-deprivation hearing within a reasonable period does not violate the minimum federal due process rights of the parent. *Yount v. Millington*, 1993-NMCA-143, 117 N.M. 95, 869 P.2d 283.

Parties' stipulation to custody in department creates consent decree. — A stipulation entered into between the parties, following a hearing in which a physician testified that the child's condition was the result of neglect and in which the natural parents did not contest the neglect allegations and agreed to temporary custody in the

department, was in effect a consent decree under Rule 10-307 NMRA, and not a temporary custody order under this rule. *State ex rel. Dep't of Human Servs. v. Doe*, 1985-NMCA-078, 103 N.M. 260, 705 P.2d 165.

Law reviews. — For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Infants § 22.

10-316. Appointment or change of educational decision maker.

A. **Definition.** An educational decision maker is an individual appointed by the children's court to attend school meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's educational setting, and the development and implementation of an individual education plan for the child.

B. **Appointment of educational decision maker; separate order required.** The children's court shall appoint an educational decision maker in every case. The appointment shall be made by a separate order substantially in the form approved by the Supreme Court.

C. **Timing of appointment.**

(1) ***Initial appointment.*** The children's court shall appoint an educational decision maker at the custody hearing, provided that the court may change the appointment of an educational decision maker upon motion of a party at any stage of the proceedings.

(2) ***Review of appointment.*** The children's court shall review at each subsequent stage of the proceedings whether to continue or change the appointment of an educational decision maker for the child. Any change shall be made by a separate order substantially in the form approved by the Supreme Court.

D. **Identity of educational decision maker; qualifications.**

(1) ***Respondent.*** The children's court shall appoint a respondent as the child's educational decision maker, unless the court determines that doing so would be contrary to the best interests of the child.

(2) ***Other qualified individual.*** If the court determines that no respondent should be appointed as the child's educational decision maker, the court shall appoint another qualified individual, taking into account the following:

(a) whether the individual knows the child and is willing to accept responsibility for making educational decisions;

(b) whether the individual has any personal or professional interests that conflict with the interests of the child; and

(c) whether the individual is permitted to make all necessary educational decisions for the child, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act.

[Adopted by Supreme Court Order No. 15-8300-011, effective in all cases filed or pending on or after December 31, 2015.]

Committee commentary. — This rule is intended to ensure that the court clearly identifies for each child in an abuse and neglect proceeding a person who is authorized to make all decisions about the child's educational rights under state and federal law, including decisions related to early intervention and special education. The rule makes clear that in most cases, the person appointed as educational decision maker should be a respondent-parent of the child. However, certain laws authorize a court to appoint a person other than a parent to protect and to make decisions related to the child's educational rights. *See, e.g.*, 20 U.S.C. §§ 1415(b)(2)(A)(i), 1439(5) (authorizing a judge overseeing the care of a ward of the state to appoint a surrogate to protect the rights of the child under the Individuals with Disabilities Education Act (IDEA)); 34 C.F.R. § 300.30 (providing that a person appointed by judicial decree or order to make educational decisions on behalf of a child shall be considered a "parent" under the IDEA). Because certain educational rights may attach at an early age, including the right to identification, evaluation, and educational placement in special education or early intervention services under the IDEA, the rule requires the appointment of an educational decision maker for every child, including for infants and toddlers. *See* 20 U.S.C. § 1412(a)(1)(A) (providing that a child with a disability is entitled to a free appropriate public education from the ages of three (3) to twenty-one (21)); 20 U.S.C. § 1432(1), (5) (providing that an infant or toddler under the age of three (3) is entitled to identification and evaluation services to determine eligibility for early intervention services).

Under Paragraph B, the Court must appoint an educational decision maker in every case, even when the educational decision maker is a respondent. When consistent with the best interests of the child, the court may appoint more than one respondent as educational decision maker; however, if the court determines that no respondent should be appointed under Subparagraph (D)(1), the court should appoint only one person as the child's educational decision maker.

Under Subparagraph (D)(2)(c), federal regulations preclude a guardian *ad litem* or a CYFD social worker from being appointed as a surrogate parent for a ward of the state. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents

for wards of the state); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 15-8300-011, effective December 31, 2015.]

10-317. Notice of change in placement.

A. **Notice required.** The department shall provide written notice of a change in a child's placement, including a return to the child's home, and of the factual grounds supporting the change in placement at least ten (10) days before the placement change, unless an emergency requires moving the child prior to sending notice. The notice shall be substantially in the form approved by the Supreme Court and shall be provided to the following:

(1) the children's court;

(2) the child's guardian *ad litem* or attorney;

(3) all parties;

(4) the child's CASA; and

(5) the child's foster parents.

B. **Contesting a change in placement.** The child, by and through the child's guardian *ad litem* or attorney, may file a motion to contest the proposed change in placement. When such a motion is filed, the department shall not change the child's placement pending the court's ruling on the motion, unless an emergency requires a change in placement prior to the court's ruling.

C. **Notice of emergency change of placement.** When the department changes a child's placement without the prior notice required in Paragraph A of this rule, the department shall provide written notice substantially in the form approved by the Supreme Court within three (3) days after the placement change. The notice shall be sent to the recipients listed in Paragraph A of this rule.

D. **Written notice not required.** Written notice is not required for removal of a child from temporary emergency care, emergency foster care, or respite care. The department shall orally notify the child's guardian *ad litem* or attorney of such a removal.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed or pending on or after on or after August 31, 2014.]

Committee commentary. — This rule is modeled substantially after NMSA 1978, Section 32A-4-14, which requires the department to give notice of a child's change in placement. Unlike the statute, however, the rule requires the department to notify the

court of any change in the child's placement, including when the change is made at the request of the child's foster parents or substitute care provider. *Contra id.* § 32A-4-14(D).

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed or pending on or after August 31, 2014.]

10-318. Placement of Indian children.

A. **Placement preferences.** The court shall ensure that the department follows the placement preferences established by the Indian Child Welfare Act and its regulations when the following conditions are met:

(1) the court finds at the custody hearing or any subsequent hearing that the child is an Indian child or there is reason to know that the child is an Indian child; and

(2) legal custody of the child is or has been transferred or awarded to the department.

B. **Applicability.** The placement preferences must be applied in any foster care, preadoptive, or adoptive placement by the department unless there is a determination on the record that good cause exists to not apply those placement preferences.

C. **Departure from placement preferences; good cause.** If any party asserts that good cause exists not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the proceeding and the court. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

D. **Good cause; determination.**

(1) ***Motion.*** The court shall determine whether good cause exists to depart from the placement preferences upon the occurrence of the following:

(a) a written or oral motion by a party or the Tribe to determine whether good cause exists to depart from the placement preferences; or

(b) the court's own motion when it appears that a placement or recommended placement may depart from the placement preferences.

(2) ***Record; factual basis.*** A determination of good cause to depart from the placement preferences shall be made on the record or in writing and shall include factual findings based on evidence in the record or the stipulation of the parties. Any hearing on a motion under this paragraph shall be held within thirty (30) days of the motion.

E. ***Good cause; permissible considerations.*** A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) the request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) the presence of a sibling attachment that can be maintained only through a particular placement;

(4) the extraordinary physical, mental, or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(5) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

F. ***Good cause; impermissible considerations.***

(1) ***Socioeconomic status.*** A placement may not depart from the placement preferences based on the socioeconomic status of any placement relative to another placement.

(2) ***Ordinary bonding or attachment.*** A placement may not depart from the placement preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

[Approved by Supreme Court Order No. 16-8300-038, effective for all cases pending or filed on or after November 28, 2016.]

Committee commentary. — The Indian Child Welfare Act and its regulations provide the following placement preferences for Indian children in foster-care or preadoptive placements:

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least restrictive setting that:

(1) Most approximates a family, taking into consideration sibling attachment;

(2) Allows the Indian child's special needs (if any) to be met; and

(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

25 C.F.R. § 23.131.

The Indian Child Welfare Act and its regulations provide the following placement preferences for Indian children in adoptive placements:

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) Other members of the Indian child's Tribe; or

(3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

25 C.F.R. § 23.130.

The rule requires the court to ensure that the department follows the placement preferences when custody has been "transferred or awarded" to the department. The use of both terms is consistent with the Children's Code and is intended to clarify that the placement preferences must be followed irrespective of when the department receives custody of the child. *See* NMSA 1978, § 32A-4-18(D)(2) (providing that the court may "award" custody of the child to the department at the conclusion of the custody hearing); § 32A-4-22(B)(2) (providing that the court may "transfer" custody of the child to the department at the conclusion of the dispositional hearing).

[Approved by Supreme Court No. 16-8300-038, effective for all cases pending or filed on or after November 28, 2016.]

10-321. Joinder of parties; severance.

A. **Joinder of parties.** Two or more respondents may be named in the same pleadings:

(1) alleging abuse or neglect of a child; or

(2) requesting a termination of parental rights.

B. **Misjoinder and nonjoinder.** Parties may be dismissed or added by order of the court on motion of any party or of its own initiative at any stage of the proceeding. Any claim against a party may be severed and proceeded with separately.

[Adopted, effective August 1, 1999; Rule 10-305.1 NMRA, recompiled and amended as Rule 10-321 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "abuse and neglect proceedings" in the title.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-305.1 NMRA was recompiled as Rule 10-321 NMRA, effective January 15, 2009.

10-322. Defenses and objections; when and how presented; by pleading or motion.

A. **When presented.** A respondent in a proceeding may serve a response within twenty (20) days after the service of the summons and petition. Unless a different time is fixed by the court, after service of a motion under Paragraph B of this rule, any responsive pleading shall be filed within ten (10) days after the denial of the motion. Although a response to a petition is not required, the effect of failure to respond is a general denial, and any defense in law or in fact which is not affirmatively pled by a respondent may be deemed waived, provided that the court shall allow such a defense for good cause shown.

B. **How presented.** Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading, except that the following defenses may, at the option of the respondent, be made by motion:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a necessary party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

Committee commentary. — The committee has amended the rule to conform to practice. Answers are not generally filed unless an affirmative defense is being raised, and defaults are not taken. The time for filing a response has been changed from thirty (30) to twenty (20) days to avoid unnecessary delays.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, provided the children's court judge the discretion to allow defenses not affirmatively pled in a response to a petition; in Paragraph A, after "not affirmatively pled by a respondent", deleted "shall" and added "may", and after "deemed waived", deleted "and shall not be allowed unless the court, for good cause shown, allows the same" and added "provided that the court shall allow such a defense for good cause shown".

Allegations sufficient to state a cause of action. — Where the factual allegations in a petition for child neglect only identified the actions of the mother and the stepfather of the children; the petition did not contain specific allegations of neglect on the part of the father; and the petition described the mother's and stepfather's drug abuse, the unsatisfactory conditions of the home in which the children were living with the mother and stepfather, the subsequent voluntary placement of the children with fictive kin, the mother's and stepfather's failure to participate in a court-ordered treatment plan, the mother's arrest for domestic violence, the family's eviction, and the mother's announcement that she intended to take the children from the fictive kin, the allegations stated a cause of action against the father for neglect because the petition alleged that the children's basic needs had not been met and that the children were lacking adequate supervision and care and a safe and stable home environment which the father had a continuing legal duty to provide. *State ex rel. CYFD v. Cosme V.*, 2009-NMCA-094, 146 N.M. 809, 215 P.3d 747.

10-323. Dismissal of a respondent or child; party dismissal sheet.

A completed party dismissal sheet substantially in the form approved by the Supreme Court shall accompany any order filed with the court that dismisses a respondent or child from a case for any reason and at any stage of the proceedings.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases pending or filed on or after August 31, 2014.]

Committee commentary. — The party dismissal sheet is for administrative use only and is not made part of the record.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases pending or filed on or after August 31, 2014.]

10-324. Conduct of hearings.

A. **Definitions.** For purposes of this rule, the following definitions shall apply:

(1) ***General public*.** A member of the general public is a person who is not a party, the attorney of a party, or the representative of a child's Indian tribe or tribes when the court knows or has reason to know that the child is an Indian child under the Indian Child Welfare Act;

(2) ***Proper interest in the case*.** A person with a proper interest in the case is a member of the general public

(a) whose attendance is necessary to aid in resolving the issues presented at the hearing;

(b) who has a professional relationship with a party; or

(c) who has a close personal relationship with a party; and

(3) ***Proper interest in the work of the court*.** A person with a proper interest in the work of the court is a member of the general public who wishes to attend a closed hearing as a neutral observer for educational, administrative, or other similar purposes.

B. **Hearings closed to the general public.** All abuse and neglect hearings shall be closed to the general public, except as provided under Paragraph E of this rule. Any member of the general public who is permitted to attend a hearing shall not divulge any information that would identify the child or family involved in the proceedings.

C. **News media.** Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian, or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. A child who is the subject of an abuse and neglect proceeding and is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

D. **Children.** If the court finds that it is in the best interest of a child under fourteen (14) years of age, the child may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen (14) years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

E. **General public.** Unless the court excludes all members of the general public from a closed hearing, the court shall inquire of any member of the general public who is present at a closed hearing to determine if the person may attend the hearing. The court may permit the attendance of such a person for part or all of the hearing if the court determines the following:

(1) the person has a proper interest in the case or a proper interest in the work of the court; and

(2) the person's interest is consistent with the interests of the parties and of the court, taking into account the following:

(a) whether a party objects to the person's attendance, including the reasons for the objection;

(b) whether a party supports the person's attendance, including the reasons for the support;

(c) whether the person's attendance will be in the best interests of a child who is a party to the proceedings;

(d) whether the person's attendance will affect any party's ability to participate in the hearing;

(e) whether the person's attendance will promote or impede the efficient resolution of the hearing; and

(f) whether any other interest of the parties or of the court weighs in favor of or against the person's attendance at the hearing.

[Adopted by Supreme Court Order No. 15-8300-011, effective for all cases filed or pending on or after December 31, 2015; as amended by Supreme Court Order No. 18-8300-011, effective for all cases pending or filed on or after December 31, 2018.]

Committee commentary. — In addition to parties and their attorneys, Subparagraph (A)(1) excludes a representative of a child's Indian tribe or tribes from the definition of "general public" in a case in which the Indian Child Welfare Act may apply. Therefore, that tribal representative shall be permitted under Paragraph B to attend all hearings in an abuse and neglect proceeding unless it is determined that the Indian Child Welfare Act does not apply. The tribal representative also should be permitted to monitor the proceedings in order to keep the tribe informed of the progress of the case, to participate in the proceedings to the extent reasonably necessary to inform the court of the tribe's concerns, and to provide additional resources, including, for example, services, placement options, financial support, and cultural connections. A tribe should not be required to formally intervene in the case unless the tribe seeks affirmative relief from the court. *See, e.g*., 25 U.S.C. § 1911(c) (providing that an Indian child's tribe shall have a right to intervene at any point in a state court proceeding for the foster care of, or termination of parental rights to, an Indian child).

Subparagraph (A)(2) identifies several categories of individuals who may have a proper interest in the case. Under Subparagraph (A)(2)(b), an individual with a professional relationship with a party may be, for example, a juvenile or adult probation officer, a mental health therapist, an attorney who represents a party in another proceeding, or a professional who provides services to a party. Under Subparagraph (A)(2)(c), an individual with a close personal relationship with a party may be, for example, a family member, a friend, a current or former foster parent, a teacher, a coach, or any other person who provides social or emotional support to a party.

[Adopted by Supreme Court Order No. 15-8300-011, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-011, effective for all cases pending or filed on or after December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018, revised the definition of "General public" for purposes of this rule, and revised the committee commentary; in Subparagraph A(1), after "not a party", deleted "or", after "attorney of a party,", added "or the representative of a child's Indian tribe or tribes when the court knows or has reason to know that the child is an Indian child under the Indian Child Welfare Act".

10-325. Notice of child's advisement of right to attend hearing.

A. **Notice required.** Counsel assigned to represent a child fourteen (14) years of age or older shall provide written notice that the child has been advised of the child's right to attend any hearing under the Abuse and Neglect Act.

B. **Timing of Notice.** Notice shall be filed at least fifteen (15) days before each hearing, unless there is an emergency hearing that is held without fifteen (15) days notice.

C. **Content of Notice.** The notice shall be substantially in the form approved the Supreme Court and shall be provided to the following:

(1) the children's court;

(2) all parties;

(3) the child's CASA; and

(4) the child's foster parents.

D. **Written notice not required.** Written notice is not required when there is an emergency hearing scheduled without fifteen (15) days notice to the parties. Counsel for the child shall orally notify the court whether the child was advised of the child's right to attend such a hearing.

E. **Alternative method of testimony.** If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 NMRA.

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

Committee commentary. — Under Rule 10-324(D) NMRA, a child fourteen (14) years of age or older may be excluded from a hearing "only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding." *See also* NMSA 1978, § 32A-4-20(E). Together with Form 10-570 NMRA, this rule is intended to ensure that a child fourteen (14) years of age or older is notified in a timely manner of the child's right to attend a hearing under the Abuse and Neglect Act.

The fifteen (15)-day notice required under this rule is consistent with the notice required under Rules 10-332 and -333 NMRA for the disclosure of evidence and witnesses before an adjudicatory hearing or termination of parental rights hearing. Once the written notice has been filed, changes about whether the child will attend the hearing may be communicated to the court and to the other parties orally or in writing.

[Approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-019, effective for all cases pending or filed on or after December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-019, effective December 31, 2017, added the last sentence in the committee commentary.

10-325.1. Guardian *ad litem* notice of whether child will attend hearing.

A. **Notice required.** A guardian *ad litem* assigned to represent a child under fourteen (14) years of age shall provide written notice of the following:

(1) the child has been advised, to the maximum extent possible given the child's developmental capacity, of the child's right to attend any hearing under the Abuse and Neglect Act;

(2) the child's declared position, if ascertainable given the child's developmental capacity, about whether to attend the upcoming hearing; and

(3) the guardian *ad litem*'s position about why attendance is or is not in the child's best interest.

B. **Timing of Notice.** Notice shall be filed at least fifteen (15) days before each hearing, unless there is an emergency hearing that is held without fifteen (15) days notice.

C. **Content of the Notice.** The notice shall be substantially in the form approved by the Supreme Court and shall be provided to the following:

(1) the children's court;

(2) all parties;

(3) the child's CASA; and

(4) the child's foster parents.

D. **Written notice not required.** Written notice is not required when there is an emergency hearing scheduled without fifteen (15) days notice to the parties. The guardian *ad litem* for the child shall orally notify the court whether the child was informed of the hearing and whether the child wished to attend such a hearing.

E. **Alternative method of testimony.** If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 NMRA.

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]

Committee commentary. — The child is a party to an abuse and neglect proceeding and therefore has a right to attend any hearing in the case. *See* Rule 10-121(B)(3) NMRA (providing that a child alleged to be neglected or abused is a party to the proceeding); *see also* Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases § D-5 cmt. at 11 (Am. Bar Ass'n 1996) ("A child has the right to meaningful participation in the case."); *but see* Rule 10-324(D) NMRA (providing that a child may be excluded from a hearing "if the court finds that it is not in the best interest of the child" to attend); NMSA 1978, § 32A-4-20(E) (same).

Together with Form 10-570.1 NMRA, this rule is intended to ensure that a guardian *ad litem* provides a child with timely notice of the child's right to attend a hearing under the Abuse and Neglect Act. The fifteen (15)-day notice required under this rule is consistent with the notice required under Rules 10-332 and -333 NMRA for the disclosure of evidence and witnesses before an adjudicatory hearing or termination of parental rights hearing. Once the written notice has been filed, changes about whether the child will attend the hearing may be communicated to the court and to the other parties orally or in writing.

This rule also ensures that a guardian *ad litem* performs the dual responsibilities of (1) notifying the court of the child's declared position about whether to attend a hearing, and (2) notifying the court of the guardian *ad litem*'s position about whether attendance is in the child's best interests. *See* NMSA 1978, § 32A-1-7(D) ("After consultation with the child, a guardian *ad litem* shall convey the child's declared position to the court at every hearing."); § 32A-1-7(A) ("A guardian *ad litem* shall zealously represent the child's best interests in the proceeding."); *see also In re Esperanza M.*, 1998-NMCA-039, ¶ 37, 124 N.M. 735, 955 P.2d 204 ("The guardian *ad litem* may properly present the child's wishes to the court, and at the same time advise the court of those facts and matters which the guardian believes bear upon and affect the child's best interests."). In making

the latter determination, a guardian *ad litem* should bear in mind that a child's attendance should be the norm, rather than the exception. *See* Standards of Practice, *supra*, § D-5 ("In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify."). The decision of whether to exclude a child from some or all of a hearing should take into consideration factors such as the subject matter of the hearing, the potential to cause or renew trauma to the child, the propriety of using an alternative method of testimony under Rule 10-340 NMRA, and the child's physical, cognitive, and emotional development.

The law in New Mexico is unclear how a guardian *ad litem* should proceed if a conflict arises between the child's declared position about attending a hearing and the guardian *ad litem*'s determination of the child's best interests. While a guardian *ad litem* has an independent responsibility to make a recommendation to the court as to the child's best interest, ultimately the court makes the final determination. Thus, in the event of a conflict between the guardian *ad litem* and the child's expressed position, the better practice is to bring the matter to the court's attention to decide whether exclusion from the hearing is appropriate under Rule 10-324(D) NMRA. *See also In re George F.*, 1998-NMCA-119, ¶ 15, 125 N.M. 597, 964 P.2d 158 ("The GAL's role is not adversarial, but independent, and is designed to assist the court in carrying out its duty of protecting the interests of the child." (internal quotation marks and citation omitted)).

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]

10-331. Disclosure by the department.

A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, no less than fifteen (15) days prior to any adjudicatory hearing or termination of parental rights hearing, the department shall disclose and make available to the parties:

(1) any statement made by the respondent or a co-respondent, or copies thereof, which is in the possession, custody or control of the department and the existence of which is known, or by the exercise of due diligence may become known, to the children's court attorney;

(2) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the department, and which are intended for use by the department as evidence at the adjudicatory hearing or termination of parental rights hearing, or were obtained from or belong to the respondent;

(3) any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, which are in the possession, custody or control of the department and the existence of

which is known, or by the exercise of due diligence, may become known to the children's court attorney; and

(4) a written list of the names and addresses of all witnesses which the children's court attorney intends to call at the adjudicatory hearing or termination of parental rights hearing, together with any recorded or written statement made by the witness.

B. **Examining, photographing or copying evidence.** The parties may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. **Certificate.** At least ten (10) days prior to the adjudicatory hearing or termination of parental rights hearing, the children's court attorney shall file with the clerk of the court a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information prior to the adjudicatory hearing or termination of parental rights hearing. If information specifically excepted from the certificate is furnished by the children's court attorney to the parties after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the parties.

D. **Information not subject to disclosure.** Unless otherwise ordered, the children's court attorney shall not be required to disclose any material required to be disclosed by this rule if:

(1) the disclosure will expose a confidential informer; or

(2) there is substantial risk to some person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure.

When material is withheld under this rule, the children's court attorney shall disclose to the parties that material has been withheld, together with a description of the nature of the documents, communications or things not disclosed that is sufficient to enable a party to contest the failure to disclose.

E. **Failure to comply.** If the department fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 10-137 NMRA and Rule 10-165 NMRA.

[Approved, effective July 1, 2002; Rule 10-308 NMRA, recompiled and amended as Rule 10-331 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "abuse, neglect and termination of parental rights proceedings" in the title; in Paragraph A, changed "make available to the respondent and the guardian ad litem" to "make available to the parties"; deleted former Paragraph B which provided for court orders relating to discovery; relettered former Paragraphs C through F as Paragraphs B through E; in Paragraph B, changed "The respondent" to "The parties"; in Paragraph C, changed "The children's court attorney shall file with the clerk of the court at least ten (10) days" to "At least ten (10) days", changed "parental rights hearing" to "parental rights hearing, the children's court attorney shall file with the clerk of the court" and changed "the respondent" to "the parties"; in Subparagraph (2) of Paragraph D, changed "usefulness of the disclosure to defense counsel" to "usefulness of the disclosure"; in Paragraph D, added the last sentence; and in Paragraph E, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-308 NMRA was recompiled as new Rule 10-331 NMRA, by effective January 15, 2009.

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, former Rule 10-331 NMRA, relating to the explanation of *pro se* respondent's rights at first appearance and termination of parental rights proceedings, was withdrawn, effective January 15, 2009. For comparable provisions of former Rule 10-331 NMRA, *see* Rule 10-314 NMRA.

10-332. Disclosure of evidence and witnesses by the respondent.

A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, not less than fifteen (15) days prior to any adjudicatory hearing or termination of parental rights hearing, the respondent shall disclose and make available to the parties:

(1) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the respondent, and which the respondent intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the respondent intends to call at the adjudicatory hearing or termination of parental rights hearing;

(2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, in the possession or control of the respondent, which the respondent intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the respondent intends to call at the adjudicatory hearing or termination of parental rights hearing; and

(3) a list of the names and addresses of the witnesses the respondent intends to call at the adjudicatory hearing or termination of parental rights hearing, together with any recorded or written statement made by any identified witness.

B. **Examining, photographing or copying evidence.** The parties may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. **Information not subject to disclosure.** Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of:

(1) reports, memoranda or other internal defense documents made by the respondent, or the respondent's attorneys in connection with the investigation or defense of the case; or

(2) statements made by the respondent to the respondent's agents or attorneys.

D. **Certificate.** The respondent shall file with the clerk of the court at least ten (10) days prior to the adjudicatory hearing or termination of parental rights hearing a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the respondent after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the parties.

E. **Failure to comply.** If the respondent fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 10-137 NMRA or Rule 10-165 NMRA.

[Approved, effective July 1, 2002; Rule 10-309 NMRA, recompiled and amended as Rule 10-332 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "abuse, neglect and termination of parental rights proceedings" in the title; in Paragraphs A, B and D, changed "department and the guardian ad litem" to "parties"; and in Paragraph E, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-309 NMRA was recompiled as Rule 10-332 NMRA, effective January 15, 2009.

10-333. Disclosure of evidence and witnesses by the child's guardian *ad litem* or attorney.

A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, not less than fifteen (15) days prior to any adjudicatory hearing or termination of parental rights hearing, the child's guardian *ad litem* or attorney shall disclose and make available to the parties:

(1) a statement of the child's declared position appertaining to the adjudication, disposition or termination of parental rights;

(2) a statement of the guardian *ad litem's* position appertaining to the adjudication, disposition or termination of parental rights;

(3) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the child's guardian *ad litem* or attorney, and which the child's guardian *ad litem* or attorney intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing;

(4) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, in the possession or control of the child's guardian *ad litem* or attorney, which the child's guardian *ad litem* or attorney intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing; and

(5) a list of the names and addresses of the witnesses the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing, together with any recorded or written statement made by any identified witness.

B. **Examining, photographing or copying evidence.** The parties may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. **Information not subject to disclosure.** Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of:

(1) reports, memoranda or other internal defense documents made by the child's guardian ad litem or attorney in connection with the investigation or defense of the case;

(2) statements made by the child to the child's guardian *ad litem* unless such statements contradict prior statements made by the child in connection with any allegation of abuse or neglect; or

(3) statements made by the child to the child's attorney.

D. **Certificate.** The child's guardian *ad litem* or attorney shall file with the clerk of the court at least ten (10) days prior to the adjudicatory hearing or termination of parental rights hearing a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the child's guardian *ad litem* or attorney after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the parties.

E. **Failure to comply.** If the child's guardian *ad litem* or attorney fails to comply with any of the provisions of this rule, the court may enter any order pursuant to Rule 10-137 NMRA or Rule 10-165 NMRA.

[Approved, effective March 1, 2003; Rule 10-310 NMRA, recompiled and amended as Rule 10-333 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed "guardian ad litem; abuse, neglect and termination of parental rights proceedings" to "child's guardian ad litem or attorney" in the title; in Paragraphs A, C, D and E, changed "guardian ad litem" to "child's guardian ad litem or attorney"; in Paragraphs A, B and D, changed "department and the respondent" to "parties"; added Subparagraph (3) of Paragraph C; added the paragraph designation for Paragraph E and the title; and in Paragraph E, changed the reference from Rule 10-113 NMRA to Rule 10-165 NMRA.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-310 NMRA was recompiled as Rule 10-333 NMRA, effective January 15, 2009.

10-334. Court-ordered discovery.

In addition to the disclosures between the parties and for good cause shown, the court may order any discovery permitted by the Children's Court Rules or by Rules of Civil Procedure for the District Court. The court may order or limit production of any books, papers, documents, photographs, tangible objects, reports or other information as may be necessary to ensure a fair consideration of the issues while considering the best interests of the child.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — Rule 10-334 NMRA was taken from an existing rule but modified to discourage unnecessary or abusive discovery in Children's Court cases. In most cases, disclosures under Rules 10-331, 10-332, and 10-333 NMRA should be sufficient as between the parties. It is in dealing with non-parties that traditional discovery is most important.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

10-335. Court ordered diagnostic examinations and evaluations.

At any time after the commencement of an abuse and neglect proceeding, upon motion of a party or upon the court's own motion, the court may order a respondent or any child alleged to be neglected or abused to undergo a diagnostic examination or evaluation. Copies of any diagnostic examination or evaluation report shall be provided to the parties. If the examination is ordered prior to the adjudicatory hearing, copies of the diagnostic or evaluation report shall be provided to the parties at least five (5) days prior to the adjudicatory hearing. Diagnostic or evaluation reports shall not be provided to the court prior to the adjudicatory hearing.

[Approved, effective June 1, 1999; Rule 10-306.1 NMRA, recompiled as Rule 10-335 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-306.1 NMRA was recompiled as Rule 10-335 NMRA, effective January 15, 2009.

10-340. Testimony of a child in an abuse or neglect proceeding.

A. **Request to permit testimony by alternative method.** The court may permit a child witness to testify by an alternative method upon request of 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. A hearing on the request must be concluded on the record after reasonable notice to all parties, any non-party requestor, and any other person the court specifies. The child's presence is not required at the hearing unless ordered by the court. In conducting the hearing, the court is not bound by the Rules of Evidence except the rules of privilege.

B. **Alternative method.** The court may allow a child witness to testify by an alternative method if the court finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the court. In making this finding, the court shall consider the following:

(1) the nature of the hearing;

(2) the age and maturity of the child;

(3) the relationship of the child to the parties in the proceeding;

(4) the nature and degree of mental or emotional harm that the child may suffer in testifying; and

(5) any other relevant factor.

C. **Further considerations.** If the court finds that the requirements of Paragraph B of this rule have been met, the court shall consider

(1) alternative methods reasonably available for protecting the interests of or reducing mental or emotional harm to the child;

(2) available means for protecting the interests of or reducing mental or emotional harm to the child without resort to an alternative method;

(3) the nature of the case;

(4) the relative rights of the parties;

(5) the importance of the proposed testimony of the child;

(6) the nature and degree of mental or emotional harm that the child may suffer if an alternative method is not used; and

(7) any other relevant factor.

D. **Ruling regarding testimony by alternative method.** The alternative method ordered by the court shall be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order. An order allowing a child witness to testify by an alternative method shall set forth the court's findings and conclusions that support allowing the child to testify by an alternative method, including findings that demonstrate that an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the court and that the alternative method allowed by the court protects the rights of the parties in light of the nature of the proceedings. An order allowing a child witness to testify by an alternative method also shall

(1) state the method by which the child is to testify;

(2) list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

(3) state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(4) state any condition or limitation upon the participation of individuals present during the testimony of the child; and

(5) state any other condition necessary for taking or presenting the testimony.

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

Committee commentary. — This rule is intended to supplement the Uniform Child Witness Protective Measures Act, NMSA 1978, §§ 38-6A-1 to -9. The rule provides standards for requesting and permitting an alternative method for a child to testify in an abuse and neglect proceeding. In considering the request, the court must balance the needs of the child ("to serve the best interests of the child or enable the child to communicate with the court") with the due process rights of the parties ("no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order"). *See also In re Pamela A.G.*, 2006-NMSC-018, ¶ 18, 139 N.M. 459, 134 P.3d 746 ("[T]rial judges should explore alternatives for the questioning of a child in order to help the fact-finder test the reliability of the child's statements while also protecting the child's emotional state.").

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

10-341. Witness immunity.

A. **Issuance of order.** If a person has been or may be called to testify or to produce a record, document or other object in an abuse or neglect, termination of parental rights or guardianship proceeding in the children's court, the judge before whom the proceeding is pending may upon the written application for immunity by a party, or upon the court's own motion, issue a written order requiring the person to testify or to produce the record, document or other object notwithstanding the person's privilege against self-incrimination. The applicant shall serve the district attorney with a copy of the application for immunity and notice of hearing on the application.

B. **Application**. The court may grant the application and issue a written order pursuant to this rule if it finds:

(1) the testimony, or the record, document or other object may be necessary to the public interest;

(2) the person has refused or is likely to refuse to testify or to produce the record, document or other object on the basis of the person's privilege against self-incrimination; and

(3) the district attorney was properly served.

C. **Extent of immunity.** Evidence compelled under an order granted pursuant to this rule or any information directly or indirectly derived from such evidence may not be used against the person in any criminal case except as provided by Rule 11-413 NMRA of the Rules of Evidence.

[Adopted effective February 1, 1982, Court Rule 64 NMSA 1978; Rule 10-110 SCRA 1986; Rule 10-110 NMRA; as amended effective March 20, 2000; Rule 10-110 NMRA, recompiled as Rule 10-341 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

Committee commentary. — Prior to the New Mexico Supreme Court's decision in *State v. Belanger*, 2009-NMSC-025, ¶ 35, 146 N.M. 357, 210 P.3d 783, the court could only issue an order granting use immunity upon application of the state. *Belanger* removed that restriction, and this rule has been revised, consistent with the revisions made to Rule 5-116 NMRA. For a discussion of the balancing of interests required by the district court when granting use immunity in the criminal context, *see Belanger*, 2009-NMSC-025, ¶ 38.

[Adopted by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-024, effective January 7, 2013, permitted a party or the court to apply for immunity; required service of an application upon the district attorney; in Paragraph A, in the first sentence, after "application for immunity by", deleted "the children's court attorney" and added "a party, or upon the court's own motion" and in the second sentence, at the beginning of the sentence, after "The", deleted "department" and added "applicant"; and added Subparagraph (3) of Paragraph B.

The 2000 amendment, effective for cases filed in the Children's Court on and after March 20, 2000, in Paragraph A, substituted the enumerated types of proceedings in the children's court for "an official proceeding" in the first sentence and added the last sentence; added Paragraph C; and made gender neutral changes.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-110 NMRA was recompiled as Rule 10-341 NMRA, effective January 15, 2009.

10-342. Admissions, including no contest pleas, and consent decrees.

A. **Admissions.** The respondent may make an admission by:

(1) admitting sufficient facts to permit a finding that the allegations of the petition are true; or

(2) entering a plea of no contest by declaring the respondent's intention not to contest the allegations in the petition. A no contest plea entered under this rule shall not be construed as or used as an admission for any other civil or criminal purpose.

B. **Consent decrees.** A consent decree in an abuse or neglect proceeding is an order of the court, after an admission, including the entry of a no contest plea, has been made, that suspends the proceedings on the petition and in which, under terms and conditions negotiated and agreed to by the respondent and the children's court attorney:

(1) the legal custody of the child is transferred to the department for a period not to exceed six (6) months from the date of the consent decree; and

(2) the child is allowed to remain with the respondent or other person and the respondent will be under supervision of the department for a period not to exceed six (6) months.

C. **Inquiry of respondent.** The court shall not accept an admission, including the entry of a no contest plea, or approve a consent decree without first, by addressing the respondent personally in open court, determining that:

(1) the respondent understands the allegations of the petition;

(2) the respondent understands the dispositions that the court may make if the allegations of the petition are found to be true;

(3) the respondent understands that by making an admission, including entering into a no contest plea, the court will enter a finding that the child is an abused or neglected child as to that respondent and as defined under the Children’s Code, and that such a finding can be used against the respondent to establish the fact of abuse and/or neglect in the event the case proceeds to a hearing on a motion to terminate parental rights;

(4) the respondent understands the right to deny the allegations in the petition and to have a trial on the allegations;

(5) the respondent understands that by admitting, including by entering a no contest plea, or agreeing to the entry of the consent decree the respondent is waiving the right to a trial;

(6) the admission, including the entry of a no contest plea, or provisions of the consent decree are voluntary and not the result of force or threats or of promises other than any consent decree agreement reached.

D. **Basis for admission, no contest plea, or consent decree.** The court shall not enter judgment upon an admission, including the entry of a no contest plea, or approve a consent decree without making such inquiry as shall satisfy the court that there is a factual basis for the admission, including the entry of a no contest plea, or consent decree. If the admission is a no contest plea, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true.

E. **Disposition.** After acceptance of an admission, including a no contest plea, unless made for the purpose of a consent decree, the court shall proceed to make any disposition permitted by law as it deems appropriate under the circumstances.

F. **Acceptance of consent decree.** If the court accepts a consent decree, the court shall approve the disposition provided for in the consent decree or another disposition more favorable to the respondent than that provided for in the consent decree. If the court rejects the consent decree, the decree shall be null and void.

G. **Inadmissibility of discussions.** Evidence of an admission, including a no contest plea, or agreement to a consent decree, later withdrawn, or of conduct or statements made during negotiations shall be considered to be "compromise negotiations" under Rule 11-408 NMRA and is not admissible to prove abuse or neglect. This rule does not require the exclusion of any evidence otherwise discoverable merely because it was presented in the course of settlement negotiations.

H. **Time limits.** If the child is in the custody of the department, the court shall accept or reject the admission, including a no contest plea, or consent decree within five (5) days after the admission, including a no contest plea, is made or within five (5) days after a consent decree has been submitted to the court for its approval.

I. **Extension.** The department may move the court for an order extending the original consent decree for a period not to exceed six (6) months from the expiration of the original decree. The motion for extension shall be filed prior to the expiration of the original decree. If the respondent objects to the extension, the court shall hold a hearing to determine if the extension is in the best interests of the child.

J. **Revocation.** If, prior to the expiration of the consent decree, the respondent allegedly fails to fulfill the terms of the decree, the department may file a petition to revoke the consent decree. If the respondent is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition which would have been appropriate in the original proceedings.

[As amended, effective May 1, 1986; Rule 10-307 NMRA, recompiled and amended as Rule 10-342 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

Committee commentary. — The rule institutes consent decree and admissions procedures for abuse and neglect cases. The consent decree in an abuse or neglect case differs from that in a delinquency proceeding in that the parties may agree that the department have legal custody of the child for a period of up to six months or the child may be placed under supervision in his own home or the home of another for the six-month period.

See generally Rules 10-227 and 10-228 NMRA on consent decrees in delinquency cases.

Paragraph D makes a distinction between admissions and no contest pleas. With an admission, the respondent may be asked questions to establish the factual basis for the charges. With a no contest plea, the children's court attorney is required to set forth the factual basis.

[As recompiled and amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order, No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-024, effective January 7, 2013, provided for an admission by entry of a no contest plea; in the title of the rule, after "Admission", added "including no contest pleas", in Subparagraph (2) of Paragraph A, at the beginning of the first sentence, added "entering a plea of no contest by" and added the second sentence; in Paragraph B, in the first sentence, after "after an admission", added "including the entry of a no contest plea"; in Paragraph C, in the first sentence, after "accept an admission", added "including the entry of a no contest plea", added Subparagraph (3), relettered former Subparagraph (4) as Subparagraph (5), in Subparagraph (5), after "understands that by admitting", added "including by entering a no contest plea", relettered former Subparagraph (5) as Subparagraph (6), and in Subparagraph (6), after "the admission", added "including the entry of a no contest plea"; in Paragraph D, in the title of the paragraph, after "Basis for admission", added "no contest plea", in the first sentence, after "judgment upon an admission", added "including the entry of a no contest plea" and after "factual basis for the admission", added "including the entry of a no contest plea", and added the second sentence; in Paragraph E, after "acceptance of an admission", added "including a no contest plea"; in Paragraph G, in the first sentence, after "Evidence of an admission", added "including a no contest plea"; and in Paragraph H, after "reject the admission", added "including a no contest plea" and after "five (5) days after the admission", added "including a no contest plea".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph G, changed "statements made in connection therewith is not admissible in any proceeding against the respondent" to "conduct or statements made during negotiations shall be considered to be 'compromise negotiations' under Rule 11-408 NMRA and is not admissible to prove abuse or neglect" and added last sentence; deleted former Paragraph I which provided that the Rules of Evidence apply to inquiries made to determine whether there is a factual basis for admission or a consent decree; relettered former Paragraphs J and K as Paragraphs I and J; in Paragraph I, deleted the former rule which provided that consent decrees in abuse and neglect proceedings may be extended by the department and may be terminated in accordance with Rule 10-225 NMRA and added the current rule; and in Paragraph J, changed "children's court attorney" to "department".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-307 NMRA was recompiled as Rule 10-342 NMRA, effective January 15, 2009.

Parties' stipulation to custody in department creates consent decree. — A stipulation entered into between the parties, following a hearing in which a physician testified that the child's condition was the result of neglect and in which the natural parents did not contest the neglect allegations and agreed to temporary custody in the department, was in effect a consent decree under this rule, and not a temporary custody order under Rule 10-303 NMRA. *State ex rel. Dep't of Human Servs. v. Doe*, 1985-NMCA-078, 103 N.M. 260, 705 P.2d 165.

Inquiry required before acceptance of admission. — Failure of the children's court to personally address a minor mother in open court concerning her understanding and consent to a stipulated judgment and disposition voided her purported admission that her children were neglected and, in a subsequent proceeding to terminate her parental rights, the court's use of such admission as the basis of its finding that the children were neglected violated the mother's due process rights. *State ex rel. Children, Youth & Families Dep't v. Lilli L.*, 1996-NMCA-014, 121 N.M. 376, 911 P.2d 884.

Inquiry into waiver of right to contest termination. — Without any inquiry into whether it was proper to infer from her absence that a mentally-ill mother voluntarily and unequivocally intended to waive her right to contest a termination proceeding, she faced an unacceptably high risk of erroneous deprivation of her fundamental rights. *State ex rel. Children, Youth & Families Dep't v. Stella P.*, 1999-NMCA-100, 127 N.M. 699, 986 P.2d 495.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Infants §§ 23, 24, 28 to 30.

10-343. Adjudicatory hearing; time limits; continuances.

A. **Time for hearing.** The adjudicatory hearing shall be commenced within sixty (60) days after whichever of the following events occurs latest:

(1) the date that the petition is served on the respondent;

(2) the termination of any diversion agreement;

(3) if a mistrial is declared or a new trial is ordered by the trial court, the date that such order is filed; or

(4) in the event of an appeal from a judgment and disposition on a petition alleging abuse or neglect, the date that the mandate or order is filed in the children's court disposing of the appeal.

B. **Children's court attorney.** The children's court attorney shall represent the state at the adjudicatory hearing.

C. **Extensions of time.** The time for commencement of an adjudicatory hearing may be extended by the children's court for good cause shown, provided that the aggregate of all extensions granted by the children's court shall not exceed sixty (60) days, except upon a showing of exceptional circumstances. An order granting an extension shall be in writing and shall state the reasons supporting the extension. An order extending time beyond the sixty (60)-day limit set forth in this paragraph shall not rely on circumstances that were used to support another extension.

D. **Procedure for extensions of time.** The party seeking an extension of time shall file with the clerk of the children's court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the children's court. If the children's court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.

E. **Effect of noncompliance with time limits.**

(1) The children's court may deny an untimely motion for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing on any petition does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

(3) An appeal from an order issued under Rule 10-315 NMRA and Section 32A-4-18 NMSA 1978 shall not affect the time limits set forth in this rule.

[Adopted April 1, 1976, Children's Court Rule 44 NMSA 1953; recompiled and amended effective November 1, 1978, Rule 60 NMSA 1978; amended, effective February 1, 1982; January 1, 1983; May 1, 1986; Rule 10-308 SCRA 1986; Rule 10-308 NMRA; recompiled and amended effective February 15, 1999; as recompiled by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 08-8300-058, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-004, effective in all cases filed on or after July 1, 2014; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Subparagraph E(1), after "untimely", deleted "petition" and added "motion".

The second 2014 amendment, approved by Supreme Court Order No. 14-8300-015, effective December 31, 2014, increased the time by which the children's court may extend the time for commencement of an adjudicatory hearing; provided the procedure for extensions of time in children's court; authorized the children's court to deny or grant, with sanctions, an untimely petition for extension of time; in Paragraph C, in the first sentence, after "extensions granted by the children's court", deleted "judge may" and added "shall", after "shall not exceed", changed "thirty (30)" to "sixty (60)", after "sixty (60) days", added the remainder of the sentence, and added the second and third sentences; deleted former language which required a party seeking an extension of time to file a verified petition stating facts that supported an extension of time, provided that the children's court or the Supreme Court could grant an extension of time for good cause if the petition was filed within the applicable time limits or for exceptional circumstances if the petition was filed within ten days after the expiration of the applicable time limits, provided time limits for filing a response to the petition, provided that a hearing would be held only upon order of the Supreme Court, and required the Supreme Court to fix the time limit for commencement of the adjudicatory hearing if the court granted the extension of time; added Paragraph D; in Paragraph E, deleted the former language which provided that if an adjudicatory hearing had not begun within the applicable time limits or an extension of time, then the children's court could dismiss the petition with prejudice or sanctions; and in Paragraph E, added Subparagraphs (1) and (2).

The committee commentary was withdrawn as part of the 2014 amendments to Rule 10-343 NMRA.

The first 2014 amendment, approved by Supreme Court Order No. 14-8300-004, effective July 1, 2014, clarified the type of judgment involved in an appeal that determines the deadline for the commencement of an adjudicatory hearing and the court in which the mandate or order is filed; excepted appeals from orders issued in custody hearings from the time limits for commencement of adjudicatory hearings; in Subparagraph (4) of Paragraph A, after “in the event of an appeal”, added “from a judgment and disposition on a petition alleging abuse or neglect” and after “order is filed in the”, deleted “district” and added “children’s”; and in Paragraph D, added the second sentence.

The second 2008 amendment, approved by Supreme Court Order No. 08-8300-058, effective January 15, 2009, in Paragraph D, after "the petition", replaced "shall" with "may" and added "or the court may consider other sanctions as appropriate" at the end of the sentence.

The first 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, replaced the former committee commentary with the current version.

The 1999 amendment, effective for cases filed in the Children's Court on and after February 15, 1999 and approved provisionally for six months until July 15, 1999, added "continuances" to the rule heading; in Paragraph A, substituted "sixty (60)" for "ninety (90)"; added new Subparagraph A(2); redesignated Subparagraphs A(2) and A(3) as Subparagraphs A(3) and A(4) respectively; in Paragraph C, deleted "only" following "extended" in the introductory paragraph; added Subparagraph C(1) and numbered the undesignated paragraph as Subparagraph C(2).

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-320 NMRA was recompiled as Rule 10-343 NMRA, effective January 15, 2009.

Rule 10-343 NMRA controls dismissal for failure to comply with time limitations. — Rule 10-343 NMRA, which allows the court discretion to dismiss for failure to meet time limit requirements, prevails over Section 32A-4-19 NMSA 1978, which requires dismissal for failure to meet time limit requirements. *State ex rel. Children, Youth & Families Dep't v. Arthur C.*, 2011-NMCA-022, 149 N.M. 472, 251 P.3d 729.

Change of rule during pendency of case. — Where Rule 10-343 NMRA replaced Rule 10-320 NMRA, which required dismissal for failure to meet time limit requirements, after the filing of a child abuse and neglect petition but before the adjudication of the petition, the court properly applied Rule 10-343 NMRA to determine whether the case should be dismissed for failure to comply with time limit requirements. *State ex rel. Children, Youth & Families Dep't v. Arthur C.*, 2011-NMCA-022, 149 N.M. 472, 251 P.3d 729.

Failure to comply with time limit requirements. — Where the Children, Youth and Families Department failed to comply with the time limits for adjudicating a petition for

child abuse and neglect, and the district court refused to dismiss the case based on the court's concern for the child's safety and well being and the need to quickly determine the child's custody status, the court did not abuse its discretion. *State ex rel. Children, Youth & Families Dep't v. Arthur C.*, 2011-NMCA-022, 149 N.M. 472, 251 P.3d 729.

Failure to timely adjudicate petition. — Where the Children, Youth and Families Department (CYFD) filed an abuse and neglect petition alleging that mother was homeless and had left child in father's care, that mother tested positive for certain controlled substances, and that the conditions in father's home were dangerous, and where there was reason to know that the child was an Indian child as set forth in the federal Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, the district court did not err in granting parents' motion to dismiss the case with prejudice for failure to timely commence the adjudicatory hearing or in denying CYFD's motion for an extension of time, because this rule mandates that adjudicatory hearings be commenced within sixty days from the date parents are served with an abuse and neglect petition, and the oral motion to dismiss occurred more than 100 days after parents were served; the rule does not allow the district court to consider a motion for an extension after the ten-day grace period has expired. *State ex rel. CYFD v. Tanisha G.*, 2019-NMCA-067.

Rule compared regarding noncompliance with time limits. — Despite notable similarities of their provisions, this rule, Rule 5-604 NMRA and Rule 10-226 NMRA, each has an additional provision that Rule 10-229 NMRA does not have. These rules all provide that noncompliance with the time limits of the rules or with the time limits of any extensions granted shall result in dismissal with prejudice of the charges against the accused, and Rule 10-229 NMRA has no such provision. *State v. Stephen F.*, 2005-NMCA-048, 137 N.M. 409, 112 P.3d 270, cert. granted, 2005-NMCERT-004.

10-344. Dispositional hearings; time limits.

A. **Predisposition report.** If the court finds that the respondent has abused or neglected the child, the court shall hold a dispositional hearing. If the dispositional hearing is not held at the same time as the adjudicatory hearing, the department shall prepare a predisposition report. Unless the dispositional hearing is held in conjunction with the adjudicatory hearing, at least five (5) days prior to the dispositional hearing, the department shall file with the court and serve on each party a predisposition report.

B. **Access to reports.** At the time of serving the department's dispositional plan on the parties, the department shall serve each party with:

(1) copies of any social, diagnostic or other predisposition reports ordered by or submitted to the court; and

(2) a proposed disposition order.

C. **Time.** If, at the conclusion of an adjudicatory hearing, the child is found to be abused or neglected, the court may proceed immediately to make disposition of the

case. If the dispositional hearing is not held in conjunction with the adjudicatory hearing, it shall commence within thirty (30) days after conclusion of the adjudicatory hearing.

[Adopted April 1, 1976, Children's Court Rule 45 NMSA 1953; recompiled and amended effective November 1, 1978 as Children's Court Rule 61 NMSA 1978; as amended effective February 1, 1982; May 1, 1986; Rule 10-309 SCRA 1986; Rule 10-309 NMRA; recompiled as Rule 10-321 and amended, effective February 15, 1999; Rule 10-321 NMRA, recompiled and amended as Rule 10-344 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — As to the predisposition study and report, *see* Section 32A-4-21 NMSA 1978.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraphs A and B, deleted the references to guardian ad litem.

The 1999 amendment, effective for cases filed in the Children's Court on and after February 15, 1999, rewrote the rule, adding present Paragraph A and deleting former Paragraphs C and D, relating to findings and reports.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-321 NMRA was recompiled as Rule 10-344 NMRA, effective January 15, 2009.

Cross references. — For hearing of evidence on disposition of child, *see* Section 32A-2-16 NMSA 1978.

For predisposition studies, reports and examinations, *see* Section 32A-2-17 NMSA 1978.

For disposition of child, *see* Sections 32A-2-19 and 32A-4-22 NMSA 1978.

10-345. Permanency and permanency review hearings.

A. **Initial permanency hearing.** Within six (6) months after the conclusion of the initial judicial review of a child’s dispositional order or within twelve (12) months of a child entering foster care, as defined in Section 32A-4-25.1(E) NMSA 1978 (as amended, 2005), whichever occurs first, the court shall conduct a permanency hearing to determine what permanency plan is in the child's best interest.

B. **Notice.** The department shall be responsible for obtaining a setting for the initial and any subsequent permanency or permanency review hearings and shall give notice of the hearing to all other parties and such other persons as required by law.

C. **Pre-permanency hearing report; conference.** Not less than five (5) days prior to a permanency hearing, the department shall prepare and serve on each party a pre-permanency hearing report. The report shall include the department's proposed permanency plan. The pre-permanency hearing report shall also set forth any changes to the disposition plan.

D. **Pre-hearing mandatory meeting.** Not less than five (5) days prior to the initial permanency hearing, the parties shall participate in a pre-hearing mandatory meeting. The department shall give notice of the time and place of the meeting to each party.

E. **Initial permanency order.** At the conclusion of the permanency hearing, the court shall enter an order establishing one of the permanency plans set forth in Section 32A-4-25.1(B) NMSA 1978 (as amended, 2005) for the child.

F. **Permanency review hearing; when required.**

(1) If the court adopts a permanency plan of reunification under Paragraph E of this rule at the conclusion of the initial permanency hearing, the court shall schedule a permanency review hearing within three (3) months, which may be vacated if the child is reunified.

(2) At the conclusion of any permanency review hearing, the court shall enter an order changing the plan, dismissing the case, or returning the child to his parent, guardian or custodian as set forth in Section 32A-4-25.1(D) NMSA 1978 (as amended, 2005).

G. **Subsequent permanency hearings.** The court shall hold permanency hearings at least every twelve (12) months when a child is in the legal custody of the department. At each hearing, the court shall review the permanency plan in effect, determine that the department has made reasonable efforts to finalize the plan in effect, and determine whether changes to the plan are appropriate.

[Approved, effective February 15, 1999; Rule 10-325 NMRA, recompiled and amended as Rule 10-345 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed the title from "Judicial review and permanency hearings" to "Permanency and permanency review hearings"; in Paragraph A, added "of a child's dispositional order or within twelve (12) months of a child entering foster care, as defined in Section 32A-4-25.1(E) NMSA 1978 (as amended, 2005), whichever occurs first"; in Paragraph B, added "or permanency review"; in Paragraph D, changed the title from "Pre-hearing settlement conference" to "Pre-hearing mandatory meeting", changed "each permanency hearing" to "the initial permanency hearing", changed "pre-hearing

settlement conference" to the phrase "pre-hearing mandatory meeting", changed "place of the hearing to each party and to the child's guardian ad litem" to "place of the meeting to each party"; in Paragraph E, added "establishing one of the permanency plans set forth in Section 32A-4-25.1(B) NMSA 1978 (as amended, 2005) for the child" and deleted former Subparagraphs (1) through (3) which specified alternative dispositions at a permanency hearing; in Paragraph F, changed the title from "Subsequent permanency review hearing" to "Permanency review hearing"; deleted former Subparagraphs (1) through (3) of Paragraph F which specified conditions that required a subsequent permanency hearing; added new Subparagraphs (1) and (2) of Paragraph F; in Paragraph G, deleted "disposition" from the title, deleted the former rule which specified alternative dispositions at a subsequent permanency hearing, and added the current rule; and deleted former Paragraph H which provided for the review of a treatment plan for a child found to be neglected or abused and the department's progress implementing the court's orders.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-325 NMRA was recompiled as Rule 10-345 NMRA, effective January 15, 2009.

10-346. Judicial reviews.

If a judgment has been filed finding a child to be neglected or abused, within sixty (60) days after the date the judgment was filed, the court shall review the treatment plan approved by the court. At least once every six (6) months thereafter, the court shall review the department's progress in implementing the court's orders. The department shall request a date for each judicial review and give notice as required by law.

[Approved, effective February 15, 1999; Rule 10-325 NMRA, recompiled and amended as Rule 10-346 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "and permanency hearings" in the title; deleted former Paragraph A which provided for a permanency hearing after the conclusion of the court's initial judicial review; deleted former Paragraph B which provided for notice of the permanency hearing; deleted former Paragraph C which provided for the service of a pre-permanency hearing report on each party; deleted former Paragraph D which provided for a pre-hearing settlement conference; deleted former Paragraph E which provided for alternative dispositions at a permanency hearing; deleted former Paragraph F which specified conditions that required a subsequent permanency hearing; deleted former Paragraph G which provided for alternative dispositions at a subsequent permanency hearing; and deleted the letter designation and title of former Paragraph H.

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, a portion of former Rule 10-325 NMRA was recompiled as Rule 10-346 NMRA, effective January 15, 2009.

10-347. Termination of parental rights; form of motion.

A motion for the termination of parental rights shall be substantially in the form approved by the Supreme Court.

[Approved, effective August 1, 2000; Rule 10-330 NMRA, recompiled and amended as Rule 10-347 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — For termination of parental rights, *see* Sections 32A-4-28 to 32A-4-30 NMSA 1978.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed "commencement of proceedings" to "form of motion" in the title; deleted former Paragraph A which provided for the commencement of a termination of parental rights proceeding; deleted former Paragraph B which provided for the joinder of parents as parties to a termination of parental rights proceeding; deleted the letter designation and title of former Paragraph C; and changed "motion or petition" to "motion for the termination of parental rights".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-330 NMRA was recompiled as Rule 10-347 NMRA, effective January 15, 2009.

10-351. Findings of fact and conclusions of law.

A. **Findings of fact and conclusions of law.** At the conclusion of an adjudicatory hearing or termination of parental rights proceeding, upon request of any party the court shall allow counsel a reasonable opportunity to file requested findings of fact and conclusions of law, which shall be served upon the parties and provided to the judge. The court shall enter its decision, which shall consist of findings of fact and conclusions of law. Each finding of fact and conclusion of law shall be separately numbered.

B. **Waiver.** A party waives findings of fact and conclusions of law if the party fails to file requested findings of fact and conclusions of law within the time specified by the court.

C. **Motion to amend or make additional findings and conclusions.** Upon motion of a party made not later than ten (10) days after entry of judgment, the court may

amend its findings or make additional findings and may amend the judgment accordingly. If a motion made under this paragraph is not granted within thirty (30) days from the date it is filed, the motion is automatically denied.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — *See* Rule 1-052 NMRA for the Rule of Civil Procedure on findings and conclusions. The court has the inherent authority to order parties to file proposed findings of fact and conclusions of law.

[Adopted by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

10-352. Judgments and appeals.

A. **Entry of judgment.** The judge shall enter a written judgment on petitions alleging abuse or neglect and a written judgment on motions to terminate parental rights. The clerk shall give notice of entry of the judgment and disposition and any judgment on a motion to terminate parental rights.

B. **Appeals.** Appeals from judgments and dispositions on petitions alleging abuse or neglect and appeals from judgments on motions to terminate parental rights shall be governed by the Rules of Appellate Procedure and the following procedures:

(1) the notice of appeal shall be signed by both the appellant and the appellant's counsel, unless the appellant is a minor child or state agency or unless counsel complies with the requirements of Subparagraph (2) of this paragraph.

(2) A notice of appeal shall not be filed without the appellant's signature unless counsel certifies that the appeal is not frivolous or certifies the following:

(a) the appellant contested the proceedings and expressed an intention to appeal the judgment or disposition; and

(b) the appellant has failed to maintain contact with counsel, and despite diligent efforts counsel has been unable to locate the appellant to sign the notice of appeal. Counsel shall specify the last date on which the appellant contacted counsel and the efforts counsel has made to locate the appellant.

[10-310 NMRA, as amended, effective May 1, 1986; January 1, 1987; recompiled, effective March 1, 2003; Rule 10-350 NMRA, recompiled and amended as Rule 10-352 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 13-8300-024, effective in all cases pending or filed on or after December 31, 2013.]

Committee commentary. — This rule recognizes that there are two types of judgments which are subject to appeal, the adjudication and termination of parental rights. *See*

State ex rel. CYFD v. Frank G., 2005-NMCA-026, 137 N.M. 137, 108 P.3d 543, aff'd, 2006-NMSC-019.

The amendments to Paragraph B are intended to clarify the duties of counsel to file a notice of appeal. Failure to file a notice of appeal of the termination of parental rights or an adjudication of abuse or neglect may constitute ineffective assistance of counsel. *See State ex rel. Children, Youth & Families Dep't v. Ruth Anne E.*, 1999-NMCA-035, ¶¶ 9-10, 126 N.M. 670, 974 P.2d 164 (termination of parental rights); *State ex rel. Children, Youth & Families Dep't v. Amanda M.*, 2006-NMCA-133, ¶ 22, 140 N.M. 578, 144 P.3d 137 (adjudication of abuse or neglect). If counsel has lost contact with the parent during the appeal period, counsel must file a notice of appeal if the parent actively opposed the termination of parental rights or the adjudication of abuse or neglect and has not expressly waived the right to appeal.

[As amended by Supreme Court Order No. 13-8300-024, effective in all cases pending or filed on or after December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-024, effective December 31, 2013, required that a notice of appeal be signed by the appellant as well as appellant's counsel; specified the conditions that excuse the appellant from signing the notice of appeal; and in Paragraph B, after "Rules of Appellate Procedure", added "and the following procedures", and added Subparagraphs (1) and (2).

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, in Paragraph A, changed "The judge shall sign a written judgment and disposition in abuse and neglect proceeding. The judgment and disposition shall be filed" to "The judge shall enter a written judgment on petitions alleging abuse or neglect and a written judgment on motions to terminate parental rights" and added "and any judgment on a motion to terminate parental rights"; and in Paragraph B, changed "judgments" to "judgments and dispositions" and added "and appeals from judgments on motions to terminate parental rights".

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-350 NMRA was recompiled as Rule 10-352 NMRA, effective January 15, 2009.

Cross references. — For stay pending appeal, *see* Rule 12-206 NMRA.

ARTICLE 4
Children's Court Forms
(Recompiled)

Table of Corresponding Forms

Article 4 - Forms for Delinquency and Youthful Offender Proceedings

The table below lists the former form number and the corresponding new form number, and the new form number and the corresponding former form number prior to recompilation by Supreme Court Order No. 16-8300-017.

Former Rule No.	Corresponding New Rule No.
10-401	10-704
10-404A	10-705
10-406	10-703
10-407	10-706
10-408	10-707
10-408A	Withdrawn
10-409	10-722
10-410	10-723
10-411	10-724
10-412	10-725
10-412A	10-726
10-413	Withdrawn
10-414	Withdrawn
10-415	10-715
10-415A	10-711
10-416	10-716
10-417	Withdrawn
10-418	10-717
10-420	10-718
10-423	10-712
10-424	10-713
10-425	10-714
10-430	10-701
10-431	10-702
10-432	10-731
10-433	10-732
10-496A	10-741
10-496B	10-743
10-496C	10-744
10-496D	10-745
10-496E	10-742

New Rule No.	Corresponding Former Rule No.
10-701	10-430
10-702	10-431
10-703	10-406
10-704	10-404
10-705	10-404A
10-706	10-407
10-707	10-408
10-711	10-415A
10-712	10-423
10-713	10-424
10-714	10-425
10-715	10-415
10-716	10-416
10-717	10-418
10-718	10-420
10-721	New
10-722	10-409
10-723	10-410
10-724	10-411
10-725	10-412
10-726	10-412A
10-727	New
10-731	10-432
10-732	10-433
10-741	10-496A
10-742	10-496E
10-743	10-496B
10-744	10-496C
10-745	10-496D

10-401. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-401 NMRA was recompiled and amended as 10-516 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-402. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-402 NMRA was recompiled and amended as 10-515 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-403. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-403 NMRA was recompiled and amended as 10-502 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-404. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-404 NMRA was recompiled and amended as 10-704 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-404A. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-404A NMRA was recompiled and amended as 10-705 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-405. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-405 NMRA was recompiled and amended as 10-560 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-406. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-406 NMRA was recompiled and amended as 10-703 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-407. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-407 NMRA was recompiled and amended as 10-706 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-407.1. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-407.1 NMRA was recompiled and amended as 10-551 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-407.2. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 14-8300-009, 10-407.2 NMRA, relating to request to withdraw as counsel and order approving substitution of counsel, was withdrawn effective December 31, 2014. For provisions of former form, *see* the 2014 NMRA on *NMOneSource.com*.

10-407.3. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-407.3 NMRA was recompiled and amended as 10-552 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-408. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-408 NMRA was recompiled and amended as 10-707 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-408A. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-017, 10-408A NMRA, relating to order of appointment, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former form, *see* the 2016 NMRA on *NMOneSource.com*.

10-408B. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-408B NMRA was recompiled and amended as 10-554 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-408C. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-408C NMRA was recompiled and amended as 10-555 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-409. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-409 NMRA was recompiled and amended as 10-722 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-410. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-410 NMRA was recompiled and amended as 10-723 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-411. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-411 NMRA was recompiled and amended as 10-724 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-412. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-412 NMRA was recompiled and amended as 10-725 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-412A. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-412A NMRA was recompiled and amended as 10-726 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-413. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-017, 10-413 NMRA, relating to notice of detention, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former form, *see* the 2016 NMRA on *NMOneSource.com*.

10-414. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-017, 10-414 NMRA, relating to demand for release hearing, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former form, *see* the 2016 NMRA on *NMOneSource.com*.

10-415. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-415 NMRA was recompiled and amended as 10-715 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-415A. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-415A NMRA was recompiled and amended as 10-711 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-416. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-416 NMRA was recompiled and amended as 10-716 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-417. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-017, 10-417 NMRA, relating to notice of entry of judgment and disposition, was withdrawn effective for all cases pending or filed on or after December 31, 2016. For provisions of former form, *see* the 2016 NMRA on *NMOneSource.com*.

10-418. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-418 NMRA was recompiled and amended as 10-717 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-419. Recompiled.

ANNOTATIONS

Recompilations. — Form 10-419 NMRA, an affidavit for ex parte custody order, was recompiled as Form 10-451 NMRA, effective August 1, 1999.

10-420. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-420 NMRA was recompiled and amended as 10-718 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-421. Withdrawn.

ANNOTATIONS

Withdrawals. — Former Form 10-421 NMRA, an abuse or neglect petition, is withdrawn effective August 1, 1999.

10-422. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 14-8300-009, 10-422 NMRA, relating to judgment and disposition, was withdrawn effective December 31, 2014. For provisions of former form, *see* the 2014 NMRA on *NMOneSource.com*.

10-423. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-423 NMRA was recompiled and amended as 10-712 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-424. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-424 NMRA was recompiled and amended as 10-713 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-425. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-425 NMRA was recompiled and amended as 10-714 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-426. Withdrawn.

[Adopted by Supreme Court Order No. 11-8300-033, effective for cases pending or filed on or after September 30, 2011; suspended by Supreme Court Order No. 11-8300-036, effective September 1, 2011; withdrawn by Supreme Court Order No. 12-8300-034, effective for all cases filed or pending on or after November 8, 2012.]

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 12-8300-034, Rule 10-426 NMRA, relating to motion for use of physical restraints in the children's court, was withdrawn effective for all cases filed or pending on or after November 8, 2012. For provisions of former rule, *see* the 2011 NMRA on *NMOneSource.com*.

10-427. Withdrawn.

[Adopted by Supreme Court Order No. 11-8300-033, effective for cases pending or filed on or after September 30, 2011; suspended by Supreme Court Order No. 11-8300-036, effective September 1, 2011; withdrawn by Supreme Court Order No. 12-8300-034, effective for all cases filed or pending on or after November 8, 2012.]

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 12-8300-034, Rule 10-427 NMRA, relating to order on physical restraints in the children's court, was withdrawn effective for all cases filed or pending on or after November 8, 2012. For provisions of former rule, *see* the 2011 NMRA on *NMOneSource.com*.

10-430. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-430 NMRA was recompiled and amended as 10-701 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-431. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-431 NMRA was recompiled and amended as 10-702 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-432. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-432 NMRA was recompiled and amended as 10-731 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-433. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-433 NMRA was recompiled and amended as 10-732 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-440. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-440 NMRA was recompiled as 10-611 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-441. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-441 NMRA was recompiled as 10-612 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-442. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-442 NMRA was recompiled as 10-613 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-443. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-443 NMRA was recompiled as 10-614 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-450. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-450 NMRA was recompiled and amended as 10-503 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-451. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-451 NMRA was recompiled and amended as 10-504 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-452. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-452 NMRA was recompiled and amended as 10-505B NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-453. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-453 NMRA was recompiled and amended as 10-505A NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-454. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-454 NMRA was recompiled and amended as 10-501 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-455. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-455 NMRA was recompiled and amended as 10-561 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-456. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-456 NMRA was recompiled and amended as 10-506 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-456A. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-456A NMRA was recompiled and amended as 10-510 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-457. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-457 NMRA was recompiled and amended as 10-562 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-470. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-470 NMRA was recompiled and amended as 10-540 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-471. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-471 NMRA was recompiled and amended as 10-563 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-491. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-491 NMRA was recompiled and amended as 10-601 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-492. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 14-8300-009, 10-492 NMRA, relating to mental health review report, was withdrawn effective December 31, 2014. For provisions of former form, *see* the 2014 NMRA on *NMOneSource.com*.

10-493. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-493 NMRA was recompiled and amended as 10-602 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-494. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former form 10-494 NMRA was recompiled and amended as 10-603 NMRA, effective for all cases pending or filed on or after December 31, 2014.

10-495. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 14-8300-009, 10-495 NMRA, relating to notice of independent counsel, was withdrawn effective December 31, 2014. For provisions of former form, *see* the 2014 NMRA on *NMOneSource.com*.

10-496A. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496A NMRA was recompiled and amended as 10-741 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-496B. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496B NMRA was recompiled and amended as 10-743 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-496C. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496C NMRA was recompiled and amended as 10-744 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-496D. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496D NMRA was recompiled and amended as 10-745 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-496E. Recompiled.

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496E NMRA was recompiled and amended as 10-742 NMRA, effective for all cases pending or filed on or after December 31, 2016.

ARTICLE 5
Forms for Abuse and Neglect Proceedings

Table of Corresponding Forms

Article 5 - Forms for Abuse and Neglect Proceedings

The table below lists the former form number and the corresponding new form number, and the new form number and the corresponding former form number prior to recompilation by Supreme Court Order No. 14-8300-009.

New No.	Former No.
10-501	10-454
10-501A	10-501A
10-502	10-403
10-503	10-450
10-504	10-451
10-505A	10-453
10-505B	10-452
10-506	10-456
10-510	10-456A
10-511	New
10-512	New
10-513	New
10-514	New
10-515	10-402
10-516	10-401
10-520	New
10-521	New
10-522A	New
10-522B	New
10-522C	New
10-522D	New
10-530	New
10-531	New
10-532	New
10-533	New
10-540	10-470
10-550	New
10-551	10-407.1
10-552	10-407.3
10-554	10-408B
10-555	10-408C
10-560	10-405
10-561	10-455

Former No.	New No.
10-401	Recomp. as 10-516
10-402	Recomp. as 10-515
10-403	Recomp. as 10-502
10-405	Recomp. as 10-560
10-407.1	Recomp. as 10-551
10-407.3	Recomp. as 10-552
10-408B	Recomp. as 10-554
10-408C	Recomp. as 10-555
10-450	Recomp. as 10-503
10-451	Recomp. as 10-504
10-452	Recomp. as 10-505B
10-453	Recomp. as 10-505A
10-454	Recomp. as 10-501
10-455	Recomp. as 10-561
10-456	Recomp. as 10-506
10-456A	Recomp. as 10-510
10-457	Recomp. as 10-562
10-470	Recomp. as 10-540
10-471	Recomp. as 10-563
10-501A	10-501A
10-565	10-565
10-566	10-566
10-567	10-567

10-562	10-457
10-563	10-471
10-564	New
10-565	10-565
10-566	10-566
10-567	10-567

10-501. Abuse/Neglect petition.

[For use with Rule 10-312 NMRA]

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).

ABUSE/NEGLECT PETITION

The New Mexico Children, Youth and Families Department (CYFD), by its children's court attorney, alleges:

1. Respondent(s) has/have abused or neglected the child(ren), as more fully stated below.

2. The child(ren)'s name(s) and date(s) of birth is/are:

Child(ren)'s name(s)	Date(s) of Birth
_____	_____
_____	_____
_____	_____

3. _____’s (*name of child(ren)*) residence is: _____.

4. The name and address of each parent, guardian, or custodian named as a party in this action are:

Name:	Address:	Relationship to Child(ren):
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The facts giving rise to this petition are set out in the affidavit attached to the motion for ex parte custody order filed by CYFD and incorporated by reference. The affidavit reflects the current state of the investigation by CYFD, which is ongoing, and does not preclude the showing of additional facts at trial.

6. _____ (*name(s) of child(ren)*) is/are alleged to be abused or neglected as follows: (*Select appropriate allegations, modify as appropriate, and delete allegations not used; repeat if necessary*)

A. _____ (*name(s) of child(ren)*) is/are (an) abused child(ren) as defined in Section 32A-4-2(B)(1) NMSA 1978 in that the child(ren) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)’s [parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____.

B. _____ (*name(s) of child(ren)*) is/are (an) abused child(ren) as defined in Section 32A-4-2(B)(2) NMSA 1978 in that the child(ren) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child(ren)’s [parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____.

C. _____ (*name(s) of child(ren)*) is/are (an) abused child(ren) as defined in Section 32A-4-2(B)(3) NMSA 1978 in that the child(ren) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)’s [parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____.

D. _____ (*name(s) of child(ren)*) is/are (an) abused child(ren) as defined in Section 32A-4-2(B)(4) NMSA 1978 in that the child(ren)’s [(parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____, has/have knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)’s life or health.

E. _____ (*name(s) of child(ren)*) is/are (an) abused child(ren) as defined in Section 32A-4-2(B)(5) NMSA 1978 in that the child(ren)’s [parent(s)]

[guardian(s)] [custodian(s)], Respondent(s) _____, has/have knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren).

F. _____ (*name(s) of child(ren)*) is/are (a) neglected child(ren) as defined in Section 32A-4-2(E)(1) NMSA 1978 in that the child(ren) has/have been abandoned by the child(ren)'s parent(s), Respondent(s) _____, in that this/these parent(s) left the child(ren) with others, without provision for support and without communication for a period of (three (3)/six (6)) months, all without justifiable cause.

G. _____ (*name(s) of child(ren)*) is/are (a) neglected child(ren) as defined in Section 32A-4-2(E)(2) NMSA 1978 in that the child(ren) is/are without proper parental care and control or subsistence, education, medical, or other care or control necessary for the child(ren)'s well-being because of the faults or habits of the child(ren)'s [(parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____, or the failure or refusal of the [parent(s)] [guardian(s)] [custodian(s)], when able to do so, to provide them.

H. _____ (*name(s) of child(ren)*) is/are (a) neglected child(ren) as defined in Section 32A-4-2(E)(3) NMSA 1978 in that the child(ren) has/have been physically or sexually abused, when the child(ren)'s [parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm.

I. _____ (*name(s) of child(ren)*) is/are (a) neglected child(ren) as defined in Section 32A-4-2(E)(4) NMSA 1978 in that the child(ren)'s [parent(s)] [guardian(s)] [custodian(s)], Respondent(s) _____, is/are unable to discharge his/her/their responsibilities to and for the child(ren) because of incarceration, hospitalization, or physical or mental disorder or incapacity.

J. _____ (*name(s) of child(ren)*) is/are (a) neglected child(ren) as defined in Section 32A-4-2(E)(5) NMSA 1978 in that the child(ren) has/have been placed for care or adoption in violation of the law.

7. In addition, Respondent(s) _____ has/have subjected _____ (*name(s) of child(ren)*) to aggravated circumstances, as defined in Section 32A-4-2 (C) NMSA 1978, as follows: (*if applicable, insert appropriate language or delete paragraph; repeat if necessary*)

8. CYFD has initiated an investigation of the allegations and it has been determined that it is in the best interests of _____ (*name(s) of child(ren)*) that this petition be filed.

9. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act.] [It is unknown whether _____ (*name(s) of child(ren)*) is/are subject to the Indian Child Welfare Act.]

10. _____ (*name(s) of child(ren)*) has/have been in the custody of the CYFD in _____ County, New Mexico, since _____. (*Modify if one or more child(ren) are not in custody.*)

CYFD therefore requests:

1. The Court find that _____ (*name(s) of child(ren)*) is/are (a) neglected or abused child(ren);

2. CYFD be given legal custody of _____ (*name of child(ren)*);

3. A custody hearing be held within ten (10) days of the filing of this petition; and

4. The Court order such other relief as the court deems just and proper.

_____
Children's Court Attorney

_____
Address

_____
Telephone numbers

[Approved, effective August 1, 1999; 10-454 recompiled and amended as 10-501 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, provided for the use of the form for one or more children; provided for a statement of facts by reference to the affidavit attached to the motion for ex parte custody order; provided a check list of allegations of neglect or abuse; provided for allegations concerning aggravated circumstances, the Indian Child Welfare Act, and custody of the children; deleted the former caption of the case and added the current caption; in the introductory sentence, deleted "Comes now the" and added "The New Mexico", added "(CYFD)" and changed "attorney" to "children's court attorney"; in Paragraph 1, deleted "_____ (name of respondent or respondents (has)(have)" and added "Respondent(s) has/have", after "abused or neglected" deleted "_____, a child" and added the remainder of the sentence; in Paragraph 2, deleted "The child's birthdate is _____ (month, day and year of birth)" and added the current sentence and column headings for the childrens' names and dates of birth; in Paragraph 3, deleted the former sentence which provided for the address of the child and added the current sentence;

added Paragraph 4; in Paragraph 5, after "to this petition are", added the remainder of the sentence; deleted former Paragraph 6 which provided for the names and addresses of each respondent and their relationship to the child; added current Paragraph 6; in Paragraph 7, deleted the former sentence which alleged that the department had completed an investigation of the allegations and determined that the best interests of the child required the filing of the petition and added the current sentence; in Paragraph 8, deleted the former first sentence which alleged that the child was or was not in the custody of the Department, deleted the former second sentence which alleged the date the child was placed in custody of the Department, and added the current sentence; in Paragraph 9, deleted the former sentence which alleged the place of custody of the child and added the current sentence; in Paragraph 10, deleted the former sentence which alleged that the child was or was not Native American and added the current sentence; in the last unnumbered paragraph, in the introductory sentence, changed "WHEREFORE, the Children, Youth and Families Department" to "CYFD therefore"; in the request for relief, in Paragraph 1, after "The", deleted "child be adjudicated abused or neglected" and added the remainder of the sentence; in the request for relief, in Paragraph 2, deleted the former sentence which asked the court to place the child in the custody of the Department and added the current sentence; in the request for relief, in Paragraph 3, deleted the former sentence which asked the court to hold a custody hearing, and added the current sentence and added the signature line and contact data for the children's court attorney.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-454 NMRA was recompiled and amended as Form 10-501 NMRA, effective December 31, 2014.

10-501A. Abuse and neglect party information sheet.

Abuse and Neglect Cases – Information Sheet
(File with Petition or Amended Petition)
Type or print responses. Required in all abuse and neglect cases.

THIS SECTION FOR OFFICIAL USE ONLY
NOTE TO COURT CLERK:
DOCKET EVENT CODE 9509, CRT: Abuse & Neglect Party Information Sheet.
Scan document, but will not become part of the official record.

Case number: _____ Assigned judge: _____

Children's Court Attorney's Name: _____

Person Completing Form: _____

Phone Number: _____ E-mail: _____

New petition _____ Amended petition (enter new info only) _____

Enter as much of the following information as possible:			
Minor Child 1			
Name (F, M, L)			
Type of current placement*			
Date of placement			
Date of Birth			
Special Conditions†			
Respondent's Relation to Minor Child**	Respondent 1	Respondent 2	Respondent 3
Minor Child 2			
Name (F, M, L)			
Type of current placement*			
Date of placement			
Date of Birth			
Special Conditions†			
Respondent's Relation to Minor Child**	Respondent 1	Respondent 2	Respondent 3
Minor Child 3			
Name (F, M, L)			
Type of current placement*			
Date of placement			
Date of Birth			
Special Conditions†			
Respondent's Relation to Minor Child**	Respondent 1	Respondent 2	Respondent 3
Add information for additional children as necessary.			

* Type of placement: relative foster care; non-relative foster care; treatment foster care; residential treatment center; mental health facility/non-residential treatment center; juvenile justice facility
† Special Conditions: Indian Child Welfare Act (ICWA); Americans with Disabilities Act (ADA)
** Relation to Minor Child: Parent, custodian, guardian, other

Respondent 1	
Name (F, M, L)	
Other Name (aka)	

Address	
Address	
Date of Birth	
Social Security Number	
Special Conditions†	
Respondent 2	
Name (F, M, L)	
Other Name (aka)	
Address	
Address	
Date of Birth	
Social Security Number	
Special Conditions†	
Respondent 3	
Name (F, M, L)	
Other Name (aka)	
Address	
Address	
Date of Birth	
Social Security Number	
Special Conditions†	
Add information for additional Respondents as necessary.	

† Special Conditions: Indian Child Welfare Act (ICWA); Americans with Disabilities Act (ADA)

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed on or after August 31, 2014.]

10-502. Summons.

[For use with Rule 10-103 NMRA]

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).

SUMMONS

TO: _____, Respondent,

_____
Address

**If you need help reading this document, you can call _____,
and the court will appoint an interpreter for you at no charge.**

**Si usted necesita ayuda para leer este documento, puede llamar al
_____,
y el tribunal le nombrerá un intérprete sin costo.**

YOU ARE SUMMONED to appear before this court. The petition served along with this summons alleges that you have neglected and/or abused the child(ren) named above in the caption. You may file a response to the abuse/neglect petition with the clerk of this court within thirty (30) days after the summons and petition are served upon you, with a copy of your response to the children's court attorney named below. Although a response is not required, the effect of failure to respond is a general denial. Any affirmative defense not set forth in a response may be deemed waived.

If you are a respondent, you have a right to be represented by an attorney in this proceeding. You may hire an attorney of your own choosing at your own expense. If you cannot afford an attorney, you may request the court to appoint an attorney to represent you. You must submit a completed affidavit of indigency to the court if you want the attorney to represent you without charge. Completion does not guarantee a free attorney and the judge will make the final decision on this.

The child(ren) will have an attorney or guardian ad litem appointed to represent him/her/them in this proceeding.

**THIS PROCEEDING MAY RESULT IN THE TERMINATION
OF YOUR PARENTAL RIGHTS.**

(SEAL)

_____
Clerk of the District Court
By _____
Deputy

Dated: _____

Name and address of the Children's Court Attorney

_____

_____

RETURN OF SERVICE

I, _____, certify that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within summons in said county on the _____ day of _____, _____, by delivering a copy thereof, with a copy of the petition, affidavit for ex parte custody order, ex parte custody order, order appointing attorney for child(ren), order appointing attorney for respondent attached, in the following manner: (**check one box and fill in appropriate blanks**)

[ ] by delivering the summons and petition to respondent _____ (used when respondent receives copy of summons or refuses to receive summons).

[ ] by delivering the summons and petition to _____, (a person of suitable age and discretion who resides at the usual place of abode of respondent _____).

[ ] by delivering the summons and petition to _____, (custodial parent) (guardian) (custodian) (conservator) of _____ (*used when respondent is a minor or an incapacitated person*).

Fees: _____

_____
Signature of person making service

_____
Title (*if any*)

Children, Youth and Families Department

_____
(Name of children's court attorney)

_____
(Address)

_____
(Telephone number)

USE NOTES

A copy of the summons and a copy of the petition must be served on each respondent.

[As amended, effective September 1, 1995; 10-403 recompiled and amended as 10-502 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, rephrased the provision regarding the request for an interpreter, and removed redundant language regarding the waiver of defenses not affirmatively pled in a response to a petition; after "Address", deleted the next two sentences relating to the request for an interpreter, and added the English and Spanish sentences regarding the request for an interpreter; and in the first undesignated paragraph, after "may be deemed waived", deleted "and may not be allowed unless the court, for good cause shown, allows it".

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, notified the respondent in English and Spanish that the court will appoint an interpreter if the respondent needs help reading the summons; ordered the respondent to appear before the court and respond to the abuse/neglect petition; notified the respondent that the respondent has a right to be represented by an attorney and that the respondent may ask the court to appoint an attorney; deleted the former caption of the case and added the current caption; added the first and second paragraphs after the blank for the respondent's address; deleted the former first paragraph which ordered the respondent to serve on the attorney for the Department an answer to the petition within thirty days; deleted the former second paragraph which notified the respondent that the proceeding could result in termination of parental rights; added the third paragraph which orders the respondent to appear before the court; added the fourth paragraph which notifies the respondent of the respondent's right to an attorney; added the fifth paragraph which notifies the respondent that the children will be represented by an attorney or guardian ad litem; added the notice that the proceeding may result in termination of parental rights; added the blanks for the name and address of the Children's Court Attorney; in the Return of Service, in the introductory sentence, after "with a copy of the petition", deleted "and _____" and added "affidavit for ex parte custody order, ex parte custody order, order appointing

attorney for child(ren), order appointing attorney for respondent"; and in the Return of Service, after the introductory sentence, in the third sentence, added "by delivering the summons and petition".

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-403 NMRA was recompiled and amended as Form 10-502 NMRA, effective December 31, 2014.

10-503. Motion for ex parte custody order.

[For use with Rule 10-311 NMRA]

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 FOR EX PARTE CUSTODY ORDER

Petitioner respectfully requests that the Court issue an ex parte custody order based on the affidavit for ex parte custody order, which is attached and made part of this motion. In support of this motion, Petitioner states as follows:

1. The facts stated in the affidavit establish probable cause to believe _____ (*name(s) of child(ren)*) has/have been [abused] [and] [neglected], that custody under the criteria set forth in Section 32A-4-18 NMSA 1978 is necessary, and that it would be contrary to the welfare of the child(ren) to remain in the home.

2. The Children, Youth and Families Department (CYFD) has made reasonable efforts to prevent the removal of the child(ren) from the home.

3. It is necessary for the protection and in the best interests of the child(ren) that he/she/they either be placed in the custody of CYFD, or remain in the custody of CYFD pending further order of the Court.

_____
Children's Court Attorney

_____
Address

_____
Telephone number

[Approved, effective August 1, 1998; 10-450 recompiled and amended as 10-503 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, replaced the former language of the form; provided allegations in support of the motion; deleted the former caption of the case and added the current caption; deleted the former language of the motion which provided the petitioner requested an ex parte custody order based on the affidavit attached to the motion; and added the current language of the form.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-450 NMRA was recompiled and amended as Form 10-503 NMRA, effective December 31, 2014.

10-504. Affidavit for ex parte custody order.

[For use with Rule 10-311 NMRA.]

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).

PARTE CUSTODY ORDER

STATE OF NEW MEXICO)
) ss.
COUNTY OF)

I, _____, being duly sworn, under oath, state as follows:

(1) This affidavit pertains to the child(ren) listed below:

Child(ren)	Date of Birth
_____	_____
_____	_____

(2) I state the following facts to establish probable cause to believe _____ (*name(s) of child(ren)*) has/have been [abused] [and] [neglected], that custody under the criteria set forth in Section 32A-4-18 NMSA 1978 is necessary, and that it would be contrary to the welfare of the child(ren) to remain in the home:[1]

_____. (*List facts supporting probable cause for each child*)

(3) I state that the Children, Youth and Families Department (CYFD) has made the following reasonable efforts to prevent the removal of the child(ren) from the home:[2]

_____. (*List the efforts made*)

(4) I state upon oath or affirm that the statements in this affidavit are true and correct to the best of my knowledge, information, and belief.

_____
Signature of CYFD representative

SUBSCRIBED AND SWORN TO before me in the above county of the State of New Mexico this _____ day of _____ (*month*), _____ (*year*).

_____
Notary Public

My commission expires: _____

USE NOTES

1. The paragraph about probable cause addresses the requirement to make a factual showing of abuse or neglect and that the children are not safe in the home.

2. The paragraph about reasonable efforts addresses the requirements of the federal Adoption and Safe Families Act that there be a factually specific sworn statement that details the efforts made to prevent removal of the children from the home, even if such efforts were ultimately unsuccessful.

[Rule 10-419 SCRA 1986; as recompiled and amended, effective August 1, 1999; 10-451 recompiled and amended as 10-504 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, replaced the former language of the affidavit; required that the affidavit be verified by signing before a notary public; required statements of facts supporting probable cause to believe that the children have been abused or neglected; required a statement of the efforts made by the Department to prevent the removal of the children from the home; in the "For use with" note, changed "10-312" to "10-311"; deleted the former caption of the case and added the current caption; deleted the former language of the affidavit which provided a check list of facts that supported probable cause to believe that the children had been abused or neglected; deleted the former verification form that had to be signed by an officer authorized to administer oaths; added the current language of the form; added the certification by the notary public; and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-451 NMRA was recompiled and amended as Form 10-504 NMRA, effective December 31, 2014.

10-505A. Ex parte custody order (child in state custody).

[For use with Rule 10-311 NMRA]

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).

EX PARTE CUSTODY ORDER[1]

I

_____ (*name(s) of child(ren)*), [is] [are] currently in the legal custody of the Children, Youth and Families Department pursuant to a law enforcement hold and [is] [are] placed in _____ (*type of placement*).

II

The Court has found there is probable cause to believe that the above named child(ren) [is] [are], abused or neglected as defined in Section 32A-4-2-NMSA 1978. Furthermore, there is probable cause to believe that continuation in the home would be contrary to the welfare of the child(ren) because _____ (*a factual recitation is required for each child*).

III

Reasonable efforts have been made to prevent removal of the child(ren) from the home as follows: _____ (*a factual recitation is required*). Therefore, it is necessary for the child(ren)'s protection that the child(ren) remain in the legal custody of the Children, Youth and Families Department.

IT IS ORDERED that the children remain in the legal custody of the New Mexico Children, Youth and Families Department until further order of the court.[2]

Dated this _____ day of _____, _____.

_____
District Court Judge

USE NOTES

1. This order is used when the child is already in the custody of the department.

2. This order may be served with the petition. *See* Rule 10-311(B) NMRA.

[Approved, effective August 1, 1999; 10-453 recompiled and amended as 10-505A by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, provided that the form is to be used when the children are in state custody; in the title, added "(child in state custody)"; deleted the former caption of the case and added the current caption; added Paragraph I; in Paragraph II, added the last sentence; in Paragraph III, in the first sentence, after "have been made to", deleted "avoid" and added "prevent" and after "child(ren) from the home", deleted "or, given the circumstances, the court finds it was reasonable to forego those efforts to keep the child(ren) in the home" and added "as follows: _____ (a factual recitation is required)" and in the second sentence, after "remain in the", added "legal"; in the last paragraph, after "ORDERED that the", added "children remain in the legal custody of the", and after "Department", deleted "continue in the custody of the child(ren)"; and in the Use Note, in Paragraph 2, added the last sentence.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-453 NMRA was recompiled and amended as Form 10-505A NMRA, effective December 31, 2014.

10-505B. Ex parte custody order (child not in state custody).

[For use with Rule 10-311 NMRA]

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).

EX PARTE CUSTODY ORDER[1]

THE STATE OF NEW MEXICO TO ANY OFFICER[2]
AUTHORIZED TO EXECUTE THIS ORDER

I

YOU ARE HEREBY COMMANDED to take _____, _____ (*name of child or children*), born _____, _____ (*date of birth for each child*) without unnecessary delay and deliver the child(ren) into the custody of the Children, Youth and Families Department.

II

You are further commanded to serve a copy of this order on _____ ([*respondent*] *Respondent or Respondents*).

III

The court has found there is probable cause to believe that the above named child(ren) (is) (are), abused or neglected as defined in Section 32A-4-2 NMSA 1978. Furthermore, there is probable cause to believe that continuation in the home would be contrary to the welfare of the child(ren) because _____ (*a factual recitation is required for each child*).

IV

Reasonable efforts have been made to prevent removal of the child(ren) from the home as follows: _____ (*a factual recitation is required*). Therefore, it is necessary for the child(ren)'s protection that the child(ren) be placed in the legal custody of the Children, Youth and Families Department.

IT IS ORDERED that the child(ren) be placed in the legal custody of the New Mexico Children, Youth and Families Department until further order of the court.

Dated this _____ day of _____, _____.

Submitted by:

_____
Children's Court Attorney

RETURN

I took the above-named child(ren) into custody and delivered the child(ren) into the legal custody of the Children, Youth and Families Department on the _____ of _____, _____. A copy of this ex parte custody order [and a copy of the petition][3] [was] [were] served on _____[4] (*Respondent*) on the _____ day of _____, _____.

_____
Signature

_____
Title

USE NOTES

1. For use when the child has not been placed in the custody of the department. Form 10-505A NMRA is used when the child is in the custody of the department.

2. This order shall be served by a person authorized to serve arrest warrants.

3. Order and petition may, but are not required to, be served together.

4. Write the name of every respondent served.

[10-420 NMRA, as amended and recompiled, effective August 1, 1999; 10-452 recompiled and amended as 10-505B by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, provided that the form is to be used when the children are not in state custody; deleted the former title of the rule, "The State of New Mexico to any officer authorized to execute this order", and added the current title; deleted the former caption of the case and added the current caption; in the title of the form, after "AUTHORIZED TO", deleted "SERVE AN ARREST WARRANT" and added "EXECUTE THIS ORDER"; in Paragraph III, added the second sentence; in Paragraph IV, in the first sentence, after "have been made to", deleted "avoid" and added "prevent", and after "from the home", deleted "or given the circumstances, the court finds that reasonable efforts to keep the child(ren) in the home are unnecessary" and added "as follows: _____ (a factual recitation is required)" and in the second sentence, after "placed in the", added "legal"; in the last paragraph, after "ORDERED that", deleted "custody of", and added the signature line for the Children's Court Attorney; in the Return portion of the form, after "RETURN", deleted "WHERE CHILD IS FOUND", after "child(ren) into the", added "legal", after the two blanks, deleted "and served a", and added "[was][were] served"; and in the Use Note, in Paragraph 1, after changed "10-453" to "10-505A

NMRA", in Paragraph 2, after "This order", deleted "is served with the petition" and added the remainder of the sentence", and added Paragraphs 3 and 4.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-452 NMRA was recompiled and amended as Form 10-505B NMRA, effective December 31, 2014.

10-506. Notice of filing of petition alleging abuse or neglect of a child.

[For use with Rule 10-312 NMRA]

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).

NOTICE
OF FILING OF PETITION
ALLEGING ABUSE OR NEGLECT OF CHILD[1]

A petition has been filed alleging that _____, (*name(s) of child(ren)*) (is an) (are) abused or neglected child(ren) and that it is necessary for the protection of (the child) (these children) to place (this child) (the children) in the custody of the Children, Youth and Families Department. A copy of the petition alleging abuse and neglect is attached.

[The Children, Youth and Families Department, has been granted custody of your child(ren).][2]

You have a right under the Children's Code to intervene in the proceedings and to request custody of the child. This proceeding could ultimately result in termination of your parental rights.

If you wish to intervene, please contact an attorney. If you do not have an attorney contact the court and an attorney may be appointed for you.

_____
Children's Court Attorney

USE NOTES

1. This form is used if a parent has not been named as a party. A copy of the petition and a copy of a motion to intervene is to be served with this notice.

2. Use this paragraph if an ex parte custody order has been signed placing the child or children in the custody of the department.

[Approved, effective August 1, 1999; 10-456 recompiled and amended as 10-506 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, deleted the former caption of the case and added the current caption.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-456 NMRA was recompiled and amended as Form 10-506 NMRA, effective December 31, 2014.

10-510. Affidavit of indigency; abuse or neglect.

[For use with Section 32A-4-10 NMSA 1978]

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).

AFFIDAVIT OF INDIGENCY

I give upon my oath or affirmation the following statement:

My marital status is single ___ married ___ divorced ___ separated ___ widowed ___.

INFORMATION ABOUT MY FINANCES (*Check all that apply and fill in the blanks.*)

A. PUBLIC ASSISTANCE

___ I do not receive public assistance. (*If you check this blank, go directly to Section B, EMPLOYMENT/UNEMPLOYMENT).*

___ I currently receive the following public assistance in _____ County
(*please check all applicable public assistance programs*):
Temporary Assistance for Needy Families (TANF) ___;
Food Stamps ___;
General Assistance (GA) ___;
Public Housing ___;
Department of Health Case Management Services (DHMS) ___;
Medicaid ___;
Supplemental Security Income (SSI) ___;
Social Security Disability Income (SSDI) ___;
Veterans Disability Benefits (VA) ___;
Other (*please describe*)
_____.

B. EMPLOYMENT/UNEMPLOYMENT

___ I am currently unemployed and have been unemployed for ___ months in the past year. I am unemployed because
_____.

___ I receive unemployment benefits in the amount of $_____ per month.

___ I have no income because I am unemployed.

___ I am employed. My employer's name, address, and phone number is:

_____

_____

_____.

___ I am self-employed. _____ (*Describe nature of the business.*)

___ I am paid

___ daily

___ weekly

___ every other week

___ twice a month

___ once a month.

When I am paid, my net take-home pay minus deductions required by law, like state and federal tax withholding and FICA, is $_____.

___ I am married, and my spouse is unemployed and has been unemployed for ___ months in the past year because

_____

_____.

___ My spouse receives unemployment benefits in the amount of $_____ per month.

___ My spouse does not have an income because he or she is unemployed.

___ I am married, and my spouse is employed. My spouse's employer's name, address, and phone number is:

_____

_____

_____.

___ I am married, and my spouse is self-employed. _____ (*Describe nature of the business.*)

___ My spouse is paid

___ daily

___ weekly

___ every other week

___ twice a month

___ once a month.

When my spouse is paid his or her net take-home pay minus deductions required by law, like state and federal tax withholding and FICA, is $ _____.

C. OTHER SOURCES OF INCOME

___ I have income from another source not mentioned above.

___ Child support $_____

___ Alimony $_____

___ Investments $ _____

___ Other _____ $_____

___ I do not have any other sources of income.

___ I am married, and my spouse has income from another source not mentioned above.

___ Child support $_____

___ Alimony $_____

___ Investments $_____

___ Other _____ $_____

___ I am married, and my spouse does not have any other sources of income.

D. OTHER ASSETS (*Please list other assets owned by you or your spouse that can be turned into cash. Do not include money you have in retirement accounts.*)

Cash on hand	$_____	
Bank accounts	$_____	
Stocks/bonds	$_____	
Income tax refund	$_____	
Real estate (*other than primary residence*)	value: $_____	
Vehicles (*other than primary vehicle*)	value: $_____	debt: $_____
Other assets (*describe below*):		debt: $_____
_____	$_____	
_____	$_____	

IF YOU DO NOT HAVE ACCESS TO YOUR OWN OR YOUR SPOUSE'S INCOME OR ASSETS, EXPLAIN WHY.

_____

_____

_____

E. EXCEPTIONAL EXPENSES:

Medical expenses (*not covered by insurance*)	$_____
Medical insurance payments	$_____
Court ordered support payments/alimony	$_____
Child care payments (*e.g., day care*)	$_____
Any funds garnished from paycheck	$_____
Other (*describe*)	$_____
TOTAL EXCEPTIONAL EXPENSES	$_____

F. HOUSEHOLD

I live at
_____.

Other than myself, the other members of my household are:

Name	Age	Employment	I Support
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )

_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )

This statement is made under oath. I hereby state that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service, and other state agencies. I understand that the court may require documentation for any information listed above. If at any time the court discovers that information in this affidavit was false, misleading, inaccurate, or incomplete at the time the application was submitted, the court may require me to pay for any costs or fees that were waived based on the information in this application.

_____
(*Signature*)

_____
(*Print name*)

_____
(*Street address*)

_____
(*City, state, and zip code*)

_____
(*Telephone*)

State of _____)
) ss.
County of _____)

Signed and sworn or affirmed to before me on _____ (*date*) by _____ (*name of applicant*).

_____
Notary Public

My commission expires: _____

GUIDELINES FOR DETERMINING ELIGIBILITY

Court administration or the respondent's attorney shall assist the respondent in completing this form. This form should be served with the petition on the respondent.

An applicant is presumed indigent if the applicant is the current recipient of aid from a state or federally administered public assistance program, such as Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Social Security Disability Income (SSDI), VA Disability Benefits, Department of Health Case Management Service (DHMS), Food Stamps, Medicaid, or public assisted housing.

An applicant who is not presumptively indigent can, nevertheless, establish indigency by showing in the application that the applicant's available funds (annual income + assets - expenses) do not exceed one hundred fifty percent (150%) of the federal poverty guidelines established by the United States Department of Health and Human Services. (*See* www.aspe.hhs.gov/poverty/ for current federal poverty guidelines.)

A presumption of indigency under this rule does not require the court to find an applicant indigent and therefore entitled to a court appointed attorney if it appears from the application that the applicant is otherwise able to pay.

Even if an applicant cannot establish indigency, the court may still appoint an attorney if, in the court's discretion, appointment of counsel is required in the interests of justice.

If at any time the court discovers that information in an application for indigency was false, misleading, inaccurate, or incomplete at the time the application was submitted, and that the determination of indigency was improvidently made, the court may require the applicant to pay the court-appointed attorney fees.

[Adopted by Supreme Court Order No. 10-8300-022, effective August 30, 2010; 10-456A recompiled and amended as 10-510 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, deleted the former caption of the case and added the current caption.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-456A NMRA was recompiled and amended as Form 10-510 NMRA, effective December 31, 2014.

10-511. Motion to appoint counsel for parties.

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 APPOINT COUNSEL FOR PARTIES

The Children, Youth and Families Department, pursuant to Sections 32A-4-10(B) and (C) NMSA 1978, requests that the Court appoint an attorney for each named respondent herein, and a guardian ad litem or attorney for the child(ren), as appropriate, dependent on the/each child's age.

Respectfully submitted,

_____
Children's Court Attorney

_____
Address

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-512. Order appointing counsel for parties.

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).

ORDER APPOINTING COUNSEL FOR PARTIES

THIS MATTER came before the Court on the petitioner's motion. Being fully advised in the premises, the Court finds the motion is well taken and should be granted.

IT IS THEREFORE ORDERED:

1. _____ a member of the New Mexico Bar, is appointed to represent Respondent, _____, in this cause pending a determination of indigency at the temporary custody hearing or no later than Respondent's first appearance before the court.

2. _____, a member of the State Bar of New Mexico, is appointed to represent Respondent, _____, in this cause pending a determination of indigency at the temporary custody hearing or no later than Respondent's first appearance before the court. (*Expand as necessary to include all respondents*)

3. _____, a member of the State Bar of New Mexico, is appointed to represent _____, child/ren in this cause who are fourteen (14) years of age or older. (*Expand as necessary to include all youth*)

4. _____, a member of the State Bar of New Mexico, is appointed to represent the child/ren, in this action as guardian ad litem, acting as an arm of the court and cloaked with quasi-judicial immunity. (*Expand as necessary to include all youth*)

_____
District Court Judge

USE NOTES

1. *See* Rule 10-313.1 NMRA to determine if the attorney can represent multiple siblings.

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-513. Motion for service by publication or other alternative method on _____ (*name*).

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 FOR SERVICE BY PUBLICATION
OR OTHER ALTERNATIVE METHOD ON _____ (*NAME*)

COMES NOW Petitioner, the Children, Youth and Families Department, and moves the Court for the following: (*Check applicable options*)

[ ] Pursuant to Paragraphs H and I of Rule 10-103 NMRA, Petitioner moves the Court, without notice, to order service by publication on _____ (*name of Respondent*). A copy of the proposed notice of pendency of action is attached to this motion, to be published once a week for three (3) consecutive weeks.

[ ] Pursuant to Paragraph H of Rule 10-103 NMRA, Petitioner moves the Court, without notice, to order service by an alternative method on _____ (*name of Respondent*) that is reasonably calculated under all of the circumstances to apprise Respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend as follows: _____
_____
_____
_____.

Based upon the attached affidavit(s), Petitioner states that after diligent inquiry and search efforts, personal service cannot reasonably be made by Petitioner upon _____ (*name of Respondent*) as provided by Paragraph F of Rule 10-103 NMRA.

_____
Children's Court Attorney

_____
Address

_____
Telephone number

USE NOTES

Service by publication is a recognized method under Rule 10-103 NMRA for giving notice when traditional methods of service cannot be accomplished, including service by publication in another jurisdiction. However, the court is authorized under Rule 10-103(H) NMRA to order service of process by other alternative methods or combinations of methods "reasonably calculated under all of the circumstances to apprise the respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend" if service cannot be accomplished by traditional means. In addition to, or in lieu of, service by publication, the practitioner and court should consider other alternative methods of service if they are more likely to give the respondent notice of the action and an opportunity to be heard.

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-514. Order for service of process by publication or other 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).

ORDER FOR SERVICE OF PROCESS
BY PUBLICATION OR OTHER ALTERNATIVE METHOD

Petitioner, the Children, Youth and Families Department, has filed a motion requesting that the Court approve service of process upon _____ (*name of Respondent*) by [publication in a newspaper of general circulation] [and] [by alternative method].

The Court finds that Petitioner has made diligent efforts to make personal service of process upon _____ (*name of Respondent*), but has not been able to do so as provided by Rule 10-103 NMRA.

The Court finds that a newspaper of general circulation in this county where the action is pending is most likely to apprise _____ (*name of Respondent*) of the existence and pendency of this action.

OR

The Court finds that a newspaper of general circulation in this county where the action is pending is not the newspaper most likely to apprise _____ (*name of Respondent*) of the existence and pendency of this action and that a newspaper of general circulation in _____ (*county and state*) is most likely to do so.

OR

The Court finds that an alternative method is most likely to apprise _____ (*name of Respondent*) of the existence and pendency of this action.

THEREFORE, IT IS HEREBY ORDERED: (*Check all that are applicable*)

[ ] Petitioner shall serve process on _____ (*name of Respondent*) by publication once a week for three (3) consecutive weeks in a newspaper of general circulation in this county and state.

[ ] Petitioner shall also serve process on _____ (*name of Respondent*) by publication once a week for three (3) consecutive weeks in a newspaper of general circulation in _____ (*county and state*).

[ ] Petitioner shall file proof of service with a copy of the affidavit of publication when service has been completed.

[ ] Petitioner shall serve process on _____ (*name of Respondent*) by the following alternative method that is reasonably calculated under all of the circumstances to apprise Respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend: _____
_____
_____
_____.

_____
District Court Judge

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-515. Notice of pendency of action by publication.

[For use with Rule 10-103 NMRA]

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).[1]

NOTICE OF PENDENCY OF ACTION BY PUBLICATION[2]

TO: _____, Respondent(s).

If you need help reading this document, you can call _____, and the court will appoint an interpreter for you at no charge.

Si usted necesita ayuda para leer este documento, puede llamar
_____,
y el tribunal le nombrará un intérprete sin costo.

YOU ARE HEREBY NOTIFIED that an abuse/neglect petition has been filed against you in the above-named court and county by the State of New Mexico. In the petition, the New Mexico Children, Youth and Families Department alleges that you have neglected and/or abused _____ (*initials of child(ren)*), [a] child(ren), and seeks legal custody of the child(ren).

YOU ARE FURTHER NOTIFIED that this matter will be heard in the children's court division of the district court in _____ County, New Mexico, no sooner than twenty (20) days after the last publication date of this notice.

The name, address, and telephone number of the attorney for the petitioner is:
_____

THIS PROCEEDING MAY RESULT IN TERMINATION OF YOUR PARENTAL RIGHTS.

Date: _____

USE NOTES

1. Use the full name of the party who is being served by publication. For any other party listed in the caption, use only the initials of the party's first and last name.

2. This form is to be used for service by publication. *See* Rule 10-103(F), (H), (I) NMRA; *see also* Form 10-516 NMRA. The frequency and duration of publication of the notice of pendency of action is once a week for three (3) consecutive weeks as required by Rule 10-103(I) NMRA unless otherwise ordered by the court. The matter cannot be heard any sooner than twenty (20) days after the last publication because the respondent has twenty (20) days to respond under Rule 10-322 NMRA.

If service cannot be accomplished by traditional means, the court is authorized under Rule 10-103(H) NMRA to order service of process by other alternative methods or combinations of methods "reasonably calculated under all of the circumstances to apprise the respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend."

[As amended, effective September 1, 1995; 10-402 recompiled and amended as 10-515 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 18-8300-011, effective for all cases pending or filed on or after December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018, provided additional guidelines related to the caption of the case; in the caption, after "Respondent(s).", added Use Note reference "1", after the title of the form, added Use Note reference "2" and rewrote the English and Spanish instructions related to receiving assistance to read the form; and added Use Note 1 and redesignated the former Use Note as Use Note 2.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the form to a notice by publication; added statements that notify the respondent in English and Spanish that the court will appoint an interpreter if the respondent needs help reading the notice and that a hearing will be held no sooner than twenty days after the last publication of the notice; eliminated the requirement that the notice be witnessed by the clerk of the district court; in the title of the rule and form, after "action", added "by publication"; deleted the former caption of the case and added the current caption; in the first paragraph, after "TO", deleted "THE ABOVE NAMED RESPONDENT(S)" and added "Respondent(s)"; added the second and third paragraphs; in the fourth paragraph, first sentence, after "NOTIFIED that an", deleted "action" and added "abuse/neglect petition", after "against you in the", deleted "said court and county in which the State of New Mexico has filed a petition alleging that you have (neglected)(abused) _____ (child's initials), a child _____ (set forth relief sought in the petition" and added "above-named court and county by the State of New Mexico", deleted the former second sentence which provided that the proceeding could result in termination of respondent's parental rights; deleted the former third sentence which notified respondent that the matter would be heard thirty days after the last publication of the notice, and added the current second sentence; added the fifth and sixth paragraphs; added the bold statement that the proceeding may result in termination of parental rights; deleted the former certification by the clerk of the district court; deleted the former statement of the name, address and telephone number of the State's attorney; and in the Use Note, in the first paragraph, deleted the former second sentence which referred to Rules 10-103, 10-104 and 10-401 NMRA, added the current second, third and fourth sentences; and added the second paragraph.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-402 NMRA was recompiled and amended as Form 10-515 NMRA, effective December 31, 2014.

10-516. Certificate.

[For use with Rule 10-103 NMRA]

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).

CERTIFICATE

_____, as the attorney for the _____ (*set forth department or entity*) hereby certifies that after diligent inquiry and search efforts petitioner has been unable to serve process on the above-named party by any other means permitted by this rule and further certifies the following diligent efforts were made to locate and serve respondent:

(*check appropriate box*)

[ ] service by mail pursuant to Rule 10-103 NMRA

[ ] at the respondent's last known residential address;

[ ] at the respondent's last known business address;

[ ] at the address listed at the motor vehicle division for the respondent's driver's license;

[ ] at the address listed in the last telephone directory listing in the following county or counties: _____ (*list counties*);

[ ] after search of the records of the following courts _____ (*list courts*);

[ ] after _____ (*describe other attempts to locate respondent*);

On information and belief, the respondent:

[ ] is concealed to avoid service; or

[ ] cannot be discovered, though reasonably diligent efforts have been made.

_____
Children's Court Attorney

_____
Address

_____
Telephone number

USE NOTES

This form may be used in abuse or neglect actions or for service by publication on a party, other than the child in a delinquency proceeding.

[As amended, effective September 1, 1995; 10-401 recompiled and amended as 10-516 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, deleted the former caption of the case and added the current caption; and in the first sentence after the first paragraph, changed "Rule 10-104" to "Rule 10-103 NMRA".

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-401 NMRA was recompiled and amended as Form 10-516 NMRA, effective December 31, 2014.

10-517. Respondent's first appearance rights and ICWA advisement.

[For use with Children's Court Rule 10-314 NMRA]

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

In the Matter of _____, a Child,

And Concerning _____ and

_____, Respondents. No. _____

RESPONDENT'S FIRST APPEARANCE RIGHTS ANDINDIAN CHILD WELFARE ACT ADVISEMENT (IF APPLICABLE)

_____ 1. Do you understand that you have a right to have the court hearings interpreted into the language that you understand? What is your primary language? _____ (*insert primary language here*). Do you wish to have an interpreter? YES or NO. (*Choose one*.)[1]

_____ 2. Now that I have read the allegations against you in the abuse or neglect petition (or termination of parental rights motion), do you understand the allegations?[2]

_____ 3. Do you understand that you have the right to [an adjudicatory hearing on the allegations in the petition] [the right to a trial on the allegations in the termination of parental rights motion]?

_____ 4. Do you understand you have the right to an attorney, and that one will be appointed to represent you free of charge if you cannot afford an attorney?[3]

_____ 5. Do you understand the possible consequences if the allegations of the [petition] [termination of parental rights motion] are found to be true?[4]

IF THE CHILD IS AN INDIAN CHILD OR THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD, THE COURT SHALL MAKE THE FOLLOWING INQUIRIES:

_____ 1. Do you understand that either parent, the Indian Custodian, or the tribe may request that the case be transferred to tribal court?

_____ 2. Do you understand that either parent may object to the transfer if transfer is requested?

_____ 3. Do you understand that the Children, Youth and Families Department is required to place your child according to the placement preferences set forth in the Indian Child Welfare Act, unless the court finds good cause not to follow these placement preferences?

_____ 4. Do you understand that the Children, Youth and Families Department is required to make active efforts to provide services and programs designed to prevent the breakup of your Indian family?

_____ 5. Do you understand that if a motion to terminate parental rights is filed, the Children, Youth and Families Department is required to prove the allegations beyond a reasonable doubt.

I hereby certify that I advised Respondent _____ (*insert name here*) of the foregoing rights and determined that Respondent understands these rights on this _____ day of _____ 20___.

_____
Children's Court Judge

USE NOTES

1. If there are multiple Respondents, include answer for each Respondent.

2. Prior to completing this form, the Judge should read each allegation in the Petition or Motion aloud to the Respondent and ensure that the Respondent understands each allegation. Similarly, the Judge should read each right aloud and ensure that the Respondent understands each right. After determining that the Respondent understands the allegations or rights in each paragraph, the Judge should initial the paragraph. Knowing that Respondents in abuse, neglect, and termination of parental rights cases are often overwhelmed by the information being provided in court, and that they may indicate understanding even when they do not fully understand what is happening, the Committee encourages the court to allow Respondents an opportunity to consult with counsel whenever it is not readily apparent that the Respondent truly understands each allegation and right. Furthermore, for this advisement to be meaningful, Respondent attorneys are encouraged to review this form with their clients before the hearing and should be prepared to explain the meaning of terms like "legal custody," "placement," "reunification," and "termination."

3. The Judge may appoint an attorney "in the interest of justice" even if the Respondent is not indigent. NMSA 1978, § 32A-4-10.

4. Respondent attorneys are encouraged to discuss fully the possible consequences of an abuse or neglect petition or termination of parental rights motion with their clients before the hearing. During the hearing, the judge may use the following language to inform the Respondent of possible consequences: *These consequences may include the child(ren) remaining in the State's legal custody, the child(ren) living with someone else, and you being ordered to work a case plan that requires you to complete services or other conditions. If ordered, the goal of the case plan would be to reunify your family. Additionally, if you are not successful in your attempts at reunification, then this could turn into a termination of parental rights case. The possible consequences of a motion to terminate parental rights are having all rights to your child(ren) severed permanently and the child(ren) being placed for adoption*. The consequences may not be an inclusive list.

5. The completed and signed form should be filed with the court and distributed to the Respondents during the hearing.

[Adopted by Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which respondent has not made a first appearance, on or after December 31, 2019.]

10-520. Custody order.

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).

CUSTODY ORDER

This matter came before [the Honorable _____] [Special Master _____], on _____ (*date*) for a hearing to determine if the above-named child(ren) should remain in the custody of the New Mexico Children, Youth and Families Department (CYFD) pending adjudication of this matter. CYFD was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/youth attorney). (*Expand-modify as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*). The CASA [was] [not] present. (*If applicable*) A court-certified interpreter [did] [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, the _____ (*name(s) of child(ren)*) is/are not subject to ICWA.]

3. Respondent(s) _____ was/were advised of his/her/their first appearance rights, either by the Court or by his/her/their attorneys, as required by Rule 10-314 NMRA.

4. An indigency determination has been made and Respondent(s) _____ remain(s) entitled to court appointed counsel.

(Or)

An indigency determination has been made and Respondent(s) _____ is/are [not] entitled to court appointed counsel.

(Or)

In the interests of justice, appointment of counsel for Respondent(s) _____ is required.

5. There is probable cause to believe that, as provided in Section 32A-4-18(C) NMSA 1978, (*Select the appropriate provision(s) for each child and delete those not applicable.*)

a. _____ (*name(s) of child(ren)*) is/are suffering from an illness or injury, and no parent, guardian, or custodian is providing adequate care for the child(ren);

b. _____ (*name(s) of child(ren)*) is/are in immediate danger from his/her/their surroundings, and removal from those surroundings is necessary for the child(ren)'s safety or well-being;

c. _____ (*name(s) of child(ren)*) will be subject to injury by others if not placed in the custody of CYFD;

d. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, guardian, or custodian; or

e. the parent, guardian, or custodian is not able or willing to provide adequate supervision and care for _____ (*name(s) of child(ren)*).

6. It is in _____'s (*name(s) of child(ren)*) best interest that he/she/they remain in the legal custody of CYFD.

(And/Or)

It is in _____'s (*name(s) of child(ren)*) best interest that he/she/they be returned to the legal custody of _____, the child(ren)'s parent(s)/guardian(s)/custodian(s), under the following conditions to reasonably assure the safety and well-being of the child(ren): (*List conditions, including protective supervision if ordered. If different placements or conditions are appropriate, repeat and modify as necessary.*)

OR

(*If probable cause is not found, use the following alternates to Paragraphs 5 and 6, above.*)

5. There is no probable cause to believe that any of the factors listed in Section 32A-4-18(C) NMSA 1978 exist.

6. The Court retains jurisdiction and the following conditions should be imposed:

a. Unless the Court permits otherwise, Respondent(s) _____ and _____ (*name(s) of child(ren)*) should remain in the jurisdiction of the Court pending adjudication;

b. Legal custody of _____ (*name(s) of child(ren)*) should be returned to the child(ren)'s parent(s)/guardian(s)/custodian(s), _____, (under the following conditions to provide for the safety and well-being of the child(ren): (*list conditions*); and

c. _____, _____'s (*name(s) of child(ren)*) parent(s)/guardian(s)/custodian(s), should allow the child(ren) necessary contact with the child(ren)'s guardian *ad litem*/youth attorney.

7. The following diagnostic evaluations and examinations are appropriate as to each Respondent: _____.

8. (*To be used if reasonable efforts to prevent removal was not a finding in the ex parte custody order.*) CYFD has made the following reasonable efforts to prevent the removal of _____ (*name(s) of child(ren)*) from the home: (*A factual recitation is required.*)

9. Respondent(s) should maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or mandatory meetings requiring his/her/their attendance.

10. Respondent(s) should [not] sign the following releases as requested by CYFD:[2] (*List the requested releases*)

11. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD.[2] (*List the requested releases*)

12. Respondent(s) should [not] attend all school meetings regarding education for _____ (*name(s) of child(ren)*).

13. Respondent(s) should [not] make educational decisions regarding _____ (*name(s) of child(ren)*) and should [not] continue to have authority as the parent for the purposes of the Family Educational Rights and Privacy Act (FERPA). (*If not, identify who should make educational decisions here and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

14. Respondent(s) should identify any and all relatives known to them who are or may be interested in providing permanency or placement for the child(ren) and provide this information to the CYFD worker within five (5) days of this hearing.[3]

15. (*If applicable*) The parties do not object to the special master presenting this recommendation to the Court on the issues herein as a proposed order, in lieu of the procedures required by Rule 10-163(E) and (F) NMRA.

16. The initial assessment plan proposed by CYFD, attached as exhibit A, is reasonable and should be implemented.

IT IS THEREFORE ORDERED:

1. _____ (*name(s) of child(ren)*) shall remain in the legal custody of CYFD pending adjudication. (*Or other order consistent with the findings in Paragraphs 5 and 6, above.*)

2. The initial assessment plan proposed by CYFD, attached as exhibit A, is reasonable and shall be implemented.

3. Respondent(s) _____ shall undergo appropriate diagnostic evaluations and examinations as follows: _____. Copies of any diagnostic evaluations or examinations and evaluation reports shall be provided to counsel for the parties at least five days before the adjudicatory hearing, further redisclosure of such being subject to the limitations set forth in Section 32A-4-33 NMSA 1978.

4. Visitation, if any, shall be as follows: _____.

5. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment and/or education. Further disclosure of records, reports, writings, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

6. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker in order to inform him/her/themselves about the dates and times of any court hearings or mandatory meetings requiring his/her/their attendance.

7. (*If applicable*) A separate order shall issue appointing _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[4]

8. Respondents shall identify all relatives known to them who are or may be interested in providing permanency and/or placement for the child(ren) and provide this information to the CYFD worker within five (5) days of this hearing.

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations.

2. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations for accessing medical and mental health records over the objection of a party.

3. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

4. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem*

and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-521. ICWA notice.

[For use with Rules 10-312 and 10-315 NMRA]

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).

ICWA NOTICE AS TO _____ (*CHILD(REN)*)[1]

COMES NOW the New Mexico Children, Youth and Families Department (CYFD) by _____, Children's Court Attorney, and gives the following notice under 25 U.S.C. § 1912(a) and 25 C.F.R. §§ 23.11 and 23.111:

1. An Abuse/Neglect Petition was filed in _____County, New Mexico, _____ Judicial District Court on _____, in the above-captioned and numbered cause.

2. _____ (*name of child(ren)*), is/are unmarried, under eighteen (18) years of age, and may be

[ ] member(s) of the _____ tribe(s); or

[ ] eligible for membership in the _____ tribe(s) and the biological child(ren) of member(s) of the _____ tribe(s).

3. The child(ren) is/are, or there is reason to know[2] that the child(ren) is/are, [an] Indian child(ren) based on the following information:

_____

_____.

4. This proceeding may result in the termination of the parental and/or custodial rights of the child(ren)'s parents and/or Indian custodian(s).

5. The following information about _____ (*name of child(ren)*) is known (*repeat or modify as necessary if more than one child*):

a. Full name of child _____;

i. Birth date _____;

ii. Birthplace _____;

b. Full name of child's biological mother (*including maiden, married, and former names or aliases*) _____;

i. Birth date _____;

ii. Place of birth and death (if applicable)_____;

iii. Tribal enrollment number _____;

iv. Other identifying information _____;

v. All known current and former addresses _____;

c. Full name of child's biological father (*including married and former names or aliases*) _____;

i. Birth date _____;

ii. Place of birth and death (*if applicable*) _____;

iii. Tribal enrollment number _____;

iv. Other identifying information _____;

v. All known current and former addresses _____;

d. (*Provide the information above, if known, for the child's other direct lineal ancestors, such as grandparents*).

6. The child(ren) is/are currently in the custody of CYFD, and contact with CYFD may be made by contacting either undersigned counsel or _____, the child(ren)'s case worker, at _____ (*address*) or at the following telephone number: _____.

7. The child(ren) is/are currently placed in _____ (*type of placement, e.g., non-relative foster care*).

8. The Indian child(ren)'s parent(s), Indian custodian(s), and tribe(s) have the right to intervene in this case.

9. If the Indian child(ren)'s parent(s) or Indian custodian(s) is/are unable to afford counsel, counsel will be appointed upon a finding of indigency.

10. The address and telephone number of the _____ Judicial District Court for _____ County, New Mexico is: _____. The cause is assigned to the Honorable _____.

11. The Indian child(ren)'s parent(s), Indian custodian(s), and tribe(s) shall have the right to petition the court for transfer of the proceeding to the Tribal court as provided by 25 U.S.C. § 1911 and 25 C.F.R. § 23.115.

12. You must keep confidential the information contained in this notice, and this notice should not be handled by anyone not needing the information to exercise rights under ICWA.

13. Except for emergency proceedings, no hearing on the petition in the involuntary child custody proceeding shall be held sooner than ten (10) days from the date of receipt of this notice by the Indian child(ren)'s parent(s), Indian custodian(s), and tribe(s). The Indian child(ren)'s parent(s), Indian custodian(s), and tribe(s) have the right to be granted, upon request, up to twenty (20) additional days to prepare for the child custody proceedings.[3]

14. The Indian child(ren)'s parent(s), Indian custodian(s), and tribe(s) shall have the right to request up to twenty (20) additional days to prepare for a hearing on the petition.

15. Request is hereby made of the _____ tribe(s) to respond to the undersigned or to the Court if and when ICWA may be applicable to this action, and the undersigned will distribute to the parties of record and to the Court.

_____
Name of Attorney, CCA

CYFD Protective Services
Address
Telephone Number

CERTIFICATE OF MAILING[4]

I hereby certify that a true and correct copy of this Notice, along with a copy of the Abuse/Neglect Petition and Affidavit of _____, were sent by registered/certified mail, return receipt requested, to (*check all that apply*)

[ ] the designated Tribal Agent[5] of the _____ tribe(s) at _____ (*address*);

[ ] _____ *(name of parent/Indian custodian)* at _____ (*address*);

[ ] the appropriate Regional Director of the Bureau of Indian Affairs[6] at _____ (*address*).

_____
Name of Attorney, CCA

USE NOTES

1. This form is intended for use in the early stages of a child-custody proceeding. *See* Rule 10-315 (F)(1)(c) NMRA (providing that the court shall ensure that the department provides notice under ICWA when the court determines at a custody hearing that the child is an Indian child or that there is reason to know that the child is an Indian child); *see also* Rule 10-312 NMRA (providing that the department shall provide the notice required under ICWA of the filing of the petition when the child is enrolled or eligible for enrollment in an Indian tribe). This form should be modified as necessary when the duty to provide notice under ICWA arises later in the proceeding. *See* Rule 10-315(G) (providing that the court shall order the participants to inform the court if they receive information after the custody hearing that provides reason to know that the child is an Indian child).

2. *See* 25 C.F.R. § 23.107(c) and Rule 10-315(E) NMRA for circumstances that provide reason to know that the child is an Indian child.

3. The law is unsettled about whether the time-related restrictions set forth in this paragraph, which are required under ICWA, 25 U.S.C. § 1912(a), apply to ex parte and custody hearings. The Supreme Court has held that ex parte and custody hearings are emergency proceedings under ICWA and therefore are exempt from the requirements of § 1912. *See State ex rel. Children, Youth and Families Dep't v. Marlene C.*, 2011-NMSC-005, 34, 149 N.M. 315, 248 P.3d 863 ("New Mexico's ex parte and custody

hearings are emergency proceedings under [25 U.S.C.] § 1922 to which the requirements of [25 U.S.C.] § 1912 do not apply.").

Recently adopted federal regulations, however, clarify the standards imposed in emergency proceedings under ICWA and are difficult to reconcile with the procedures allowed under New Mexico law. *Compare, e.g.*, 25 C.F.R. § 23.113(b) (providing that the emergency removal or placement of an Indian child must be based on a finding that the removal or placement "is necessary to prevent imminent physical damage or harm to the child"), *and id.* § 23.113(e) (providing that an emergency proceeding should not be continued for more than 30 days without a finding, *inter alia*, that "restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm"), *with* NMSA 1978, § 32A-4-18(C) (providing that custody may be awarded to the department based upon a showing that, *inter alia*, "the child will be subject to injury by others if not placed in the custody of the department"), *and id.* § 32A-4-19(A) (providing that an adjudicatory hearing shall commence within 60 days of service on the respondent).

Regardless of the continued validity of *Marlene C.*, the committee views the new regulations, taken as a whole, as a directive to engage potentially interested Tribes as early as possible in a child-custody proceeding in which an Indian child may be affected. *See* 25 C.F.R. § 23.101. The committee therefore encourages all participants in an abuse and neglect proceeding-including the court-to work with and accommodate the needs of interested Tribes to the fullest extent possible under the circumstances.

4. ICWA and its regulations require this Notice to be sent via registered or certified mail, return receipt requested, to the individuals identified in the certificate of mailing. *See* 25 C.F.R. §§ 23.11, 23.111(c). A copy of this Notice also must be served on the parties, as required by Rule 10-104 NMRA.

5. The CCA must send a copy of this Notice to the designated Tribal Agent of the Indian child's tribe(s), who may be identified by contacting the Bureau of Indian Affairs or by consulting the Bureau's annually published listing of Designated Tribal Agents for Service of Notice. The CCA may also determine the identity of the designated tribal representative(s) by contacting the tribe(s), subject to the confidentiality required by law.

6. The CCA must send this Notice or a copy to the appropriate Regional Director of the Bureau of Indian Affairs identified in 25 C.F.R. § 23.11(c). Service requirements may vary based upon whether the identity of the child's parents, Indian custodian, or Tribe can be ascertained. *See* 25 C.F.R. § 23.11(a), (b).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-038, effective for all cases pending or filed on or after November 28, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-038, effective November 28, 2016, revised the form to coincide with Rule 10-315 NMRA and the adoption of new regulations by the Bureau of Indian Affairs that are intended to clarify the minimum federal standards governing implementation of the Indian Child Welfare Act; added "[For use with Rules 10-312 and 10-315 NMRA]"; in the title, after "(CHILD(REN))", added Use Note reference "1"; in the introductory sentence, after "C.F.R. §", added "§", and after "23.11", added "and 23.111"; in Paragraph 2, after "years of age, and", deleted "believed to" and added "may"; in Paragraph 3, deleted "The basis for the belief that the child(ren) may be eligible for membership in the _____ tribe(s) is as follows:" and added "The child(ren) is/are, or there is reason to know[2] that the child(ren) is/are, [an] Indian child(ren) based on the following information:"; in Paragraph 4, after "custodial rights of the child(ren)'s", deleted "Indian parent(s) and/or Indian custodian(s)" and added "parents and/or Indian custodian(s)"; in Subparagraph 5(b)(ii), after "birth and", deleted "/or", and after "death", added "if applicable"; in Subparagraph 5(c)(ii), after "birth and", deleted "/or", and after "death", added "if applicable"; in Subparagraph 5(d), after "for the child's", deleted "maternal and paternal grandparents, great grandparents, and Indian custodians" and added "other direct lineal ancestors, such as grandparents"; in Paragraph 8, after "The", added "Indian", after "child(ren)'s", deleted "biological Indian", after "tribe(s)", deleted "shall", after "have the", deleted "absolute", and after "intervene", deleted "premised on the establishment of the applicability of the Indian Child Welfare Act (ICWA) to" and added "in"; in Paragraph 9, after "If the", added "Indian", and after "child(ren)'s", deleted "Indian"; in Paragraph 11, after "The", added "Indian", after "child(ren)'s", deleted "Indian", after "proceedings to the", deleted "child's tribal" and added "Tribal", and after "court", deleted "provided that the subject tribal court shall have the right to decline the transfer" and added "as provided by 25 U.S.C. § 1911 and 25 C.F.R. § 23.115"; in Paragraph 12, after the paragraph designation, deleted "These proceedings are confidential and all information contained in this notice shall be kept confidential" and added "You must keep confidential the information contained in this notice, and this notice should not be handled by anyone not needing the information to exercise rights under ICWA"; in Paragraph 13, after the paragraph designation, deleted "No" and added "Except for emergency proceedings, no", after "hearing on the petition", added "in the involuntary child custody proceeding", after "receipt of this notice by the", added "Indian", after "child(ren)'s", deleted "Indian", after "Indian custodian(s), and tribe(s)", deleted "or sooner than fifteen (15) days from the date of receipt of this notice by the Area Director of the Bureau of Indian Affairs", added the last sentence of the paragraph, and changed Use Note reference "1" to "3"; in Paragraph 14, after "The", added "Indian", and after "child(ren)'s", deleted "Indian"; after "CERTIFICATE OF MAILING", changed Use Note reference "2" to "4"; in the certification of mailing, after "registered", added "/certified", after "designated", deleted "representatives", added "Tribal Agent", and changed Use Note reference "3" to "5", after "name of", deleted "Indian" and added "parent/Indian custodian", after "appropriate", deleted "Area" and added "Regional", after "Director of Bureau of Indian Affairs", changed Use Note reference "4" to "6", after "(address)", deleted the last sentence which provided for mailing to the Secretary of the Department of Interior; and in the Use Note, deleted Use Note 1, added new Use Notes

1 through 3, and redesignated former Use Notes 2 through 4 as Use Notes 4 through 6, respectively, and deleted former Use Note 5.

10-522A. Adjudicatory judgment and dispositional order.

(*Uncontested/Non-ICWA Version*)

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).

ADJUDICATORY JUDGMENT AND DISPOSITIONAL ORDER AS TO _____

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for adjudicatory hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand-modify as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are not subject to the Indian Child Welfare Act.] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.[2]]

3. The substitute care provider was notified of this hearing and was [not] present and given an opportunity to be heard.

4. Respondent _____ does not contest the following allegations of the petition: (*Select the appropriate allegation(s) and delete those not applicable.*)

a. _____ (*name(s) of child(ren)*) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)'s parent guardian, or custodian, pursuant to Section 32A-4-2(B)(1) NMSA 1978.

b. _____ (*name(s) of child(ren)*) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(2) NMSA 1978.

c. _____ (*name(s) of child(ren)*) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)'s life or health, pursuant to Section 32A-4-2(B)(4) NMSA 1978.

e. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren), pursuant to Section 32A-4-2(B)(5) NMSA 1978.

f. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, pursuant to Section 32A-4-2(E)(1) NMSA 1978.

g. _____ (*name(s) of child(ren)*) is/are without proper parental care and control or subsistence, education, medical or other care or control necessary for the child(ren)'s well-being because of the faults or habits of the child(ren)'s parent, guardian, or custodian, or the neglect or refusal of the child(ren)'s parent, guardian, or custodian, when able to do so, to provide them, pursuant to Section 32A-4-2(E)(2) NMSA 1978.

h. _____ (*name(s) of child(ren)*) has/have been physically or sexually abused, when the child(ren)'s parent, guardian, or custodian, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm, pursuant to Section 32A-4-2(E)(3) NMSA 1978.

i. The child(ren)'s parent, guardian, or custodian is unable to discharge his/her parental responsibilities to and for _____ (*name(s) of child(ren)*) because of incarceration, hospitalization, or other physical or mental disorder or incapacity, pursuant to Section 32A-4-2(E)(4) NMSA 1978.

j. _____ (*name(s) of child(ren)*) has/have been placed for care or adoption in violation of the law by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(E)(5) NMSA 1978.

5. (*If applicable*) Respondent _____ does not contest the following aggravated circumstances: (*Select the appropriate circumstances(s) and delete those not applicable.*)

a. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm to the child(ren) or great bodily harm or death to the child(ren)'s sibling, pursuant to Section 32A-4-2(C)(1) NMSA 1978.

b. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian, or custodian of the child(ren), pursuant to Section 32A-4-2 (C)(2) NMSA 1978.

c. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to subject, or has subjected the child(ren) to torture, chronic abuse or sexual abuse, pursuant to Section 32A-4-2(C)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian had parental rights over a sibling of the child(ren) terminated involuntarily, pursuant to Section 32A-4-2(C)(4) NMSA 1978.

6. (*Redo paragraphs 4 and 5 above for each Respondent entering into a no contest plea covered by this pleading, and adjust paragraph numbering as necessary.*)

7. Pursuant to Rule 10-342(C) and (D) NMRA, the Court determines that:

a. Respondent(s) _____ understand(s) the allegations of the petition.

b. Respondent(s) _____ understand(s) the possible dispositions the Court may make if the allegations of the petition are found to be true.

c. Respondent(s) _____ understand(s) that he/she/they has/have the right to deny the allegations of the petition and to have a trial on the allegations.

d. Respondent(s) _____ understand(s) that by making the foregoing plea(s) of no contest that he/she/they is/are waiving his/her/their right to trial.

e. The foregoing plea(s) of no contest is/are voluntary, not the result of force or threats or promises, and has/have been made after consultation with and advice of counsel.

f. This/These plea(s) is/are not made for the purpose of a consent decree.

g. Respondent(s) _____ understand(s) that by entering a no-contest plea, the Court will enter a finding that, as to each Respondent entering a plea, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Abuse and Neglect Act, and that such a finding can be used against Respondent(s) to establish that the child(ren) has/have been a/an [abused] [and] [neglected] child(ren) as defined in the Abuse and Neglect Act in the event the case proceeds to a hearing on a motion to terminate parental rights.

h. The factual basis for the plea is as follows: _____. (*Provide a concise statement of facts not being contested that fits with statutory definition(s) subject of the no contest plea.*)

8. (*Select appropriate option(s) and delete the rest*)

a. The treatment plan contained within the Family Treatment Plan and Predispositional Study, attached to this order as Exhibit A, is reasonable and should be ordered by the Court.

b. The Court finds that reasonable efforts to preserve and reunify the family are not necessary as to Respondent _____, as such efforts would be futile.

c. Respondent _____ has subjected _____ (*name of child(ren)*) to aggravated circumstances.

9. Pursuant to Section 32A-4-22(A) NMSA 1978, the Court makes the dispositional findings of fact attached as Exhibit B and incorporated by reference into this order.

10. (*Select the appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

11. _____ (*name(s) of child(ren)*) has/have [not] been placed with a relative. CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).[3]

12. It is in the best interest of _____ (*name(s) of child(ren)*) that he/she/they be in the legal custody of CYFD.

13. Visitation should be as set forth in the treatment plan adopted by the Court.

14. Respondent(s) should [not] sign the following releases as requested by CYFD:[4] (*List the requested releases*)

15. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD:[4] (*List the requested releases*)

16. Respondent(s) should [not] attend all school meetings regarding education for _____ (*name(s) of child(ren)*).

17. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[5] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. As to Respondent _____, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Children's Code, as found above.

(*Repeat paragraph 1 above as necessary for each Respondent and adjust paragraph numbering.*)

2. (*Select appropriate custody option and delete the others*)

a. Legal custody of _____ (*name(s) of child(ren)*) shall be with CYFD for a period of up to two (2) years from the date of this order, subject to judicial review.

b. Legal custody of _____ (*name(s) of child(ren)*) shall be with Respondent(s) _____ with protective supervision in CYFD.

c. Legal custody of _____ (*name(s) of child(ren)*) shall be with _____ (*formerly non-custodial parent*) [with] [without] CYFD retaining protective supervision of the child(ren)].

3. CYFD shall make reasonable efforts to implement the treatment plan adopted by the Court.

4. Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan adopted by the Court and achieve the desired outcomes set forth in the treatment plan. (*Or, if futility of efforts or aggravated circumstances found for both Respondents, the Court will schedule a permanency hearing within thirty (30) days.*)

5. Visitation shall be as set forth in the treatment plan adopted by the Court.

6. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

7. This matter shall be referred to the Child Support Enforcement Division of the New Mexico Human Services Department (CSED) for determination of ongoing child support as to Respondent(s) _____. As required by federal and state law, Respondent(s) shall pay the reasonable costs of support and maintenance of the child that the parent(s) are financially able to pay as provided by Section 32A-4-26 NMSA 1978, and CYFD shall refer this matter to CSED for determination of ongoing support obligations.

8. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or meetings requiring his/her/their attendance.

9. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[5]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations.

2. Recite the efforts made to comply with the Indian Child Welfare Act.

3. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

4. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations that may affect access to medical and mental health records. Practitioners should review specific proposed release language, with special attention to the scope of the release sought, to ensure the release conforms to state and federal law.

5. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians ad litem and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 17 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-522B. Adjudicatory judgment and dispositional order.

(*Contested/Non-ICWA Version*)

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).

ADJUDICATORY JUDGMENT AND DISPOSITIONAL ORDER AS TO _____

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for adjudicatory hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are not subject to the Indian Child Welfare Act.] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.[2]]

3. CYFD has proven by clear and convincing evidence that as to Respondent _____, _____ (*name(s) of child(ren)*)

is/are a/an [abused] [and] [neglected] child(ren) as follows: (*Select the appropriate finding(s) and delete those not applicable*)

a. _____ (*name(s) of child(ren)*) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(1) NMSA 1978.

b. _____ (*name(s) of child(ren)*) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(2) NMSA 1978.

c. _____ (*name(s) of child(ren)*) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)'s life or health, pursuant to Section 32A-4-2(B)(4) NMSA 1978.

e. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren), pursuant to Section 32A-4-2(B)(5) NMSA 1978.

f. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, pursuant to Section 32A-4-2(E)(1) NMSA 1978.

g. _____ (*name(s) of child(ren)*) is/are without proper parental care and control or subsistence, education, medical, or other care or control necessary for the child(ren)'s well-being because of the faults or habits of the child(ren)'s parent, guardian, or custodian, or the neglect or refusal of the child(ren)'s parent, guardian, or custodian, when able to do so, to provide them, pursuant to Section 32A-4-2(E)(2) NMSA 1978.

h. _____ (*name(s) of child(ren)*) has/have been physically or sexually abused, when the child(ren)'s parent, guardian, or custodian, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm, pursuant to Section 32A-4-2(E)(3) NMSA 1978.

i. The child(ren)'s parent, guardian, or custodian is unable to discharge (his/her) parental responsibilities to and for _____ (*name(s) of child(ren)*) because of incarceration, hospitalization, or other physical or mental disorder or incapacity, pursuant to Section 32A-4-2(E)(4) NMSA 1978.

j. _____ (*name(s) of child(ren)*) has/have been placed for care or adoption in violation of the law by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(E)(5) NMSA 1978.

4. (*If applicable*) CYFD has proven by clear and convincing evidence the following aggravated circumstances as to Respondent _____: (*Select the appropriate circumstances(s) and delete those not applicable*)

a. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm to the child(ren) or great bodily harm or death to the child(ren)'s sibling, pursuant to Section 32A-4-2(C)(1) NMSA 1978.

b. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian, or custodian of the child(ren), pursuant to Section 32A-4-2(C)(2) NMSA 1978.

c. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to subject, or has subjected the child(ren) to torture, chronic abuse, or sexual abuse, pursuant to Section 32A-4-2(C)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian had parental rights over a sibling of the child(ren) terminated involuntarily, pursuant to Section 32A-4-2(C)(4) NMSA 1978. (*Redo paragraphs 4 and 5 above for each Respondent covered by this pleading and adjust paragraph numbering as necessary.*)

5. The Court makes the following findings and conclusions: (*At this point, make appropriate provision for inclusion of findings of fact and conclusions of law.*)

DISPOSITIONAL FINDINGS[3]

6. The substitute care provider was notified of the dispositional hearing, [was] [was not] present, and was given an opportunity to be heard.

7. The treatment plan contained within the Family Treatment Plan and Predispositional Study, attached to this order as Exhibit A, is reasonable and should be ordered by the Court.

8. Pursuant to Section 32A-4-22(A) NMSA 1978, the Court makes the dispositional findings of fact attached as Exhibit B and incorporated by reference into this order.

9. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

10. _____ (*name(s) of child(ren)*) has/have [not] been placed with a relative. CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any relatives expressing an interest in providing permanency for the child(ren).[4]

11. It is in the best interest of _____ (*name(s) of child(ren)*) that he/she/they be in the legal custody of CYFD.

12. Visitation should be as set forth in the treatment plan adopted by the court.

13. Respondent(s) should [not] sign the following releases as requested by CYFD.[5] (*List the requested releases*)

14. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD.[5] (*List the requested releases*)

15. Respondent(s) should [not] attend all school meetings regarding education for _____ (*name of child(ren)*).

16. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[6] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. As to Respondent _____, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Children's Code, as found above.

(*Repeat paragraph 1 above as necessary for each Respondent and adjust paragraph numbering as necessary.*)

2. (*Select appropriate custody option and delete the rest*)

a. Legal custody of _____ (*name(s) of child(ren)*) shall be with CYFD for a period of up to two (2) years from the date of this order, subject to judicial review.

b. Legal custody of _____ (*name(s) of child(ren)*) shall be with Respondent(s) _____ with protective supervision in CYFD.

c. Legal custody of _____ (*name(s) of child(ren)*) shall be with _____ (*formerly non-custodial parent*) [with] [without] CYFD retaining protective supervision of the child(ren).

3. CYFD shall make reasonable efforts to implement the treatment plan adopted by the court.

4. Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan adopted by the Court and achieve the desired outcomes set forth in the treatment plan. (*Or, if futility of efforts or aggravated circumstances found for both Respondents, the Court will schedule a permanency hearing within thirty (30) days.*)

5. Visitation shall be as set forth in the treatment plan adopted by the court.

6. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

7. This matter shall be referred to the Child Support Enforcement Division of the New Mexico Human Services Department (CSED) for determination of ongoing child support as to Respondent(s) _____. As required by federal and state law, Respondent(s) shall pay the reasonable costs of support and maintenance of the child that the parent(s) are financially able to pay as provided by Section 32A-4-26 NMSA 1978, and CYFD shall refer this matter to CSED for determination of ongoing support obligations.

8. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or meetings requiring his/her/their attendance.

9. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[6]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations.

2. Recite the efforts made to comply with the Indian Child Welfare Act.

3. Dispositional findings may be in a separate order.

4. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

5. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations that may affect access to medical and mental health records. Practitioners should review specific proposed release language, with special attention to the scope of the release sought, to ensure the release conforms to state and federal law.

6. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians ad litem and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 16 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-522C. Adjudicatory judgment and dispositional order.

(*Uncontested/ICWA Version*)

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).

ADJUDICATORY JUDGMENT AND DISPOSITIONAL ORDER AS TO _____

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for adjudicatory hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand-modify as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. The Indian Child Welfare Act (ICWA) applies to _____ (*name(s) of child(ren)*).

3. Pursuant to 25 U.S.C. § 1912(a), CYFD has provided written notification of these proceedings to _____'s (*name(s) of child(ren)*) Indian tribe.

4. _____'s (*name(s) of child(ren)*) Indian tribe has [not] appeared for this hearing.

5. The substitute care provider was notified of this hearing and was [not] present and given an opportunity to be heard.

6. Respondent _____ does not contest the following allegations of the petition: (*Select the appropriate allegation(s) and delete those not applicable.*)

a. _____ (*name(s) of child(ren)*) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)'s parent guardian, or custodian, pursuant to Section 32A-4-2(B)(1) NMSA 1978.

b. _____ (*name(s) of child(ren)*) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(2) NMSA 1978.

c. _____ (*name(s) of child(ren)*) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)'s life or health, pursuant to Section 32A-4-2(B)(4) NMSA 1978.

e. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren), pursuant to Section 32A-4-2(B)(5) NMSA 1978.

f. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, pursuant to Section 32A-4-2(E)(1) NMSA 1978.

g. _____ (*name(s) of child(ren)*) is/are without proper parental care and control or subsistence, education, medical or other care or control necessary for the child(ren)'s well-being because of the faults or habits of the child(ren)'s parent, guardian, or custodian, or the neglect or refusal of the child(ren)'s parent, guardian, or custodian, when able to do so, to provide them, pursuant to Section 32A-4-2(E)(2) NMSA 1978.

h. _____ (*name(s) of child(ren)*) has/have been physically or sexually abused, when the child(ren)'s parent, guardian, or custodian, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm, pursuant to Section 32A-4-2(E)(3) NMSA 1978.

i. The child(ren)'s parent, guardian, or custodian is unable to discharge his/her parental responsibilities to and for _____ (*name(s) of child(ren)*) because of incarceration, hospitalization, or other physical or mental disorder or incapacity, pursuant to Section 32A-4-2(E)(4) NMSA 1978.

j. _____ (*name(s) of child(ren)*) has/have been placed for care or adoption in violation of the law by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(E)(5) NMSA 1978.

7. (*If applicable*) Respondent _____ does not contest the following aggravated circumstances: (*Select the appropriate circumstances(s) and delete those not applicable.*)

a. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm to the child(ren) or great bodily harm or death to the child(ren)'s sibling, pursuant to Section 32A-4-2(C)(1) NMSA 1978.

b. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian, or custodian of the child(ren), pursuant to Section 32A-4-2(C)(2) NMSA 1978.

c. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to subject, or has subjected the child(ren) to torture, chronic abuse or sexual abuse, pursuant to Section 32A-4-2(C)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian had parental rights over a sibling of the child(ren) terminated involuntarily, pursuant to Section 32A-4-2(C)(4) NMSA 1978.

8. (*Redo paragraphs 4 and 5 above for each Respondent entering into a no contest plea covered by this pleading, and adjust paragraph numbering as necessary.*)

9. Pursuant to Rule 10-342(C) and (D) NMRA, the Court determines that:

a. Respondent(s) _____ understand(s) the allegations of the petition.

b. Respondent(s) _____ understand(s) the possible dispositions the Court may make if the allegations of the petition are found to be true.

c. Respondent(s) _____ understand(s) that he/she/they has/have the right to deny the allegations of the petition and to have a trial on the allegations.

d. Respondent(s) _____ understand(s) that by making the foregoing plea(s) of no contest that he/she/they is/are waiving his/her/their right to trial.

e. The foregoing plea(s) of no contest is/are voluntary, not the result of force or threats or promises, and has/have been made after consultation with and advice of counsel.

f. This/These plea(s) is/are not made for the purpose of a consent decree.

g. Respondent(s) _____ understand(s) that by entering a no-contest plea, the Court will enter a finding that, as to each Respondent entering a plea, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Abuse and Neglect Act, and that such a finding can be used against Respondent(s) to establish that the child(ren) has/have been a/an [neglected] [and] [abused] child(ren) as defined in the Abuse and Neglect Act in the event the case proceeds to a hearing on a motion to terminate parental rights.

h. The factual basis for the plea is as follows: _____. (*Provide a concise statement of facts not being contested that fits with statutory definition(s) subject of the no contest plea.*)

10. The parties stipulate, and the Court finds, that there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued care of _____ (*name(s) of child(ren)*) by Respondent(s) is likely to result in serious emotional or physical damage to the child(ren).

11. The parties stipulate, and the Court finds, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.

12. (*Select appropriate option(s) and delete the rest*)

a. The treatment plan contained within the Family Treatment Plan and Predispositional Study, attached to this order as Exhibit A, is reasonable and should be ordered by the Court.

b. The Court finds that reasonable efforts to preserve and reunify the family are not necessary as to Respondent _____, as such efforts would be futile.

c. Respondent _____ has subjected _____ (*name of child(ren)*) to aggravated circumstances.

13. Pursuant to Section 32A-4-22(A) NMSA 1978, the Court makes the dispositional findings of fact attached as Exhibit B and incorporated by reference into this order.

14. (*The next three paragraphs are used only if CYFD retains legal custody of the child(ren)*.) _____ (*name(s) of child(ren)*) is/are [not] placed in accordance with the placement preference of 25 U.S.C. § 1915(b) [but there is good cause to deviate from those placement preferences].

15. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

16. _____ (*name(s) of child(ren)*) has/have [not] been placed with a relative. CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).[2]

17. It is in the best interest of _____ (*name(s) of child(ren)*) that he/she/they be in the legal custody of CYFD.

18. Visitation should be as set forth in the treatment plan adopted by the Court.

19. Respondent(s) should [not] sign the following releases as requested by CYFD:[3] (*List the requested releases*)

20. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD:[3] (*List the requested releases*)

21. Respondent(s) should [not] attend all school meetings regarding education for _____ (*name(s) of child(ren)*).

22. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[4] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify if necessary.*)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. As to Respondent _____, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Children's Code, as found above. (*Repeat paragraph 1 above as necessary for each Respondent and adjust paragraph numbering.*)

2. (*Select appropriate custody option and delete the rest*)

a. Legal custody of _____ (*name(s) of child(ren)*) shall be with CYFD for a period of up to two (2) years from the date of this order, subject to judicial review.

b. Legal custody of _____ (*name(s) of child(ren)*) shall be with Respondent(s) _____ with protective supervision in CYFD.

c. Legal custody of _____ (*name(s) of child(ren)*) shall be with _____ (*formerly non-custodial parent*) [with] [without] CYFD retaining protective supervision of the child(ren).

3. CYFD shall continue to place _____ (*name(s) of child(ren)*) in accordance with ICWA. (*This paragraph is used only if CYFD retains legal custody of the child(ren)*.)

4. The treatment plan is adopted, and CYFD shall make reasonable efforts to implement the treatment plan.

5. Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes in the treatment plan. (*Or, if futility of efforts or aggravated circumstances found for both Respondents, the Court will schedule a permanency hearing within thirty (30) days.*)

6. Visitation shall be as set forth in the treatment plan.

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

8. This matter shall be referred to the Child Support Enforcement Division of the New Mexico Human Services Department (CSED) for determination of ongoing child support as to Respondent(s) _____. As required by federal and state law, Respondent(s) shall pay the reasonable costs of support and maintenance of the child that the parent(s) are financially able to pay as provided by Section 32A-4-26 NMSA 1978, and CYFD shall refer this matter to CSED for determination of ongoing support obligations.

9. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or meetings requiring his/her/their attendance.

10. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[4]

11. Respondent(s) shall identify any and all relatives known to them who are or may be interested in providing permanency and/or placement for _____ (*name(s) of child(ren)*).

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

3. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations that may affect access to medical and mental health records. Practitioners should review specific proposed release language, with special attention to the scope of the release sought, to ensure the release conforms to state and federal law.

4. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions,

does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 22 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-522D. Adjudicatory judgment and dispositional order.

(*Contested/ICWA Version*)

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).

ADJUDICATORY JUDGMENT AND DISPOSITIONAL ORDER AS TO _____

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for adjudicatory hearing. The New Mexico Children, Youth and Families

Department (CYFD) was represented by _____, children's court attorney. _____ (*names(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. The Indian Child Welfare Act applies to _____ (*name(s) of child(ren)*).

3. Pursuant to 25 U.S.C. § 1912(a), Petitioner has provided written notification of these proceedings to _____'s (*name(s) of child(ren)*) Indian tribe.

4. The Indian tribe of _____ (*name(s) of child(ren)*) has [not] appeared for this hearing.

5. CYFD has proven by clear and convincing evidence that as to Respondent _____, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as follows: (*Select the appropriate finding(s) and delete those not applicable*)

a. _____ (*name(s) of child(ren)*) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(1) NMSA 1978.

b. _____ (*name(s) of child(ren)*) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child/ren's parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(2) NMSA 1978.

c. _____ (*name(s) of child(ren)*) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)'s life or health, pursuant to Section 32A-4-2(B)(4) NMSA 1978.

e. _____’s (*name(s) of child(ren)*) parent, guardian, or custodian has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren), pursuant to Section 32A-4-2(B)(5) NMSA 1978.

f. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, pursuant to Section 32A-4-2(E)(1) NMSA 1978.

g. _____ (*name(s) of child(ren)*) is/are without proper parental care and control or subsistence, education, medical, or other care or control necessary for the child(ren)’s well-being because of the faults or habits of the child(ren)’s parent, guardian, or custodian, or the neglect or refusal of the child(ren)’s parent, guardian, or custodian, when able to do so, to provide them, pursuant to Section 32A-4-2(E)(2) NMSA 1978.

h. _____ (*name(s) of child(ren)*) has/have been physically or sexually abused, when the child(ren)’s parent, guardian, or custodian, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm, pursuant to Section 32A-4-2(E)(3) NMSA 1978.

i. The child(ren)’s parent, guardian, or custodian is unable to discharge (his/her) parental responsibilities to and for _____ (*name(s) of child(ren)*) because of incarceration, hospitalization, or other physical or mental disorder or incapacity, pursuant to Section 32A-4-2(E)(4) NMSA 1978.

j. _____ (*name(s) of child(ren)*) has/have been placed for care or adoption in violation of the law by the child(ren)’s parent, guardian, or custodian, pursuant to Section 32A-4-2(E)(5) NMSA 1978.

6. (*If applicable*) CYFD has proven by clear and convincing evidence the following aggravated circumstances as to Respondent _____: (*Select the appropriate circumstances(s) and delete those not applicable*)

a. _____’s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm to the child(ren) or great bodily harm or death to the child(ren)’s sibling, pursuant to Section 32A-4-2(C)(1) NMSA 1978.

b. _____’s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian, or custodian of the child(ren), pursuant to Section 32A-4-2(C)(2) NMSA 1978.

c. _____’s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to subject, or has subjected the child(ren) to torture, chronic abuse, or sexual abuse, pursuant to Section 32A-4-2(C)(3) NMSA 1978.

d. _____’s (*name(s) of child(ren)*) parent, guardian, or custodian had parental rights over a sibling of the child(ren) terminated involuntarily, pursuant to Section 32A-4-2(C)(4) NMSA 1978.

(*Redo paragraphs 4 and 5 above for each Respondent covered by this pleading and adjust paragraph numbering as necessary.*)

7. There is clear and convincing evidence, including testimony of a qualified expert witness, that the continued care of _____ (*name(s) of child(ren)*) by the Respondent(s) is likely to result in serious emotional or physical damage to the child(ren).

8. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and these efforts have been unsuccessful.

9. The Court makes the following findings and conclusions: (*At this point, make appropriate provision for inclusion of findings of fact and conclusions of law.*)

DISPOSITIONAL FINDINGS[2]

10. The substitute care provider was notified of the dispositional hearing, was [not] present, and was given an opportunity to be heard.

11. (*Select appropriate option(s) and delete the rest*)

a. The treatment plan contained within the Family Treatment Plan and Predispositional Study, attached to this order as Exhibit A, is reasonable and should be ordered by the Court.

b. The Court finds that reasonable efforts to preserve and reunify the family are not necessary as to Respondent _____, as such efforts would be futile.

c. Respondent _____ has subjected _____ (*name(s) of child(ren)*) to aggravated circumstances.

12. Pursuant to Section 32A-4-22(A) NMSA 1978, the Court makes the dispositional findings of fact attached as Exhibit B and incorporated by reference into this order.

13. (*The next three paragraphs are used only if CYFD retains legal custody of the child(ren)*.) _____ (*name(s) of child(ren)*) is/are [not] placed in accordance with the placement preferences of 25 U.S.C. § 1915(b) [but there is good cause to deviate from those placement preferences].

14. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

15. _____ (*name(s) of child(ren)*) has/have [not] been placed with a relative. CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).[3]

16. It is in the best interest of _____ (*name(s) of child(ren)*) that he/she/they be in the legal custody of CYFD.

17. Visitation should be as set forth in the treatment plan adopted by the court.

18. Respondent(s) should [not] sign the following releases as requested by CYFD:[4] (*List the requested releases*)

19. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD:[4] (*List the requested releases*)

20. Respondent(s) should [not] attend all school meetings regarding education for _____ (*name(s) of child(ren)*).

21. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[5] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. As to Respondent _____, _____ (*name(s) of child(ren)*) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Children's Code, as found above.

(*Repeat paragraph 1 above as necessary for each Respondent and adjust paragraph numbering as necessary.*)

2. (*Select appropriate custody option and delete the rest*)

a. Legal custody of _____ (*name(s) of child(ren)*) shall be with CYFD for a period of up to two (2) years from the date of this order, subject to judicial review.

b. Legal custody of _____ (*name(s) of child(ren)*) shall be with Respondent(s) _____ with protective supervision in CYFD.

c. Legal custody of _____ (*name(s) of child(ren)*) shall be with _____ (*formerly non-custodial parent*) [with] [without] CYFD retaining protective supervision of the child(ren).

3. CYFD shall continue to place _____ (*name(s) of child(ren)*) in accordance with ICWA. (*This paragraph is used only if CYFD retains legal custody of the child(ren).*)

4. The treatment plan is adopted, and CYFD shall make reasonable efforts to implement the treatment plan.

5. Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes in the treatment plan. (*Or, if futility of efforts or aggravated circumstances are found for both Respondents, the Court will schedule a Permanency Hearing within thirty (30) days.*)

6. Visitation shall be as set forth in the treatment plan.

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

8. This matter shall be referred to the Child Support Enforcement Division of the New Mexico Human Services Department (CSED) for determination of ongoing child support as to Respondent(s) _____. As required by federal and state law, Respondent(s) shall pay the reasonable costs of support and maintenance of the child that the parent(s) are financially able to pay as provided by Section 32A-4-26 NMSA 1978, and CYFD shall refer this matter to CSED for determination of ongoing support obligations.

9. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or meetings requiring his/her/their attendance.

10. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[5]

11. Respondent(s) shall identify any and all relatives known to them who are or may be interested in providing permanency and/or placement for _____ (*name(s) of child(ren)*).

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. Dispositional findings may be in a separate order.

3. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

4. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations that may affect access to medical and mental health records. Practitioners should review specific proposed release language, with special attention to the scope of the release sought, to ensure the release conforms to state and federal law.

5. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions

related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 21 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-530. Initial judicial review order.

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).

INITIAL JUDICIAL REVIEW ORDER

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for initial judicial review. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as*

necessary) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.]

3. (*If ICWA applies, select one of the following and delete the others; otherwise, delete this paragraph*)

a. _____ (*name(s) of child(ren)*) is/are placed with a member of the child(ren)'s extended family.

b. _____ (*name(s) of child(ren)*) is/are placed in a foster home licensed, approved, or specified by the Indian child(ren)'s tribe.

c. _____ (*name(s) of child(ren)*) is/are placed in an Indian foster home licensed or approved or authorized by a non-Indian licensing authority.

d. _____ (*name(s) of child(ren)*) is/are placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child(ren)'s needs.

AND

_____'s (*name(s) of child(ren)*) tribe was notified of this hearing and a representative of the child(ren)'s tribe did [not] participate in the hearing.

4. [_____ (*name(s) of child(ren)*) is a/are United States citizen(s).] [_____ (*name(s) of child(ren)*) is/are not (a) United States citizen(s), and CYFD has notified the consulate of the child(ren)'s home country and advised the consulate that the child(ren) is/are in CYFD custody.]

5. The substitute care provider was notified of this hearing and [was not present] [was present and given the opportunity to be heard].

6. CYFD has made reasonable efforts to implement the treatment plan previously ordered by the Court.

7. With respect to Respondent _____:

a. This Respondent has complied with the treatment plan as follows:

_____;

b. This Respondent has failed to comply with the treatment plan as follows:

_____;

c. This Respondent has progressed in the following ways:

_____;

d. This Respondent needs to make further progress in the following areas:

_____.
(*Repeat as necessary for each Respondent and adjust paragraph numbers accordingly*)

Further detail regarding the efforts and activities of the parties with respect to the treatment plan are found in the court report for this hearing, [filed on _____] [attached hereto] and incorporated by reference.

8. The treatment plan proposed by CYFD in its court report for this hearing, [filed on _____] [attached to this Order], is appropriate in the circumstances of this case and should be adopted by the Court for implementation by CYFD, subject to the following modifications/additions: _____.

9. CYFD has presented a report for this hearing, [filed on _____] [attached hereto], containing the facts involved in this matter which are adopted as further findings of the Court.

10. (*Include this finding only if ICWA applies; otherwise delete*) CYFD has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

11. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. CYFD has made reasonable efforts to place the siblings in custody together but has not been able to do so. The siblings have not been placed together as placement would be contrary to the safety or well-being of the siblings because _____ and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been placed together or provided visitation or other ongoing interaction as such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

12. (*Select appropriate option and delete the other*)[2]

a. _____ (*name(s) of child(ren)*) has/have been placed with an appropriate relative.

b. _____ (*name(s) of child(ren)*) has/have not been placed with an appropriate relative; further, CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).

13. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) remain in the legal custody of CYFD subject to judicial review as required by law.

14. Visitation should be as set forth in the treatment plan adopted by the Court.

15. Other findings(s): (*Consider whether findings regarding a transition plan for youth is necessary. This is also where other findings made by the Court may be added.*)

16. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[3] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

IT IS THEREFORE ORDERED:

1. _____ (*name(s) of child(ren)*) shall remain in the legal custody of CYFD subject to judicial review as required by law.

2. The treatment plan proposed by CYFD in its court report for this hearing is adopted, and Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes set forth in the treatment plan for that Respondent.

3. CYFD shall make reasonable efforts to implement the treatment plan.

4. Visitation shall be as set forth in the treatment plan.

5. (*Include this paragraph only if ICWA applies; otherwise delete*) CYFD shall continue to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

6. Supplemental orders are necessary to assure compliance with the treatment plan and the safety of _____ (*name(s) of child(ren)*) as follows: _____. (*Complete or delete as appropriate*)

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

8. Respondent(s) shall advise their respective attorneys and case worker of any change in address and/or telephone number and maintain regular communication with them regarding the dates and times of any court hearings or meetings requiring his/her/their attendance and the case in general.

9. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[3]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. The reference to relative placement is not required by state statute until the initial permanency hearing. *See* NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. *See, e.g.*, Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).

3. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person

who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 16 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-531. Initial permanency order.

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).

INITIAL PERMANENCY ORDER

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for initial permanency hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but]

was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.]

3. (*If ICWA applies, select one of the following and delete the others; otherwise, delete this paragraph*)

a. _____ (*name(s) of child(ren)*) is/are placed with a member of the child(ren)'s extended family.

b. _____ (*name(s) of child(ren)*) is/are placed in a foster home licensed, approved, or specified by the Indian child(ren)'s tribe.

c. _____ (*name(s) of child(ren)*) is/are placed in an Indian foster home licensed or approved or authorized by a non-Indian licensing authority.

d. _____ (*name(s) of child(ren)*) is/are placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child(ren)'s needs.

AND

_____'s (*name(s) of child(ren)*) tribe was notified of this hearing and a representative of the child(ren)'s tribe did [not] participate in the hearing.

4. The substitute care provider was notified of this hearing and [was not present] [was present and given the opportunity to be heard].

5. CYFD has made reasonable efforts to implement the treatment plan previously ordered by the Court.

6. CYFD has made reasonable efforts to finalize the permanency plan currently in effect, which is _____, as follows: (*be factually specific in enunciating what*

CYFD has done to accomplish the goal inherent in the permanency plan identified above)

7. With respect to Respondent _____:

a. This Respondent has complied with the treatment plan as follows: _____;

b. This Respondent has failed to comply with the treatment plan as follows: _____;

c. This Respondent has progressed in the following ways: _____;

d. This Respondent needs to make further progress in the following areas: _____.

e. (*If applicable*) The trial home visit which commenced on _____ should be extended for a period not to exceed six (6) months.

(*Repeat as necessary for each Respondent and adjust paragraph numbers accordingly*)

Further detail regarding the efforts and activities of the parties with respect to the treatment plan are found in the court report for this hearing, [filed on _____] [attached hereto] and incorporated by reference.

8. The treatment plan proposed by CYFD in its court report for this hearing, [filed on _____] [attached to this Order], is appropriate in the circumstances of this case and should be adopted by the Court for implementation by CYFD, subject to the following modifications/additions: _____.

9. The permanency plan proposed by CYFD is _____; the Court finds that this plan is [not] appropriate (and a plan of _____ is in the best interests of _____ (*name(s) of child(ren)*)). (*Modify as appropriate if all of the children do not have the same permanency plan*)

10. (*If the plan is reunification and custody is not returned*) The plan proposed by CYFD to transition _____ (*name(s) of child(ren)*) home within three (3) months, as required by statute, as set forth in the court report for this hearing, is appropriate and adopted by the Court, with the following modifications: _____.

AND

There should be a permanency review hearing scheduled within three (3) months, as required in the circumstances of this case by Section 32A-4-25.1(C) NMSA 1978.

11. (*To be used if the permanency plan is not reunification*) CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for _____ (*name(s) of child(ren)*).

12. (*To be used if the plan is not reunification and the Court finds that reasonable efforts on relative placement have not been made*) There should be a permanency review hearing scheduled within sixty (60) days, as required in the circumstances of this case by Section 32A-4-25.1(D) NMSA 1978 to determine whether an appropriate relative placement has been made.

13. (*To be used if the child(ren) has/have been in foster care for not less than fifteen (15) of the last twenty-two (22) months*) A motion to terminate parental rights in not in _____'s (*name(s) of child(ren)*) best interest and will not be filed because of the following compelling reason: (*Select the applicable reason and delete the others – there are other possible reasons, but they are rarely, if ever, used*)

a. The parent(s) _____, has/have made substantial progress toward eliminating the problem that caused _____'s (*name(s) of child(ren)*) placement in foster care; it is likely that the child(ren) will be able to safely return to the parent's home within three (3) months and the child(ren)'s return to the home will be in the child(ren)'s best interests;

b. _____ (*name(s) of child(ren)*) has/have a close and positive relationship with a parent and a permanency plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child(ren).

c. _____ (*name(s) of child(ren)*) is fourteen (14) years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place [him] [her] with an adoptive family;

d. _____ (*name(s) of child(ren)*) is not capable of functioning if placed in a family setting. (*To be re-evaluated every ninety (90) days unless there is a final court determination that the child cannot be placed in a family setting*)

e. The parent's incarceration or participation in a court ordered residential substance abuse treatment program constitutes the primary factor in _____'s (*name(s) of child(ren)*) placement in substitute care and termination of parental rights is not in the child's best interests.

f. Grounds do not exist for termination of parental rights because _____. (*Boilerplate is not adequate . . . the reason should amount to a failure to make reasonable efforts to offer treatment plan services to a Respondent*)

14. (*To be used if the Court-ordered permanency plan is another planned permanent living arrangement*) Placement in the legal custody of the Department under a

permanency plan of planned permanent living arrangement is appropriate due to the following compelling reasons: Reunification is not appropriate because _____; adoption is not appropriate because _____; permanent guardianship is not appropriate because _____; placement with a fit and willing relative is not appropriate because _____.

15. (*Include this finding only if ICWA applies; otherwise delete*) CYFD has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

16. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The Department has made reasonable efforts to place the siblings in custody together but has not been able to do so. The siblings have not been placed together as placement would be contrary to the safety or well-being of the siblings because _____ and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been placed together or provided visitation or other ongoing interaction as such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

17. (*Select appropriate option and delete the other*)

a. _____ (*name(s) of child(ren)*) has/have been placed with an appropriate relative.

b. _____ (*name(s) of child(ren)*) has/have not been placed with an appropriate relative; further, CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).

18. (*Select appropriate custody option and delete the rest*)

a. It is in the best interest of _____ (*name(s) of child(ren)*) that the child(ren) remain(s) in the legal custody of CYFD subject to judicial review as required by law.

b. Legal custody of _____ (*name(s) of child(ren)*) is returned to the child(ren)’s parent, guardian or custodian and the case dismissed.

c. Legal custody of _____ (*name(s) of child(ren)*) is/are returned to the child(ren)'s parent, guardian or custodian, subject to protective supervision of the child(ren) by CYFD for a period not to exceed six (6) months and subject to the following additional conditions or limitations as follows: _____.

19. (*If applicable*) Visitation shall be as set forth in the treatment plan adopted by the Court.

20. CYFD has presented a report for this hearing, [filed on _____] [attached hereto], containing the facts involved in this matter which are adopted as further findings of the Court.

21. Other Findings(s): (*Consider whether Findings regarding a transition plan for youth is necessary.*) (*This is also where other findings made by the Court would be added.*)

22. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[2] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

IT IS THEREFORE ORDERED:

1. (*Select appropriate custody option and delete the rest*)

a. _____ (*name(s) of child(ren)*) shall remain in the legal custody of CYFD subject to judicial review as required by law.

b. Legal custody of _____ (*name(s) of child(ren)*) is returned to the child(ren)'s parent, guardian or custodian and the case dismissed.

c. Legal custody of _____ (*name(s) of child(ren)*) is/are returned to the child(ren)'s parent, guardian or custodian, subject to protective supervision of the child(ren) by CYFD for a period not to exceed six (6) months and subject to the following additional conditions or limitations: .

2. (*Do not use if legal custody is returned*) _____'s (*name(s) of child(ren)*) permanency plan shall be _____.

3. (*The next three paragraphs are used only if respondent(s) remain in the case*) The treatment plan proposed by CYFD in its court report for this hearing is adopted, and each Respondent shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes set forth in the treatment plan for that Respondent.

4. CYFD shall make reasonable efforts to implement the treatment plan.

5. Visitation shall be as set forth in the treatment plan.

6. (*Include this paragraph only if ICWA applies; otherwise delete*) CYFD shall continue to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

8. Respondent(s) shall advise their respective attorneys and case worker of any change in address or phone number and maintain regular communication with them regarding the dates and times of any court hearings or meetings requiring his/her/their attendance and the case in general.

9. (*If applicable*) The trial home visit which was commenced on _____ is extended for a period not to exceed six (6) months.

10. (*Consider whether an order regarding a transition plan for youth is necessary or additional ICWA related orders are necessary. This is also where other orders made by the Court would be added.*)

11. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[2]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions,

does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 22 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-532. Permanency review order.

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).

PERMANENCY REVIEW ORDER

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for permanency review. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand*

as necessary) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.]

3. (*If ICWA applies, select one of the following and delete the others; otherwise, delete this paragraph*)

a. _____ (*name(s) of child(ren)*) is/are placed in the foster care of a member of the child(ren)'s tribe which is a preferential placement in accordance with ICWA.

b. _____ (*name(s) of child(ren)*) is/are placed in the foster care of a Native American family which is a preferential placement in accordance with ICWA.

c. _____ (*name(s) of child(ren)*) is/are placed in the foster care of their _____ (*relationship*) which is a preferential treatment in accordance with ICWA.

d. _____ (*name(s) of child(ren)*) is/are not placed in the foster care of a Native American family which is not a preferential placement as defined in ICWA, but there is good cause for the placement because the placement is the least restrictive setting that closely approximates a family in which the child(ren)'s special needs may be met, or the placement is in reasonable proximity to the Indian child(ren)'s home, taking into account any special needs of the Indian child(ren).

AND

CYFD should continue to place _____ (*name(s) of child(ren)*) with a custodian already selected, so long as the placement remains in the child(ren)'s best interests and in accordance with ICWA.

4. The substitute care provider was notified of this hearing and [was not present] [was present and given the opportunity to be heard].

5. CYFD has made reasonable (*and if ICWA applies, add "active"*) efforts to implement the treatment plan previously ordered by the Court.

6. (*Include this finding only if ICWA applies; otherwise delete*) CYFD has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

7. CYFD has made reasonable efforts to finalize the permanency plan currently in effect, which is _____, as follows: (*Be factually specific in enunciating what CYFD has done to accomplish the goal inherent in the permanency plan identified above*)

8. With respect to Respondent _____,

a. This Respondent has complied with the treatment plan as follows: _____;

b. This Respondent has failed to comply with the treatment plan as follows: _____;

c. This Respondent has progressed in the following ways: _____;

d. This Respondent needs to make further progress in the following areas: _____.

(*Repeat as necessary for each Respondent and adjust paragraph numbers accordingly*)

Further detail regarding the efforts and activities of the parties with respect to the treatment plan are found in the court report for this hearing, [filed on _____] [attached and incorporated by reference].

9. (*Complete the appropriate paragraph and delete the other*)

a. (*If the hearing is a ninety (90) day permanency review hearing*) The transition home plan was [not] successful because _____.

b. (*If the hearing is a sixty (60) day permanency review hearing*) [CYFD has made an appropriate relative placement.] [No relative placement has been made by CYFD; further, CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).]

10. (*Not applicable if case is dismissed*) The treatment plan proposed by CYFD in its court report for this hearing, [filed on _____] [attached to this Order], is

appropriate in the circumstances of this case and should be adopted by the Court for implementation by CYFD, subject to the following modifications or additions: _____.

11. (*Not applicable if legal custody is returned*) The permanency plan proposed by CYFD is _____; the Court finds that this plan is [not] appropriate (and a plan of _____ is in the best interests of _____ (*name(s) of child(ren)*)). (*Modify as appropriate if all of the children do not have the same permanency plan*)

12. (*To be used if the ordered permanency is not adoption and the child(ren) will remain in foster care after the hearing and no Motion for Termination of Parental Rights has been or will be filed*) A motion to terminate parental rights will not be filed by CYFD at this time because of the following compelling reasons: (*Select the applicable reason(s) and delete the others – there are other possible reasons, but they are rarely, if ever, used*)

a. The parent(s) _____, has/have made substantial progress toward eliminating the problem that caused _____'s (*name(s) of child(ren)*) placement in foster care; it is likely the child(ren) will be able to safely return to the parent's home within three (3) months and the child(ren)'s return to the home will be in the child(ren)'s best interests.

b. _____ (*name(s) of child(ren)*) has/have a close and positive relationship with a parent and a permanency plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child(ren).

c. _____ (*name(s) of child(ren)*) is fourteen (14) years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place [him] [her] with an adoptive family.

d. _____ (*name(s) of child(ren)*) is not capable of functioning if placed in a family setting. (*To be re-evaluated every ninety (90) days unless there is a final court determination that the child cannot be placed in a family setting*)

e. The parent's incarceration or participation in a court ordered residential substance abuse treatment program constitutes the primary factor in _____'s (*name(s) of child(ren)*) placement in substitute care and termination of parental rights is not in the child's best interests.

f. Grounds do not exist for termination of parental rights because _____. (*Boilerplate is not adequate . . . the reason should amount to a failure to make reasonable efforts to offer treatment plan services to a Respondent*)

13. (*To be used if the Court-ordered plan is planned permanent living arrangement. Delete if not used.*) The permanency plan of planned permanent living arrangement is

justified by the following compelling reasons: Reunification is not appropriate because _____; adoption is not appropriate because _____; permanent guardianship is not appropriate because _____; placement with a fit and willing relative is not appropriate because _____ (and the child affirmatively desires to be independent).

14. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together, and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

15. (*Select appropriate option and delete the rest*)

a. It is in the best interest of _____ (*name(s) of child(ren)*) that the child(ren) remain in the legal custody of CYFD subject to judicial review as required by law.

b. It is in the best interest of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ and the case be dismissed.

c. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ with _____ (*up to six (6)*) months of protective supervision by CYFD, which will expire on _____. During the period of protective supervision the following limitations to legal custody will be in place: (*indicate limitations, such as compliance with treatment plan, etc.*)

16. Visitation should be as set forth in the treatment plan adopted by the Court.

17. CYFD has presented a report for this hearing, [filed on _____] [attached hereto], that contains the facts involved in this matter which are adopted as further findings of the Court.

18. Other finding(s): (*Consider whether findings regarding a transition plan for youth is necessary. This is also where other findings made by the Court may be added.*)

19. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s (*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[2] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

IT IS THEREFORE ORDERED:

1. (*Select appropriate custody option and delete the rest*)

a. It is in the best interests of _____ (*name(s) of child(ren)*) that he/she/they remain in the legal custody of CYFD, subject to periodic review as required by law.

b. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ and the case be dismissed.

c. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ with _____ (*up to six (6)*) months of protective supervision by CYFD, which will expire on _____. During the period of protective supervision the following limitations to legal custody shall be in place: (*Indicate limitations, such as compliance with treatment plan, etc.*)

2. (*Do not use if legal custody is returned*) _____'s (*name(s) of child(ren)*) permanency plan shall be _____.

3. (*The next three paragraphs are used only if Respondent(s) remain in the case*) The treatment plan proposed by CYFD in its court report for this hearing is adopted, and each Respondent shall make reasonable efforts to comply with the treatment plan and to achieve the desired outcomes set forth in the treatment plan for that Respondent.

4. CYFD shall make reasonable (*and if ICWA applies, "active"*) efforts to implement the treatment plan.

5. Visitation shall be as set forth in the treatment plan.

6. (*Include this paragraph only if ICWA applies; otherwise delete*) CYFD shall continue to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education.

Further disclosure of records, reports, writing, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.

8. Respondents shall maintain regular communication with their attorneys and social worker to inform themselves about the dates and times of any court hearings or meetings requiring their attendance.

9. Respondents shall identify all relatives known to them who are or may be interested in providing permanency or placement for _____ (*name(s) of child(ren)*).

10. (*Consider whether an order regarding a transition plan for youth is necessary. This is also where other orders made by the Court may be added.*)

11. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[2]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 19 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-533. Periodic judicial review order/Permanency order/Extension of custody order.

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).

PERIODIC JUDICIAL REVIEW ORDER
AND
PERMANENCY ORDER
AND
EXTENSION OF CUSTODY ORDER

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for [periodic judicial review] [permanency hearing] [extension of custody]. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.[1]

2. [_____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, _____ (*name(s) of child(ren)*) is/are not subject to ICWA.]

3. (*If ICWA applies, select one of the following and delete the others; otherwise, delete this paragraph*)

a. _____ (*name(s) of child(ren)*) is/are placed in the foster care of a member of the child(ren)'s tribe which is a preferential placement in accordance with ICWA.

b. _____ (*name(s) of child(ren)*) is/are placed in the foster care of a Native American family which is a preferential placement in accordance with ICWA.

c. _____ (*name(s) of child(ren)*) is/are placed in the foster care of their _____ (*relationship*) which is a preferential treatment in accordance with ICWA.

d. _____ (*name(s) of child(ren)*) is/are not placed in the foster care of a Native American family which is not a preferential placement as defined in ICWA, but there is good cause for the placement because the placement is the least restrictive setting that closely approximates a family in which the child(ren)'s special needs may be met, or the placement is in reasonable proximity to the Indian child(ren)'s home, taking into account any special needs of the Indian child(ren).

AND

CYFD should continue to place the child(ren) with a custodian already selected, so long as the placement remains in _____'s (*name(s) of child(ren)*) best interests and in accordance with ICWA.

4. The substitute care provider was notified of this hearing and [was not present] [was present and given the opportunity to be heard].

5. CYFD has made reasonable (*and if ICWA applies, add "active"*) efforts to implement the treatment plan previously ordered by the Court.

6. (*Include this finding only if ICWA applies; otherwise delete*) CYFD has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

7. CYFD has made reasonable efforts to finalize the permanency plan currently in effect, which is _____, as follows: (*Be factually specific in enunciating what CYFD has done to accomplish the goal inherent in the permanency plan identified above*)

8. With respect to Respondent _____,

a. This Respondent has complied with the treatment plan as follows: _____;

b. This Respondent has failed to comply with the treatment plan as follows: _____;

c. This Respondent has progressed in the following ways: _____;

d. This Respondent needs to make further progress in the following areas: _____;

(*Repeat as necessary for each Respondent and adjust paragraph numbers accordingly*)

Further detail regarding the efforts and activities of the parties with respect to the treatment plan are found in the court report for this hearing, [filed on _____] [attached and incorporated by reference].

9. The treatment plan proposed by CYFD in its court report for this hearing, [filed on _____] [attached to this Order], is appropriate in the circumstances of this case and should be adopted by the Court for implementation by CYFD, subject to the following modifications or additions: _____.

10. The permanency plan proposed by CYFD is _____; the Court finds that this plan is [not] appropriate (and a plan of _____ is in the best interests of _____ (*name(s) of child(ren)*)). (*Modify as appropriate if all of the children do not have the same permanency plan*)

11. (*To be used if the ordered permanency is not adoption and the child(ren) will remain in foster care after the hearing and no Motion for Termination of Parental Rights has been or will be filed*) A motion to terminate parental rights will not be filed by CYFD at this time because of the following compelling reasons: (*Select the applicable reason(s) and delete the others – there are other possible reasons, but they are rarely, if ever, used*)

a. The parent(s) _____, has/have made substantial progress toward eliminating the problem that caused the child(ren)'s placement in foster care; it is likely that _____ (*name(s) of child(ren)*) will be able to safely return to the parent's home within three (3) months and the child(ren)'s return to the home will be in the child(ren)'s best interests.

b. _____ (*name(s) of child(ren)*) has/have a close and positive relationship with a parent and a permanency plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child(ren).

c. _____ (*name(s) of child(ren)*) is fourteen (14) years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place [him] [her] with an adoptive family.

d. _____ (*name(s) of child(ren)*) is not capable of functioning if placed in a family setting. (*To be re-evaluated every ninety (90) days unless there is a final court determination that the child cannot be placed in a family setting*)

e. The parent's incarceration or participation in a court ordered residential substance abuse treatment program constitutes the primary factor in _____'s (*name(s) of child(ren)*) placement in substitute care and termination of parental rights is not in the child's best interests.

f. Grounds do not exist for termination of parental rights because _____. (*Boilerplate is not adequate . . . the reason should amount to a failure to make reasonable efforts to offer treatment plan services to a Respondent*)

12. (*To be used if the Court-ordered plan is planned permanent living arrangement. Delete if not used.*) The permanency plan of planned permanent living arrangement is justified by the following compelling reasons: Reunification is not appropriate because _____; adoption is not appropriate because _____; permanent guardianship is not appropriate because _____; placement with a fit and willing relative is not appropriate because _____ (and the child affirmatively desires to be independent).

13. (*Select appropriate option and delete the other*)

a. _____ (*name(s) of child(ren)*) has/have been placed with an appropriate relative.

b. _____ (*name(s) of child(ren)*) has/have not been placed with an appropriate relative; further CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).

14. (*Select appropriate option and delete the rest*)

a. CYFD has made reasonable efforts to place siblings in custody together, and they have been placed together.

b. The siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been provided reasonable visitation or other ongoing interaction because such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

15. (*Select appropriate option and delete the rest*)

a. It is in the best interest of _____ (*name(s) of child(ren)*) that the child(ren) remain in the legal custody of CYFD subject to judicial review as required by law.

b. It is in the best interest of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ and the case be dismissed.

c. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ with _____ (*up to six (6)*) months of protective supervision by CYFD, which will expire on _____. During the period of protective supervision the following limitations to legal custody will be in place: (*indicate limitations, such as compliance with treatment plan, etc.*)

16. (*If applicable*) Visitation should be as set forth in the treatment plan adopted by the Court.

17. It is necessary to safeguard the welfare of _____ (*name(s) of child(ren)*) that legal custody in CYFD be extended for one year, to _____ (*date*) (*Or until adoption or emancipation, whichever occurs first*).

18. CYFD has presented a report for this hearing, [filed on _____] [attached hereto], that contains the facts involved in this matter which are adopted as further findings of the Court.

19. Other finding(s): (*Consider whether findings regarding a transition plan for youth is necessary. This is also where other findings made by the Court may be added.*)

20. The appointment(s) of _____ as _____'s (*name(s) of child(ren)*) educational decision maker and _____ as _____'s

(*name(s) of child(ren)*) parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.[2] (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

IT IS THEREFORE ORDERED:

1. (*Select appropriate custody option and delete the other*)

a. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ and the case be dismissed.

b. It is in the best interests of _____ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of _____ with _____ (*up to six (6)*) months of protective supervision by CYFD, which will expire on _____. During the period of protective supervision the following limitations to legal custody shall be in place: (*Indicate limitations, such as compliance with treatment plan, etc.*)

2. (*Do not use if legal custody is returned*) _____'s (*name(s) of child(ren)*) permanency plan shall be _____.

3. (*The next three paragraphs are used only if Respondent(s) remain in the case*) The treatment plan proposed by CYFD in its court report for this hearing is adopted, and each Respondent shall make reasonable efforts to comply with the treatment plan and to achieve the desired outcomes set forth in the treatment plan for that Respondent.

4. CYFD shall make reasonable (*and if ICWA applies*, "active") efforts to implement the treatment plan.

5. Visitation shall be as set forth in the treatment plan.

6. (*Include this paragraph only if ICWA applies; otherwise delete*) CYFD shall continue to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writing, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMRA 1978.

8. Respondents shall maintain regular communication with their attorneys and social worker to inform themselves about the dates and times of any court hearings or meetings requiring their attendance.

9. Respondents shall identify all relatives known to them who are or may be interested in providing permanency or placement for _____ (*name(s) of child(ren)*).

10. (*Consider whether an order regarding a transition plan for youth is necessary. This is also where other orders made by the Court may be added.*)

11. (*If applicable*) A separate order shall issue [appointing] [changing] _____'s (*name(s) of child(ren)*) educational decision maker and parent for the purposes of FERPA.[2]

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. *See* Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. *See also In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 ("If the Indian child resides or is domiciled within the reservation of the child's tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.").

2. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-017, effective December 31, 2015, in Paragraph 20 of the Findings portion of the form, after "the purposes of the", deleted "Federal" and added "Family".

10-540. Motion for termination of parental rights.

[For use with Rule 10-347 NMRA]

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 FOR TERMINATION OF PARENTAL RIGHTS

COMES NOW the New Mexico Children, Youth and Families Department, Petitioner, and in support of this Motion to Terminate Parental Rights, states as follows:

1. _____ is an unmarried child born on _____, _____, in _____ County, State of _____. (*Repeat for each child*)

2. _____ (*name(s) of child(ren)*) is/are placed in _____ (*type of placement*). No person, other than Respondents named herein, claims to have custody or visitation rights to the child(ren).

3. _____ (*name(s) of child(ren)*) is/are residents of New Mexico and have been for more than six (6) months preceding the filing of this Motion for Termination of Parental Rights. _____ (*name(s) of child(ren)*) was/were placed by Petitioner from _____ County, New Mexico.

4. This action is governed by the New Mexico Children's Code, Section 32A-1-1 NMSA 1978, et seq., and concerns minor child(ren) who is/are located in the State of New Mexico.

5. _____ (*name(s) of child(ren)*)'s mother is _____, and Petitioner seeks to terminate the parental rights of this individual.[1]

6. _____ (name(s) of child(ren))'s father is _____, and Petitioner seeks to terminate the parental rights of this individual.[2]

7. The grounds upon which termination of parental rights is sought are: (*Select appropriate option(s) and delete the rest*)

a. _____ (*name(s) of child(ren)*) has/have been neglected or abused as defined in Section 32A-4-2 NMSA 1978, and the conditions and causes of the neglect or abuse are unlikely to change in the foreseeable future despite reasonable efforts by Petitioner or other appropriate agencies to assist the parents in adjusting the conditions which render the parents unable to care for the children properly, pursuant to Section 32A-4-28 (B)(2) NMSA 1978.

b. _____ (*name(s) of child(ren)*) has/have been abandoned by the child(ren)'s parents, pursuant to Section 32A-4-28(B)(1) NMSA 1978.

c. _____ (*name(s) of child(ren)*) has/have been placed in the care of others, and the conditions enumerated in Section 32A-4-28(B)(3) NMSA 1978 apply.

8. The facts and circumstances supporting the grounds for termination set out above are as follows:

a. _____ (*name(s) of child(ren)*) was/were placed in the custody of Petitioner on _____, ____, pursuant to a law enforcement hold and subsequent Ex Parte Order entered on _____ (*date of order*) and have been in the legal custody of Petitioner continuously since that date.

b. _____ (*name(s) of child(ren)*) was/were adjudicated a/an [abused] [and] [neglected] child(ren) in _____ County District Court, Children's Court Division, in Cause No. _____, on _____, ____.

c. Respondents are unable or unwilling to provide proper parental care or control for _____ (*name(s) of child(ren)*). Petitioner has provided or made available services and support designed to correct this inability or unwillingness, but respondents have either not utilized these services and support, or have been unable or unwilling to benefit sufficiently from them, or both. It is unlikely that this situation will change in the foreseeable future.

d. (*Insert further factual recitations in lettered sub-paragraphs as necessary.*)

9. _____ (*name(s) of child(ren)*) is/are [not] subject to the Indian Child Welfare Act.[3]

10. Petitioner, at _____ (*insert CYFD office address*), requests that it be granted continued custody of _____ (*name(s) of child(ren)*), pending adoption.

11. Termination is in the best interests of _____ (*name(s) of child(ren)*), taking into consideration the physical, mental, and emotional needs of the child(ren), including the likelihood of the child(ren) being adopted if parental rights are terminated. (*Add specific facts if appropriate*)

12. (*Use when appropriate.*) This Motion is in contemplation of adoption.

13. Petitioner currently has legal custody of _____ (*name(s) of child(ren)*).

WHEREFORE, Petitioner prays that this Court enter its Judgment terminating the parental rights of _____ (*name(s) of Respondent(s)*), with respect to _____ (*name(s) of child(ren)*), and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

_____
Attorney name
Children's Court Attorney
Children, Youth and Families Department
Attorney address
Telephone: _____
Facsimile: _____

USE NOTES

1. More than one person may need to be named as "father." *See* Section 32A-5-17(A)(4), (5) NMSA 1978.

2. More than one person may need to be named as "mother." *See, e.g., Chatterjee v. King*, 2012-NMSC-019, 280 P.3d 283.

3. If the child(ren) is/are subject to the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., the petition must include the following:

(a) the tribal affiliations of the child(ren)'s parents;

(b) the specific actions taken by the moving party to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

[Approved, effective, August 1, 2000; as amended, effective May 1, 2003; 10-470 recompiled and amended as 10-540 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, replaced the former language of the motion; eliminated the requirement that the motion be verified by signing before a notary public; provided a check list of grounds upon which termination of parental rights is sought; provided a check list of facts and circumstances that support the grounds for termination; deleted the former caption of the case and added the current caption; deleted the former language of the form and added the current language; deleted the former verification and certification by a notary public; and in the Use Note, deleted former Paragraph 1 which listed the agencies and persons who could file a motion to terminate parental rights; deleted former Paragraph 2 which provided for allegations if the child was or was not subject to the Indian Child Welfare Act; added current Paragraphs 1 and 2; deleted former Paragraph 4 which provided for allegations if the child was or was not subject to the Indian Child Welfare Act; and deleted former Paragraph 5 which directed the respondent to use only the applicable alternative.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-470 NMRA was recompiled and amended as Form 10-540 NMRA, effective December 31, 2014.

10-550. Motion to withdraw as counsel.

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 WITHDRAW AS COUNSEL

COMES NOW _____, and moves this court for its order allowing movant to withdraw as counsel of record for _____. Movant has sought the concurrence of all attorneys and parties pro se to this proceeding and states that they [do] [do not] oppose this motion.

1. As grounds for this motion, movant states: (*Set out grounds*) _____
_____
_____.

2. Hearings in this case are set as follows: (*Specify date, time, and matters to be heard*) _____
_____
_____.

3. Supreme Court deadlines relevant to this case are as follows: (*Specify rule and date deadline expires*) _____
_____
_____.

4. (*Select appropriate option*)

[ ] _____ (*name of substitute counsel*) has agreed to appear on behalf of _____ (*name of party*). The address and telephone number of _____ (*name of substitute counsel*) are as follows:
_____
_____.

[ ] This motion is being filed along with an entry of appearance by _____ as a party pro se.

[ ] I acknowledge that _____ has twenty (20) days to obtain counsel or be deemed appearing pro se. The last known address and telephone numbers for _____ are as follows: _____
_____.

_____
Signature

_____
Name (*print*)

_____

Address (*print*)

_____

City, state, and zip code (*print*)

_____

Telephone number

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ this motion was served on _____ (*name of person served*) by:

(*complete applicable alternative*)

[United States first class mail, postage prepaid, and addressed to:
Name: _____
Address: _____
City, State and zip code: _____]

[fax to _____ the above named person. The fax consisted of _____ pages and was sent to: _____ (*fax number of person served*). The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

_____

Signature of attorney

USE NOTES

1. This form may be used to request an order permitting withdrawal of counsel only when the request is made less than fifteen (15) days prior to the adjudicatory hearing or before substitute counsel has been identified.

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-551. Order permitting withdrawal of counsel.

[For use with Rule 10-165 NMRA]

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).

ORDER PERMITTING WITHDRAWAL OF COUNSEL

This matter came before the Court on _____'s motion to withdraw as counsel of record for _____. The Court has considered the motion and finds that it is well-taken and should be GRANTED.

IT IS THEREFORE ORDERED

1. _____ is permitted to withdraw as counsel of record for _____.

2. (*Select appropriate option*)

[ ] _____ shall serve as substitute counsel for _____.

[ ] _____ (*name of party*) has entered an appearance as a party pro se.

[ ] _____ (*name of party*) shall notify the Court witihin twenty (20) days of this order that substitute counsel has been obtained or shall be deemed to have entered an appearance pro se.

3. The filing of this order shall serve as notice to all parties of the withdrawal of _____ [and of the substitution of _____] as attorney for _____.

_____
District Court Judge

APPROVED:

Withdrawing attorney

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

Substitute attorney (*if applicable*)

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

[(*Add signature blocks for all other attorneys and pro se parties in the case.*)]

USE NOTES

1. This form is used only when an order permitting withdrawal of counsel is required under Rule 10-165 NMRA.

[Approved, effective April 2, 2001; 10-407.1 recompiled and amended as 10-551 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the form from a notice and order of withdrawal of counsel to an order of withdrawal; in the title of the form, deleted “Notice of withdrawal of counsel and”, and after “withdrawal”, added “of counsel”; changed the caption of the case; deleted the former first paragraph, which stated that the named attorney was withdrawing as counsel of record, and added the first and second paragraphs; added “IT IS THEREFORE ORDERED”, and added Paragraphs 1 through 3 of the Order, and “District Court Judge” under the signature line; added the signature block for the substitute attorney; deleted the approval by the Children's Court Judge; deleted the certificate of mailing; and in the Use Note, deleted the former language which referred to Rule 10-113 NMRA for when approval was required prior to withdrawal and which provided that the form was to be used only if the court approved the party to proceed pro se, and added the new language.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-407.1 NMRA was recompiled and amended as Form 10-551 NMRA, effective December 31, 2014.

10-552. Notice of substitution of counsel for legal representation of _____.

[For use with Rule 10-165 NMRA]

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).

**NOTICE OF SUBSTITUTION OF COUNSEL
FOR LEGAL REPRESENTATION OF _____**

_____ (*name of attorney*) has agreed to appear on behalf of _____ (*name of party*). _____ (*name of withdrawing attorney*) is withdrawing as attorney of record for this party. This notice is being filed not less than fifteen (15) days prior to the adjudicatory hearing in this matter, which has been set for _____ (*date*).

Dated: _____

Withdrawing attorney

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

Attorney entering appearance

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____ this notice was served on all attorneys of record and parties pro se by:

(*complete applicable alternative; repeat as necessary for each attorney or party served*)

[United States first class mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[fax to _____. The fax consisted of _____ pages and was sent to: _____ (*fax number of person served*). The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

_____
Signature of attorney

USE NOTES

1. This form may be used in an abuse or neglect or delinquency proceeding if notice of substitution of counsel is filed not less than fifteen (15) days prior to the adjudicatory hearing.

[Approved, effective April 2, 2001; 10-407.3 recompiled and amended as 10-552 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, required that the notice be filed not less than fifteen days before the adjudicatory hearing; changed the caption of the case; in the first paragraph, added the second sentence; deleted the approval by the Children's Court Judge; deleted the certificate of mailing; and added the certificate of service.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-407.3 NMRA was recompiled and amended as Form 10-552 NMRA, effective December 31, 2014.

10-554. Notice of appearance as counsel for child by guardian *ad litem*.

[For use with Rules 10-165, 10-312 and 10-313 NMRA
and Section 32A-4-10 NMSA 1978]

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).

NOTICE OF APPEARANCE AS FOR CHILD
BY GUARDIAN *AD LITEM*

The undersigned attorney notifies the court that:

(1) _____ (*name of child*) has reached fourteen (14) years of age;

(2) As the child's guardian ad litem, I have explained to this child the child's right to be represented by an attorney in all further proceedings in this case; and

(3) the child has agreed to my continued representation of the child in the capacity of the child's attorney.

The court is notified that I am entering my appearance as attorney for _____ (*name of child*) in the above proceeding.

Dated: _____

Attorney

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

CERTIFICATE OF SERVICE[1]

I hereby certify that on this ____ day of _____, _____ this notice was served on _____ (*name of person served*) by:

(*complete applicable alternative*)

[United States first class mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[fax to _____ the above named person. The fax consisted of _____ pages and was sent to: _____ (*fax number of person served*). The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

_____
Signature of attorney

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number of attorney or party

USE NOTES

1. A copy of this notice shall be provided to the child, and the notice shall be served on the other parties.

[Approved by Supreme Court Order No. 06-8300-004, effective March 15, 2006; 10-408B recompiled and amended as 10-554 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the form from an entry of appearance to a notice of appearance; in the "For use with" note, changed "10-321" to "10-313"; in the title, changed "Entry" to "Notice", changed "attorney" to "counsel", and after "ad litem", deleted "for the child"; changed the caption of the case; in Paragraph (1), after "has reached", deleted "the age of"; in the signature block under the Certificate of Service, after "attorney", deleted "or party", deleted the date of service, and deleted the telephone and fax number of the sender; and in the Use Note, in Paragraph 1, deleted the former sentence which provided that the notice shall be served on the child and

each party to the proceeding and added the current sentence, and deleted former Paragraph 2 which provided that the voice and fax number of the person sending a fax was required.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-408B NMRA was recompiled and amended as Form 10-554 NMRA, effective December 31, 2014.

10-555. Motion to appoint attorney for fourteen (14) year-old child.

[For use with Rules 10-165, 10-312 and 10-313 NMRA
and Section 32A-4-10 NMSA 1978]

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 APPOINT ATTORNEY
FOR FOURTEEN (14) YEAR-OLD CHILD**

The undersigned attorney as guardian *ad litem* for _____ (*name of child*) notifies the court that:

(1) _____ (*name of child*) [is reaching] [has reached] fourteen (14) years of age;

(2) I have explained to this child the child's right to be represented by an attorney in all further proceedings in this case; and

(3) (*Select appropriate option*)

[ ] The child has requested that another attorney be appointed to represent the child.

[ ] I request the court to appoint another attorney to represent this child.

Dated: _____

Attorney

_____
Signed

_____
Name (*print*)

_____
Address (*print*)

_____
City, state, and zip code (*print*)

_____
Telephone number

CERTIFICATE OF SERVICE[1]

I hereby certify that on this ____ day of _____, _____ this motion was served on _____ (*name of person served*) by:

(*complete applicable alternative*)

[United States first class mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State and zip code: _____]

[fax to _____ the above named person. The fax consisted of _____ pages and was sent to: _____ (*fax number of person served*). The transmission was reported as complete and without error. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

_____
Signature of attorney

USE NOTES

1. A copy of this motion shall be provided to the child, and the motion shall be served on the other parties.

[Approved by Supreme Court Order No. 06-8300-004, effective March 15, 2006; 10-408C recompiled and amended as 10-555 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, clarified the language of the form; in the "For use with" note, changed "10-321" to "10-313"; changed the caption of the case; in the first paragraph, in Paragraph (1), after "[has reached]", deleted "[the age of]"; at the end of Paragraph (2), deleted "(use applicable alternative)"; after the attorney signature block, deleted the former sentence which provided that the named attorney was appointed to represent the child, and deleted the signature block for the judge; in the signature block under the Certificate of Service, after "attorney", deleted "or party", deleted the date of service, and deleted the telephone and fax number of the sender; and in the Use Note, deleted former Paragraph 1, which provided that the form could be used for substitution of counsel and that unless a new attorney was appointed by the judge prior to filing the motion, new counsel was required to enter an appearance; deleted former Paragraph 2, which required that the motion be served on the child and each party; deleted former Paragraph 3, which required that the voice and fax number of the person sending a fax be completed; and added a new Paragraph 1.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-408C NMRA was recompiled and amended as Form 10-555 NMRA, effective December 31, 2014.

10-560. Subpoena.

[For use with Rule 10-143 NMRA]

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).

SUBPOENA

SUBPOENA FOR[1]

[ ] APPEARANCE OF PERSON FOR

[ ] STATEMENT

[ ] DEPOSITION

[ ] _____ (*type of hearing*)

[ ] SUBPOENA FOR DOCUMENTS OR OBJECTS[2]

TO: _____

YOU ARE HEREBY COMMANDED TO:

[ ] appear to testify at the taking of a deposition in the above case:
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

[ ] appear to testify at a hearing
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

[ ] permit inspection of the following described documents or objects
_____
_____
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

[ ] appear to give a statement
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s)
_____
_____

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

_____, _____.

_____
Judge, clerk, or attorney

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of_____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena[, a witness fee in the amount of $_____ and mileage in the amount of $_____].[3]

_____
Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____ , _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena[, a witness fee in the amount of $_____ and mileage as provided by law in the amount of $_____].[3]

_____
Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, _____ (*date*).

_____
Judge, notary, or other officer authorized to administer oaths

THIS SUBPOENA issued by or at request of:

_____
Name of attorney of party

_____
Address

_____
Telephone

CERTIFICATE OF SERVICE BY ATTORNEY[4]

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (*delivery*) (*mail*) on this ____ day of _____, _____:

(1) _____
(*Name of party*)
_____
(*Address*)

(2) _____
(*Name of party*)
_____
(*Address*)

_____
Attorney

_____
Signature

_____
Date of signature

TO BE PRINTED ON EACH SUBPOENA

1. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

3. Payment of per diem and mileage for subpoenas issued by a children's court attorney or an attorney appointed by the court is made pursuant to regulations of the Administrative Office of the Courts or to policies or procedures of the Children, Youth and Families Department. The bracketed language should be deleted if the subpoena is issued by a children's court attorney or an attorney appointed by the court.

A subpoena by a private party or corporation must be accompanied by the payment of one full day's per diem. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act.

4. To be completed only if the subpoena is commanding production of documents and things before trial. If the subpoena is commanding production of documents and things before trial, it must be served on each party in the manner provided by Rules 5-103, 5-103.1 or 5-103.2 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

[Approved, effective April 1, 2002; 10-405 recompiled and amended as 10-560 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, in the first section, under the caption "SUBPOENA", after "[ ] DEPOSITION", deleted "[ ] ADJUDICATORY HEARING" and added "_____(*type of hearing*)", and after the second occurrence of "appear to testify at", deleted "trial" and added "a hearing"; in the fifth section, under the caption "TO BE PRINTED ON EACH SUBPOENA", in item 3, after "subpoenas issued by", deleted "the district attorney, attorney general, public defender" and added "a children's court attorney", after "appointed by the court", deleted "district attorney, attorney general or public defender", after "Office of the Courts", added "or to policies or procedures of the Children, Youth and Families Department", and after "subpoena is issued by", deleted "the state or the public defender" and added "a children's court attorney or an attorney appointed by the court".

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-405 NMRA was recompiled and amended as Form 10-560 NMRA, effective December 31, 2014.

10-561. Notice of hearing.

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).

NOTICE OF HEARING

TO: _____
_____

A _____ (*type of hearing*) will be held before the Honorable _____, Judge of the District Court, Children's Court Division, at _____ (a.m.) (p.m.) on the ____ day of _____, _____, in the Children's Court Division of the District Court, _____ County, New Mexico.

_____
Clerk, District Court
Children's Court Division

[Approved, effective August 1, 1999; 10-455 recompiled and amended as 10-561 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-455 NMRA was recompiled and amended as Form 10-561 NMRA, effective December 31, 2014.

10-562. Motion to intervene.

[For use with Rule 10-122 NMRA]

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 INTERVENE

COMES NOW, _____, Movant, by his/her/its counsel,_____, and moves this Court for an order allowing _____ to intervene in this matter as a party and to fully participate in these proceedings. In support of this motion, Movant states as follows:

1. The Court has jurisdiction of the parties and subject matter herein.

(*Check as applicable*)

[ ] 2. Movant is allowed to intervene as a matter of right because:
   a. Movant is a parent who has not been named as a party; or
   b. Movant is _____'s (*name(s) of child(ren)*) Indian tribe;

OR

[ ] 3. Permissive intervention should be granted by the Court because:
   a. Movant has the following relationship with _____ (*name(s) of child(ren)*):

(*Check as applicable*)

___ foster parent with whom the child(ren) has/have resided for at least six (6) months;
___ a relative within the fifth degree of consanguinity with whom the child(ren) has/have resided;
___ a stepparent with whom the child(ren) has/have resided;
___ a person who wishes to become the child(ren)'s permanent guardian;
___ a guardian or custodian of the child(ren); or
___ a person who has a constitutionally protected liberty interest in the proceedings and the disposition of the action may impair or impede Movant's ability to protect that interest.

   b. Movant's rationale for the proposed intervention is:
   _____
   _____
   and the pleading is attached setting forth the claims or defenses for which intervention is sought.

c. The intervention is in the best interest of _____ (name(s) of child(ren)), and (*Check as applicable*)

___ the Children, Youth and Families Department does not have a viable plan for reunification and/or

___ the intervention will not impede the progress of the reunification plan.

4. The intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

_____ _____

Date Attorney for intervenor

_____

Attorney's address

_____

Attorney's telephone number

(*To be completed by proposed intervenor who is not represented by an attorney*)

_____ _____

Date Signature of proposed intervenor

_____

Name of proposed intervenor (*printed*)

_____

Street address

_____

City

_____

State and Zip Code

_____

Telephone number of proposed interveno

USE NOTES

1. Use bracketed material if the proposed intervenor is represented by an attorney. If an attorney signs this pleading, the signature, name, address, and telephone number of the proposed intervenor are not required.

[Approved, effective August 1, 1997; 10-457 recompiled and amended as 10-562 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, provided allegations to support the motion; in the "For use with" note, changed "10-312" to "10-122"; changed the caption of the case; deleted the former first paragraph, which provided that the named person as a parent of the child requested permission to intervene as a party and added the current language of the form; in the sentence following the attorney for intervenor signature block, and in the following signature block and Use Note, changed "[parent]" to "proposed intervenor".

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-457 NMRA was recompiled and amended as Form 10-562 NMRA, effective December 31, 2014.

10-563. Report of mediation.

[For use in abuse, neglect, and termination of parental rights proceedings]

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).

REPORT OF MEDIATION

We the undersigned, participated in (a) mediation session(s) which concluded on _____ (*date*).

We acknowledge that the purpose of this meeting is to candidly discuss and attempt to resolve outstanding issues in this case. Pursuant to Rule 11-408 NMRA of the Rules of Evidence, any opinions, admissions, and comments made during this proceeding are confidential. Except as otherwise provided by the Rules of Evidence or the Children's Code, these opinions, admissions, and comments are not subject to discovery, and cannot be used as an admission or for any other purpose by any party in any proceeding governing this action. New allegations of abuse or neglect are not confidential and shall be reported pursuant to the Children's Code.

Signatures:

_____	_____
Mediator	Children's Court Attorney
_____	_____
Respondent	Respondent's Attorney
_____	_____
Other Respondent	Other Respondent's Attorney
_____	_____
Social Work Supervisor	Social Worker
_____	_____
Guardian *ad litem*	CASA
_____	_____
Other	Other

(*To be completed by mediator. Choose the appropriate option without providing additional information. This section of the form shall not be modified.*)

___ parties reached complete agreement

___ parties reached a partial agreement

___ no agreement was reached

___ continued

___ reset

___ vacated

USE NOTES

1. For use in abuse and neglect proceedings.

[Approved, effective September 1, 2005; 10-471 recompiled and amended as 10-563 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, required that allegations of abuse or neglect be reported pursuant to the Children's Code; changed the caption of the case; in the first paragraph, after "session(s)", deleted "today" and added "which concluded on"; in the second paragraph, in the fourth sentence, after "New", deleted "information" and added "allegations" and after "neglect", deleted "is subject to being" and added "are not confidential and shall be"; in the signature blocks, added a signature line for "Other Respondent" and "Other Respondent's Attorney"; in the paragraph following the signature blocks, in the parenthesis, in the second sentence, after "Choose", deleted "one" and added the remainder of paragraph; and in the Use Note, deleted the reference to Form 6559 NTC and in Paragraph 1, deleted the former last sentence which required the children's court attorney to report with the court and provide a copy of the form to each party.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-471 NMRA was recompiled and amended as Form 10-563 NMRA, effective December 31, 2014.

10-564. Order appointing/changing educational decision maker.

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).

ORDER APPOINTING/CHANGING
EDUCATIONAL DECISION MAKER

This matter came before the [Honorable _____] [Special Master _____], on _____ (*date*) for _____ hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court

attorney. _____ (*name(s) of child(ren)*) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (*Expand as necessary*) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (*Expand-modify as necessary*) The CASA was [not] present. (*If applicable*) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. _____ (name(s) of Respondent(s)) should [not] make educational decisions regarding _____ (name(s) of child(ren)) and should [not] have authority as the parent for the purposes of the Family Educational Rights and Privacy Act (FERPA).

2. (If applicable, otherwise delete) The appointment of _____ as _____'s (name(s) of child(ren)) educational decision maker should not continue.

3. (If applicable, otherwise delete) The appointment of _____ as _____'s (name(s) of child(ren)) parent for the purpose of obtaining and releasing school records under FERPA should not continue.

4. (If applicable, otherwise delete) _____ should be appointed _____'s (name(s) of child(ren)) educational decision maker.

5. (If applicable, otherwise delete) _____ should be appointed _____'s (name(s) of child(ren)) parent for the purpose of obtaining and releasing school records under FERPA.

IT IS THEREFORE ORDERED:

1. _____ is appointed _____'s (*name(s) of child(ren)*) educational decision-maker.

2. _____ is authorized to act as _____'s (*name(s) of child(ren)*) parent under FERPA for the purpose of obtaining and releasing school records.

3. (*If applicable, otherwise delete*) The appointment(s) of _____, who was/were previously appointed _____'s (*name(s) of child(ren)*) educational decision maker is/are terminated.

4. (*If applicable, otherwise delete*) The appointment(s) of _____, who was/were previously authorized to act as (a) parent(s) under FERPA for the purpose of obtaining and releasing school records, is/are terminated.

_____
District Court Judge

_____
(*Add signature lines for all attorneys in the case*)

USE NOTES

1. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. *See, e.g.*, 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); *see also* 34 C.F.R. § 300.30 (defining "Parent" as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

10-565. Advance notice of change of placement.

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).

ADVANCE NOTICE OF CHANGE OF PLACEMENT[1]

TO: Hon. Judge full name
GAL,
Attorneys
Planning Worker/Supervisor
CASA
Foster Parent(s)

Pursuant to NMSA 1978, Section 32A-4-14(A), you are notified that the placement of _____ (*name of child(ren)*) will be changed from _____ (*type of current placement*)[2] to _____ (*type of future placement*)[2] on or after _____ (*date*) for the following reasons: _____.

You are further notified that the educational setting of _____ (*name of child(ren)*) will be changed from _____ (*current educational setting*) to _____ (*future educational setting*) on or after _____ (*date*) for the following reasons: _____.

_____
Children's Court Attorney

CERTIFICATE OF MAILING

I certify that a true copy of the foregoing was mailed/faxed/delivered to all persons listed above this ____ day of _____, 20____.

_____
CYFD Legal Staff

USE NOTES

1. In cases with more than one child, modify this form as necessary if the type and location of placement is not uniform for all children.

2. Placement types include relative foster care, non-relative foster care, treatment foster care, adoptive home/waiting finalization, group home, shelter, residential treatment center, mental health facility/non-residential treatment center, juvenile justice facility, trial home placement, or return home.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed or pending on or after August 31, 2014.]

10-566. Emergency notice of change of placement.

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).

EMERGENCY NOTICE OF CHANGE OF PLACEMENT[1]

TO: Hon. Judge full name
GAL,
Attorneys
Planning Worker/Supervisor
CASA
Foster Parent(s)

Pursuant to NMSA 1978, Section 32A-4-14, you are notified that the placement of _____ (*name of child(ren)*), was changed on _____ (*date*) from _____ (*type of former placement*)[2] to _____ (*type of current placement*).[2] This change of placement was made without prior notice for the following reasons: _____.

You are further notified that the educational setting of _____ (*name of child(ren)*) was changed on _____ (*date*) from _____ (*former educational setting*) to _____ (*current educational setting*) for the following reasons: _____.

_____
Children's Court Attorney

CERTIFICATE OF MAILING

I certify that a true copy of the foregoing was mailed/faxed/delivered to all persons listed above this ____ day of _____, 20____.

_____
CYFD Legal Staff

USE NOTES

1. In cases with more than one child, modify this form as necessary if the type and location of placement is not uniform for all children.

2. Placement types include relative foster care, non-relative foster care, treatment foster care, adoptive home/waiting finalization, group home, shelter, residential treatment center, mental health facility/non-residential treatment center, juvenile justice facility, trial home placement, or return home.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed or pending on or after August 31, 2014.]

10-567. Abuse and neglect party dismissal sheet.

Abuse and Neglect Cases – Party Dismissal Sheet
Type or print responses. Required in all abuse and neglect cases anytime a party is being dismissed from the case. This form should accompany an order.

THIS SECTION FOR OFFICIAL USE ONLY
NOTE TO COURT CLERK:
DOCKET EVENT CODE 9500, CRT: Abuse and Neglect Party Dismissal Sheet.
Scan document, but will not become part of the official record.

Children's Court Attorney's Name:
_____

Person Completing Form:
_____

Phone Number: _____ E-mail: _____

Case number: _____ Does This Action Close the Case? _____

Enter as much of the following information as possible for each party being dismissed:	
Minor Child 1	
Name (F, M, L)	
Reason for dismissal*	
Date of dismissal	
Minor Child 2	
Name (F, M, L)	
Reason for dismissal*	
Date of dismissal	
Minor Child 3	
Name (F, M, L)	
Reason for dismissal*	
Date of dismissal	
Add information for additional children as necessary.	

* Type of placement: Kinship Guardianship; Non-relative Guardianship; Adoption; Reunification; PPLA / Aging out of care.

Respondent 1	
Name (F, M, L)	
Reason for Dismissal**	
Address at Dismissal	
Respondent 2	
Name (F, M, L)	
Reason for Dismissal**	
Address at Dismissal	
Add information for additional Respondents as necessary.	

**Reasons for Dismissal: Relinquishment, Termination of Parental Rights, Dismissed by Judge Post Adjudication, Dismissed Prior to Adjudication.

[Adopted by Supreme Court Order No. 14-8300-002, effective for all cases filed on or after August 31, 2014.]

10-570. Notice of child's advisement of right to attend hearing.

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).

NOTICE OF CHILD'S ADVISEMENT OF RIGHT TO ATTEND HEARING[1]

I, _____, the attorney for _____, the child in the above cause, give notice of the following:

1. I have advised the child that the child has a right to attend the _____ (*type of hearing*) hearing on _____ (*date*) because the child is a party to the case and because the court may be making decisions regarding the child's placement, education, and case plan.

2. (*Choose one of the following*:)

[ ] The child intends to attend the hearing and [will] [will not] request the Department to arrange transportation.

[Or]

[ ] The child, being fully advised of the child's right to attend this hearing, does not intend to attend this hearing. [The child requests leave to present the child's wishes to the Court regarding _____ (*describe wishes*) and would like to present this information by _____ (*describe method of alternative participation*). The child requests leave to communicate with the court in this manner because _____ (*describe reason*).][2]

3. I have talked to the child about what the child would like the court to know regarding the child's position on issues related to the child's best interests or to the child's stated position.

4. The child understands that the child has the right to attend any future hearings in this cause regardless of the child's choice to attend the hearing on _____ (*date*).

I certify that I have explained to the child the child's right to attend the hearing, and I am satisfied that the child understands his or her right.[3]

_____
Attorney for Child

USE NOTES

1. Under Rule 10-324(D) NMRA, a child fourteen (14) years of age or older may be excluded from a hearing "only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding." *See also* NMSA 1978, § 32A-4-20(E). This form and Rule 10-325 NMRA are intended to ensure that the child's lawyer (1) notifies the child in a timely manner of the child's right to attend each hearing; (2) notifies the court and the children's court attorney of a request to arrange transportation for the child to attend the hearing; and (3) considers whether an alternative form of participation may be warranted.

2. The bracketed language is intended to allow the child to request leave to submit information to the court that is unrelated to the substantive allegations of abuse and neglect in the petition. Such information may include updating the court about the child's well-being, including recreational, extracurricular, or school-related activities and interests, and may be presented via letter, video or audio recording, or any other manner that does not require the child's presence in the courtroom. If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 and Form 10-571 NMRA.

3. This form describes the minimum efforts necessary to effectively communicate with the child before a hearing and does not supplant the lawyer's continuing duty to communicate with the child. *See* Rule 16-104 NMRA (defining a lawyer's duty to communicate with a client); *see also* NMSA 1978, § 32A-1-7.1(A) ("The attorney [retained or appointed to represent a child] shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct."). Additional communication may be necessary after this notice is filed to ensure that the child's rights are protected. For example, a lawyer should review with the child the predisposition study and report required under NMSA 1978, § 32A-4-21, which is not due to the court until five (5) days before a dispositional hearing, to determine whether the report affects the child's position about attending the hearing. If the child decides to attend a hearing after this notice is filed, the attorney should communicate the child's wish to the court and to the other parties as soon as practicable.

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

10-570.1. Notice of guardian ad litem regarding child's attendance at hearing.

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).

NOTICE OF GUARDIAN *AD LITEM* REGARDING CHILD'S ATTENDANCE AT HEARING[1]

I, _____, the guardian *ad litem* for _____ (*name of child*) in the above cause, give notice of the following:

1. I [have] [have not] met with the child prior to the _____ (*type of hearing*) on _____ (*date*) as required by Section 32A-1-7(E)(1) NMSA 1978. [The following circumstances render such a meeting unreasonable:
_____
_____]

2. I [have] [have not] interviewed the child, to the maximum extent possible given the child's developmental capacity, prior to the _____ (*type of hearing*) on _____ (*date*) as required by Section 32A-1-7(E)(1) NMSA 1978. [The following circumstances render such an interview unreasonable:
_____
_____]

3. To the maximum extent possible given the child's developmental capacity, I [have] [have not] advised the child that, unless the court makes a determination that

attendance is not in the child's best interest, the child has a right to attend the _____ hearing on _____ (*date*) because the child is a party to the case and because the court may be making decisions regarding the child's placement, education, and case plan.[2]

4. I [have] [have not] talked to the child about what the child would like the court to know regarding the child's position on issues related to his/her best interest.[3]

5. (*Choose one of the following*)

[ ] The child wishes to attend the _____ hearing on _____ (*date*).

OR

[ ] The child does not wish to attend the _____ hearing on _____ (*date*).

OR

[ ] Given the child's developmental capacity, the child cannot express a wish about whether to attend the _____ hearing on _____ (*date*).

6. I believe it [is] [is not] in the best interest of the child to attend the hearing because:
_____
_____
_____

7. (*Choose one of the following*)

[ ] The child will attend the _____ hearing and [will] [will not] need the Department to arrange transportation for the child to attend the hearing.

OR

[ ] The child, being fully advised of the child's right to attend this hearing, will not attend this hearing. [The child requests leave to present the child's wishes to the Court regarding _____ and would like to present this information by _____ (*describe method of alternative participation*). The child requests leave to communicate with the court in this manner because _____.][4]

8. I [have] [have not] advised the child that the child has the right to attend any future hearings in this case regardless of the child's choice to attend the hearing on _____ (*date*).

I certify that I have taken the steps outlined in this notice, and I am satisfied that the child understands his or her right to attend the hearing to the maximum extent possible given the child's developmental capacity.[5]

_____

Guardian *ad litem*

USE NOTES

1. Under Rule 10-324(D) NMRA, a child under fourteen (14) years of age may be excluded from a hearing if the court finds that it is not in the child's best interest to attend. *See also* NMSA 1978, § 32A-4-20(E). This form and Rule 10-325.1 NMRA are intended to ensure that the child's lawyer (1) notifies the child in a timely manner of the child's right to attend each hearing; (2) notifies the court and the children's court attorney of a request to arrange transportation for the child to attend the hearing; and (3) considers whether an alternative form of participation may be warranted.

2. The child is a party to an abuse and neglect proceeding and therefore has a right to attend any hearing in the case. *See* Rule 10-121(B)(3) NMRA; *see also* Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases § D-5 cmt. at 11 (Am. Bar Ass'n 1996) ("A child has the right to meaningful participation in the case."). A guardian *ad litem* therefore must notify the child of the right to attend and must consult with the child about whether attendance at a particular hearing is in the child's best interests. *See* NMSA 1978, § 32A-1-7(D), (E)(1). The child's attendance should be the norm, rather than the exception. *See* Standards of Practice, *supra*, § D-5 ("In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify."). The guardian *ad litem*'s position about whether attending some or all of the hearing is in the child's best interests should take into consideration factors such as the subject matter of the hearing, the potential to cause trauma to the child, and the child's physical, cognitive, and emotional development.

3. Interviewing the child may not be appropriate given the child's developmental capacity. When that is the case, interviewing the child's caregiver is especially critical to determining the child's best interests. *Accord* Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases; Guardian *ad litem* (GAL) § 3 (N.M. Sup. Ct. Order No. 11-8500, effective May 23, 2011), https://s3.amazonaws.com/realfile3016b036-bbd3-4ec4-ba17-7539841f4d19/d000e35b-fc82-4e3f-af81-dbc380b069a1?response-content-disposition=filename%3D%22New+Mexico+Attorney+Standards.16.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAIMZX6TNBAOLKC6MQ&Signature=gO2Op2PKRLFuGBN%2BrfqCtfTlfUw%3D&Expires=1478729214 ("The GAL meets with the child and the child's caregiver in advance of . . . hearings . . . and other court proceedings to ascertain the need for witnesses or other evidence to be presented[.]"); Candice L. Maze, *Advocating for Very Young Children in Dependency Proceedings:*

The Hallmarks of Effective, Ethical Representation 20 (Am. Bar Ass'n 2010), http://www.americanbar.org/content/dam/aba /migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf ("Because babies, toddlers, and most preschoolers are not verbal enough to describe what is taking place in their home environments, advocates must visit their very young child client wherever he spends considerable time—foster home, grandparents' house, parents' home, child care centers, early education/preschools.").

4. The bracketed language is intended to allow the child to request leave to submit information to the court that is unrelated to the substantive allegations of abuse and neglect in the petition. Such information may include updating the court about the child's well-being, including recreational, extracurricular, or school-related activities and interests, and may be presented via letter, video or audio recording, or any other manner that does not require the child's presence in the courtroom. If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 and Form 10-571 NMRA.

5. This form describes the minimum efforts necessary to effectively communicate with the child before a hearing and does not supplant the lawyer's continuing duty to communicate with the child. *See* Rule 16-104 NMRA (defining a lawyer's duty to communicate with a client); Rule 16-114 (A) NMRA (providing that a lawyer shall as far as reasonably possible, maintain a normal lawyer-client relationship with a client with diminished capacity); *see also* NMSA 1978, § 32A-1-7 (providing that the child's guardian *ad litem*, among other duties, shall meet with and interview the child prior to hearings under the Abuse and Neglect Act and, after consultation with the child, shall convey the child's position to the court at every hearing). Additional communication may be necessary after this notice is filed to ensure that the child's rights are protected. For example, a lawyer should review with the child the predisposition study and report required under NMSA 1978, § 32A-4-21, which is not due to the court until five (5) days before a dispositional hearing, to determine whether the report affects the child's position about attending the hearing.

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]

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 _____,[1] 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[2]:
_____.

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.[3]

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[4]:

_____
_____.

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.[5]

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

_____
_____.[6]

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.]

ARTICLE 6
Other Forms for Children's Court Proceedings

10-601. Voluntary consent to voluntary admission for [residential treatment] [habilitation].

[For use with Section 32A-6A-20 NMSA 1978]

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

_____

VOLUNTARY CONSENT TO
VOLUNTARY ADMISSION FOR
[RESIDENTIAL TREATMENT] [HABILITATION]

_____ (*name of guardian or legal custodian*) states that I am the parent, guardian, or legal custodian of _____, a child under the age of fourteen (14) years, and that, pursuant to Section 32A-6A-20 NMSA 1978:

(*check applicable*)

___ 1. I am voluntarily admitting my child to _____ (*place admitted*).

___ 2. I have been advised and understand that I have the right to voluntarily consent or refuse to consent to my child's admission for treatment.

___ 3. I agree to my child participating in treatment programs based on my child's individual needs as may be deemed appropriate by the treatment team.

___ 4. I understand that I have the right to request an immediate discharge of my child from the treatment program at any time.

___ 5. I understand that if I should request a discharge of my child and my child's physician, licensed psychologist, or director of the residential treatment program determines that my child needs continued treatment, that on the first business day following my request for discharge, the children's court attorney or district attorney may begin involuntary commitment proceedings.

___ 6. I understand that if involuntary commitment proceedings are filed, my child has a right to a court hearing on continued treatment within seven (7) days after my request that my child be discharged.

___ 7. My rights have been explained to me in the language of my preference, which is _____ (*specify language*).

_____
(Parent) (guardian) (legal custodian)

_____

Date

WITNESS

I state that I have witnessed the signature of the above parent, guardian, or legal custodian and that I explained the contents of each of the numbered paragraphs to the parent, guardian, or legal custodian and to the minor child and I believe that they understand clearly the contents of those paragraphs.

_____
Witness

_____
Date

[Approved, effective July 1, 2002; 10-491 recompiled and amended as 10-601 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the statutory reference from the repealed statute to the current consent to placement statute; in the "For use with" note and first paragraph, changed "32A-6-11.1(C)" to "32A-6A-20".

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-491 NMRA was recompiled and amended as Form NMRA, effective December 31, 2014.

10-602. Guardian *ad litem* certification of [continued] [admission] [placement] for [residential treatment] [habilitation].

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

_____

GUARDIAN *AD LITEM* CERTIFICATION
OF [CONTINUED] [ADMISSION] [PLACEMENT] FOR
[RESIDENTIAL TREATMENT] [HABILITATION][1]

_____, guardian *ad litem* for the above child, certifies pursuant to Section 32A-6A-20 NMSA 1978 the following:

1. _____ (*initials and date of birth of child*) was admitted to _____ (*place admitted*) on _____ (*date*).

2. The child was advised of the child's rights on _____ (*date*).

3. Pursuant to Section 32A-6A-20 NMSA 1978, I certify that I have met with the child, the child's legal custodian, and the child's clinician and that I have determined the following: (*provide a detailed factual explanation for each*)

a. On _____ (*date*), I met with the child's parent, guardian, or legal custodian, _____ (*name*), who [does] [does not] understand and [does] [does not] consent to the child's admission to a [residential treatment] [habilitation] program.[2]

b. The admission [is] [is not] in the child's best interests because _____ _____.

c. The admission [is] [is not] appropriate for the child because _____ _____.

d. The admission [is] [is not] consistent with the least restrictive means principle because _____ _____.

e. The child's clinician [does] [does not] recommend [continued] admission because _____ _____.

4. Based on the above determination, I recommend the following: (*choose only one option*)

[ ] a. The child should [continue to] be admitted to a [residential treatment] [habilitation] program because all of the requirements in Paragraph Three (3), above, have been satisfied.

[ ] b. The child should be discharged immediately or the facility should immediately initiate involuntary commitment proceedings because one or more of the requirements in Paragraph Three (3) have not been satisfied.

_____
Date

_____
Attorney's signature

_____
Address

_____
Telephone number

_____
Guardian *ad litem* (*signature*)

_____
Address

_____
Telephone number

USE NOTES

1. This form shall be filed upon the admission or placement of the child in a residential treatment or habilitation program and every sixty (60) days after the date of the child's initial admission or placement. *See* NMSA 1978, § 32A-6A-20(H), (K).

2. If the child's parent, guardian, or legal custodian could not be found, the guardian *ad litem* must recommend discharge or the initiation of involuntary commitment proceedings as provided in Paragraph 4(b).

[Approved, effective July 1, 2002; 10-493 recompiled and amended as 10-602 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the form from a certification of voluntary placement to

continued placement; required the guardian ad litem to determine the factual basis for recommending either continued treatment or discharge; in the title of the form, after "certification of", deleted "[voluntary]" and added "[continued]"; in the first paragraph, changed "(name of guardian ad litem)" to "guardian ad litem", changed "32A-6-11.1" to "32A-6A-20", and after "NMSA 1978", deleted "that" and added "the following"; in Paragraph 1, changed "(name of child)" to "(initials and date of birth of child)", and after "(date)", deleted "and was advised of the child's rights on _____ (date)"; deleted former Paragraphs 2 through 6, which provided a check list of allegations that a parent, guardian, or legal custodian consented to admission, a statement of the efforts to contact a parent, guardian or legal custodian, that admission was in the child's best interests, that admission was appropriate for the child, that admission was consistent with the least drastic means principle, the date the child would be discharged, and that the child should be discharged; added new Paragraphs 2 through 4; and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-493 NMRA was recompiled and amended as Form 10-602 NMRA, effective December 31, 2014.

10-603. Attorney's certificate.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT No. _____

IN THE MATTER OF

_____

ATTORNEY'S CERTIFICATE

I, _____ (*name of attorney*), certify that on _____ (*date*) I met with the above named child who was born on _____ and explained the child's rights under Sections 32A-6A-12 and 32A-6A-21 NMSA 1978.

I further certify the following: (*check only one*)

[ ] I am satisfied that the child understands these rights and voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program.

[ ] I do not believe that the child understands these rights.

[ ] The child demands to be released.

[ ] The child was discharged prior to the opportunity for advisement.

_____
Date

_____
Attorney's signature

_____
Address

_____
Telephone number

[Approved, effective July 1, 2002; 10-494 recompiled and amended as 10-603 by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014.]

ANNOTATIONS

The 2014 amendment, approved by Supreme Court Order No. 14-8300-009, effective December 31, 2014, changed the statutory references from repealed statutes to the current statutes governing the child's rights; added allegations concerning the child's understanding of the child's rights, the child's desire to be discharged, and the discharge of the child prior to advisement; in the first paragraph, changed "32A-6-12" to "32A-6A-12 and 32A-6A-21"; added the second sentence; and added the second, third, and fourth sentences to be checked by the attorney.

Recompilations. — Pursuant to Supreme Court Order No. 14-8300-009, former Form 10-494 NMRA was recompiled and amended as Form 10-603 NMRA, effective December 31, 2014.

10-604. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to Supreme Court Order No. 16-8300-037, former Form 10-604 NMRA, relating to notice of federal restriction on right to receive or possess a firearm or ammunition, was withdrawn retroactively effective to May 18, 2016. For provisions of former form, *see* the 2016 NMRA on *NMOneSource.com*.

10-605. Tribal court order for involuntary placement for treatment or habilitation of a child not to exceed 60 days.

TRIBAL COURT

[NAME OF TRIBE]

STATE OF NEW MEXICO

IN THE MATTER OF No. _____

_____, a child.

TRIBAL COURT ORDER FOR INVOLUNTARY PLACEMENT FOR TREATMENT OR HABILITATION OF A CHILD NOT TO EXCEED 60 DAYS

THIS MATTER, having come before the Court upon proper notice and hearing on the petition of _____ (*name of petitioner*), for involuntary placement for treatment or habilitation of a child not to exceed 60 days, the _____ (*name of residential treatment or evaluation facility*) will admit _____ (*name of child*) for treatment.

The child was represented by _____ (*name of legal representative*), the child's [counsel] [guardian *ad litem* appointed by the tribe]. The child has been afforded the opportunity to present evidence, including the testimony of a mental health and developmental disabilities professional of the child's own choosing, to cross-examine witnesses, and to access the complete record in this case. The child has been advised of the right to appeal this order.

THE COURT FINDS on the basis of clear and convincing evidence and by testimony of _____ (*name*), who is a person whose licensure allows the person to make independent clinical decisions, including a physician, licensed psychologist, psychiatric nurse practitioner, licensed independent social worker, licensed marriage and family therapist and licensed professional clinical counselor, that the child's medical and psychological evaluations demonstrate the following.

1. Involuntary residential placement is in the best interest of the child.

2. As a result of the child's mental condition:

a. The child needs treatment and is likely to benefit from the proposed treatment;

b. The involuntary residential placement is consistent with the child's treatment needs; and

c. The proposed involuntary placement is consistent with the least restrictive means principle.

3. Taking into account the opinion of the child's legal guardian, involuntary residential treatment is necessary to maintain the health and safety of the child.

THE COURT HEREBY ORDERS the involuntary commitment of the child into the custody of _____ (*name of residential treatment or evaluation facility*), pursuant to _____ (*applicable tribal statute*). The child shall be transported by _____ to the receiving facility.

IT IS FURTHER ORDERED that the child shall be subject to the continuing jurisdiction of the tribal court under Section 32A-6A-29 NMSA 1978, provided that any decisions regarding discharge or release from the evaluation facility shall be made by the administrator of that facility. The facility shall inform the tribal court of any decision to petition for continued involuntary placement. Further, prior to discharging or releasing the child, the facility shall notify the tribal court, make custody arrangements with the child's legal custodian, and establish a plan for the child's aftercare. This order shall be filed with the clerk of the district court in accordance with Section 32A-6A-29 NMSA 1978.

_____
Tribal Court Judge

Prepared by: _____

[Approved by Supreme Court Order No. 18-8300-011, effective December 31, 2018.]

10-611. Suggested questions for assessing qualifications of proposed court interpreter.

[For use with Children's Court Rule 10-167 and Evidence Rule 11-604 NMRA]

SUGGESTED QUESTIONS FOR PROPOSED COURT INTERPRETERS

1. Do you have any particular training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. How did you learn [the foreign language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study either language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?

10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?
13. Do you have any other potential conflicts of interests?
14. Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems?
15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
16. Are you able to interpret simultaneously without leaving out or changing anything that is said?
17. Are you able to interpret consecutively?

USE NOTES

This list of proposed questions is taken from Court Interpretation: Model Guides for Policy and Practice in the State Courts; Chapter 6, Judges Guide to Standards for Interpreted Proceedings; NCSC, 9/4/2002. The list of questions is not mandatory nor exclusive, and the judge retains the discretion to inquire into any subject matter necessary to determine whether the proposed court interpreter is qualified to serve.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013; 10-440 recompiled as 10-611 by Supreme Court Order No. 17-8300-029, effective for all cases filed or pending on or after December 31, 2017.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-440 NMRA was recompiled as 10-611 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-612. Request for court interpreter.

[For use with Children's Court Rule 10-167 and
Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

IN THE CHILDREN'S COURT

No. _____ *(number of original case)*

IN THE MATTER OF:
_____, a child

REQUEST FOR COURT INTERPRETER

PERSON NEEDING INTERPRETER: Party _____ Witness for _____

NAME OF PERSON NEEDING INTERPRETER: _____

SPECIFIC MATTERS TO BE HEARD: _____

DATE: _____ TIME: _____ LOCATION: _____

JUDGE: _____ TIME REQUIRED: _____

LANGUAGE NEEDED: Spanish _____ Sign _____ Other _____

REQUESTED BY: _____

Signature of party or party's attorney

[*BELOW FOR CLERK'S USE ONLY*]

NAME OF INTERPRETER: _____

DATE INTERPRETER CONTACTED: _____

DATE/TIME VERIFIED WITH INTERPRETER: _____

BY _____
Deputy Clerk

USE NOTES

The party requesting the interpreter is responsible for notifying the court clerk's office if cancellation of the interpreter services is required. If the requesting party fails to do so in a timely manner, that party may be responsible for the fees and mileage expenses of the interpreter in accordance with the Administrative Office of the Courts Court Interpreter Standards of Practice and Payment Policies.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013; 10-441 recompiled as 10-612 by Supreme Court Order No. 17-8300-029, effective for all cases filed or pending on or after December 31, 2017.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-441 NMRA was recompiled as 10-612 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-613. Cancellation of court interpreter.

[For use with Children's Court Rule 10-167 and
Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

IN THE CHILDREN'S COURT

No. _____ *(number of original case)*

IN THE MATTER OF:
_____, a child

CANCELLATION OF COURT INTERPRETER

The court interpreter previously requested is no longer needed. Please cancel the court interpreter scheduled for

DATE: _____ **TIME:** _____ **LOCATION:** _____

JUDGE: _____

REQUESTED BY: _____

Signature of party or party's attorney

[*BELOW FOR CLERK'S USE ONLY*]

NAME OF INTERPRETER: _____

DATE INTERPRETER CONTACTED FOR CANCELLATION:
_____

BY _____
Deputy Clerk

USE NOTES

The party requesting the interpreter is responsible for notifying the court clerk's office if cancellation of the interpreter services is required. If the requesting party fails to do so in a timely manner, that party may be responsible for the fees and mileage expenses of the interpreter in accordance with the Administrative Office of the Courts Court Interpreter Standards of Practice and Payment Policies.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013; 10-442 recompiled as 10-613 by Supreme Court Order No. 17-8300-029, effective for all cases filed or pending on or after December 31, 2017.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-442 NMRA was recompiled as 10-613 NMRA, effective for all cases pending or filed on or after December 31, 2017.

10-614. Notice of non-availability of certified court interpreter or justice system interpreter.

[For use with Children's Court Rule 10-167 and
Evidence Rule 11-604 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

IN THE CHILDREN'S COURT

No. _____ *(number of original case)*

IN THE MATTER OF:
_____, a child

NOTICE OF NON-AVAILABILITY OF CERTIFIED COURT INTERPRETER OR JUSTICE SYSTEM INTERPRETER

Notice is hereby given that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter to provide requested court interpretation services in this proceeding but none is reasonably available. After evaluating the totality of the circumstances including the

nature of the court proceeding and the potential penalty or consequences flowing from the proceeding, the court concludes that an accurate and complete interpretation of the proceeding can be accomplished with a non-certified court interpreter. The court therefore will make arrangements to provide interpretation services by a qualified non-certified court interpreter.

_____

Signature of Judge

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013; 10-443 recompiled as 10-614 by Supreme Court Order No. 17-8300-029, effective for all cases filed or pending on or after December 31, 2017.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 17-8300-029, former 10-443 NMRA was recompiled as 10-614 NMRA, effective for all cases pending or filed on or after December 31, 2017.

ARTICLE 7
Forms for Delinquency and Youthful Offender Proceedings

Table of Corresponding Rules

Article 7- Forms for Delinquency and Youthful Offender Proceedings

The table below lists the former rule number and corresponding new number, and the new rule number and the corresponding former rule number prior to recompilation by Supreme Court Order No. 16-8300-017.

Former Rule No.	Corresponding New Rule No.	New Rule No.	Corresponding Former Rule No.
10-404	10-704	10-701	10-430
10-404A	10-705	10-702	10-431
10-406	10-703	10-703	10-406
10-407	10-706	10-704	10-404
10-408	10-707	10-705	10-404A
10-408A	Withdrawn	10-706	10-407
10-409	10-722	10-707	10-408
10-410	10-723	10-711	10-415A

10-411	10-724
10-412	10-725
10-412A	10-726
10-413	Withdrawn
10-414	Withdrawn
10-415	10-715
10-415A	10-711
10-416	10-716
10-417	Withdrawn
10-418	10-717
10-420	10-718
10-423	10-712
10-424	10-713
10-425	10-714
10-430	10-701
10-431	10-702
10-432	10-731
10-433	10-732
10-496A	10-741
10-496B	10-743
10-496C	10-744
10-496D	10-745
10-496E	10-742

10-712	10-423
10-713	10-424
10-714	10-425
10-715	10-415
10-716	10-416
10-717	10-418
10-718	10-420
10-721	New
10-722	10-409
10-723	10-410
10-724	10-411
10-725	10-412
10-726	10-412A
10-727	New
10-731	10-432
10-732	10-433
10-741	10-496A
10-742	10-496E
10-743	10-496B
10-744	10-496C
10-745	10-496D

10-701. Statement of probable cause.

[For use with Rules 10-221 and 10-222 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

STATEMENT OF PROBABLE CAUSE

The above child has been arrested without a warrant for the following reasons *(set forth a plain, concise and definitive statement of facts establishing probable cause and the name of the offense charged):* _____
_____
_____
_____ *(continued on attached sheet)*

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT UNDER OATH.

_____ _____
Date Arresting Officer

USE NOTES

This form may be used to make a written showing of probable cause. It is used only in the absence of a written showing of probable cause being made in an arrest warrant.

[Adopted, effective November 1, 1995; 10-430 recompiled and amended as 10-701 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-430 NMRA was recompiled and amended as 10-701 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-702. Probable cause determination.

[For use with Rules 10-221 and 10-222 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

PROBABLE CAUSE DETERMINATION

(*For use only if the child has been arrested without a warrant and has not been released*)

Finding of probable cause

[ ] I find that there is probable cause to believe that an offense has been committed by the above-named child.

IT IS ORDERED that the child be:

[ ] detained

[ ] detained, unless after the preliminary inquiry the juvenile probation officer determines that release is appropriate.

[ ] released on personal recognizance.

[ ] released on the conditions of release set forth in the release order.

[ ]

Failure to make showing of probable cause

[ ] I find that probable cause has not been shown that an offense has been committed by the above-named child. It is therefore ordered that the child be immediately discharged from custody.

_____
Date

_____
Judge

USE NOTES

This form may be used for any child taken into custody. If the child has a right to bail, the amount of bail and any conditions of release must also be determined. This form is not necessary if the child was arrested on an arrest warrant or a finding of probable cause is endorsed by the judge on the petition or on a statement of probable cause.

[Adopted, effective November 1, 1995; 10-431 recompiled and amended as 10-702 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case, and provided for release of the child when determined appropriate by the juvenile probation officer; added "[ ] detained, unless after the preliminary inquiry the juvenile probation officer determines that release is appropriate".

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-431 NMRA was recompiled and amended as 10-702 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-703. Petition.

[For use with Rule 10-211 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

PETITION

The undersigned states that _____ *(name of child)* is a delinquent child.

The child's birth date is: _____

The child's address is: _____
_____

The address of the child's parents, guardian, custodian or spouse is as follows:

_____	_____	_____
Name	Address	Relationship
_____	_____	_____
Name	Address	Relationship

(If the child has no parents, guardian, custodian, or spouse residing in this state, set forth the adult with whom the child resides or the known adult relative residing nearest to the court.)[1]

The above-named child did: _____
_____
(set forth essential facts) contrary to Section(s) _____ *(citation to criminal statute or other law or ordinance allegedly violated)*.[2] The acts alleged were committed within _____ county.

(complete applicable alternatives)

The child is:

[ ] not in detention.

[ ] being detained at _____ *(address)* _____, New Mexico. The child has been in detention since _____ , _____ at _____ _____.m.

Probation services has completed a preliminary inquiry in this matter and the children's court attorney, after consultation with probation services, has determined that the filing of a petition is in the best interest of the public and the child.

_____
Children's Court Attorney

_____
Address

_____
Telephone number

USE NOTES

1. If any information concerning the child's birth date, address, family or guardian is not known, please state "not known."

2. If the delinquent act is a violation of a traffic ordinance, NMSA 1978, Section 35-15-2 requires that the section or subsection defining the offense and the title of the ordinance be set forth.

[As amended, effective October 1, 1996; 10-406 recompiled and amended as 10-703 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 1996 amendment, effective October 1, 1996, rewrote the form.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-406 NMRA was recompiled and amended as 10-703 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-704. Summons to child - Delinquency Proceeding.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

SUMMONS TO CHILD
DELINQUENCY PROCEEDING[1]

TO: _____
Name of the respondent child

_____
Address

If you need help reading this document, you can call _____, and the court will appoint an interpreter for you at no charge.

YOU ARE NOTIFIED that a petition, a copy of which is attached hereto, has been filed in this court alleging that you

[ ] committed the following delinquent acts _____ (*common name and description of each delinquent act*).

[ ] violated your conditions of probation by _____ (*briefly describe conditions imposed and acts violating those conditions*).

YOU ARE ORDERED TO PERSONALLY APPEAR before the Children's Court Division of the District Court at _____ (*set forth address of court*) on _____ , _____ at the hour of _____ (a.m.) (p.m.) to answer the allegations contained in the attached petition. You have the right to an attorney. If you

cannot afford an attorney, the court will appoint an attorney to represent you at no charge.

If you fail to appear at such time and place, a warrant will be issued for your arrest. Service of this summons shall be by mail unless otherwise ordered by the court.

Dated this _____ day of _____, _____.

_____
Clerk, District Court
Children's Court Division

_____
Address

_____
Telephone number

CERTIFICATE OF MAILING

I certify that I mailed a copy of the summons and a copy of the petition filed herein to:

_____
Name of child

_____
Address

on the _____ day of _____ , _____.

_____
Signature of Children's Court Attorney

_____
Title

CERTIFICATE OF PROCESS SERVER[2]

(*check one box and fill in appropriate blanks*)

I, _____ , certify that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within summons in the State of New Mexico on the _____ day of _____, _____, by delivering a copy thereof, with a copy of petition attached, in the following manner.

(*check one box and fill in appropriate blanks*)

[ ] by delivering the summons and petition to the above-named child (*used when respondent receives copy of summons or refuses to receive summons*).

[ ] by delivering the summons and petition to _____, (parent) (guardian) (custodian) (conservator) (guardian *ad litem appointed in the delinquency proceeding*[3]) of the above-named child.

[ ] by delivering the summons and petition to _____ (*name of person*), _____ (*title of person who has legal authority over the child*) (*used when the child is in the custody of a legal entity, including the Children, Youth and Families Department*).

[ ] by delivering the summons and petition to _____ (*if another manner of service has been ordered by the court, set forth how served*).

_____
Signature of person making service

_____
Title (if any)

USE NOTES

1. This form is to be used for service on a child alleged to have committed a delinquent act. A copy of the summons and petition must be served on the respondent child.

2. To be completed only if personal service is ordered by the court.

3. If the summons and petition is served on a guardian *ad litem*, it should only be served on the guardian *ad litem* who was appointed in the delinquency proceeding. It would be inappropriate to serve a guardian *ad litem* who may have been appointed for the child in another proceeding.

[As amended, effective September 1, 1995; 10-404 recompiled and amended as 10-704 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, in the heading, added “to child”; changed the caption of the case; in the title of the form, after “SUMMONS”, added “TO CHILD”; after “Address”, added the provision regarding the appointment of an interpreter; after “answer the allegations

contained in the attached petition.", added "You have the right to an attorney. If you cannot afford an attorney, the court will appoint an attorney to represent you at no charge."; in the section under the title "CERTIFICATE OF PROCESS SERVER[2]", after "guardian ad litem", added "appointed in the delinquency proceeding[3]", and after the second box option, deleted "[ ] by delivering the summons and petition to _____, a person of suitable age and discretion then residing at the usual place of abode of the above-named child."; in the third box option, after "title of person", deleted "authorized to receive service" and added "who has legal authority over the child"; and added Use Note 3.

The 1995 amendment, effective September 1, 1995, rewrote the form and rewrote the use note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-404 NMRA was recompiled and amended as 10-704 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-705. Summons to parent or custodian or guardian – Delinquency Proceeding.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

SUMMONS TO PARENT OR CUSTODIAN OR GUARDIAN
DELINQUENCY PROCEEDING[1]

TO: _____
Name of parent or custodian or guardian

_____
Address

If you need help reading this document, you can call _____, and the court will appoint an interpreter for you at no charge.

YOU ARE ORDERED TO PERSONALLY APPEAR before the Children's Court Division of the District Court at _____ (*set forth address of court*) on _____ (*date*) at the hour of _____ (a.m.) (p.m.) to participate in these proceedings.

If you do not appear at the time and place set forth above, you may be held in contempt of court and punished by fine or imprisonment.

YOU ARE NOTIFIED that a petition has been filed in this court alleging that you are the [parent] [custodian] [guardian] of a child who is alleged to have

[ ] committed the following delinquent acts _____ (*common name and description of each delinquent act*).

[ ] violated [his] [her] conditions of probation by _____ (*briefly describe conditions imposed and acts violating those conditions*).

Attached to this summons is the petition alleging delinquency [and the motion to join parent/custodian/guardian as a party][1].

Service of this summons shall be by mail unless otherwise ordered by the court.

Dated this _____ day of _____, _____.

_____
Clerk, District Court
Children's Court Division

_____
Address

_____
Telephone number

CERTIFICATE OF MAILING

I certify that I mailed a copy of the summons and a copy of the petition filed herein to:

_____
Name of parent or custodian or guardian

_____
Address

_____
City and zip code

on the _____ day of _____ , _____.

_____

Signature of Children's Court Attorney

_____
Title

CERTIFICATE OF PROCESS SERVER[2]

I, _____ , certify that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in the State of New Mexico on the _____ day of _____, _____, by delivering a copy thereof, with a copy of petition [and a copy of the motion to join the parent/custodian/guardian as a party][1] attached, in the following manner:

(*check one box and fill in appropriate blanks*)

[ ] by delivering the summons and petition to _____ (*set forth name of parent or custodian or guardian to be served*). (*This alternative is used when the person to be served is served or refuses to accept summons*).

[ ] by delivering the summons and petition to _____, a person of suitable age and discretion then residing at the usual place of abode of _____ (*set forth name of parent or custodian or guardian served*).

by delivering the summons, petition and motion to _____ (*if another manner of service has been ordered by the court, set forth how served*).

_____
Signature of person making service

_____
Title (if any)

USE NOTES

1. This form is to be used for service on a parent, custodian, or guardian of a child alleged to have committed a delinquent act. A copy of the summons and petition must be served on the respondent. If a written motion to join the parent has been filed with the court, it must also be served with the summons and petition on the respondent and the parent.

2. To be completed only if personal service is ordered by the court.

[Adopted, effective September 1, 1995; 10-404A recompiled and amended as 10-705 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the caption of the case, rewrote the form, making it applicable to the "guardian" of a child alleged to have committed a delinquent act, in addition to a parent or custodian, and revised the Use Notes.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-404A NMRA was recompiled and amended as Form 10-705 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-706. Order of appointment of attorney for child and notice and order to parent(s), guardian(s), or custodian(s).

[For use with Rule 10-223 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ORDER OF APPOINTMENT OF ATTORNEY FOR CHILD
AND
NOTICE AND ORDER TO PARENT(S), GUARDIAN(S), OR CUSTODIAN(S)

THIS MATTER having come before the court, and the court finding that an attorney has not entered an appearance for the child,

IT IS THEREFORE ORDERED that the following attorney shall be appointed to represent the child in this matter:

[ ] the Public Defender, whose address and telephone number is _____

_____

[ ] _____, an attorney on contract with the Office of the Public Defender, whose address and telephone number is

_____

_____

NOTICE AND ORDER TO PARENT(S), GUARDIAN(S), OR CUSTODIAN(S):

1. Within five (5) days of receiving this order, you must do one of the following:

A. Complete the enclosed copy of Form 10-707 NMRA, the Eligibility Determination for Indigent Defense Services form, and return it to the public defender, or

B. Make arrangements with another attorney of your choosing for the payment of legal services performed for the child.

2. Failure to complete and return the enclosed Form 10-707 NMRA within five (5) days may result in you being charged for all legal representation of the respondent child.

3. If you reside in a county where no public defender office exists, you may apply at the district or magistrate court in your area.

4. The appointed attorney has been directed to assist you in any indigency determination proceeding.

5. Under New Mexico law, if you can afford to pay, you may be ordered to reimburse the state for the costs of representing the above-named child.

THIS IS A COURT ORDER. IF YOU DO NOT COMPLY WITH THIS ORDER, YOU MAY BE HELD IN CONTEMPT OF COURT AND PUNISHED BY FINE OR IMPRISONMENT.

_____
District judge

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this notice to _____, (*name*) at the address indicated.

Date of Mailing:

_____, _____ By _____

[10-407 recompiled and amended as 10-706 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the heading and title of the form from "Notice of requirement to pay attorney fees for legal representation of the above-named child." to "Order of appointment of attorney for child and notice and order to parent(s), guardian(s), or custodian(s).", changed the caption of the case, and rewrote the form.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-407 NMRA was recompiled and amended as 10-706 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-707. Eligibility determination for indigent defense services.

[For use with Rule 10-223 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ELIGIBILITY DETERMINATION
FOR INDIGENT DEFENSE SERVICES

Child's Name: _____ DOB: _____ Age: ____

AKA:_____ Sex: Male Female SSN: _____

Child's Address: _____ Phone: _____

P/G/C's Name1: _____ Phone: _____

P/G/C's Address1: _____ Phone: _____

Charges:
_____
_____

Child Lives with: Alone:____ Lives with: Spouse ____ Children ____ Parent ____ Friend ____ Other ____

Parent's Marital status: Single ____ Married ____ Divorced ___ Separated ____ Widowed ____

Number of dependents in household: _____

[ ] Child is in detention. [ ] Child is not in detention.

[ ] Child is in legal custody of CYFD or other Public Agency.

PRESUMPTIVE ELIGIBILITY:

___ Parents/guardian/custodian DOES NOT receive public assistance.

___ Parents/guardian/custodian receives the following type of public assistance in _____ County:

DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS) $_____

TANF/GA $_____ Food Stamps $_____ Medicaid $_____

Public Housing $_____ SSI/SSDI $ _____

VA Disability _____

___ Unable to complete application because of possible Mental Health/Developmental Issue of Parent/Guardian/Custodian.

NET INCOME:	**CHILD**	**PARENT, GUARDIAN, CUSTODIAN**
Employer's Name	_____	_____
Employer's Phone	_____	_____
Pay Period (*weekly, every second week, twice monthly, monthly*)	_____	_____
Net take home pay *(salary wages minus deductions required by law*)	$_____	$_____
Other income sources (*please specify*)		
_____	$_____	$_____
		SCREENING USE ONLY
TOTAL ANNUAL INCOME	$_____ +	_____**=____/____/____A**
ASSETS:		
CASH ON HAND	$_____	$_____
BANK ACCOUNTS	$_____	$_____
REAL ESTATE (*equity*)	$_____	$_____

	$_____	$_____
MOTOR VEHICLES (*equity*)	$_____	$_____
	$_____	$_____
OTHER PERSONAL PROPERTY (equity):		
(describe and set forth equity)		
_____	$_____	$_____
_____	$_____	$_____
		SCREENING USE ONLY
TOTAL ASSETS	**$**_____	_____ **= ___/____/____B**

EXCEPTIONAL EXPENSES (total exceptional expenses of dependents):

MEDICAL EXPENSES (not covered by insurance)	$_____
MEDICAL INSURANCE PAYMENTS (receipts required)	$_____
COURT-ORDER SUPPORT PAYMENTS/ALIMONY	$_____
CHILD-CARE PAYMENTS (e.g. day care)	$_____
OTHER (describe) _____	$_____
_____	$_____
	SCREENING USE ONLY
TOTAL EXCEPTIONAL EXPENSES	**$**_____ **= ____/____/____C**

I UNDERSTAND THAT I WILL BE CHARGED IF THE ABOVE-NAMED CHILD IS REPRESENTED BY THE PUBLIC DEFENDER DEPARTMENT AND I AM NOT INDIGENT AS DETERMINED BY THE PUBLIC DEFENDER STANDARD.

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

This statement is made under oath. I hereby state that the above information is correct to the best of my knowledge. I hereby authorize the screening agent, district defender, and the court to obtain information regarding my financial condition from financial institutions, employers, relatives, the internal revenue service, and other state agencies.

_____ _____
Date Signature of parent(s)/guardian/custodian

I UNDERSTAND THAT I WILL BE CHARGED IF THE ABOVE-NAMED CHILD IS REPRESENTED BY THE PUBLIC DEFENDER DEPARTMENT AND I AM NOT INDIGENT AS DETERMINED BY THE PUBLIC DEFENDER STANDARD.

STATE OF NEW MEXICO)
) ss

COUNTY OF _____)

Signed and sworn to (*or affirmed*) before me on _____ (*date*) by _____ (*name of parent, guardian, or custodian*).

_____
Notary

(*Seal, if any*) My commission expires: _____

I UNDERSTAND THAT IF IT IS DETERMINED THAT I AM NOT INDIGENT, I MAY APPEAL TO THE COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED OF THIS DECISION.

____ I wish to appeal.

____ I do not wish to appeal.

_____ _____
Date Signature of parent(s)/guardian/custodian

COLUMN "A" (*net income*)
plus COLUMN "B" (*assets*) **SCREENING USE ONLY**
minus COLUMN "C" (*exceptional expenses*) **AVAILABLE FUNDS**

equals AVAILABLE FUNDS /
_____/....._____

____ The parent/guardian/custodian is indigent.

____ The parent/guardian/custodian is not indigent.

____ The parent/guardian/custodian applicant [has] [has not] paid the $10.00 application fee.

____ Receipt number: _____

Based on the above answers and information, I find that the applicant [is] [is not] indigent.

_____ _____
Signature of Screening Agent Title

_____ I find that the parents/guardian/custodian is unable to pay the $10.00 indigency application fee due to _____ and I therefore waive the

payment of the $10.00 application fee.

_____

Signature of Screening Agent

[1] P/G/C means parent(s)/guardian/custodian

[2] Dependent means any person who qualifies as a dependent of the applicant under Section 152 of the Internal Revenue Code. The Public Defender Department is committed to a policy against discrimination based on race, color, religion, national origin, age, sex, ancestry, veteran status, or mental or physical disability.

GUIDELINES FOR DETERMINING ELIGIBILITY

Pursuant to Sections 31-15-7 and 32A-2-30 NMSA 1978, the following guidelines are established for determination of indigency and eligibility for public defender services in juvenile cases.

I. APPLICATION FEE

A person shall pay a non-refundable application fee for each case in the amount set in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender for representation. *The interviewer will determine if the financial circumstances of the applicant are such that the fee would pose an exceptional hardship, and will recommend to the District office Administrator or Eligibility Supervisor if the fee should be waived. The interviewer will document on the application the reason for the fee waiver.*

II. PRESUMPTION OF INDIGENCY

A parent, parent(s), guardian or custodian is presumed indigent if the parent(s), guardian or custodian is a current recipient of state or federally administered public assistance programs for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), Veteran's disability benefits (VA) if the benefit is the sole source of income, food stamps, Medicaid, public assisted housing or Department of Health, Case Management Services (DHMS). Proof of assistance must be attached to the application and no further inquiry is necessary. The document submitted as proof must clearly identify the child, parent, guardian or custodian as currently receiving the qualifying benefit. Benefit cards without other supporting documents will not be accepted as proof of benefit. If the applicant is not receiving Medicaid benefits, but has dependents in the household for whom Medicaid eligibility has been determined, the applicant will be presumed indigent. Home equity, etc. is not to be taken into account if the parent(s), guardian or custodian is a current recipient of one of the six programs described above. If the child is in the physical custody of the Children Youth and Family Department (CYFD) the parent(s), guardian or custodian is presumed indigent and no further inquiry is necessary.

If the parent, guardian or custodian is the alleged victim in the case for which application is being made, they will be approved for Public Defender representation and no further inquiry is necessary.

If the interviewer is unable to complete the indigency application or believes the information to be unreliable because of communication or other problems associated with a mental or developmental disability of the parent/guardian/custodian, indigency will be presumed. If because of the mental disability of the parent/guardian/custodian, the interviewer is unable to complete the indigency application or believes the information is unreliable, the *Mental Health/Communication* section of the application should be checked. The designated attorney for juvenile cases is to be immediately notified, and if that person is not available the duty attorney is to be immediately notified.

III. FINANCIAL RESOURCES

If the parent(s), guardian or custodian is not presumptively indigent, the screening agent shall examine the financial resources of the applicant with consideration given to:

Net Income, Paragraph A;

Assets, Paragraph B; and

Exceptional Expenses, Paragraph C.

A. **Net Income.** The screening agent shall include total salary and wages for the applicant and the applicant's spouse minus deductions required by law (FICA, state and federal withholding). Child support deductions and medical insurance deductions will also be considered if already deducted from salary, but will not be recounted in the Exceptional Expenses section if counted here. Savings deductions and non-mandatory retirement deductions will be added to the net income. In order to calculate the salary of an individual, the screening agent shall use one of the two methods:

(1) if the individual is presently unemployed, the screening agent shall ask about employment during the twelve (12) months preceding the interview date and calculate the amount of money earned during such twelve (12) months. Proof of this income must be attached to the application; or

(2) if the individual is presently employed, the screening agent shall project the current income for twelve (12) months into the future. Proof of this income must be attached to the application. If the applicant is unemployed and has no income, the screening agent shall inquire as to how the applicant "gets by". Proof of income is not required but responses must be documented on the eligibility form (*i.e.* eats on soup line, street person, sleeps in car, *etc.*) and some proof of how the individual lives must be provided if available, *i.e.*, lives with someone providing support, lives on the street (*must provide some proof of assistance from homeless shelters or other street*

assistance providers). If the applicant gets by on "odd jobs", the income from the odd jobs must be verified. Zeros will not be accepted for income. If there is no income, an explanation is needed as to why there is no income and documentation is needed that sets forth the reason for no income.

(3) Any parent, guardian or custodian that has been incarcerated for six (6) months or more is also presumed to be indigent. Proof must be provided, i.e., proof of incarceration, jail release form. An individual incarcerated in a Department of Corrections facility in any state automatically qualifies.

Net income shall include, but is not limited to social security payments, union funds, veteran's benefits, worker's compensation, unemployment benefits, regular support from any absent family member, public or private employee pensions, or income from dividends, interests, rents, estates, trusts or gifts. If the parent, guardian or custodian lives alone but receives rent from a family member, the rent shall be considered as regular support from the parent's, guardian's or custodian's family and shall be included as income.

The income of each of the child's parent(s), guardians or custodians who have a legal obligation to support the child must be included in the calculation of income even though the child is not living in the same household. If one parent makes application, and the whereabouts of the other parent is unknown, the income, assets and exceptional expenses of the applying parent will be assessed. If the parent is deemed to not be indigent, and reimbursement is required for representation, the reimbursement contract or order of reimbursement will reflect the applying parent as owing half of the fee required for the offense in question. If the absent parent is located an order of reimbursement will be prepared for the other half of the fee.

B. **Assets.** The screening agent shall consider all assets of the child's parent(s), guardians or custodians that are readily convertible into cash within a reasonable period of time. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit and tax refunds. Real estate other than the primary residence shall be valued at the current full valuation on the county property tax rolls less any outstanding obligations against the property. Written documentation of both the value and the outstanding obligations will be attached to the application.

C. **Exceptional Expenses.** The screening agent shall consider any unusual expenses of the applicant and the applicant's legal dependents that would, in all probability, prohibit the applicant from being able to secure private counsel. The following expenses are not exceptional expenses: rent, food, utilities, gas money, consumer loans and student loans. Exceptional expenses shall include, but not be limited to, costs for medical care or medical insurance, family support obligations and child care payments. In order to be included as an exceptional expense:

(1) the cost of medical care cannot be covered by insurance;

(2) family support expense obligations must be verified by court order or a notarized statement from the person to whom the support is paid. The support must actually be paid on a regular basis; and must be verified by written documentation such as receipts or cancelled checks; and

(3) child care must be paid on a regular basis.

If the parent(s)/guardian/custodian says that child support is paid when the parent(s)/guardian/custodian can, the payments do not qualify as exceptional expenses.

The parent(s)/guardian/custodian must provide proof of the exceptional expense incurred and proof that payment is being made on a regular basis. If proof is provided, the regular monthly payment for the exceptional expense is multiplied by twelve (12) months and the calculated amount can be deducted from total income.

Other exceptional expenses shall include: payroll garnishments, internal revenue service claims, court ordered attorney fees or other court ordered payments and funeral expenses not covered by insurance.

An approved filing from a pending bankruptcy proceeding of a potential client can be considered in determining indigency.

IV. INDIGENCY FORMULA

An applicant is indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

The screening agent shall calculate the amount of available funds by adding the total for net income for the household (Column A) together with the total for assets for the household (Column B) and subtracting the total for exceptional expenses (Column C). If the available funds exceed one hundred fifty percent (150%) of the applicable federal poverty level guideline, the applicant is not indigent.

If a parent, guardian or custodian does not know the income or assets of all other persons who are legally responsible for the child’s support, and the whereabouts of that person(s) is known, the child is presumed not indigent and is not eligible for free representation unless the applicant produces the necessary information within two (2) working days after the interview.

V. APPEAL

If the parent(s)/guardian/custodian is found by the screening agent or the court not to be indigent, the parent(s)/guardian/custodian may appeal the decision to the district defender in those districts with public defender offices. If a parent(s), guardian or custodian wishes to appeal the decision of the district defender, the parent(s), guardian

or custodian shall file a notice of appeal in the district court. In those districts without public defender offices, the parent, guardian or custodian may appeal directly to the court. If the parent, guardian or custodian wishes to appeal a finding that the parent, guardian or custodian is not indigent:

(1) in those districts with district public defender offices, the screening agent shall notify the public defender of the appeal;

(2) in those districts without public defender offices, the screening agent shall notify the court of the appeal.

All appeals shall be filed within ten (10) working days after the date of the decision.

VI. REIMBURSEMENT

A parent, guardian or custodian who is ineligible for free representation but is unable to hire private counsel may sign a contract for public defender representation on a reimbursement basis. The reimbursement cost shall cover all charges for legal fees, expert witness, and private investigation costs. Reimbursement fees shall be governed by the schedule adopted by the Public Defender Department. If one parent makes application, and the whereabouts of the other parent is unknown, the reimbursement contract will reflect one-half of the scheduled fee. If the absent parent is located, an order of reimbursement will be prepared for the other half of the fee.

First payment under a reimbursement contract shall be due thirty (30) days from the date of execution of the contract and note. If the parent(s), guardian or custodian fails to complete a contract, the order of appointment with reimbursement shall serve as notice for collection if payments are not made. If this is the case, a copy of the order of appointment and a copy of the application shall be sent to the administration office instead of the contract and note.

VII. NEW CHARGES

If a child has applied for public defender services within six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is not necessary, but the parent, guardian or custodian shall be required to pay the application fee. A printout of the CDMS entry for the original application with the new referral should be placed in the new file being opened. If a child has applied for public defender services and been found eligible more than six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is necessary. A parent, guardian or custodian must pay the application fee for each case for which the child seeks representation regardless of whether completion of a new eligibility documentation form is required, unless the fee has been waived.

[Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1, 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No. 09-8300-038, effective October 26, 2009; 10-408 recompiled and amended as 10-707 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2009 amendment, approved by Supreme Court Order No. 09-8300-038, effective October 26, 2009, in the style of the case, added the blank for "KEY"; in the first paragraph after the title of the form, in the eleventh line after "Child is in", deleted "custody" and added "detention" and in the second sentence, after "Child is not in", deleted "custody" and added "detention" and in the twelfth line added the line for "Child is in legal custody of CYFD or other Public Agency"; in the section labeled "Presumptive Eligibility", in the fourth line, changed "AFDC" to "TANF/GA", in the fifth line, deleted the blank for "DSI$" and added the blank for "SSI/SSDI", in the sixth line, added the blank for "VA Disability", and added the seventh line for "Unable to complete application because of possible Mental Health/Developmental Issue of Parent/Guardian/Custodian"; after the section for "Presumptive Elgibility", added the section heading "Net Income: ____ Child ____ Parent, Guardian, Custodian"; in the section labeled "Exceptional Expenses", added the second line for "Medical Insurance Payments (receipts required)"; after the line for "Total Exceptional Expenses", added the sentence which provides that the parent/guardian/custodian understands that the parent/guardian/custodian will be charged if the child is represented by the Public Defender and the parent/guardian/custodian is not indigent as determined by the Public Defender standard; after the signature line of the affirmation and release by the parent/guardian/custodian, added the sentence which provides that the parent/guardian/custodian understands that the parent/guardian/custodian will be charged if the child is represented by the Public Defender and the parent/guardian/custodian is not indigent as determined by the Public Defender standard; after the sentence which provides that the parent/guardian/custodian understands that if it is determined that parent/guardian/custodian is not indigent, parent/guardian/custodian may appeal to the court, deleted the former affirmation and release by the applicant and the verification by the notary public signature; in the paragraph partially labeled "Column A plus Column B", in the third line, after "applicant [has] [has not] paid the", deleted "statutory" and added "$10.00"; deleted the former fourth line which provided that "applicant [has] [has not] paid the statutory application fee"; following the first signature line for the screening agent, deleted the former sentence in parentheses which provided that the following part of the form was to be completed only if the court determined that the applicant was unable to pay the statutory indigency application fee; in the sentence following the first signature line for the screening agent, after "I find that the", deleted "child" and added

"parents/guardian/custodian", after "$10.00 indigency application fee", added "due to ____", after "waive the payment of the", deleted "indigency" and added "$10.00", and deleted the signature line for the "Judge or authorized designee"; in the section labeled "Guidelines For Determining Eligibility", in Section I, Application Fee, deleted the former second sentence which provided for waiver of the application fee if the applicant is homeless or incarcerated and unable to pay the fee, and added the second and third sentences; in Section II, Presumption of Indigency, in the first paragraph, after "social security disability income (SSDI)", added "Veteran's disability benefits (VA) if the benefit is the sole source of income", after "food stamps, medicaid", deleted "disability security income (DSI)", added the third, fourth and fifth sentences, and in the last sentence, after "physical custody of the", deleted "Human Services" and added "Children, Youth and Family"; in Section II, Presumption of Indigency, added the second paragraph; in Section II, Presumption of Indigency, in the third paragraph, after "other problems associated with a mental", added "or developmental", after "disability of the", deleted "child" and added "parent/guardian/custodian", after "indigency will be presumed", deleted "until the child's competency to stand trial and indigency is determined by the public defender or court", in the second sentence, after "believes the information is unreliable", deleted "the Department of Health, Case Management Services (DHMS) section should be checked" and added the remainder of the sentence, and added the last sentence; in Section III, Financial Resources, in the first paragraph, after "presumptively indigent, the screening", added "agent"; in Section III, Financial Resources, in Paragraph A, in the first paragraph, added the second and third sentences, in Subparagraph (3) of Paragraph A, in the first sentence, after "Any", deleted "person" and added "parent, guardian or custodian", in the second paragraph, in the second sentence, after "If the", deleted "child" and added "parent, guardian or custodian", and after "regular support from the", deleted "child's" and added "parent's, guardian's or custodian's", in the third paragraph, added the second, third and fourth sentences; in Section III, Financial Resources, in Paragraph B, in the first sentence, after "consider all assets of the", added "child's" and after "guardians or custodians", deleted "of the child", in the second sentence, after "Real estate", added "other than the primary residence" and after "shall be valued at", deleted "fair market value" and added "the current full valuation on the county property tax rolls", and added the third sentence; in Section III, Financial Resources, in Paragraph C, in the first paragraph, after "costs for medical care", added "or medical insurance", in the first paragraph, in Subparagraph (2), of Paragraph C, after "family support expense obligations must be", deleted "court ordered" and added "verified by court order or a notarized statement from the person to whom the support is paid", and in the second sentence, at the beginning of the sentence, added "The support must", after "actually", added "be", and after "on a regular basis", added the remainder of the sentence, and in the last paragraph, before "bankruptcy", added "pending"; in Section IV, Indigency Formula, in the third paragraph, after "legally responsible for the child's support", added "and the whereabouts of that person(s) is known"; in Section VI, Reimbursement, in the first paragraph, added the fourth and fifth sentences; and in Section VII, New Charges, in the second sentence, changed "A copy of the last eligibility determination form" to "A printout of the CDMS entry for the original application with the new referral."

The 2004 amendment, effective November 1, 2004, deleted the last sentence in the statement under oath following “Total Exceptional Expenses”, inserted the oath to follow the time limit to appeal if not indigent language, deleted the Indigency Table that was based on one hundred twenty five percent (125%) of the federal poverty guidelines established by the United States Department of Labor in April of 1996 and replaced it with the Indigency Formula which provides that an applicant is "indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor". The 2004 amendment also replaced the $10.00 application fee with "statutory indigency fee", inserted present Guideline I, redesignated former Guidelines I through VI as present Guidelines II through VII, substituted “temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI)” for “aid to families of dependent children (AFDC)” in the first sentence of the first paragraph of Guideline II, added “Paragraph A”, “Paragraph B” and “(Paragraph C)” in the introductory paragraph and rewrote former Paragraph A(2) so as to create present Paragraphs A(2) and (3) in Guideline III, substituted “that are readily” for “which are” in the first sentence and rewrote the last sentence of Paragraph B of that guideline, and, in Paragraph C of that guideline, substituted “that” for “which” in the first sentence of the first paragraph, deleted “or child care” following “support” in Subparagraph (3), and added the last paragraph. The amendment further added the first paragraph and substituted the present last sentence for the former last two sentences in the second paragraph of Guideline IV, substituted the present first paragraph for the former first paragraph in Guideline VI, and, in the second paragraph of that guideline, inserted “under a reimbursement contract” and substituted “execution” for “completion” in the first sentence and deleted “and note” following “contract” in the second sentence, and, in Guideline VII, added “but the parent, guardian or custodian shall be required to pay the application fee” in the first sentence, rewrote the third sentence and added the last sentence.

The 1997 amendment, effective August 1, 1997, rewrote the Indigency Table near the end of the form by increasing the available funds amounts and adding figures for seven and eight family members.

The 1993 amendment, effective December 1, 1993, rewrote the form and guidelines.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-408 NMRA was recompiled and amended as 10-707 NMRA, effective for all cases pending or filed on or after December 31, 2016.

Cross references. — For indigency determination, *see* Section 31-15-12 NMSA 1978.

For appointment of public defender under Delinquency Act, *see* Section 32A-2-14B NMSA 1978.

For indigency standard under Delinquency Act, *see* Section 32A-2-30 NMSA 1978.

10-711. Waiver of arraignment and denial of delinquent act.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

WAIVER OF ARRAIGNMENT AND DENIAL OF DELINQUENT ACT

I was given a copy of the petition which charges me with committing a delinquent act. I have read the petition, and it has been explained to me by my attorney. I understand what I am charged with and the possible penalties that I face, including a disposition as a delinquent child in need of care or supervision.

I FURTHER UNDERSTAND THAT I HAVE THE FOLLOWING RIGHTS:

1. the RIGHT to personally appear before the children's court and to admit or deny the charge(s) and to have my rights explained;

2. the RIGHT to trial by jury;

3. the RIGHT to the assistance of an attorney at all stages of the proceedings and to have an attorney appointed free of charge if I cannot afford one;

4. the RIGHT to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony;

5. the RIGHT to present evidence on my own behalf and to have the State compel witnesses of my choosing to appear and testify; and

6. the RIGHT to remain silent.

With this knowledge and understanding, I give up the right to personally appear before the children's court for arraignment and hereby deny the delinquent acts charged in the above-referenced petition.

_____
Signature of Child

_____

Date

I have explained to the child the child's right to personally appear before the children's court to enter a denial and to have the child's rights explained by the Judge. I am satisfied that the child understands the waiver of his or her rights.

_____
Attorney for Child

APPROVED:

_____

[ ] Children's Court Judge

[ ] Children's Court Hearing Officer

[Adopted, effective July 1, 1995; 10-415A recompiled and amended as 10-711 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the caption of the case, changed the heading and the title of the form from "Denial of petition and explanation of rights." to "Waiver of arraignment and denial of delinquent act.", and rewrote the form.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-415A NMRA was recompiled and amended as 10-711 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-712. Plea and disposition agreement.

[For use with Rule 10-227 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

PLEA AND DISPOSITION AGREEMENT

The state and the child agree to the following disposition:

PLEA:

The child agrees to (admit) (not contest) the following charges/delinquent acts:

_____
_____.

_____
_____.

TERMS:

[ ] There are no agreements as to disposition. A pre-disposition report will be prepared. The maximum penalties for these charges are:
_____
_____ (*Set forth maximum penalties*).

[ ] A consent decree will be entered by the court for a period of _____ months, not to exceed six (6) months.

[ ] The child will not oppose an extension of the consent decree for an additional six (6) months.

[ ] The consent decree will end on _____ (*date*), unless discharged sooner by probation services.

[ ] Probation for a period of _____, not to exceed two (2) years in accordance with the probation order approved by the court.

[ ] The child will be committed to the Children, Youth and Families Department for predispositional diagnosis, rehabilitation, and education for a period not to exceed fifteen (15) days. Upon completion, the court shall set a disposition hearing.

[ ] The child will be committed to the Children, Youth and Families Department for a period of _____.

[ ] The child will be committed to the _____ detention center for a period of _____.

[ ] _____ (*set forth any other specific conditions*).

[ ] **Additional charges.** The following charges will be dismissed, or not filed: _____ _____.

[ ] **Restitution.**[1]

Effect on petition:

This agreement, unless rejected or withdrawn, serves to amend the petition to charge delinquent acts to which the child pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

Waiver of defenses and appeal:

Unless this plea is rejected or withdrawn, the child gives up any and all motions, defenses, objections or requests which the child has made or raised, or could assert hereafter, to the court's entry of judgment and disposition consistent with this agreement. The child waives the right to appeal the judgment and disposition that results from the entry of this plea agreement.

Withdrawal permitted if agreement rejected:

If after reviewing this agreement and any predisposition report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any children's court or criminal proceedings.

I HAVE READ AND UNDERSTAND THE ABOVE. I have discussed the case and my constitutional rights with my lawyer. I understand that by entering into this agreement I will be giving up my rights to a trial (jury or court), to confront, cross-examine, and compel the attendance of witnesses, my privilege against self-incrimination, and my right to an appeal. I agree to enter my plea as set forth above on the terms and conditions set forth in this agreement.

_____ _____
Child's signature Date

REVIEW BY CHILD'S ATTORNEY

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client. I have advised my client of my client's constitutional rights and possible defenses.

_____ _____
Children's Court Attorney Date

COURT APPROVAL

_____ _____

Children's Court Judge Date

USE NOTES

1. If this option is selected, the juvenile probation and parole officer (JPPO) and the child shall promptly prepare a restitution plan, including a specific amount to be paid to each victim and a payment schedule. *Cf*. NMSA 1978, § 31-17-1(B) (setting forth the requirements for ordering restitution in a criminal proceeding). The child's restitution plan and the JPPO's recommendations shall be submitted promptly to the court. *Cf. id*. The court shall promptly enter an order approving, disapproving, or modifying the plan, taking into account the child's circumstances and the limitations on restitution set forth in NMSA 1978, Section 32A-2-3(G) (defining "restitution" under the Delinquency Act). *See also* § 32A-2-27(C) (providing that the court may order a child "found to be within the provisions of the Delinquency Act" to pay restitution).

[Approved, effective August 1, 1999; 10-423 recompiled and amended as 10-712 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the caption of the case; in the first undesignated section of the form, after "The state and the child agree to the following disposition", deleted "Admission" and added "PLEA", after "The child agrees to (admit) (not contest)", deleted "to the following allegations charging the following" and added "the following charges/delinquent acts"; in the second undesignated section, in the heading, deleted "Terms" and added "TERMS", after "A consent decree will be entered by the court for a period of ____ months", added "not to exceed six (6) months", after "The child will not oppose an extension of the consent decree", added "for an additional six (6) months", after "The consent decree will end", added "on _____(date), unless discharged sooner by probation services", in the sixth box option, after "Upon completion, the", deleted "Children, Youth and Families Department" and added "court", in the box option titled "Restitution", deleted "The child agrees to make restitution as follows"; in the undesignated section beginning with "I HAVE READ AND UNDERSTAND THE ABOVE", after "attendance of witnesses", deleted "and", after "self-incrimination", added "and my right to an appeal", and after "I agree to", deleted "admit the allegations" and added "enter my plea as", in the undesignated section titled "REVIEW BY CHILD'S ATTORNEY", under the second signature line, deleted "Defense counsel" and added "Child's attorney"; added the undesignated section titled "COURT APPROVAL"; and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-423 NMRA was recompiled and amended as 10-712 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-713. Advice of rights by judge.

[For use with Rules 10-226 and 10-227 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ADVICE OF RIGHTS BY JUDGE (DELINQUENT OFFENDER)[1]

The child personally appearing before me, I have ascertained the following facts, noting each by initialing it.

Judge's Initial

_____ 1. The child understands the charges set forth in the petition.

_____ 2. The child understands the range of possible dispositions includes commitment to _____.

_____ 3. The child understands the following constitutional rights which the child gives up by [admitting] [not contesting] [standing mute to][2] the offenses alleged:

- _____ (a) the right to trial by jury, if any;
- _____ (b) the right to the assistance of an attorney at the adjudicatory stage of the proceeding, and to an appointed attorney, to be furnished free of charge, if the child cannot afford one;
- _____ (c) the right to confront the witnesses against the child and to cross-examine them as to the truthfulness of their testimony;
- _____ (d) the right to present evidence on the child's own behalf, and to have the state compel witnesses of the child's choosing to appear and testify;
- _____ (e) the right to remain silent and to be presumed innocent until the allegations of criminal offenses are proven beyond a reasonable doubt; and

_____ (f) the right to appeal the adjudication unless the child has reserved an issue for appeal.

_____ 4. That the child wishes to give up the constitutional rights of which the child has been advised.

_____ 5. That there exists a basis in fact for believing the child committed the offenses charged and that an independent record for such factual basis has been made.

_____ 6. That the child and the children's court attorney have entered into an agreement that the child understands and consents to its terms. (*Indicate "NONE" if a plea agreement has not been signed.)*

_____ 7. That the agreement is voluntary and not the result of force or threats except the promises made in the plea agreement.

_____ 8. That the child understands that admission of, not contesting, or standing mute to the charges may have an effect upon the child's immigration or naturalization status and that the child has been advised by counsel of the immigration consequences.

_____ 9. That under the circumstances, it is reasonable that the child admit, not contest, or stand mute to the charges alleged in the petition.

On the basis of these findings, I conclude that the child knowingly, voluntarily and intelligently agrees to [admit] [plead no contest to] [stand mute to] the alleged delinquent acts as set forth and accepts the agreement. This advice of rights shall be filed in the record proper in the above-styled case.

_____ _____

Children's Court Judge Date

CERTIFICATE BY CHILD

I certify that my attorney personally advised me of the matters noted above and that I understand the constitutional rights that I am giving up by admitting, not contesting, or standing mute to the allegations in the delinquency petition filed under this cause number.

_____

Child

CERTIFICATE OF COUNSEL

I have reviewed the above matters with my client and have explained the matters to my client in detail.

_____

Defense Counsel

USE NOTES

1. This form shall be used with a plea agreement or a consent decree entered into by a delinquent offender.

2. Under NMSA 1978, Section 32A-2-22, when entering into a consent decree, a child is not required to admit some or all of the allegations stated in the delinquency petition.

[Approved, effective August 1, 1999; as amended by Supreme Court Order No. 10-8300-022, effective August 30, 2010; 10-424 recompiled and amended as 10-713 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-022, effective August 30, 2010, in the title of the rule, deleted "Admission or no contest"; in the reference to applicable rules, added "For use with"; deleted the former style of the case and added the current style of the case; in the title to the pleading, at the beginning of the title, deleted "ADMISSION OR NO CONTEST" and after the word "JUDGE", added the parentheses and "(DELINQUENT OFFENDER)"; in Paragraph 3, after "admitting" added "[not contesting] [standing mute to]"; in Subparagraph (b) of Paragraph 3, after "an attorney at" deleted "all stages" and added "the adjudicatory stage"; added Subparagraph (f) of Paragraph 3; in Paragraph 8, after "understands that" deleted "this"; after "admission of" added "not contesting, or standing mute to"; and after "naturalization status" added the remainder of the sentence; in Paragraph 9, after "the child admit" added "not contest, or stand mute to"; in the last paragraph before the signature line for the children's court judge after "intelligently agrees to", deleted "committing the above charge" and added "[admit] [plead no contest to] [stand mute to] the alleged delinquent acts as set forth"; deleted the former second sentence which provided that "A copy of this affidavit shall be made a part of the record in the above-styled case", and added the current second sentence; in the certificate by child, after "I certify that" deleted "the judge personally advised me of the matters noted above, that I understand the constitutional rights that I am giving up by admitting or not contesting the allegation contained in the plea and disposition agreement" and added the remainder of the sentence; in the certificate by counsel, deleted the former first and second sentences which provided that "I have conferred with my client with reference to the execution of this certificate. I have explained to my client its contents in detail" and added the current sentence; and added the use note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-424 NMRA was recompiled and amended as 10-713 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-714. Consent decree.

[For use with Rules 10-227 and 10-228 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

CONSENT DECREE

This matter came before the court on _____, and the court finds as follows:

1. The court has made a sufficient advisement of rights[1] upon addressing the child in open court and has determined that there is a factual basis for the charges.

2. The child freely and voluntarily

( ) admits to or

( ) declares the intention not to contest or

( ) stands mute[2] to the following delinquent acts filed under this cause number.

3. The state and the child have agreed that the following charges will be dismissed or will not be filed:

_____
_____

_____
_____

4. The child's best interests will be served by suspending proceedings without adjudication and placing the child on supervised probation

( ) for a period not to exceed six (6) months

( ) for an agreed-upon extended period not to exceed one (1) year.

IT IS THEREFORE ORDERED that the child is placed on probation under the terms and conditions of the [plea and disposition agreement] [probation agreement] [and] [or] [motion for consent decree]3, which shall be signed by the child [and parents (*if made a party*)] and the state and considered a part of this consent decree.

_____
District Judge

_____ _____
Children's Court Attorney Child's Attorney

USE NOTES

1. The advice of rights form shall be used to document the advisement.

2. Under NMSA 1978, Section 32A-2-22, when entering into a consent decree, a child is not required to admit some or all of the allegations stated in the delinquency petition.

3. Use applicable bracketed alternative.

[Approved, effective August 1, 1999; as amended by Supreme Court Order No. 10-8300-022, effective August 30, 2010; by Supreme Court Order No. 10-8300-025, effective August 30, 2010; 10-425 recompiled and amended as 10-714 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The second 2010 amendment, approved by Supreme Court Order No. 10-8300-025, effective August 30, 2010, in Paragraph 4 added "without adjudication" after "proceedings".

The first 2010 amendment, approved by Supreme Court Order No. 10-8300-022, effective August 30, 2010, in the reference to applicable rules, added "For use with" and Rule "10-228"; deleted the former style of the case and added the current style of the case; deleted the former first sentence, which provided that "The court being fully advised finds" and added the current first sentence; in Paragraph 1, deleted the former sentence, which provided that "The court has personal and subject matter jurisdiction"

and added the current sentence; in Paragraph 2, changed the tense of the sentence from the past tense to the present tense; after "not to contest" deleted "the following delinquent acts (set forth common name of delinquent acts)", and added the third parentheses and language; deleted former Paragraph 3, which provided that after addressing the child in open court, the court determined that the child understood the charges alleged in the petition, the dispositions authorized by the Children's Code, and the right to deny the allegations and have a trial; added the current Paragraph 3; in Paragraph 4, after "suspending proceedings" deleted "for a period of _____ months, during which the child will be on supervised probation" and added the remainder of the sentence, including the provisions specifying the maximum length of probation; deleted former Paragraph 5, which provided that the state and the child had agreed that the listed charges would be dismissed or would not be filed; in the last paragraph, after "plea and disposition agreement", added "[probation agreement] [and] [or] [motion for consent decree], which shall be", and after "signed by the child" added "and parents (*if made a party*)"; in the signature block, deleted the blank for a date; and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-425 NMRA was recompiled and amended as 10-714 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-715. Motion for extension of consent decree.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

MOTION FOR EXTENSION OF CONSENT DECREE

The State of New Mexico, through its Children's Court Attorney and under Rule 10-228 NMRA, moves the court for an extension of the consent decree entered in this matter on the ____ day of _____, _____, for a period not exceeding six (6) months. As grounds for this motion, the State states as follows:

_____
_____

_____
_____

_____
(*facts supporting motion*).

Based on the above, the State of New Mexico respectfully requests an extension of the consent decree for six (6) months to expire on _____, _____.

_____
Children's Court Attorney

(*Insert certificate of service*)

[As amended, effective August 1, 1999; 10-415 recompiled and amended as 10-715 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the caption of the case, and rewrote the form; after the title, deleted "The petitioner, pursuant to Children's Court Rule 10-225" and added "The State of New Mexico, through its Children's Court Attorney and under Rule 10-228 NMRA", after "not exceeding six (6) months", deleted "and states that" and added "As grounds for this motion, the State states as follows", and added the last sentence prior to the signature line.

The 1999 amendment, effective August 1, 1999, substituted "petitioner" for "undersigned", substituted "an extension" for "a _____ month extension" following "moves the court", and substituted "for a period not exceeding six (6) months and states that" for "and in support thereof states that".

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-415 NMRA was recompiled and amended as 10-715 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-716. Judgment and Disposition.

[For use with Rules 10-246 and 10-251 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

JUDGMENT AND DISPOSITION

This matter being properly before the Court and the Court being advised, FINDS:

1. The Court has personal and subject matter jurisdiction.

2. The child appeared in person and by the undersigned attorney.

3. The State appeared by the undersigned Children's Court Attorney.

4. [ ] The Child IS a [delinquent child] [youthful offender] in that the child [ ] ADMITTED [ ] WAS TRIED BY [jury] [court] and found to have committed the following act(s) alleged in the [Delinquency] [Probation Violation] Petition, or indictment:
_____
_____
_____

OR

[ ] The Child IS NOT a [delinquent child] [youthful offender] in that the child was tried by [jury] [court] and found to have not committed the following act(s) alleged in the [Delinquency] [Probation Violation] Petition, or indictment:
_____
_____
_____

5. The following charge(s) will be dismissed or will not be filed:

_____
_____

JUDGMENT OF COURT

[ ] IT IS ADJUDGED that the child **IS NOT** a [delinquent child] [youthful offender] and that the child is hereby released from all detention.

[ ] IT IS ADJUDGED that the child **IS** a [delinquent child] [youthful offender] and that the child is hereby:

[ ] PLACED ON PROBATION for a full term not to exceed _____ year(s) under the terms and conditions of the Probation Agreement which shall be executed and considered a part of this Judgment and Disposition.

[ ] TRANSFERRED to the legal custody of the New Mexico Children Youth and Families Department (CYFD) which shall receive the child at a facility designated by the Secretary of CYFD. The New Mexico CYFD shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the child. This Judgment shall remain in force for an indeterminate period not exceeding _____ year(s). The Sheriff of _____ is ordered to provide transportation between facilities.

[ ] COMMITTED to the _____County Juvenile Detention Center for a period of _____ days.

[ ] RELEASED from the Court's Jurisdiction.

_____
CHILDREN'S COURT JUDGE

_____
CHILDREN'S COURT ATTORNEY

_____
CHILD'S ATTORNEY

[Adopted, effective April 1, 1997; 10-416 recompiled and amended as 10-716 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, provided that the form is for use with Rules 10-246 and 10-251, changed the caption of the case, and rewrote the form.

The 1997 amendment, effective April 1, 1997, rewrote the form.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-416 NMRA was recompiled and amended as 10-716 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-717. Petition to revoke probation.

[For use with Rule 10-261 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

PETITION TO REVOKE PROBATION[1]

The undersigned states that the above-named child has violated the terms of probation entered on the ____ day of _____, _____.

The child's birthdate is: _____.

The child's address is: _____.

The facts giving rise to this petition are: _____

_____

_____

(*include the terms of probation alleged to have been violated and the factual basis for revocation of probation, including dates of violation*.)

The names and addresses of the child's parents, guardian, or custodian are:

_____

_____

The best interests of the child and the public require that this petition be filed.

(*complete applicable parts*)

[ ] The child is not in detention.

[ ] The child is being detained at _____, _____, New Mexico.

The child has been in detention since _____ (a.m.) (p.m.) on the _____ day of _____, _____.

_____
Children's Court Attorney

USE NOTES

1. This form may also be used to revoke a consent decree.

2. A petition to revoke probation or a consent decree may be served in the manner provided for service of pleadings and papers. *See* Rules 10-104, -105, -106 NMRA.

[As amended, effective August 1, 1999; 10-418 recompiled and amended as 10-717 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective December 31, 2016, changed the caption of the case, and revised the Use Note; after "(include the terms of probation alleged to have been violated and the factual basis for revocation of probation", added "including dates of violation", and in the Use Note, deleted "Rules 10-105 [Rule 10-104 NMRA], 10-105.1 [Rule 10-105 NMRA] and 10-105.2 [Rule 10-106 NMRA] NMRA" and added "Rules 10-104, -105, -106 NMRA".

The 1999 amendment, effective August 1, 1999, deleted "(PROBATION) (CONSENT DECREE)" preceding "PROBATION" in the heading; substituted "probation" for "(probation) (the consent decree)" and deleted "and is in need of care or rehabilitation" at the end of the first paragraph; deleted "or consent decree" following "terms of probation" and substituted "revocation of probation" for "such allegations" in the parenthetical at the end of the fourth paragraph; added the use note; and made gender neutral changes and minor stylistic changes throughout the form.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-418 NMRA was recompiled and amended as 10-717 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-718. Sealing order.

[For use with Rule 10-262 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

SEALING ORDER

This matter came before the court and the court FINDS as follows (*check one*):

[ ] (1) two years have elapsed since the final release of the person from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision;

[ ] (2) within the two years immediately prior to filing the motion, the person has not been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and there is no pending proceeding seeking such a conviction or finding; and

[ ] (3) the person is eighteen years of age or older or the court finds that good cause exists to seal the records prior to the child's eighteenth birthday.

OR

[ ] The children's court attorney has notified this court that the petition in this case, which is concluded, did not result in an adjudication of delinquency.

OR

[ ] The Children, Youth and Families Department (CYFD or department) has notified this court that _____ (*insert name of child*) has been released from the court-ordered supervision or custody of the department or has otherwise completed the terms of his or her disposition or other non-custodial requirements, or that the child has reached his or her eighteenth (18th) birthday, whichever occurs later; that the department has sealed the records and files of the child in the department's possession; and that the child's records and files must be sealed.

IT IS THEREFORE ORDERED THAT the files and records in this case shall be sealed and that the clerk of this court shall deliver or mail copies of this sealing order to the Legal Administrator, Public Records Custodian, CYFD Office of General Counsel.

IT IS FURTHER ORDERED THAT the department shall notify all entities requiring notice.[1]

IT IS FURTHER ORDERED THAT, upon entry of this sealing order, the proceedings in the case shall be treated as if they never occurred; the findings, orders, and judgments shall be vacated, and all index references shall be deleted.

IT IS FURTHER ORDERED THAT all persons and agencies to whom this sealing order is delivered shall immediately seal their delinquency case records, and reply to any inquiry that no record exists with respect to the delinquency case that is the subject of this sealing order.

_____

District Judge

CERTIFICATE OF SERVICE

I certify that I delivered or mailed a copy of this order to the department.

_____

Clerk

_____

Date

USE NOTES

1. CYFD shall deliver this order to all entities having custody of records or files subject to this order, including but not limited to the Children's Court Attorney division of the District Attorneys Office; the law enforcement office having custody of the child's law enforcement files and records; counsel of record at the time of disposition; and the person who is the subject of this order at the person's last known address.

[Approved by Supreme Court Order No. 06-8300-030, effective January 1, 2007; as amended by Supreme Court Order No. 12-8300-024, effective for all cases filed or pending on or after January 7, 2013; 10-420 recompiled and amended as 10-718 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-024, effective January 7, 2013, provided findings regarding persons who are eighteen years of age or older and who have been released from custody and supervision; specified the persons and entities to whom the clerk is required to give a copy of the sealing order and the documents that are to be deleted; at the top of the form, added directions for use of the form; added the first sentence of the findings; added the first paragraph of the three findings; in the third paragraph of findings, after "released from court –ordered supervision", added "or custody", after "custody of the department, deleted "that two (2) years have elapsed since the release; and that the department had not received any new allegations of delinquency regarding _____ (*insert name of child*) during that time period" and added the remainder to the sentence; deleted the former sentence "The Court has further been provided with the following names and addresses of the persons or agencies to whom the sealing order shall be delivered or mailed." and deleted the former list of persons and entities to whom the sealing order was required to be given, that consisted of the Children's Court Attorney, CYFD, law enforcement officers,

departments and central depositories having custody of law enforcement files and records, other agencies having custody or records or files subject to the order, counsel of record , and persons subject to the order; in the first order, after “sealing order to the”, deleted “persons and agencies listed herein” and added “Legal Administrator, Public Records Custodian, CYFD Office of General Counsel”; added the second order; in the third order, after “as if they never occurred”, added “the findings, orders, and judgments shall be vacated”; in the fourth order, after “whom this sealing order is”, deleted “directed” and added “delivered”, after “sealing order is delivered shall”, added “immediately seal their delinquency case records, and”, and after “record exists with respect to the”, deleted “person who”, and added “delinquency case that”; changed the signature line from “Children’s Court Judge” to “District Judge”; in the Certificate of Service, after “copy of this order to the” deleted “above-named persons and agencies at the above-listed addresses” and added “department”; and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-420 NMRA was recompiled and amended as 10-718 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-719. Probation order and agreement.

[For use with Rule 10-261 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN’S COURT

Cause No: _____
File No: _____

In the Matter of

_____,
a Child.

PROBATION ORDER AND AGREEMENT

I. ORDER.

Child, _____ (*name of child*), is hereby placed on probation beginning _____ (*date*) and ending no later than _____ (*date*), for the following delinquent act(s) and/or probation

violation(s):
_____.

Period of Probation:

[ ] 6 month Consent Decree
[ ] 6 month Consent Decree with no opposition to extend
[ ] Extended Consent Decree not to exceed one (1) year
[ ] Probation up to 1 year
[ ] Probation up to 2 years
[ ] Probation up to the age of 21

Time Reduction1: _____

_____

_____

_____

II. AGREEMENT.

Child:

I, _____ (*name of child*), agree to participate in developing a plan of care that will help support my success on probation, and I have the ability to earn early release.[2]

Standard Terms. I further agree to the following standard terms of probation:

_____ 1. **General Behavior.** I will obey all laws.

_____ 2. **Reporting and Visits.** I will/understand:

a. Report in person to the Probation Officer/designee as required;

b. Keep all appointments arranged by the Probation Office;

c. The Probation Officer/designee may visit me at any location, including my home, school, or work site.

_____ 3. **Residence.**

a. I will stay at _____.

b. I will be under the physical custody and care of _____ (*Parent/Guardian/Custodian*).

c. I will not be under another person's custody and care without prior approval from the Probation Office.

d. I will notify the Probation Office within twenty-four (24) hours of any changes of location or residence.

e. I will first get permission from the Probation Officer/designee if I leave the County or the State or will be away from my location or residence for more than twenty-four (24) hours.

_____ 4. **Weapons – Alcohol – Drugs.** I will not:

a. Use or possess any firearms or other weapons,

b. Use or possess any alcohol,

c. Use or possess any illegal drugs,

d. Use or possess any illegal synthetic substances,

e. Use or possess any harmful mind or mood altering substances,

f. Use or possess medications not legally prescribed for my use,

g. Use or possess any drug paraphernalia.

_____ 5. **Search and Seizure.** I will:

a. Allow the probation department, with pre-approval from the Chief Juvenile Probation Officer, to conduct a warrantless search of my person and property upon reasonable suspicion to believe the search will produce evidence of a violation of probation.

b. Submit to drug and alcohol testing upon request by my Probation Officer/designee.

Special Terms. I agree to the following special terms of probation:

_____ _____
_____
_____
_____

I further understand the following:

a. The Probation Officer/designee may use incentives, interventions, and graduated sanctions to promote my progress on probation.

b. Any changes to the terms of my probation will require approval; and

c. If I do not follow these terms of probation, it can result in further action by the court up to and including a revocation or extension of my probation period or a commitment.

Parent/Guardian/Custodian:

I, _____ (*name(s) of P/G/C*), agree to support and help in my child's successful completion of all probation requirements, including creating and following his/her plan of care.

_____ _____
Initials Initials

Approved and agreed to by:

_____ _____
Child Date P/G/C Date

_____ _____
JPO Date P/G/C Date

_____ _____
Child's Attorney Date Children's Court Attorney Date

It is ORDERED that the above agreed to terms of probation be approved and adopted.

_____
Children's Court Judge Date

Approved and Recommended by:

_____
Special Master Date

USE NOTES

1. The court may order a time reduction to provide incentives to promote compliance and progress with the terms of probation. A time reduction conditions a shorter period of probation on the child's compliance with all standard terms of probation and with the incentive term(s) identified by the court. An incentive may be a term in addition to any standard or special term, or it may be a standard or special term completed in a specific period of time. The conditions of the time reduction should be

specific and clearly stated. One example of using a standard term of probation as an incentive could be ordering one month of time reduction for each month of sobriety. An example of using a special term could be allowing a child who is ordered to juvenile drug court to be released from probation upon completion. Because a time reduction is meant to encourage positive behavior, non-compliance with an incentive term cannot provide grounds for the court to extend or revoke probation or to impose other punitive sanctions.

2. The Probation Department, the child, and the child's family shall develop a plan of care for the child as soon as practicable after the entry of this order. The plan of care provides an individualized opportunity for the child to become invested in his or her probation and supports the child's success by providing an incentive for possible early release by the Probation Department. *Accord* NMSA 1978, § 32A-2-23(C) ("A child shall be released by an agency and probation or supervision shall be terminated . . . when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment."). The plan of care should be narrowly tailored to address the specific child's risks and needs. Thus, the participation and input of the child and the child's family is critical in developing a plan of care that meets the child's individual needs. Full or partial compliance with the plan of care may result in early release at the Probation Department's discretion without judicial approval. *But see id*. ("A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority."). Non-compliance with the plan of care, however, cannot provide grounds for the court to extend or revoke probation or to impose other punitive sanctions.

[Approved by Supreme Court Order No. 18-8300-011, effective for all cases filed on or after December 31, 2018.]

10-721. Subpoena.

[For use with Rule 10-143 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

SUBPOENA

SUBPOENA FOR[1]

[ ] APPEARANCE OF PERSON FOR
[ ] STATEMENT
[ ] DEPOSITION
[ ] _____ (type of hearing)
[ ] SUBPOENA FOR DOCUMENTS OR OBJECTS [2]

TO:

_____
__

YOU ARE HEREBY COMMANDED TO:

[ ] appear to testify at the taking of a deposition in the above case:
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

[ ] appear to testify at a hearing
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

[ ] permit inspection of the following described documents or objects _____
_____
_____
_____
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.).

[ ] appear to give a statement
Place: _____
Date: _____ Time: _____ (a.m.) (p.m.)

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s)

_____
_____

_____
_____

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

_____, _____.

_____
Judge, clerk or attorney

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of_____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena[, a witness fee in the amount of $ _____, and mileage in the amount of $ _____].[3]

_____
Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____ , _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena[, a witness fee in the amount of $ _____, and mileage as provided by law in the amount of $ _____].[3]

_____
Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, _____ (*date*).

_____
Judge, notary or other officer authorized to administer oaths

THIS SUBPOENA issued by or at request of:

_____
Name of attorney of party

_____
Address

_____
Telephone

CERTIFICATE OF SERVICE BY ATTORNEY[4]

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (*delivery*) (*mail*) on this ____ day of _____, _____:

(1) _____
(*Name of party*)

_____
(*Address*)

(2) _____
(*Name of party*)

_____
(*Address*)

_____
Attorney

_____
Signature

_____
Date of signature

TO BE PRINTED ON EACH SUBPOENA

1. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

3. Payment of per diem and mileage for subpoenas issued by a children's court attorney or an attorney appointed by the court is made pursuant to regulations of the Administrative Office of the Courts or to policies or procedures of the Children, Youth and Families Department. The bracketed language should be deleted if the subpoena is issued by a children's court attorney or an attorney appointed by the court.

A subpoena by a private party or corporation must be accompanied by the payment of one full day's per diem. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act.

4. To be completed only if the subpoena is commanding production of documents and things before trial. If the subpoena is commanding production of documents and things before trial, it must be served on each party in the manner provided by Rules 5-103, 5-103.1 or 5-103.2 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

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

10-722. Affidavit for arrest warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

AFFIDAVIT FOR ARREST WARRANT[1]

The undersigned, being duly sworn, states that there is reason to believe that on or about the _____ day of _____, _____, in _____ County, New Mexico, the above-named respondent, a child, _____ (*insert date of birth or approximate age*)

(*check appropriate boxes*)

[ ] committed the delinquent act of:

_____ (*state common name of delinquent act or acts*)

[ ] contrary to the law of the State of New Mexico

[ ] contrary to ordinance _____ (*specify the number of the section or subsection defining the offense and the title and date of passage of the ordinance*)[2]

[ ] violated conditions of probation, release, or supervised release.

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named respondent

[ ] is delinquent

[ ] or violated conditions of release, probation, or supervised release _____

_____ (*include facts in support of the credibility of any hearsay relied upon*).

_____
Affiant's Signature

_____
Title (*if any*)

_____
Affiant's Name
(*please print or type*)

Subscribed and sworn to before me in the above-named county of the State of New Mexico this _____ day of _____, _____ .

_____
Officer Authorized to Administer Oaths

_____
Title

USE NOTES

1. Either this form or the form approved for arrest warrants in adult criminal proceedings may be used in delinquency cases in the Children's Court.

2. *See* NMSA 1978, § 35-15-2.

[As amended by Supreme Court Order No. 10-8300-046, effective February 14, 2011; 10-409 recompiled and amended as 10-722 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case and revised the Use Note.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-046, effective February 14, 2011, deleted the former case caption and added the current case caption; in the first paragraph, after "being duly sworn", deleted "on his oath"; after "states that", deleted "he has" and added "there is", and after "above-named respondent, a child", added the remainder of the sentence; in the third "box", after "the title", added "and date of passage" and after "of the ordinance" deleted "and the date of passage"; deleted the former fourth "box" which provided a statement of the reason the child is in need of supervision and added the current fourth "box"; and in the former sixth "box", deleted "in need of supervision" and added "or violated conditions of release, probation, or supervised release".

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-409 NMRA was recompiled and amended as 10-722 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-723. Arrest warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

_____, Child Date: _____
DOB: _____ SSN: _____
Gender:_____ Race:_____
AKA: _____ Gang affiliation:_____
Address: _____
Height:_____ Weight: _____ Eyes: _____ Hair:_____

ARREST WARRANT[1]

THE STATE OF NEW MEXICO TO ANY OFFICER
AUTHORIZED TO EXECUTE THIS WARRANT

BASED ON A FINDING OF PROBABLE CAUSE, YOU ARE HEREBY COMMANDED to arrest the above-named respondent, a child, and deliver said child without unnecessary delay to a place of detention authorized under the Children's Code to answer the charge of _____ (*state common name and description of offense charged*). Said child is alleged to be

(*check one*)

[ ] a delinquent child

[ ] in violation of conditions of probation, release, or supervised release.

Dated this _____ day of _____, _____.

_____
Judge, District Court
Children's Court Division

RETURN WHERE RESPONDENT IS FOUND

I arrested the above-named respondent on the _____ day of _____, _____, and served a copy of this Warrant on the _____ day of _____, _____, and immediately contacted the local juvenile probation officer.

_____
Signature

_____
Title

Upon arrest, immediately contact the juvenile probation officer.

USE NOTES

1. Either this form or the form approved for arrest warrants in adult criminal proceedings may be used in delinquency cases in the Children's Court.

[As amended by Supreme Court Order No. 10-8300-046, effective February 14, 2011; 10-410 recompiled and amended as 10-723 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-046, effective February 14, 2011, deleted the former case caption and added the current case caption that includes blanks for personal identification information; in the first sentence, added "BASED ON A FINDING OF PROBABLE CAUSE", after "without unnecessary delay"; deleted "to probation services or"; and after "Children's Code" added the remainder of the sentence; in the second "box", deleted "a child in need of supervision" and added the current language; in the part of the form entitled "RETURN WHERE RESPONDENT IS FOUND", in the first sentence, after "day of" and blanks, added the remainder of the sentence; and after the signature and title lines, added the last sentence.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-410 NMRA was recompiled and amended as 10-723 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-724. Affidavit for search warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

AFFIDAVIT FOR SEARCH WARRANT[1]

Affiant, being duly sworn, upon his oath, states that [he] [she] has reason to believe that on the following premises or person of _____

_____

_____

_____ (*here name the person and/or describe the premises*) in the city or county

designated above, there is now being concealed _____

_____

_____

(*set forth the name of the person or describe the property as particularly as possible*) and that the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

_____

_____

(include facts in support of the credibility of any hearsay relied upon; if necessary, continue on reverse side of this form or on a separate page or pages).

_____
Affiant's Signature

_____
Official Title *(if any)*

Subscribed and sworn to before me in the above-named county of the State of New Mexico this _____ day of _____, _____.

_____
Judge, Notary or other officer authorized to administer oaths

_____
Official Title

USE NOTES

1. The affidavit shall be filed in the same file as the search warrant. If no criminal proceedings are filed, the affidavit and warrant shall be filed in a miscellaneous file. Either this form or the form approved for an affidavit for search warrant in an adult criminal proceeding may be used in the children's court.

[As amended by Supreme Court Order No. 11-8300-044, effective January 16, 2012; 10-411 recompiled and amended as 10-724 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-044, effective January 1, 2012, rewrote the form and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-411 NMRA was recompiled and amended as 10-724 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-725. Search warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

SEARCH WARRANT[1]

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

Proof by Affidavit for Search Warrant, having been submitted to me I am satisfied that there is probable cause that the person named or the property described in the affidavit is located where alleged in the affidavit and I find that grounds exist for the issuance of the search warrant. A copy of the affidavit is attached and made part of this warrant.

YOU ARE HEREBY COMMANDED to search forthwith the person or place described in the affidavit between the hours of 6:00 a.m. and 10:00 p.m., unless I have specifically authorized a night time search, for the person or property described in the affidavit, serving this warrant together with a copy of the affidavit and if the person or property be found there, to seize the person or the property and hold for safekeeping until further order of the court.

You are further directed to prepare a written inventory of any person or property seized. You are further directed to file the return and written inventory with the court promptly after its execution.

Dated this _____ day of _____, _____.

_____
District Judge

AUTHORIZATION FOR NIGHT TIME SEARCH

I further find that reasonable cause has been shown for night time execution of this warrant. I authorize execution of this warrant at any time of the day or night for the following reasons:

_____

_____

_____

(*describe the reasons why a night time search is necessary*).

_____
District Judge

RETURN AND INVENTORY

I received the attached Search Warrant on _____, _____, and executed it on _____, _____, at _____ o'clock [a.m.[[p.m.]. I searched the person or premises described in the warrant and I left a copy of the warrant with _____ (*name the person searched or owner at the place of search*) together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the Warrant: _____

_____
(*attach separate inventory if necessary*).

This inventory was made in the presence of _____ (*name of person executing the search warrant*) and _____ (*name of owner of premises or property. If not available, name of other credible person witnessing the inventory*).

This inventory is a true and detailed account of all the property taken by me on the warrant.

_____
Signature of Officer

_____
Signature of owner of property or other witness

Return made this _____ day of _____, _____, at _____ [a.m.] [p.m.]

_____
[Judge] [Clerk]

After careful search, I could not find at the place, or on the person described, the property described in the Warrant.

_____
Officer

_____
Date

USE NOTES

1. Either this form or the form approved for search warrants in adult criminal proceedings may be used in the children's court.

[As amended by Supreme Court Order No. 11-8300-044, effective January 16, 2012; 10-412 recompiled and amended as 10-725 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-044, effective January 1, 2012, rewrote the form and added the Use Note.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-412 NMRA was recompiled and amended as 10-725 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-726. Bench warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

_____, Child Date: _____
DOB: _____ SSN: _____
Gender:_____ Race:_____
AKA: _____ Gang affiliation:_____
Address: _____
Height:_____ Weight: _____ Eyes: _____ Hair:_____

BENCH WARRANT

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

YOU ARE HEREBY COMMANDED to arrest _____ and bring (him) (her) forthwith before this court to answer the following charges:

(*check appropriate box or boxes*)

[ ] Failure to appear for
_____

[ ] Failure to comply with the conditions of release imposed by this court

[ ] Failure to comply with the conditions of probation imposed by this court

[ ] Child may be released on appropriate conditions following arrest if the probation officer determines that the child's failure to appear resulted from a lack of notice or other circumstances beyond the child's control and it is likely the child will appear for a future court setting.

_____
District Judge

RETURN

Child was arrested and taken into custody on the _____ day of _____, 20__, and I contacted the local juvenile probation officer.

_____	_____	_____
Signature	Deputy	Date

PROBATION OFFICER DETERMINATION

The child was

[ ] released on the following conditions: _____

[ ] detained at _____.

_____	_____	_____
Signature	Title	Date

[ ] telephonic authorization by

Distribution instructions:

1 copy-court file 1 copy-police/sheriff's office 1 copy-district attorney
1 copy-probation dept. 1 copy-Child's attorney

[Adopted by Supreme Court Order No. 10-8300-046, effective February 14, 2011; 10-412A recompiled and amended as 10-726 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-412A NMRA was recompiled and amended as 10-726 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-727. Waiver of right to have a children's court judge preside over hearing.

[For use with Rule 10-163(C)(2) NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

WAIVER OF RIGHT TO HAVE A CHILDREN'S COURT JUDGE PRESIDE OVER HEARING[1]

I, the child in the above-named proceedings, have been advised of my right to have a children's court judge preside over all hearings in my case.

I understand that a special master has been appointed by a children's court judge to preside over the _____ (*type of hearing*) hearing on _____ (*date*).

I understand that the special master may preside over the hearing only if I waive my right to a children's court judge.

Being fully advised, I waive my right to have a children's court judge preside over the hearing referenced above.

_____ _____
Child Date

_____ _____
Child's Attorney Date

APPROVED:

_____
Children's Court Special Master

_____
Children's Court Attorney

USE NOTES

1. This form shall be used when the child's consent is required before a special master may preside over a hearing in a delinquency proceeding. *See* Rule 10-163(C)(2) NMRA. The child's consent is not necessary for a special master to make a judicial determination of probable cause, to preside over a detention hearing, to advise a party of basic rights, or to appoint counsel, a guardian, or a custodian. *See id*.

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

10-731. Waiver of arraignment in youthful offender proceedings.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

WAIVER OF ARRAIGNMENT AND ENTRY OF DENIAL OF CHARGES IN YOUTHFUL OFFENDER PROCEEDINGS

I was given a copy of the petition which charges me with committing a youthful offender offense [and a delinquent act]. I have read the petition, and it has been explained to me by my attorney. I understand what I am charged with and the possible

penalties that I face, ranging from being sentenced as an adult to prison time, to a disposition as a delinquent child in need of care or supervision.

I FURTHER UNDERSTAND THAT I HAVE THE FOLLOWING RIGHTS:

1. the RIGHT to personally appear before the children's court and to admit or deny the charge(s) and to have my rights explained;

2. the RIGHT to trial by jury;

3. the RIGHT to the assistance of an attorney at all stages of the proceedings and to have an attorney appointed free of charge if I cannot afford one;

4. the RIGHT to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony;

5. the RIGHT to present evidence on my own behalf and to have the State compel witnesses of my choosing to appear and testify; and

6. the RIGHT to remain silent.

With this knowledge and understanding, I give up the right to personally appear before the children's court for arraignment and hereby enter a denial of the youthful offender offense(s) [and delinquent act(s)] charged in the above-referenced petition.

_____
Signature of Child

_____
Date

I have explained to the child the child's right to personally appear before the children's court to enter a denial and to have the child's rights explained by the Judge. I am satisfied that the child understands the waiver of his or her rights.

_____
Attorney for Child

APPROVED:

_____

[ ] Children's Court Judge

[ ] Children's Court Hearing Officer

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; 10-432 recompiled and amended as 10-731 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-432 NMRA was recompiled and amended as 10-731 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-732. Waiver of preliminary examination and grand jury proceeding.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

WAIVER OF PRELIMINARY EXAMINATION AND GRAND JURY PROCEEDING

I, the respondent child in the above cause, state that I have been advised that

1. I have a right to a preliminary examination and to have a judge determine if there is probable cause to bind the case over to the Children's Court for trial on the charges in the petition;

2. If I do not receive a preliminary examination, I have the right to have a grand jury hear the evidence in the case and to determine if there is probable cause to return an indictment for trial in the Children's Court; and

3. I do not have to give up my right to a preliminary examination or a grand jury proceeding before I enter a plea or before I am brought to trial in the Children's Court on the charges in the petition.

Knowing each of my rights as stated above, I nevertheless knowingly, freely, and voluntarily waive my right to a preliminary examination and a presentation to a grand jury.

_____
Signature of Respondent Child

_____
Date

_____
Attorney for Respondent Child

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; 10-433 recompiled and amended as 10-732 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-433 NMRA was recompiled and amended as 10-732 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-741. Order for evaluation of competency to stand trial.

[For use with Rule 10-242 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ORDER FOR EVALUATION OF COMPETENCY TO STAND TRIAL

This matter came before the court on the motion of _____, and after being fully advised, the court **FINDS** good cause exists, and

IT IS HEREBY ORDERED as follows:

1. The proceedings in this matter shall be stayed pending a determination of competency.

2. If the child is charged with an offense that would be a misdemeanor if committed by an adult, only the first evaluation listed below shall be performed. If the child is charged with an offense that would be a felony if committed by an adult, both the first and second evaluations listed below shall be performed.

[ ] An evaluation of the child's competency to stand trial shall be performed by ____ _____ (*insert name and address of a doctoral level licensed psychologist performing the evaluation*)[1]; the report shall, at a minimum, contain an evaluation of the current ability to stand trial, measured by the capacity of the child to understand the proceedings, to consult meaningfully with counsel through the adjudication proceedings, measured by a capacity with a reasonable degree of rational and factual understanding of the proceedings, and to assist in the defense.[2]

[ ] If the child is charged with an offense that would be a felony if committed by an adult and the child is found to be incompetent, an evaluation of whether the child can be treated to competency shall be performed by _____ _____ (*insert name and address of a doctoral level licensed psychologist overseeing/supervising the evaluation*). A proposed treatment plan shall be included in the report.[3]

3. Defense counsel shall cause this order to be served so that it is received by the evaluator no later than five (5) days from the date of entry of this order and shall file with the court a certificate of service.

4. Child is in detention at _____ _____ or Child's address and telephone number are _____ _____.

5. If the evaluator is unable to contact the child, the evaluator shall immediately contact defense counsel, who will contact the child and set up the evaluation or notify the court that the evaluator cannot contact the child.

6. A copy of the evaluation report shall be sent to the child's attorney

[ ] within thirty (30) days of the date of receipt of this order if the child is in custody.

[ ] within forty-five (45) days of the date of receipt of this order if the child is not in custody.

7. If the child needs to be transported to effect the evaluation, a separate transport order needs to be obtained.

8. Defense counsel shall file a certificate of service with the court showing the date the evaluation report was received.

_____
DISTRICT JUDGE

_____
Children's Court Attorney

_____
Attorney for Child

USE NOTES

1. The evaluator will be selected from a list supplied by the Children, Youth and Families Department.

2. *See State v. Rotherham*, 1996-NMSC-048, 122 N.M. 246, 251, 923 P.2d 1131, 1136 (citing *Dusky v. United States*, 362 U.S. 402 (1960)).

3. *See* NMSA 1978, § 32A-2-21(G) (2005) ("If the child has been accused of an act that would be considered a misdemeanor if the child were an adult and the child is found to be incompetent to stand trial, the court shall dismiss the petition with prejudice and may recommend that the children's court attorney initiate proceedings pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.").

[Adopted by Supreme Court Order No. 11-8300-030, effective September 9, 2011; 10-496A recompiled and amended as 10-741 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496A NMRA was recompiled and amended as 10-741 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-742. Ex parte order for forensic evaluation.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

EX PARTE ORDER FOR FORENSIC EVALUATION

This matter came before the court on the ex parte motion of counsel for Child, pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985), and Article II, Sections 10, 14, 15, and 18 of the New Mexico Constitution, and after being fully advised, the court **HEREBY ORDERS** as follows:

1. The forensic evaluator shall provide a confidential forensic evaluation for the benefit of the defense on such issues as defense counsel specifically raises and believes are likely to be a significant factor in the defense. The forensic evaluator may be provided by Department of Health contract or retained through the New Mexico Public Defender Department.

2. The results of the examination, including underlying data, are confidential and are not to be disclosed to anyone other than defense counsel without a court order.

3. Rules 10-232(A) and 10-241(D) NMRA govern disclosure relating to any evaluations conducted.[1]

4. The forensic evaluator shall meet with Child no later than two weeks from the time of service of this order.

5. This order is to be sealed by the clerk's office upon filing and not unsealed without a court order.

_____
DISTRICT JUDGE

_____
Attorney for Child

USE NOTES

1. When the Rules of Criminal Procedure for the District Courts apply, use Rules 5-502, 5-602, and specifically 5-602(E) NMRA. *See* Rule 10-101(A) NMRA.

[Adopted by Supreme Court Order No. 11-8300-034, effective September 9, 2011; 10-496E recompiled and amended as 10-742 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496E NMRA was recompiled and amended as 10-742 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-743. Order for diagnostic evaluation.

[For use with Sections 32A-2-17(B) and 32A-2-21(A) NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ORDER FOR DIAGNOSTIC EVALUATION

This matter came before the court on the motion of _____, and after being fully advised, the court **ORDERS** as follows:

1. A diagnostic evaluation of the child shall be performed by _____ _____ _____ (*insert name and address of a master level clinician who will perform the evaluation with independently licensed master or doctoral level oversight*)[1]; the report shall, at a minimum, contain a current description of the child, including behavioral health diagnoses (*if any*) and the present level of functioning, and recommended course of action regarding treatment and rehabilitation.

2. Defense counsel shall cause this order to be served so that it is received by the evaluator no later than five (5) days from the date of entry of this order and shall file with the court a certificate of service.

3. Child is in detention at _____
_____
or Child's address and telephone number are _____
_____.

4. If the evaluator is unable to contact the child, the evaluator shall immediately contact defense counsel, who will contact the child and set up the evaluation or notify the court that the evaluator cannot contact the child.

5. A copy of the evaluation report shall be sent to defense counsel

[ ] within fifteen (15) days of the date of receipt of this order if the child is in custody.

[ ] within thirty (30) days of the date of receipt of this order if the child is not in custody.

6. If the child needs to be transported to effect the evaluation, a separate transport order needs to be obtained.

7. Defense counsel shall file a certificate of service with the court showing the date the evaluation report was received.

_____
DISTRICT JUDGE

_____
Children's Court Attorney

_____
Attorney for Child

USE NOTES

1. The evaluator will be selected from a list supplied by the Children, Youth and Families Department.

[Adopted by Supreme Court Order No. 11-8300-030, effective September 9, 2011; 10-496B recompiled and amended as 10-743 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496B NMRA was recompiled and amended as 10-743 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-744. Order for pre-dispositional diagnostic evaluation.

[For use with Section 32A-2-17(A) NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ORDER FOR PRE-DISPOSITIONAL DIAGNOSTIC EVALUATION

This matter came before the court on the motion of _____, and after being fully advised, the court **ORDERS** as follows:

1. A pre-dispositional diagnostic evaluation of the child shall be performed by _____ _____ (*insert name and address of a master level clinician who will perform the evaluation with independently licensed master or doctoral level oversight*)[1]; the report shall contain, at a minimum, a current description of the child, an explanation of the child's delinquent behavior, and a recommended course of action regarding disposition.

2. Defense counsel shall cause this order to be served so that it is received by the evaluator no later than five (5) days from the date of entry of this order and shall file with the court a certificate of service.

3. Child is in detention at _____ _____ or Child's address and telephone number are _____ _____.

4. If the evaluator is unable to contact the child, the evaluator shall immediately contact defense counsel, who will contact the child and set up the evaluation or notify the court that the evaluator cannot contact the child.

5. A copy of the evaluation report shall be sent to defense counsel

[ ] within fifteen (15) days of the date of receipt of this order if the child is in custody.

[ ] within thirty (30) days of the date of receipt of this order if the child is not in custody.

6. If the child needs to be transported to effect the evaluation, a separate transport order needs to be obtained.

7. Defense counsel shall file a certificate of service with the court showing the date the evaluation report was received.

_____
DISTRICT JUDGE

_____
Children's Court Attorney

_____
Attorney for Child

USE NOTES

1. The evaluator will be selected from a list supplied by the Children, Youth and Families Department.

[Adopted by Supreme Court Order No. 11-8300-030, effective September 9, 2011; 10-496C recompiled and amended as 10-744 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496C NMRA was recompiled and amended as 10-744 NMRA, effective for all cases pending or filed on or after December 31, 2016.

10-745. Order for evaluation of amenability to treatment for youthful offender (requested by defense counsel).

[For use with Sections 32A-2-17(A)(3) and 32A-2-20 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

ORDER FOR EVALUATION OF AMENABILITY TO TREATMENT FOR A YOUTHFUL OFFENDER[1]

This matter came before the court on the motion of defense counsel, and after being fully advised, the court **ORDERS** as follows:

1. An evaluation whether the child is amenable to treatment or rehabilitation as a child in available facilities and whether the child is eligible for commitment to an institution for children with developmental disabilities or mental disorders shall be performed by _____
_____
(*insert name and address of a doctoral level licensed psychologist who will perform this evaluation*)[2]; the report shall contain, at a minimum, an evaluation whether the child is amenable to treatment or rehabilitation as a child in available facilities, whether the child is eligible for commitment to an institution for children with developmental disabilities or mental disorders, and a recommended course of action regarding disposition in youthful offender proceedings. The report shall address the following factors:

(a) the seriousness of the alleged offense;

(b) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(c) whether a firearm was used to commit the alleged offense;

(d) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(e) the maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history, and disability;

(f) the record and previous history of the child;

(g) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available; and

(h) any other factor relevant to amenability.

2. Defense counsel shall cause this order to be served so that it is received by the evaluator no later than five (5) days from the date of entry of this order and shall file with the court a certificate of service.

3. Child is in detention at _____
_____
or Child's address and telephone number are _____
_____.

4. If the evaluator is unable to contact the child, the evaluator shall immediately contact defense counsel, who will contact the child and set up the evaluation or notify the court that the evaluator cannot contact the child.

5. A copy of the evaluation report shall be sent to defense counsel who shall serve copies on the children's court attorney, defense counsel, and the court

[ ] within forty-five (45) days of the date of receipt of this order if the child is in custody.

[ ] within sixty (60) days of the date of receipt of this order if the child is not in custody.

6. If the child needs to be transported to effect the evaluation, a separate transport order needs to be obtained.

7. Defense counsel shall file a certificate of service with the court showing the date the evaluation report was received.

_____
DISTRICT JUDGE

_____
Children's Court Attorney

_____
Attorney for Child

USE NOTES

1. This form is for use only in youthful offender cases.

2. The evaluator will be selected from a list supplied by the Children, Youth and Families Department.

[Adopted by Supreme Court Order No. 11-8300-030, effective September 9, 2011; 10-496D recompiled and amended as 10-745 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016, changed the caption of the case.

Recompilations. — Pursuant to Supreme Court Order No. 16-8300-017, former 10-496D NMRA was recompiled and amended as 10-745 NMRA, effective for all cases pending or filed on or after December 31, 2016.