Children's Court Rules and Forms

ARTICLE 1
General Provisions; All Proceedings

Table of Corresponding Rules

Article 1 - General Provisions; All Procedures

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. 08-8300-042.

Former Rule No.	Corresponding New Rule No.
10-101	10-101
10-102	Withdrawn
10-103	Withdrawn
10-103.1	Recomp. as 10-111
10-103.2	Recomp. as 10-145
10-103.3	Recomp. as 10-113
10-104	Recomp. as 10-103
10-104.1	Withdrawn
10-105	Recomp. as 10-104
10-105.1	Recomp. as 10-105
10-105.2	Recomp. as 10-106
10-105.3	Recomp. as 10-104.1
10-106	Recomp. as 10-107
10-107	Recomp. as 10-112
10-108	Recomp. as 10-121 & 10-122
10-109	Recomp. as 10-143
10-110	Recomp. as 10-341
10-111	Recomp. as 10-163
10-112	Recomp. as 10-162
10-113	Recomp. as 10-165
10-114	Withdrawn
10-115	Recomp. as 10-141

New Rule No.	Corresponding Former Rule No.
10-101	10-101
10-102	New
10-103	10-104
10-104	10-105
10-104.1	10-105.3
10-105	10-105.1
10-106	10-105.2
10-107	10-106
10-111	10-103.1
10-112	10-107
10-113	10-103.3
10-114	New
10-115	New
10-121	10-108 (Part of rule recompiled)
10-122	10-108 (Part of rule recompiled)
10-131	10-131
10-132	10-132
10-133	10-133
10-134	10-134
10-135	10-135
10-136	10-136
10-137	10-137

10-116	Withdrawn	10-138	10-138
10-117	Recomp. as 10-144	10-141	10-115
10-118	Recomp. as 10-151	10-142	New
10-119	Recomp. as 10-152	10-143	10-109
10-120	Recomp. as 10-146	10-144	10-117
10-121	Recomp. as 10-164	10-145	10-103.2
10-131	10-131	10-146	10-120
10-132	10-132	10-151	10-118
10-133	10-133	10-152	10-119
10-134	10-134	10-161	New
10-135	10-135	10-162	10-112
10-136	10-136	10-163	10-111
10-137	10-137	10-164	10-121
10-138	10-138	10-165	10-113

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 [32A-1-1 NMSA 1978]:

(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 [32A-2-1 NMSA 1978];

(b) to be members of families in need of court-ordered services as defined in the Families in Need of Court-Ordered Services Act [32A-3B-1 NMSA 1978];

(c) to be abused or neglected as defined in the Abuse and Neglect Act [32A-4-1 NMSA 1978] including proceedings to terminate parental rights which are filed pursuant to the Abuse and Neglect Act;

(2) the Rules of Criminal Procedure for the District Courts govern the procedure:

(a) in all proceedings in the district court in which a child is alleged to be a "serious youthful offender" as defined in the Children's Code;

(b) in all proceedings in the Children's Court in which a notice of intent has been filed alleging the child is a "youthful offender" as that term is defined in the Children's Code. If the indictment or bind over order does not include a "youthful

offender" offense, any further proceedings for the offense shall be governed by the Children's Court rules;

(3) the Rules of Criminal Procedure for the Magistrate Courts govern all proceedings in the magistrate court in which a child is charged as a "serious youthful offender" or "youthful offender" as those terms are 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 charged as 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;

(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 a:

(a) summons and complaint;

(b) summons and petition;

(c) writ or warrant; and

(d) 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.]

ANNOTATIONS

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.

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."

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 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.

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 of N.M. 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*, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

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*, 93 N.M. 31, 595 P.2d 1221 (Ct. App. 1979).

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 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.

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

ANNOTATIONS

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. 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:

(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 (3) of Paragraph E 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), 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 either delinquency 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.** Except in delinquency 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.

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:

(a) the caption of the case, as provided in Rule 10-108 NMRA, including a statement which describes the action or relief requested;

(b) 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

(c) the name, address and telephone number of 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:

(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. **Failure to appear.** If the respondent in a delinquency proceeding fails to appear at the time and place specified in the summons, the court may:

(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.]

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.

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-104 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.

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

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.

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 order required by its terms to be served, 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, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

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

(1) "delivery of 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 of these rules;

(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 therein; or

(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 therein; and

(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 pleadings and other 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 pursuant to Rule 10-105 NMRA or Rule 10-106 NMRA. A paper filed by electronic means in compliance with Rule 10-106 NMRA constitutes a written paper for the purpose of applying these rules. 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.

[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.]

ANNOTATIONS

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.

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

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 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".

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 07-8300-12, 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

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 32-4-29 NMSA 1978.

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.

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. *Thatcher v. Arnall*, 94 N.M. 306, 610 P.2d 193 (1980)

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

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.

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.

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

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.

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.

10-107. Time.

A. **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court or by the Children's Code, the day of the act, event or default from which the designated period of time begins to run shall not be included, unless otherwise provided by these rules. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, or when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's day, Martin Luther King, Jr.'s birthday, Presidents day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day and any other day designated as a state or judicial holiday.

B. **Enlargement.** When, by these rules or by a notice given thereunder or by order of court, an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 10-211, 10-241 or 10-343 NMRA, except to the extent and under the conditions stated in those rules.

C. **For motions.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time

specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application.

D. **Additional time after service by mail.** Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

[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.]

ANNOTATIONS

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.

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.

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.

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*, 91 N.M. 393, 574 P.2d 1021 (Ct. App. 1978).

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.*, 120 N.M. 160, 899 P.2d 603 (Ct. App. 1995).

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

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.

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

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 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.

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

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.

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

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.

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order 08-8300-042, portions of former Rule 10-108 NMRA have been recompiled as Rule 10-121 NMRA, effective January 15, 2009.

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.

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.*, 110 N.M. 768, 800 P.2d 202 (Ct. App. 1990).

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.*, 110 N.M. 768, 800 P.2d 202 (Ct. App. 1990).

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

Recompilations. — Pursuant to Supreme Court Order 08-8300-042, portions of former Rule 10-108 NMRA have been recompiled as Rule 10-122 NMRA, effective January 15, 2009.

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.

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 Termination of Parental Rights of Melvin B.*, 109 N.M. 18, 780 P.2d 1165 (Ct. App. 1989).

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 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.

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".

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

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

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.

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

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.

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".

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*, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

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*, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

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*, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

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

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.

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."

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.

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

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.

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.

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*, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

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*, 103 N.M. 233, 704 P.2d 1109 (Ct. App. 1985).

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*, 89 N.M. 700, 556 P.2d 1176 (Ct. App. 1976).

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

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.

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

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".

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

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.

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.

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

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.

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.

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".

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 pursuant to 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 pursuant to 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, 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.

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

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

ANNOTATIONS

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. **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.

E. **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.]

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

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.

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

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 2011 amendment, approved by Supreme Court Order 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.

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*, 96 N.M. 440, 631 P.2d 1308 (1981).

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 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. All recommendations of the special master are contingent upon the approval of the children's court judge.

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.]

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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".

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 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.

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*, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

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

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*, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

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.*, 106 N.M. 123, 739 P.2d 992 (Ct. App. 1987).

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.*, 118 N.M. 538, 882 P.2d 1051 (Ct. App. 1994).

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*, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

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

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.

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.

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

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 10-407.1 and 10-407.2 and 10-407.3 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.

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.

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."

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) court records in delinquency proceedings protected by Section 32A-2-32 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.

(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.

[Adopted 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.]

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.

[Adopted 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.]

ANNOTATIONS

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.

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.]

ARTICLE 2
Delinquency Proceedings

Table of Corresponding Rules

Article 2 - Delinquency 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. 08-8300-042.

Former Rule No.	Corresponding New Rule No.
10-201	10-201
10-202	Withdrawn
10-203	Withdrawn
10-204	Recomp. as 10-211
10-204.1	Recomp. as 10-212
10-205	Recomp. as 10-223
10-206	Recomp. as 10-215
10-207	Withdrawn
10-208	Recomp. as 10-221

New Rule No.	Corresponding Former Rule No.
10-201	New
10-211	10-204
10-212	10-204.1
10-213	10-222
10-214	New
10-215	10-206
10-221	10-208
10-222	10-208A
10-223	10-205

10-208A	Recomp. as 10-222
10-208B	Recomp. as 10-224
10-209	Withdrawn
10-210	Withdrawn
10-211	Recomp. as 10-225
10-212	Withdrawn
10-213	Recomp. as 10-231
10-214	Recomp. as 10-232
10-215	Recompiled
10-216	Withdrawn
10-217	Recomp. as 10-234
10-218	Recompiled
10-219	Recomp. as 10-233
10-220	Recomp. as 10-241
10-221	Recomp. as 10-242
10-222	Recomp. as 10-213
10-223	Withdrawn
10-224	Recomp. as 10-227
10-224.1	Recomp. as 10-226
10-225	Recomp. as 10-228
10-226	Recomp. as 10-243
10-227	Recomp. as 10-244
10-228	Recomp. as 10-245
10-229	Recomp. as 10-246
10-230	Recomp. as 10-251
10-230.1	Recomp. as 10-252
10-231	Withdrawn
10-232	Recomp. as 10-261
10-233	Recomp. as 10-262
10-224	10-208B
10-225	10-211
10-226	10-224.1
10-227	10-224
10-228	10-225
10-231	10-213
10-232	10-214
10-233	10-219
10-234	10-217
10-241	10-220
10-242	10-221
10-243	10-226
10-244	10-227
10-245	10-228
10-246	10-229
10-251	10-230
10-252	10-230.1
10-261	10-232
10-262	10-233

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

The 1996 amendment, effective October 1, 1996, added "Preliminary inquiry" to the rule heading, rewrote Paragraphs A, B and C, and added Paragraph D.

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.

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*, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

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*, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

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*, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

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*, 96 N.M. 440, 631 P.2d 1308 (1981).

Rule does not apply to a petition to revoke probation; such petitions are governed by Rule 10-232. *State v. Doe*, 91 N.M. 364, 574 P.2d 288 (Ct. App. 1978).

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*, 94 N.M. 446, 612 P.2d 238 (Ct. App. 1980).

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*, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

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 offenses and parties; severance.

A. **Joinder of offenses.** Two or more offenses may 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 such respondents:

(1) when each of the respondents is charged with accountability for each offense included;

(2) when all of the respondents are charged with conspiracy and some of the respondents are also charged with one or more offenses 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 offenses 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 charge from proof of others.

C. **Motion for severance.** If it appears that a respondent or the state is prejudiced by the joinder of offenses or of parties by the filing of a statement of joinder for trial, the court may order separate trials of offenses, 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.]

ANNOTATIONS

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.

The 1998 amendment, effective May 1, 1998, rewrote this rule.

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".

10-213. Youthful offender proceedings; filing of notice.

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 request the court to treat the respondent child as a "youthful offender", as that term is defined in the Children's Code. At any time prior to the commencement of the adjudicatory proceeding, upon good cause shown, the court may permit the filing of a notice of intent to invoke an adult sentence.

B. **Probable cause determination.** Within fifteen (15) days after a notice of intent to invoke an adult sentence is filed, a preliminary hearing will be conducted by the court unless the case is presented to a grand jury or the respondent child waives the right to a preliminary hearing or grand jury. If the case is presented to a grand jury, the provisions of Section 31-6-1 NMSA et seq. shall apply, except as otherwise provided in these rules.

[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.]

Committee commentary. — Changing the time limit from ten to fifteen days in Paragraph A allows the ten-day requirement of notice of grand jury target to be met and eliminates the need to write special rules for grand jury proceedings. *See* Section 31-6-1 NMSA et seq.

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-222 NMRA was recompiled as Rule 10-213 NMRA, effective January 15, 2009.

The 1995 amendment, effective July 1, 1995, substituted "Youthful offender" for "Transfer" in the section heading and rewrote this rule.

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 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 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.

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*, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983)(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*, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983)(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

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.

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.

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".

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

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.

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.

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 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".

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.

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. 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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".

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

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.

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.

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".

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.]

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.

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.

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

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.

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".

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

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.

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.

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 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".

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).

10-226. Plea agreements.

A. **In general.** The court shall not participate in any plea discussions. A plea and disposition agreement entered into between the respondent child and the children's court attorney shall be submitted to the court substantially in the form approved by the Supreme Court.

B. **Hearing.** Prior to accepting a plea and disposition agreement, the court shall require the disclosure of the agreement in open court.

C. **Rejection of plea.** If the court rejects the 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, and advise the respondent child that if the respondent child persists in admitting the allegations or pleading no contest, the disposition of the case may be less favorable to the respondent child than that contemplated by the plea agreement.

[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.]

ANNOTATIONS

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.

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".

10-227. Admission; no contest plea; motion for consent decree.

A. **Response to petition.** The respondent child may:

(1) admit sufficient facts to permit a finding that the allegations of the petition are true; or

(2) enter a plea of no contest to the allegations in the petition; or

(3) in the case of a motion for consent decree, stand mute.

B. **Inquiry of 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 charges;

(2) the possible dispositions authorized by the Children's Code [32A-1-1 NMSA 1978] for the offense;

(3) the right to deny the allegations in the petition and have a trial on the allegations;

(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.

C. **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 a 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.

D. **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 in the petition. In determining the existence of a factual basis in the case of a motion for consent decree, the court shall not require any statement or admission from the child.

[As amended, effective August 1, 1999; November 1, 2000; July 1, 2002; Rule 10-224 NMRA, recompiled and amended as Rule 10-227 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]

Committee commentary. — This rule was amended in 2008 to reflect the changes to Section 32A-2-22(A) NMSA 1978 (2005) of the Children's Code.

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-224 NMRA was recompiled as Rule 10-227 NMRA, effective January 15, 2009.

Cross references. — For consent decrees, *see* Section 32A-2-22 NMSA 1978.

The 1999 amendment, effective August 1, 1999, deleted "and consent decrees" from the end of the section heading; deleted former Paragraph B, relating to consent decrees; redesignated former Paragraph C as Paragraph B, and in the introductory language of that paragraph, substituted "without addressing the child" for "or approve a consent decree without first, by addressing the respondent personally"; inserted "possible" in Subparagraph B(2); substituted "an admission waives" for "if he makes an admission or agrees to the entry of the consent decree, he is waiving" in Subparagraph B(4); rewrote Subparagraph B(5), which formerly read "the admission 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"; added Subsection C; in Paragraph D, deleted "or consent decree" following "admission" in the section heading and text, added "Factual" in the section heading, and substituted "disposition" for "judgment upon an admission or shall not approve a consent decree"; and deleted former Paragraph E relating to disposition of admission by respondent, former Paragraph F relating to disposition on acceptance of consent decree, former Paragraph G relating to inadmissibility of discussions, former Paragraph H relating to time limits, and former Paragraph I relating to rules of evidence; and made gender neutral and minor stylistic changes throughout the section.

The 2000 amendment, effective November 1, 2000, added Paragraph E.

The 2002 amendment, effective July 1, 2002, substituted "entering a plea of no contest to" for "declaring an intention not to" in Paragraph A(2).

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, changed the title from "Admissions" to "Admission; no contest plea; motion for consent decree"; in Paragraphs A, B and C, changed "child" to respondent child"; in Paragraph A, changed the title from "Admissions" to "Response to petition"; added Subparagraph (3) of Paragraph A; in Paragraph B, changed "accept an admission" to "accept an admission or a no contest plea, or grant a motion for consent

decree"; in Subparagraph (4) of Paragraph B, added "no contest plea, or motion for consent decree accepted by the court"; in Subparagraph (5) of Paragraph B, changed "admits the allegations of the petition" to "admits, pleads no contest or enters into a consent decree"; in Paragraph C, changed the title from "Ensuring that the admission is voluntary" to "Ensuring voluntariness", changed "not accept an admission" to "not accept an admission or plea of no contest, or grant a motion for consent decree", changed "determining that the admission is voluntary" to "determining that the admission, no contest plea, or a motion for consent decree is voluntary", and changed "plea agreement" to "plea agreement or motion for consent decree"; in Paragraph D, changed "enter a disposition" to "enter a disposition or consent decree", changed "factual basis for the admission" to "factual basis for the allegations in the petition", and added the last sentence; and deleted former Paragraph E which provided that this rule applied to admissions in delinquency and probation revocation proceedings.

Motion for consent decree held admission. — Where a motion for a consent decree signed by the child and his attorney states that the child does not object to the entrance of a consent decree, that statement declares the child's intention not to contest the allegations in the petition and thus is an admission under this rule. *State v. Doe*, 92 N.M. 354, 588 P.2d 555 (Ct. App. 1978).

Court has discretionary power to accept or refuse admission by a child, and so it was not an abuse of discretion to refuse to accept an admission when the consequence of such an acceptance would foreclose transfer. *State v. Doe*, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978)(decided before 1978 amendment).

Failure of trial court to follow procedures. — Child's admission may be invalidated by the court's failure to follow its affirmative duty under Paragraph C of this rule to ascertain whether the admission is supported by an adequate factual basis and whether it is knowing, intelligent, and voluntary. *In re Aaron L.*, 2000-NMCA-024, 128 N.M. 641, 996 P.2d 431.

Defendant does not have absolute right under federal constitution to have his guilty plea accepted. *State v. Doe*, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Probation revocation proceedings. — The requirements of Paragraph C of this rule apply to probation revocation proceedings. *In re Aaron L.*, 2000-NMCA-024, 128 N.M. 641, 996 P.2d 431.

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, "Defending the Criminal Alien in New Mexico: Tactics and Strategy to Avoid Deportation," see 9 N.M.L. Rev. 45 (1978-79).

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

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

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.

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.

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 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".

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*, 92 N.M. 354, 588 P.2d 555 (Ct. App. 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).

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

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.

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.

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.

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

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.

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".

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.

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

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".

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

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".

10-241. Insanity at time of commission of delinquent act; notice of incapacity to form specific intent.

A. **Defense of insanity.** Notice of the defense of insanity of the respondent child at the time of the commission of the delinquent act must be given within ten (10) days after service of the petition or within ten (10) days after an attorney is appointed or enters an appearance on behalf of the respondent child, whichever is later, unless upon good cause shown the court waives the time requirement of this rule.

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 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 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, 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.]

ANNOTATIONS

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.

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".

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".

10-242. Determination of competency to stand trial.

A. **How raised.** The issue of 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.

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. 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.]

Committee commentary. — This rule was changed in 2008 to reflect the changes to Section 32A-2-21(G) NMSA of the Children's Code that were enacted in 2005.

[As amended by Supreme Court Order 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

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*, 97 N.M. 189, 637 P.2d 1244 (Ct. App. 1981).

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. Adjudicatory hearing; 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 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 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. **Extension of time by children's court.** For good cause shown, the time for commencement of an adjudicatory hearing may be extended by the children's court judge provided that the aggregate of all extensions granted by the children's court judge may not exceed sixty (60) days.

E. **Extension of time by Supreme Court.** For good cause shown, the time for commencement of an adjudicatory 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 adjudicatory 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 adjudicatory hearing must be commenced.

F. **Effect of noncompliance with time limits.** If the adjudicatory hearing on any petition is not begun within the times specified in Paragraph A or B of this rule or within the period of any extension granted as provided in this rule, the petition may be dismissed with prejudice or the court may consider other sanctions as appropriate.

G. **Time waiver.** These limits may be waived through a waiver of time limits under NMSA 1978, § 32A-2-7 (2005).

[As amended, effective February 1, 1997; May 15, 2000; as recompiled and amended by Supreme Court Order 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 09-8300-003, effective April 6, 2009.]

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. The time limits in this rule for commencing an adjudicatory hearing are jurisdictional.

[As amended by Supreme Court Order 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

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 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 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".

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*, 90 N.M. 568, 566 P.2d 117 (Ct. App. 1977).

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.*, 120 N.M. 160, 899 P.2d 603 (Ct. App. 1995).

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 (1998).

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 (1998).

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*, 90 N.M. 568, 566 P.2d 117 (Ct. App. 1977).

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*, 90 N.M. 568, 566 P.2d 117 (Ct. App. 1977).

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*, 90 N.M. 568, 566 P.2d 117 (Ct. App. 1977).

"Appeal". — The term "appeal" in Subparagraph A(6) includes a request for review over which the appellate court lacks jurisdiction. *State v. Michael C.*, 106 N.M. 440, 744 P.2d 913 (Ct. App. 1987).

"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.*, 105 N.M. 192, 730 P.2d 495 (Ct. App. 1986).

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).

10-244. 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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "Delinquency proceedings" from the title.

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*, 78 N.M. 717, 437 P.2d 716 (1968).

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.

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.]

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 08-8300-042, effective January 15, 2009.]

Historical Background

Until the adoption of the first juvenile law in New Mexico in 1917 (Laws 1917, Chapter 4), New Mexico handled juvenile criminal offenders in the same manner as adult criminal offenders. From 1917 until 1968, New Mexico followed the general rule that, under the theory of parens patriae, juvenile proceedings were civil proceedings and therefore juveniles were not entitled to a right to a jury trial. See In re Santillanes, 47 N.M. 140, 152, 138 P.2d 503 (1943).

In 1968, the Supreme Court of New Mexico in *Peyton v. Nord*, 78 N.M. 717, 724, 437 P.2d 716 (1968) relied in part on In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) and held that a juvenile was entitled to a jury trial under the jury trial guaranties of Article 2, Section 14 of the New Mexico Constitution "as well as those of the Sixth Amendment of the United States Constitution . . .." In holding that a juvenile is entitled to a jury trial, the court reasoned that since juveniles were entitled to a jury trial as adult offenders at the time of the adoption of our state Constitution, under Article 2, Section 12, they cannot be denied this right merely because of a "change in terminology or procedure."

It is almost universally decided that a jury trial is not required by either the state or federal constitutions in delinquency proceedings unless a jury trial is provided for by statute. 100 A.L.R. 2d 1241. The United States Supreme Court has held a juvenile proceeding is not a "criminal prosecution" under the Sixth Amendment of the United States Constitution and therefore juveniles are not entitled to a jury trial under the United States Constitution. *McKeiver v. Pennsylvania*, 403 U.S. 528, 95 S. Ct. 1976, 29 L. Ed. 2d 647 (1971).

In *State v. Doe*, 90 N.M. 776, 568 P.2d 612 (Ct. App. 1977) the court referred to *McKeiver v. Pennsylvania*, supra, to support its conclusion that a jury trial in juvenile proceedings is not constitutionally mandated by the Sixth and Fourteenth Amendments of the United States Constitution and explains that the decision in *Peyton v. Nord*, supra, is applicable only to those situations where a felony is charged and not where the offense is a petty misdemeanor. The court held that Section 32-1-31A NMSA 1978 authorizes a jury trial only if the juvenile has committed a "district court offense." Rule 10-228 should not be construed as extending a right to trial by jury in cases where the delinquent act would have been a petty misdemeanor if committed by an adult.

The 1972 session of the legislature repealed the Juvenile Code of 1955 and enacted a new Children's Code, Section 32-1-31 NMSA 1978 of which provided that the child, parent, guardian, custodian or counsel in proceedings alleging delinquency may demand a jury trial. The New Mexico Supreme Court subsequently adopted Children's Court Rule 10-228 requiring that the demand for jury trial be made in writing within 10 days from the date the petition is filed or within 10 days from the appointment of an attorney, whichever is later.

In *State v. Doe*, 94 N.M. 637, 614 P.2d 1086 (Ct. App. 1980), the New Mexico Court of Appeals held that under *Peyton v. Nord*, supra, a juvenile has a right to a jury trial unless there is a waiver. Although there is dictum in *Peyton v. Nord*, supra, relating to waiver, the committee does not believe that case law in criminal cases relating to the issue of waiver was extended to juvenile proceedings by the *Peyton* decision. The supreme court by readopting Rule 10-228 concurs in this belief. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether or not the child committed the alleged delinquent acts. If no jury is demanded, the hearing will be by the court without a jury and all hearings on petitions other than those alleging delinquency will be without a jury. Jury trials will be conducted in accordance with rules promulgated under the provisions of Subsection C of Section 32-1-4 NMSA 1978.

ANNOTATIONS

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.

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.

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.

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*, 78 N.M. 717, 437 P.2d 716 (1968).

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.*, 120 N.M. 160, 899 P.2d 603 (Ct. App. 1995).

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*, 94 N.M. 637, 614 P.2d 1086 (Ct. App. 1980).

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*, 78 N.M. 717, 437 P.2d 716 (1968).

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.

10-246. 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 06-8300-04, 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

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.

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.

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.

The 2006 amendment, approved by Supreme Court Order 06-8300-04 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 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".

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*, 93 N.M. 31, 595 P.2d 1221 (Ct. App. 1979).

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.*, 118 N.M. 538, 882 P.2d 1051 (Ct. App. 1994).

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.*, 118 N.M. 538, 882 P.2d 1051 (Ct. App. 1994).

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 (1998).

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*, 94 N.M. 282, 609 P.2d 729 (Ct. App. 1980).

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.*, 118 N.M. 538, 882 P.2d 1051 (Ct. App. 1994).

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).

10-251. Judgments and appeals.

A. **Entry of judgment.** 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.

B. **Advisement of right to an appeal.** At the time of disposition 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.

C. **Appeals.** Appeals from judgments and dispositions on petitions alleging delinquency shall be governed by the Rules of Appellate Procedure.

[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.]

ANNOTATIONS

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.

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.

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*, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

State has the right to appeal judgments of the children's court. *State v. Doe*, 92 N.M. 354, 588 P.2d 555 (Ct. App. 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 § 106 et seq.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt, 8 A.L.R.3d 657.

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

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 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.

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 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 (2002).

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.

10-261. 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.

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.]

ANNOTATIONS

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.

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.

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*, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

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 (2002).

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 06-8300-30, 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

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.

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.

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.

ARTICLE 3
Abuse and Neglect Proceedings and Families in Need of Court Ordered Services

Table of Corresponding Rules

Article 3 - Abuse and Neglect Proceedings and Families in Need of Court Ordered Services

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. 08-8300-042.

Former Rule No.	New Rule No.	New Rule No.	Corresponding Former Rule No.
10-301	Recomp. as 10-311	10-301	New
10-302	Withdrawn	10-311	10-301
10-303	Recomp. as 10-315	10-312	10-305
10-304	Recomp. as 10-314	10-313	10-305.2
10-305	Recomp. as 10-312	10-314	10-304
10-305.1	Recomp. as 10-321	10-315	10-303
10-305.2	Recomp. as 10-313	10-321	10-305.1
10-306	Withdrawn	10-322	New
10-306.1	Recomp. as 10-335	10-331	10-308

10-307	Recomp. as 10-342	10-332	10-309
10-308	Recomp. as 10-331	10-333	10-310
10-309	Recomp. as 10-332	10-334	New
10-310	Recomp. as 10-333	10-335	10-306.1
10-311	Withdrawn	10-341	10-110
10-320	Recomp. as 10-343	10-342	10-307
10-321	Recomp. as 10-344	10-343	10-320
10-325	Recomp. as 10-345 & 10-346	10-344	10-321
10-330	Recomp. as 10-347	10-345	10-325 (Part of rule recompiled)
10-331	Withdrawn	10-346	10-325 (Part of rule recompiled)
10-350	Recomp. as 10-352	10-347	10-330
		10-351	New
		10-352	10-350

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

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.

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.

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.

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 06-8300-04, 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

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.

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".

The 2006 amendment, approved by Supreme Court Order 06-8300-04 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 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 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".

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 06-8300-04, 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; appointed counsel.

A. **Explanation of rights at first appearance.** At the first appearance of the respondent on an abuse or neglect petition or a termination of parental rights motion, if

the respondent is not represented by an attorney, the respondent shall be informed by the court of:

(1) the allegations of the petition or the 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; and

(4) the possible consequences if the allegations of the petition or the motion are found to be true.

B. **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.]

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*, 47 N.M. 140, 138 P.2d 503 (1943). 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).

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-304 NMRA was recompiled as Rule 10-314 NMRA, effective January 15, 2009.

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.

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.

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*, 96 N.M. 779, 635 P.2d 588 (Ct. App. 1981).

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.

[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.]

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.

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-303 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.

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.

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.

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*, 117 N.M. 95, 869 P.2d 283 (Ct. App. 1993).

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*, 103 N.M. 260, 705 P.2d 165 (Ct. App. 1985).

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.

10-321. 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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-042, effective January 15, 2009, deleted "abuse and neglect proceedings" in the title.

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 shall be deemed waived and shall not be allowed unless the court, for good cause shown, allows the same.

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.]

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.]

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 of N.M. ex rel. CYFD v. Cosme V.*, 2009-NMCA-094, 146 N.M. 809, 215 P.3d 747.

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 08-8300-042, effective January 15, 2009.]

ANNOTATIONS

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.

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.

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

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.

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.

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

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.

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.

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.

10-341. 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

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.

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.

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.

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

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.

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".

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".

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*, 103 N.M. 260, 705 P.2d 165 (Ct. App. 1985).

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, the date that the mandate or order is filed in the district court disposing of the appeal.

B. **Children’s court attorney.** The children’s court attorney shall represent the state at the adjudicatory hearing.

C. **Extension of time.** The time for commencement of an adjudicatory hearing may be extended by the:

(1) children’s court judge for good cause shown, provided that the aggregate of all extensions granted by the children’s court judge may not exceed thirty (30) days. The party seeking an extension of time shall file with the court a verified petition for extension concisely stating the facts that petitioner deems to constitute good cause for an extension of time to commence the adjudicatory 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; or

(2) Supreme Court, a justice thereof, or a judge designated by the Supreme Court, for good cause shown. 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 that petitioner deems to constitute good cause for an extension of time to commence the adjudicatory 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 adjudicatory hearing must be commenced.

D. **Effect of noncompliance with time limits.** If the adjudicatory hearing on any petition is not begun within the time specified in Paragraph A of this rule or within the period of any extension granted as provided in this rule, the petition may be dismissed with prejudice or the court may consider other sanctions as appropriate.

[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.]

Committee commentary. — The time limits in this rule are jurisdictional.

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

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-320 NMRA was recompiled as Rule 10-343 NMRA, effective January 15, 2009.

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).

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 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.

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.

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

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.

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.

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.

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

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.

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.

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

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.

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.

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

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.

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".

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

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.

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".

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).

ARTICLE 4
Children's Court Forms

10-401. Certificate.

[Rule 10-103 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

[State of New Mexico
v.
_____ , Respondent]
[State of New Mexico ex rel.
Children, Youth and Families Department, Petitioner]
[_____ , Petitioner]
[In the Matter of
_____ , a Child, and Concerning

_____ , No. _____
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 10-104 [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 NOTE

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.]

ANNOTATIONS

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

The 1995 amendment, effective September 1, 1995, rewrote the form and rewrote the use note.

10-402. Notice of Pendency of Action.

[For use with Rule 10-103 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

[State of New Mexico
v.
_____ , Respondent]

[State of New Mexico ex rel.
Children, Youth and Families
Department
In the Matter of
_____ , a Child, and Concerning
_____ , Respondent(s)]

No. _____

NOTICE OF PENDENCY OF ACTION

TO THE ABOVE-NAMED RESPONDENT(S):

You are hereby notified that an action has been filed against you in the said court and county by the State of New Mexico 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 petition)*]. The above proceeding could ultimately result in the termination of your parental rights. You are further notified that this matter will be heard in the Children's Court Division of the District Court in _____ County, New Mexico, thirty (30) days after the last publication of this notice.

WITNESS my hand and the seal of the District Court of the State of New Mexico.

Clerk of the District Court
Children's Court Division
By
Deputy

(COURT SEAL)

The name of the State's attorney is _____ , whose post office address is _____, New Mexico, and telephone number is _____.

USE NOTE

This form is to be used for service by publication. *See* Paragraph J of Rule 10-104 [Rule 10-103 NMRA]. *See also* Rule 10-401 NMRA.

[As amended, effective September 1, 1995.]

ANNOTATIONS

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

The 1995 amendment, effective September 1, 1995, rewrote the caption, substituted "Children, Youth and Families Department" for "Human Services Department", inserted the blank for relief sought in the first sentence, added the second sentence, rewrote the third sentence to provide the 30 day period, added the blank for the attorney's telephone number, and added the use note.

10-403. Summons.

[For use with Rule 10-103 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

[State of New Mexico
v.
_____ , Respondent]
[State of New Mexico ex rel.
Children, Youth and Families
Department,
In the Matter of
_____ , a Child and Concerning

_____ , Respondent(s)] No. _____

SUMMONS

TO: _____
Respondent
_____
Address

You are hereby summoned and required to serve upon _____ , the attorney for the Children, Youth and Families Department, whose address is set forth below, an answer to the petition which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service.

This proceeding could ultimately result in termination of parental rights.

Clerk of the District Court

Children's Court Division
By
Deputy

Dated: _____

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 petition 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 and then residing at the usual place of abode of respondent _____ .

[ ] to _____ , (custodial parent) (guardian) (custodian) (conservator) of respondent _____ *(used when respondent is a minor or an incompetent person).*

Fees: _____

Signature of person making service

Title *(if any)*

Children, Youth and Families Department
_____
(Name of attorney)
_____
(Mailing address)
_____
(Telephone number)

USE NOTE

A copy of the summons and a copy of the petition must be served on each respondent.

[As amended, effective September 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective September 1, 1995, rewrote the form and rewrote the use note.

10-404. Summons - Delinquency Proceeding.

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

State of New Mexico

v. No. _____

_____ , Respondent

SUMMONS
DELINQUENCY PROCEEDING[1]

TO: _____
Name of the respondent child

_____
Address

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.

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*) of the above-named child.

[ ] 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.

[ ] by delivering the summons and petition to _____ *(name of person),* _____ *(title of person authorized to receive service) (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 NOTE

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.

[As amended, effective September 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective September 1, 1995, rewrote the form and rewrote the use note.

10-404A. Summons - Delinquency Proceeding.

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

State of New Mexico

v. No. _____

_____ , Respondent

SUMMONS
DELINQUENCY PROCEEDING[1]

TO: _____
Name of parent or custodian

_____
Address

YOU ARE NOTIFIED that a motion has been filed in this court alleging that you are the (parent) (custodian) of a child who is alleged to have

[ ] committed the following delinquent acts _____
(common name and description of each delinquent act).

[ ] violated the conditions of probation by _____
(briefly describe conditions imposed and acts violating those conditions).

and requesting that you be joined as a party to this proceeding. A copy of the motion to join you as a party and a copy of the petition alleging delinquency have been attached to this summons.

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 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.

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

_____
Address

_____
City and zip code

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 and a copy of the motion to join the parent or custodian as a party attached, in the following manner:

(check one box and fill in appropriate blanks)

[ ] by delivering the summons, petition and motion to _____ *(set forth name of parent or custodian to be served). (This alternative is used when the person to be served is served or refuses to accept summons).*

[ ] by delivering the summons, petition and motion to _____ , a person of suitable age and discretion then residing at the usual place of abode of _____ *(set forth name of parent or custodian 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 NOTE

1. This form is to be used for service on a parent or custodian of a child alleged to have committed a delinquent act. A copy of the summons, petition and motion to join the parent or custodian must be served on the respondent.

2. To be completed only if personal service is ordered by the Court.

[Adopted, effective September 1, 1995.]

10-405. Subpoena.

[For use with Rule 10-143 NMRA]

STATE OF NEW MEXICO

_____ COUNTY No. _____

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT DIVISION
IN THE MATTER OF
_____, a Child

SUBPOENA

SUBPOENA FOR[1]

[ ] APPEARANCE OF PERSON FOR
[ ] STATEMENT [ ] DEPOSITION [ ] ADJUDICATORY 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 trial
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

USE NOTE

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 the district attorney, attorney general, public defender or an attorney appointed by the court, district attorney, attorney general or public defender is made pursuant to regulations of the Administrative Office of the Courts. The bracketed language should be deleted if the subpoena is issued by the state or the public defender.

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.]

ANNOTATIONS

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

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.

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.

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, 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. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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

(1) fails to allow reasonable time for compliance,

(2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, 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

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

(4) subjects a person to undue burden.

If a subpoena:

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

(2) 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

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, 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.

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.

Compiler's notes. — Former 10-405 NMRA, relating to notice of preliminary inquiry, was withdrawn October 1, 1996.

10-406. Petition.

[For use with Rule 10-211 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

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 child's parents, guardian, custodian or spouse address 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 NOTE

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, Section 35-15-2 NMSA 1978 requires that the section or subsection defining the offense and the title of the ordinance be set forth.

[As amended, effective October 1, 1996.]

ANNOTATIONS

The 1996 amendment, effective October 1, 1996, rewrote the form.

10-407. Notice of Requirement to Pay Attorney Fees for Legal Representation of the Above-Named Child.

[For use with Rule 10-223 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

STATE OF NEW MEXICO

v. No._____

DOE (_____)

(Actual name of child)

NOTICE OF REQUIREMENT TO PAY ATTORNEY FEES
FOR LEGAL REPRESENTATION OF THE ABOVE-NAMED CHILD

TO: *(Name of parents, custodian or guardian)*
(Address)

Please take notice that pursuant to New Mexico law if you can afford to pay, you may be required to pay for the costs of representing the above-named child. If you cannot afford to pay, you must complete the enclosed affidavit and return it to this office by the _____ day of _____, _____ .

Office of Public Defender
By

Address

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

_____, _____

10-407.1. Notice of withdrawal of counsel and order permitting withdrawal.

[For use with Rule 10-165 NMRA]

STATE OF NEW MEXICO

_____ COUNTY No. _____

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT
STATE OF NEW MEXICO

v.

_____.

NOTICE OF WITHDRAWAL OF COUNSEL
AND
ORDER PERMITTING WITHDRAWAL

_____ *(name of withdrawing attorney)* is withdrawing as attorney of record for this party.
Dated: _____

Withdrawing attorney

Signed

Name *(print)*

Address *(print)*

City, state and zip code *(print)*

Telephone number

APPROVED:

_____
Children's court judge

_____
Date

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this notice to _____ *(name of party)*, at the address indicated.
Date of Mailing: _____, _____.

By:

USE NOTE

See Rule 10-113 NMRA [Rule 10-165 NMRA] for when approval of the court is required prior to withdrawal of counsel. This form is used only if the court has approved the party to proceed *pro se*.

[Approved, effective April 2, 2001.]

ANNOTATIONS

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

10-407.2. Request to withdraw as counsel and order approving substitution of counsel.

[For use with Rule 10-165 NMRA]

STATE OF NEW MEXICO

_____ COUNTY No. _____

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT
STATE OF NEW MEXICO
v.
_____.

REQUEST TO WITHDRAW AS COUNSEL
AND
ORDER APPROVING SUBSTITUTION OF COUNSEL

_____ *(name of withdrawing attorney)* requests permission of the court to withdraw as counsel for the above named party and approval of _____ *(name of attorney)* as counsel to represent the above named party.
Dated: _____

Withdrawing attorney

Signed

Name *(print)*

Address *(print)*

City, state and zip code *(print)*

Telephone number

APPROVED:
_____

Children's court judge

_____

Date

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this notice to _____ *(name of party)*, at the address indicated.
Date of Mailing: _____, _____.

By:

_____

USE NOTE

See Rule 10-113 NMRA [Rule 10-165 NMRA] for when approval of the court is required prior to withdrawal of counsel.

[Approved, effective April 2, 2001.]

ANNOTATIONS

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

10-407.3. Notice of substitution of counsel for legal representation of _____.

[For use with Rule 10-165 NMRA]

STATE OF NEW MEXICO

_____ COUNTY No. _____

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT
STATE OF NEW MEXICO
v.
_____.

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.
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

APPROVED:

_____
Children's court judge

_____
Date

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this notice to _____ *(name of party)*, at the address indicated.
Date of Mailing: _____, _____.

By: _____

USE NOTE

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.]

10-408. Eligibility determination for indigent defense services.

[Rule 10-223]

STATE OF NEW MEXICO

_____**COUNTY**

_____**JUDICIAL DISTRICT**

KEY_____

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/G 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 dependants 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.]

ANNOTATIONS

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.

The 1993 amendment, effective December 1, 1993, rewrote the form and guidelines.

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 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 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."

10-408A. Order of Appointment.

[Section 32A-2-20 NMSA 1978]

STATE OF NEW MEXICO (COUNTY OF _____)

IN THE CHILDREN'S COURT

STATE OF NEW MEXICO

v. No. _____

John Doe

ORDER OF APPOINTMENT

This matter having come before the court, the court finds:
(please check appropriate box or boxes)

[ ] The child is indigent and unable to obtain counsel.

[ ] The child is not indigent, desires counsel, but is unable to obtain counsel.

IT IS THEREFORE ORDERED THAT:

[ ] public defender shall represent the child in the above-entitled case.

[ ] _____, an attorney on contract with the public defender department, shall represent the child in the above-entitled case.

[ ] _____ and _____, the (parents) (guardians) (custodians) of the child shall reimburse the State of New Mexico in an amount of not less than $_____ for legal representation and related expenses.

Judge

CERTIFICATE OF MAILING

I certify that I mailed a copy of this order to the above-named child at _____ *(set forth address)*, to the child's (parents) (guardians) (custodians) at _____ *(set forth address)* and to the public defender on the _____ day of _____, _____

(Judge) (Clerk)

Date

[Adopted, effective August 1, 1989.]

10-408B. Entry of appearance as attorney for child by guardian *ad litem* for the child

[For use with Rules 10-165, 10-312 and 10-321 NMRA and Section 32A-4-10 NMSA 1978.]

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

No. _____

State of New Mexico
Children, Youth and Families
Department,
v.
_____, respondent

In the Matter of _____,
(insert name of each child).

ENTRY OF APPEARANCE AS ATTORNEY FOR CHILD BY GUARDIAN AD LITEM FOR THE CHILD

The undersigned attorney notifies the court that:

(1) _____ *(name of child)* has reached the age of fourteen (14) years of age;

(2) As the child's guardian *ad litem*, I have explained to this child the child's right 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 or party

Date of signature

Address *(print)*

City, state and zip code *(print)*

Telephone number of attorney or party
[
Telephone and fax number of sender][2]

USE NOTE

1. This notice shall be served on the child and on each party to the proceeding.

2. The voice and fax number of the person sending a fax is required to be completed. *See* Rule 10-105.1 NMRA [Rule 10-105 NMRA].

[Approved by Supreme Court Order 06-8300-04, effective March 15, 2006.]

ANNOTATIONS

Compiler's notes. — 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.

10-408C. Motion to appoint an attorney for fourteen year old child.

[For use with Rules 10-165, 10-312 and 10-321 NMRA
and Section 32A-4-10 NMSA 1978.]

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

No. _____

State of New Mexico
Children, Youth and Families
Department,
v.
_____, respondent

In the Matter of _____,
(insert name of each child).

**MOTION TO APPOINT AN ATTORNEY
FOR FOURTEEN 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] the age of 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

(use applicable alternative)

(3) [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

[_____ *(name of attorney)* is appointed to represent _____ *(name of child)* in the above proceedings.][1]

_____
Judge

_____
Date

CERTIFICATE OF SERVICE[2]

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 or party

Date of signature

Telephone and fax number of sender

USE NOTE

1. This form may also be used for the substitution of counsel. Unless a new attorney is appointed by the judge prior to the filing of this motion, new counsel must also enter an appearance for the child.

2. This motion shall be served on the child and on each party to the proceeding.

3. The voice and fax number of the person sending a fax is required to be completed. *See* Rule 10-105.1 NMRA [Rule 10-105 NMRA].

[Approved by Supreme Court Order 06-8300-04, effective March 15, 2006.]

ANNOTATIONS

Compiler's notes. — 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.

10-409. Affidavit for Arrest Warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[_____ JUDICIAL DISTRICT]

IN THE CHILDREN'S COURT

No. _____

IN THE MATTER OF

_____, a Child.

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 NOTE

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. Section 35-15-2 NMSA 1978.

[As amended by Supreme Court Order No. 10-8300-046, effective February 14, 2011.]

ANNOTATIONS

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".

10-410. Arrest Warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

_____COUNTY

_____ 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 NOTE

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.]

ANNOTATIONS

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.

10-411. Affidavit for Search Warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[_____ JUDICIAL DISTRICT]
IN THE CHILDREN'S COURT

No. _____

IN THE MATTER OF
_____, a Child

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 NOTE

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.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-044, effective January 1, 2012, rewrote the form and added the Use Note.

10-412. Search Warrant.

[Rule 10-215 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[_____ JUDICIAL DISTRICT]
IN THE CHILDREN'S COURT

No. _____

IN THE MATTER OF
_____, a Child

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 NOTE

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.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-044, effective January 1, 2012, rewrote the form and added the Use Note.

10-412A. Bench warrant.

[For use with Rule 10-215 NMRA]

STATE OF NEW MEXICO

_____COUNTY

_____ 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.]

10-413. Notice of Detention.

[For use with Rule 10-221 NMRA]

In the Matter of
_____, a Child

NOTICE OF DETENTION

This notice is directed to the child's parents, guardian or custodian and should be used only if notice cannot be given orally.

1

To: _____, _____
relationship

_____, _____
relationship

The above-named child was placed in detention on the day of _____, _____, at _____, _____ m. as an alleged [ ] delinquent child, [ ] child in need of supervision or [ ] child who has violated the terms or conditions of probation.

The child is in detention at _____, *(place of detention and address)* New Mexico. The visiting hours are from _____ to _____, and from _____ to _____ on weekends and legal holidays.

If a petition alleging that the above-named child is delinquent, in need of supervision or has violated the terms or conditions of probation has been filed or is filed in the District Court, Children's Court Division, of this judicial district, a hearing will be held to determine whether continued detention of the above-named child is necessary. If no petition alleging delinquency, need of supervision or violation of probation is filed, the above-named child will be released.

The child has a right to an attorney and if you cannot afford one, the public defender will represent the child. If you can afford an attorney to represent the child, and the public defender represents the child, you will be assessed reasonable attorney's fees.

Notice sent this _____ day of _____, _____ .

Probation Services,
Judicial District.
By:

10-414. Demand for Release Hearing.

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

DEMAND FOR RELEASE HEARING

_____ by his attorney states that he was denied release from detention after hearing on the _____ day of _____, _____, and hereby demands a release hearing pursuant to Children's Court Rule 10-212 [withdrawn].

Signature

ANNOTATIONS

Compiler's notes. — Pursuant to a court order dated September 12, 1995, Rule 10-212 NMRA was withdrawn effective November 1, 1995.

10-415. Motion for extension of consent decree.

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

In the Matter of
_____, a Child

No. _____

MOTION FOR EXTENSION OF CONSENT DECREE

The petitioner, pursuant to Children's Court Rule 10-225 [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 and states that:

(facts supporting motion).

Children's Court Attorney

[As amended, effective August 1, 1999.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-225 NMRA was recompiled as Rule 10-228 NMRA, effective January 15, 2009.

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".

10-415A. Denial of Petition and Explanation of Rights.

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

In the Matter of
_____, a Child

No. _____

DENIAL OF PETITION
AND
EXPLANATION OF RIGHTS

I understand that a petition has been filed charging me with the following delinquent acts under the law of the State of New Mexico:

(list all offenses charged).

I understand that I am entitled to personally appear before the children's court and deny the delinquent acts charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the petition, which I have read and had explained to me by my attorney. I understand the delinquent acts alleged and the penalty provided by law for these acts.

I further understand that: I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the state compel witnesses of my choosing to appear and testify; I have a right to remain silent and that any statement made by me may be used against me; I may have a right to trial by jury and, if I do have a right to a trial by jury, that all jurors must agree that I committed the delinquent acts charged in order for me to be adjudicated as a delinquent child.

After reading and understanding the above, I waive my right to a personal appearance before the judge and I hereby deny the allegations set forth in the petition.

Date Signature of child

I have explained to the child the rights set forth above. I have explained the maximum possible consequences if the allegations of the petition are found to be true and whether the child has a right to a jury trial. The above child understands that if the child does not wish to sign this form, the child may personally appear before the judge (with the child's parents) to deny the allegations of delinquency petition in this case and to have the child's basic rights explained by the judge. I am satisfied that the above named child understands the rights set forth above.

Defense Counsel

Approved:

_____
Children's Court Judge

[Adopted, effective July 1, 1995.]

10-416. Judgment and Disposition.

[For use with Rule 10-251 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

JUDGMENT AND DISPOSITION

On this _____ day of _____, _____, the respondent, a child, appeared in person and with _____, the respondent's attorney, and _____ appeared on behalf of the State of New Mexico as Children's Court attorney.

DENIAL OF ALLEGATIONS OF THE PETITION

The respondent having denied the allegations of the petition:
(check one)

[ ] a jury was impaneled and the jury finds:

[ ] the court finds:

(check one)

[ ] the respondent committed a delinquent act in that respondent _____ *(state delinquent acts)*

[ ] the respondent did not commit a delinquent act.

ADMISSION OF THE ALLEGATIONS OF THE PETITION

The respondent having admitted the allegations of the petition, the court finds that the respondent committed _____ *(delinquent acts)*.

JUDGMENT OF COURT

(Check one)

[ ] IT IS ADJUDGED that the respondent is a delinquent child and the respondent is hereby _____ *(state disposition)*.

[ ] IT IS ORDERED that the respondent not be adjudged a delinquent child and be released from all detention.

[ ]

Children's Court Judge

Noted:

_____
Children's Court Attorney

_____
Attorney for Respondent

[Adopted, effective April 1, 1997.]

ANNOTATIONS

The 1997 amendment, effective April 1, 1997, rewrote the form.

10-417. Notice of Entry of Judgment and Disposition.

[For use with Rules 10-251 and 10-333 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

NOTICE OF
ENTRY OF JUDGMENT AND DISPOSITION

NOTICE is hereby given that a Judgment and Disposition was entered in the above matter on the _____ day of _____, _____ .

Clerk of the Children's Court

This is to certify that this notice was mailed to

on the _____ day of _____, _____ .

Clerk of the Children's Court

_____

For neglect actions, the caption should be the same as that used on the neglect petition form.

10-418. Petition to revoke probation.

[For use with Rule 10-261 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

No. _____

In the Matter of
_____, a Child

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.)

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 NOTE

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 10-105 [Rule 10-104 NMRA], 10-105.1 [Rule 10-105 NMRA] and 10-105.2 [Rule 10-106 NMRA] NMRA.

[As amended, effective August 1, 1999.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, Rules 10-105, 10-105.1 and 10-105.2 NMRA were recompiled as Rules 10-104, 10-105 and 10-106 NMRA respectively.

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.

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. Sealing order.

[For use with Rule 10-262 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

Date of Birth: _____

Social Security Number (*last four digits only*): _____

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 has 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 NOTE

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 06-8300-30, 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.]

ANNOTATIONS

Recompilations. — Form 10-420 NMRA, an ex parte custody order, was recompiled as Form 10-452 NMRA, effective August 1, 1999.

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.

10-421. Withdrawn.

ANNOTATIONS

Withdrawals. — Former Form 10-421 NMRA, an abuse or neglect petition, is withdrawn effective August 1, 1999.

10-422. Judgment and Disposition.

[For use with Rule 10-310 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

State of New Mexico ex rel. Human
Services Department, In the Matter of
_____, a Child and Concerning
_____, Respondent(s)

No. _____

JUDGMENT AND DISPOSITION

This matter came on for hearing on this _____ day of _____, _____, _____, a child being represented by _____, guardian ad litem _____, appearing on behalf of the State of New Mexico as Children's Court attorney, and
(check one)

[ ] the Respondent having appeared in person and with _____, his attorney;

[ ] the Respondent not having appeared, but having been duly served on _____, _____, and no answer, motion or other pleading having been filed hereon on his behalf except _____

(DENIAL OF ALLEGATIONS OF THE PETITION)

[ ] The respondent having denied the allegations of the petition, the court finds that:

(check one)

(a) [ ] _____, a child, is (an abused) (a neglected) child by reason of the acts of the Respondent in that he _____ *(state acts of abuse or neglect)* and the Department has made reasonable efforts

to leave the child in its home or to return the child to its home if in temporary custody.

(b) [ ] _____, a child, is not (an abused) (a neglected) child.

(ADMISSION OF THE ALLEGATIONS OF THE PETITION
OR FAILURE TO APPEAR)

(check one)

(a) [ ] The Respondent having admitted the allegations of the petition, the court so finds that _____, a child, is (an abused) (a neglected) child by reason of the acts of the Respondent in that he _____ *(state acts of abuse or neglect)* and the Department has made reasonable efforts to leave the child in its home or to return the child to its home if in temporary custody.

(b) [ ] The Respondent not appearing and the court having heard the evidence adduced, the court finds that _____, a child, is (an abused) (a neglected) child by reason of the acts of the Respondent in that he _____ .

JUDGMENT OF COURT

[ ] IT IS ADJUDGED that _____, a child, is (an abused) (a neglected) child.

[ ] IT IS ADJUDGED that _____, a child, is not (an abused) (a neglected) child and should be released from all custody.

[ ] IT IS ADJUDGED that said child is hereby _____ *(state disposition)*.

[ ] IT IS ORDERED that _____ *(name of parent or guardian)* pay $_____ as reasonable costs of (support) (maintenance) (treatment) (defense) of _____ *(name of child)*.

[As amended, effective May 1, 1986.]

10-423. Plea and disposition agreement.

[For use with Rule 10-227 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION

COUNTY OF _____
STATE OF NEW MEXICO

Petition filed: _____
JPPO No. _____

IN THE MATTER OF:
_____, a Child

PLEA AND DISPOSITION AGREEMENT

The state and the child agree to the following disposition:

Admission:

The child agrees to (admit) (not contest) to the following allegations charging the following:

.
.

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.

[ ] The child will not oppose an extension of the consent decree.

[ ] The consent decree will end _____.

[ ] Probation for a period 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 Children, Youth and Families Department 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.** The child agrees to make restitution as follows:
.

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, and my privilege against self-incrimination. I agree to admit the allegations 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.

_____
Defense counsel Date

CHILDREN'S COURT ATTORNEY REVIEW

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

_____
Children's Court Attorney Date

[Approved, effective August 1, 1999.]

10-424. Advice of rights by judge.

[For use with Rules 10-226 and 10-227 NMRA]

STATE OF NEW MEXICO

_____ **COUNTY**

_____ **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 NOTE

1. This form shall be used with a plea agreement or a consent decree entered into by a delinquent offender.

2. Under Section 32A-2-22 NMSA 1978, 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.]

ANNOTATIONS

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.

10-425. Consent decree.

[For use with Rules 10-227, 10-228 NMRA]

STATE OF NEW MEXICO

_____ **COUNTY**

_____ **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 NOTE

1. The advice of rights form shall be used to document the advisement.

2. Under Section 32A-2-22 NMSA 1978, 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.]

ANNOTATIONS

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.

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".

10-426. Withdrawn.

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.

10-427. Withdrawn.

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.

10-430. Statement of Probable Cause.

[For use with Rules 10-221 and 10-222 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

In the Matter of
John Doe, 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 NOTE

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.]

10-431. Probable Cause Determination.

[For use with Rules 10-221 and 10-222 NMRA]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

In the Matter of
John Doe, 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

[ ] 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 NOTE

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.]

10-440. 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 NOTE

This list of proposed question 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.]

10-441. 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 NOTE

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. 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 scheduledfor

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 NOTE

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.]

10-443. 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.]

10-450. Motion for ex parte custody order.

[For use with Rule 10-311 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s)

MOTION FOR EX PARTE CUSTODY ORDER

The petitioner moves the court for an ex parte custody order based on the affidavit for ex parte custody order attached and made a part of this motion.

Children's Court Attorney

[Approved, effective August 1, 1999.]

ANNOTATIONS

Cross references. — For *ex parte* custody orders, *see* Rule 10-311 NMRA.

10-451. Affidavit for ex parte custody order.

[For use with Rule 10-312 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s)
STATE OF NEW MEXICO
COUNTY OF _____

AFFIDAVIT FOR EX PARTE CUSTODY ORDER

The undersigned states that the above-named child(ren) (is) (are) (abused) (neglected) and that it is necessary for the protection of the child(ren) that the child(ren) be placed in the custody of the Children, Youth and Families Department because there is probable cause to believe:

[ ] the child(ren) (is) (are) suffering from an illness or injury and the respondent(s) (is) (are) not providing adequate care;

[ ] the child(ren) (is) (are) in immediate danger from (his) (their) surroundings and immediate removal from those surroundings is necessary for the child(ren)'s safety or well being;

[ ] the child(ren) will be subject to injury by others if not placed in the custody of the department;

[ ] the child(ren) (has) (have) been abandoned by respondent(s);

[ ] the respondent(s) (is) (are) not able to provide adequate supervision and care for the child(ren);

[ ] (*other*)
.

The facts in support of this affidavit are: (*include facts in support of the credibility of any hearsay relied upon and list names of the children and dates of birth*)

.
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

[Rule 10-419 SCRA 1986; as recompiled and amended, effective August 1, 1999.]

ANNOTATIONS

Cross references. — For *ex parte* custody orders, *see* Section 32A-4-16 NMSA 1978.

For grounds for the court to grant custody to the department, *see* Section 32A-4-18 NMSA 1978.

The 1999 amendment, effective August 1, 1999, deleted "Human Services Department" under "State of New Mexico ex rel." in the introductory material; in the forms text, in the first paragraph, deleted "being duly sworn, on his oath" following "The undersigned", deleted "he has reason to believe that" preceding "the above-named", and substituted the language beginning "Children, Youth and Families Department" and ending with the listed items for "Human Services Department"; in the second paragraph substituted "The facts" for "The undersigned further states the following facts on oath to establish probable cause" and added "and list names of the children and dates of birth", and following that paragraph, deleted ruled spaces for the affiant's name, signature, and title.

10-452. The state of New Mexico to any officer authorized to execute this order.

[For use with Rule 10-311 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____

STATE OF NEW MEXICO No. _____.

State of New Mexico ex rel. Children, Youth and
Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s).

EX PARTE CUSTODY ORDER[1]

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS ORDER

YOU ARE HEREBY COMMANDED to take _____, _____ (*name of child or children*), born _____, _____ (*date born for each child*) without unnecessary delay and deliver the child(ren) into the custody of the Children, Youth and Families Department. You are further commanded to serve a copy of this order on _____ (*respondent*).

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.

Reasonable efforts have been made to avoid removal of the child(ren) from home; or, given the circumstances, the court finds that reasonable efforts to keep the child(ren) in the home were unnecessary. Therefore, it is necessary for the child(ren)'s protection that the child(ren) be placed in the custody of the Children, Youth and Families Department.

It is ordered that custody of the child(ren) be placed in the custody of the New Mexico Children, Youth and Families Department until further order of the court.

Dated this _____ day of _____, _____.

Judge

RETURN WHERE CHILD IS FOUND

I took the above-named child(ren) into custody and delivered the child(ren) into the custody of the Children, Youth and Families Department on the _____ day of _____, _____, and served a copy of this ex parte custody order and a copy of the petition[2] on (*respondent*) on the _____ day of _____, _____.

Signature

Title

USE NOTE

1. For use when the child has not been placed in the custody of the department. Form 10-453 is used when the child is in the custody of the department.

2. This order is served with the petition.

[10-420 NMRA, as amended and recompiled, effective August 1, 1999.]

ANNOTATIONS

The 1999 amendment, effective August 1, 1999, deleted "Human Services Department" following "ex rel." in the introductory language; substituted "Children, Youth and Families Department" for "Human Services Department" in the first paragraph and the last paragraph; deleted the former second paragraph, which read "Said child is alleged to be neglected and it is necessary for the protection of said child to be placed in the custody of the Human Services Department"; added the second, third, and fourth paragraphs; following the fourth paragraph, deleted "District" preceding "Judge" under the ruled line; inserted "and a copy of the petition[2]" in the last paragraph; added item 1. in the Use Note; and made gender neutral changes throughout the form.

10-453. Ex parte custody order.

[For use with Rule 10-311 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s).

EX PARTE CUSTODY ORDER[1]

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.

Reasonable efforts have been made to avoid removal of the child(ren) from home, or, given the circumstances, the court finds it was reasonable to forego those efforts to keep the child(ren) in the home. Therefore, it is necessary for the child(ren)'s protection that the child(ren) remain in the custody of the Children, Youth and Families Department.

It is ordered that the New Mexico Children, Youth and Families Department continue custody of the child(ren) until further order of the court.[2]

Dated this _____ day of _____, _____.

Judge

USE NOTE

1. This order is used when the child is already in the custody of the department.

2. This order is served with the petition.

[Approved, effective August 1, 1999.]

10-454. Abuse or neglect petition.

[For use with Rule 10-312 NMRA]

_____ JUDICIAL DISTRICT COURT
CHILDREN'S COURT DIVISION
COUNTY OF _____
STATE OF NEW MEXICO

No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s)

ABUSE OR NEGLECT PETITION

Comes now the Children, Youth and Families Department, by its attorney and alleges that:

1. _____ (*name of respondent or respondents*) (has) (have) abused or neglected _____, a child.

2. The child's birthdate is: _____ (*month, day and year of birth*).

3. The resident address of the child is:
.

4. The facts giving rise to this petition are:

.

5. As a result of the foregoing, [as well as the additional information contained in the Affidavit for Ex Parte Custody Order,] the child is alleged to be neglected or abused as defined in the Children's Code.

6. The name and address of each respondent and relationship to the child is:

_____,	_____,	
Name	Relationship	Address
_____,	_____,	
Name	Relationship	Address

7. The Children, Youth and Families Department has completed an investigation of the allegations and has determined that it is in the best interest of the child that this petition be filed.

8. The child (is) (is not) in the custody of the Children, Youth and Families Department. The child has been in custody since _____ (*date*).

9. The place of custody of the child is: _____.

10. The child (is) (is not) Native American.

WHEREFORE, the Children, Youth and Families Department requests that:

1. The child be adjudicated abused or neglected.

2. The court order that the child *(be placed) (remain)* in the custody of the Children, Youth and Families Department;

3. The court hold 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

[Approved, effective August 1, 1999.]

10-455. Notice of hearing.

STATE OF NEW MEXICO
IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION
_____ COUNTY
In the Matter of
_____, a Child

No. _____.

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.]

10-456. Notice of filing of petition alleging abuse or neglect of child.

[For use with Rule 10-312 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

_____ COUNTY No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s)

NOTICE
OF FILING OF PETITION
ALLEGING ABUSE OR NEGLECT OF CHILD[1]

A petition has been filed alleging that _____, (*name 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 NOTE

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.]

10-456A. Affidavit of indigency; abuse or neglect.

[For use with 32A-4-10 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

State of New Mexico ex rel. No. _____

Children, Youth and Families Department,

In the Matter of _____, a Child,

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: $ _____	debt: $ _____
Vehicles (other than primary vehicle)	value: $ _____	debt: $ _____
Other assets (describe below):		
_____	$ _____	
_____	$ _____	

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, zip code*)

_____

(*Telephone*)

State of)

_____

) ss

County of
_____)

Signed and sworn or affirmed to before me on
_____ (*date*) by
_____ (*name of applicant*).

_____

Notary

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.]

10-457. Motion to intervene.

[For use with Rule 10-312 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT
CHILDREN'S COURT DIVISION

_____ COUNTY No. _____.

State of New Mexico ex rel.
Children, Youth and Families Department,
In the Matter of
_____, a Child and Concerning
_____, Respondent(s)

MOTION TO INTERVENE

Comes now _____, the (father) (mother) of the above named child(ren), [through (his) (her) attorney][1] and requests the court for permission to intervene as a party in this proceeding.

_____
Date

Attorney for intervenor

Attorney's address

Attorney's telephone number

(*To be completed by parent who is not represented by an attorney*)

_____
Date

Signature of parent

Name of parent *(printed)*

Street address

City

State and Zip Code

Telephone number of parent

USE NOTE

Use bracketed material if parent is represented by an attorney. If an attorney signs this pleading, the signature, name, address and telephone number of the parent are not required.

[Approved, effective August 1, 1999.]

10-470. Motion for termination of parental rights.

[For use with Rule 10-347 NMRA]

STATE OF NEW MEXICO

_____ COUNTY No. _____.

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT
_____,
Petitioner
v.
_____,
Respondent.

MOTION FOR TERMINATION OF PARENTAL RIGHTS

I, _____ *(name of petitioner)*, state that:

1. The petitioner is the [department] _____ *(set forth the relationship of the moving party to the child)*[1]; and

2. The [respondent is] [respondents are] the [father] [and] [mother] of the following children who reside in this state:

Name	**Date of birth**
_____	
_____	
_____	

3. If anyone other than the parties to this proceeding has either physical custody or claims to have custody or visitation rights of a child listed above, complete the following for each child:

Child's name	**Person claiming rights**
_____	
_____	
_____	
_____	

(use applicable alternative)

4. [The child is not subject to the Indian Child Welfare Act;][2]
[The child is subject to the federal Indian Child Welfare Act of 1978.

(a) The child's father is a member of _____ *(tribal affiliation)*.
The child's mother is a member of _____ *(tribal affiliation)*.

(b) The [department] [moving party] has taken the following actions to notify the parents' tribes:

(set forth the actions taken, the names, address, titles and telephone numbers of the persons contacted)
The results of the contacts are as follows:

The following correspondence with the tribes is attached as exhibits:

(Attach copies of any correspondence with the tribes as exhibits to the petition);]

(c) The following 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:
.][3]

5. [A New Mexico court, a tribal court or a court in another state has previously set conditions of child custody or child support for any or all of the children listed above in _____ *(style of case and docket number)*.][4]

6. As grounds for termination of the parental rights of respondent, the [petitioner] [moving party] states:

;

7. The facts and circumstances supporting the grounds for termination are as follows:

;

8. The following persons or agencies should be considered by the court to take custody of the respondent's children:

;

9. _____ *(name of child)* resides or has resided with _____, a foster parent, who [desires][5] [does not desire] to adopt this child;

10. [This motion has been filed by the [petitioner] [moving party] in contemplation of adoption proceedings.]
[Adoption of _____ *(name of child)* is not contemplated at this time;]

11. It is in the best interest of _____ *(name of child)* that the parental rights of _____ be terminated.

WHEREFORE, [petitioner] [the moving party] requests the court:

1. For termination of respondent's parental rights and continuing the child in the legal custody of the department until the child is adopted or until further order of the court;

2. For such other relief as appropriate.

VERIFICATION

STATE OF NEW MEXICO)
COUNTY OF _____) ss
TRIBE OR PUEBLO _____)

I have read and understand the contents of this petition and the statements made are true and correct to the best of my information and belief.

I understand that I can be punished both civilly and criminally if statements I have made in this petition are false.

_____
Date

Signature of petitioner or moving party

Petitioner's or moving party's street address

Petitioner's or moving party's (*City, state and zip code*)

Signed and sworn before me on this _____ day of _____, _____.

_____
Notary Public

My commission expires:

USE NOTE

1. Section 32A-4-29 NMSA 1978 permits a motion to terminate to be filed by the department, a licensed child placement agent or any other person having a legitimate interest in the matter. Rule 10-330 [Rule 10-347 NMRA] requires the person to be a party.

2. If the child is not subject to the Indian Child Welfare Act, this paragraph must be included. If the child is subject to that act, this paragraph may be deleted.

3. If the child is subject to the Indian Child Welfare Act, 25 U.S.C. Section 1901, et seq., the petition must include the following:

(a) the tribal affiliations of the child'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.

4. If the child is subject to the Indian Child Welfare Act, this paragraph must be completed. If the child is not subject to that act, this paragraph may be deleted.

5. Use only applicable alternative. Inapplicable alternatives may be deleted.

[Approved, effective, August 1, 2000; as amended, effective May 1, 2003.]

ANNOTATIONS

Compiler's notes. — Pursuant to Supreme Court Order No. 08-8300-042, Rule 10-330 NMRA was recompiled as Rule 10-347 NMRA, effective January 15, 2009.

The 2003 amendment, effective May 1, 2003, deleted the last two sentences, concerning service, from Paragraph 1 of the first use note.

10-471. 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

No. _____

In the Matter of _____,

(*insert name of each child*)

State of New Mexico

Children, Youth and Families

Department, Petitioner

v.

_____, Respondent

REPORT OF MEDIATION

We the undersigned, participated in a mediation session today, _____ (*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 of 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 information of abuse or neglect is subject to being reported pursuant to the Children's Code.

Signatures:

_____	_____
Mediator	Children's Court Attorney
_____	_____
Respondent	Respondent's Attorney
_____	_____
Social Work Supervisor	Social Worker
_____	_____
Guardian ad litem	CASA
_____	_____
Other	Other

(*To be completed by mediator. Choose one.*)

___ parties reached complete agreement

___ parties reached a partial agreement

___ no agreement was reached

___ continued

___ reset

___ vacated

USE NOTE

Form 6559 NTC: Report of Mediation. For use in neglect and abuse proceedings. The children's court attorney shall file this report with the court and provide a copy to each party to the proceeding.

[Approved, effective September 1, 2005.]

ANNOTATIONS

Cross references. — For confidentiality of certain records in abuse and neglect proceedings, *see* Section 32A-4-33 NMSA 1978.

For compromise negotiations, *see* Rule 11-408 NMRA.

For reports that are privileged by statute, *see* Rule 11-502 NMRA.

For required reporting of child abuse, *see* Section 32A-4-3 NMSA 1978.

10-491. Voluntary consent to voluntary admission for [residential treatment] [habilitation].

[Section 32A-6-11.1(C) NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____ No. _____.

_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

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-6-11.1 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.]

10-492. Mental health review report.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT No. _____.

IN THE MATTER OF
_____

MENTAL HEALTH REVIEW REPORT

Case number: _____
Initial placement date: _____

Advisement of rights date: _____

Mental health review date: _____

Recommendation sent: _____

INTERVIEWS WITH

Client: _____

Date of interview: _____

Telephone: _____

Clinician: _____

Date of interview: _____

Telephone: _____

Home guardian ad litem: _____

Date of interview: _____

Telephone: _____

Case worker: _____

Date of interview: _____

Telephone: _____

Resource consultant: _____

Date of interview: _____

Telephone: _____

Treatment guardian: _____

Date of interview: _____

Telephone: _____

Medical records review: (yes) (no)

If yes *(identify records that were reviewed)*

.

Diagnosis:

Prescriptions:

RECOMMENDATIONS

Placement appropriate: _____ Placement inappropriate: _____

Reason:

.

Number of hours for interviews and report: _____

STATEMENT OF ADVISEMENT OF RIGHTS

I advised the child in case number _____ of the child's rights under the Children's Mental Health and Developmental Disabilities Act _____ *(date)*.

The child understood those rights: Yes _____ No _____.

If no, please explain why:

_____
Guardian ad litem *(signature)*

_____
Address

_____

_____
Telephone number

[Approved, effective July 1, 2002.]

10-493. Guardian ad litem certification of voluntary [admission] [placement] for [residential treatment] [habilitation].

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT No. _____.

IN THE MATTER OF
_____

GUARDIAN AD LITEM CERTIFICATION
OF VOLUNTARY [ADMISSION] [PLACEMENT] FOR
[RESIDENTIAL TREATMENT] [HABILITATION]

_____ *(name of guardian ad litem)*, guardian for the above child certifies pursuant to Section 32A-6-11.1 NMSA 1978 [repealed] that: *(check applicable)*

_____ 1. _____ *(name of child)* was admitted to _____ *(place admitted)* on _____ *(date)* and was advised of the child's rights on _____ *(date)*.

_____ 2 A parent, guardian or legal custodian understands and consents to the child's admission.

or

_____ The following efforts were made to contact the parent, guardian or legal custodian of the child: _____.

_____ 3. The admission is in the child's best interests;

_____ 4. The admission is appropriate for the child; and

_____ 5. [The admission is consistent with the least drastic means principle.]

or

_____ [The child has been or will be discharged on _____.]

_____ 6. The child should be discharged immediately or the facility should immediately initiate involuntary commitment proceedings.

_____
Date

_____
Attorney's signature

_____
Address

_____

_____
Telephone number

_____
Guardian ad litem *(signature)*

_____
Address

_____

_____
Telephone number

[Approved, effective July 1, 2002.]

ANNOTATIONS

Compiler's notes. — Section 32A-6-11.1 NMSA 1978 was repealed by Laws 2007, Ch. 161, § 31, effective June 15, 2007. For comparable provisions, *see* the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978.

10-494. 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 above named child who was born on _____ and explained the child's rights under Section 32A-6-12 NMSA 1978 [repealed].

I am satisfied that the above child understands these rights and voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program.

_____
Date

_____
Attorney's signature

_____
Address

_____

_____
Telephone number

[Approved, effective July 1, 2002.]

ANNOTATIONS

Compiler's notes. — Section 32A-6-12 NMSA 1978 was repealed by Laws 2007, Ch. 161, § 31, effective June 15, 2007. For comparable provisions, *see* the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978.

10-495. Notice of independent counsel.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

IN THE CHILDREN'S COURT No. _____.

_____
(name of treatment facility)
IN THE MATTER OF

_____

NOTICE OF INDEPENDENT COUNSEL

I, _____ *(name of attorney)*, have been retained by the parent, guardian or legal custodian of the above minor child who has agreed to voluntary treatment at the above treatment facility.

_____
Date

_____
Attorney's signature

_____
Address

_____

_____
Telephone number

[Approved, effective July 1, 2002.]

10-496A. Order for evaluation of competency to stand trial.

[For use with Rule 10-242 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

Year of Birth: _____

Social Security No. or Court-Issued ID No. (*last four digits only*): _____

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 NOTE

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.]

10-496B. 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 COURT

IN THE CHILDREN'S COURT

No. _____ (*number of original case*)

IN THE MATTER OF: _____, a child

Year of Birth: _____

Social Security No. or Court-Issued ID No. (*last four digits only*): _____

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 NOTE

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. Order for pre-dispositional diagnostic evaluation.

[For use with Section 32A-2-17(A) NMSA 1978]

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

Year of Birth: _____

Social Security No. or Court-Issued ID No. (*last four digits only*): _____

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 NOTE

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.]

10-496D. 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 COURT

IN THE CHILDREN'S COURT

No. _____ (*number of original case*)

IN THE MATTER OF:

_____, a child

Year of Birth: _____

Social Security No. or Court-Issued ID No. (*last four digits only*): _____

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 NOTE

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.]

10-496E. Ex parte order for forensic evaluation.

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.

Year of Birth: _____

Social Security No. or Court-Issued ID No. (*last four digits only*): _____

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 NOTE

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.]